

STUDIES IN  
OLD OTTOMAN  
CRIMINAL LAW



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CRIMINAL LAW

BY  
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## PREFACE

THIS volume of *Studies in Old Ottoman Criminal Law* by the late Uriel Heyd, Elath Professor in the History of the Moslem Peoples at the Hebrew University of Jerusalem, is a testimony to the loss which the scholarly world suffered by his untimely passing some four years ago.

Uriel Heyd was a rare combination of the productive and careful scholar, the devoted teacher, and the seasoned diplomat. He could have advanced as far as he wished in the Israel diplomatic service, but the world of scholarship was a magnet that drew him back to university life.

Rarely can it be said of a man that he is indispensable and irreplaceable; but of him this can be said. A cruel fate deprived us of his academic leadership and of the generations of young scholars whom he undoubtedly would have attracted. This is a loss that cannot be overrated. His erudition was broad but punctilious, enriched by a familiarity with many disciplines and many cultures. His was a combination of qualities that occurs all too infrequently: when it does occur, it secures for its possessor a unique distinction, and a position of academic leadership.

In the life of the University, and in the broader sphere of international scholarship, Heyd's human qualities will long be remembered.

I would express my deep appreciation to Professor Ménage and the Clarendon Press for preparing this volume, which will serve not only as a memorial to Uriel Heyd but as a stimulus to his successors in those fields of study to which he made such significant contributions.

*Jerusalem, 1972*

A. HARMAN  
*President*  
*The Hebrew University*



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## EDITOR'S PREFACE

FROM their conversations with him and from references in his publications, Uriel Heyd's friends and colleagues knew that for several years before his premature death (13 May 1968) he had been engaged on a major work to be entitled *Studies in Old Ottoman Criminal Law*. So long ago as 1958, when it was my good fortune to be in Istanbul at the same time as he was working there and so to enjoy and profit from his company, he was collecting his material; and his posthumously published article 'Some aspects of the Ottoman fetvā' (*BSOAS*, xxxii/1 (1969), 35-56), which was a parergon to these researches, was an index of the succinct and penetrating scholarship which we might have expected from the *Studies*.

When, therefore, Mrs. Heyd, Professor Baer, and Professor Ayalon did me the honour of suggesting that I should see the manuscript of the *Studies* into print, I was torn between a sense of obligation to ensure that the work should appear and a recognition of my own inability to complete the work as Heyd would have wished. My hesitations were overruled by Professor Ayalon's assurance that the Hebrew University wished it to appear in the state that Heyd had left it, with no attempt to supply sections or chapters still unwritten.

The papers with which I was entrusted represented material at varying stages of revision. Heyd's broad plan—to quote from a research report—was to make 'the first attempt systematically to investigate Ottoman penal law and the administration of criminal justice in the Ottoman Empire in the 15-17th centuries'. The report continues: 'Its first part deals with the development of the Ottoman Criminal Code, the only major secular code of penal law in a Muslim state before the Westernizing reforms of the 19th century. A scholarly edition of the Turkish text based on many manuscripts will be followed by an annotated translation into English. Thereafter, several fundamental problems of Ottoman criminal law are investigated: its origin, its relationship to the religious law of Islam, the reasons for its decline, and criminal procedure. The extent of its application is studied in different

sources, mainly the records of the cadis' law-courts and the registers of firman copies. The final object is to draw certain conclusions concerning the status of secular law in a traditional Islamic State, the role played by the Sultan, the governors and the cadis in the administration of criminal justice, the Ottoman concept of justice, and related questions.'

The projected 'first part' (pp. 5-147 of this book) was at an advanced stage of revision, so that here my editorial intervention has been minimal. All the text and all the footnotes indicated by numbers are Heyd's own; the few footnotes which I have added are indicated by asterisks and enclosed in square brackets. Since Heyd had not written any general introduction, I have reprinted (pp. 1-3) the first paragraphs of his paper '*Kānūn* and *Shari'a* in Old Ottoman Criminal Justice' (The Israel Academy of Sciences and Humanities, *Proceedings*, vol. iii, no. 1, Jerusalem, 1967), which is a résumé of most of the matters treated in the *Studies*, and I have transferred to this part of the work some only lightly revised and perhaps unfinished pages on the application in practice of the Ottoman Criminal Code, which can appropriately figure here (pp. 148-57) as a coda to its text.

Here and there it was evident, from pencil notes in the typescript or from slips attached to its pages, that Heyd was planning to revise further a sentence or a paragraph. To suppress such passages, sometimes with consequent disruption of the argument, was impossible; to revise them went beyond my brief. I have therefore indicated in footnotes those passages which may not represent Heyd's final conclusions, and have also given as footnotes (at what I judge to be the appropriate points) introduced by the words '[pencil note]' or '[slip]' passages and comments which Heyd had not yet worked into the typescript.

To edit the material presented here as Part Two (pp. 165-313) was a more delicate task. I had before me three loose-leaf books, containing nearly 400 unnumbered pages, some full, some containing only a sentence or two. Practically every page contained corrections and revisions, and also numerous notes in pencil, many of these being just jottings of a reference or a query. I have rearranged these pages slightly so that they constitute four chapters, on (1) the legal character of *kānūn* legislation and its relation to the *shari'a*, (2) the authorities administering criminal justice, (3) procedure (particularly with reference to the *cadi's* court), and

(4) punishment. A section on *ih̄tisāb* jurisdiction I have placed in chapter two. Since some repetition is inevitable, I have inserted several cross-references.

Many pages in these four chapters were little more than a first draft, so that in preparing them for the press I had to intervene more than was necessary with Part One. I have tacitly made a few stylistic changes, filled a few blanks, and eliminated a few duplications. At points where Heyd was evidently proposing to extend a paragraph or to insert further material I have ended the paragraph with four points (see, e.g., p. 170): here the reader is to understand, according to the context, 'this subject was to be further developed' or 'there is here a turn, or a slight gap, in the argument'. As in Part One, all the numbered footnotes are Heyd's, asterisks indicating those inserted by me, while '[pencil note]' indicates an addendum substantially in Heyd's words. Frequently, however, the notes are little more than a 'cf.' or a 'but cf.' with a reference; in these cases I have, wherever possible, looked up the works concerned and have written up in my own words, as '[pencil note(s) expanded]', such entries as I judged to deserve inclusion. The reader should therefore bear in mind that these 'expansions' may not carry the weight or the interpretation that Heyd would have given to them.

These four chapters are in the main a factual description of the administration of Ottoman criminal justice in the period from the late fifteenth century into the eighteenth, principally based upon the *kānūnnāmes* themselves, other archival material, and descriptions by European observers. (I have included the few paragraphs which Heyd had drafted on this source-material as Appendix I, pp. 314-16.) This description probably represents little more than half of what Heyd was planning to write, for he left folders of notes on (1) the evidence for the origins of the Ottoman penal code, in the Turco-Mongol, the Islamic, and the Byzantine worlds; (2) the 'orthodox' position of the *sharī'a*; (2) a possible parallel for the Ottoman penal code in the Mogul Empire under Aurangzēb; and (4) the reforms carried out in the field of criminal law during the period of the Tanzimāt. Only for (3) had he made a short draft, which I have included as Appendix II, pp. 317-18.

I have supplied the List of Abbreviations, the Conspectus of Manuscript Sources, the Note on Transliteration, the Concordance (pp. 158-63), the Indexes, and the Glossary. Needless to say, I

have not attempted to make any modification to the conclusions in Heyd's text or his notes in the light of studies published since his death. It should therefore be remembered, when this book is read in conjunction with other publications touching on the same subjects, that the results here set out represent the state of the case as seen by Heyd in 1968.

The mere list of the manuscripts which Heyd used for his text of the Ottoman Criminal Code (pp. 33-7) sufficiently indicates the extent of his debt to the directors and staffs of numerous libraries of Europe. Since he cannot personally express his gratitude to them for their help, it will not, I hope, be thought incongruous if I do so here on his behalf. Similarly, he would have wished particularly to thank the Director of the Turkish State Archives, the Director of the Topkapı Sarayı Museum, and his many other friends in the libraries of Istanbul, Ankara, and other cities of Turkey for their generous assistance and co-operation.

Heyd spent the academic year 1965-6 in Oxford, attached to St. Antony's College as a senior associate member, and it was then especially that he was able, freed from the pressure of his duties at the Hebrew University, to concentrate on these researches. He was deeply appreciative of the hospitality extended to him in Oxford by the Warden and Fellows of St. Antony's College and the Curators of the Oriental Institute, and of the helpfulness of the staff of the Department of Oriental Books in the Bodleian Library.

V. L. MÉNAGE

*London, 1972*

## LIST OF ABBREVIATIONS

(The dates enclosed in angle brackets after the names of travellers, etc., are the years, sometimes approximate, to which their accounts purport to refer)

- Abū Yūsuf: Abū Yūsuf Ya'kūb b. Ibrāhīm (d. 182/798), *Kitāb al-Kharāj*, Bülāk, 1302 (Fr. trans., E. Fagnan, *Le Livre de l'impôt foncier*, Paris, 1921, giving the pagination of the Bülāk, 1302, edition).
- Ahmed Luṭfī: Ahmed Luṭfī, *Mir'āt-i 'adālet yāhūd Tārīhçe-i 'adliye-i Devlet-i 'Alīye*, Istanbul, 1304.
- Ahmed Luṭfī, *Ta'rīh*: Ahmed Luṭfī (d. 1907), *Ta'rīh*, 8 vols., Istanbul, 1290-1306.
- Anhegger: R. Anhegger, *Beiträge zur Geschichte des Bergbaues im osmanischen Reich*, 2 parts and Nachtrag, Istanbul, 1943-5.
- Anhegger-İnalçık: R. Anhegger-Halil İnalçık, *Kānūnnāme-i sulṭānī ber müceb-i 'orf-i 'osmānī*, Ankara, 1956.
- Arşiv Kılavuzu*: Topkapı Sarayı Müzesi, *Arşiv Kılavuzu*, fascs. i-ii, Istanbul, 1938-40.
- d'Arvieux: Louis Laurent d'Arvieux (1653-83), *Mémoires du chevalier d'Arvieux*, recueillis . . . par J. B. Labat, 6 vols., Paris, 1735.
- 'Aṭā'i: 'Aṭā'i (Nev'izāde 'Aṭā'u'llāh, d. 1045/1635), *Ḥadā'ik al-ḥakā'ik fī takmilat al-Shakā'ik*, Istanbul, 1268.
- d'Aubignosc: L. P. B. d'Aubignosc, *La Turquie nouvelle jugée au point où l'ont amenée les réformes du sultan Mahmoud*, 2 vols., Paris, 1839.
- AÜDTCFD: *Ankara Üniversitesi Dil ve Tarih-Coğrafya Fakültesi Dergisi*, Ankara, i (1942)- .
- Babinger, *GOW*: Franz Babinger, *Die Geschichtsschreiber der Osmanen und ihre Werke*, Leiden, 19
- Babinger, *Sult. Urkunden*: Franz Babinger, *Sultanische Ur Geschichte der osmanischen W Staatsverwaltung . . .*, Teil I [fö A.f. turc 39 of the Biblioth Paris], Munich, 1960.

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- Ahmed Luṭfī: Ahmed Luṭfī, *Mir'āt-i 'adālet yāhūd Tārīhçe-i 'adliye-i Devlet-i 'Alīye*, Istanbul, 1304.
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- Anhegger-İnalçık: R. Anhegger-Halil İnalçık, *Kānūnnāme-i sultānī ber müceb-i 'orf-i 'osmānī*, Ankara, 1956.
- Arşiv Kılavuzu*: Topkapı Sarayı Müzesi, *Arşiv Kılavuzu*, fascs. i-ii, Istanbul, 1938-40.
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- d'Aubignosc: L. P. B. d'Aubignosc, *La Turquie nouvelle jugée au point où l'ont amenée les réformes du sultan Mahmoud*, 2 vols., Paris, 1839.
- AÜDTCFD: *Ankara Üniversitesi Dil ve Tarih-Coğrafya Fakültesi Dergisi*, Ankara, i (1942)- .
- Babinger, *GOW*: Franz Babinger, *Die Geschichtsschreiber der Osmanen und ihre Werke*, Leiden, 1927.
- Babinger, *Sult. Urkunden*: Franz Babinger, *Sultanische Urkunden zur Geschichte der osmanischen Wirtschaft und Staatsverwaltung . . .*, Teil I [facsimile of MS. A.f. turc 39 of the Bibliothèque Nationale, Paris], Munich, 1960.

- Barkan:** Ömer Lûtfi Barkan, *XV ve XVIinci asırlarda Osmanlı İmparatorluğunda ziraî ekonominin hukukî ve malî esasları*, i, *Kamunlar*, İstanbul, 1943.
- Bassano:** Luigi Bassano (1537), *I costumi et i modi particolari de la vita de' Turchi*, Rome, 1545 (cited after the facsimile reprint with Introduction by F. Babinger, Munich, 1963).
- Beldiceanu, i, ii:** Nicoară Beldiceanu, *Les Actes des premiers sultans conservés dans les manuscrits turcs de la Bibliothèque Nationale à Paris*, i (*Actes de Mehmed II et de Bayezid II du ms. fonds turc ancien 39*), Paris-The Hague, 1960; ii (*Règlements miniers, 1390-1512*), Paris-The Hague, 1964.
- Belgeler:** *Belgeler (Türk Tarihi Belgeleri Dergisi)*, Ankara, i (1964)- .
- Belleten:** Türk Tarih Kurumu, *Belleten*, Ankara, i (1937)- .
- B. Ét. Or.:** *Bulletin d'Études orientales de l'Institut français de Damas*, i (1931)- .
- Bilmen:** Ömer Nasuhi Bilmen, '*Hukukî İslâmiyye ve İstilahatı Fikhiyye*' *Kamusu*, i- , İstanbul, 1967- .
- Blochet:** E. Blochet, *Bibliothèque Nationale: Catalogue des manuscrits turcs*, 2 vols., Paris, 1932-3.
- Blount:** Sir Henry Blount (1634), *A Voyage into the Levant*, 3rd edn., London, 1638.
- Brockelmann, GAL, i<sup>2</sup>-ii<sup>2</sup>, Suppl. i-iii:** C. Brockelmann, *Geschichte der arabischen Literatur*, 2nd edn., 2 vols., Leiden, 1943-9; Supplement, 3 vols., Leiden, 1937-42.
- BSOAS:** *Bulletin of the School of Oriental and African Studies, University of London*, i (1917)- .
- Busbecq:** Ogier Ghislain de Busbecq (1555-62), *A. G. Busbequii legationis Turcicae epistolae iv.* (many editions and translations; cited in the Eng. trans. by E. S. Forster, Oxford, 1927, repr. 1968).
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- Cantacasin: Teodoro Spandugino Cantacusino (1490-1510), *Petit Traicté de l'origine des Turcqz*, ed. C. Schefer, Paris, 1896.
- Cantemir: Demetrius Cantemir (d. 1723), *The History of the Growth and Decay of the Othman Empire*, London, 1734.
- Celälzâde, *Ṭabaḳât*: Celälzâde Muṣṭafâ (d. 975/1567), *Ṭabaḳât al-mamâlik wa-darajât al-masâlik*, Süleymaniye Libr., Istanbul, MS. Fatih 4423.
- Cevdet: Aḥmed Cevdet Paşa (d. 1895), *Ta'riḥ*, revised edn., 12 vols., Istanbul, 1309.
- Cezar, *Levendler*: Mustafa Cezar, *Osmanlı tarihinde levendler*, Istanbul, 1965.
- Chesneau: J. Chesneau (1547-55), *Le Voyage de M. d'Aramon . . .*, ed. C. Schefer, Paris, 1887.
- Chishull: E. Chishull (1698-1702), *Travels in Turkey and Back to England*, London, 1747.
- de Crouzenac: Sieur de Crouzenac (pseud. = Saumier de Beaumont), *Histoire de la dernière révolution arrivée dans l'Empire ottoman . . . 1730*, Paris, 1740.
- Çavuşzâde: Çavuşzâde Meḥmed 'Azîz, *Durr al-şukûk*, 2 vols., Istanbul, 1277.
- Dağlıoğlu: Hikmet Turhan Dağlıoğlu, *On altıncı asırda Bursa, 1558-1589*, Bursa, 1943.
- Dallaway: James Dallaway (1797), *Constantinople Ancient and Modern . . .*, London, 1797.
- Danişmend: İsmail Hami Danişmend, *İzahlı Osmanlı tarihi kronolojisi*, 4 vols., Istanbul, 1947-55.
- Debbâgzâde: Debbâgzâde Nu'mân (d. 1114/1702-3), *Tuḥfat al-şukûk*, Istanbul, 1259.
- Dede Efendi, MS. 697: Dede Efendi, İbrâhîm Kemâl ed-Dîn (d. 975/1567-8?), *al-Siyâsa al-shar'îya (Siyâset-nâme)*, cited after Süleymaniye Libr., Istanbul, MS. Esad Ef. 697 (Turkish trans. of the work by Meşrebzâde Meḥmed 'Ârif, *Tercüme-i Siyâset-nâme*, Istanbul, 1275).
- Deny: Jean Deny, *Grammaire de la langue turque (dialecte osmanli)*, Paris, 1921.
- Derleme Dergisi*: Türk Dil Kurumu, *Türkiyede halk ağzından söz derleme dergisi*, vols. i-iii and (Appendix) iv, Istanbul, 1939-51.
- Dernschwam: Fr. Babinger (ed.), *Hans Dernschwam's Tagebuch einer Reise nach Konstantinopel und Kleinasien (1553/55)*, Munich-Leipzig, 1923.

- Deshayes: Louis Deshayes de Cormenin, *Voyage de Levant fait par le commandement du Roy en l'année 1621*, Paris, 1624.
- Digeon: M. Digeon, *Nouveaux Contes turcs et arabes*, 2 vols., Paris, 1781 (ii. 195-278 being 'Canoun-Namé ou Édits de Sultan Soliman').
- Djikiya: S. S. Djikiya, *Prostranny reyestr Gyurdzhistan-skogo vilayeta*, vol. i (Turkish text), Tiflis, 1947.
- DFR, DLF: the two lists of fines levied in the district of Dulkadir (see pp. 50 et sqq.).
- Dozy: R. Dozy, *Supplément aux dictionnaires arabes*, 2 vols., Leiden, 1881.
- DPC: the Dulkadir Penal Code (see pp. 44 et sqq.).
- de Dreux: Robert de Dreux, *Voyage en Turquie et en Grèce . . . (1665-1669)*, ed. H. Pernot, Paris, 1925.
- Driesch: Gerard Cornelius von den Driesch (1719-20), *Historische Nachricht von der Römischen Kays. Gross-botschafft nach Constantinopel . . .*, Nürnberg, 1723.
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- Du Loir: Du Loir (1639-41), *Les Voyages du Sieur Du Loir . . .*, Paris, 1654.
- Du Mont: Jean Du Mont (1691), *Nouveau Voyage du Levant par le Sieur D. M. . .*, The Hague, 1694.
- Đurđev, *Kanuni*: B. Đurđev et al., *Kanuni i kanun-name* (Monumenta Turcica, ser. i, no. 1), Sarajevo, 1957.
- EI<sup>1</sup>: *The Encyclopaedia of Islām*, 4 vols. and supplement, Leiden-London, 1913-38.
- EI<sup>2</sup>: *The Encyclopaedia of Islam (new edition)*, Leiden-London, 1954- .
- Eton: William Eton (1790?), *A Survey of the Turkish Empire*, 2nd edn., London, 1799.
- Evliyā Çelebi: Evliyā Çelebi (d. after 1095/1684), *Seyāhatnâme*, 10 vols., Istanbul, 1896-1938.
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Konya 1  
Larende 1  
Trabzon 42/1815 42/1817  
Üsküdar 1 2 4 6 9

Besides the manuscripts included in the Abbreviations and those listed under sigla at pp. 33-7, the following manuscripts and archival sources, here arranged alphabetically by city and library, are cited in the footnotes:

### Ankara

Dil ve Tarih-Coğrafya Fakültesi Libr.: İsmail Saib I 53  
Tapu ve Kadastro Genel Müdürlüğü: Kuyudu Kadime Defteri  
62 134

### Dubrovnik State Archives Acta Turcarum C-10

### Istanbul

Aya Sofya Libr. 2954 4871  
Başbakanlık Arşivi  
Cevdet catalogue Adliye 4733 5576  
Fekete catalogue 89 1475 3468 3469 4158 4636  
İbnülemin catalogue Adliye 3 4 86  
Kalebend Defteri 1 2  
Kâmil Kepeci catalogue 677 678  
Maliye Defteri 81 546 2775 15367 15450  
Maliyeden müdevver 729  
Mühimme Defteri 2-4 6 7 9 10 12 14 16 19 21 23 24 55 58 61  
62 64 67 70 73 78 108  
Tapu Defteri 69 71 110 155 181 194 282 315(Gb)\* 402 408  
825 998

\* Such a siglum in parentheses indicates that another section of the MS. (a miscellany) is listed at pp. 33-7.

Bayezit Libr.

Bayezit 4789

Veliyüddin 1466 1970(Eb) 2542m.

Belediye Libr.

Belediye 17 71

M. Cevdet O 18 O 44 K 122 K 227 K 525

Köprülü Libr. II 203 II 360 III 99 III 123

Ragıp Paşa Libr. 3742

Süleymaniye Libr.

Çelebi Abdullah Ef. 362

Esad Ef. 697 852 2362(Fw, Qa)

Fatih 3519

Halet Ef. 366(Ga)

Harpuz 283

Hekimoğlu Ali Paşa 558

Hüsrev Paşa 812

Lala İsmail 706

Reşid Ef. 281 662

Şehit Ali Paşa 2865

Topkapı Sarayı Archives D 162; E 5439 10751 12078 12079

Topkapı Sarayı Libr.

Emanet Hazinesi 2064

Hazine 1650 1768

Revan 1935(Bc, Fh) 1936(Fi) 1938

University Libr. T 3586 T 4401

Leningrad State Public Libr. Dorn 535

London British Museum Or. 7477 9503 12423 12463; Add. 7834

Paris Bibliothèque Nationale Ancien fonds turc 35(Ba, Fg) 42 81(Ed)

82 85(Bb, Fo, Ge, Gf, Vd); Supplément turc 69 70 97 1027 1197

Sarajevo Hüsrevbeg Libr. 922

Vienna Nationalbibl. A. F. 77(Fd, Gc)

## NOTE ON TRANSLITERATION

THE system of transliteration for Ottoman Turkish employed in this book follows that of *İslâm Ansiklopedisi* as Heyd modified it for his *Ottoman Documents*. The letters of the Arabic alphabet are rendered thus:

<i>b</i> ب	<i>ġ</i> غ	<i>k</i> ك	<i>p</i> پ	<i>t</i> ت	ظ
<i>c</i> ج	<i>ġ̇</i> ك	<i>k̇</i> ق	<i>r</i> ر	<i>ṫ</i> ط	ذ
<i>ç</i> چ	<i>h</i> ه	<i>l</i> ل	<i>s</i> س	<i>v</i> و	ء
<i>d</i> د	<i>ḣ</i> ح	<i>m</i> م	<i>ṡ</i> ص	<i>y</i> ی	ع
<i>f</i> ف	<i>ḣ̇</i> خ	<i>n</i> ن	<i>ṡ̇</i> ث	<i>z</i> ز	
<i>g</i> گ	<i>j</i> ج	<i>ñ</i> ك	<i>ş</i> ش	<i>ż</i> ض	

Apart from *ġ* and *ñ*, diacritical marks not found in the modern Turkish alphabet are used almost exclusively for words of Arabic or Persian origin. Arabic terms and names not occurring in a Turkish context are given according to the common transcription for Arabic: ج = *j*, خ = *kh*, ش = *sh*, etc. (but ق = *k̇*), and Arabic titles of Ottoman works are transcribed as for Arabic. To avoid complications in the index, however, some common terms of the *shari'a* are, even when employed in a pre-Ottoman context, consistently given after their Turkish rather than their Arabic forms: *diyēt* (not *diya*), *kazf* (not *kadhf*), etc. The judge of the *shari'a* court (A. *ḳāḍī*, but T. *kāḍī*) is referred to throughout as 'cadi'.

Short vowels are represented by the letters used in the modern Turkish alphabet, with the addition of *ē* for the closed *e*. The letters *ā*, *ī*, *ū* reproduce long vowels in Arabic and Persian words. Since it is not known exactly how Turkish was pronounced in the fifteenth and sixteenth centuries, the manner in which vowels are rendered here is necessarily somewhat arbitrary; in doubtful cases the transcription errs on the side of modernizing: thus the Turkish name for the asper, though almost certainly *akça* in the

fifteenth century and later, is consistently rendered *akçe*. For the name Muḥammad in Ottoman contexts the convention of the *Encyclopaedia of Islam* (new edition) has been adopted, namely, of spelling Meḥemmed for sultans and Meḥmed for others.

The spelling of modern Turkish terms and names follows present-day usage in Turkey. Names of places outside the modern Republic are given in their current English forms, where such exist (Montenegro, Aleppo, etc.).

## INTRODUCTION\*

THE criminal law of the *shari'a*, as is well known, never had much practical importance in the lands of Islam. Its substantive law is rather deficient: fixed penalties are prescribed for a limited number of crimes only, many are not dealt with at all. Moreover, its rules of evidence are so strict that a number of offences cannot be punished adequately.

Since the very first centuries of Islam, therefore, criminal justice remained largely outside the jurisdiction of the cadis. A wide range of crimes and misdemeanours was examined and punished by the head of the police (*ṣāhib al-shurṭa*, *wālī al-jarā'im*, etc.), while the *muḥtasib*, or inspector of the market, dealt with trade contraventions and offences against Islamic morals. To check oppression by officials, to correct denials of justice and repress wrongdoers whom the cadis were unable to restrain, the caliphs instituted Courts of Complaint, the famous *maẓālim* jurisdiction which, in Ibn Khaldūn's definition, 'combines the power of the sovereign's authority with the justice of the cadi's judicature'.<sup>1</sup> The *maẓālim* courts were secular institutions, headed by the ruler, a vizier, a governor, or a Palace official. Though often attended by cadis, they were distinct from the ordinary law-courts in which the cadis administered justice according to the religious law.

All these extraordinary jurisdictions were free from the rigid rules of the *shari'a* penal law and criminal procedure, and were guided in the main by customary law (*'urf*), the public interest (*al-maṣlaḥa al-'amma*), and, in particular, the consideration of administrative and political expediency (*siyāsa*). In trying to elicit the truth, they often used intimidation and even force. The punishment awarded may have been effective, but it tended to be arbitrary and excessively severe.

The Ottomans maintained these jurisdictions side by side with the cadis' law-courts (*maḥkeme-i šer'iye*). David ben Zimrā, a Jewish rabbi in Ottoman Egypt in the first half of the sixteenth century, remarked in one of his responsa:

\* [See p. xii.]

<sup>1</sup> Ibn Khaldūn, *Muḥaddima*, Beirut, 1900, p. 222.

... They have two kinds of justice, the one *shar'i* and the other *'urfi*. The *shar'i* justice is entrusted to the chief *cadi* who decides [according to] the religious law [Hebrew: *din*] and the governor is charged with carrying out [his] sentences. The *'urfi* justice, [on the other hand,] which is [based on] a kind of temporary regulation [*hōrā'ath shā'ah*], is entrusted to the governor of the province.<sup>1</sup>

The Ottoman sultans, however, made great and, at first, partly successful efforts to eliminate this dichotomy in regard both to the two separate jurisdictions, the administrative and the judicial, and to the two different systems of law, the customary and the religious. The efforts were made simultaneously in several directions.

First, by laying down the law which they had to apply, the sultans tried to limit the discretion of the non-*shari'a* judges to inflict punishment at their will. For this purpose, the sultans did something unprecedented in Islam—they promulgated comprehensive and detailed regulations (called *kānūn*) of secular criminal law and procedure, and gave orders to assemble them in the form of codes known as *kānūnnāme*.

No similar acts of legislation are known from any other Muslim country outside Anatolia before the process of Westernization began in the nineteenth century. Customary criminal law different from the *shari'a* existed in North Africa, South Arabia, Indonesia, and many other parts of the Muslim world, but nowhere was it officially promulgated, like the Ottoman *kānūn*, in the form of codes. The only parallel that I can cite, in addition to the Dulkadir codes to be discussed, is much later and much more limited in scope—a kind of penal code issued in 1672 by Aurangzēb, the Muslim ruler of India.<sup>2</sup> This surely is no coincidence. The Mogul Empire, the only other great Sunnī Muslim power from the sixteenth to the eighteenth century, was, like the Ottoman, a centralistic, well-organized, and military state with a very large non-Muslim population and institutions largely based on Turco-Mongol traditions.

The authorized Ottoman justification for the issuance of *kānūns* in the field of penal law is twofold, and reflects clearly the dual character of these regulations. On the one hand, the lengthy

<sup>1</sup> R. David b. Zimrā, *Shē'elōth u-Tēshūwōth* (שאלות ותשובות), Venice, 5509 (1748-9), i, f. 53b, no. 296 (attention was drawn to this passage by I. Goldziher, *Die Zāhīriten*, Leipzig, 1884, p. 205, n. 4).

<sup>2</sup> [See below, pp. 317-18.]

preface to the *ḵānūnnāme* of Egypt of 1525,<sup>1</sup> hitherto unpublished, points out that, in the course of time, crimes have multiplied to such an extent that 'disputes and feuds can no longer be decided by the swords of the tongue [*tig-i zebān*] of the guardians of the holy law [i.e. the cadis], but require the tongue of the sword [*zebān-i tig*] of those empowered to inflict heavy punishment [i.e. the non-*shari'a* judges]'. Therefore, the preface goes on, the Ottoman sultans have, since olden times, laid down regulations (*ḵānūn*) in conformity with the *shari'a* and anyone who commits a crime is to be punished in accordance with them. On the other hand, several other *ḵānūnnāmes* embodying criminal law affirm that the codes were issued in response to the complaints of the people about the tyranny of the local officials and fief-holders. A marginal note in one manuscript<sup>2</sup> pithily sums up this concept by defining the object of the *ḵānūns* as *ḥimāyat al-ra'īya min mazālim al-ḥukkām*, 'to protect the common people against the oppression of the authorities', a formulation which, incidentally, indicates the continuity of the idea of *mazālim* jurisdiction.

<sup>1</sup> Aya Sofya Library, Istanbul, MS. 4871, ff. 118b et sqq.

<sup>2</sup> Üniversite Kütüphanesi, Istanbul, MS. T 1807 [=Vc, in the list at pp. 33-7, below], folio preceding f. 1a.



PART ONE

THE OTTOMAN  
CRIMINAL CODE

# I

## THE DEVELOPMENT OF THE OTTOMAN CRIMINAL CODE

### 1. *The make-up and date of Sultan Mehemmed II's criminal and fiscal code*

THE oldest Ottoman code of criminal and fiscal law that has so far come to light is the text published with a German translation by Kraelitz-Greifenhorst<sup>1</sup> from a unique manuscript in Vienna.<sup>2</sup> Its heading is 'Imperial *Ḳānūn* of Sultan Mehemmed, Son of Murād Ḥān'.<sup>3</sup> Kraelitz<sup>4</sup> and, more recently, İnalçık<sup>5</sup> assumed that the whole text was a code of Mehemmed II, which was compiled shortly after his conquest of Constantinople in 1453 and was copied in the last nine days of Cumādā II 893/2-10 June 1488. The first three chapters (*faṣl*) deal with penal law;<sup>6</sup> the fourth consists mainly of statutes on various taxes, tolls, etc. The heading of the latter is interpreted by İnalçık, in accordance with its literal meaning, 'Chapter IV: *Ḳānūn* of Sultan Mehemmed Ḥān'. In his opinion, it comprises three separate *ḳānūns*—a first without a special heading, a second called '*Ḳānūn* of the Nomads (*yürükān*)', and a third with the heading '*Ḳānūn* of the Armoured Followers of the Feudal Lords (*cebelüyān*) together with the *Ḳānūn* of the Married Infidels'.

A different view of the make-up and date of this important text is submitted here. First, it seems that Kraelitz was right in

<sup>1</sup> Friedrich Kraelitz-Greifenhorst, 'Kānūnnāme Sultan Mehemeds des Eroberers. Die ältesten osmanischen Straf- und Finanzgesetze', in *MOG*, i (1921-2), 13-48 and Tafel I.

<sup>2</sup> Österreichische Nationalbibliothek, Vienna, A. F. 554 (Flügel 1814), ff. 2b-7b.

<sup>3</sup> Or, '... Sultan Mehemmed, son of Murād, Ḥān' (cf. the heading of chapter IV). <sup>4</sup> *MOG*, i. 17.

<sup>5</sup> Halil İnalçık, 'Osmanlı hukukuna giriş: Örfi-Sultanî hukuk ve Fatih'in kanunları', in *SBFD*, xiii (1958), 111-12; idem, 'Osmanlılar'da riyyet rüsümü', in *Belleten*, xxiii/92 (1959), 576, n. 3a.

<sup>6</sup> With the exception of chapter III, §§ 11-14 and 16, which deal with agrarian matters and the bride tax.

translating the heading of the fourth chapter, with a slight emendation, 'Vierter Abschnitt des Gesetzes Sultan Mehmed Hân's'.<sup>1</sup> There is no reason why this chapter should be specifically called 'Kânûn of Sultan Mehmed Hân' when the whole text already bears this title. Secondly, notwithstanding their different contents (penal law and statutes on taxes, etc.), it appears that the first three chapters together with the fourth chapter—but excluding the *kânûns* on the nomads and the married infidels—form a single unit.<sup>2</sup> (Otherwise it would be surprising that only the second and third parts of what İnalçık considers chapter IV should have separate headings.) Moreover, the section which, on this interpretation, is the last section of the fourth chapter (i.e. Kraeletz, p. 28, § 36) is part of the concluding formula (*sanctio-comminatio* and *corroboratio*) of a *kânûn* issued in the form of a firman or *nişân* (. . . *şeyle bileler bu kânûn muhakkak bilesiz*).<sup>3</sup> In the manuscript, its final words are set in the middle of the line, as is done here only with the final words of a complete document.

A similar formula occurs, as İnalçık rightly pointed out, in the last section of the 'Kânûn on the married infidels' (Kraeletz, p. 31, § 30), which shows that the latter, too, is a complete and separate document.<sup>4</sup> Some of its sections<sup>5</sup> deal with matters treated also in the first *kânûn*,<sup>6</sup> but especially regulate taxes and other duties imposed on non-Muslim subjects, who are entirely ignored in the other law. Significantly, its § 29 refers to crop damage inflicted, *inter alia*, by pigs, which were raised by Christians only and are not mentioned in the corresponding section (Kraeletz, p. 27, § 34) of the first *kânûn*.

The heading of the 'Kânûn on the married infidels' (p. 28) is rendered by Kraeletz (p. 44) as 'Gesetz der Gepanzerten (gebelüjân) und Gesetz der verheirateten Ungläubigen (gebrân)'. This obviously does not make sense. There can be no connection be-

<sup>1</sup> The incorrect formulation of the heading of chapter IV, *al-faşl al-râbi'a kânûn-i Sultân Mehmed Hân*, is not the only mistake of the copyist (see the corrupted eulogy in the title of the whole text).

<sup>2</sup> J. H. Mordtmann, in his review of Kraeletz's article in *OLZ*, 1922, col. 421, already refers to the last part of the text as 'Anhang'.

<sup>3</sup> Cf., for example, the *nişân* published by P. Wittek in *WZKM*, 54 (1957), 240-1.

<sup>4</sup> The short law on the nomads, interposed between these two *kânûns*, also ends with *şeyle bilesiz*, a remnant of the closing formula of a firman.

<sup>5</sup> Kraeletz, pp. 29-31, §§ 3, 5, 6, 8, 9, 10, 12, 29, etc.

<sup>6</sup> Kraeletz, p. 25, § 23; p. 22, §§ 13, 12; pp. 26-7, §§ 28, 30, 31, 32, 34, etc.

tween the (Muslim) armoured followers of the feudal lords and the Christian subjects—and in fact nothing is said in this *ḵānūn* about *cebeliūs*. A closer examination of the manuscript (f. 6a–b) shows that while the words *ḵānūn-i cebeliüyān* are in the same writing as the preceding text, the rest of the heading, which Kraelitz read *bā ḵānūn-i müzevvec gebrān*, and the first two sections of the ensuing *ḵānūn* are written with a broader pen and in longer lines. Hence it seems that the scribe at first intended to copy a *ḵānūn-i cebeliüyān* (which would indeed have been a suitable continuation to the preceding *ḵānūn-i yürükān*), but for some reason stopped after copying only its heading.<sup>1</sup> The following heading, written with a different pen, belongs to the new chapter. Here the (unpointed) letters ل, read by Kraelitz as *bā*, ‘with’, ‘and’, do not in fact precede but follow the word *ḵānūn*; moreover there is a small gap between these letters and *müzevvec gebrān*. It may be conjectured that the letters ل are the beginning of the word *nāme* and that the copyist, planning to write *ḵānūn-nāme-i müzevvec gebrān*, left the word *nāme* unfinished when he realized that his original, here as in all preceding headings, had *ḵānūn* and not *ḵānūn-nāme*.

It is evident that the ‘*Ḵānūn* on the married infidels’ was not enacted together with the laws preceding it in Kraelitz’s text, for otherwise the statutes that are identical in both would not have been repeated and the different amounts of taxes imposed on non-Muslims would simply have been added to the relevant sections of the first law.

As regards the date of the codes, Kraelitz<sup>2</sup> claimed that two sections in the ‘*Ḵānūn* on the married infidels’ (p. 30, §§ 11 and 22), referring to goods imported from Walachia, Istanbul (and Christian Europe), must have originated before the Ottoman conquest of Constantinople, whereas another section, which deals with the sale of merchandise in Istanbul (§ 25), relates to a period after the conquest. Moreover, he accepted<sup>3</sup> the opinion first put forward by Wittek<sup>4</sup> that at least one section (ch. IV, § 3), and perhaps the whole *Ḵānūnnāme* of Mehemmed II, was compiled prior to 861/

<sup>1</sup> Similarly, after the ‘*Ḵānūn* on the married infidels’, there appear in the manuscript only the heading of a *ḵānūnnāme-i asker el-manşūr* [sic], the name of its addressee (mevlānā ‘Alī) and its date (first 10 days of Cumādā I 893) (see *MOG*, i. 17); the subsequent text is, as is shown by its addressees (the cadis of Rümeli), the beginning of another decree.

<sup>2</sup> Kraelitz, p. 18; p. 46, n. 1.

<sup>3</sup> In the Addenda et Corrigenenda to his article (*MOG*, i. 246).

<sup>4</sup> *MOG*, i. 122, n. 2.

1456-7. Wittek had quoted 'Āşıkpaşazāde and Neşrī as stating that in that year the *çift akçe* (which in this section is fixed at 22 *akçe*) was raised to 30 or 32 *akçe*.

In discussing the date of Kraelitz's text, İnalçık<sup>1</sup> adduces the same arguments, viz.

- (a) In several sections (especially p. 30, § 22) Istanbul is mentioned among foreign places.
- (b) In 1458 the *çift resmi* in the *eyālet* of Anadolu was raised to 33 *akçe*,<sup>2</sup> whereas this text does not mention any such increase.

He adds two more reasons:

- (c) Grain is measured here (p. 25, § 24) in the *müdd* of Edirne.<sup>3</sup>
- (d) The customs duties on goods imported from Europe, as laid down in this code (p. 30, § 22), are two per cent. This, İnalçık points out, was the rate current in the early period of Mehemmed II's reign, while in its later years it was raised to four or five per cent.\*

Consequently, Kraelitz and İnalçık conclude that the whole text, including the chapter on the infidels, was probably compiled shortly after the conquest of Constantinople in 1453, and even contains some still earlier statutes.

Their arguments are not convincing:

(a) No Ottoman *kānunnāme* compiled, however soon, after the conquest of Istanbul would have included earlier statutes mentioning that city as located in foreign territory. Incidentally, if §§ 11 and 22 on p. 30 were verbatim quotations of earlier statutes, they would hardly call the city *İslāmbol*, i.e. the town where 'Muslims are plentiful'. In fact, they refer to Istanbul as one of the places from where goods were brought to a certain Ottoman province.

(b) As has been shown by İnalçık himself,<sup>4</sup> the *çift resmi* rate of 22 *akçe* prescribed in the text remained in force in many Balkan provinces until the sixteenth century.

<sup>1</sup> In his articles cited in p. 7, n. 5 above.

<sup>2</sup> In his article 'Mehmed II.' in *IA* (at p. 533a): 32 *akçe*.

<sup>3</sup> It may be added that in the '*Ānūn* on the married infidels' (p. 29, § 2) wine is measured in the *medre* of Edirne.

\* [For customs rates see also H. İnalçık's remarks in *Der Islam*, xliii (1967), 152 et sqq.]

<sup>4</sup> In *Bellekten*, xxiii. 584-6.

(c) The use of an Edirne (instead of an Istanbul?) measure does not indicate that the codes (or any particular statute in them) were enacted before or shortly after the conquest of Istanbul, since Edirne remained one of the capitals of the Empire and for many years was even the chief residence of the Sultan. If the codes are *kānūnnāmes* for European provinces, the reference to Edirne measures is not at all surprising.

(d) İnalçık himself states<sup>1</sup> that in Bāyezīd II's time the customs duties on merchandise imported from Europe were again two per cent. This is confirmed by another *kānūnnāme* issued in the reign of that sultan.<sup>2</sup> However, it seems that the statute quoted does not refer to customs duties (*gümrük*) at all, but to toll (*bāc*), which was levied on goods brought into a town, irrespective of whether or not customs duties had previously been paid at the Ottoman frontier.<sup>3</sup>

We may say, therefore, that none of the *kānūns* included in Kraelitz's text can be proved to have been enacted in or about 1453. The date of Mehemmed II's code (chs. I–IV of Kraelitz's text) cannot be fixed. Several modern scholars<sup>4</sup> think that it might in the main have been compiled by, or by order of, Karamānī Meḥmed Paşa, who from 869/1464–5(?) served as Nişāncı and in 1477/8–1481 as Sultan Mehemmed II's last Grand Vizier. They seem to follow 'Osmānzāde,<sup>5</sup> according to whom Meḥmed Paşa was the author of many *kānūns*, and von Hammer,<sup>6</sup> who, however, ascribes to Meḥmed Paşa not this *kānūnnāme*, but that on the organization of the Government and Court.<sup>7</sup> This assumption is rather tempting. Karamānī Meḥmed Paşa is said to have played a major part in carrying out Sultan Mehemmed II's policy of

<sup>1</sup> In *SBFD*, xiii. 107.

<sup>2</sup> The *Kānūnnāme* for Cephalonia (Bibl. Nat., Paris, MS. A.f. turc 35, f. 140b; 85, f. 248b). See also *TOEM*, 1329, suppl., p. 22, lines 21–2.

<sup>3</sup> See *EI*<sup>2</sup>, art. 'Bādī' (M. F. Köprülü).

<sup>4</sup> Fr. Babinger, in *MOG*, ii. 244; idem, *GOW*, 25; idem, in *EI*<sup>1</sup>, art. 'Karamānī Meḥmed Paşa'; M. C. Şehâbeddin Tekindağ in *İA*, art. 'Meḥmed Paşa, Karamānī'; Ç. N. Atsız, *Osmanlı Tarihleri*, i, Istanbul, 1949, p. 339 (where the many references to Karaman and Konya in chapters IV and VI of the third part of Bāyezīd II's *kānūnnāme* (*TOEM*, 1329, suppl.: see below, p. 20) are adduced as evidence that that code was compiled under the supervision of Meḥmed Paşa, a native of Karaman).

<sup>5</sup> *Hadika*, p. 14.

<sup>6</sup> *GOR*, ii. 157, 217, 227. His opinion is shared by Meḥmed 'Arif (*TOEM*, 1330, suppl., p. 6).

<sup>7</sup> *KAO* (= *TOEM*, 1330, suppl., pp. 9–32).

increasing the public revenue, turning many areas of waqf and privately owned land into state property and allotting them as fiefs, and generally reorganizing the 'feudal' system.<sup>1</sup> Thus it would not be surprising if further evidence proved that he compiled, or ordered to be compiled, this code, which, apart from feudal legislation, consists mainly of penal statutes prescribing fines, i.e. additional income for fief-holders and officials.

As to the '*Ḳānūn* on the married infidels', there can be little doubt that it is a *ḵānūnnāme* for a certain province largely populated by Christians.<sup>2</sup> The detailed statutes concerning tolls, which differed from province to province, prove that it cannot be a law for the whole Empire. The province for which it was enacted imported merchandise from Walachia, Dubrovnik (Ragusa), and perhaps other places in Christian Europe, as well as from Istanbul, which consequently was outside its borders. Nowhere does this *ḵānūn* refer to the sale of goods in Istanbul. Section 25, on p. 31, does not mean, as Kraelitz (p. 47) believed, 'Wenn man von auswärts Feigen (und) Schafe einführt (und) in Konstantinopel verkauft, so soll von 2 eingeführten Schafen 1 Akçe eingehoben werden . . .', but 'If a dealer<sup>3</sup> brings sheep from outside [into town]—if he brings and sells [them] with Istanbul [as their ultimate] destination,<sup>4</sup> one *akçe* shall be collected for [every] two sheep . . .'.<sup>5</sup>

It therefore appears that this law is a *ḵānūnnāme* for one of the European provinces of the Empire. The above-mentioned use of the Edirne measure corroborates this assumption. It may also be significant that several documents reproduced in the same manuscript after this *ḵānūn* refer to Edirne and, repeatedly, to the *sancak* of Vize, located half-way between Edirne and Istanbul.

<sup>1</sup> 'Aşıkpaşazāde, *Ta'riḥ*, Istanbul, 1332, p. 192; Kıvāmī, *Fetihnāme-i Sultan Mehmed*, ed. Babinger, Istanbul, 1955, pp. 272-4, 286; İbn Kemāl, *Tevâriḥ-i Âl-i Osman*, VII. *Defter*, ed. Turan, Ankara, 1957, pp. 531-2; Neşri, *Cihānnümā*, ed. Taeschner, i. 231; Mecdī, 285.

<sup>2</sup> It is not impossible that the first four chapters of Kraelitz's text also formed a *ḵānūnnāme* enacted for the (Muslim) population of a certain (European?) province. Cf. the *Ḳānūnnāme* for Niğbolu (MS. Fb in the list at p. 34, below), which includes the general Ottoman Criminal Code.

<sup>3</sup> Reading *rençber* and not *incir* 'figs', as read by Kraelitz, nor *tācir* 'merchant', as emended by Barkan, pp. 394-5. For *rençber* in this meaning see U. Heyd, *Ottoman Documents*, p. 133, n. 1; p. 134.

<sup>4</sup> Read *İslāmbol niyetine getirüp satsa* (by writing *ḥ* under *satsa* and *m* under *getirüp*, the copyist restored the correct order of these inadvertently transposed words). The statute prescribes a transit duty.

As to the date of the '*Ḳānūn* on the married infidels', it was apparently not *copied*, together with the preceding *kānūns*, in 893/1488 (as Kraelitz and İnalçık believed), but *enacted* in that year. A date preceded by *tahrīren fī*, like that at the end of this text (Kraelitz, p. 31), is generally, though not always, the date of issue of an official document, and the expression *evāḥır*, i.e. the last nine or ten days of a given month, also suggests the date of such a document rather than the date on which a manuscript was copied. Furthermore, the date in the manuscript is written in direct continuation of the text of the *kānūn*, whereas a scribe might have preferred to give the date of copying in a new line. Immediately after this *kānūn* begins another *kānūnnāme*, the date of which is about a month and a half earlier.<sup>1</sup> The subsequent documents in the manuscript bear various dates, mostly between 894/1488-9 and 898/1492-3.

This conclusion that the '*Ḳānūn* on the married infidels' was enacted in the reign of Bāyezīd II<sup>2</sup> does not, of course, rule out the possibility that some of its statutes originated in earlier periods.

The first three chapters of Meḥemmed II's *kānūnnāme* (designated Aa in the list at p. 33 below)\* consist almost exclusively of criminal statutes.<sup>3</sup> The only exceptions are §§ 11-14 and 16 of chapter III, which refer to the bride tax (*gerdek deḡūri*)<sup>4</sup> and certain agrarian matters. The fourth chapter deals chiefly with taxes and tolls, but includes also a statute concerning the recipients

<sup>1</sup> See above, p. 9, n. 1.

<sup>2</sup> He seems to be the *ḥudāvend-i a'zam* mentioned in § 6 on p. 29. This title was given not only to Meḥemmed II (and some of his predecessors), but also to later sultans. Selim I, for example, was addressed as *ḥudāvendgār-i a'zam* (see Ferīdūn, i. 373).

\* [slip:] Nothing is known as to the existence of earlier criminal codes. If it can be proved that Meḥemmed II's code is the first to be compiled, this fact may be explained by that sultan's policy to do everything in his power to strengthen the feudal system (see B. Cvetkova, in *YESHO*, vol. vi, part I (1963), pp. 108 et seq.), one element of which was that part of the *sipāhi*'s income arose from fines.

<sup>3</sup> In the Ottoman Criminal Code published at pp. 56-93 below, they correspond to sections (and headings) I, 1, 2, 5, 6, 30, 4, 9, 8, 18, 24, 25, 29; II, 36+37+40, 41, 45; III, 61, 64, 65, 67, 66, 66, 68, 72, 50, 52, 69, 94+97, 81. [See the Concordance at pp. 158-63 below.]

<sup>4</sup> This tax, later usually called *resm-i 'arūs(āne)* or '*arūsiye*', belongs fiscally to the same group of dues as fines (see below, p. 279); see also *MOG*, i. 25, § 18 (read in conjunction with § 17) and p. 29, § 6 (read in conjunction with § 7).

of fines (§ 17),<sup>1</sup> as well as two sections (§§ 34-5) relating to the prevention and punishment of crop damage by animals.<sup>2</sup>

The 'Kānūn on the married infidels' (Ab), enacted in 1488, contains the two earliest-known additions to the criminal code of Mehemmed II. Its § 29, on crop damage, amplifies the corresponding § 34 of the latter's chapter IV; it adds damage by cows and, significantly, by pigs, which were raised by Christians only.<sup>3</sup> Another statute (§ 7) lays down the important rule under which an infidel in many cases paid half the fine imposed on a Muslim for the same offence.<sup>4</sup>

## 2. *The criminal codes in the Kānūnnāmes for the Christians of Cephalonia and Montenegro*

As might be expected from this last-mentioned provision of Bāyezīd's 'Kānūn on the married infidels', special criminal codes were enacted for Christian provinces of the Empire. The earliest so far discovered is the *kānūnnāme* for the Christian population of the island of Cephalonia (Kephallenia), which is preserved in several manuscripts<sup>5</sup> and is very helpful in establishing the text and the meaning of Mehemmed II's and Bāyezīd II's laws discussed above. According to its preamble, the inhabitants of Cephalonia sent a representative to Istanbul to complain about oppressive tax-collectors ('*ummāl*) and other officials and requested a *kānūnnāme*. As a result, the ensuing *nişān* was enacted and, as is stated at the end of the document, the local *sancakbeğis*, *cadis*, *subaşıs*, and *emīns* were ordered to implement it. Though this *kānūnnāme* is undated, there can be little doubt that it was enacted in the reign of Sultan Bāyezīd II (1481-1512). The island was under Ottoman domination only from 1479 to 1499 (or 1500),<sup>6</sup> and it is rather unlikely that the inhabitants should have lodged their complaint during the first year or two after the conquest, i.e. before Mehemmed's death in 1481.

The *kānūnnāme* deals with various taxes and tolls. Many of its statutes are almost identical with or very similar to those in Mehemmed II's and Bāyezīd II's *kānūns* discussed above, but their order is different. After the sections corresponding to p. 27,

<sup>1</sup> See below, p. 291.

<sup>2</sup> See OCC, §§ 108-10.

<sup>3</sup> See OCC, §§ 108-9.

<sup>4</sup> See OCC, § 51.

<sup>5</sup> Ba, Bb, Bc.

<sup>6</sup> Hammer, *GOR*, ii. 322-3, 611-12.

§ 35 and p. 31, § 28<sup>1</sup> of Kraelitz's text, one of its texts (Bb, f. 248a and 248b) has parts of the concluding formula of a *nişān* (cf. Kraelitz, p. 28, § 36; p. 31, § 30), showing that it incorporates two originally separate *kānūns*. But it mixes the sections of the *kānūnnāmes* of Meḥemmed II and Bāyezīd II; this may indicate that it was written after the latter's completion (in 1488, as suggested at p. 13, above). After the statute on the bride tax it has, instead of the section on fines for infidels,<sup>2</sup> a detailed criminal code. This code much resembles that of Meḥemmed II,<sup>3</sup> but—in accordance with the rule mentioned above—it frequently prescribes lighter penalties than those which Meḥemmed's law imposes on Muslims.<sup>4</sup>

A similar criminal code for another province largely populated by Christians, Montenegro, occurs in a cadastral register dated 929/1523<sup>5</sup> under the heading '*Ḳānūnnāme* of the *vilāyet* of Montenegro (*Karadağ*) according to the old register'. It has been published, with a Serbo-Croatian translation, by B. Đurđev.<sup>6</sup> Apart from a statute on the bride tax, it contains only penal provisions, almost identical with those of the *Ḳānūnnāme* for Cephalonia. Three sections,<sup>7</sup> however, are absent, and the order of the statutes is somewhat different. Like that for Cephalonia, this code is meant for Christians<sup>8</sup> and prescribes the lower fines to which they were liable.

### 3. *The Siyāsetnāme*

In the criminal laws so far discussed, penalties are nearly always fines and strokes.\* Besides these laws, there existed, probably

<sup>1</sup> Kraelitz's § 29 is placed in the first part of the *kānūnnāme*.

<sup>2</sup> Kraelitz, p. 29, § 7. See above, p. 14.

<sup>3</sup> It omits, however, the chapter headings, as well as two sections not imposing fines (Kraelitz's text, ch. II, § 1, first sentence; ch. III, § 15) and a section not applicable to Christians (ch. III, § 1). (The corresponding sections in OCC are 36, 69, 61.)

<sup>4</sup> See below, p. 287.

<sup>5</sup> Başbakanlık Arşivi, Istanbul, Tahrir (Tapu) Defteri 122.

<sup>6</sup> Ca. The reference to the 'old register' probably indicates that the *kānūnnāme* was compiled at an earlier date.

<sup>7</sup> Corresponding to OCC, §§ 4 (corrupted in Ba, Bb: *faḳīr* for *kız*), 8 (slaves), 67 (theft of turbans, etc.).

<sup>8</sup> See the variants to OCC, § 1 (at pp. 56, 95, below).

\* [pencil note:] Significantly, the version found in the *Ḳānūnnāme* for Montenegro just mentioned (Ca) is called in its preface (Đurđev, *Kanuni*, 163) '*Ḳānūnnāme* concerning the fines and *bād-i havā* of the said province'.

already in the time of Bāyezīd II, a completely different code called *siyāsetnāme*. It chiefly prescribed *siyāset*,<sup>1</sup> i.e. capital punishment or severe corporal punishment (cutting off a hand, the male organ, or the nose, branding the forehead), and, in a few cases, exposition to public scorn, cutting off the beard, etc.; in addition, it included a number of statutes on criminal procedure.\*

The *siyāsetnāme* texts that have been preserved are of two different types. Of the first, two copies have been discovered. One<sup>2</sup> is contained in a Vienna manuscript of collectanea (*mecmū'a*), which consists mainly of documents of the late fifteenth century (among them the *kānūnnāme* of Meḥemmed II published by Kraelitz). It was issued at the request of Ḥüsni(?), *sancakbeği* of Aydın-ēli, but in the date the year is omitted. The other copy<sup>3</sup> is included, among decrees of the time of Selīm I and the early years of Süleymān the Magnificent, in a manuscript at the Bibliothèque Nationale in Paris; it was addressed to a *sancakbeği* by the name of Sinān Beğ and was issued in Şafer 928/January 1522. In their headings, these documents are called *siyāsetnāme-i sulṭānī* and *siyāsetnāme ve kānūnnāme*, respectively; in the text, the latter is referred to as *kānūnnāme* only. The two texts are very similar. Both are negligently copied and contain many mistakes and defective passages, some of which can be corrected and completed by collation.

Rather different in composition, wording, and certain particulars of material law<sup>4</sup> is the *siyāsetnāme* text of the second type, which seems to have become the standard form. A specimen was published, with many errors, by E. Z. Karal.<sup>5</sup> This document, which is incomplete, is said to have been sent by Sultan Selīm I (1512–20) to his son Süleymān, the future Sultan Süleymān the Magnificent, when the latter was serving as *sancakbeği* of Saruḥan (Manisa).\*\* Further texts of this type exist as separate documents in many *mecmū'as*.<sup>6</sup>

<sup>1</sup> For this term see below, pp. 259–71.

\* [pencil notes:] It also regulated the payment of compensation for torts. It was not a complete code: it did not cover, for example, all crimes punishable by the amputation of a hand.

<sup>2</sup> Da.

<sup>3</sup> Db.

<sup>4</sup> See notes to the relevant statutes in the Ottoman Criminal Code, e.g. §§ 10, 57, 82, 85, 87.

<sup>5</sup> Ea.

\*\* [pencil note:] According to İnalçık (in *SBFD*, xiii (1958), 121), in 1519.

<sup>6</sup> Eb (issued on 15 Cumādā I 935/25 January 1529); Ec (issued end of Cumādā II 963/May 1556); Ed; Ee (copied in 1157/1744–5).

Although a *siyāsetnāme* of the first type (Dd) was issued as late as 1522, this may be the older type. The second type is more detailed and better organized, and it, unlike the first, was incorporated in the Ottoman Criminal Code, as will be shown below. Moreover, in one case,<sup>1</sup> the severe penalty (cutting off the nose) prescribed in the first type is not found in the second—but it does appear in the Dulkadir Penal Code (§ 14). As to the time when the first type originated, it may be significant that the only matter dealt with in the second type but not in the first was—according to the Ottoman Criminal Code<sup>2</sup>—(first?) regulated by a firman of the year 900/1494–5.\* This could mean that the first type originated before, and the second type after, this year, but to determine the question further proof is required.<sup>3</sup>

Most *siyāsetnāmes* are decrees of the *nişān* type, i.e. orders of the sultan addressed not, like a firman, to a certain person (or certain persons) but to all officials whom it might concern.<sup>4</sup> After the usual opening formula, *nişān-i hümayūn* (or *şerif*) . . . *hükmi oldur ki*, they state that they are issued in response to the request of a *sancakbeği*, *beğlerbeği*, or vizier,\*\* who has asked for such a criminal code for the punishment of the law-breakers in his district or province or on his *hâşş*-fiefs.<sup>5</sup> Unlike many *kānūnnāmes*, the *siyāsetnāmes* are not sent to cadis, though, as will be explained later on,<sup>6</sup> the cadi is ordered to co-operate in their execution. For a copy of a *siyāsetnāme* a fee of 3–4 gold pieces was charged in 985/1577–8 (by the Imperial chancery?).<sup>7</sup>

In the preamble of the standard form of the *siyāsetnāme*, an order is given 'first of all to proclaim its contents in the towns and

<sup>1</sup> See OCC, § 57.

<sup>2</sup> See OCC, § 90, n. 5.

\* [The variants (910, 915, 927) seem to be excluded by the date of copying (907) of MS. Fa (see p. 19), which has this note and with the date 900: see the facsimile (p. 19, n. \*), fol. 9r.]

<sup>3</sup> The fact that the second type did not at once supersede the first is not surprising: the criminal code of Bāyezīd II continued in use long after that of Süleymān was enacted (see below, pp. 21–4).

<sup>4</sup> Cf. Kraelitz, *Osm. Urkunden*, pp. 25–6.

\*\* [pencil note:] For a *siyāsetnāme* sent to a *subaşı* see Refik, *Aşiretler*, no. 46.

<sup>5</sup> A *siyāsetnāme* for *hâşş* lands is contained in Ec. It was sent to Vizier [Meḥ-med] Pertev Paşa, who later, in 1571, took a leading part in the disastrous naval battle at Lepanto (SO, ii. 37–8).

<sup>6</sup> See below, pp. 217–18.

<sup>7</sup> MS. Eb, f. 5b. The fee for a *yasaknāme* (the same as *siyāsetnāme*?) granted to a *sancakbeği* in the sixteenth century was 120 *akçe* (MS. Ba, f. 44 bis a; MS. Fj, f. 160a).

villages of the district and to bring it to the knowledge of the people [so that] whoever commits a crime or disturbance after its proclamation will be punished by means of\* the local *cadi*(s) according to the *siyāsetnāme*'.<sup>1</sup> Then comes the criminal code, beginning *meşelā*, 'For example . . .'.<sup>2</sup> As is shown by the relatively few complete texts preserved,<sup>3</sup> the *siyāsetnāme* ends with the usual concluding formula of a *nişān*: 'Thus shall they know and have confidence in my noble cipher. Written in . . . (date) at . . . (place).'<sup>4</sup>

The standard text of the *siyāsetnāme* was, probably in Bāyezīd II's time,<sup>5</sup> added to the criminal code of Mehemmed II as a fourth chapter under the heading 'On *Siyāset* Punishment Only' (*mücerred siyāseti(n) beyān eder*). But even then it did not completely lose its separate character. In a *kānūnnāme* copied in 927/1521<sup>6</sup> and in the margin of another, undated one,<sup>7</sup> the fourth chapter opens with the words, 'As the Imperial *siyāsetnāme*<sup>8</sup> has ordered'. An eighteenth-century copy of the criminal code<sup>9</sup> still opens its fourth chapter with the preamble to a *siyāsetnāme*.<sup>10</sup>

#### 4. The criminal code of Sultan Bāyezīd II

The result of the addition of the *siyāsetnāme* to the first three chapters of Mehemmed II's *kānūnnāme* is the criminal code which forms the first part (*bāb*) of the well-known *Kānūnnāme-i Āl-i 'Oşmān*. Its two other parts, each of which is subdivided into seven chapters, deal with agrarian, feudal, and military law, various taxes, customs duties, tolls, fees, etc. The Turkish text of

\* [There is a query in the margin. The term is *ma'rifetiyle*, perhaps rather 'with the cognizance of' or 'with the co-operation of': cf. text and trans. of OCC, §§ 43, 94, 116.]

<sup>1</sup> So in Ed, Eb. In the other copies the text is very similar.

<sup>2</sup> Its statutes correspond to OCC, §§ 10, 15, 41 (1), 74-7, 82, 84-6, 49, 91, 92, 95, 87-90, 117. [See the Concordance at pp. 158-63 below.]

<sup>3</sup> e.g. Ec, f. 35b.

<sup>4</sup> The version Db differs from the other *siyāsetnāmes*. It is not a *nişān*, but a firman addressed to a certain *sancakbeği* (see above), and refers, as the reason for its issue, not to a prior request of its addressee, but to reports on a crime wave in his district. The two *siyāsetnāmes* of the first type (Da, Db) do not explicitly receive the proclamation of the code before its enforcement.

<sup>5</sup> See below, p. 19.

<sup>6</sup> Kb.

<sup>7</sup> Kc.

<sup>8</sup> More exactly, 'the Imperial code of *siyāset* penalties only' (*mücerred siyāsetnāme-i pādīşāhi*). Here, too, *mücerred* seems to be an attribute to *siyāset*.

<sup>9</sup> Kf.

<sup>10</sup> Ia-Ie (see also Ja) include, with a few changes, the statutes of the *siyāsetnāme* as the only part (except for OCC, §§ 108-10, 121-4) of the criminal code.

the whole code has been published by Mehmed 'Ārif.<sup>1</sup> He as well as H. Hadžibegić, who published a Serbian translation,<sup>2</sup> and others<sup>3</sup> held that the *ḵānūnnāme* was issued early in the reign of Sultan Süleymān the Magnificent, and this became the prevailing view.

In fact, this *ḵānūnnāme*—at least the criminal code and some other major parts of it—cannot be ascribed to that sultan. Of more than thirty complete texts examined, none states that it was first compiled in Sultan Süleymān's time. Its preamble merely mentions that it came into being as the result of an order of a sultan (unnamed) to collect the Ottoman *ḵānūns* in a bound register. It bears the title *Ḵānūnnāme-i 'Oṣmānī (Āl-i 'Oṣmān, Pādişāhī, Hümāyūn), Ḵavānīn-i 'Oṣmānīyān ('Örfiye-i 'Oṣmānī)* or the like. Only in one manuscript (Ka) is it called '*Ḵānūn of Sultan Süleymān Ḥān*', but this may be due to the fact that part of the heading of its first chapter<sup>4</sup> and its first three sections<sup>5</sup> are additions which were taken from a later *ḵānūnnāme* compiled in the reign of that sultan.<sup>6</sup>

This *ḵānūnnāme* seems to have originated in the reign of Süleymān's grandfather, Sultan Bāyezīd II. In the private library of Mr. A. R. İzzet Koyunoğlu in Konya is a manuscript (Fa) of a *Kitāb-i Ḵavānīn-i 'Örfiye-i 'Oṣmānī* very similar to the text published by Mehmed 'Ārif (up to the latter's page 70) and opening with the same preamble.\* According to the colophon, it was written by a certain Muṣṭafā b. Ramazān and finished on Wednesday, *evāsiṭ* of Rebī' I 907/29 September 1501.<sup>7</sup>

\*\* This seems to be a very early copy of the *ḵānūnnāme*. In the sixth chapter of its Part III<sup>8</sup> reference is made to certain

<sup>1</sup> *TOEM*, 1329, suppl., 1-10.

<sup>2</sup> *Glasnik*, N.S. iv-v (1949-50), 295-311 (for the date of the code see pp. 299-300).

<sup>3</sup> e.g. H. İncalcık in *Belleten*, vol. xxiii, no. 92 (1959), 579.

<sup>4</sup> The heading includes a reference to sodomy, an offence which is not dealt with by this code (but which is dealt with by Süleymān the Magnificent's law).

<sup>5</sup> OCC, §§ 11, 12, 106.

<sup>6</sup> See below, pp. 24 et sqq.

\* [It has now been published in facsimile by N. Beldiceanu, as *Code de lois coutumières de Mehmed II*, Wiesbaden, 1967.]

<sup>7</sup> Meaning 16 Rebī' I, which in 907 was (according to the Wüstenfeld-Mahler tables) indeed a Wednesday. A similar formulation of the date appears in the colophon of MS. Oa (f. 146a): see below, p. 25 and n. 5.

\*\* [The next five paragraphs, an addendum to the typescript, were probably not finally revised.]

<sup>8</sup> *TOEM*, 1329, suppl., 66; Barkan, 43, § 4 [; MS. Fa (facsimile ed. Beldiceanu), f. 61a].

activities of Cem Sultan at Konya in a wording suggesting that not very much time has elapsed since. Cem Sultan, son of Sultan Mehmed II, served as governor of the province of Karaman (with his residence at Konya) from the end of 1474 to 1481.<sup>1</sup>

Moreover, several passages in the same chapter<sup>2</sup> prohibit the oppression of the people of Konya by the men or 'servants' (*kullar*) of 'Çelebi Sultan'. He may either be identical with Cem Sultan or be his nephew, *sancakbeği* of Teke, who in 883/1478-9 was charged, together with Cem Sultan, to negotiate with the Knights of Rhodes.<sup>3</sup> In either case these regulations would probably have been issued in the last few years of Sultan Mehmed's reign.

Decisive evidence concerning the date of compilation of the *kānūnnāme* may be found at the very end of this chapter.<sup>4</sup> Here an illegal innovation made at Semendre (Smederovo) in 'the time of Süleymān Paşa' is abolished. If this is Hādīm Süleymān Paşa, who was governor of Semendre in 1491-2,<sup>5</sup> the *kānūnnāme* must have been compiled in the last decade of the fifteenth century or the first year of the sixteenth.<sup>6</sup>

It has been suggested<sup>7</sup> that the many references in this *kānūnnāme* to Karaman and Konya<sup>8</sup> may be regarded as evidence that it was compiled under the supervision of Mehmed Paşa, a native of Karaman.

Barkan<sup>9</sup> assumes that the abolition of the innovations in the province of Karaman as mentioned in this chapter (part III, ch. VI) of the *kānūnnāme* was due to Mevlānā Muḥiyü 'd-Din, known as Mevlānā Vildān.<sup>10</sup> He directed a census of this province and compiled a *kānūnnāme* for it in which he listed the innovations abolished on his advice. If this census of Karaman was the one held in c. 906/1500-1,<sup>11</sup> the *Ḳānūnnāme-i Āl-i 'Oṣmān* would have been compiled in 1500 or 1501.

<sup>1</sup> *EI*<sup>2</sup>, art. 'Djem' (İnalçık).

<sup>2</sup> *TOEM*, 1329, suppl., 66-8; [MS. Fa (facsimile), ff. 62a, 63a-b;] Barkan, 43, § 6, 44, §§ 10-12 (in this version of § 12 there is no reference to 'Çelebi Sultan').

<sup>3</sup> *İA*, art. 'Cem' (Baysun), 70a.

<sup>4</sup> *TOEM*, 1329, suppl., 69; Barkan, 45, § 15 [; MS. Fa (facsimile), f. 64b].

<sup>5</sup> Hammer, *GOR*, ii. 302.

<sup>6</sup> It may be significant that certain sections of this *kānūnnāme* (*TOEM*, 1329, suppl., pp. 38-9) are very similar to sections of the *Ḳānūnnāme* for Bursa of 1487 (Barkan, 4, §§ 23-4).

<sup>7</sup> See above, p. 11 and n. 4.

<sup>8</sup> See *TOEM*, 1329, suppl., 37, 42, 43, 53, 62, 65 et sqq. [; MS. Fa (facsimile), index, s.vv.]

<sup>9</sup> Barkan, 39-40.

<sup>10</sup> See Mecdi, 215-17.

<sup>11</sup> See 'Aşıkpaşazāde, ed. 'Āli, 260.

The oldest official copy of the criminal code encountered by the present writer (MS. Fb) also precedes Süleymān the Magnificent's reign. It occurs in a *kānūnnāme* for the province of Niğbolu (Nikopol) which is copied in a cadastral register compiled by order of Sultan Selīm I 'in the year of the conquest of Egypt and Syria'. According to a note in a different handwriting, the text was written in early Muḥarrem 922/February 1516.<sup>1</sup> Later copies of this code in *kānūnnāmes* for the same province are contained in MS. Fc, written in 987/1579-80, and MS. Fd, which is undated.<sup>2</sup>

Usually, however, this criminal code was copied, as in MS. Fa, to stand as the first of three parts (*bāb*) of a *kānūnnāme* valid for the whole Empire. There exist a large number of copies, many of them known to have been made in the sixteenth century.<sup>3</sup> Several manuscripts are splendidly written and were apparently destined for the Sultan or a high official.<sup>4\*</sup>

The first three chapters (*faṣl*) of the new criminal code include the penal statutes contained in the *Kānūnnāme* of Meḥemmed II (with the additions from Bāyezīd II's '*Kānūn* on the married infidels').<sup>5</sup> Three sections,<sup>6</sup> however, are omitted and one has been replaced by another.<sup>7</sup> The code is much better organized than the earlier laws. Unlike them, it contains penal statutes only; non-

<sup>1</sup> The Grand Vizier at that time, Hersekzāde Aḥmed Paşa, who first held this office in 1497-8, is known to have made changes in the existing feudal law by order of Sultan Selīm I. See the preamble to MSS. Fh and Fi.

<sup>2</sup> In both MSS., the chapter usually numbered III precedes chapter I. Fb, Fc, and Fd omit OCC, § 8.

<sup>3</sup> e.g. MSS. Fe (17 Rebi' I 932/January 1526), Ff (11 Muḥarrem 936/September 1529), Fg (end of Receb 953/September 1546), and Fi (end of Şa'bān 975/February 1568). Most other copies (MSS. Fj-Fz) are undated.

<sup>4</sup> e.g. MSS. Fh, Fi, Fj, Fp, and Fy. But the text of some of them (Fi, Fp) contains many mistakes.

\* [pencil notes:] MS. Fdd, the text of which is in many details similar to those of Fa, Fb, Fc, Fd (and Ke), seems to have been copied in 1110/1698-9. Though it is headed by a small copy of the *tuğra* of Sultan Meḥemmed II, it is not an official copy: it contains many mistakes, and chapter VI of Part III was first omitted and then added at the end.

In some of these texts (Fdd, Fh, Fi, Fj, etc.) the *kānūnnāme* is preceded or followed by *kānūns* for Niğbolu and neighbouring districts.

<sup>5</sup> For the list of the statutes contained in these chapters see above, p. 13 and n. 3 [and the Concordance, at pp. 158-63 below].

<sup>6</sup> Ch. III, §§ 3, 5, and 15 of Meḥemmed II's code (see OCC, § 65, n. 3; § 66, n. 5; § 69, n. 2).

<sup>7</sup> OCC, § 3 replaced § 4. The general rule as to the fines for non-Muslims (Kraelitz, p. 29, § 7) occurs twice in the new code (OCC, §§ 31, 51).

criminal regulations have been removed from the third chapter,<sup>1</sup> and additional penal statutes have been transferred here from other parts of the earlier *kānūns*.<sup>2</sup>

The fourth chapter, as has been mentioned above, is identical with the standard type of the *siyāsetnāme*, without its opening and concluding formulas.<sup>3</sup> The result of its addition to the older law is that some offences are now treated twice and in different ways.\* According to chapter IV,<sup>4</sup> a murderer incurs capital punishment, while a statute in chapter II<sup>5</sup> makes him liable to a fine, unless retaliation is carried out. Similarly, procuring is punishable by a fine (chapter I) or by branding the forehead (chapter IV).<sup>6</sup>

Shorter versions of this code occur in *kānūnnāmes* for the *sancaks* of Bozok, Kırşehir, and Maraş, which formerly belonged to the Dulkadir principality (MSS. Ga, Gb, Gc, Gd; Ge; Gf, Gg). The code, which was to replace the Dulkadir law,<sup>7</sup> omits many statutes<sup>8</sup> and, in some manuscripts, arranges the rest in a different way.<sup>9</sup>

Chapters III and IV only<sup>10</sup> are included in MS. Ha.

Several seventeenth-century manuscripts (Ia, Ib, Ic, Id, Ie) and the text published in Ja contain only chapter IV, the former *siyāsetnāme*, with a few changes.<sup>11</sup> In most of these manuscripts, the penal statutes appear in a collection of laws under the heading

<sup>1</sup> Kraelitz, pp. 22-3, §§ 11-14, 16.

<sup>2</sup> OCC, §§ 108-10 (Kraelitz, p. 27, §§ 34-5; p. 31, § 29). On the other hand, §§ 9-10 of chapter III of Mehemmed II's *kānūnnāme* (OCC, §§ 50, 52) have been transferred to chapter II, where they really belong.

<sup>3</sup> The list of the statutes contained in this chapter is given above, p. 18, n. 2.

\* [slip:] By the addition of the *siyāsetnāme*, the criminal code appears to have become much more severe in its penalties, a fact to which J. Schacht drew attention (*Der Islam*, xx (1932), 212, n. 4) but which he was unable to explain.

<sup>4</sup> *TOEM*, 1329, suppl., 7. Cf. OCC, § 41 (1).

<sup>5</sup> *TOEM*, 1329, suppl., 4. Cf. OCC, § 41 (2).

<sup>6</sup> *TOEM*, 1329, suppl., 2, 7. Cf. OCC, §§ 30 and 57, 75.

<sup>7</sup> See below, pp. 40-1.

<sup>8</sup> Either all the statutes of chapter IV or those of its second part (viz. OCC, §§ 84-6, 49, 91, 92, 95, 87-90, 117). It may be significant that most of the latter deal with matters not treated in the Dulkadir Penal Code (for which see below, pp. 44 et sqq.). Some manuscripts of this group omit further statutes (e.g. OCC, §§ 3, 29, 31, etc.).

<sup>9</sup> First chapter II, then chapters III and I. The sections of chapter IV, so far as they are included at all, are added at the end or after those of chapter II.

<sup>10</sup> Omitting § 117.

<sup>11</sup> OCC, §§ 41 (1), 91, 95 are missing, but some manuscripts add §§ 108-10, 121-4.

'(Miscellanea from the) *Ḳānūnnāme* of Celālzāde',<sup>1</sup> which opens with the words *Bir yerde kapan hāşıl yazılsa*.

On the other hand, enlarged versions of this *ḳānūnnāme* exist, which contain statutes not found in the text published by Mehmed 'Ārif.

MS. Ka has three additional sections (OCC, §§ 11, 12, and 106) and a unique provision in § 64.

The text in MS. Kb, which was copied in 927/1521, is a *ḳānūnnāme* for Rümeli, Anadolu, Karaman, and other *vilāyets*. It contains some additional statutes (§§ 13, 14, 46), the last citing an order of the Sultan of Receb 908/January 1503. The same statutes are copied in the margin of the very similar text in MS. Kc, which is called 'New Detailed Ottoman *Ḳānūnnāme*'.

Two other versions, which contain a much larger number of additional statutes, are of particular interest. The first, MS. Kd, occurs in a volume which looks like an official register. As is stated in the margin above the heading of the first part, this *ḳānūnnāme* was obtained from a certain Ayās Efendi, former *müfti* at Amasya;<sup>2</sup> he, in turn, had received it from 'Ömer Beğ, who conducted the census (*tahrir*) of the *vilāyet* of Rüm, i.e. the Amasya-Sivas region.<sup>3</sup> A second note (in a different hand) adds that the text was later collated with the *ḳānūnnāme* of (i.e. in the office of?) Ḥamza Paşa the Nişāncı, who was also (according to a marginal note on f. 41a) consulted on a particular point. Ḥamza, who in 1595 was promoted to the rank of Paşa, held this office four times in the period 1580-1604/5.<sup>4</sup> Below this note there is a third one, saying '[This] is what the late Celālzāde wrote', which may mean that the *ḳānūnnāme* in the possession of Ḥamza Paşa was written or compiled by one of his predecessors, the famous Nişāncı Celāl-zāde, who died in 1567 (see below, p. 25). In the margins of this manuscript we find a great many notes in a different hand, which

<sup>1</sup> Probably the famous Nişāncı Celālzāde Muştafā Çelebi, who died in 1567 (on whom see below, p. 25). In that case, however, the criminal code and other laws in the second part of the collection, which mention dates as late as 1018/1609-10, do not belong to his *ḳānūnnāme*.

<sup>2</sup> Is this the Ayās Efendi who was eventually *müfti* of Trabzon and died in 1003/1594-5 (SO, i. 447)?

<sup>3</sup> Most probably he is the *sancakbeği* of Trabzon of this name who in 977/1569-70 was charged with conducting a census of this *vilāyet*; its result was the cadastral register of 982/1574-5 (see Tuncer, *Toprak Hukuku*, 341; Barkan, 299).

<sup>4</sup> Resmî Ahmed, pp. 16-17; SO, ii. 252-3; iv. 792.

confirm or annul existing statutes and add a number of sections (see below). They frequently refer to the '*Ḳānūnnāme* of the late Celālzāde', as well as to decisions by the Nişāncı [Lām-i] 'Alī Efendi and Mūsā Beğ, who served at the end of the sixteenth century,<sup>1</sup> and to firmans issued in its last quarter.

The second manuscript of this group, MS. Ke, was also written in the early seventeenth century.<sup>2</sup> The preamble to the *ḳānūnnāme*, which we find also in MS. Fi, states that Cenābī (in MS. Fi, Aḥmed) Paşa, who died while serving as Beğlerbeği of Anadolu, sent this *ḳānūnnāme* to the Nişāncı, Muştafā Beğ. The latter collated it with the *ḳānūnnāme* preserved in the capital and corrected it by adding in the appropriate places in the margin the regulations of the '*ḳānūn* newly enacted by order of H.M. the Sultan'. He then returned it to the sender so that it might in future be enforced in this form. In the Table of Contents of the manuscript, the code is called '*Ḳānūnnāme* of Celālzāde the Nişāncı'.

The Beğlerbeği mentioned is Cenābī(zāde) Aḥmed Paşa, who is said to have held this office for twenty years, until his death in 969/1561-2.<sup>3</sup> The Nişāncı is the well-known Celālzāde Muştafā (see below).

While the code in both manuscripts is almost identical with the text published by M. 'Ārif, the margins present a great many (in Kd 10, in Ke about 50) additional statutes not contained in that text. These were taken from the 'newly enacted *ḳānūn*' referred to in the preamble to Ke, i.e. the criminal code compiled in the reign of Sultan Süleymān the Magnificent.<sup>4</sup>

Another (rather poor) version, MS. Kf, copied as late as 1157/1744-5, likewise inserts (but this time in the text) a number of additional statutes copied from Sultan Süleymān's new penal code.

##### 5. *The criminal code of Sultan Süleymān the Magnificent*

The many secular laws (*ḳānūn*) compiled in the reign of Sultan Süleymān the Lawgiver (*ḳānūnī*) include a criminal code which differs considerably from the code of Bāyezīd II published by

<sup>1</sup> Resmī Aḥmed, 19-20, 22-3; SO, iii. 505; iv. 521; Danişmend, iii. 601-2.

<sup>2</sup> According to Pertsch (no. 260), the *ḳānūnnāme* which includes the criminal code was copied in Cumādā I 1013/October 1604.

<sup>3</sup> SO, i. 199.

<sup>4</sup> Almost all the additional statutes appear in the La and Ta versions of this code, published below.

Mehmed 'Ārif. Its full Turkish text is published for the first time in Arabic characters at pp. 56–93 below.<sup>1</sup> A German translation by von Hammer of one of its versions is very faulty and is incomplete.<sup>2</sup>\*

When was this new code compiled and enacted? The oldest dated text encountered by this writer forms part of a *kānūnnāme* preserved in MS. Oa in Cambridge. Its preamble<sup>3</sup> states that this *kānūnnāme*—which is issued in the form of a *niṣān*—was sent to the cadis of several districts of Anatolia (Karaman, Tokat, Amasya, Kastamonu, Ankara, Sivrihisar, and Sultanönü). The cadis had informed the government that they were not entirely familiar with the *kānūn*, especially the 'new *kānūn*' which they had been ordered to enforce, and each of them had asked for a copy of a *kānūnnāme*. According to the colophon on f. 146a,<sup>4</sup> the copying of the manuscript was finished on Saturday, in the middle (*min evāsıtı*) of Şevvāl 952<sup>5</sup> (19 December 1545).<sup>6</sup>

The evidence of MSS. Kd and Ke (see above) leaves little doubt that this *kānūnnāme*, including the criminal code, was compiled by Celälzāde Muṣṭafā Çelebi (Beğ, Paşa), who held the office of Nişāncı in 1534–57 and 1566–7. This famous official, historian, and poet is known in Ottoman history as Koca, i.e. 'the Great', Nişāncı. After a thorough *medrese* education, he entered government service in the reign of Selīm I. In 1524–5 he accompanied the Grand Vizier İbrāhīm Paşa on his mission to Cairo and played an important part in the reorganization of the Egyptian administration as embodied in the *Ḳānūnnāme-i Mıṣr*.<sup>7</sup> Later, as Re'is ül-Küttāb and Nişāncı, he introduced many reforms in the work of

<sup>1</sup> Transcriptions of two of its poorer versions appear in Tuncer, *Kanunname*, 124–8, and *Toprak Kanunları*, 127–30, but they contain a large number of mistakes.

<sup>2</sup> Hammer, *Staatsverfassung*, i. 143–52.

\* [A Russian translation of one of the shorter versions (MS. Rb) with the variants of another (MS. Rc) is given by A. S. Tveritina, in *Kniga Zakonov Sultana Selima I*, Moscow, 1969, pp. 31–40.]

<sup>3</sup> The preamble appears also in the parallel texts in MSS. Ob, Oc, Od.

<sup>4</sup> After the colophon are two more pages in the same handwriting, apparently later additions. [Pencil note:] Browne appears to have missed this (E. G. Browne, *A Hand-list of the Muḥammadan Manuscripts . . . preserved in the Library of the University of Cambridge*, Cambridge, 1900, p. 140: 'no colophon, no date').

<sup>5</sup> Probably the 14th of Şevvāl 952 which, according to Wüstenfeld–Mahler, was a Saturday.

<sup>6</sup> One chapter of the *kānūnnāme* (ff. 120b–123b) is a firman dated middle of Zū'l-Ḳa'de 945/April 1539.

<sup>7</sup> Barkan, 355–87.

the Imperial Dīvān and its chancery<sup>1</sup> and, in 'Atā'i's words, excelled in solving the problems of the Ottoman *ḵānūn* (*müşkil-ḵüşā-i ḵānūn-i 'Oşmāni*). His collection of official letters (*münşe'āt*) was long used as an epistolary guide by the secretaries of the Dīvān.<sup>2</sup> Peçevî mentions that in his day, i.e. in the first half of the seventeenth century, Celälzāde's *ḵānūnnāme*, with a few changes, was still in force.<sup>3</sup>

The new code was probably compiled between the end of 1534, when Celälzāde first became Nişāncı, and 1545, when MS. Oa was written. The compilation may have been ordered by Luţfî Paşa, Grand Vizier from July 1539 to May 1541.<sup>4</sup> Hammer<sup>5</sup> ascribes to Luţfî Paşa the compilation of all the major Ottoman *ḵānūnnāmes* in the reign of Süleymān the Magnificent, but this is no doubt a gross exaggeration. Nevertheless, according to Kātib Çelebi's *Kashf al-zunūn*,<sup>6</sup> the Grand Vizier Luţfî Paşa was the author of a *Ḵānūnnāme-i 'Oşmāni*. This cannot be identical with Bāyezid II's code published by Mehmed 'Ārif, since the latter is described separately in Kātib Çelebi's article.<sup>7</sup> It seems rather improbable that, as Babinger<sup>8</sup> assumed, Kātib Çelebi is referring to Luţfî Paşa's *Aşafnāme*, his well-known treatise on the duties of the Grand Vizier and on good administration in general. Though the *Aşafnāme* is sometimes called *Ḵānūnnāme-i Luţfî Paşa*<sup>9</sup> or *Ḵānūnnāme-i Süleymāni*,<sup>10</sup> it is not known by the name of, and would hardly be listed as, *Ḵānūnnāme-i 'Oşmāni*. In the late

<sup>1</sup> See Hüseyin, *Badāyi'*, ii, 584-5.

<sup>2</sup> On Celälzāde's life and activities see 'Atā'i, 113-14; (following him) Resmî Ahmed, 5-6; SO, iv, 375-6; İA, art. 'Celâl-zāde, Mustafa Çelebi' (Gökbilgin); EI<sup>2</sup>, art. 'Djalälzāde Muştafā Çelebi' (Ménage).

<sup>3</sup> *Ta'rih-i Peçevî*, i, Istanbul, 1281(?), p. 43.

<sup>4</sup> On Luţfî Paşa see R. Tschudi, *Das Aşafnāme des Luţfî Pascha*, Berlin, 1910, pp. vii-xvii; J. H. Mordtmann, in ZDMG, lxx (1911), 599-603; Köprülüzāde Mehmed Fu'ād, 'Luţfî Paşa', in TM, i (1925), 119-50; EI<sup>1</sup>, art. 'Luţfî Pasha' (Menzel); İA, art. 'Luţfî Paşa' (Gökbilgin).

<sup>5</sup> Hammer, *Staatsverfassung*, i, 73. But cf. *ibid.*, i, 85: most of them were compiled by Ebu 's-Su'ūd and Celälzāde.

<sup>6</sup> *Kashf al-zunūn*, ed. Flügel, iv, 502 (no. 9361) (ii, 103 in Bülāk edn., 1274; ii, col. 1314 in Istanbul edn., 1943).

<sup>7</sup> As a collection of Ottoman *ḵānūns*, divided into three parts, the first of which (on criminal law) has four chapters.

<sup>8</sup> GOW, 81.

<sup>9</sup> See Topkapı Sarayı Libr., MS. Hazine 1768, f. 189a; Süleymaniye Libr., MS. Resid Ef. 662, f. 61b.

<sup>10</sup> See Şehrîzāde Mehmed Sa'id, *Tāj al-Ḵawānin* (Topkapı Sarayı Libr., MS. Emanet Hazinesi 2064, ff. 2a-b, 20a; cf. also ff. 16a, 18b), an eighteenth-century work.

eighteenth century Toderini<sup>1</sup> claimed to have found in the Aya Sofya Library both Luṭfî Paşa's *Âşafnâme* and his *kānūnnâme*, but the latter is not listed in the library's catalogue today. Köprülüzâde's statement<sup>2</sup> that, according to Kâtib Çelebi, Luṭfî Paşa's *kānūnnâme* was collected and provided with an appendix by Mü'ezzinzâde i.e. 'Ayn-i 'Alî in the reign of Sultan Ahmed (I) is based on a mistake in the relevant passage of the Bülâk edition of the *Kashf al-ẓunûn*, which has *dhayl*<sup>3n</sup> 'alâ for 'Ayn-i 'Alî; the same misunderstanding occurs already in 'Osmânîh Mü'ellifleri.<sup>3</sup> On the other hand, Köprülüzâde draws attention to a seventeenth-century reference (in Evliyâ Çelebi)<sup>4</sup> to a work entitled *Kānūnnâme-i Latîfî Paşa*, which seems to be a mistake for *Kānūnnâme-i Luṭfî Paşa*. Finally, 'Osmānzâde, in his biographies of the Ottoman grand viziers,<sup>5</sup> mentions that Luṭfî Paşa wrote works on the Ottoman *kānûn*.

The fact that the *kānūnnâme* is neither included in Luṭfî Paşa's own list of his works<sup>6</sup> nor mentioned in his *Âşafnâme* indicates that it was not written by himself, but does not refute the conjecture that it was compiled by his order. Indeed, the compilation of the new criminal code during his term of office would fit in very well with what is known of Luṭfî Paşa's energetic reforms in various fields of public administration. For instance, in his *Tevârih*<sup>7</sup> and his *Âşafnâme*<sup>8</sup> he refers to some measures he had taken against the oppression of the people by the couriers (*ulak*). A detailed *nişân* to this effect was in fact issued in Rebî' I 946/July–August 1539, i.e. very soon after his appointment as Grand Vizier.<sup>9</sup> In conclusion, therefore, pending proof to the contrary, the new criminal code of Sultan Süleymân the Magnificent may be assumed to have originated in the years 1539–41.

In addition to the oldest text so far discovered (MS. Oa), early copies of Sultan Süleymân's code occur in three other manuscripts. In one of them (Pa), the text of the new code was copied early in Ramazân 959/August 1552 'in Istanbul, in the house of the Re'îs [ül-Küttâb]' (f. 16a). In the colophon of another work in this *mecmû'a* (f. 98b), his name is given as Maḥmûd; but this may be

<sup>1</sup> Toderini, i. 74, n. (c).

<sup>2</sup> *TM*, i (1925), 141.

<sup>3</sup> *OM*, iii. 133.

<sup>4</sup> *Seyâhatnâme*, iv. 245.

<sup>5</sup> 'Osmānzâde, *Hadiqa*, i. 27.

<sup>6</sup> See Luṭfî Paşa, *Tevârih*, pp. 3–4.

<sup>7</sup> *Tevârih*, pp. 373 et sqq.

<sup>8</sup> *Âşafnâme*, ed. Tschudi, Turkish text, 10–11 (for *bâdgirleri* read, of course, *bârgirleri*).

<sup>9</sup> Text in MS. Kc, ff. 72b–76a.

a mistake for Meḥmed, i.e. Eḡri-‘Abdullāh-zāde Meḥmed Çelebi, the Re’is ül-Küttāb in those days.<sup>1</sup> Another text (MS. Ud), which is only a fragment of the penal code, seems to have been copied about the same time, viz. at the beginning of Z̄ū ’l-Ḳa’de 959/October 1552.<sup>2</sup> The third text (MS. Rb) was copied in late Receb 971/March 1564, also still in the reign of Süleymān the Magnificent.

Other dated copies of this *ḵānūnnāme* were written in the seventeenth, eighteenth, and early nineteenth centuries.<sup>3</sup>

Some texts of Sultan Süleymān the Magnificent’s new law bear general titles, such as *Ḳānūnnāme-i ‘Oṣmānī*<sup>4</sup> or *Ḳānūnnāme-i (cedid-i mufaṣṣal-i) (ṣaḥih-i) pādīṣāhī (sulṭānī)*<sup>5</sup> or *Ḳānūn(nāme)-i sulṭānī ve āyīn-i resm-i (resm-i āyīn-i) (āyīn-i ḵadīm-i) ‘Oṣmānī*.<sup>6</sup> Others, however, are called *Ḳānūn(nāme)-i Sulṭān Süleymān (Ḥān)*<sup>7</sup> or *Ḳānūnnāme-i Sulṭān Selīm Ḥān*.<sup>8</sup> In one group of manuscripts containing short versions of the criminal code, the *ḵānūnnāme* has the heading *Ḳānūnnāme-i sulṭānī der zamān-i Murād (Ḥān) Gāzī*<sup>9</sup> or *Ḳānūnnāme-i Feridūn Paṣa Niṣāncı*.<sup>10</sup> In some cases, it is not clear whether the title is part of the original text or an addition by a later copyist.

<sup>1</sup> Resmī Aḥmed, 6–7; SO, iv. 117, 794.

<sup>2</sup> The date(s) given in Blochet (i. 15) seem to be erroneous, since the two documents on ff. 25b–28a were added later; the relevant date appears on f. 25b.

<sup>3</sup> e.g. MS. Sa, apparently in 1032/1622–3; MS. Pb, in its main parts, including the criminal code, in 1045/1635–6; MS. Lb, copied by Meḥmed Efendi, cadi of the island of Samos, for the *çavuş* Selīm of Foça and finished on 10 Şafer 1041/July 1637; MS. Pi in 1066/1655–6; MS. Pd, it seems, in 1068/1657–8; MS. Ph, in 1092/1681; MS. Pe, in 1108/1696–7; MS. Nd, in 1126/1714; MS. Qd, in 1222/1807–8. <sup>4</sup> MSS. Pb, Rb (on f. 25b [ed. Tveritina, p. 135]).

<sup>5</sup> MSS. Lb, Oa, Od, Pd, Pe, Ra, Ta.

<sup>6</sup> MSS. La, Ld, Ma.

<sup>7</sup> MSS. Pg, Pi, Sa, Sb. See also MS. Lc: *Ḳānūnnāme-i Sulṭān Meḥmed Ḥān alladhī yu’mal fī zamān Sulṭān Sulaymān Ḥān* (on fly-leaf, later addition?).

<sup>8</sup> MS. Rc [ed. Tveritina, p. 137]. [Heyd has written in the margin against this note: ‘Selīm II?’ Furthermore, his typescript of note 7 reads, between ‘Pi’ and ‘Sa’, also ‘Rb (later addition)’: this, suspecting it to belong in fact to note 8, I have deleted. There is indeed a difficulty: MS. Rb, copied in 971/1564 (see above), i.e. two years before the accession of Selīm II, has the heading (f. 1b; ed. Tveritina, p. 87) *Ḳānūnnāme-i Sulṭān Selīm Ḥān ṭāb<sup>a</sup> ṣarāḥ<sup>u</sup>*, which prima facie therefore can only mean Selīm I: hence the title of Dr. Tveritina’s edition (cited at p. 25, n. \* above) and the argument in her introduction (Russian text, p. 11, Turkish text, p. 24). Heyd (who died before the edition appeared) evidently took the view that the heading (as well as the marginal notes, see below, p. 148) is a later addition to the text copied in 971/1564 and thus does not necessarily imply that the copyist of Rb ascribed the *ḵānūnnāme* to Selīm I.]

<sup>9</sup> MSS. Qa, Qb. (The Sultan is Murād III.)

<sup>10</sup> MS. Qc. On Feridūn Paṣa, see below, p. 149.

Süleymān the Magnificent's penal code is preserved in many different versions. They can be classified in three major groups, each of which may be subdivided into smaller units.

(a) The longest version occurs in four manuscripts (La, Lb, Lc, and, with a few omissions, Ld). The *kānūnnāme* is preceded by a preamble, the first part of which (until *ve ba' dehu*) is identical with the preamble of Bāyezīd II's code;<sup>1</sup> the second part consists of one short sentence: 'Know that this *kānūnnāme* has been arranged in twenty-four chapters'. In the margin of MS. La, next to the title of the *kānūnnāme* (f. 34b), is a note saying, 'It (the title or the entire law?) is set down in writing in this form in the cadastral registers (*al-dafātir al-ḥākāniya*) which contain the Ottoman *kānūns*'. This version (La) is the main basis for the text and translation of the Ottoman Criminal Code published below.

Five other manuscripts (Ma; Na, Nb, Nc, Nd) contain a very similar text, but omit the preamble and a few sections.<sup>2</sup> In MSS. Na-Nd the criminal code occurs after the *Ḳānūnnāme* for Bosnia, copied in late Cumādā I 973/December 1565.<sup>3</sup>

(b) All the other versions are shorter. Certain sections<sup>4</sup> are missing in almost all of them, and a few more in some. Since most of the missing articles are present in the earlier penal code of Bāyezīd II's time, it seems that version (a) of the new code is not necessarily a later, enlarged version of these shorter texts.<sup>5</sup>

Shorter versions occur in the following manuscripts:

MSS. Oa, Ob, Oc, Od. As mentioned above (p. 25), these *kānūnnāmes*, one of which (Oa) was copied as early as 1545, were sent to various cadis in Anatolia.

MSS. Pa, Pb, Pc, Pd, Pe, Pf, Pg, Ph, Pi. They are very similar to the preceding version, but lack its preamble. Only MS. Pb has a preamble, which is entirely different.<sup>6</sup> The earliest dated copy in this group is, as stated above (p. 27), MS. Pa of 1552.

MSS. Qa, Qb, Qc, Qd. This *kānūnnāme*, which opens with the words *Bir ra'iyet defterde çift yazılmış olsa* and follows a different

<sup>1</sup> See *TOEM*, 1329, suppl., p. zā.

<sup>2</sup> §§ 13 and 14; MSS. Na-Nd leave out a few more.

<sup>3</sup> Cf. MS. Uc, mentioned below, p. 30, n. 3.

<sup>4</sup> §§ 3, 13, 14, 16, 29-33, 35, 75, 76, 88, 91, 95, 117.

<sup>5</sup> This assumption is further supported by the fact that in § 1 most of the shorter versions prescribe a fine of 400 *akçe*, while version (a), like the early codes (Aa, Fa, Fb, Fe, etc.), has 300 *akçe*.

<sup>6</sup> See below, p. 176.

order, was copied in or after the reign of Sultan Murād III (see p. 28 and notes 9, 10 above). Its criminal code is much shorter than all the other versions.

(c) Some manuscripts (Ra, Rb, Rc, Rd, Re) omit roughly the same sections as most O and P manuscripts but, on the other hand, add a number of sections<sup>1</sup> not contained in any text so far mentioned, not even in the longest version (a).

Few of these additional sections occur in MSS. Sa and Sb, which are rather poor texts.

MS. Ta, probably a seventeenth-century composite copy, not only includes most of the articles missing in all the shorter versions, but adds some rare or unique statutes.<sup>2</sup>

Finally, there are a few manuscripts (Ua, Ud) and published texts (Ub, Uc)<sup>3</sup> in which only certain chapters (or parts of chapters) of this criminal code occur.

The manuscripts in each of the above subdivisions are so similar to one another, both in the number and order of their sections and in their wording, that they seem to be derived from the same original.

The penal code of Sultan Süleymān the Magnificent contains all the sections of the earlier criminal codes<sup>4</sup> and, in addition, a great number of other statutes. As against 33 penal statutes in Meĥemmed II's *kānūnnāme* (MS. Aa) and 52 in Bāyezid II's law (F MSS.), the three chapters of the new criminal code<sup>5</sup> in the longest version (L MSS.) have 93 sections; another 27 statutes occur in other versions of the same chapters.<sup>6</sup> These additions do not merely elaborate and complete the older laws. They also deal with many offences not treated in the earlier codes at all, such as sodomy and other sexual perversions, the pressing and selling of wine, false testimony, the forging of documents, the counterfeiting of coins, neglect of ritual prayer and the fast of Ramazān, the

<sup>1</sup> e.g. §§ 21, 22, 23, 34, 47, 59, 60, 63, 80, 102, etc.

<sup>2</sup> e.g. §§ 11, 42, 55, 79, 119, 125, etc.

<sup>3</sup> In Uc, just as in Na-Nd, the criminal statutes come after the *Ḳānūnnāme* for Bosnia.

<sup>4</sup> Except § 93 (in MSS. Fb, Fc, Fd).

<sup>5</sup> This excludes OCC, §§ 121 et sqq., which are taken from other chapters of the same *kānūnnāmes*.

<sup>6</sup> The division of the texts into sections or statutes (see below, the Ottoman Criminal Code at pp. 56 et sqq.) is of course arbitrary and, so far as MS. Aa is concerned, independent of Kraclitz's numbering.

taking of interest, unfounded denunciation, disturbing public order and decency, and others. Furthermore, they include many additional statutes on criminal procedure.

Compared with the earlier laws, a most important change has taken place in the structure of the penal code. The former division between offences punishable by fines and/or strokes (chapters I–III in the codes of Meḥemmed II and Bāyezīd II) and those entailing capital or severe corporal punishment (chapter IV of Bāyezīd’s code) is abolished in the new law. Consequently, the fourth chapter has been broken up and most of its statutes<sup>1</sup> have been inserted in chapter III.<sup>2</sup> The statutes now being arranged according to offences only and not, as before, according to penalties, the new code is, on the whole, more systematic than the older. In many cases, statutes dealing with related matters are now consolidated<sup>3</sup> or placed in juxtaposition; in others, however, the re-arrangement has not been fully carried out and the order of the sections is, or remains, unsatisfactory.<sup>4</sup>

Unlike Bāyezīd II’s law, the new *kānūnnāme* is not divided into parts (*bāb*) and chapters (*faṣl*) but into chapters only. In most versions, the criminal code consists of the first three chapters out of 24, or slightly fewer (18 or 20); in others (Q MSS.) it stands as chapters V–VII. In addition, a few more penal statutes<sup>5</sup> form chapter XV (in Q MSS., chapter I).

Another difference between Sultan Süleymān’s code and the earlier ones is lexical. The new law often uses Arabic terms where most of the older codes had Turkish ones; e.g. *cāriye* for *karavaş* ‘female slave’ (§ 8), *zeker* for *emcek*(?) ‘penis’ (§ 10), *cebr* for *güç* ‘force’ (§ 15), *cerrāḥa muhtāc* for *otacılı* ‘needing [the help of] a surgeon’ (§ 40), *mecrūḥ* for *başlı* ‘wounded’ (§ 45), as well as *gani* for *bay* ‘rich’, *yemin* for *and* ‘oath’, etc., in several sections.

Did the code compiled in Sultan Süleymān the Magnificent’s reign supersede the older *kānūnnāme*? No definite answer can

<sup>1</sup> The exceptions are §§ 10 and 15 and § 49 (of the new code), which have been transferred to the first and the second chapter, respectively.

<sup>2</sup> For this reason, the heading of chapter III of the new code exists in two versions, one (in MSS. of group (a)) similar to that of the third chapter, and the other (in MSS. of groups (b) and (c)) resembling that of the fourth chapter, of Bāyezīd’s law.

<sup>3</sup> See, for instance, § 41 (cf. above, p. 22 and notes 4 and 5).

<sup>4</sup> e.g. §§ 30–57–75.

<sup>5</sup> §§ 121–4.

yet be given. It seems that most of the texts written after Süleymān's time are versions of his new code. Interesting evidence of the application of the new code at the end of his reign is contained in the register of the *shari'a* court at Konya for the years 970-1.<sup>1</sup> According to an entry of Rebi' I 971/October-November 1563 concerning an alleged theft, the *cadi* based his sentence on the 'Imperial *kānūnnāme*', the relevant section of which is quoted. In its wording this section is quite different from the statute in Bāyezīd II's *kānūnnāme*, but it is identical with the corresponding part of § 77 of the new penal code of Sultan Süleymān, as given in the L MSS. (the basis for the text published below). This proves that at the end of Süleymān the Magnificent's reign the new code in that version was in official use.

### 6. *A criminal code of the seventeenth century*

The last Ottoman criminal code before the *Tanzīmāt* period seems to have been compiled in the seventeenth century, probably in its second quarter, on private initiative. Four texts of this code have been found (MSS. Va, Vb, Vc, Vd). They are very similar to one another, Va being the longest and Vd, which opens with chapter III, the shortest version. In the text, dates as late as 1033/1623-4 occur, and marginal notes (in MS. Vc) refer *inter alia* to the years 1064/1653-4 and 1083/1672-3.\* According to the preamble, which has been published by Barkan,<sup>2</sup> the compiler, a clerk of a *shari'a* court, had found that the few available copies of the official *kānūnnāmes* were too short and altogether inadequate; he therefore set out to compile a more detailed and complete text by culling material from various *kānūn* collections, firmans, and other sources of secular law ('*örf*) and incorporating it in the original *kānūnnāme* 'in a new form'.

The new *kānūnnāme* is divided into eight parts, the first of which (*siyāsāt*<sup>3</sup> *kānūnları*) contains the penal code arranged in the same four chapters as Sultan Bāyezīd II's code published by Meḥ-

<sup>1</sup> Konya Sicilli, vol. 1, p. 144.

\* [Pencil notes indicate that Heyd had doubts whether Vd really belongs to this group, since the (whole?) manuscript has been ascribed to the end of the sixteenth century (Beldiceanu, i. 38-9).]

<sup>2</sup> p. xxv, n. 9. A few passages need correction; e.g. *şer'-i mutahhara muzâf* in para. 4 should be read . . . *muvâfik*, and *nicesi mesâli tahrir* in para. 5—*nice resâil tahrir*.

<sup>3</sup> Or *siyâset* (see Vb f. 2b).

med 'Ārif. In fact, the compiler preserved the order, and often even the wording, of that old law and intercalated in it most of the additional statutes of Süleymān the Magnificent's criminal code, as well as a few others<sup>1</sup> not appearing in any of its versions. The result of his work is the most comprehensive Ottoman penal code, containing about a hundred statutes of criminal law and a number of sections dealing with market regulations. However, the code lacks uniformity and conciseness and, most important, is devoid of the official character of the earlier laws.\* The relatively small number of manuscripts of this code indicates that it was never widely used.

## APPENDIX

### *List of Kānūnnāme Manuscripts*

#### 1. *The criminal code of Mehemmed II and the additions of Bāyezīd II*

- Aa Nationalbibl., Vienna, A. F. 554 (Flügel 1814), ff. 2b-6a; published in *MOG*, i (1921), 19-28 (trans. pp. 32-43)  
 Ab Ibid., ff. 6a-7b; published *ibid.*, 28-31 (trans. pp. 44-8)

#### 2. *The criminal code for the Christians of Cephalonia and Montenegro, of the late 15th and early 16th century*

- Ba Bibl. Nat., Paris, A.f. turc 35, ff. 138a-140a  
 Bb Bibl. Nat., Paris, A.f. turc 85, ff. 246b-248a  
 Bc Topkapı Sarayı Libr., Istanbul, Revan K. 1935, ff. 133b-135a  
 Ca Başbakanlık Arşivi, Istanbul, Tahrir (Tapu) Defteri 122; published in *Prilozi*, i (1950), 19-20 (trans. pp. 21-2) and in *Kanuni i Kanun-name*, 163-6 (trans. pp. 166-8)

#### 3. *The siyāsetnāme*

- Da Nationalbibl., Vienna, A. F. 554 (Flügel 1814), f. 65a-b  
 Db Bibl. Nat., Paris, A.f. turc 295, ff. 229b-231a

<sup>1</sup> See OCC, §§ 7, 17, 96, 114.

\* [slip:] Nevertheless, so far as the criminal regulations are concerned, Barkan (xxiii et sqq.) goes too far when he ranks this collection with certain other private compilations of Ottoman law, such as Hezārfenn Hüseyn's *Talkhiş al-bayān* or certain *fetvā*-collections which include a large number of *kānūns*.

- Ea Museum of Manisa, Şeriye sicilleri, I, v. 13; published by E. Z. Karal in *Belleten*, vi/21-2 (1942), 37-44
- Eb Bayezit Libr., Istanbul, Veliyüddin 1970, ff. 68a-70a
- Ec Atif Efendi Libr., Istanbul, 1734, ff. 33b-35b
- Ed Bibl. Nat., Paris, A.f. turc 81, ff. 70b-71b
- Ee Bibl. Nat., Paris, Suppl. turc 79, ff. 48b-49b

#### 4. *The criminal code of Bāyezid II*

##### (a) *The standard version*

- Fa MS. in private library of Mr. A. R. İzzet Koyunoğlu, Konya, ff. 1b-10a [now published in facsimile by N. Beldiceanu, as *Code de lois coutumières de Mehmed II*, Wiesbaden, 1967]
- Fb Başbakanlık Arşivi, Istanbul, Maliye Defteri 11, ff. 9b-11b
- Fc Tapu ve Kadastro Genel Müdürlüğü, Ankara, Kuyudu Kadime Defteri 58; published in Roman script in Tuncer, *Toprak Hukuku*, 153-5, 149-50 (many mistakes)
- Fd Nationalbibl., Vienna, A. F. 77 (Flügel 1826), ff. 191b-194b
- Fdd Nationalbibl., Vienna, Cod. Mixt. 870, ff. 2b-6b
- Fe Bayerische Staatsbibl., Munich, Cod. turc. 110, ff. 1b-5b
- Ff Millî Kütüphane, Ankara, Mikrofilm Arşivi, Nu. A-1393
- Fg Bibl. Nat., Paris, A.f. turc 35, ff. 2a-6a
- Fh Topkapı Sarayı Libr., Istanbul, Revan K. 1935, ff. 11a-16a
- Fi Topkapı Sarayı Libr., Istanbul, Revan K. 1936, ff. 10b-16b
- Fj Bayezit Libr., Istanbul, Veliyüddin 1969, ff. 126b-131a
- Fk Biblioteca Apost. Vaticana, Bar. Orient. 69, ff. 1b-8a
- Fl Orijentalni Institut, Sarajevo, Archives, MS. no. 1, part 2, ff. 1a-4a
- Fm Orijentalni Institut, Sarajevo, Archives, MS. no. 41, ff. 124a-127a
- Fn Bibl. Nat., Paris, Suppl. turc 80, pp. 1-13
- Fo Bibl. Nat., Paris, A.f. turc 85, ff. 1b-4a
- Fp Üniversite Kütüphanesi, Istanbul, T 5826, ff. 3b-12a
- Fq Nationalbibl., Vienna, H. O. 143 (Flügel 1813), ff. 10b et sqq.
- Fr Ankara Umumî Kütüphanesi, MS. no. 208, ff. 1b-4a
- Fs Bibliotheca Academiae Lugduno-Batava (Leiden University), Cod. Or. 327, ff. 5b-10b
- Ft Staatsarchiv, Vienna, Krafft 470, pp. 7 et sqq.

- Fu Cambridge University Libr., Dd. 11. 20, ff. 2b-5b [published in Roman script, with a rendering in modern Turkish, in Tuncer, *Arazi Kanunları*, pp. 105-8, 13-17]
- Fv Atif Efendi Libr., Istanbul, 1734, ff. 68b-75a
- Fw Süleymaniye Libr., Istanbul, Esad Efendi 2362, ff. 1b-5a
- Fx Üniversite Kütüphanesi, Istanbul, T 2753, ff. 2a-5b
- Fy Üniversite Kütüphanesi, Istanbul, T 3239, ff. 2b-7a
- Fz Topkapı Sarayı Libr., Bağdat K. 346, ff. 1b-5a

(b) *Shorter versions*

- Ga Süleymaniye Libr., Istanbul, Halet Efendi 366, ff. 62a-64a
- Gb Başbakanlık Arşivi, Istanbul, Tahrir (Tapu) Defteri 315, pp. 4-6
- Gc Nationalbibl., Vienna, A. F. 77 (Flügel 1826), ff. 71b-73b
- Gd Tapu ve Kadastro Genel Müdürlüğü, Ankara, Kuyudu Kadime Defteri 31; published (with many mistakes) in Tuncer, *Toprak Hukuku*, 335-7
- Ge Bibl. Nat., Paris, A.f. turc 85, ff. 152a-153b
- Gf Bibl. Nat., Paris, A.f. turc 85, ff. 139a-140a
- Gg Tapu ve Kadastro Genel Müdürlüğü, Ankara, Kuyudu Kadime Defteri 101
- Ha Institut Narodov Azii, Leningrad, A 250, ff. 31b-33b
- Ia Aya Sofya Libr., Istanbul, 2894, ff. 90b-92a
- Ib Süleymaniye Libr., Istanbul, Şehid Ali Paşa 2884, ff. 22b-23b
- Ic Süleymaniye Libr., Istanbul, Lâleli 3735, ff. 46a-47b
- Id Türk Tarih Kurumu Libr., Ankara, Y 34, pp. 63-6
- Ie Süleymaniye Libr., Istanbul, Hacı Mahmud 913, ff. 98b-100a
- (Ja Unknown MS. of 1091 (1680/1) published in Aḥmed Luṭfi, 78-82)

(c) *Versions with additional sections*

- Ka Nuruosmaniye Libr., Istanbul, 4094, ff. 1b-4a
- Kb (Formerly) Preussische Staatsbibl. (today in Universitätsbibl., Tübingen), Diez A. 24 (Pertsch 262), ff. 1b-8a
- Kc Bibliotheca Academiae Lugduno-Batava (Leiden University), Cod. Or. 865, ff. 1b-7a
- Kd Süleymaniye Libr., Istanbul, Reisülküttab (Aşir Ef.) 1004, ff. 40a-43a (50a-53a)

- Ke (Formerly) Preussische Staatsbibl. (see Kb), MS. orient. 1271 (Pertsch 260), ff. 17a-21b  
 Kf Bibl. Nat., Paris, Suppl. turc 79, ff. 42a-45b

5. *The criminal code of Süleymân the Magnificent*

(a) *Ample versions*

- La Public Library (Kitapsaray), Manisa, 5819, ff. 34b-38b (44b-48b)  
 Lb Üniversite Kütüphanesi, Istanbul, T 2730, ff. 1a-5a  
 Lc Bayerische Staatsbibl., Munich, Cod. turc. 111, ff. 1b-13b  
 Ld John Rylands Libr., Manchester, Turkish MS. no. 145, [ff. 1b-4b]  
 Ma Millî Kütüphane, Ankara, Mikrofilm Arşivi, A-1690  
 Na Belediye Libr., Istanbul, M. Cevdet, K 286, ff. 9a-13a  
 Nb Millet Libr., Istanbul, Ali Emiri, Kavanin 76, ff. 7b-10b  
 Nc Orijehtalni Institut, Sarajevo, Archives, MS. no. 1, part 2, ff. 64b-67b  
 Nd Nationalbibl., Vienna, H. O. 149 (Flügel 1804), ff. 71a-73b

(b) *Shorter versions*

- Oa Cambridge University Libr., Dd. 11. 20, ff. 103b-109b [published in Roman script, with a rendering in modern Turkish, in Tuncer, *Arazi Kanunları*, pp. 136-40, 44-9]  
 Ob Public Library (Kitapsaray), Manisa, 4655, ff. 51b-55a  
 Oc Süleymaniye Libr., Istanbul, Esad Efendi 933, ff. 51b-53b  
 Od Bibl. Nat., Paris, Suppl. turc 81, ff. 3a-8b  
 Pa British Museum, London, Or. 7268, ff. 1b-4b  
 Pb Millet Libr., Istanbul, Ali Emiri, Kavanin 74, ff. 1b-6a  
 Pc Türk Tarih Kurumu Libr., Ankara, Y 104, ff. 1b-8b  
 Pd Süleymaniye Libr., Istanbul, Fatih 3507, ff. 1b-6b  
 Pe Staatsarchiv, Vienna, Krafft 472, pp. 1 et sqq.  
 Pf Süleymaniye Libr., Istanbul, Reisülküttab (Aşir Ef.) 1004, ff. 78b-82a (89b-93a)  
 Pg Nationalbibl., Vienna, H. O. 146 (Flügel 1799), ff. 34b-36b  
 Ph Tarih ve Dil-Coğr. Fakültesi Libr., Ankara, İsmail Saib I/47, pp. 2-5  
 Pi Süleymaniye Libr., Istanbul, Serez 2728, ff. 5b-9a

- Qa Süleymaniye Libr., Istanbul, Esad Efendi 2362, ff. 35b-36a, 37a-38b  
 Qb Staatsarchiv, Vienna, Krafft 471, pp. 75-6, 78-82  
 Qc Süleymaniye Libr., Istanbul, Mihrişah 440, ff. 182b-184a  
 Qd Orientalni Institut, Sarajevo, Archives, MS. no. 16, ff. 82b-85a

(c) *The shorter versions with additional sections*

- Ra Public Library (Kitapsaray), Manisa, 3392, ff. 71b-76a  
 Rb Institut Narodov Azii, Leningrad, B 1882, ff. 1b-6b [now published in facsimile, with Russian translation and the variants of Rc, by A. S. Tveritina, as *Kniga Zakonov Sultana Selima I*, Moscow, 1969]  
 Rc Institut Narodov Azii, Leningrad, A 250, ff. 1b-7b  
 Rd Süleymaniye Libr., Istanbul, Esad Efendi 850, ff. 1b-5a  
 Re Yusuf Ağa Libr., Konya, 243, pp. 180-2.  
 Sa Nationalbibl., Vienna, A. F. 547 (Flügel 1820), ff. 38a-42b; published in Roman script and with many mistakes in Tuncer, *Kanunname*, pp. 124-8  
 Sb Stadtbibl. Leipzig, Cod. Ar. Per. Turc. 233, ff. 40b-45b  
 Ta Historijski Institut Jugoslavenske Akademije Z. i U., Zagreb, Orijentalna Zbirka, Kod. 126, ff. 104b-107b

(d) *Incomplete versions*

- Ua Millet Libr., Istanbul, Ali Emiri, Kavanin 78, ff. 2a-4b, 11a-b  
 (Ub Unknown MS. published in Ahmed Luṭfi, 47-57)  
 (Uc After *Ḳānūnnāme* for Bosnia published in *Glasnik*, xxviii (1916), 448-50)  
 Ud Bibl. Nat., Paris, A.f. turc 36, ff. 1a-3a

6. *The criminal code of the 17th century*

- Va Belediye Libr., Istanbul, M. Cevdet, K 223, ff. 4b-12b  
 Vb Belediye Libr., Istanbul, M. Cevdet, K 520, ff. 5a-11a  
 Vc Üniversite Kütüphanesi, Istanbul, T 1807, ff. 3a-8b  
 Vd Bibl. Nat., Paris, A.f. turc 85, ff. 118b-120b

## II

### CRIMINAL LAW IN PROVINCIAL KĀNŪNNĀMES

SINCE the Ottoman criminal code was in force in all parts of the Empire, most provincial *kānūnnāmes* contain few, if any, penal statutes.\* An undated *Kānūnnāme* for Karaman<sup>1</sup> explicitly states that no criminal code (or list of fines) has been embodied in either the old or the new cadastral register (*defter*) of the province and that when necessary the text of the criminal code as used in the Imperial Divān or transcribed in the registers (*sicillāt*) of the local law-courts shall be consulted.

In some Muslim countries annexed in the early sixteenth century, the Ottomans at first confirmed existing secular law, which mainly dealt with fiscal matters such as taxes, tolls, customs duties, etc. They did so in order not to uproot local usage and, above all, not to disorganize the economic life of the new provinces. In one case,<sup>2</sup> significantly, they justified this policy by citing, with a slight variation, a formula of the Qur'ān, 'Verily we found our fathers practising like this'.<sup>3</sup> Similarly, in his *Ṭabaḳāt*, the Nişāncı Celālzāde refers to the laws of the late Mamlūk Sultan Ḳāyitbāy, which served in part as the basis for the Ottoman *Kānūnnāme-i Mısr*, as 'just laws' (*ḳavānīn-i 'adl-āyīn*).<sup>4</sup> The same policy was, though to a much smaller extent, adopted even in provinces conquered from the Christians.<sup>5</sup> In the province

\* [See below, p. 171.]

<sup>1</sup> Nationalbibl., Vienna, MS. A. F. 77 (Flügel 1826), f. 80a; Bibl. Nat., Paris, MS. A.f. turc 85, f. 212b. [ff. 207-22 of the latter have now been published by N. Beldiceanu and I. Beldiceanu-Steinherr in French translation with facsimile in *ḴESHŌ*, xi, 1968, 1-129, and separately as *Recherches sur la Province de Qaraman au XVI<sup>e</sup> siècle*, Leiden, 1968 (same pagination), the section cited by Heyd appearing (without the phrase mentioning the *sicillāt*) at p. 119 (facs.) and p. 54 (trans.). These authors see a different implication in the passage, see p. 54, n. 3 and p. 87.]

<sup>2</sup> In the preface to the *Kānūnnāme* of 'Alā' al-Dawla, the Dulkadir ruler (see Barkan, 120).

<sup>3</sup> Qur'ān, 7. 27; 43. 21, 22; etc.

<sup>4</sup> Celālzāde, *Ṭabaḳāt*, ff. 86b-87a.

<sup>5</sup> See, for instance, Barkan, 304, note; 322, § 1; etc.

of Baghdad, however, the Ottoman conquerors, while reaffirming the *ḳānūn* of Uzun Ḥasan, the Sunnī ruler of the Akkoyunlu dynasty, immediately abolished the 'tyrannical innovations' of the former Kızılbaş, i.e. Shī'ī Ṣafawī, rulers.<sup>1</sup>

These statutes of previous Muslim rulers included some criminal legislation. The most important specimens are the penal code and a list of fines of the Dulkadırlıs (DPC, DFR).<sup>2</sup> But there also seems to be an interesting instance of fines laid down by the Mamlūk rulers of Egypt. A *ḳānūnnāme* for the formerly Mamlūk province of Çukurābād (Adana) of the time of Süleymān the Magnificent<sup>3</sup> prescribes (§ 16) fines of 22 Ottoman *akçe* for inflicting a gashing head-wound and of 40 Ottoman *akçe* for causing a non-mortal wound with a knife. These are the only fines mentioned; 'for all other fines (or offences)', the *ḳānūnnāme* continues (§ 17), 'the old Ottoman *ḳānūn* (*ḳānūn-i ḳadīm-i 'Oṣmānī*) is to be consulted'. The fines prescribed here are lower than those fixed in the Ottoman Criminal Code and other provincial *ḳānūnnāmes*,<sup>4</sup> and one of them (22 *akçe*) is not, as is usual, a round number.

An explanation of this odd feature may be found in the earlier *ḳānūnnāmes* for the neighbouring *sancaks* of Sīs (today Kozan)<sup>5</sup> and Tarsus,<sup>6</sup> registered in Şafer 925/February 1519, i.e. only about two years after the subjugation of the Mamlūk Sultanate to which these regions had belonged. These laws are called '*Ḳānūnnāme* of Sultan Ḳāyıtḃāy', the above-mentioned Mamlūk sultan of Egypt, who reigned from 1468 to 1495. Here too fines are fixed for only the two offences mentioned above; they are 60 and 100 *Ḥalebī* (Aleppo) *akçe*, respectively.<sup>7</sup> Since this Mamlūk coin equalled two-fifths of an Ottoman *akçe*,<sup>8</sup> the fines in the later *ḳānūnnāme* of Süleymān the Magnificent are almost the exact

<sup>1</sup> See the *Ḳānūnnāme* for Baghdad of 943/1536-7 in MS. Ed, ff. 82b-84a; firman of the same year to the Beğlerbeği and cadi of Baghdad in MS. Eb, ff. 104a-106b.

<sup>2</sup> See below, pp. 132-44, 144-6.

<sup>3</sup> Barkan, 204-6. See also the *Ḳānūnnāme* for Tarsus in Tapu ve Kadastro Genel Müdürlüğü, Ankara, Kuyudu Kadime Defteri 134, f. 1b.

<sup>4</sup> See OCC, §§ 40, 45.

<sup>5</sup> Barkan, 200-1.

<sup>6</sup> Başbakanlık Arşivi, İstanbul, Tapu Defteri 69 (old number 973), p. 272. §§ 11-12 of Barkan's text (p. 201), which in the originals of both *ḳānūnnāmes* are written in smaller letters, seem to be a later addition.

<sup>7</sup> See Barkan, 201, § 8.

<sup>8</sup> Barkan, 204, § 2. For the coining of silver money at Aleppo in the middle of the fifteenth century, see Labib, 432-3.

equivalent<sup>1</sup> of what appear to have originally been Mamlūk fines.<sup>2</sup> Similarly, instead of the usual Ottoman bride tax of 60 *akçe* for a virgin, in Çukurābād only 48 *akçe* is imposed,<sup>3</sup> probably because in Mamlūk times it was 120 *Halebi akçe*.<sup>4</sup> Consequently, the opinion that fines were unknown to the Mamlūk fiscal administration<sup>5</sup> must be revised.

After a short period of transition, however, the Ottoman sultans, while preserving some of the fiscal regulations of the previous Muslim rulers, introduced their own criminal law. Thus, many *kānūnnāmes* for provinces in the former Akkoyunlu (then Şafawī), Dulkadir, and Mamlūk dominions in eastern Anatolia, Syria, and Egypt prescribe that in criminal matters, especially in respect of fines, Ottoman law (*kānūn-i 'Oşmānī, Rūm kānūnu*) shall be applied.<sup>6</sup> In certain Balkan regions, such as the district of Semendre (Smederevo), too, local Christian (Byzantine, Serbian?)<sup>7</sup> law (*despot kānūnu*<sup>8</sup> *demekle ma'rūf olan āyin-i bāṭil*) seems to have been left in force at first. According to the *Kānūn-i Eflāk* of 10 Şafer 912/July 1506,<sup>9</sup> however, it was abrogated, and henceforth the *sharī'a* and the Ottoman *kānūn* were to be applied by the *sancakbeği* and the local cadis in all lawsuits and trials.<sup>10</sup>

In ordering this change, the sultans emphasized their intention to abrogate many *bid'ats*, i.e. illegal and oppressive innovations of

<sup>1</sup> The first of the Ottoman fines should be 24 (two-fifths of 60) instead of 22 *akçe*.

<sup>2</sup> For what seems to have been another Mamlūk fine (for bruising), see below, p. 42.

<sup>3</sup> Barkan, 205, § 8.

<sup>4</sup> Barkan, 201, § 7; Başbakanlık Arşivi, İstanbul, Tapu Defteri 110, p. 2.

<sup>5</sup> Mantran-Sauvaget, 78, n. 1 (the result of a misunderstanding of Barkan, 552, § 4). (For the imposition of fines in Mamlūk Egypt by the *muhtasib*, see Labib, 183.)

<sup>6</sup> See the *kānūnnāmes* for Diyarbakır (Barkan, 136, § 28), Boz Ulus (143, § 15), Çemişgezek (190, § 14; 191, § 19), Malatya (117, § 13), Maraş (128, note), Sis (Kozan) (201, § 12), Çukurābād (Adana) (206, § 17), Aleppo (207, § 8), Ma'arra (Bibl. Nat., Paris, MS. A.f. turc 85, f. 99a), Tripoli (in Syria) (Barkan, 216, § 14), Egypt (362, § 13, with a reservation in respect of fines). See also DLF at pp. 146-7, below.

<sup>7</sup> For the code of the Serbian king, Stephan Dušan, see K. Kadlec, *Introduction à l'étude comparative de l'histoire du droit public des peuples slaves*, Paris, 1933, 113 et sqq. In the fifteenth century the Serbian princes received from the Byzantine Emperors the title of despot (Kadlec, op. cit., 86-7).

<sup>8</sup> In MS. Ke misread as *şübüt kānūnu*.

<sup>9</sup> Thus in the text of MS. Ke. Its heading, however, as well as MS. Fh, have 10 Şafer 922/March 1516, which may be the better reading.

<sup>10</sup> MS. Fh, f. 7a; MS. Ke, f. 15b.

the previous rulers, and to alleviate the plight of the population by reducing onerous impositions, including excessive fines and other penalties for criminal offences.<sup>1</sup> This intention was indeed carried out. For instance, the replacement of the Dulkadir law by the Ottoman Criminal Code meant, as shown below,<sup>2</sup> a considerable reduction of many fines. Moreover, the Ottomans abolished the Dulkadir custom of exacting, in addition to the prescribed fines, an extra 20 per cent of their amount, apparently for the benefit of various officials.<sup>3</sup> Similarly, certain oppressive practices in the administration of criminal justice in Mamlūk Egypt<sup>4</sup> and, possibly, in the former Karaman principality<sup>5</sup> were abolished after the Ottoman conquest.

Detailed criminal codes occur in very few provincial *ḲĀNŪNNĀMES*, such as those for the province of Niğbolu (Nikopol)<sup>6</sup> and for the Christian-populated island of Cephalonia and province of Montenegro.<sup>7</sup> Shorter versions are included in the *ḲĀNŪNNĀMES* for Bozok (today Yozgat), Kırşehir, and Maraş, former Dulkadir territories.<sup>8</sup> In some MSS.,<sup>9</sup> the criminal code follows the *ḲĀNŪNNĀME* for Bosnia.

Several other provincial *ḲĀNŪNNĀMES*—e.g. those for Ḥudāvendigār (Bursa), Erzurum, Mosul, Georgia, and Arapkir<sup>10</sup>—contain short lists of fines, somewhat similar in content to the lists of Dulkadir fines (DFR, DLF). They prescribe fines for homicide, knocking out an eye or tooth, crippling(?) a hand, wounding with various weapons, inflicting a gashing head-wound or a bruise, and, in most versions, fornication.<sup>11</sup> The fines are not very different

<sup>1</sup> Süleymaniye Libr., Istanbul, MS. Halet Ef. 366, ff. 60b–61b and Barkan, 128, note (for *bedayi'at* read *bid'atler*, as in Bibl. Nat., Paris, MS. A.f. turc 85, f. 138a) (former Dulkadir territory); Barkan, 40–1, § 1 (former Karaman principality); *ibid.*, 63, § 1 and n. 3 (former Akkoyunlu dominions).

<sup>2</sup> See below, pp. 48–9.

<sup>3</sup> See DPC, § 42.

<sup>4</sup> Barkan, 362–3, § 13; 382–3, §§ 41–2; etc.

<sup>5</sup> *TOEM*, 1329, suppl., 66–8 (Barkan, 43, §§ 5, 8; 44, §§ 12–13). It seems quite likely that these *bid'ats* go back to Karaman rule.

<sup>6</sup> Fb, Fc, Fd (see above, p. 21).

<sup>7</sup> Ba, Bb, Bc; Ca (see above, pp. 14–15).

<sup>8</sup> Ga–Gd; Ge; Gf, Gg (see above, p. 22).

<sup>9</sup> Na–Nd, Uc (see above, pp. 29 and 30).

<sup>10</sup> Barkan, 5, § 29; 71, §§ 45–8; 180, § 28; Djikiya, 4, and Tuncer, *Toprak Hukuku*, 170; Bibl. Nat., Paris, MS. A.f. turc 85, f. 134a.

<sup>11</sup> See OCC, §§ 41, 50, 45, 40, 1, 2. Even shorter and somewhat different lists of fines occur in the *ḲĀNŪNNĀMES* for Malatya and Divriği (Başbakanlık Arşivi, Istanbul, Tapu Defteri 408, f. 327a; Tuncer, *Toprak Hukuku*, 248) as well as in those for certain mining districts in Serbia (Beldiceanu, ii. 201–2, § 10 (for

from those of the Ottoman Criminal Code. For certain offences,<sup>1</sup> however, several of these *ḳānūnnāmes*, including the oldest,<sup>2</sup> prescribe, like the Dulkadır laws, a single fine, irrespective of the offender's financial circumstances. Furthermore, no lower fines are prescribed for non-Muslims.<sup>3</sup>

Fines for inflicting a gashing head-wound (60 *Halebî akçe*) or a black bruise (30 *Halebî akçe*) are fixed in a *ḳānūnnāme* copied into the Tapu Defteri of Muḥarrem 928/December 1521 for the formerly Mamlūk district of 'Uzeyr, between Adana and Aleppo.<sup>4</sup> Similarly, a statute concerning the (much higher) fines for causing such a head-wound (100 *akçe*) or bruise (50 *akçe*) appears in many *ḳānūnnāmes* enacted in the time of Süleymān the Magnificent and his successors for Hungarian and neighbouring provinces.<sup>5</sup>

Another offence treated in many provincial *ḳānūnnāmes* in much the same way as in the Ottoman Criminal Code is crop damage by animals.<sup>6</sup> A few statutes imposing fines for the violation of market regulations<sup>7</sup> resemble those in the general *ihtisāb ḳānūnu*.<sup>8</sup>

Finally, the provincial *ḳānūnnāmes* list penalties for a few offences not mentioned in the Ottoman Criminal Code. For example, shepherds who hunt or scare away wild animals in hunting-grounds reserved for *beğs* are liable to a fine of five *akçe* or to five strokes.<sup>9</sup> Bringing wine into a town without the permission of the farmer of the wine-shop taxes (*meyhāne 'āmili*) is punishable by a fine of the amount of one day's tax(?) of the wine-shop and by the seizure of the wine brought in or of all the wine in the village from where it was brought.<sup>10</sup>

The only provincial *ḳānūnnāme* which includes a large number of different criminal regulations is the famous *Ḳānūnnāme* for Egypt.<sup>11</sup> Enacted early in the reign of Süleymān the Magnificent,

'crime' read 'homicide') and ii, 207, § 10 (for 'vol accompagné de meurtre' read 'hitting and [as a result] killing').

<sup>1</sup> OCC, §§ 40, 45, 50.

<sup>2</sup> Barkan, 5, § 29 (of the year 1487); cf. also Beldiceanu, ii. 201-2, § 10; 207, § 10 (of March 1488).

<sup>3</sup> See above, p. 14, and below, pp. 286-8.

<sup>4</sup> Başbakanlık Arşivi, Istanbul, Tapu Defteri 110, p. 2.

<sup>5</sup> See Barkan, 302, § 23; 311, § 24; 317, § 12; 321, § 20; 322, § 5; Bibl. Nat., Paris, MS. A.f. turc 85, f. 31a; f. 45a-b.

<sup>6</sup> See OCC, §§ 108-9.

<sup>7</sup> Barkan, 43, § 5; 134, § 21; 400, § 23; etc.

<sup>8</sup> See below, pp. 229 et sqq.

<sup>9</sup> Barkan, 26, §§ 18-19 (Kütahya).

<sup>10</sup> Barkan, 186, § 3 (Kemah); 138, § 33 (Diyarbakır); 164, § 10 (Mardin).

<sup>11</sup> Barkan, 355-87.

it is quite dissimilar in content to all the other provincial laws.\* Most of the offences listed in it are military crimes; disobedience to government orders concerning taxation, the cultivation of land, etc.; oppression, embezzlement, and neglect of duty by officials and local notables; and the like. There are, however, a few others, such as lascivious performances by brides at their marriage festivities, for which the offenders are to be chastised, exposed to public scorn, and heavily fined.<sup>1</sup>

\* [pencil note expanded:] This is not surprising in view of the special character of the Ottoman regime in Egypt, where the Ottoman 'feudal' system was not introduced.

<sup>1</sup> Barkan, 378-9, § 33.

### III

## THE DULKADIR CRIMINAL LAW

### 1. *The Dulkadır penal code*

THE only non-Ottoman Turkish sources of criminal law from Anatolia that have so far come to light are the penal code and lists of fines of the Dulkadır (*Dhū 'l-Ḳādir*, *Dhū 'l-Ḳadr*)<sup>1</sup> dynasty. After the death of the last powerful *İlkhān* ruler, Abū Sa'īd, in 1335, this *Türkmen* clan gradually established its rule over the region of Maraş-Elbistan-Malatya-Harpūt. Forming a kind of buffer between the Mamlūk Sultanate of Egypt and the rising Ottoman, Akkoyunlu, and (finally) Şafawī states, they were, during most periods, dependent on either the Mamlūks or the Ottomans, until their territory was conquered and, in 1522, formally annexed by the latter.

The Dulkadır Penal Code is preserved in two versions, both of which were copied into Ottoman cadastral registers shortly after the annexation. The two versions are:

(A) The so-called *Ḳānūnnāme* of 'Alā' al-Dawla, the last Dulkadır ruler but one (1479-1515). It<sup>2</sup> was published by Barkan,<sup>3</sup> but there is a better, though incomplete copy,<sup>4</sup> which, according to Barkan (p. 120), dates from the year 932/1525-6.<sup>5</sup>

(B) The *Ḳānūnnāme* for the *każā* of Bozok, which at times formed part of the Dulkadır territory.<sup>6</sup> Its text,<sup>7</sup> as published by

<sup>1</sup> For these and other forms of the name see R. Hartmann, *Zur Wiedergabe türkischer Namen und Wörter in den byzantinischen Quellen*, Berlin, 1952, p. 7; *IA*, art. 'Dulkadırlılar' (Mordtmann[-Yınanç]); *EI*<sup>2</sup>, art. 'Dhū 'l-Ḳadr' (Mordtmann[-Ménage]).

<sup>2</sup> The text found in Başbakanlık Arşivi, İstanbul, Tapu Defteri 998 (old number 735), pp. 414-16.

<sup>3</sup> Barkan, 120-4, with photostats of the original on Plates 18-19.

<sup>4</sup> Tapu Defteri 402 (old number 375), pp. 17 et sqq. (the upper parts of the pages are missing).

<sup>5</sup> It was certainly made between 928/1522, the year of the death of the last Dulkadır ruler, 'Alī Beğ, who is referred to as *merhūm*, and 938/1531-2, the date of an addition in the margin (p. 414).

<sup>6</sup> See Hammer, *GOR*, ii. 425; *TOEM*, vi. 696; F. Sümer in *İkt. Fak. Mecm.*, xi (1949-50), 462-3, 492, 498, 512-13.

<sup>7</sup> Tapu Defteri 998, pp. 584-90.

Barkan,<sup>1</sup> should be corrected by collation with another copy,<sup>2</sup> which was written and delivered to the Imperial Treasury in Şa'bān 936/April 1530.<sup>3</sup>

Though the first-mentioned *kānūnnāme* (A) purports (§ 51) to be an exact copy of 'Alā' al-Dawla's code, its last part, from § 42 on, seems to be an addition (by the Ottoman scribe?) containing, at least in part, other Dulkadir regulations. This is evident from its abrupt divergence, after that section, from the parallel *Ḳānūnnāme* for Bozok, as well as from the confusion of the following sections, the repetition of part of § 39 in § 44, and the list of fines in §§ 47-8, which differ from those mentioned in the preceding regulations and are given in *pāre*, a coin not previously referred to in the code.<sup>4</sup>

Similarly, the last part of the *Ḳānūnnāme* for Bozok (from § 41 or 42 to the end) is an Ottoman addition, as is clearly shown by its abrogation of many Dulkadir fines and taxes, and its references to the Ottoman territory, Sultan, *kānūn*, etc.

Up to § 41, the two versions are very similar, and in parts almost identical. Generally speaking, the Bozok *kānūnnāme* is the better text. It often uses Turkish terms where Arabic ones occur in the code of 'Alā' al-Dawla.<sup>5</sup> In some cases, it prescribes slightly lower fines.<sup>6</sup>

The translation of the Dulkadir code (without the later additions) is given at pp. 132-44, below.

At first sight, the Dulkadir law bears a striking resemblance to the Ottoman Criminal Code. Its language, which may of course have been altered by the Ottoman copyist, is almost the same (the Ottoman code, especially in the earlier versions, abounds in older Turkish words). A slight difference is that adverbs, subordinate clauses, and even subjects are placed *after* the main verb more often than in the Ottoman *kānūnnāmes*.<sup>7</sup> As to the contents, the Dulkadir law deals largely with the same offences, including a rather uncommon one,<sup>8</sup> and defines crimes and imposes penalties in a similar manner.

<sup>1</sup> Barkan, 124-9, with photostats of the original on Plates 21-4.

<sup>2</sup> Tapu Defteri 155 (old number 13), pp. 2-8 (the lower parts of which have crumbled away).

<sup>3</sup> *Ibid.*, p. 12.

<sup>4</sup> See the translations of these sections (DFR) at pp. 144-6, below.

<sup>5</sup> e.g., in §§ 6, 8, 9, 11.

<sup>6</sup> See §§ 2 (1), 4, 5 (1), 10, 12 (3), 20, 26, 28 in the translation.

<sup>7</sup> See, for instance, §§ 3 (near the end), 9 (in B), 12 (in A), 16, etc.

<sup>8</sup> DPC, § 17. OCC, § 35.

A closer examination, however, reveals a number of important differences:

(a) In scope, the Dulkadır law is closest to the Ottoman criminal codes of Mehemmed II's and Bāyezīd II's time (A and F groups of MSS.); like them it lacks the many later regulations, which, in part, reflect a more urban and developed society.<sup>1</sup> At the same time, however, it ignores a number of matters dealt with in those codes, such as offences committed by slaves or infidels (OCC, §§ 8, 31, 51), thefts between relatives or in caravanserais (§§ 72, 84-6), liability for homicide or theft perpetrated by persons unknown (§§ 76, 77), various questions of criminal procedure, including torture (§§ 29, 82, 87-90, 117), etc.

(b) On the other hand, the Dulkadır code deals with some offences not covered by the Ottoman *ḵānūnnāmes*, even the later ones. Examples are sexual intercourse with one's fiancée (DPC, § 11), highway robbery (§ 1),<sup>2</sup> assault on a pregnant woman who, as a result, miscarries (§ 18 (2)), fights between peasant and feudal lord (§§ 32, 37, 41),<sup>3</sup> the concealing of sheep from the official teller (§ 30 (1)), etc. Some Dulkadır statutes, though not contained in the Ottoman Criminal Code, have parallels in other Ottoman laws: e.g. the regulations dealing with peeping into a harem<sup>4</sup> and the infliction of a bruise,<sup>5</sup> and the severe punishment for habitual procuring.<sup>6</sup>

Other sections deal with special cases not mentioned in the Ottoman code, such as theft by more than one person or of more than one animal (§§ 2 (2), 3), the killing of a thief caught in the act or while pursuing him (§ 7), injury inflicted on a person who has caused a fight (§§ 19, 29),<sup>7</sup> etc. Some regulations, that likewise have no parallel in the Ottoman *ḵānūnnāmes*, relate to self-defence against assailants (§§ 27, 30 (2), 37) and unintentional offences

<sup>1</sup> See above, pp. 30-1.

<sup>2</sup> The Ottoman Criminal Code (§ 77) deals only with the liability of the people living near the place where such a crime is committed.

<sup>3</sup> The second and third of these statutes protect the peasant to an astonishing degree.

<sup>4</sup> DPC, § 34 (3). Mehemmed II's *Ḵānūnnāme* on the organization of the Court and the Government (KAO) cited in OCC, § 55, translation n. 1.

<sup>5</sup> DPC, § 22, 26. Ottoman provincial *ḵānūnnāmes* quoted in OCC, § 40, n. 9.

<sup>6</sup> DPC, § 14. The non-standard Ottoman *siyāsetnāmes* (Db, Da) quoted in OCC, § 57, n. 2. (Note also the similar definition of the crime.)

<sup>7</sup> But cf. OCC, § 38.

(§§ 23-5).<sup>1</sup> In all these matters the Dulkadir law shows a higher development of legal thought than the Ottoman Criminal Code even in its much later and larger versions.

(c) The order of sections differs from that of most versions of the Ottoman Criminal Code.<sup>2</sup> First come theft and related offences, next sexual crimes, then homicide and the infliction of bodily injury, and lastly miscellaneous offences, including some that belong to one of the preceding chapters.

(d) While the Ottoman code imposes all fines in *akçe*, most Dulkadir fines are fixed in gold pieces (*altun*), and the remainder, generally small fines, in *akçe*. Nothing is said in the Dulkadir law about the identity of these coins and the relation between the gold piece and the (silver) *akçe*; but from § 26 in A (if the version is correct) we may infer that one gold piece was worth more than 30 *akçe*. On the evidence of a *vakfnâme* of 'Alā' al-Dawla, it has been claimed<sup>3</sup> that, in his days at least, the money current in Dulkadir territory was the Egyptian *eşrefî* gold piece and the Ottoman *akçe*, but this requires further proof.

Several Ottoman *kānūnnāmes* for provinces in east and south-east Anatolia<sup>4</sup> state that in the early sixteenth century one *eşrefî*,<sup>5</sup> or '*eşrefî* of Kaytıbeğ' (Kāyıtbaş, the Mamlūk Sultan of Egypt, 1468-95), equalled 50 and that one *Şāmî* (Damascus) *eşrefî* equalled 40 Ottoman *akçe*. In about the years 1479-82, it seems, the official Ottoman rate of exchange of the *eşrefî* was 45 *akçe*.<sup>6</sup> The value of the Ottoman gold piece, which imitated the Venetian ducat, in the time of Mehemmed II and Bāyezid II was at first 40 *akçe* and gradually rose to about 54-5 *akçe*.<sup>7</sup> It does not much matter, therefore, whether the Dulkadir code refers to the Egyptian or the Ottoman (or European) gold piece.

The identification of the *akçe*, on the other hand, is of greater importance. In some regions that belonged to the Mamlūk Sultanate of Egypt, but were at times *de facto* controlled by the

<sup>1</sup> And, in one version (B, § 36 (2)), offences committed by women.

<sup>2</sup> The same order of the first three chapters is, however, found in Fc, Fd, (Pf and Vd).

<sup>3</sup> 'Arifi in *TOEM*, vi, no. 36, p. 767.

<sup>4</sup> Ergani, Urfa, Mardin, Siverek, Harput, Arapkir (see Barkan, 152, §§ 27 and 2; 156, § 18; 159, § 15; 171, § 14; 170, § 2; 166, § 11; 172, § 16).

<sup>5</sup> First coined by, and named after, the Mamlūk Sultan al-Malik al-Ashraf Barsbāy (1422-38), the *eşrefî* (*ashrafî*) had more or less the same value as the ducat of Venice (see Mantran-Sauvaget, 11, n. 1).

<sup>6</sup> Anhegger-İnalçık, p. 84; Beldiceanu, i, 156, 176.

<sup>7</sup> See Beldiceanu, i, 175; İnalçık, in *İkt. Fak. Mecm.*, xv (1953/4), 63, n. 31.

Dulkadir rulers, such as Behesnī (today Besni) and Sis (today Kozan), the *Halebī* (Aleppo) *akçe* was current before the Ottoman conquest and in the period immediately following it.<sup>1</sup> Many taxes were fixed here in *Halebī akçes*, two and a half of which equalled one Ottoman *akçe*.<sup>2</sup> At the same time, a common coin in regions further to the east, north-east, and north, particularly in parts of the former territory of Uzun Hasan, was the *karaca akçe*, three *karaca akçe* being worth one Ottoman *akçe*.<sup>3</sup> It seems unlikely, however, that the *akçe* mentioned in the Dulkadir code is the *Halebī akçe* or the *karaca akçe*, since in that case the Dulkadir fines fixed in *akçe* would have been very low. For instance, the fine for crop damage by animals would have amounted to two-fifths or one-third of the Ottoman fine.<sup>4</sup>

For this reason, it seems more probable that the coin referred to is either the Ottoman *akçe* or the *Hasan-beği* (or the *tenge*), also current in that period in the east and south-east Anatolian territory formerly ruled by Uzun Hasan and each worth two Ottoman *akçe*.<sup>5</sup>

(e) In fact, the fines prescribed in gold pieces in the Dulkadir law are, on the whole, very much higher than those laid down in the Ottoman code. For example, a person who steals a horse or mule must pay 18 gold pieces (§ 2 (1)), while the Ottoman *kānūn* (OCC, § 66) imposes 200 *akçe*, which, at the rate of exchange mentioned above, is about one quarter of that amount. The fine for homicide is 30 gold pieces (§ 18 (1)), i.e. about 1,200–1,500 *akçe*, as compared with 50–400 *akçe* in the Ottoman code (§ 41).<sup>6</sup> The penalty for the deliberate knocking out of an eye (§ 24) is 14 gold pieces, or about 560–700 *akçe*, as against the Ottoman fine (§ 50) of only 30–200 *akçe*.<sup>7</sup> Considerable differences exist also with regard to the fines for fornication, the theft of a sheep, the breaking of an arm or leg, the knocking out of teeth,<sup>8</sup> and several other offences.

<sup>1</sup> See Barkan, 118, § 2 (of ch. XXVII); 200 et sqq.; 205, § 4. See also Başbakanlık Arşivi, İstanbul, Tapu Defteri 71, p. 4 (*kānūnnāme* of 925/1519 for Gerger and Kāhta).

<sup>2</sup> Barkan, 204, § 2; see above, p. 39.

<sup>3</sup> Barkan, 145 et sqq.; 149 et sqq.; 159 et seq.; 166 et seq.; etc.

<sup>4</sup> DPC, § 33. OCC, § 108.

<sup>5</sup> Barkan, 152, § 27; 154, §§ 2–3; etc.; 148, §§ 1, 3, 5; 149, §§ 8–10; etc.

<sup>6</sup> The Ottoman KAO, however, imposes 3,000 *akçe* (p. 28, lines 4–5).

<sup>7</sup> But in KAO (loc. cit.) it is 1,500 *akçe*.

<sup>8</sup> See DPC, §§ 10, 2 (1), 23, 19. OCC, §§ 1, 2, 65 (n. 3), 47, 50.

Ottoman fines are generally much lower because the Ottoman code frequently takes the offender's financial circumstances into account and grades the fine accordingly. The Dulkadir law has only one fine for any particular offence.

The ratio of about 4:1 between the amounts of the Dulkadir and the (highest) Ottoman fines for many offences obtains also in respect of the bride tax (*resm-i 'arūsāne*), which, as mentioned above,<sup>1</sup> belongs to the same group of impositions as do fines. While the Dulkadir authorities used to levy 120–240 *aķçe* or, according to another version, four to five gold pieces (i.e. about 160–250 *aķçe*), the Ottomans reduced this tax to 30–60 *aķçe*, the usual rates in their state.<sup>2</sup>

(f) In the Dulkadir law, the penalties are mostly fines. Chastisement, i.e. discretionary corporal punishment inflicted by the *cadi* (*ta'zīr*),<sup>3</sup> is much rarer than in the Ottoman code. The *cadi*, so often referred to in the Ottoman Criminal Code, is not mentioned here at all.<sup>4</sup> Under Dulkadir rule, he may have played a less important part in the administration of criminal justice than he did, according to the *kānūn*, in the Ottoman state.

If chastisement is imposed at all in the Dulkadir code, it is mostly either the sole penalty or an alternative to a fine.<sup>5</sup> The Ottoman system of imposing both a pecuniary and a corporal penalty and of fixing a ratio between the fine and an (unspecified) number of strokes is unknown in the Dulkadir law.<sup>6</sup>

(g) A few cruel corporal penalties, not to be found in the Ottoman code, are laid down here, such as the cutting off of the tongue for false accusation (§ 34 (4)) and of the nose and ear(s) for habitual procuring (§ 14 (in A)).<sup>7</sup>

(h) In addition to a fine, the payment of compensation is required in some cases (theft, damage to property, etc.) in which

<sup>1</sup> See p. 13, n. 4.

<sup>2</sup> See Başbakanlık Arşivi, İstanbul, Tapu Defteri 315, p. 3; Bibl. Nat., Paris, MS. A.f. turc 85, f. 139a. In the Ottoman addition to the Dulkadir code written in 1530 (Barkan, 129, § 49), the high rates of 100–200 *aķçe* are retained. But see Barkan, § 51.

<sup>3</sup> Sometimes (§§ 15, 34 (5), 35) termed *hadd* (*vurmak*).

<sup>4</sup> But see A, § 44 (Barkan, 123, in the additional section).

<sup>5</sup> See §§ 17, 40; 39 (1), 39 (2), 39 (3). Exceptions are §§ 34 (5), 35 (and 33, see next note).

<sup>6</sup> Only crop damage by animals (§ 33) is punishable by both a number of strokes and, in B, a prescribed fine for each stroke, but this formulation of the section may be Ottoman (cf. A).

<sup>7</sup> But see the non-standard Ottoman *siyāsetnāmes* quoted in OCC, § 57, n. 2.

the Ottoman code prescribes—at least expressly—only a fine.<sup>1</sup> Particularly noteworthy are statutes, unknown to the Ottomans, which allot part of the fine to the injured person (§ 20 (in A)) or award him compensation for loss of earnings (§ 23).<sup>\*</sup> Here, too, the Dulkadir Penal Code is astonishingly more advanced than the Ottoman law.

## 2. *Two Dulkadir lists of fines*

Besides the Dulkadir Penal Code, two lists of fines imposed by the Dulkadir rulers have been preserved and are translated below.<sup>\*\*</sup>

One of them (DFR) is annexed to the above-mentioned *Ḳānūnnāme* of 'Alā' al-Dawla. It was published by Barkan,<sup>2</sup> but his text is rather faulty. A generally more complete version occurs in a Paris MS.<sup>3</sup> and a less good one in another Istanbul MS.<sup>4</sup> In both of the latter the list forms part of an Imperial *nişān* dealing with the new Ottoman census of the Dulkadir region after its conquest and enumerates the fines that 'since ancient times' have been imposed in the *nāhiye* of Maraş, one of the centres of Dulkadir rule. The *nişān* is not dated, but seems to have been issued not very long after the death in 1522 of Şehsüvāroğlu 'Alī Beğ, the last Dulkadir ruler (see below).

The other list (DLF), not hitherto published, is contained in a *ḳānūnnāme* of Süleymān the Magnificent for the region of Bozok (Yozgat).<sup>5</sup> To pacify this turbulent, rebellious province, the Sultan orders the reduction of the excessive taxes and fines imposed by the former Dulkadir rulers. The *ḳānūnnāme* formally abrogates their penal regulations and replaces them by the Ottoman Criminal Code.

The two lists resemble each other in parts. Many offences are common to both, but the fines are given in different coins—in DLF in *aḳçe* and in DFR in *pāre*. The ratio between the fines in *aḳçe* and those in *pāre* is mostly 6 : 1 (once 8 : 1 and once 10 : 1).

<sup>1</sup> See DPC, §§ 6, 8, 34 (1), 36 (1), 36 (3), 38. [The Ottoman provisions for the payment of compensation are discussed below, pp. 307-8.]

<sup>\*</sup> [pencil note:] And, further, the provisions (§§ 19, 29) that the injured party, if he was the aggressor, shall receive only half the *diyyet* due to him.

<sup>\*\*</sup> [DFR at pp. 144-6, DLF at pp. 146-7.]

<sup>2</sup> Barkan, 123, §§ 47-8.

<sup>3</sup> Bibl. Nat., Paris, MS. A.f. turc 81, f. 79a-b.

<sup>4</sup> Bayezit Libr., Istanbul, MS. Veliyüddin 1970, f. 82a-b.

<sup>5</sup> Başbakanlık Arşivi, Istanbul, Tapu Defteri 315 (of the year 966/1558-9), pp. 2-4; Süleymaniye Libr., Istanbul, MS. Halet Ef. 366, ff. 61b-62a.

Since in south-eastern Anatolia in the first part of the sixteenth century one *pāre* was worth two Ottoman *akçe*,<sup>1</sup> the *akçe* in DLF must be either the *Halebi akçe* or the *karaca akçe*, which, as stated above (p. 48), equalled two-fifths and one-third of an Ottoman *akçe* respectively. In that case, however, the fines in the two lists do not tally with those in the Dulkadir Penal Code. They would conform only if the *akçe* in DLF were the Ottoman *akçe* and the *pāre* in DFR had roughly the value of the *şāh-ruḥi* (*şāh-rūḳi*) in eastern Anatolia, i.e. about six Ottoman *akçe*.<sup>2</sup> Since we cannot be certain as to the authenticity of the various Dulkadir laws copied by the Ottomans, no definite conclusions can be reached in this matter.

The first of the two lists (DFR) is clearly divided into two parts (§§ 1-7 and §§ 8-16), which include several parallel sections (5 and 8, 7 and 16). This leads to the interesting assumption that not only the revenue from the seizure of the various stray animals and fugitive slaves but also that from the various fines belonged partly (§§ 1-7) to the Dulkadir Beğs and partly (§§ 8-16) to the tribal chiefs (*boy beğleri*).

This interpretation is corroborated by a report written by an Ottoman governor in former Dulkadir territory a few years after the annexation. In this document, the original of which is kept in the Turkish State Archives,<sup>3</sup> the governor complains about local tribal chiefs who oppress the populace and encroach upon his prerogative to punish criminals. Such lawlessness, he adds, never existed in the days of Dulkadir rule. Among many examples of oppression, he mentions the collection of fines for sexual offences, even such as had never been committed. All these are fines exacted

<sup>1</sup> See Barkan, 111, § 1; 204, §§ 1, 2; etc.; see also *ibid.*, 373, § 28 (for Egypt). The *pāre* was equal in value to the *Ḥasan-beği* (and the *tenge*), see above, p. 48 and n. 5.

<sup>2</sup> See Barkan, 146, § 7; 151, § 22; 159, § 15; etc.

<sup>3</sup> Başbakanlık Arşivi, İstanbul, Fekete catalogue, 89. The document, as preserved today, is neither signed nor dated. But according to the catalogue of the Archives and a note in pencil on the document itself, it was written in 930/1523-4 by a governor of Bozok by the name of Mūsā. Since the lower left-hand corner of the document is torn off, the signature and date may have stood there. In one place, the report refers to the wishes of the Sultan and of the Commander-in-Chief (*ser'asker*). If the latter, as seems most likely, is the Grand Vizier İbrāhīm Paşa, the report must have been written some time between 1529, when the title of *ser'asker* was permanently conferred on İbrāhīm Paşa, and 1536, the year of his execution (see Hammer, *GOR*, iii. 78-80; Uzunçarşılı, *Osm. Tarihi*, ii. 344).

from women (or their guardians) or from bachelors, that is fines which, according to our interpretation of the list (§§ 8–10), are due to the tribal chiefs. Not a single instance is mentioned of the fining of married men, whom the list (§ 5) apparently requires to pay their penalties to the *sancakbeği* as the successor of the Dulkadir ruler.<sup>1</sup> Moreover, the report adds, the tribal chiefs prevent the punishment (*siyāset*) of thieves, claiming that the accused did not commit theft but approached a woman, 'since the fine [for the latter offence] is due to them'. According to the list (DFR, § 2), the fine for theft indeed belongs not to them but to the *sancakbeği*, who also has sole authority to inflict capital and severe corporal punishment.

If this explanation is correct, the chief object of the list is to prescribe to whom the various revenues mentioned are due, a matter not regulated in the larger Dulkadir Penal Code. The division may be summed up as follows: The Dulkadir Beğ (and now the *sancakbeği*) receives the fines for theft (§ 2), for homicide and bodily injuries inflicted with weapons (§§ 1, 3, 4), and for deliberate attacks on houses by bands of men (§ 6), while the fines for wounds (inflicted with the bare hands or with stones, sticks, etc.)<sup>2</sup> (§§ 11–15) are to be paid to the tribal chiefs. For certain sexual offences, the Dulkadir Beğ receives the fines from married men (§ 5), the tribal chief the fines from bachelors and women (§§ 8–10). It should be noted that most of the fines due to the tribal chiefs are lower than those assigned to the Dulkadir Beğ. Similarly, the revenue from fugitive male slaves and from stray animals of higher value (horses, camels, mules) belongs to the ruler (§ 7), that from—probably—female slaves and animals of lesser value (cattle, sheep, etc.) to the tribal chiefs (§ 16). No parallel is known in Ottoman law to this strange division of fines and income from runaways.\* It may be assumed that the list was drawn up in connection with the pacification of the Dulkadir region in the late 1520s. Following the Ottoman annexation of

<sup>1</sup> The following statement in the report may serve as an illustration: 'If a married man commits fornication with a married woman, it is the tribal chief (*boy beği*) who collects the fine from the woman ('*avret cerimesi*) . . .' (cf. *dişi cerimesi* in DFR, § 8). Nothing is said about the fine to be paid by the married man.

<sup>2</sup> Cf. DPC, §§ 22, 26.

\* [The Ottoman system of assigning the income from fines to governors and/or fief-holders is described below, pp. 289–95.]

their territory, the fiefs of the Dulkadir tribal chiefs had been turned into Imperial domains (*havāşş-i hümayūn*). In 1526 the growing discontent flared into open revolt in the Bozok, Elbistan, and neighbouring districts, and the Ottoman government was compelled to give them back their former holdings.<sup>1</sup>

<sup>1</sup> See Bayezit Libr., Istanbul, MS. Veliyüddin 1970, ff. 50a et sqq. (firmans); Celälzāde, *Tabakāt*, ff. 88b-89a, 108b-109a, 114a-b; 'Ārifī, in *TOEM*, vi. 628-9, 692-3; *IA*, art. 'Elbistan' (Yınanç), p. 229a.

## IV

### THE OTTOMAN CRIMINAL CODE

#### I. TEXT

##### *Introductory remarks*

THE following text of the Ottoman Criminal Code is mainly based on MS. La, which, notwithstanding its inconsistent spelling, is one of the best manuscripts of Sultan Süleymān the Magnificent's law. Exceptionally, better variants are substituted from manuscripts of the same group (Lb, Lc, Ld), but this is indicated in every case. Additions from these MSS. (and, in sections not found in the L MSS., from others) are inserted in the text in angle brackets < >, the source(s) for each addition being recorded in the footnotes (see, e.g., § 1, n. 7; § 21, n. 3). No changes have been made in the order of sections in La, even where this is unsatisfactory or in the few cases where other groups of MSS. are better arranged.

To show the development of Ottoman penal law before and after the compilation of Süleymān's code, parallel, alternative, or additional sections from MSS. other than the L group have been added. These are indicated by indentation, and are intercalated at what seem the most appropriate places, regardless of where they appear in the texts or the margins of the various and differently arranged manuscripts.

The division of the text into sections and subsections has been made by the present writer, who also has supplied the numbers and inserted commas.

The footnotes give variants from other manuscripts (and some references to other Ottoman laws). However, in view of the large number of manuscripts collated, the considerable differences between their various groups, and the negligence with which most of them were copied, it would have been useless to attempt to

quote *all* variants. In making the necessary choice the following rules have been observed:

Synonyms are, in general, quoted only in the case of rare words or terms, or where they may help to explain the text.

The innumerable differences in spelling (which was largely discretionary for words of Turkish origin), in grammatical forms, in word order, etc., are generally ignored.

Obvious copying mistakes in other manuscripts are not indicated, and the countless omissions and shorter versions in them are mentioned only when they seem to be meaningful or to be important for tracing the evolution of the text. On the other hand, all variants that affect the meaning of the text in any way have (it is hoped) been quoted.

In cases of common variants, only one manuscript of each group in which they appear is noted.

If variants quoted in the footnotes differ among themselves in points of secondary importance, the abbreviations for the divergent manuscripts are given in round brackets ( ). Round brackets are used also for such divergences as deserve quotation, while additions are indicated (as in the text) by means of angle brackets (see, e.g., § 1, n. 9). When it is necessary to identify more precisely the source of a divergence or an addition, this is indicated within the brackets (see, e.g., § 5, n. 7).

Since the MSS. of the V group are a late and eclectic compilation, they are generally quoted only if they contain important variants not found in earlier texts.

For the letters indicating the MSS. (Aa, Ab, etc.) see above, pp. 33-7; 'marg.' after these letters means that the variant or addition is found in the margin of that MS.

It should be remembered that variants relating to penalties which are quoted from MSS. of the B and C groups refer to non-Muslims (see above, pp. 14-15).

In the text and notes diacritical marks obviously missing in the originals have been added. On the other hand, certain marks found only sporadically even within the same MS. (such as vowel signs, the *madda* over the letter *alif* in non-Arabic words (except, to prevent misreading, in *at*, 'horse'), the *shadda* over double consonants in words of Turkish origin, the points above the letter  $\aleph$  to indicate *g* and *sağır nûn*, the points beneath the letter  $\zeta$ , etc.) have been omitted.

## اولكى فصل

در بيان زنا وغيرى<sup>1</sup>

1 اكر بر كمسته<sup>1</sup> زنا اتسه دخى اوزرينه ثابت<sup>2</sup> اولسه زنا ايدن اولو<sup>3</sup> ايسه و غنى اولسه بيك اقجهيه ودخى زيادهيه قادر<sup>4</sup> اولسه اوج يوز<sup>5</sup> اقجه جرم انه (سياست اولنمدغى تقديرجه)<sup>6</sup>، وسط الحال اولوب التيوز اقجهيه كوچى يتسه ايكيوز اقجه جرم انه، فقير الحال اولوب درت يوز اقجهيه كوچى يتسه يوز اقجه جرم انه، ودخى اشغه اولسه اللى اقجه جرم انه ويا<sup>7</sup> قرق اقجه جرم انه<sup>8</sup>

2 اكر زنا ايدن اركن اولوب غنى اولوب بيك<sup>1</sup> اقجهيه ودخى زيادهيه كوچى يتسه يوز<sup>2</sup> اقجه جرم انه، وسط الحال اولسه<sup>3</sup> اللى<sup>4</sup> اقجه<sup>5</sup>، فقير الحال<sup>6</sup> اولسه اوتوز<sup>7</sup> اقجه جرم انه

*Heading:* <sup>1</sup> Fe, Ff (Ka) متعلق جرم بيان ايدر <sup>2</sup> Pb في زنايه (ولواطيه Ka) بر عورت ايله <sup>3</sup> Fe, Ff (Ka) مسلمان <sup>4</sup> Ba, Ca كافر <sup>5</sup> Fb, Fc add مالک <sup>6</sup> Pb, Qc محصن يعنى اولى <sup>7</sup> V MSS. دورتيوز <sup>8</sup> Oa, Pb, Rb, Sa and others لکن علی وجه الشرع رجم (ثابت اولسه انه) <sup>9</sup> Lb so; Pb adds instead (after اولسه انه) قلملو اولسه

1 <sup>1</sup> Fe, Ff (Ka) مسلمان <sup>2</sup> Ba, Ca كافر <sup>3</sup> Fb, Fc add مالک <sup>4</sup> Pb, Qc محصن يعنى اولى <sup>5</sup> V MSS. دورتيوز <sup>6</sup> Oa, Pb, Rb, Sa and others لکن علی وجه الشرع رجم (ثابت اولسه انه) <sup>7</sup> Lb so; Pb adds instead (after اولسه انه) قلملو اولسه

زنا ايدر كورلسه شرعاً اوزرينه ثابت <sup>1</sup> Pb في زنايه (ولواطيه Ka) بر عورت ايله <sup>2</sup> Fe, Ff (Ka) مسلمان <sup>3</sup> Ba, Ca كافر <sup>4</sup> Fb, Fc add مالک <sup>5</sup> Pb, Qc محصن يعنى اولى <sup>6</sup> V MSS. دورتيوز <sup>7</sup> Oa, Pb, Rb, Sa and others لکن علی وجه الشرع رجم (ثابت اولسه انه) <sup>8</sup> Lb so; Pb adds instead (after اولسه انه) قلملو اولسه

مالک <sup>1</sup> Pb, Qc محصن يعنى اولى <sup>2</sup> V MSS. دورتيوز <sup>3</sup> Oa, Pb, Rb, Sa and others لکن علی وجه الشرع رجم (ثابت اولسه انه) <sup>4</sup> Lb so; Pb adds instead (after اولسه انه) قلملو اولسه

دورتيوز <sup>1</sup> Oa, Pb, Rb, Sa and others لکن علی وجه الشرع رجم (ثابت اولسه انه) <sup>2</sup> Lb so; Pb adds instead (after اولسه انه) قلملو اولسه

لکن علی وجه الشرع رجم (ثابت اولسه انه) <sup>1</sup> Lb so; Pb adds instead (after اولسه انه) قلملو اولسه

اندن داخى اشغه كي غايتده فقير الحال الورسه <sup>1</sup> Aa اولو اولور ايسه وياى اولسه كه التى يوزه كوچى يتسه (جرم) يوز <sup>2</sup> Ba (Ca) (سكسن) اقجه، اندن اشغا حالو (وسط الحال) اولور ايسه اللى اقجه، غايت فقير (فقير الحال) اولور ايسه اوتوز ويا يكرم اقجه انه

اولو اولور ايسه وياى اولسه كه التى يوزه كوچى يتسه (جرم) يوز <sup>1</sup> Ba (Ca) (سكسن) اقجه، اندن اشغا حالو (وسط الحال) اولور ايسه اللى اقجه، غايت فقير (فقير الحال) اولور ايسه اوتوز ويا يكرم اقجه انه

الى <sup>1</sup> Ba, Ca الت يوز <sup>2</sup> Ca بيك <sup>3</sup> Ba

الت يوز اقجهيه كوچى يتسه <sup>1</sup> Aa اوتوز <sup>2</sup> Ca

اندن اشغه درت يوزه كوچى يتسه قرق اقجه <sup>1</sup> Aa

يكرم ويا اون بيش <sup>1</sup> Ba, Ca غايت فقير <sup>2</sup> Aa

3 اكر زنا ايدن (طول)<sup>1</sup> عورت اولسه ار كنلر كى جرم<sup>2</sup> ويره، ازلقده وچوقلقده اكه اعتبار ايدلر

4 واكر زنا ايدن قز اوغلان<sup>1</sup> ايسه انك دخى جرمى همان ار كن جرمى كبيدر<sup>2</sup>

5 اكر اولو مسلمه<sup>2</sup> عورت زنا اتسه غنى<sup>3</sup> ايسه بعد الثبوت<sup>4</sup> غنى جرمين<sup>5</sup> ويره، اكر اورته حاللو<sup>6</sup> ايسه اول حاللو ار جرمين<sup>7</sup> ويره

6 اكر زناى ارلى عورت اتسه ارى جرم<sup>1</sup> ويره<sup>2</sup> غنى اولورسه وقبول ايدرسه<sup>3</sup> (يوز اقچه)<sup>4</sup> كفته خورلق<sup>5</sup> ويره، اما

3 <sup>1</sup> Lb <sup>2</sup> Fc اولسه مجرد اردن النان جريمه

4 <sup>1</sup> Aa, Pb, Qc, Ta omit اوعلان قيز Rb; اوعلان قيز

<sup>2</sup> Aa adds here the second part of § 3.

5 <sup>1</sup> From Lb, where it is inserted in § 6 (before ابا). This section, wanting in most L-Q and S MSS., is found in Aa and most B, C, F, G, K, R, V MSS.

<sup>2</sup> Aa, Ba, Ca, Ra omit اولو مسلمه <sup>3</sup> Fe, Ra غنيه

<sup>4</sup> شريعت قاتنده ثابت اولسا Aa: بعد الثبوت

<sup>5</sup> Aa and many F and K MSS. ار قنلغين (قنلغين)

<sup>6</sup> Aa (Ra) add ياخود فقيره

<sup>7</sup> Aa (Ba, Fp, Kb) ارنلر كيب اولور (اولو Ba) قنلوغين

6 <sup>1</sup> Lb, Ma, Rd جرمين

<sup>2</sup> Subsection (1) is found in most L-Q and S MSS. instead of § 5 (in Lb and R MSS. in addition to it). Most of the older texts have only subsection (2), which originally (Aa, Ba, Ca) followed on § 5 but was later (F, G, K MSS.) separated from it by § 3.

<sup>3</sup> In many early texts (Aa, Fl, Fx, Gf, Ka, Kd) the section begins اكر حالى Others (Ba, Bc, Fa, Fg, Fi, Kb) have حالى اكر بو عورتك يارمز (بو) حالى معلوم اولپ (Ke) اكر بو حاللو (بونك كى) عورتى ارى قبول Ff (Fq) and حاللغى ظاهر اولوب واكر عورتك (مالى اولوب) ارى اولوب ينه قبول ايدر Ra (Rb); ايسه ارى رد ايلمبوب قبول ايسه Ca; ايسه

<sup>4</sup> Lb so; Fa-Fc اوج يوز اقچه Ba, Ca اللى اقچه

<sup>5</sup> Aa, Fa, Gd, Rd كوفتخور قنلوغين; Fb, Fc كوفتخور جريمه سن; in the margin of Va, Vc ديوت جرمى

- عادت کوفته خورلق جرمی اوچیوز اقبجه النی کلمشدر<sup>6</sup>، وسط الحال<sup>7</sup>  
 اولورسه اللی<sup>8</sup> اقبجه، فقیر الحال<sup>9</sup> اولورسه قرق ویا اوتوز<sup>10</sup> اقبجه ویره<sup>11</sup>
- 17 اکر زنا ایدنلرک بری اولی ویری ارکن اولسه اولودن اولی  
 جرمی ارکندن ارکن جرمی الیه حاللرینه کوره
- 8 اکر قول و جاریه<sup>1</sup> زنا اتسه حرّ و حرّه جرمونک نصفن الالر<sup>2</sup>
- 9 اکر بر کشی زنا قصدینه بر کشنک اوینه کیرسه اولی اولورسه  
 اولی جرمن ویره وارکن اولورسه ارکن جرمن ویره<sup>1</sup>
- 10 ودخی قز اوغلان<sup>1</sup> چکن ویا خیانت ایله کمسنه نک اوینه کیرن  
 و عورت وقز چکمکه بله وارن کمسنه نک سیاست<sup>2</sup> ایچون ذکر<sup>3</sup>  
 کسله<sup>4</sup>

6 Aa, Fa-Fc omit النی کلمشدر اما . . . Aa, Gd یوقسول<sup>7</sup>

8 Fb, Fc یوز; Ba, Ca اتوز<sup>9</sup> Aa, Fa, Gd غایت فقیر

10 Fb, Fc یوز . . . فقیر; Ba, Ca یوز یا اون بش

11 In the margin of Fm بو خصوص مرفوعدر

7<sup>1</sup> Only in Va (after § 3) and Vc (after § 2); text according to Vc.

8<sup>1</sup> Aa, Fa, Gd قراواش

2 Aa, Fa, Fr ویره; Lc ویره لر; Aa (Fdd) add بایلقده  
 عادت وقانون موجبنجه بایلق ویخسوللق اعتبارنجه Ff, Fq add ویوقسوللقده

9<sup>1</sup> Aa (Fa) add بیان اولندی که یوزه که بیان اولندی

10<sup>1</sup> Ea, Fa, Ib, Ma, Od اوغلان (و یا) اوغلان Qc (Gd)

2 Lb, Ma, Pb سیاست

3 L-T MSS. so; most D-K MSS. have امجکی or ایچمکی (ایچمکی) (cf. in the margin of Kb دیو ذکره درلر)

4 Instead of the entire section Da (Db) (in three sections) بر کمسنه (خیانت) ایله) بر کمسننک کیجه وکونده اونه کرسه جرسوزلوغله کیردوکی ثابت اولا عورت چکان کبی سیاست اولنه . . . عورت وقیز چکان (اوغلان) (omitting کمسنه لروک (اوغلان چکان) ایچمکی کسینه . . . قیز چکان (وقیز چکمکه) و اوغلان چکمکه بله کلن) کمسنه لری زندانه دوکدر (دوکوب) اندن اشغریلق و اوغلان چکمکه بله کلن) کمسنه لری زندانه دوکدر (دوکوب) اندن اشغریلق (the text is badly corrupted). جزا ایده لر

11<sup>1</sup> واکر بر کشی عورت ویا قیز قاپسه<sup>2</sup> عورتک و قیزک رضاسی اولمسه ارک ذکرین<sup>3</sup> کسهلر عورته وقیزه نسنه دیمیهلر وجرم المیالر، اکر عورت ویا قیز راضی اولوب اوندن طشره<sup>4</sup> کتسهلر انلرک فرجلرین طغلیه لر<sup>5</sup>

12<sup>1</sup> واکر عورت ویا قیز قایمق ایچون خرسوز ایله بله وارسه لر اول وارن خرسوزلره قاضی تعزیر ایدوب حاللرنه کوره قنه یه لر، اعلاسی یوز اقیچه اولاندن اشغه حاللرنه کوره قنه یه لر

13<sup>1</sup> وبر کمسنه کندی عورتن بر کمسنه ایله زنا ایدرکن<sup>2</sup> بر یرده بولسه<sup>3</sup> ایکسن بیله<sup>4</sup> قتل ایتسه همان اوی ایچنه<sup>5</sup> جماعت کتورب اشهاد<sup>6</sup> اتسه اول مقتوللرک وارثلرینک دعوالری استماع اولنمیه<sup>7</sup>

11<sup>1</sup> Only in Ka (before § 1), Ke marg., Ta (before § 10), Va (between § 20 and § 8), Vc marg.; text according to Ke marg.

<sup>2</sup> Ta و دخی قز ویا اوغلن چکن ویا خود قیان

<sup>3</sup> Ka ایچمکی

<sup>4</sup> Instead of طشره: Ka اویدرشب; Vc marg. ایشوب; Va الشوب (? ایشوب)

<sup>5</sup> Va, Vc marg. کتسلر عورتی اردن ایره لر ایکی سنه دخی قاضی تعزیر ایله. کتمش اولسه لر عورتی Ta; حاللرینه کوره قینه لر (قنه یه لر?) یوز اقیچه جرم انه ایروب اکسنک حقندن کله لر جرملرن الهلر

12<sup>1</sup> Only in Ka and Ke marg. (after § 11); text according to Ke marg.

13<sup>1</sup> Only in L MSS., Kb, Kc marg., Ke marg., Ta, and V MSS.

<sup>2</sup> Ke marg. (Ta) ویا خود بله یاتورکن ویا خود بله یاتورکن

<sup>3</sup> Lb so; La کورسه ویر یرده بولسه

<sup>4</sup> Ke marg. adds داخی همان اول حین ده Lb ویا خود بریسن

<sup>5</sup> Instead of (اول ساعت): Ld, Kb, Kc marg. اوی ایچنه; most MSS. omit.

<sup>6</sup> Lb کشف واشهاد

<sup>7</sup> Ke marg. (Ta) اولدورنه نسنه دیمیه لر



- 17<sup>1</sup> اگر بر عورتك بر اریله ادی چكسه ایكسنى بر خلوت یرده  
كوب شهادت ایلسر قاضی تعزیر ایده<sup>2</sup> زنا قتلغن كماكان الالر
- 18 اگر بر كشی بر غیرك عورتن ویا قرین اوپسه ویا دلسه<sup>1</sup> ویا  
یولنه وارب سویلسه<sup>2</sup> و(یا)<sup>3</sup> یاپشسه<sup>4</sup> قاضی محكم تعزیر ایدوب اغاج<sup>5</sup>  
باشنه بر اقیجه جرم انه<sup>6</sup>
- 19 اگر بر كشی بر كشنك جاریه سنه سویلسه<sup>1</sup> ویا اوپسه محكم  
تعزیر اولنوب ایکی اغاجه<sup>2</sup> بر اقیجه جرم انه
- 20 اگر بر كشنك اوغلن<sup>1</sup> اوپسه ویا یولنه واروب سویلسه<sup>2</sup> محكم  
تعزیر ایدوب اغاج باشنه<sup>3</sup> بر اقیجه جرم انه، اگر حبس داخی  
ایتسه لر قاضی مصلحت كوردکی یرده<sup>4</sup> ایده
- 21 اگر بر كشی بر عورتك اوینه کیروب ویا یولنه واروب صاچن  
كسوب<sup>2</sup> (ویا طونن ویا دستارین السه)<sup>3</sup> حقارت ایلسه بعد الثبوت  
قاضی تعزیر ایدوب داخی حبس ایتدروب دركاه معلایه عرض ایده

17<sup>1</sup> Only in Va (after § 16) and Vc marg.; text according to the latter.

<sup>2</sup> Va so; Vc marg. ایدوب

18<sup>1</sup> In Fr, Kb vocalized *dilese*; Ff, Fj دیلسه; Fg دلسه; Gd دیلیوب; Fdd, Ke دیلیوب سویلسه; Fb دیلیوب دلسه; Ka دوتسه; Fx, Ta دكسه; Aa, Lc, Ld, Pb, Sa omit.

<sup>2</sup> Ra adds یعنی ازلسه <sup>3</sup> Lb, Lc

<sup>4</sup> Fb adds شرعله ثابت اولسه <sup>5</sup> Ba, Ca, Gd, Rc اغاج

<sup>6</sup> اهل عرف بر اقیجه الا Fb: بر... انه

19<sup>1</sup> Ma سیلهسه <sup>2</sup> Pb باشنه اغاج

20<sup>1</sup> Sa (Lc) امرد اوغلان; Gd اوغلان <sup>2</sup> Ma سیلهسه

<sup>3</sup> Gd ایدوب ایکی اغاجه <sup>4</sup> Ob دكلو

21<sup>1</sup> Only in R and S MSS. (before § 22); text according to Sa.

<sup>2</sup> Rb, Rc چكسه <sup>3</sup> Ra, Rb, Rc, Re.

122 واكر بر كشى عورتنك جاريه سنه وياخود اناسنك (ويا اتاسنك)<sup>2</sup> جاريه سنه وياخود مطلقه ثلثه سنه وطي ايلسه قاضى تعزير ايدوب هر اغاجنه ايكي<sup>3</sup> اقچه جرم انه

123 واكر<sup>2</sup> اوغلى جاريه سنه وياخود معتده ومكاتبه سنه<sup>3</sup> جماع اتسه نسته لازم كلمز دخل وتعزير اولنميه

24 اكر عورت ويا قز بر كمسنه يه<sup>1</sup> بكا زنا ايتدك ديسه ار انكار ايتسه<sup>2</sup> سوزلرينه شاهدسز<sup>3</sup> اعتماد<sup>4</sup> اتميوب اره يمينا ويروب عورتى وقيزى تعزير<sup>5</sup> ايدوب ايكي اغاجه<sup>6</sup> بر اقچه جرم انه<sup>7</sup>

25 اكر بر عورته<sup>1</sup> وبر قزه بر كمسنه زنا ايتدم<sup>2</sup> ديسه انلر انكار اتسلر<sup>3</sup> ينه انلره يمينا ويروب زنا ايتدم دياني تعزير<sup>4</sup> ايدوب اكي اغاجه بر اقچه جرم انه<sup>5</sup>

22 <sup>1</sup> Only in R, S, and V MSS. (near end of first chapter); text according to Ra.

<sup>2</sup> Rd <sup>3</sup> Va, Vb بر

23 <sup>1</sup> Only in R, S, and V MSS. (after § 22); text according to Ra.

<sup>2</sup> Rd, Sa add اتا <sup>3</sup> Rc so; others faulty.

24 <sup>1</sup> Pe adds اقتر اتسه <sup>2</sup> Fb (Fc) اولمسه ديسه شرعله اثبات اولمسه

<sup>3</sup> Aa, Fb, Fc omit; Gd مجرد <sup>4</sup> Ld and most others اعتبار

<sup>5</sup> Fb قاضى تعزير <sup>6</sup> Ba, Ca same

<sup>7</sup> Fb, Fc اهل عرف بر اقچه جريمه الا

In the margin of Pd زنا دعواسنده يمينا مرفوع ايكن متن كتابده يمينا غلطدر غفلت اولنميه ويريلور ديمك غلطدر غفلت اولنميه

In the margin of Va (Vb) شرع شريفده ار وعورتدن برى برينه زنا ايتدى ديو شيله (شويله) ادبدوروم (ايدوپدوروم) اقرار ايلسه زنايى سنكر اولانك اوزرينه يمينا ويرمك يوقدر زيرا حد زنا خالص حق الله در حق عبد ذكدر

25 <sup>1</sup> Ta adds ويا اوغلانه

بن سنى Fb, Fc, Fd; بن ساكه (سكا) زنا قلدوم (Aa (Fa, Gd) : زنا ايتدم <sup>2</sup> شيله (شويله) ادبدوروم (ايدوپدوروم)

اره قاضى تعزير Aa, Fb : زنا . . . تعزير <sup>4</sup> ايلسه La : Lb so;

اهل عرف بر اقچه جريمه الا Fb, Fc <sup>5</sup>

See also the marginal notes to § 24.

26 ودخی بر کشی آخر کمسنه یه سن بنم عورتمه<sup>1</sup> ویا جاریمه زنا ایتدک دیسه<sup>2</sup> اثبات<sup>3</sup> ایده مسه<sup>4</sup> تعزیر<sup>5</sup> ایدوب جرم النمیة

27 ودخی بر کشنک اوغلی ککزک<sup>1</sup> ایلسه<sup>2</sup> بالغ ایسه اوغلاقی محکم تعزیر ایدوب اغاج باشنه بر اقجه جرم انه، وداخی بالغ اولمدیسه باباسی حفظ اتمدکیجون باباسنی تعزیر ایده لر لکن جرم النمیة

28 وداخی بر کمسنه حیوانه وارسه<sup>1</sup> محکم تعزیر ایدوب اغاج باشنه بر اقجه جرم انه

29 اکر بر کمسنه زنائی بلوب قاضی یه (واروب)<sup>1</sup> دیسه جرم یوقدر<sup>2</sup> اکر اوغرلغی بلوب دیسه اون<sup>3</sup> اقجه جرم انه<sup>4</sup>

30 اکر بر عورت<sup>2</sup> پوزه ونک لک ایلسه قاضی تعزیر اورب نه مقدار وجه کوررسه<sup>3</sup> اغاج باشنه<sup>4</sup> بر اقجه جرم انه<sup>5</sup>

31 اما بو جرائم کافردن صادر اولسه غنی سندن مسلمان غنی سنک جرم نک نصفی انه، ومتوسط الحال اولاندن متوسط الحال اولان مسلمان جرم نک نصفی، وققیرندن فقیر مسلمان جرم نک نصفی انه

26 <sup>1</sup> Ra, Rc, Re add ویا قیزمه <sup>2</sup> Pa, Ta ایلسه دیو دعوی

<sup>3</sup> Sa شرعاً اثبات <sup>4</sup> Lb, Lc so; La اتمسه <sup>5</sup> Va, Vb قاضی تعزیر

27 <sup>1</sup> Lb so; La کاکزک <sup>2</sup> Na adds (above the line) یعنی سکشسه

28 <sup>1</sup> Ph وطی ایلسه

29 <sup>1</sup> Lb

<sup>2</sup> Fv (Gf) add عمل اولنمز ایله عمل اولنمز (بو قضیه) بونک; the same in the margin of Kd.

<sup>3</sup> Aa بش اوون بش; Ba, Ca بش

<sup>4</sup> In the margin of Fm, Fv مخصوص دخی مرفوعدر; in the margin of Kd بونک ایله عمل اولنماز

30 <sup>1</sup> The same section is found in La also after § 18.

<sup>2</sup> Fdd, Ke add بر کمسنه نک عورتنه

<sup>3</sup> In a parallel section in La کوررسه نه مقدار نسته کوررسه; Aa بقدر ما براه (not, as Kraelitz reads, نقدر)

<sup>4</sup> باشنه اهل عرف بر اقجه جریمه الا <sup>5</sup> Fb اکی اغاجه Ba, Ca اغاج باشنه

32 واکر عاقل وبالغ<sup>1</sup> بر کشی<sup>2</sup> لواطه<sup>3</sup> قلسه اولو اولوب غنی اولسه اوجیوز اقجه جرم انه، ومتوسط الحال اولاندن ایکی یوز اقجه جرم انه، وفقیر الحالدن یوز اقجه جرم انه، وداخی اشغه حاللودن اللی ویا<sup>4</sup> قرق اقجه جرم انه<sup>5</sup>

33 واکر لواطه<sup>1</sup> ایدن ارکن اولسه غنی سندن یوز، وسطندن اللی، فقیرندن اتوز اقجه جرم انه<sup>2</sup>

34<sup>1</sup> ویر کمسنه عورتنی دبرندن تصرف اتسه محکم تعزیر ایدوب اغاج باشنه بر اقجه جرم انه

35 اکر شهر<sup>1</sup> و ترک<sup>2</sup> اوغلا نیجقیری دکشک<sup>3</sup> اتسلر<sup>4</sup> تادیب<sup>5</sup> ایدوب هر برندن اوتوز اقجه جرم انه

## اکجی فصل

### در بیان تضارب و تشاتم و قتل نفس و جرائم ایشان

36 اکر ایکی کشی چکشوب<sup>1</sup> بر برینک یقاسن یرتسه قاضی اکسنه داخی تعزیر ایدوب<sup>2</sup> اما جریمه النمیة

32<sup>1</sup> Lb so; La بالغ

<sup>2</sup> Va, Vb بر کشیه Ra, Re ویاخود قولنه

<sup>3</sup> In some MSS. لواط <sup>4</sup> Lc so; La و جرم <sup>5</sup> See § 33, n. 2.

33<sup>1</sup> In some MSS. لواط

اکر اولودر واکر ارکندر سیاست Ra (Re): اولو اولوب (§ 32) ... انه (§ 33)<sup>2</sup> ایچون ذکرنی کسلر جرم النمیة

واکر لواطه (لواط؟) ایلسه همان زنا کبیدر، اولو اولو جرمن Ta: §§ 32 and 33: ویره ارکن ارکن جرمن ویره

34<sup>1</sup> Only in Ra and Re (between §§ 32-3 and 21).

35<sup>1</sup> La, Ld, Ma so; Lb, Ke marg., Na, Nd شهرلو <sup>2</sup> Lc اکر شهرده ترک

<sup>3</sup> Lb, Ld, Ma so; Va, Vc دکیشک; La دوکش; Ta زنا

<sup>4</sup> Na, Nd اویناسه لر <sup>5</sup> Ta (read تعزیر)

36<sup>1</sup> Aa, Fa برینه یاپشسه

<sup>2</sup> قاضی دوکسون (محکم لت اورب) Aa (Lc): قاضی ... ایدوب

37 اکر بربرینک صاحنی وصالنی یولسلر دخی<sup>1</sup> ثابت اولسه<sup>2</sup> اکسنه تعزیر ایدوب<sup>3</sup> غنیدن یکرمی اقجه<sup>4</sup> فقیردن ارن<sup>5</sup> اقچه جرم انه<sup>6</sup>

38 واکر بر کمسنه بر کشنک یولنه ویا اوینه ویا اوی اوستنه وارسه ودخی چکشوب بربرینک صقالن یولسه ویا محکم دوکشسه اکسن داخی<sup>1</sup> تعزیر ایدوب بادی اولوب سبب اولندن<sup>2</sup> اغاج باشنه بر اقچه جرم انه وآخردن ایکی اغاجه بر اقچه جرم انه<sup>3</sup>

39 بر کمسنه اکر بر کشیء ناحق بیره لت ایتسه<sup>1</sup> ویا صقالن یولسه<sup>2</sup> تعزیر ایدوب غنی اولاندن یکرمی اقچه و فقیر اولاندن اون اقچه جرم انه

40 اکر بر کشی باش یاروب قان جقرسه قاضی تعزیر ایدوب<sup>1</sup> اوتوز<sup>2</sup> اقجه جرم انه

37 <sup>1</sup> Aa قاضی قاتنده Ca شرعله

<sup>2</sup> Va, Vb add قاضی

<sup>3</sup> Aa, Fa omit تعزیر ایدوب

<sup>4</sup> Ca adds وسط الحال لر اولسه جرم اون بش اقچه

<sup>5</sup> Fa, Fk, Fu, Fv, Gb, Gf اون اوچ

<sup>6</sup> Fq (Ff) add بو خصوصک قانونی کفرده داخی بعینه در، غنیدن یکرمی اقچه انه دیوقید اولنمش در

38 <sup>1</sup> Va, Vb add قاضی

<sup>2</sup> اورزیننه (اوی) Rd (Sa)؛ وران آدمدن Pa, Ta؛ اول ووردن Ra؛ سبب اولندن اوستنه) وارندن

آخردن (صکره ووردن) (او صاحبندن) Pb, Qb, Ra, Sa؛ وآخردن . . . انه <sup>3</sup> نسنه (جریمه) النیه

39 <sup>1</sup> Ua adds (sic) یا اطالہ لسان

<sup>2</sup> Sa adds قاضی

40 <sup>1</sup> Aa, Ca, Fa omit قاضی تعزیر ایدوب

غنی . . . یکریم . . . ، وسط . . . اون بش . . . ، فقیر Ca؛ اون بیش <sup>2</sup> Ba . . . اون

واكر كموك چقوب<sup>3</sup> جراحه محتاج<sup>4</sup> اولسه باش يارن غنى اولوب  
ييك<sup>5</sup> اقجه يه ودخى زياده يه<sup>6</sup> قادر اولسه بعد التعزير<sup>7</sup> (يوز<sup>8</sup> اقچه جرم  
النه ، فقير اولسه)<sup>9</sup> اوتوز<sup>10</sup> اقجه ، ومتوسط حال اولوب التيوزه<sup>11</sup> كوچى  
يتسه اللي<sup>12</sup> اقجه جرم النه

**41** واكر بر كمسنه آدم اولدرسه يرينه قصاص ايده لر<sup>1</sup> جرم النيمه<sup>2</sup>  
اكر<sup>3</sup> قصاص اتمسلر ويا قصاص (لازم)<sup>4</sup> اولجق قتل اولمسه<sup>5</sup> غنى  
ايسه ييك<sup>6</sup> اقجه يه ودخى زياده يه كوچى يتوب مالك اولسه در تيوز<sup>7</sup>  
اقجه ، ومتوسط حال اولوب التيوزه<sup>8</sup> مالك اولسه<sup>9</sup> ايكي يوز<sup>10</sup> اقجه ،  
فقيرندن يوز<sup>11</sup> اقجه جرم النه (وغايت فقير اولندن اللي اقچه جرم  
النه)<sup>12</sup>

باشنك (باش) كموكين (Ra (Rc) باش كموكن چقاروب Rb : كموك چقوب<sup>3</sup>  
كم يره اولوب Lb ; . . . اوقادوب

Ka ; اوتاجيلو (اوتاجلو) . . . Aa and most B, C, F, and K MSS. جراحه محتاج<sup>4</sup>  
خسته Fj ; اوتاجى لر تيماراتسه

زياده La ; Lb so<sup>6</sup> ييك Ba but ; الت يوز Ca<sup>5</sup>

اللى Ba, Ca<sup>8</sup> بعد التعزير Aa, Ca, Fa omit<sup>7</sup> Lb<sup>9</sup>

يكرمى يا اون بيش Ba, Ca ; قرق ويا اوتوز Fa, Gd<sup>10</sup>

اوتوز Ba, Ca<sup>12</sup> (copying mistake) اكيوزه Aa<sup>11</sup>

**41** : D, E, F, G, H, K MSS. (parallel section between § 15  
and § 74) وآدم اولدرن كمسنه يي اولدردوكى كمسنه نك يرينه اولدوره لر (74 §  
(قصاص ايده لر)

قانون اوزرينه (اوزره) سياسته مستحق اولانك قانونى سياستدر ، Lb, Lc add<sup>2</sup>  
the same in the margin of Rb, Rc, the latter adding (Lc دم) يوقدر  
قوله نشانجى احمد بك<sup>3</sup> Lb<sup>4</sup> قصاص . . . اكر Aa, Fa omit<sup>3</sup>

عفو (Pb) or قان جرم (جرمى) but add ويا . . . اولسه Aa, Fa, Pb omit<sup>5</sup>  
وارنلر مقتول حَقن الدقن صكره قان جرمى V MSS. add اولنسه

بيك Ba but ; الت يوز Ca ; ايكي ييك La, Ld, Na ; لى Lb, Aa and most others so<sup>6</sup>

اكي يوز Ba, Ca, Fa<sup>7</sup> Gd dört yüz akçeye<sup>8</sup>

يوز Ba, Ca, Fa<sup>10</sup> التيوزه مالك اولسه Ba, Ca omit<sup>9</sup>

اللى ويا اوتوز<sup>11</sup> Ba, Ca

بونك كيبيلردن بدل سياست ديو النمق قانون قديمه<sup>12</sup> Lb ; Djikiya, p. 4, adds  
مخالفدر النيمه

42<sup>1</sup> واکر «آدم»<sup>2</sup> اولدورن ایکی کشی یاخود دخی زیاده اولسه همان<sup>3</sup> برقان جرمن الالر، هر کشیدن باشلو باشنه المیهلر واکر بر کشی ایکی کشی یاخود زیاده یی اولدرسه<sup>4</sup> یرنه قصاص اولسه شریعت یرینه واروب ایرق نسته دیمیهلر وجرم المیهلر، واکر قصاص اولماسه قاضی دیت بیوره، ولی مقتول یتیرب حقن الدقدن صکره قان جرمی هر قاندن<sup>5</sup> بر جرم الالر فی الجمله جرم المقده تعدد مقتوله اعتبار اولنور تعدد قاتله اعتبار اتمیهلر

43 اکر مجروح بنی فلان کمسنه اورشدر<sup>1</sup> دیسه اعتبار یوقدر، مکر اول کمسنه متهم<sup>2</sup> اولوب ویاخود مجروح ایله عداوقی ظاهر کمسنه اولسه قاضی معرفتیه عرفه قابل اولور<sup>3</sup>

44 اکر محلّه ایجنده ویا کوی اراسنده مقتول بولنسه البته<sup>1</sup> تفتیش ایدوب قاتلی<sup>2</sup> بولدرهلر ویا دیت چکدرهلر، واثر قتل<sup>3</sup> بولنمزه مجرد میت بولنمه ایله اینجتمیهلر<sup>4</sup>

42<sup>1</sup> Only in Ke marg. and in Ta (after § 58); shorter versions in Va marg. and Vc marg.; text according to Ke marg.

<sup>2</sup> Ta <sup>3</sup> Va marg., Vc marg. جمله سندن

<sup>4</sup> Va marg., Vc marg. دپلسه

<sup>5</sup> Va marg., Vc marg. هر مقتول ایجون

43<sup>1</sup> Lb so; La ورشدر <sup>2</sup> Lb, Ld, Ma, Ub متهم سابقا (قدیمدن) <sup>3</sup> قابل اولورسه عرف اولنه Pb; قابل اولورسه اولور Lb: قابل اولور <sup>4</sup> عرفه لایقدر

In the margin of Lb, Rb, Rc (کنار نشانی پاشا Lb) عرف یوقدر یکلشدر، شرعله ثابت اولمدیسه نسنه لازم کلمز (احمد بك Rc)

44<sup>1</sup> Lc so; La البته <sup>2</sup> Pb, Rc قانلوی

<sup>3</sup> جراحت اثری Oa; واثار قتل La; واثار قتل Lb and most others so;

<sup>4</sup> Lc (Ld) بولنمسیله جبر اتمیلر (رنجیده اولنمیه)

In the margin of Lb, Rb, Rc (in Lc erroneously twice in the text of § 43) (بونده) امر شرع شریف معتبردر، شرعله دیت لازم کلورسه (دیتدر)، (والا) کلمز ایسه نسنه یوقدر، شرع شریف نه امر ایدر ایسه اول اولور

45 اکر بر کمسنه آخری اوقله و بجاغله<sup>1</sup> اورسه مجروح ایدوب<sup>2</sup> دوشکه دوشرسه<sup>3</sup> غنی اولورسه بعد التعزیر<sup>4</sup> اکیوز اچجه، ومتوسط الحال اولورسه یوز اچجه، وفقیر اولورسه الی<sup>5</sup> اچجه جرم انه<sup>6</sup>

46<sup>1</sup> واستانبولده بر کمسنه نك علانیا بر اوغلانك یوزنی<sup>2</sup> بجاغله چالوب مجروح ایدوب قاضی عسکر (افندی)<sup>3</sup> تفتیش ادوب شرعله چالدوغی ظاهر<sup>4</sup> اولیچاق پادشاه عالم پناه حضرتلرینه عرض اولنوب سیاست<sup>5</sup> اول کمسنه صلب اتردی فی ۳ رجب سنه ثمان وتسعمائہ

وبروسه ده بر نیجه سوخته لر شیخیله عسسلرک اوزرنه کلوب بر نیجه سن مجروح ایدوب انی داخی پادشاه عالم پناه سیاست<sup>5</sup> صلب اتردی فی التاریخ المزبور

47<sup>1</sup> اکر بر کشی بر کمسنه طاش ایله ویاخود اغاج ایله اوروب مجروح اتسه بعد التعزیر هر اغاجه بر اچجه جرم انه اکر اوروب قولین ویاخود ایاغین اوفاتسه<sup>2</sup> شرعا نه لازم کلور ایسه حکم ایدوب یوز اچجه جرم انه

45<sup>1</sup> Pb adds وناجاق ایله; Kc adds وطاشله

<sup>2</sup> Aa باشلو ویاخود اولوب (Kraeizitz erroneously emends and reads باشلو 'bejaht', which is also found in several later MSS.); Fq یرالو ویاخود اولوب (başlu is a synonym of yaralu 'wounded': see *Tarama Sözlüğü*, i. 80.)

<sup>3</sup> Ub دوشورسه (see also below, n. 6.)

<sup>4</sup> Aa, Ca, Fa, Gd omit بعد التعزیر داخی، but add بیک (الت یوز Ca) اچجه داخی، زیاده کوجی یترسه جرم

<sup>5</sup> Ba, Ca اتوز یا یکریم الی... یوز... الی

<sup>6</sup> Cf. the *kānūnāmes* of Malatya (Başbakanlık Arşivi, Tapu Defteri 408, f. 327a) and Divriği (Tuncer, *Toprak Hukuku*, 248) اکی یوز دوشکه دوشورسه اکی یوز اچجه جرمه دن غیری مجروحک ملهم (جرح) بهاسن واجرة طیبین ویره

46<sup>1</sup> Only in Kb (after § 76) and Kc marg.; text according to Kc.

<sup>2</sup> Kb بر اغلانی یوزنه <sup>3</sup> Kb ثابت <sup>4</sup> Kb سیاست<sup>5</sup> Read

47<sup>1</sup> Only in Ra, Rb, Rc, Rd, Re (before or after § 48); text according to Ra.

<sup>2</sup> Rb, Rc کسر ایدرسه; Rd همیسه

48 اكر بر كشى بر كمسنه نك يولنه واروب اوق چكسه<sup>1</sup> اوقنى قلاغنه<sup>2</sup> صنجب كزدره لر

اكر يولنه واروب قلج<sup>3</sup> يا بچاق چكسه محكم تعزير ايدوب حقندن كلوب (غنى ايسه)<sup>4</sup> اللى اقچه جرم النه<sup>5</sup>، فقير اولورسه اون اقچه جرم النه<sup>6</sup>

49 ودخى يان<sup>1</sup> كسنوك وآدم بچاقليلانك<sup>2</sup> اكر<sup>3</sup> عادتى ايسه الن كسه لر، اكر عادتى دكل ايسه قولنه<sup>4</sup> بچاق صنجب كزدره لر<sup>5</sup>

50 اكر بر كشى قصدله بر كشينك كوزن ويا دشن چقرسه قصاص اتسلر جرم النيه، اكر<sup>1</sup> قصاص اتمسه لر ويا قصاص لازم اولمسه<sup>2</sup> غنى اولورسه ايكي يوز اقچه، ومتوسط الحال اولورسه يوز اقچه، وفقير<sup>3</sup> اولورسه اللى اقچه ويا قرق اقچه<sup>4</sup> جرم النه<sup>5</sup>

48<sup>1</sup> Rc جكوب اتسه اورسه

<sup>2</sup> قولرينه Va, Vb; قولينه . . . وياخود قولاغينه Qc

<sup>3</sup> Ta adds ويا نجق <sup>4</sup> Lc

<sup>5</sup> Na, Nd add متوسط الحالدن بكرمى

<sup>6</sup> Va (Ta) چكسه بعد الثبوت قاضى تعزير ايده بقدر ما يراهم (مائة دراهم Ta) جرم النه نسخه اخراذندر

49<sup>1</sup> Sa (exceptionally) يول

<sup>2</sup> Sa, Sb (after § 48 (1)) ويا قليج ايله ويچق ايله آدم مجروح ايدنه نك

<sup>3</sup> Fa adds بچاقلقمق

<sup>4</sup> Ia, Ie سياسته قولرينه

<sup>5</sup> Ja (only in regard to *yan kesen*) دكل ايسه سياسته شهير ايدله لر

50<sup>1</sup> Aa, Ca, Fa, Gd omit قصاص . . . اكر

<sup>2</sup> Aa, Ca, Fa, Gd omit ويا . . . اولمسه <sup>3</sup> Aa ادنى حاللو

<sup>4</sup> Ba, Ca غايت فقير اولسه Aa adds; يوز. . . اللى . . . اتوز يا بكرم اقچه

اتوز اقچه

<sup>5</sup> In the margin of Lb قانون اوزره سياسته مستحق اولانك قانونى سياستدر، انده اصلا جرم يوقدر، نشانى

51 اگر بو مذکورات کفره دن<sup>1</sup> صادر اولورسه ویا عبدن<sup>2</sup> یعنی قول طایفه سندن<sup>3</sup> صادر اولورسه نصف مسلمان جرم<sup>4</sup> انه<sup>5</sup>

52 اگر صغیر<sup>1</sup> اوغلانن قتل صواش اتسلر جرم یوقدر نسنه النیه

53 اگر خاتون طایفه سی<sup>1</sup> بری بریله صواش اتسلر صاج لرین یولسه لر ویا محکم لت ایدشسلر<sup>2</sup> مخدراتدن<sup>3</sup> دکل ایسه دخی<sup>4</sup> محکم تعزیر ایدوب<sup>5</sup> اکی اغاچه<sup>6</sup> بر اقچه جرم انه، اگر مخدراتدن<sup>3</sup> اولسه لر ارلرینه تهدید<sup>7</sup> ایدوب یکرمی<sup>8</sup> اقچه جرم انه<sup>9</sup>

54 اگر بر کشی بر کمسنیه حدّ ویا تعزیر (لازم)<sup>1</sup> اولیجق<sup>2</sup> قلف<sup>3</sup> اتسه حدّ ایسه<sup>4</sup> اوج اغاچه بر اقچه جرم انه، تعزیر ایسه<sup>5</sup> اکی اغاچه بر اقچه جرم انه

51 <sup>1</sup> Ra, Rb add یا مستأمندن <sup>2</sup> Read عبددن

<sup>3</sup> اگر قول دن ویا خود جاریه دن Ra: ویا . . . طایفه سندن

<sup>4</sup> Read جریمی, as in Ld.

<sup>5</sup> Rb, Rc کفره دن . . . ضعفین انه، اما عبددن . . . نصف جرم انه

52 <sup>1</sup> Ph قیز و Kb; صبی

53 ایکی عورت Ra; عورتلر Lb: خاتون طایفه سی<sup>1</sup>

<sup>2</sup> دکش اتسه لر Sa, Sb; دوکش سلر Rd; بربرین بره اتسه لر Na: لت ایدشسلر

<sup>3</sup> Sa, Sb مخدراتدن Qa, Qb; اهل پرده Qa, Qb <sup>4</sup> Lb داخی

<sup>5</sup> محکم لت اوروب Qa, Qb

<sup>6</sup> اغاچه باشنه Lb (Ke marg.): اکی اغاچه

<sup>7</sup> Od, Rb تعزیر

<sup>8</sup> انه، وارلرندن یکرمی Ph; یکرم شر Od

<sup>9</sup> بو (زیاده) یکلش در In the margin of Lb, Rb, Rc

54 <sup>1</sup> Lb <sup>2</sup> Ra, Ua, Ke marg. اولور Sa; اولاجق یرده (?) Pc; اولاجق

<sup>3</sup> Kf, Ra, Sa شتم

<sup>4</sup> بر کشیه شتم ایدوب حد یا خود تعزیر لازم کلوب حد Kf; لازم کلورسه Ra <sup>5</sup> اگر بر کمسه یه حدّ قذف ویا غیره حدّ اولورسه Va; اولنورسه

<sup>6</sup> اولنورسه Kf (Va); لازم کلور ایسه Ra



- 159 واکر بر کشی کندویه اجنبیه اولن عورتی<sup>2</sup> ضرب اتسه محکم  
تعزیر ایدوب اغاج باشنه بر اقچه جرم انه
- 160 اکر بالغ اوغلان<sup>2</sup> اتاسنی ویاخود اتاسنی ضرب اتسه بعد  
التعزیر حبس ایدوب یوز اقچه جرم انه<sup>3</sup>

### اوجنجی فصل

#### در بیان شرب خمر وسرقه وغصب وتعدیه متعلق جرایم وسیاست و غیرها<sup>1</sup>

- 61 اکر بر کشی خمر ایجسه<sup>1</sup> بعد الثبوت قاضی حقندن کلوب<sup>2</sup> اکی  
اغاجه<sup>3</sup> بر اقچه جرم انه
- 62 اکر مسلمان خمر صقسه ویاخود بیع اتسه<sup>1</sup> قاضی تعزیر ایدوب  
ایکی اغاجه بر اقچه جرم انه
- 63 اکر بر کمسنه خمر صحبتنده بله اوترسه اما خمر اچمهسه تعزیر  
ایدوب اوج اغاجه بر اقچه جرم انه<sup>2</sup>

59 <sup>1</sup> Only in Ra, Rb, Rc, Re (after § 58), Rd (after § 51); text according to Ra.

<sup>2</sup> Rb, Rc واکر بر کشی اجنه بینک (sic) عورتنی; اکر بالغه اجنبیه عورته

60 <sup>1</sup> Only in Ra, Rb, Rc, Rd, Re (after § 59); text according to Ra.

<sup>2</sup> Rd واکر بر کشی

<sup>3</sup> In the margin of Rb, Rc معتبردر قانونی یوقدر (referring also to § 59?)

Heading: <sup>1</sup> Pa, Sa, Ta (في السياسة) در بیان سیاست; many F MSS. omit مجرد سیاستی, having a separate chapter IV under the heading سیاست (سیاستن) بیان ایلر

61 <sup>1</sup> Aa adds تورک ویا شهرلو اولسه  
<sup>2</sup> Aa قاضی تعزیر اووه

<sup>3</sup> Sa, Sb کلوب اغاج باشنه

62 <sup>1</sup> Ta ویاخود شراب ایرکوب صاتسه

63 <sup>1</sup> Only in Ra, Rb, Rc, Re (after § 62); text according to Ra.

<sup>2</sup> In the margin of Rb, Rc معتبردر قانونی یوقدر (in Rc this note may refer to § 62.)

64 اکر بر کمسنه قاض ویا تاوق ویا اوردک<sup>1</sup> اوغرلسه<sup>2</sup> قاضی تعزیر ایدوب<sup>3</sup> ایکی اغاجه<sup>4</sup> بر اقبجه جرم انه

65 اکر قوان ویا قوین ویا قوزی<sup>1</sup> اوغرلسه سرقه نصابه<sup>2</sup> یتشمش اولمسه قاضی تعزیر ایدوب اغاج باشنه بر اقبجه جرم انه<sup>3</sup>

66 اکر آت (وقاطر)<sup>1</sup> واشک<sup>2</sup> ویا صغر اوغرلسه<sup>3</sup> الن کسهلر<sup>4</sup>، اکر کسمزلر ایسه اکیوز<sup>5</sup> اقبجه جرم انه<sup>6</sup>

64 <sup>1</sup> Aa, Ba, Ca, Fa اکر قازیا اوردک Kf ویورته

<sup>2</sup> Va, Vb add ویاخود اوروب اولدرسه

<sup>3</sup> Va, Vb add قاضی تاووغ واوردکی بویننه اصب Kf adds; ویعد التضمین  
تشهیر اده و آلا

<sup>4</sup> Ba, Ca اغاجه; هر اغاج باشنه Fd, Sa, Sb: ایکی اغاجه

65 <sup>1</sup> Ke marg. کچی

<sup>2</sup> Pc حسابنه; Pb, Ta نصابنه

<sup>3</sup> Aa (Kd, Ke marg.) (Ba, Ca اون بیش اون جرم اوغرلسه جرم اون بیش (اون Ba, Ca) واکر (سرقه) نصابه یتشمش اولسه الن کسهلر Pb, Ph, Qa, Sa add اقبجه انه جرم المیهلر (واکیوز اقبجه جریمه انه Ph)

66 <sup>1</sup> Lb

<sup>2</sup> Pb, Ta اینک یا دوه یا اشک Ua

<sup>3</sup> Aa, Ba, Ca, Fa, Gd, Kd اکر ات اوغرلسه

<sup>4</sup> Pb, Qa, Qc ایدهلر (سیاست) صلب اوغرلسه (end of section)

<sup>5</sup> Ba, Ca یوز

<sup>6</sup> Ta کسمزلر ایسه بایدن ایکی یوز، اوسطدن یوز، فقیردن حاله کوره جرم انه، واکر بر قاج دفعه اتمش اولسه صلب ایدهلر

Aa (Ba, Ca) (additional section) (کسمسلر) اکر صغیر اوغرلسه الین کسمیالر (غنی الوپ بیک (الت یوز Ca) اقبجه داخی زیادیه کوجی یتسه جرم یوز (الی) اقبجه، اوسط الحال الورسه الی (اتوز) اقبجه، فقیر الورسه قرق یا اتوز (یکرم یا اون بش) اقبجه انه

In the margin of Pd ملک محزن (? محرز read) سرقه ده شرطدر، مرعاده ویا خارج  
ملکدن سرقه ده قطع ید اولتماز

67 اكر يانجق<sup>1</sup> ويا دستار<sup>2</sup> ويا دستمالر<sup>3</sup> اوغرلسه<sup>4</sup> الن كسملی اولمسه قاضی تعزیر ایدوب ایکی اغاجه بر اقجه جرم انه (ويا اغاج باشنه بر اقجه انه)<sup>5</sup>

68 اكر بر كشنك قیوسندن<sup>1</sup> ويا انبارندن بغدادی وارپه سرقه اتسه لر<sup>2</sup> شرعا الی كسملك<sup>3</sup> لازم اولمزسه<sup>4</sup> غنیدن قرق اقچه ومتوسطدن یكرمی اقچه وفقیردن اون<sup>5</sup> اقچه جرم انه<sup>6</sup>

69 اكر خرمندن رعیت تخیل اوغورلسه جرم دیو اول اوغورلدوغن الالر، ایرق نسنه المیالر<sup>2</sup>

70 اكر ترلادن دسته<sup>1</sup> اوغرلسه كه<sup>2</sup> از اوله<sup>3</sup> ویاخود كوك اكنی بجوب السه قاضی تعزیر ایدوب جرم النمییه<sup>4</sup>، وضمان<sup>5</sup> لازم اولورسه<sup>6</sup> تضمین ایتدوله لر<sup>7</sup>

67 <sup>1</sup> Lb so; Ga کیسه; Bb, La بونجق; Fp نجاج; Pb, Pc, Sa combine this section with § 71.

<sup>2</sup> Ga دلیند (cf. § 73) <sup>3</sup> Aa, Fa, Ga, Ka omit دستمالر

<sup>4</sup> Lb so; La اوغرلسه لر

<sup>5</sup> Lb; Aa (Fb) انه بر اقجه جرم انه (Ff (Fq) add بوقضیه بوعینه کفارده داخی جاری در

68 <sup>1</sup> Lc, Pb, Sa قیوسندن; Kf adds یا خرمانندن

<sup>2</sup> Aa and most B, C, F, G, H, K MSS. اكر براکینک (انبارین ویا قیوسن. (Fb (Fc) دخلین (تخلین) (واقجسین (Aa) اوغرلسه (قیوسن) اچوب

<sup>3</sup> Ta الن یا ایاغن کسملك; Kf شرعا الن کسلر

<sup>4</sup> Aa and many B, C, F, G, K MSS. شرعا . . . اولمزسه

<sup>5</sup> Ba, Ca بش . . . اون . . . یكرم; Fd غنیدن یوز وفقیردن الی

<sup>6</sup> Va (Fc, Fd, Fdd) نسخته اخریده غنیدن یوز، وسطدن الی، فقیردن یكرمی (Vb (Vc, Vd, Vdd) بش دینمشدر

69 <sup>1</sup> Only in Ke marg.

<sup>2</sup> Aa (p. 23) جاجدن اوغرلسه اوغرلدوغین بکلك ایجون الهلر

70 <sup>1</sup> Uc دست; Pd دمد وسته <sup>2</sup> Lc so; La اكر

<sup>3</sup> Lc so; La اولسه; Na, Od (اولا) اكر (ویا) چوق (اولا)

<sup>4</sup> Ma, Pc, Ph, Ub انه <sup>5</sup> Rd شرعا ضمان

<sup>6</sup> Va, Vb ضرر اولورسه <sup>7</sup> Pb لازمدر اوده ده لر

71 اکر بلته ونجق<sup>1</sup> وانلره بکزر نسنه اوغرسه قطع ید لازم اولسه<sup>2</sup>  
تعزیر ایدوب ایکی اغاجه<sup>3</sup> بر اقچه جرم انه<sup>4</sup>

72 اکر اوغل اتاسندن واناسندن (ویا انا<sup>1</sup> اتا اوغلندن ویا عورت  
ارندن)<sup>2</sup> ویا ار عورتندن ویا قرداش قرداشندن نسنه اوغرسه<sup>3</sup> قاضی  
تعزیر ایدوب اغاج<sup>4</sup> باشنه بر اقچه جرم انه<sup>5</sup>

73 اکر بر کشی دلبند قاپسه ویا غصبه بر کشنک اسبابن<sup>1</sup> السه  
محکم تعزیر ایدوب اغاج باشنه بر اقچه جرم انه

74 ودخی اسیر اوغریانی وقول وجاریه ایاردانی واوغلان ایردوب<sup>1</sup>  
کیدانی<sup>2</sup> ودگان اچانی واوه کیرنی وبر قاج دفعه خرسزلغی ظاهر اولانی  
صلب ایدهلر<sup>3</sup>

71 <sup>1</sup> Ma, Ub ویچاق; Lb نچاق ویچاق; Kf, Od, Pc add دستره

<sup>2</sup> Lc so; Lb اولمیجق; La, Pc اولمز

<sup>3</sup> اغاج باشنه: Lb, Qa ایکی اغاجه

<sup>4</sup> Pb, Pc, Sa combine this section with § 67.

72 <sup>1</sup> Aa, Ba, Fa omit انا . . . واناسندن <sup>2</sup> Lb

<sup>3</sup> Fb, Fc, Fdd, Ke, Va add سیاست یدوق; in the margin of Va سیاست دیدوکی  
شرعا قطع یددر

<sup>4</sup> Ba, Ca اکی اغاج

<sup>5</sup> In the margin of Rb, Rc لازم کلورسه; in the margin of Fl  
اوغول اتایه یمین ویرمک یوقدر، ویریه حرمتیچون

73 <sup>1</sup> Pb (Sa) (بر) نسنه سن

74 <sup>1</sup> Lb, Ma, Pc, Rd اویدورب

<sup>2</sup> Pb کزلیه نی; Na, Nd شهردن کیده نی; Qa, Qb الوب کیده نی

<sup>3</sup> سیاست صلب ایدهلر Ia, Ja همان صلب و سیاست ایدهلر Lb: صلب ایدهلر

Ea, Fa, Gd اصالر

Whole section: Db (Da) واسیر اغورلیانک وایردانک سیاستی اوغریلر سیاستی  
کبی اولا . . . و اوغورلوق ادانک (ادانی) ودگان اچان کسنه لری اصمق  
واجب در، ویر . . . (?) خرسوزلغی معلوم اولمش ایسه اصالر

75 پوزونك لك حقنده ظاهر اولانى<sup>1</sup> وبوزونك لك ايدهنى<sup>2</sup> الننه داغ ايدهلر<sup>3</sup>

76 وير بولك آدم وخلق ايچنده آدم اولسه<sup>1</sup> تهديد ايدوب خرسوزى<sup>2</sup> بولدره لر، اكر بولمازلر ايسه (اول)<sup>3</sup> خلقى طتوب حبس ايدهلر ودخى دركاه معلّاه عرض ايدهلر، فرمان قضاجرىان<sup>4</sup> انلرك بابنده نه وجهله صادر اولورسه موجيبيله عمل اولنه<sup>5</sup>

77 اكر محلّه وكوى<sup>1</sup> ايچنده آدم اولسه<sup>2</sup> ويا كاربان<sup>3</sup> باصلوب خسارت<sup>4</sup> اولسه ويا<sup>5</sup> كوى<sup>6</sup> اراسنده اوغرتق وحراملق<sup>7</sup> اولسه البته<sup>8</sup> خرسوزى بولدره لر<sup>9</sup>

ومتهم كمسنه لر وار ايسه تفتيش ايدهلر ودخى تضمين<sup>10</sup> ايتدره لر، اكر متهم يوق ايسه (اهل)<sup>11</sup> محله يه وكوى خلقنه تضمين ايتدره لر<sup>12</sup>

75 <sup>1</sup> Until here omitted in almost all other MSS.

<sup>2</sup> Fa, Lb, Ld, Ma ايدهنك; Fp ايدين عورتك <sup>3</sup> Kf دامغا اوره لر

76 <sup>1</sup> Vb قتل اولسه Lc; ايچنده خرسوزلق اولسه Da, Db add فساد اولسه

<sup>2</sup> Fa ورائى; Ja انلره <sup>3</sup> Lb <sup>4</sup> Kb (Eb, Od) فرمان همايون

<sup>5</sup> وديت صلالر Db: ودخى . . . اولنه

77 <sup>1</sup> Va adds وياخود كاربان سراى <sup>2</sup> Va ايچنده مقتول بولنه

<sup>3</sup> Fb, Fd, Gd كاربان سراى; Ia دكان

<sup>4</sup> Fb, Fd خسارت مالنه ويا نفسنه خسارت <sup>5</sup> Lb so; La اول

<sup>6</sup> Fa, Rd كوى اكى كوى والحاصل Ka; وبر قاج كوى Da, Db; بر كوى

اوچ درت پاره كوى حراميلق <sup>7</sup> Lb

<sup>8</sup> Lc so; La البته; Pa البته تفتيش ايدوب <sup>9</sup> Ea, Fa, Kc add چقاره لر

<sup>10</sup> Pb, Pf بولدره لر، واکر بولنمز ايسه متهم وار ميدر كوره لر انلره تضمين

<sup>11</sup> Lc

<sup>12</sup> Sa (Sb, Rd) تفتيش ايدهلر، واکر واريسه ياخود يوق ايسه دركاه معلّاه عرض ايدهلر، امر نجه (وارد) اولورسه اكا كوره عمل ايدهلر

Many E, F, G, I, K MSS. omit subsection (2); Ff, Fp, Ka have instead (شويله كه) بولمق ممكن اولميه (بولمزلر ايسه) ديت (غرامتين) (جريمه سن) صلالر (چكه لر)

امر شرع معتبردر، شرعله (78?) (Lb (Rb, Rc: referring to § 78?)

78 اکر بر کوی قربنده<sup>1</sup> قونن کشینک <کیجه ایله><sup>2</sup> مالی اوغرلنسه خرسوزی کویلیه البته بولدورلر، وآلا بولنمرسه کویلویه تضمین ایتدوره لر<sup>3</sup>

179 واکر بره کونک اونده قونق یاتسه<sup>2</sup> اول کیجه نسنه اوغورلانسه او اسنه قونوغن بولدوره لر، اندن شرع و عرف نیجه ایسه ایله ایده لر

180 بازار ایچنده دکان اچلسه دیواری یا اوستی دلنوب اسباب اندیسه خرسزین تفتیش ایدوب بولدورلر، واکر قپوسندن ویا پنجره سندن(?)<sup>2</sup> اچلسه یا کادی بوزلسه باسبان وارسه تضمین ایدوره لر، حافظ یوقسه ستهم اولانلری تفتیش ایدوب خرسزی بولدوره لر

81 اکر بر کشی یولدن کچرکن یوغرد واتمک السه ظلم ایله<sup>1</sup> تعزیر<sup>2</sup> ایدوب اغاج باشنه بر<sup>3</sup> اچه جرم انه<sup>4</sup>

تضمین ایلسه (وار ایسه) ایتدوریلور وآلا فلا، وهم اوغرلق مقرر اولوب ثابت اولورسه (وهم اوغورلندوغی ثابت کرک)، اکر ثابت اولماز ایسه مجرد دعوی ایله نسنه لازم اولماز

اورته سنده Pe<sup>1</sup> 78 Lb<sup>2</sup>

وبر (قچ) کوی اراسنده قونان کاربانوک طواری اغورلنسه کیم Da,<sup>3</sup> Db ایدوکی بلنمسه تهدیدات ایدوب خیرسوزی بولدوره لر ویا خود دیت صالالر

In Rb, Rc same marginal note as in Lb to § 77.

79<sup>1</sup> Only in Ta (near end of second chapter) and Ke marg.; text according to Ta.

<sup>2</sup> Ke marg. اولسه یاتسه

80<sup>1</sup> Only in Rd (between § 77 and § 81).

<sup>2</sup> Or corruption of *bacasndan* (cf. DPC, § 34 (3))?

81<sup>1</sup> Lb so; Aa omits ایله ظلم; Ub زورله; Pb اچه سوز; Ph کویلودن جبر ایله کچرکن in most MSS. these words follow ایله

<sup>2</sup> Aa اودده تعزیر <sup>3</sup> Ba, Ca اکی

<sup>4</sup> Fa, Fe add دخی مسلمان جرسنک نصفی انه وجه مسطور اوزره

82 اگر بر کشتن<sup>1</sup> النده ویا اونده اوغرلق نسنه<sup>2</sup> بولنسه صاتون الدیسه<sup>3</sup> صاتنی بولدیره لر، بولمز<sup>4</sup> ایسه متهم ایسه اشکنجه ایده لر<sup>5</sup> مکرکه بولجق کتورب<sup>6</sup> قاضیه تسلیم ایده لر<sup>7</sup> ویا خود بیانده بولدغن اثبات ایده<sup>8</sup>

اما اشکنجه ده احتیاط ایده لر که قبل الثبوت تلف نفس اولمیه، اگر اشکنجه ده اولور ایسه دم یوقدر<sup>9</sup>  
اما بیانده بولدغن اثبات ایدرسه خلاص اوله

83 اگر کاربان سرای ایچنده نسنه ضایع اولسه<sup>1</sup> کاربان سرای ایچنده اولانله بولدیره لر<sup>2</sup>

84 ودخی کاربان سرایچیلر امین ومعتد علیه کمسنه لر اولالر، هر صباح یوقلیه<sup>1</sup> کمسنه نک اسبابی<sup>2</sup> سرقه اولنمش میدر کوره تمام بیله، اندنصکره<sup>3</sup> قپوسنی «اچوب»<sup>4</sup> دستور ویره<sup>5</sup>  
اگر بو وجهله ایتد کدنصکره «بر کمسنه»<sup>4</sup> بنم اسبابیم کتمش در<sup>6</sup>

الدم دیسه<sup>3</sup> Db, Ib, Sa طوار<sup>2</sup> Da, Db کشی<sup>1</sup> Lb so; La 82

بولمز<sup>4</sup> Da, Db, Fa

متهم کشی ایسه (کبی در) خرسوزدر (خرسوز اولر) Db (Da)

ایده<sup>7</sup> Ja, Ub مکرکه صاتانی بولوب<sup>6</sup> Ub

ایده لر<sup>8</sup> Lb and most other MSS. so; La

دم (دمی) هدر اولور (اوله) Lb, Lc (Ma, Rd, Ud); instead: Ea, Fe, Gd

غوغاسی (دعواسی) صورلمیه (Da, Db)

نسنه اوغرنسه<sup>1</sup> Oa 83

مکر بولوب اول کمسنه قاضیه تسلیم ایده لر Kf adds

هر صباح کاربان سرای خلخته اجازت ورمدن کاربان سرایده قونان<sup>1</sup> Ea, Fa  
خلقدن استفسار ایدوب

رزقی واسبابی<sup>2</sup> Ea, Fa

سرقة ونهب اولمدغن معلوم وتحقیق ایتد کدن صکره کاربان سرای Ea, Fa

اچوب (خلقی) صالیویه<sup>5</sup> Ea, Fa, Ja Lb

رزقم واسبابیم اوغرنندی Ea, Fa: اسبابیم کتمش در<sup>6</sup>

دریسه عمل اولنمیه<sup>7</sup>، اگر کاربان سراجی یوقلمدن<sup>8</sup> دستور ویرر ایسه<sup>9</sup>  
کیدن اسبابک قیمتین اکا تضمین ایتدوره لر<sup>10</sup>

85 اگر کاربان سرای طشرده دن دنوب<sup>1</sup> اسباب<sup>2</sup> اندیسه طشرده دن مظنه  
ومتهم اولانی طوتوب تفتیش<sup>3</sup> ایده لر، خرسوزی بولوب الدوغی رزق  
واسبابی<sup>4</sup> بولدروب (شرعله)<sup>5</sup> صاحبته تسلیم ایده لر<sup>6</sup>

86 اگر ایجروده اولان خلقک طشرده اولان خرسوز ایله اتفاق (وقولی  
اولمق)<sup>1</sup> توهم<sup>2</sup> اولنورسه ایجروده اولانک<sup>3</sup> مظنه اولاننی دخی طوتوب  
شرعله وعرفله تفتیش ایدوب<sup>4</sup> خرسوزی بولدوره لر، اگر بولنمازسه  
کاربان سرای محله ایجنده ایسه محله ایجنده اولان اوغرلقده حکم نه  
ایسه کاربان سرای ده دخی (انی)<sup>5</sup> اجرا ایده لر<sup>6</sup>

سموع اولمیه (اولمز) Ea, Fa, Ja : عمل اولنمیه 7

8 Lb so; La کاربان سرای یوقلمدین

9 Ea, Fa, Ja, Kf add نسسی (مسافرلرک) کجه کاربان سرایده قونان خلقک (مساقرلرک) نسسی  
اوغرلنسه (دخی که) اوغرلندوغی محقق اولرسه) کاربان سراجیدن چونکه  
غدارلق اولدی (قصور ایتدیکی ایچون)

10 Fb زیرا اوغرلغی کاربان سراجی ایتمش Fdd adds اتدرب غرامتن چکدوره لر  
اولور

In the margin of Rb, Rc (referring to § 85?) شرعله ثابت اولدقدنصکره

85 1 Pb طولاشوب; Va دولنمغله

2 Lc adds کتدوکی شرعله ثابت اولدقدنصکره (see § 84, n. 10)

3 Ea, Fa تهدید

4 Lb adds شرعله ثابت اولدقدنصکره (see above, n. 2) 5 Lb

6 Whole section: Db (Da) ویر کاربان سرایده (کاربان) قونسه دوکسالر (دلسلر)  
نسته لرین السالر کاروبان سراجیه بولدورالر

86 1 Lb 2 Sa ظن Ja; فهم Kf; تهمتی

3 Fa, Va ایچرو (ده اولان) خلقدن

4 Fa adds وتهدید ایدوب

5 Lb 6 Ja ایچنده ایسه اهل محله یه خرسز بولدیریله

87 اگر خرسوز سپاهی طایفه سندن اولورسه<sup>1</sup> حبس ایدوب درگاه معلایه  
عرض ایده لر<sup>2</sup>

88 اگر عرف ایله بر کمسنه نك خرسوز لغی ثابت و ظاهر اولورسه قاضی  
اولان کمسنه<sup>1</sup> اهل عرفه حجت و یروب اهل عرف اول حجت موجبیله  
اصلماغه مستحق اولانی ایه<sup>2</sup> و قطع عضوه مستحق اولانی قطع عضو  
ایده، و قاضی بو بایده<sup>3</sup> مانع اولمیوب (وسیاست تأخیر ایدرمیوب<sup>4</sup> کنه  
اولدوغی<sup>5</sup> یرده<sup>6</sup> سیاست ایتدوره<sup>7</sup>)

89 اگر خرسوز اشکنجه ده اقرار ایدرسه و علایم دخی دلالت ایدرسه  
انك اقراری معتبر اول، صوچنه کوره سیاست اول<sup>1</sup>

90 اگر خرسوز بر کمسنه یه<sup>1</sup> بنم شریکدر دیسه اول کمسنه لوند  
ومتهم<sup>2</sup> ایسه اشکنجه ایده لر<sup>3</sup>، و آلا خرسوز<sup>4</sup> سوزینه عمل<sup>5</sup> اولنمیه<sup>6</sup>

سیاسته مستحق اولسه

87<sup>1</sup> Ea, Fa add اولور ایسه سیاستی خرسوز سیاستی کبی اولا<sup>2</sup> Da, Db

88<sup>1</sup> Lb واروب یه اولورسه قاضی یه ایلاده لر، قاضی دکلیه Fb (Ke)؛ اولورسه قاضی یه واروب<sup>1</sup> Lb  
صلب ایده لر<sup>2</sup> Lc (وقاضی اول خرسوزی اهل عرفه تسلیم ایدوب)

ایده، بو بایده بر موجب عرف لازم اولان سیاسته دخی قانون<sup>3</sup> Fb (Fdd, Ke)  
قدیمه مخالف قاضیلر

وصویاشی سیاستی تأخیر ایتمیوب Nd: وسیاست . . . ایدرمیوب<sup>4</sup>

اشلدکری (اتدوکی) Fb, Ke, Nd, Ub<sup>5</sup> Lc<sup>6</sup>

عرفاً بر کشینوک خرسوز لغی ظاهر اولور ایسه کندو<sup>7</sup> Whole section: Db (Da)  
(قاضی) ارادن چیقہ، مذکور قانون نامه (سیاست نامه) موجبنجه هر صوچنه کوره  
سیاست ادهسن

اشکنجه ده اقرار ادانه قاضی ارایه کرمیه، اقرار اتدوکی نسنه<sup>1</sup> Da (Db)  
بولدره لر و یاخود اودده لر)

و اگر بر خرسوز طوتلوب (خرسوز لغی) Fa, Fb, Kb, Ke؛ اشکنجه ده<sup>1</sup> Qa adds  
معلوم (ثابت) اولوب (سیاسته مستحق اولدقده اول داخی) بر کمسنه ایچون  
اول (Fdd, Ke) Fb؛ بونده متهم<sup>2</sup> Lc, Pb؛ اولدن متهم<sup>3</sup> Rb, Ub؛ لوند و متهم<sup>2</sup>  
زمانده انده (لوند) اولوب و متهم

عرضه محتاجدر Rb, Rc؛ ایسه موجب عرف اولور<sup>3</sup> Ra, Rb

سوزیله اشکنجه Fa؛ اعتماد<sup>5</sup> Lb, Sa, Ub؛ مجرّد خرسوزک<sup>4</sup> Fa

بو قضیه بو وجهله اولمق (اولمغیچون) Many F and other MSS. add<sup>6</sup>

91 اکر بر کشتی اتاسن واناسن وسایر اقباسندن برین<sup>1</sup> اولدورسه امر شرع نجه ایسه ایله ایده لر

92 اکر بر کمسه آخرك اوینه ودکاننه اود<sup>1</sup> قوسه داخی او دکانده (اواق دفك)<sup>2</sup> اسباب یانسه<sup>3</sup> شرعله ثابت اولسه<sup>4</sup> بر کمسنیه تهمت اتسلر تهدید ایله خرسوزی بولدره لر اکر قصد<sup>5</sup> ایله ایتمش اوله صلب ایده لر<sup>6</sup>

93 وشهرلرده اولسه پاسبانلری وبکیانلری محکم یساق ایله تفتیش ایده لر، انلر غافل ایکن اولمش ایسه اول محللی<sup>2</sup> حفظ ایدنلری من بعد اول اصل خدمته خدمت لنمیوب سیاست شهردا<sup>3</sup> (طشره)<sup>4</sup> سورهلر

پادشاه عالم پناه حضرتلرینک امر شریفلریله اولدی (فی ۱۹ ذی القعدة سنه ۹۱۰ Kb, Kd marg., Va, Vb(?), Vc (سنه تسع مایه ذی القعدة سنك اون طوقزنده (Fa (ذی القعدة سنه تسع مایه (Fi marg. ۹۱۰ (فی ۱۵ دا سنه ۹۱۰ (فی ۱۹ شهر ذی القعدة سنه ۹۲۷ (Ka))

بو تاریخدن صکره ۹۸۵ (Vb ۹۷۵) سنه سی In the margin of Va, Vb, Vc شعباننک اوایل تاریخیه بو سیاست بابتده عینی ایله بو مضمونده بر امر شریف وارد اولدوغی کورلدی

اتاسن (واناسن) وقرنداشن ویا اوغلن وقزین Da (Db) 91 1

شهرلرده وکویلرده many F MSS., Ja (Da, Db) 92 1 Fd بر کمسه غضبیه اود اولان اولرده (دکانلر یقار) اود Lc 2

Fb اولر وسایر اوتقلر یاقیلوب Kf قوسه اول او واسبابی یقسه La Lb so 3 شهرلرده وکویلرده وصحرالرده بر کمسنه قصدیه اود یاقوب دودوشدرپ مسلمانلرک ماللری واسبابلری حرق اولسه

اول اود یقان شرعا ثابت Db 4 اولمیوب D, E, F MSS. Lc and many اولمایه

سهو ایله اولورسه Ta adds اصلر Fa: صلب ایده لر 6 غضب Fdd (Ke) 5 سورهلر (read سورهلر ایلدن صورهلر see § 95)

93 1 Only in Fb, Fc, Fd, Fdd, Ke, and V MSS. (after § 92); text according to Fb.

2 Va, Vb محلله بی Fd, Vd محللری

3 Read شهردن (cf. H. W. Duda, *Die Sprache der Qyrq Vezir-Erzählungen*, i, Leipzig, 1930, p. 40) 4 Ke

94 اکر بر کمسنه بیانده طوار<sup>1</sup> بولسه اکر یوند وآت وقیون وصغر کبی اولسه ویا قیمتلوجه نسنه بولسه ودخی کتم ایلسه<sup>2</sup> معرفت قاضی ایله چاغرتسمه غنی اولورسه قرق<sup>3</sup> اقچه ، متوسط الحال اولورسه یکرمی<sup>4</sup> اقچه ، وفقیر اولورسه اون<sup>5</sup> اقچه جرم النہ

95 وجداملره<sup>2</sup> یساق ایدوب ایلدن<sup>3</sup> سورهلر<sup>4</sup>

96 قپطیان طائفه سندن قصبات<sup>2</sup> وقراده متمکن وکندو حالنده رنجبرلکده اولمیوب آلات حربله آته بنوب قرا ونواحیده کزوب رعایایه تعدی وتجاوز اوزره اولانلری قدیمدن یکی کیکلر دیو تعبیر اولانی کلوب اول مقوله اهل فسادی ایلدن سوروب چقارمق قانون قدیم اولمغین طائفه مزبوره دخی ایلدن سورلمک فرمان اولنمشدر

94 <sup>1</sup> Ma طوار یوه

<sup>2</sup> Lc so; La (Lb) ودخی کم ایسه (ایلسه)

<sup>3</sup> Aa and many F, G, K MSS. اتوز; Ba, Ca بیش

<sup>4</sup> Ba, Ca اون

<sup>5</sup> Ba, Ca بیش

95 <sup>1</sup> Found here in many L, M, N, U MSS.; in most F, K MSS. after § 92.

<sup>2</sup> Lb so; La جراملره; Da and many F, K, M, V MSS. ویکی کیکلری; Fx adds ایلرندن سورهلر جقاره لر، سورلمیانلر وک (?سورمیانلر وک read تیمارین الورین وینم عتابمه مستحق اولورلر، بو بایده تساهل اتمیه لر (sic) یعنی جداملر

<sup>3</sup> Fj شهردن وایلدن فز

<sup>4</sup> هر سنجاقده که بولونسه البته سنجاق بکی وسویشیلری Db: ایلدن سورهلر ایلرندن سورهلر جقاره لر، سورلمیانلر وک (?سورمیانلر وک read تیمارین الورین وینم عتابمه مستحق اولورلر، بو بایده تساهل اتمیه لر

Ba; وشهر ایچنده جذام طائفه سن یورتمیه لر 418, Nūrī, in *ihtisāb kānūmu*, 70a (f. 70a) وجداملری شهردن سورهلر شهرده قومیلر

96 <sup>1</sup> Only in V MSS. (after § 95); text according to Vb.

<sup>2</sup> Va so; Vb قصاب

97<sup>1</sup> اگر بیانده بولنان طواری ورزقی<sup>2</sup> چاغرتسه صاحبی بولنسه قاضی<sup>3</sup> یه<sup>3</sup> ویره لر حفظ ایده<sup>4</sup>، اگر چاغرتسه دخی صکره الندن یتسه<sup>5</sup> جرم النمیة<sup>6</sup>

98 ودخی<sup>1</sup> یلان شهادت ایده نک وتزویر<sup>2</sup> حجت ویره نک وانک ایله عمل ایده نک محکم حقندن کلالر<sup>3</sup>، وشاهد زوری تعزیر ایدوب تشهیر ایده لر، وتزویری وتلیسی ظاهر اولان کمسنه نک محکم حقندن کلوب الننه دمغا اوره لر<sup>4</sup>

وتزویر حکم وحجت یازن کمسنه نک<sup>5</sup> عادی ایسه الن کسه لر<sup>6</sup>، اگر عادی دکل ایسه محکم حقندن کلالر<sup>7</sup>

99 «واگر بر کمسنه نک النده قلاب اسباب<sup>1</sup> بولنسه<sup>2</sup> محکم حقندن کله لر»<sup>3</sup> اگر قلابلق اوستنه ثابت وظاهر اولورسه<sup>4</sup> درگاه معلایه عرض ایده لر

97<sup>1</sup> In most MSS. immediately after § 94.

<sup>2</sup> Aa omits.

<sup>3</sup> Ra, Rb, Rc یواجیه

قاضی معرفتیه Ka; قاضی سقلده (حفظ اتدیه) Aa (Fb); قاضی یه . . . ایده<sup>4</sup> صکره ضایع اولورسه<sup>5</sup> Fc, Gd, Ka امانته وره لر صقلته

<sup>6</sup> Aa, Ca, Fa (Ba, Fc, Gd) add امر شرع نه ایسه ایله اولا

98<sup>1</sup> Lb, Lc so; La اگر<sup>2</sup> Lb, Lc so; La وتزویره

عمل ایلیانک که قاضی قتنده (Ba (f. 70a, in *ihtisāb kānūnu*; cf. Nūrī, 409) ثابت اولا محتسب کما ینبغی حقندن کله

<sup>4</sup> In the margin of Lb, Rb, Rc معتبردر قانونی یوقدر

<sup>5</sup> Lb, Ld so; La وتزویر حجت ویره نک وحکم ویره نک

<sup>6</sup> In the margin of Lb, Rb, Rc معتبردر قانونی یوقدر (عرضه محتاجدر امر اولماینجه ایتیمه لر Lb)

<sup>7</sup> Ke marg., Va, Vb add حالنه کوره جریمه الالر

99<sup>1</sup> Oa قلب اقیه Sa; قلاب آلتی Ke marg.; قلاب اسبابی Ra; قلابلق اسباب

<sup>2</sup> Ra, Rb, Rc add رزقنی بکک ایدوب

<sup>3</sup> Lb, Lc; Ke marg. adds اغاج باشنه بر انه حالنه کوره جریمی انه (عرضه محتاجدر امر اولنمینجه اتمیه لر Rb, Rc) اقیه جرم انه (or referring to § 98 (2)?)

<sup>4</sup> Oa, Ob اوستنه سگه بولنمق ایله ثابت (وظاهر) اولسه وکندو اشلدوکی

ثابت اولان کمسنه دیرک صاحبی ایسه Va, Vb دخی ثابت اولسه

100 ودخی عدت تمام اولمدین نکاح<sup>1</sup> ایدن کمسنه نک<sup>2</sup> محکم حقتدن کلالر<sup>3</sup>

101 ودخی بی نمازی<sup>1</sup> محله محله<sup>2</sup> کوی بکوی تفتیش ایدوب<sup>3</sup> محکم تعزیر ایده لر اکی اغاجه بر اقجه جرم انه<sup>4</sup>

102 وجمعه نمازی واجب اولوب ترک<sup>2</sup> ایده نوک و قصد ایله اروجین بیانک محکم حقتدن کلوب بعد التعزیر ایکی اغاجه<sup>3</sup> بر اقجه جرم انه<sup>4</sup>

103 ومعامله شرعیه ایدن لره اونن اون بردن<sup>1</sup> زیاده ایتدرمیله<sup>2</sup>

(بر) عورته (عورتی) نکاح (Ra, Pe (Va), Pb marg., تزویر نکاح Ra<sup>1</sup> 100

(امامک read) ایمامک (Pe; دانشمندوک Ra<sup>2</sup>)

تعزیر وتشهیر Pe adds; سیاست ایچون سقالین کسلر Ra: محکم . . . کلالر<sup>3</sup> واغاج باشنه بر اقجه جرم انه، ونکاح ایدن (Rb, Rc, Re, Va, Vb) add (دانشمندک اگر Re) بلوب (ایدن امامی بولوب اکا دخی سؤال ایدوب (Va, Vb) اتدیسه اکا دخی بویله ایده لر، وبله (ویویله ایشه (Va, Vb) مباشر اولنرولک حقلرندن کنتوب ایکی اغاجه بر اقجه جرم انه

وقصد ایله نماز ترک ایتسه بینماز اولسه Rb; نماز قلمینلرک Pb<sup>1</sup> 101

بعد التنبیه قلمزسه Kf adds<sup>3</sup> بمحله Pb, Sa<sup>2</sup>

ادوب نماز قلائی (409) Nürî (f. 22a), Pb (f. 28b), Ka (f. 28b), Cf. *ihtisâb kânûnu*, وقلمیانی کوره لر، بی نمازلرین طتوب تشهیر ایده لر ومحکم حقلرندن کلوب سیاست ونماز قلمیانه نماز قیل دیه نماز قلمیانی محله امامندن تفتیش (Ba (f. 70a); ایده لر ایدوب حقتدن کله

امر شرع معتبردر قانونی یوقدر (102?) In the margin of Rb, Rc (or referring to § 102?)

102<sup>1</sup> Only in R and V MSS., Sa (after § 101); text according to Ra.

<sup>2</sup> Va, Vb بلا عذر ترک; وجمعه واداب ترک Sa; وجمعه نمازین دخی بلا عذر ترک

<sup>3</sup> اغاج باشنه Rd, Sa: ایکی اغاجه

ورمضان اینده اورج طوتیمان (Ba (f. 70a), Ka (f. 28b), Cf. *ihtisâb kânûnu*) کمسنلر شرع شریف مقتضاسنجه (کرکی کبی) حقتدن کنه (کلوب تشهیر ایده لر) ورباخورلر (Ba (f. 70a, in *ihtisâb kânûnu*); اون بر بچقدن Ph, Qc: اون بردن<sup>1</sup> 103 اونن اون اکیدن

اون بر بچقدن زیاده ربخ ایچون اقجه الور Ph adds; تفاضل حرامدر Pe adds<sup>2</sup> ایسه کیرویه الیوره لر

104 ودخی غمازلق ایدوب بر مسلمانک مالی ضایع اولمسنه سبب اولان کمسنه نك محکم حقندن کله لر وتضمین ایتدوره لر<sup>1</sup>

105 واکر بر کمسنه بغجیه و بوستانه<sup>1</sup> کیروب نسنه سن<sup>2</sup> السه تعزیر ایدوب اکی اغاجه بر اچجه جرم النه

106<sup>1</sup> ویر کمسنه خرسزلق اتسه چقوب کتسه بولنماسه تعلقاته<sup>2</sup> حکم ایدوب بولدوره لر، بولدورمینجه قومیه لر

107 اکر بر کمسنه یه غیره کمسنه<sup>1</sup> بولمغه<sup>2</sup> تکلیف اولنسه قانون بودر که یدی قاضیلق یری ارایه، اکر (صحیح)<sup>3</sup> ارایوب بولمادم دیو عجز اظهار ایدرسه کذب احتمالی یوغسه بری<sup>4</sup> اولوب خلاص اولور<sup>5</sup>

R and V MSS., Kf (cf. Ka (f. 28b), Pb (f. 22a) and Nürî (410) in *ihtisâb ve muamele* شرعیه (ودور شرعی) اتمدین (کمسنیه اچجه وروب) *kânûnu*) add (قطعا) ربا اتردیله لر

104<sup>1</sup> Lb, Lc so; La حقتدن کلوب تعزیر ایده لر

In the margin of Rb, Rc سبب صورلمق ممنوعدر (or referring to § 107?)

105<sup>1</sup> Ra کمسنه باغه یا خود باغچه

<sup>2</sup> Ra یمش

106<sup>1</sup> Only in Ka (after § 11), Ke marg., and Ta (after § 103); text according to Ta.

<sup>2</sup> Ka adds بولدورمالری لازم کنه

107<sup>1</sup> Lb so; La بر کمسنه بر کمسنه

<sup>2</sup> Pb (Va, Vc) بر (اخر) بر کمسنه کفالت سببندن ویا غیریدن (غیره سببندن) بر کمسنه بولمق

<sup>3</sup> Lb, Lc

<sup>4</sup> Lb, Ma, Ra, Ud بری الساحة

<sup>5</sup> Ta ایدرسه هر قاضیدن بر تمسک ابراز ایده (Pe) یوغیسه ایرق انجتمیه لر که خلاص اوله

In the margin of Lb, Rb, Rc قانونی بولدوره لر، شرعیه بولمق لازم کورسه بولدوره لر، یوقدر

108 اکر بر کشنک آتی ویا قاتری<sup>1</sup> ویا اوکوزی اکنه<sup>2</sup> کیرسه<sup>3</sup> طوار باشنه<sup>4</sup> بش اغاج<sup>5</sup> اوریلوب بش اقبجه انه، اکر اینک کیرسه درت اغاج<sup>5</sup> اورب درت اقبجه جرم انه<sup>6</sup>، اکر طنه یا<sup>7</sup> بوزاغو کیرسه بر اغاج<sup>5</sup> اورب بر اقبجه جرم انه، اکر قیون کیرسه اکی قیونه بر اغاج<sup>5</sup> اورب بر اقبجه جرم انه<sup>8</sup>  
 اما مقدم اسواقده ندا وتنبیه<sup>9</sup> اولنه، بعده ذکر اولنان اوزره عمل اولنه<sup>10</sup>

109 اکنه کیرن طوارلری اولدرمک وقویرغن «وقولاغن»<sup>1</sup> کسمک یوقدر، همان وجه مشروح اوزره عمل اولنه<sup>2</sup> وهم اولان زیانی طوار صاحبنه تضمین ایتدوره<sup>3</sup>

108 <sup>1</sup> Aa, Ab قسراغی; Ba, Ca یوندی; Ff adds ویا حماری

<sup>2</sup> Ba (Ca) اکمش غلیه (تارالیه)

<sup>3</sup> Ca adds زیان ایلسه; Ub adds قصد ایسه <sup>4</sup> Ub adds صاحبنه

<sup>5</sup> Aa (Ab), Fa چوماق; cf. Barkan, 331, § 25 (35) دکنک

<sup>6</sup> Aa, Fa omit اکر اینک . . . انه

<sup>7</sup> Aa, Ab, Ba, Ca, Fa omit ویه قیون; Ab adds

<sup>8</sup> Ab omits قره جناور (جانور); Ab, Ba, Ca, Fa (Va) add اکر قیون . . . انه  
 (cf. Barkan, خنزیر) کرسه (جانور باشنه) اکی اقبجه جرم الالر (و) اکی چماق اورهلر  
 مقدا اصمربلیوب تنبیه <sup>9</sup> Lb so; La

اٹا اول (ترکه ایرشملو) Aa (Ab, Ba, Ca, F MSS., Ke marg.) اولنه <sup>10</sup>  
 اولدقده خلقه) حجت ادهلر (قاضیلر بازارده چاغردهلر) (طوارلروکوزی  
 کوزه دوکوز (تیمار ایدک) دیو، حجت ادهلرندن صکره (بعد الاعلان) اسلمیوپ  
 دوارلرینه تیمار ایلمز لسه که اکن ایچنده بولنه واکینه زیان ایلمش اول بو  
 رسمه (بو وجهله) جرملیوپ چوماق اورهلر

109 <sup>1</sup> Lb, Lc

<sup>2</sup> Lb omits اکنه . . . اولنه; Aa, Ab, Ba, Ca, Fa omit همان . . . اولنه

<sup>3</sup> Aa (Ab, Fa) و(اولان) زیانن اوددهلر، تهدید اولنه طوارلرینه تیمار ادهلر  
 اکنه زیان اتیرمیهلر (مسلمانلرک وکافرلرک ترکسی واکینی خراب اولمیه)  
 (end of section)

Lb (Ke marg., Ma) add اکنه کیران طوار ضرر اتسه بعد ندا والتنبیه  
 صاحب ترکه اولدرسه (ترکه) ایچنده سنه لازم اولماز (نسنه دیمیهلر) (دیو فی  
 بعض النسخه)

اگر تنبیه ایتدم طواری ضبط اتمدی دیو اولدرسه ویا اورب سقط اتسه ویا بر یرنی<sup>4</sup> قطع اتسه شرعا نه لازم اولورسه اگر قیمتن اگر نقصانن<sup>5</sup> تضمین ایتدوره لر (ودخی اکنه اولان زیان طوار صاحبنه تضمین ایتدوره لر)<sup>6</sup>

**110** اگر کوی قربنده<sup>1</sup> وکوی اراسنده ویاخود طوار صوادی یولنده<sup>2</sup> اکن اولسه<sup>3</sup> صاحبنه اولاغو<sup>4</sup> ایتدوره لر<sup>5</sup>، اگر اتمزسه ضرری کندویه مترتب اولور طوار صاحبنه کنه لازم اولمز<sup>6</sup> مکر کیجه ایله کیره ویا<sup>7</sup> قصدله ارسال ایده لر<sup>8</sup>

**111** ودخی کوی خلقی بربرینک صواد لرینه ومرعی لرینه دخل ایدوب تجاوز اتمیه لر، ایده نک حقلرندن کلوب منع ایده لر  
ایله اولسه قانون بودر که شهرک وقصباتک<sup>1</sup> اورسی<sup>2</sup> بر بحق میل یردر وسایر کویلرک بر میلدر<sup>3</sup>، طوارلری ویوزاغلیری یوریه

<sup>4</sup> Ma (Sa) یانی (یانن)

<sup>5</sup> Ra قطع اتسه جائز دکدر، شرعا نه لازم کلور ایسه اگر قیمت واکر Ra نقصاندر

<sup>6</sup> Ld (Lb) so; Ra اکن صاحبنه داخلی زیانی چکدوره لر

Ra (Rd) add اگر بچاغله ویاخود غیرى آلت ایله اوروب مجروح ایلسه شرعا  
نقصان (نقصانی) لازم اولماسه تعزیر ایدوب اغاج باشنه بر اقچه جرم النه (زیاده النیه)

**110** <sup>1</sup> Fa اگر بیانده <sup>2</sup> Aa صوادنده یا صواد یولنده

<sup>3</sup> Aa, Fa, Fdd add که طوار اوغراغی اولا

<sup>4</sup> Ia, Ib marg., Kf (حوالی) حولو; Ka چورسنه اولاغو

<sup>5</sup> Ib marg. (Fk, Fn) add که (تا اچنه) طوار کیرسیه (محکم اولا)

<sup>6</sup> Lb صاحبنه ضرر چکدورلمز <sup>7</sup> Ta ویاخود صغرتماچ

<sup>8</sup> Aa and most B, C, F, G, I, K MSS. omit ایده لر . . .

**111** <sup>1</sup> Lb so; La قصبه نک; Pb, Ub قصبانک

<sup>2</sup> Sa (Qc) طواری یوریمه سی Ph; اورسی (اوروسی) ومرعاسی

<sup>3</sup> In the margin of Rb, Rc اکه (مرعادر) اکه  
اولدن طوار یورینی کلدی بر مرعیدر (مرعادر) اکه [; pencil note:] (the same definition is given, as a *kānūn*, in *MTM*, i. 98)

ودخی خرمن یرلرین ایدوب استعمال ایده<sup>4</sup>لر<sup>4</sup> قورنیه وزراعت اولنیه<sup>5</sup>

ومیل دخی ار ایله عورت فرق اولنماز اولان یره درلر، بو<sup>6</sup> مقداردن غیر<sup>7</sup> هر کم که سباهی معرفتیه زراعت<sup>8</sup> ایلیه کندونک اولور لندن النیه

112 اکر بر کمسنه آخرك تاوغین<sup>1</sup> وکلبن ویا غیر<sup>2</sup> طوارین<sup>2</sup> اورب اولدرسه تضمین ایتدرب تعزیر ایده جرم النیه<sup>3</sup>

113 ودخی عورت واوغلان واروب صو الدوغی ویا طون<sup>1</sup> یودغی یرلره لوند طایفه سی وارسیه منع ایده لر، ممنوع اولمیان<sup>2</sup> تعزیر ایدوب اکی اغاجه بر اچجه جرم نه<sup>2</sup> وحمّام اوکنده وحمّام یولنده جمعیت<sup>3</sup> ایدوب اوتورمیه لر ومقبره ایجنده ویا یول اوستنده تبول<sup>4</sup> اتمیه لر، بعد التنبیه ممنوع اولمیانک محکم حقندن کلار<sup>5</sup>

114 بعضی خلایقجیلر کاربان سرایلرده زیاده جه قسط ویروب چنکی وغیری جاریه لر کتوروب خلق کلدوکی صحبتیه وعشرته چکوب فسق

<sup>4</sup> Lb so; La ایدلر

<sup>5</sup> Rd, Sa add همان اوری (و) خرمن ایجون ترك اولنه

<sup>6</sup> Lb, Lc so; La اکر بو <sup>7</sup> Pb (Ta) غیر<sup>7</sup> یره (یری)

<sup>8</sup> Pb, Sa (Ta) (احیا و) عمارت

112 <sup>1</sup> Lb so; La توغن <sup>2</sup> Lb so; La طورن

<sup>3</sup> Ra adds الیه داخی دمشلر

113 <sup>1</sup> Kf ائواب (read ائواب)

<sup>2</sup> In the margin of Lb (Rb, Rc) شرعله (تعزیر) لازم کلورسه (تعزیر اولنه لازم) کلمزه (تعزیر قانونی) یوقدر جرم دخی یوقدر

<sup>3</sup> Rb (Rc, Re) اوکنده ویکار باشنده جمع Ta; اوکنده یولق (ویولنده) هنکابه

<sup>4</sup> Va (Pd) add (وتغوط read وتغیظ)

<sup>5</sup> In the margin of Lb, Rb, Rc امر شرع معتبردر قانونی یوقدر

114 <sup>1</sup> Only in V MSS. (after § 86); text according to Vb.

وفجور وسائر انك امثالی نامشروع اوضاع اولوب، وكاه اولورمش كه بر جاريه يی كاربان سرايده بر كمسنه صورت بيعله الوب اول كمسنه كاربان سرايدن كدنجه اول جاريه انوكله بييله اولوب كتملو اوليچق بر قاج اقجه اكسكنه كيرو خلايقجی الورمش، بونوك كبی خصوصلر منع اولنمق ايچون حكم شريف ويريله كمشدر

115 ودخی عمال طایفه سنه<sup>1</sup> بر كمسنیه<sup>2</sup> شرعا بر نسنه ثبوت بولمدین مجرد مساویسی<sup>3</sup> اولمغله دخل<sup>4</sup> ایتدرمیله<sup>5</sup> جرمن المیه لر<sup>6</sup>، الورلر ایسه قاضی ینه حكم ایدوب الوویره

116 وقاضی معرفتی<sup>1</sup> اولمدین (كمسنه)<sup>2</sup> اهل عرف طایفه سی حبس ایدوب انجتمیه لر

وهر برینك صوجنه كوره جرمن الوب زیاده المیه لر، والورلر ایسه قاضی زیاده سن حكم ایدوب الوویره

117 یایا و مسلم و یورك و طوغانجی<sup>1</sup> و وقف و ملك اولان كمسنه لر ك ایچلرینه خرسوز<sup>2</sup> قچوب و ارسه ایچلرینه کیسه<sup>3</sup> خرسوزی انلره بولدره لر

115 <sup>1</sup> Lb, Lc so; La عمال طایفه سی; Ra (Kf, Sa) اهل عرف طایفه سی; Pa (Pb, Va) و سنجاق بکی آدمی و صوباشی. O MSS. عمال و سپاهی طایفه سنه (طایفه سی) و طباق صوباشیلری و سپاهی و عمال و غیره

<sup>2</sup> O MSS. بر كمسنه نك اوزرنه

<sup>3</sup> Lb, Lc so; La مساوی

<sup>4</sup> Kf, Ma, Ob كمسنه یه دخل

<sup>5</sup> Ob, Va ایدوب; ایله میله لر

<sup>6</sup> Ob, Pb الدر میله لر

116 <sup>1</sup> Lc so; La معرفت <sup>2</sup> Lb, Lc

117 <sup>1</sup> Ib adds وینوق

<sup>2</sup> Fx وملك اولان یرده خرسوز

و طغانجی و رعایای اوقاف و املاك كم Fa, Fd, Ke; کیروب کیزلنسه Ta<sup>3</sup> كرك ایسه اولسون خرسوز قچوب (قاچوروب Fd) انلرك اچنه كرسه

الالر، «واکر انلر خرسوزی ویرمز لر ایسه جمله غرامتنی چکه لر  
 وخرسوزک الدوغن انلره اوده ده لر»<sup>4</sup>  
 اکر خرسوز بونلرک بری سندن ایسه سیاستی سائرلر<sup>5</sup> کبی اولا، شویله  
 بلالر

118<sup>1</sup> ویر سنجاقده اوغورلوق وخیرسوزلق اتسه قاجوب بر سنجاغه  
 داخی وارسه ادم کندره لر کتورده لر، ویاخود بر سنجاغک خلقتدن  
 قاجوب بر سنجاغه داخی وارسه خرسوزلق ایتدوکی سنجاقده سیاست  
 اولونه<sup>2</sup>

119<sup>1</sup> واکر خیرسوزلق ایدب کتسه کتدوغی<sup>2</sup> یرده جریمه سن السلر  
 یرینه کلدوکی وقت بر داخی جرمن المیه لر، واکر جرم الناماش  
 اولسه ثابتنه کوره جرم النه

120<sup>1</sup> واکر بر کشی بر یردن کتسه وارسه بر غیر یی یرده جنایت  
 ایتسه جنایت ایتدوکی یرده جرم الدیلر ایسه کیرو اولکی یرنه کلجک  
 بر دخی المیه لر، واکر اولکی یرده المادیلر ایسه الالر

<sup>4</sup> Lc (Lb)

<sup>5</sup> Many F MSS. سایر خلق (خرسوز)

118<sup>1</sup> Only in Db (between § 85 and § 91)

<sup>2</sup> Cf. further on in the same text اول یرده سیاستی اول یرده  
 اولا

119<sup>1</sup> Only in Ta (between § 121 and § 32)

<sup>2</sup> Read کتدوکی

120<sup>1</sup> Only in Ke marg.

اون بشنجی فصل<sup>1</sup>در بیان متهمان<sup>2</sup> و تملقات ایشان

121 بر کمسنه ایسه اسناد تهمت<sup>1</sup> اتسه لر (بولنمزسه)<sup>2</sup> اوغلی وار ایسه اوغلنه وقرنداشنه<sup>3</sup> واقرباسنه ومصاحبلرینه وکفلاسنه ویاخود اهل قریه سنه ومحلّه سی<sup>4</sup> جماعتنه ویا بر کمسنه نك اونده طوررسه اكا<sup>5</sup> تکلیف ایده لر بولدیره (طالبنه تسلیم ایده لر)<sup>6</sup>

122 ودخی بر یرده دربند حافظلری<sup>1</sup> اولسه دخی تقصیرات ایدوب حفظنده تکاسل اتسلر اول یولدرده ضایع اولان مسلمانلرک<sup>2</sup> رزقلرین الانی بولمازلر ایسه تضمین ایتدره لر زیرا دربندی حفظ ایدوب کوزتمک انلرک اوزرلرینه لازمدر<sup>3</sup>

123 ودخی قضا وتدریس وتولیت ونظارت ومشیخت وخطابت وامامت وسایر انلرک کبی مناصبدن<sup>1</sup> وجهاتدن شونلر که برات پادشاهیه تصرف ایده لر تعزیر لازم اولورسه اتمیه لر<sup>2</sup>، (همان بر دخی بویله ایتمه دیو قاضی عنقله سویلمک<sup>3</sup> اول مقوله لره تعزیردر)<sup>4</sup>

*Heading:* <sup>1</sup> Ib, ff. 22b-23a; Id, pp. 63-64; Kd, ff. 74b-75a; Lb, f. 15a-b; Lc, ff. 42a-43a; Od, f. 19a; Pb, f. 17a-b; Pc, f. 25a-b; Pd, ff. 21b-22a; Qa, ff. 35b-36a; Qc, f. 182b; Rb, f. 17a-b; Rd, f. 13a-b; Ua, f. 11a-b; Ub, pp. 78-79; Ud, f. 15a-b; and others; text according to Lb.

<sup>2</sup> Pb so; Lb بیان طلب متهم; Pb تهمت متهمان

121 <sup>1</sup> Lc so; Lb وتهمت <sup>2</sup> Pb, Qc

<sup>3</sup> Lc so; Lb وقز قرنداشنه; Ib وقز قرنداشلرینه

<sup>4</sup> Ib so (cf. § 124); Lb, Ud ومجلس

<sup>5</sup> Ib ویا اونده ساکن اولدوغی کمسه یه <sup>6</sup> Kd, Pb

In the margin of Lb, Rb, Rc داخی یوقدر، مصاحبنه تکلیف یوقدر واهل قریه کفیله در کفیل یوغیسه اقرباسنه در

122 <sup>1</sup> Ib صاجلری <sup>2</sup> Ib سبیلک

<sup>3</sup> In the margin of Rb, Rc (Lb) تضمین شرعیدر شرعله تضمین یوغسه (Lb) (ضمان) یوقدر

123 <sup>1</sup> Lc so; Lb مناصبه <sup>2</sup> Lc so; Lb یره اتمیه لر

<sup>3</sup> Kd, Pb, Qa سویلیوب ورهم ایتمک <sup>4</sup> Ib, Kd, Od, Pb, Qa

وحبس ایده‌جک یرلرده کفیل بولنورکن حبس اتمیه‌لر درگاه معلّمه عرض ایدوب اعلام ایده‌لر، مکر که شناعت عظیمه اولا فرار احتمالی اولا کفیل داخی بولنماز اوله «اول وقت»<sup>5</sup> حبس ایده‌لر<sup>6</sup>

124 ودخی بر کمسنه خرسوزدر ویاخود قجه‌در دیو محلّه‌سی ویا قریه‌سی جماعتی شکایت ایدوب یزه کر کمز دیو ردّ اتسه‌لر واقعا تهمت دخی اول کمسنه‌نک «اوزرینه»<sup>1</sup> بین التّاس معروف اولسه محلّه‌سندن ویا قریه‌سندن نفی ایدوب یعنی ردّ ایده‌لر واکر واردوغی یرده دخی قبول اتمیه‌لر شهردن سورهلر، اما بر قاج کون توقف ایده‌لر تا که<sup>2</sup> اول کمسنه اولکه یرامزلغه تویه ایدوب صلاح اوزرینه اولورسه<sup>3</sup> خوش<sup>4</sup>، وآا اندن داخی ردّ ایدوب بالکلیه (سوره‌لر)<sup>1</sup> شهردن چیقّه کیده<sup>5</sup>

## فصل<sup>1</sup>

### «در بیان اهل فساد»<sup>2</sup>

125 اکبر بر کشی اهل فساد اولسه دایما یرامز اشلرده بولنسه مسلمانلر یوزنه قرشو بز بونی خرلو<sup>1</sup> بلمرز دسه‌لر قاضی و صوباشی ارادن چقه‌لر، النده سیاست ویساق قونلن کمسنه<sup>2</sup> حقندن کله

<sup>5</sup> Ib, Pb

<sup>6</sup> In the margin of Lb (Rb, Rc) قاضیلر ویدرسلر عموماً درگاه معلّ وبارگاه اعلا قوللریدر (قوللری) و سپاهیلر دخی عرض اولنور، سایلرلی لازم دکلد، (انلره) شرعله لازم کلان اجرا اولنور

124 <sup>1</sup> Lc شاید که Pe؛ بلکه Ib: تا که <sup>2</sup>

<sup>3</sup> Ua دخی اتمیه‌لر<sup>4</sup> اوزرینه اولوب حقک بویروغی ازره اولورسه

<sup>5</sup> In the margin of Lb, Rb اجرای ایده‌لر کلانی لازم کلانی اجرا ایده‌لر

Heading: <sup>1</sup> Oa, f. 146a; Ob, f. 76b; Pg, f. 51a; Ta, f. 105a-b (in § 48); text according to Ob. <sup>2</sup> Pg

125 <sup>1</sup> Pg خیرلو <sup>2</sup> Ta ارادن چقبوب سیاستجی

﴿مواد ممنوعة الاستماع﴾<sup>1</sup>

126 مجروحاً مِيتى بولنمیان قان دعواسنک استماعی ممنوعدر مکر  
 که قتلی مشعر اسباب وطواری بولنه ، اول وقت شرعله کوریلور<sup>1</sup>  
 اغاجدن دوشوب و دیوار التنده قالب و آتدن دوشوب هلاک  
 اولانلردن وصویه غرق اولنلردن ویلدرم اورب و کوریدن وطامدن  
 و یاردن دوشوب و قیویه دوشنلردن شرعا دیت لازم کلمدوکی سبیدن  
 قانونا دخی عشر دیت یوقدر  
 و دریا بر غریق کناره چقاردقه مِیتده اثر خنق و جراحت وسایر  
 علایم قتل بولنمیه اول مقوله دریا طشره برقدوغی مِیتدن اهل عرف  
 طایفه سی عشر دیت و ورثه دیت طلب ایلمک شرعا جایز دکلد

## 2. TRANSLATION

### *Introductory remarks*

The translation of the Ottoman Criminal Code (and of the *Dul-kadır* code and lists of fines) is an attempt to render the text as literally as possible, even at the cost of a more readable and elegant English version. The only general licence taken is the omission of 'and' in enumerations or its replacement by 'or'. The very simple, primitive, and sometimes illogical style of the Turkish original is preserved as far as possible. No efforts have been made to imitate the archaic language, for this might have led to obscurity or false associations.

Special difficulties are presented to a translator by certain peculiarities of the Turkish language, which does not distinguish between masculine and feminine and between singular and collective nouns and, especially in earlier periods, between definite

*Heading:* <sup>1</sup> Va, f. 129a-b; Vc, f. 82a; the heading and a somewhat different version of subsection (2) only are found in Ia, f. 65a; Ib, f. 3a; Id, p. 9; Ie, f. 69b; British Museum, Add. 7834, f. 92a; see also Süleymaniye Libr., Harput 283, f. 243a; text according to Va.

126 <sup>1</sup> Cf. *MTM*, i. 91.

and indefinite nouns. The frequent omission of the subject and the immoderate use of the 'gerundial' form of the verb (-*ub*) are additional reasons for lack of clarity. The most serious difficulty is that the Turkish text is often extremely succinct and, in consequence, ambiguous. In order to bring out the meaning of the original without adding innumerable footnotes, connecting words and short explanations are therefore freely added in square brackets [ ].

The footnotes are of three kinds, which it would have been technically cumbersome to separate from one another: the translation of variants in other MSS., explanations and comments, and references to other sources. As to the notes of the first kind, they are not an exact translation of the variants quoted in the notes to the text and do not, of course, bear the same numbers. Parallel or minor variants and those of purely technical importance have been ignored. As in the footnotes to the text (see p. 55), MSS. whose abbreviations are enclosed in round brackets present texts which diverge to some degree from those of the main MSS. translated in the notes; when their divergences deserve translation, these too are enclosed in round brackets; their additions are enclosed in angle brackets; and the sources are, when necessary, noted within the brackets. Square brackets indicate, as in the translation of the text, additions by the translator. Finally, Turkish terms and explanations are also added in parentheses.

The Turkish *kimesne*, *kimse*, *kişi*, etc. is generally rendered 'a person'. Though it may refer to either a man or a woman, the personal pronoun referring to it is translated 'he', 'him' only.

The subdivision of the sections and their numeration have been added by the translator.

Sections not found in the MSS. of the L group, which form the basis of the edition, are given in smaller print.

It should be remembered that variants quoted from MSS. of the B and C groups refer to non-Muslims (see above, pp. 14-15).

In addition to other MSS. of the Ottoman Criminal Code, parallel sections in the code concerning the organization of the Court and Government (KAO), in provincial *ḵānūnnāmes*, in codes of market regulations (*iḥtisāb ḵānūnu*), and in the Dulkadır Penal Code (DPC) and lists of fines (DFR, DLF) are also quoted.

# THE OTTOMAN CRIMINAL CODE (OCC)

## Chapter I

### ON FORNICATION<sup>1</sup> AND OTHER [OFFENCES]<sup>2</sup>

1 If a person<sup>1</sup> commits fornication<sup>2</sup> and [this] is proved against him<sup>3</sup>—if the fornicator is married<sup>4</sup> and is rich, possessing one thousand *akçe* or more, a fine of 300<sup>5</sup> *akçe* shall be collected [from him], provided he does not suffer the [death] penalty;<sup>6</sup> if he is in average circumstances, his property amounting to six hundred *akçe*, a fine of 200 *akçe* shall be collected; if he is poor, his property amounting to four hundred *akçe*,<sup>7</sup> a fine of 100 *akçe* shall be collected; and if he is [in even] worse [circumstances], a fine of 50 *akçe* or<sup>8</sup> a fine of 40 *akçe* shall be collected.<sup>9</sup>

2 If the fornicator is unmarried and is rich, his property amounting to one thousand<sup>1</sup> *akçe* or more, a fine of 100<sup>2</sup> *akçe* shall be collected; if he is in average circumstances,<sup>3</sup> a fine of 50<sup>4</sup> *akçe*;<sup>5</sup> and if he is poor,<sup>6</sup> [a fine of] 30<sup>7</sup> *akçe* shall be collected.<sup>8</sup>

*Heading:* <sup>1</sup> *zinā* includes both fornication and adultery. A separate term for the latter, and indeed its legal concept, are unknown to Muslim law (see Schacht-Bergsträsser, 86, n. 4; Juynboll, 301).

<sup>2</sup> Fe, Ff, etc.: On the Fines for Fornication (and Sodomy)

1 <sup>1</sup> i.e. a man (see n. 2 and §§ 3–6). Fe, Fi: a Muslim Ba, Ca: an infidel

<sup>2</sup> Fb, Fc add: with a woman

<sup>3</sup> Aa adds: before the *shari'a* [court] Pb: If a person is seen committing fornication [and this] is proved against him in accordance with the *shari'a*

<sup>4</sup> V MSS.: *muḥṣan*, that is, married (For the meaning of *muḥṣan*, which is not exactly identical with 'married', see Juynboll, 302.)

<sup>5</sup> Oa, Pb, Rb, Sa, and others: 400

<sup>6</sup> Pb: provided he is not to be stoned to death in accordance with the *shari'a*

<sup>7</sup> Cf. § 41, n. 8.

<sup>8</sup> Aa: [and] if he is [in still] worse [circumstances], being extremely poor

<sup>9</sup> Ba (Ca): . . . is married and is rich, so that his property amounts to six hundred [akçe], 100 (80) *akçe* shall be collected; if he is in worse (average) circumstances, 50 *akçe*; if he is very poor (poor), 30 or 20 *akçe*

Cf. Barkan, 71, § 46 (300 . . . 200 . . . 100 *akçe*); Djikiya, 4 (300 . . . 250 . . . 200 *akçe*). Cf. also DPC, § 10; DLF, § 12.

2 <sup>1</sup> Ca: six hundred But Ba: one thousand <sup>2</sup> Ba, Ca: 50

<sup>3</sup> Aa adds: his property amounting to six hundred *akçe* <sup>4</sup> Ca: 30

<sup>5</sup> Aa adds: [and] if his property is less than that, amounting to four hundred [akçe], 40 *akçe* <sup>6</sup> Aa: very poor <sup>7</sup> Ba, Ca: 20 or 15

<sup>8</sup> Cf. Barkan, 71, § 46; 180, § 28 (200 . . . 150 . . . 100 *akçe*). Cf. also DPC, § 10; DLF, § 12.

3 If fornication is committed by a widow, she shall pay [the same] fine as unmarried men. In [deciding on] the small or large amount [of the fine], this [scale of fines] shall be taken into consideration.<sup>1</sup>

4 If fornication is committed by a girl, the fine [imposed] on her is exactly the same as that [imposed] on an unmarried man.<sup>1</sup>

5 If a married Muslim<sup>1</sup> woman commits fornication, she shall, if she is rich, pay the fine<sup>2</sup> [imposed] on a rich man after [her offence] has been proved;<sup>3</sup> if she is in average circumstances,<sup>4</sup> she shall pay the fine [imposed] on a man<sup>5</sup> in those circumstances.<sup>6</sup>

6 If it is a married woman<sup>1</sup> who commits fornication, her husband shall pay the fine.<sup>2</sup>

If he [nevertheless] accepts [her]<sup>3</sup> and he is rich,<sup>4</sup> he shall pay 100<sup>5</sup> *akçe* by way of fine [imposed] on a [consenting] cuckold (*köftehor*)<sup>6</sup>—but it has been customary to collect 300 *akçe* by way

3 <sup>1</sup> Cf. DLF, § 13.

4 <sup>1</sup> Cf. DLF, § 13.

5 <sup>1</sup> Aa, Ba, Ca omit: married Muslim

<sup>2</sup> Kraelitz, erroneously reading *kanlık*, translates 'Wergeld' or 'Blutgeld' (blood-money). The spelling *قینلق* and the vocalization of the word in many MSS. prove, however, that it should be read *kanlık*. This term, not listed in the standard dictionaries of Ottoman Turkish, is derived from *kan* (*qün*), 'pain', 'punishment' (cf. *knamak*, 'to torment', 'to punish') (Radloff, ii, cols. 725-6; A. von Gabain, *Alltürkische Grammatik*, Leipzig, 1950, p. 328; K. Grønbech, *Komanisches Wörterbuch*, Copenhagen, 1942, p. 206; *Tarama Sözlüğü*, i-iv, K-N, s.v.). As is clearly shown in this and other sections (see §§ 6, 12) of this code, it is the Turkish synonym of Arabic *cürm* or *cerime*, 'fine'.

<sup>3</sup> Aa adds: before the *shari'a* [court] (Cf. § 1, n. 5; § 37, n. 1.)

<sup>4</sup> Aa adds: or poor

<sup>5</sup> Ba: married man

<sup>6</sup> Cf. DLF, § 13. This section is missing in most MSS. of the code of Süley-mân the Magnificent (see § 6, n. 2).

6 <sup>1</sup> Lit., a woman who has a husband.

<sup>2</sup> Lb, Ma, Rd: her fine (If she has no property? Or if her husband does not divorce her, whereas § 5 presupposes divorce? Or—as seems most probable—is this subsection a later regulation, replacing § 5 of the earlier texts?)

<sup>3</sup> Aa and B, C, F, G, K MSS., which have no subsection (1): If the woman has property and her husband (does not repudiate [her but]) accepts [her] / If the woman's case (Ca, etc.: misdeed) has become (known (Fb, etc.: proved in accordance with the *shari'a*)) and her husband accepts [her]

<sup>4</sup> Lit., If he is rich and accepts [her].

<sup>5</sup> Ba, Ca: 50

<sup>6</sup> By condoning her misdeed he becomes culpable and incurs punishment.

of fine [imposed] on a cuckold—;<sup>7</sup> if he is in average circumstances, he shall pay 50<sup>8</sup> *akçe*; if he is poor, 40 or 30<sup>9</sup> *akçe*.<sup>10</sup>

7 If one [partner] of the fornicators is married and the other unmarried, the married one shall pay the fine [imposed] on a married person and the unmarried one that [imposed] on an unmarried person,<sup>1</sup> in accordance with their [financial] circumstances [but irrespective of the married or single status of his or her partner].

8 If a male or female slave commits fornication, half the fine [imposed] on a free man or woman shall be collected.<sup>1</sup>

9 If a person enters [another] person's house with intent to commit fornication, he shall, if he is married, pay the fine [imposed] on a married [fornicator]; if he is unmarried, he shall pay the fine [imposed] on an unmarried [fornicator].<sup>1</sup>

10 Furthermore, a person who abducts<sup>1</sup> a girl [or] boy<sup>2</sup> or enters [another] person's house<sup>3</sup> with malice,<sup>4</sup> and a person who joins [him as an accomplice] for the purpose of abducting a woman or girl shall be castrated<sup>5</sup> by way of punishment.<sup>6</sup>

<sup>7</sup> Aa, Fa omit: but . . . cuckold

<sup>8</sup> Fb, Fc: 200 Ba, Ca: 30      <sup>9</sup> Fb, Fc: 100 Ba, Ca: 20 or 15

<sup>10</sup> In the margin of Fm: This matter (regulation) has been abrogated.

7 <sup>1</sup> Lit., from the married one the fine [imposed] on a married person shall be collected and . . .

8 <sup>1</sup> Aa (Ff, Fq) add: according to custom (and the *kānūn*) as of old, taking into consideration [their?, their master's?] wealth or poverty. (For *bayağlayın*, 'as of old', see *Tarama Sözlüğü*, i, ii, iv, A-B, s.v.)

According to a marginal note in Ke, the fines are 140 or 100 *akçe* for married slaves, and 50 or 25 or 20 *akçe* for unmarried ones.

9 <sup>1</sup> Aa (Fa) add: like the person who [actually] commits fornication, as stated in detail above

Cf. DPC, § 12 (1); DLF, § 5(?).

10 <sup>1</sup> *çekmek* seems to be used here in the same meaning as *kaçmak* in the parallel § 11, which occurs in a few MSS. only. If there is a difference between these terms (see n. 2 to text of § 11), *çekmek* might possibly mean 'to abduct by fraud' (not by force), 'to lure away'.

<sup>2</sup> Thus clearly in Ea, Fa, etc.; *kız oğlan* (in La) could mean simply 'girl', 'virgin'. Gd, Qc: a woman or boy

<sup>3</sup> Da (Db) add: by night or day

<sup>4</sup> i.e. for that purpose. Da (Db) add: if it is proved that he entered with [intent to commit] a crime

<sup>5</sup> Is the variant of *zeker* in the older texts to be read *emcek* (*emcik*), and is *içmek* (*eçmek*) a corruption of this word? *emcek* would here mean not, as normally, 'teat, nipple' but 'penis'.

<sup>6</sup> Da (Db): and persons who join [him as accomplices] . . . shall be imprisoned

11 If a person abducts a woman or girl, [acting] without the consent of the woman or girl, [that] man shall be castrated [but] no charge shall be made against the woman or girl and no fine shall be collected. If the woman or girl is willing and runs away from her house,<sup>1</sup> her vulva shall be branded.<sup>2</sup>

12 If [persons] join the [principal] criminal [as accomplices] for the purpose of abducting a woman or girl, the *cadi* shall chastise<sup>1</sup> those criminals who joined [him] and they shall be fined according to their [financial] circumstances: the highest [fine] shall be 100 *akçe*; below that, fines shall be collected according to their circumstances.<sup>2</sup>

13 If a person finds his wife somewhere committing fornication with [another] person<sup>1</sup> [and] kills both of them together<sup>2</sup>—provided he immediately calls people into his house and takes them to witness, the claims of the heirs of those killed shall not be heard [in court].<sup>3</sup>

14 Or if a person finds a stranger in his house, strikes him with a weapon<sup>1</sup> and wounds him—provided<sup>2</sup> he calls people to witness that he has wounded [him in these circumstances],<sup>3</sup> no [capital or severe corporal] punishment shall be demanded for him either.<sup>4</sup>

and punished with a lesser [penalty]. (For *aşağarlık* see Barkan, 149, § 7; 172, § 5; Deny, p. 565; cf. also *Tarama Sözlüğü*, A–B, s.vv. *aşağarak*, *aşağralak*.)

Cf. DPC, §§ 12 (2) (?), 15; DFR, § 5.

11 <sup>1</sup> i.e. elopes (for *uyduruşub* (Ka) in this meaning, see *Derleme Dergisi*, s.v. *uyduran*). Vc marg.: and exchanges kisses [with him] (Or to be read *apışub*?) Va: and has a love affair [with him] (See *Derleme Dergisi* and Redhouse, s.v. *alışmek*.)

<sup>2</sup> Va, Vc marg. (Ta): and runs away, the woman shall be separated from the man. The *cadi* shall chastise both of them and they shall be fined according to their [financial] circumstances; a fine of 100 *akçe* shall be collected. (Cf. § 12.)

Cf. DPC, § 12 (2) (?); DFR, §§ 5, 8.

12 <sup>1</sup> Throughout this text, 'to chastise' is the translation of *ta'zir etmek* (*vurmak*), 'to inflict the discretionary punishment', which usually consisted of a certain number of strokes, as fixed by the *cadi*, on the soles of the offender's feet, i.e. the *bastinado* (see below, pp. 271–5).

<sup>2</sup> Cf. DPC, § 12 (3).

13 <sup>1</sup> Ke marg. (Ta): finds [another] person committing fornication with his wife or daughter or lying with [either of them]

<sup>2</sup> Ke marg. adds: or one of them Lb: at this very instant

<sup>3</sup> Ke marg. (Ta): no charge shall be made against the killer Cf. DPC, § 13.

14 <sup>1</sup> Kb: knife Kc marg.: sword <sup>2</sup> Va, Vb add: at that time

<sup>3</sup> Lb: wounds him—if the wounded man subsequently dies

<sup>4</sup> Cf. DPC, § 9 (but in the chapter on theft).

15 And [a person] who abducts a girl or woman and forcibly marries her<sup>1</sup> shall be forced to divorce [her] and shall be punished.<sup>2</sup>

And [the person] who marries [the couple]<sup>3</sup> shall have his beard cut off and be given a great many strokes.<sup>4</sup>

16 If a woman is spoken ill of [as having secret and illicit relations]<sup>1</sup> with a certain man and her husband divorces her,<sup>2</sup> that ill-reputed woman shall not be married to that man.<sup>3</sup> If a marriage has [nevertheless] been contracted [between them], the *cadi* shall immediately separate [them] by force and compulsion and shall severely chastise and heavily punish the *dānişmend* who married [them].

17 If a woman is spoken ill of [as having secret and illicit relations] with a man [and people] see the two at a secluded spot and testify [to that effect], the *cadi* shall chastise [them] and a fine (or: fines) for fornication shall be collected, as [mentioned(?)] before.

18 If a person kisses or licks(?)<sup>1</sup> another [man]'s wife or daughter or approaches her on her way and addresses [indecent words to

15 <sup>1</sup> Da (Db): a girl and makes [someone] marry her to him (lit., settle [on her his] marriage portion (*kābin*)) by force (in the mountains), [thus] making her his [legal] wife

<sup>2</sup> Ea, Gd: and whatever punishment [the man] caught with the woman incurs according to the *shari'a* shall be inflicted Cf. Da (Db) (in separate section): and [the man] who is caught with the woman shall be castrated.

<sup>3</sup> i.e. the '*ālīm* who deputizes for the girl's legal guardian (*veli*) and/or conducts the marriage ceremony.

<sup>4</sup> Da (Db): If the *dānişmend* (i.e. an '*ālīm* of junior rank) who married [her to him] does so (i.e. arranges such marriages) habitually, he shall have his beard cut off (and be [exposed to public scorn] mounted on a donkey); if he does not do so habitually, he shall be chastised.

Cf. DPC, § 16.

16 <sup>1</sup> *adı çekilmek* is used in this sense by present-day Anatolian villagers (see *Derleme Dergisi*, iv, s.v.).

<sup>2</sup> Va, etc. (in additional section): and the people know that she has obtained a divorce from her husband in order to marry him (the paramour)

<sup>3</sup> Ke marg.: the *cadi* shall not marry that woman to the ill-reputed man [sic]. If he does, I (the Sultan) will dismiss [him] as soon as I [come to] know [of this]. Thus shall they know. (The last sentence is part of the concluding formula of an Imperial decree.)

18 <sup>1</sup> *dillese* could also mean 'insults', 'slanders' (see *Derleme Dergisi*; *Tarama Sözlüğü*, i, iv, C-D; Zübeyr-Refet, s.v.), but neither this nor *dilese*, 'covets', seems suitable here. Ka: seizes Fx, Ta: touches

her](?)<sup>2</sup> or molests<sup>3</sup> [her],<sup>4</sup> the *cadi* shall chastise [him] severely and a fine of one *akçe* shall be collected<sup>5</sup> for each stroke.<sup>6</sup>

**19** If a person addresses [indecent words]<sup>1</sup> to or kisses [another] person's female slave, he shall be severely chastised and a fine of one *akçe* shall be collected for [every] two strokes.<sup>2</sup>

**20** If [a person] kisses [another] person's son<sup>1</sup> or approaches him on his way and addresses [indecent words] to him,<sup>2</sup> [the *cadi*] shall chastise [him] severely and a fine of one *akçe* shall be collected for each stroke.<sup>3</sup> If [the offender] is also [to be] imprisoned, the *cadi* shall do [so] at a place<sup>4</sup> he considers proper.<sup>5</sup>

**21** If a person enters a woman's house or approaches her on her way and cuts off<sup>1</sup> her hair or takes away her garment or kerchief, [thus] offering [her] a gross indignity, the *cadi* shall, after [the offence] has been proved, chastise [him]; he shall also have [him] imprisoned and submit [a report] to the Sublime Court.<sup>2</sup>

**22** If a person has sexual intercourse with his wife's female slave or with his mother's or father's female slave or with his wife after having divorced [her] irrevocably,<sup>1</sup> the *cadi* shall chastise [him] and a fine of two<sup>2</sup> *akçe* shall be collected for each stroke.

<sup>2</sup> Reading *söylese*. For the interpretation of this and the following verb compare the Addendum to section 202 of the Ottoman Penal Code of 1858: *harf- endâzlık edenler . . . ve elleriyle sarkındılık eyliyenler*. However, in the margin of Ra this word is explained as meaning *الآثار*, which appears to be *izlese*, 'tracks', 'trails'. If that is correct, the word in the text, though spelled with a *sin*, might be read *suylasa* (*soylasa*) 'pursues' (see *Tarama Sözlüğü*, ii; *Derleme Dergisi*, s.v.). See also §§ 19, 20, 55.

<sup>3</sup> *yapışsa* may mean 'touches [her]' or 'clings [to her]'.

<sup>4</sup> Fb adds: if [this] is proved in accordance with the *shari'a*

<sup>5</sup> Fb: the executive officers (*ehl-i 'örf*) shall collect . . .

<sup>6</sup> Ba, etc.: for every two strokes

Cf. DPC, §§ 12 (1), 12 (2) (?).

**19** <sup>1</sup> See § 18, n. 2.      <sup>2</sup> Pb: for each stroke

**20** <sup>1</sup> Sa (Lc): boy (slave?)      Gd: beardless boy

<sup>2</sup> See § 18, n. 2.      <sup>3</sup> Gd: for [every] two strokes

<sup>4</sup> Ob: for a period      <sup>5</sup> Cf. DPC, § 12 (1).

**21** <sup>1</sup> Rb, Rc: and pulls

<sup>2</sup> i.e. the Sultan.

**22** <sup>1</sup> Lit., threefold (i.e. by pronouncing the formula of divorce three times). In this case, he cannot resume marital relations with her until she has first been married to, and then divorced by, another man.

<sup>2</sup> Va, Vb: one

23 If [a person] has sexual intercourse with his son's female slave or with his divorced wife during her period of waiting<sup>1</sup> or with his female slave who has made a contract [with him] for her emancipation,<sup>2</sup> no [punishment] is required and he shall not be interfered with or chastised.

24 If a woman or girl says to a person,<sup>1</sup> 'You have committed fornication with me', and the man denies [it],<sup>2</sup> her words shall not be relied upon without [corroboration by] a witness. [The *cadi*] shall administer an oath to the man and [after the latter has sworn that he is innocent] shall chastise the woman or girl and a fine of one *akçe* shall be collected<sup>3</sup> for [every] two strokes.<sup>4</sup>

25 If a person says to a woman<sup>1</sup> or girl, 'I have committed fornication [with you]', and she denies [it], [the *cadi*] shall again administer the oath, [this time] to her, and [after she has sworn that she is innocent] shall chastise [the person] who said, 'I have committed fornication [with her]', and a fine of one *akçe* shall be collected<sup>2</sup> for [every] two strokes.<sup>3</sup>

23 <sup>1</sup> After being divorced by her husband, a wife has to wait a certain time ('*iddet*') before she may remarry. During that period the husband may take her back unless the divorce has been made irrevocable (see § 22, n. 1). Cf. *EI*<sup>1</sup>, art. 'Idda' (Juynboll).

<sup>2</sup> *mükâtebe*. For the legal position of a slave in relation to his or her master during this transition period see Juynboll, 207; Schacht-Bergsträsser, 42, 51; *EI*<sup>2</sup>, art. 'Abd' (Brunschvig), p. 30.

24 <sup>1</sup> Pe: defames a person saying

<sup>2</sup> Fb (Fc): and [this] is not proved in accordance with the *shari'a*

<sup>3</sup> Fb, Fc: the executive officers shall collect . . .

<sup>4</sup> In the margin of Pd: In view of the fact that the [administration of an] oath in fornication cases has been abolished, the statement in the text that an oath is [to be] tendered [to the man] is erroneous; there shall be no carelessness [in this matter].

In the margin of Va (Vb): If one of [two persons,] a man and a woman, acknowledges that they have committed fornication with each other, it is, according to the holy *shari'a*, not [permissible] to administer an oath to [the person] who denies the act of fornication, since the fixed penalty (*hadd*) for fornication is purely a right of God [and] not a right of man. (For the terms 'right of God' and 'right of man' see Schacht-Bergsträsser, 126; Juynboll, 292-4, 304, 319.)

See also below, §§ 54-5. Cf. also DPC, § 39 (3).

25 <sup>1</sup> Ta adds: or boy

<sup>2</sup> Fb, Fc: the executive officers shall collect . . .

<sup>3</sup> See the marginal notes to the preceding section; see also below, §§ 54-5. Cf. also DPC, §§ 34 (4), 39 (3).

26 Furthermore, if a person says to another,<sup>1</sup> 'You have committed fornication with my wife<sup>2</sup> or my female slave' [and] he cannot prove [it],<sup>3</sup> [the *cadi*] shall chastise [him], [but] no fine shall be collected.<sup>4</sup>

27 Furthermore, if a person's son yields to a pederast—if [the youth] is of age (*bāliġ*),<sup>1</sup> [the *cadi*] shall chastise the youth severely and a fine of one *akçe* shall be collected for each stroke; and if he is not of age, his father shall be chastised because he has not guarded [him], but no fine shall be collected.<sup>2</sup>

28 And if a person has carnal knowledge of an animal, [the *cadi*] shall chastise [him] severely and a fine of one *akçe* shall be collected for each stroke.

29 If a person knows of [an act of] fornication [but] does not go to the *cadi* and tell him, no fine is [to be collected].<sup>1</sup>

If he knows of a theft [but] does not tell [the *cadi*] a fine of 10<sup>2</sup> *akçe* shall be collected.<sup>3</sup>

30 If a woman practises procuring,<sup>1</sup> the *cadi* shall chastise [her] with whatever number [of strokes] he considers proper [and] a fine of one *akçe* shall be collected<sup>2</sup> for each stroke.<sup>3</sup>

31 But if these offences are committed by infidels, a rich one shall be liable to half the fine [imposed] on a rich Muslim,<sup>1</sup> one in

26 <sup>1</sup> Pa, etc.: charges another saying

<sup>2</sup> Ra, Rc, Re add: or my daughter

<sup>3</sup> Sa adds: in accordance with the *shari'a*

<sup>4</sup> See also below, §§ 54-5. Cf. also DPC, § 39 (3).

27 <sup>1</sup> i.e. has reached the age of puberty (see *EI*<sup>2</sup>, art. 'Bāliġ').

<sup>2</sup> Cf. DPC, § 40.

29 <sup>1</sup> Fv, etc. add: This is not [to be] acted upon.

<sup>2</sup> Aa: 15 Ba, Ca: 5

<sup>3</sup> In the margin of Fm, Fv: This matter (regulation) also has been abrogated.

In the margin of Kd: This is not [to be] acted upon.

The *shari'a* deprecates informing (or testifying) against a person who has violated a *ḥaḳḳ Allāh*, such as the prohibition of fornication. But theft is a violation of both a *ḥaḳḳ Allāh* and a *ḥaḳḳ ādami*; if a thief is not convicted, the injured person may lose the chance of recovering the stolen article (or compensation for it) (see Juynboll, 292-4; cf. Selle, 38, nos. 6, 9, 10; 85-6 and notes).

30 <sup>1</sup> Fdd, Ke add: of any person's wife

<sup>2</sup> Fb: the executive officers shall collect . . .

<sup>3</sup> Ba, Ca: for every two strokes

See also below, §§ 57, 75. Cf. also DPC, § 14.

31 <sup>1</sup> Lit., from a rich one half . . . shall be collected.

average circumstances to half the fine [imposed] on a Muslim in average circumstances, and a poor one to half the fine [imposed] on a poor Muslim.<sup>2</sup>

32 If a person who is of sound mind [and] of age<sup>1</sup> commits sodomy<sup>2</sup>—if he is married and is rich, a fine of 300 *akçe* shall be collected [from him]; and from a person in average circumstances a fine of 200 *akçe* shall be collected; and from a poor person a fine of 100 *akçe* shall be collected; and from a person in [even] worse circumstances a fine of 50 or 40 *akçe* shall be collected.<sup>3</sup>

33 And if the person who commits sodomy is unmarried—from a rich one 100 *akçe* shall be collected as a fine, from one in average circumstances 50 [*akçe*], and from a poor one 30 [*akçe*].<sup>1</sup>

34 If a person has carnal knowledge of his wife *per anum*, [the *cadi*] shall chastise [him] severely and a fine of one *akçe* shall be collected for each stroke.

35 If little boys from among the townspeople or peasants (*türk*)<sup>1</sup> perform sexual acts with one another,<sup>2</sup> [the *cadi*] shall punish [them and] a fine of 30 *akçe* shall be collected from each one.<sup>3</sup>

<sup>2</sup> In F and K MSS., this is the last section of chapter I.

32 <sup>1</sup> i.e. if he is *mükellef*, 'obliged to fulfil the religious duties, and therefore also responsible in criminal law' (see § 27, n. 1).

<sup>2</sup> Ra, Re add: with any person's son or male servant

<sup>3</sup> Ra: whether he is married or unmarried, he shall be castrated by way of punishment [but] no fine shall be collected. Ta: And if [a person] commits sodomy, [this] is [to be treated] exactly as if [he had committed] fornication: a married [person] shall pay the fine [imposed] on a married [fornicator, and] an unmarried one shall pay the fine [imposed] on an unmarried [fornicator].

33 <sup>1</sup> See also § 32, n. 3.

35 <sup>1</sup> For these opposites see also § 61, n. 1. *türk* may also include nomads. Lc: If in a town little peasant boys

<sup>2</sup> For the meaning of *değişik etmek* (or *oynamak* in Na, Nd) compare the expression *değişik çalma*, which in present-day Malatya is popularly used in the sense of 'having carnal knowledge of each other' (see Zübeyr-Refet, s.v.). The parallel section in DPC (§ 17) uses the Arabic synonym *mübâdele etmek* (see Dozy, s.v. بدل, II). Cf. also *كوجك اوغلانى* in the sense of 'dancing boy' (Red-house, p. 257).

<sup>3</sup> Cf. DPC, § 17.

## Chapter II

ON MUTUAL BEATING AND ABUSE,  
KILLING AND THE FINES FOR THEM

**36** If two persons scuffle and tear each other's collars, the *cadi* shall chastise both of them, but no fine shall be collected.<sup>1</sup>

**37** If [two persons] tear each other's hair or beards and [this] is proved,<sup>1</sup> [the *cadi*] shall chastise both of them and<sup>2</sup> from a rich person 20 *akçe*,<sup>3</sup> from a poor person 10<sup>4</sup> *akçe* shall be collected as a fine.<sup>5</sup>

**38** And if a person [aggressively] approaches [another] person on his way or goes to his house or to the [flat] roof of his house and they scuffle and tear each other's beards or beat one another severely, [the *cadi*] shall chastise both of them. [In addition] a fine of one *akçe* for each stroke shall be collected from the person who started and caused [the fight] and a fine of one *akçe* for every two strokes shall be collected from the other person.<sup>1</sup>

**39** If a person unlawfully beats<sup>1</sup> [another] person or tears his beard, [the *cadi*] shall chastise [him], and from a rich person 20 *akçe*, from a poor person 10 *akçe* shall be collected as a fine.<sup>2</sup>

**40** If a person inflicts a gashing head-wound [on another] making [his] blood flow, the *cadi* shall chastise [him] and<sup>1</sup> a fine of 30<sup>2</sup> *akçe* shall be collected.

**36** <sup>1</sup> Cf. DPC, § 21.

**37** <sup>1</sup> Aa adds: before the *cadi* Ca adds: in accordance with the *shari'a*  
<sup>2</sup> Aa, Ba, Fa omit: [the *cadi*] . . . and

<sup>3</sup> Ca adds: if they are in average circumstances, 15 *akçe*

<sup>4</sup> Ba, Bb: 15 Fa, Fk, etc.: 13

<sup>5</sup> Ff (Fq) add: This matter is [regulated in] exactly the same [way] in the *kānūn* for the infidels. [There] it is recorded that [in their case too] 20 *akçe* shall be collected from a rich person.

Cf. DPC, §§ 21, 26.

**38** <sup>1</sup> Pb, etc.: . . . from the other person (from the person who struck back; from the master of the house) no [fine] shall be collected.

Cf. DLF, § 6; cf. also DPC, §§ 19, 29.

**39** <sup>1</sup> Ua adds: or reviles <sup>2</sup> Cf. DPC, §§ 21, 26.

**40** <sup>1</sup> Aa, etc. omit: the *cadi* . . . and

<sup>2</sup> Ba: 15 Ca: 20 (rich) . . . 15 (medium) . . . 10 (poor)

And if a bone<sup>3</sup> is laid bare and [the wounded person] needs [treatment by] a surgeon—if the person who inflicted the head-wound is rich, owning one thousand<sup>4</sup> *akçe* or more, a fine of 100<sup>5</sup> *akçe* shall be collected after he has been chastised;<sup>6</sup> if he is poor, [a fine of] 30<sup>7</sup> *akçe*; and if he is in average circumstances, his property amounting to six hundred *akçe*, a fine of 50<sup>8</sup> *akçe* shall be collected.<sup>9</sup>

41 If a person kills a human being, retaliation (*kıyās*) shall be carried out [and] no fine shall be collected.<sup>1</sup>

If retaliation is not carried out or the killing is not such as to require retaliation<sup>2</sup>—if [the killer] is rich, the property he owns amounting to one thousand<sup>3</sup> *akçe* or more, a fine of 400<sup>4</sup> *akçe* shall be collected; and if he is in average circumstances, owning six hundred<sup>5</sup> *akçe*,<sup>6</sup> [a fine of] 200<sup>7</sup> *akçe*; from a poor person<sup>8</sup> [a fine of] 100<sup>9</sup> *akçe*; and from an extremely poor person a fine of 50 *akçe*.<sup>10</sup>

<sup>3</sup> Rb adds: of the head (i.e. the wound called *shajja müdiha* in Muslim law: see Schacht-Bergsträsser, 105.)

<sup>4</sup> Ca: six hundred But Ba: one thousand <sup>5</sup> Ba, Ca: 50

<sup>6</sup> Aa, etc. omit: after . . . chastised

<sup>7</sup> Fa, Gd: 40 or 30 Ba, Ca: 20 or 15 <sup>8</sup> Ba, Ca: 30

<sup>9</sup> Cf. KAO, p. 28, line 6 (for inflicting a gashing head-wound: 50 *akçe*). Fl and some provincial *kānūnnāmes* (e.g. Barkan, 5, § 29; 71, § 48) prescribe a fine of 100 *akçe* for the infliction of a head-wound exposing the bone, of 30 *akçe* for causing lesser injuries (*mādūn ūşenāyi*’, *mādūn cerime*), and of 10 *akçe* for bruising (*kara bere*); many others (*ibid.*, 302, § 23; 311, § 24; 321, § 20; etc.) impose a fine of 100 *akçe* for inflicting a gashing head-wound and of 50 *akçe* for bruising, or (*ibid.*, 180, § 28) of 30 and 20 *akçe*, respectively. Cf. also *ibid.*, 201, § 8 (60 *Ḥalebi akçe*) and 206, § 16 (22 *akçe*) with regard to the infliction of a gashing head-wound (see above, p. 39).

Cf. also DPC, §§ 20, 21(?), 22, 26; DFR, §§ 11, 14; DLF, §§ 1–2.

41 <sup>1</sup> Aa, etc. omit: retaliation . . . collected Lb, etc. add: [As to a person] who according to the *kānūn* incurs [capital] punishment, the *kānūn* with regard to him is [to inflict such] punishment. In this [case] no fine at all is [to be collected].

<sup>2</sup> Aa, etc. omit: or . . . retaliation Pb: if [retaliation] is remitted (i.e. if the heirs have renounced their right of retaliation) Va, etc. add: the fine for killing, after the heirs of the killed person have received their due (i.e. the *diyet*), [is the following:]

<sup>3</sup> La, etc.: two thousand Ca: six hundred But Ba: one thousand

<sup>4</sup> Ba, Ca, Fa: 200 <sup>5</sup> Gd: four hundred

<sup>6</sup> Ba, Ca omit: owning . . . *akçe* <sup>7</sup> Ba, Ca, Fa: 100

<sup>8</sup> Cf. Barkan, 321, § 20 (adding:) whose property is less than three hundred *akçe* (cf. above, § 1) <sup>9</sup> Ba, Ca: 50 or 30

<sup>10</sup> Cf. KAO, p. 28, lines 4–5: the fine for homicide (for *kānūnda* in the published text read *kanda* or *kandan*, as in several MSS.) shall be 3,000 *akçe* . . . Cf. also Barkan, 180, § 28 (400 . . . 300 . . . 200 *akçe*); *ibid.*, 71, § 45; Djikiya, 4 (400 . . . 200 . . . 100 *akçe*); Barkan, 5, § 29; 321, § 20 (300 . . . 200 . . . 100 *akçe*).

Cf. also DPC, § 18 (1); DFR, § 1; DLF, § 10.

42 And if two or more persons kill one human being, the fine for homicide shall be collected only once; it shall not be collected from each person separately.

And if one person kills two persons or more—if retaliation for them is carried out, the *shari'a* will [thereby] have been executed; nothing else shall be claimed and no fine be collected. And if retaliation is not carried out, the *cadi* shall order [the killer to pay] blood-money (*diyyet*); after the next of kin of the killed have contented themselves [with blood-money] and have received their due, one fine shall be collected for each killing<sup>1</sup> as a fine for homicide.

In short, when collecting the fine, the number of the killed, and not the number of the killers, shall be taken into consideration.<sup>2</sup>

43 If a wounded person states that a certain person has struck him, no regard is [to be paid to his allegation] unless that person is suspect<sup>1</sup> or is someone who has openly been at enmity with the wounded person. [In that case, the assailant] is liable to torture (*'örf*) with the co-operation of the *cadi*.<sup>2</sup>

44 If a person is found killed within a [town-]quarter or [some-where] between villages,<sup>1</sup> [the people in the vicinity] shall certainly be examined and compelled to find the killer or to defray the blood-money. But if no sign of killing is found [on the dead body, the people] shall not be hurt merely because a corpse has been found [in their vicinity].<sup>2</sup>

45 If a person hits another with an arrow or knife<sup>1</sup> and wounds him, causing him to become<sup>2</sup> bed-ridden—if [the assailant] is

42 <sup>1</sup> Va, Vc: for each person killed

<sup>2</sup> Cf. DPC, §§ 2 (2), 3 (on another matter).

43 <sup>1</sup> Lb, etc.: has been suspected for a long time

<sup>2</sup> In the margin of Lb, etc.: Marginal note of the Nişancı Paşa (Rc: of Ahmed Beğ): No torture is [to be inflicted]. [The text] is wrong. If [the allegation] has not been proved in accordance with the *shari'a*, nothing is to be done.

44 <sup>1</sup> Within a village? (Cf. § 77.)

<sup>2</sup> In the margin of Lb, etc.: In this [matter] the injunction of the *shari'a* is valid. If [the payment of] blood-money is required by the *shari'a*, blood-money is [to be paid]; if not, there is nothing [to be exacted]. Whatever the *shari'a* prescribes shall be [carried out].

Cf. §§ 76-7, 126. Cf. also Horster, 60 (97).

45 <sup>1</sup> Pb adds: or a large axe Kc adds: or a stone Cf. Barkan, 71, § 48; 180, § 28: with a sword, stick (180: with an arrow, sword, dagger, staff or spear, knife) or other weapons

<sup>2</sup> Reading *düşürse*, as clearly in Ub, etc. If *düşerse*, the sense is: [and] he (the victim) becomes

rich,<sup>3</sup> 200 *akçe* shall be collected as a fine after he has been chastised;<sup>4</sup> if he is in average circumstances, 100 *akçe*; and if he is poor, 50 *akçe*.<sup>5</sup>

46 And in Istanbul a person struck the face of one of his boys<sup>1</sup> in public with a knife and wounded [him]. The Lord Chief Justice (*kādi-asker*) investigated [the matter]. When it was proved in accordance with the *shari'a* that he had struck [the boy], [the case] was submitted to H.M. the Sultan, Asylum of the World. On 3 Receb 908<sup>2</sup> he ordered that person to be hanged by way of administrative punishment (*siyāseten*).<sup>3</sup>

And in Brusa a large number of softas<sup>4</sup> with their sheikh assaulted night-watchmen and wounded many of them. The Sultan, Asylum of the World, on the said date ordered them<sup>5</sup> to be hanged too by way of administrative punishment.

47 If a person strikes [another] person with a stone or stick and wounds him, he shall be chastised and thereafter a fine of one *akçe* shall be collected for each stroke.

If he strikes [him] and breaks his arm or leg, [the *cadi*] shall sentence [him] to whatever is required according to the *shari'a* and a fine of 100 *akçe* shall be collected.<sup>1</sup>

48 If a person runs into [another] person's path and shoots an arrow [at him], he shall be led [through the streets] with his arrow thrust through his ear.<sup>1</sup>

If he approaches him on his way and draws a sword<sup>2</sup> or knife [against him, the *cadi*] shall chastise and punish him severely and,

<sup>3</sup> Aa, Ca, Fa, Gd add: his property amounting to one thousand (Ca: six hundred) *akçe* or more

<sup>4</sup> Aa, Ca, etc. omit: after . . . chastised

<sup>5</sup> Cf. *kānūnmāmes* for Malatya and Divriği: bed-ridden, [the assailant] shall pay, apart from a fine of 200 *akçe*, the cost of the ointment (i.e. medicaments, or smart money?) and the doctor's fee for the wounded person. Cf. also Barkan, 180, § 28 (150 . . . 100 . . . 80 *akçe*); 5, § 29; 71, § 48 (in all cases 100 *akçe*); 201, § 8 (100 *Halebi akçe*); 206, § 16 (40 *akçe*) (see above, p. 39).

Cf. also DPC, §§ 23, 26, 28; DFR, §§ 3-4; DLF, § 4.

46 <sup>1</sup> i.e. servants? Mistake for 'the face of [another] person's boy (servant)?'

<sup>2</sup> 2 January 1503. <sup>3</sup> See, for this term, below, pp. 192-5.

<sup>4</sup> Students of a theological college (*medrese*).

<sup>5</sup> Lit., him (the sheikh only?).

47 <sup>1</sup> Cf. KAO, p. 28, lines 5-6 (for breaking an arm: 1,000 *akçe*). Cf. also DPC, §§ 20, 23; DFR, § 15; DLF, § 11.

48 <sup>1</sup> Qc: his arm or ear    Va, Vb: his arms    <sup>2</sup> Ta adds: or large axe

if he is rich, a fine of 50 *akçe* shall be collected;<sup>3</sup> if he is poor, a fine of 10 *akçe* shall be collected.<sup>4</sup>

49 Furthermore, if a persons cuts [people's] purses<sup>1</sup> or knives people habitually, his hand shall be cut off. If he does not do [this] habitually, he shall be led [through the streets] with the knife thrust through his arm.<sup>2</sup>

50 If a person intentionally knocks out [another] person's eye or tooth<sup>1</sup>—if retaliation is carried out, no fine shall be collected;<sup>2</sup> if retaliation is not carried out<sup>3</sup> or retaliation is not necessary,<sup>4</sup> where [the assailant] is rich, 200 *akçe* shall be collected as a fine; if he is in average circumstances, 100 *akçe*; and if he is poor, 50 *akçe* or 40<sup>5</sup> *akçe*.<sup>6</sup>

51 If the above-mentioned [offences]<sup>1</sup> are committed by infidels<sup>2</sup> or are committed by slaves,<sup>3</sup> half the fine [imposed] on [free] Muslims shall be collected.<sup>4</sup>

<sup>3</sup> Na, Nd add: from a person in average circumstances 20 [*akçe*]

<sup>4</sup> Va (Ta): According to another version: [and] a fine up to an amount considered proper shall be collected.

Cf. DPC, §§ 26, 28; DLF, § 3.

49 <sup>1</sup> Not 'is a pickpocket' (the modern *yan kesici*). See Redhouse, s.v. *كسك*; *Tarama Sözlüğü*, ii, s.v. *yan*. Cf. also its diminutive *yançık* (§ 67, n. 1).

<sup>2</sup> Ja (Ia): he shall be exposed [to public scorn] by way of administrative punishment (*siyâseten*)

Cf. DPC, §§ 26, 28; DLF, § 4.

This section seems to combine two originally separate regulations (cutting purses—knifing); in Db, the first is listed among regulations concerning theft.

50 <sup>1</sup> Teeth?

<sup>2</sup> Aa, Ca, etc. omit: if . . . collected <sup>3</sup> i.e. if *diyēt* is paid instead?

<sup>4</sup> Aa, Ca, etc. omit: or . . . necessary <sup>5</sup> Ba, Ca: 100 . . . 50 . . . 30 or 20

<sup>6</sup> Aa adds: and if he is extremely poor, 30 *akçe* In the margin of Lb: [As to a person] who according to the *kânûn* incurs [severe corporal] punishment, the *kânûn* regarding him is [to inflict such] punishment. In this [case] there is no fine at all [to be collected]. [Note of] the Nişancı.

Cf. KAO, p. 28, line 5 (for an eye: 1,500 *akçe*); cf. also Barkan, 180, § 28 (for a tooth (teeth?): 100 . . . 80 . . . 50 *akçe*; for an eye or for crippling (?) a hand: 200 . . . 150 . . . 100 *akçe*); 5, § 29 (for a tooth (teeth?) 100 *akçe* in all cases; for an eye 150 *akçe* in all cases; for crippling (?) a hand: half the fine for homicide); 71, § 47 (for eye and hand: [half] the fine for homicide).

Cf. also DPC, §§ 19, 24; DFR, §§ 12–13.

51 <sup>1</sup> In F and related versions this is the last section of chapter II.

<sup>2</sup> Ra, Rb add: or foreign residents (*müste'min*) (i.e. non-Ottoman citizens)

<sup>3</sup> Ra adds: either male or female

<sup>4</sup> Rb, Rc: If . . . by infidels or foreign residents, the same fine [as that imposed on free Muslims] shall be collected; but if . . . by slaves, half [that] fine shall be collected. [For the meaning of *zîf*, see below, p. 288, n. 13.]

52 If little boys come to blows, there is no fine [to be exacted]; nothing shall be collected.<sup>1</sup>

53 If women come to blows and tear each other's hair or beat each other severely—if they are not veiled ladies (*muḥadderāt*),<sup>1</sup> [the *cadi*] shall chastise [them] severely and a fine of one *akçe* shall be collected for every two strokes;<sup>2</sup> if they are veiled ladies, [the *cadi*] shall threaten<sup>3</sup> their husbands and a fine of 20 *akçe* shall be collected.<sup>4</sup>

54 If a person falsely accuses [another] person of fornication,<sup>1</sup> [thereby] becoming liable to [either] *ḥadd* or *ta'zīr* punishment<sup>2</sup>—if *ḥadd* is [inflicted],<sup>3</sup> a fine of one *akçe* shall be collected for [every] three strokes; if *ta'zīr* is inflicted, a fine of one *akçe* shall be collected for [every] two strokes.<sup>4</sup>

55 If [a person] imputes to [another] person the commission of fornication or theft or similar offences, such as peeping through a hole [into another man's harem],<sup>1</sup> or coming to a certain person's house [with criminal intent]<sup>2</sup> or having carnal knowledge of his animal,<sup>3</sup> or kissing

Ab (Kraelitz, p. 29, § 7): [In cases of] striking and inflicting a gashing head-wound, [drawing, or wounding with] a sword or knife and [causing] injury and [in cases of] other contentions which have been proved before the *cadi*, the [different] fines [imposed] on Muslims in [accordance with the offender's] wealth or poverty shall be considered. [Non-Muslims] shall be sentenced to half these [fines], so that the poll-tax payers (i.e. the non-Muslims) shall not be ruined. (See above, p. 14.)

52 <sup>1</sup> Cf. DPC, § 40.

53 <sup>1</sup> i.e. women of the upper classes who live in the seclusion of the harem and do not work outside their home (see Selle, 103).

<sup>2</sup> Lb, Ke marg.: for each stroke      <sup>3</sup> Od, Rb: chastise

<sup>4</sup> Od adds: from each of them      Ph adds: from their husbands      In the margin of Lb, etc.: This is (very) wrong.

54 <sup>1</sup> Kf, etc.: reviles [another person]

<sup>2</sup> For this offence (*kaḡf*) the *shari'a* prescribes *ḥadd* punishment (i.e. 80 strokes) where the accusation is made against a free Muslim, man or woman, who is of age, of sound mind, and *muḥṣan* (here in the meaning of never having been guilty of fornication); in other cases, the slanderer suffers the *ta'zīr* penalty (see Juynboll, 303; Schacht-Bergsträsser, 39, 45–6, 99).

<sup>3</sup> Va: If a person is punished with the *ḥadd* penalty for a false accusation of fornication or another [offence] (such as the drinking of wine)

<sup>4</sup> The text of this section is corrupted in many MSS.

Cf. §§ 24–6. Cf. also DPC, §§ 34 (4), 39 (3).

55 <sup>1</sup> Cf. KAO, p. 28, line 9 (which imposes a fine of 20 *akçe* for peeping into a harem). Cf. also DPC, § 34 (3).

<sup>2</sup> Cf. § 9.

<sup>3</sup> Cf. § 28.

[the imputer's] wife or daughter or son, or approaching them on their way, or telling [them], 'I love [you]',<sup>4</sup> [the case] shall be investigated. If he cannot prove [his imputation] or, claiming to have heard [this] from a certain person, cannot prove [it] to that person's face, the *cadi* shall chastise [him] and a fine of one *akçe* shall be collected for each stroke. The person to whom these offences are imputed shall be tendered the oath [to enable him to clear himself].<sup>5</sup>

56 If a person addresses unlawful language<sup>1</sup> to another [person], the *cadi* shall chastise [him] and a fine of one *akçe* shall be collected for [every] two strokes.<sup>2</sup>

57 If a person<sup>1</sup> practises procuring, the *cadi* shall chastise [him or her] and expose [him or her to public scorn; in addition] a fine of one *akçe* shall be collected for each stroke.<sup>2</sup>

58 If slaves come to blows, [the *cadi*] shall punish them severely [but] no fine shall be collected.

59 And if a person beats a woman who is a stranger (*ecnebiye*) to him,<sup>1</sup> [the *cadi*] shall chastise [him] severely and a fine of one *akçe* shall be collected for each stroke.

60 If a youth who is of age<sup>1</sup> beats his father or his mother, [the *cadi*] shall, after chastising [him], put [him] in prison and a fine of 100 *akçe* shall be collected.<sup>2</sup>

<sup>4</sup> Reading *severin* (Old Ottoman for *severim*). For the last-mentioned three offences cf. §§ 18, 20.

<sup>5</sup> (Instead of the whole section) Ta: And if a person falsely accuses [another] person, the *cadi* shall chastise the false accuser and a fine of one *akçe* shall be collected for each stroke.

Cf. DPC, §§ 34 (4), 39 (3).

56 <sup>1</sup> i.e. bad or foul language.

<sup>2</sup> Cf. KAO, p. 28, lines 7-8 (chastisement in accordance with the *shari'a* and a fine of 40 *akçe*). Cf. also DPC, § 39 (1); DLF, § 14.

57 <sup>1</sup> Ra: a man or woman

<sup>2</sup> Db (Da): And a woman who practises procuring as her regular profession shall have her nose cut off; and if she does not [procure habitually], she shall be compelled to mount a donkey and be exposed [to public scorn].

Cf. §§ 30, 75. Cf. also DPC, § 14.

59 <sup>1</sup> Rb, Rc: a strange woman of full age    Rd: the woman of a stranger (i.e. a woman not his wife, slave (concubine), daughter (or other close relative?).)

60 <sup>1</sup> See § 27, n. 1. Rd: And if a person

<sup>2</sup> In the margin of Rb, Rc (referring also to § 59?): The injunction of the *shari'a* is valid; there is no *kānūn* in this matter.

## Chapter III

ON FINES AND [CAPITAL OR SEVERE CORPORAL]  
PUNISHMENT FOR THE DRINKING OF WINE, THEFT,  
ROBBERY AND [OTHER] TRANSGRESSIONS, ETC.<sup>1</sup>

61 If a person<sup>1</sup> drinks wine, the *cadi* shall, after it has been proved, punish<sup>2</sup> him and a fine of one *akçe* shall be collected for [every] two strokes.<sup>3</sup>

62 If a Muslim presses or sells wine, the *cadi* shall chastise [him] and a fine of one *akçe* shall be collected for every two strokes.

63 If a person<sup>1</sup> attends a wine-party but [himself] does not drink wine, [the *cadi*] shall chastise [him] and a fine of one *akçe* shall be collected for [every] three strokes.<sup>2</sup>

64 If a person steals<sup>1</sup> a goose or hen or duck,<sup>2</sup> the *cadi* shall chastise [him] and<sup>3</sup> a fine of one *akçe* shall be collected for [every] two strokes.<sup>4</sup>

65 If [a person] steals a beehive or a sheep or lamb<sup>1</sup>—if the [value of the] stolen property does not reach the legal minimum (*nişāb*),<sup>2</sup>

*Heading* <sup>1</sup> This heading combines those of chapter III ('On Fines for the Drinking of Wine etc.') and chapter IV ('Exclusively on [Capital or Severe Corporal] Punishment') in the earlier texts (see pp. 18, 31). Pa, Pb: On [Capital or Severe Corporal] Punishment.

61 <sup>1</sup> i.e. a Muslim. Aa adds: be he a peasant (*türk*) or a townsman (cf. § 35)

<sup>2</sup> Aa: shall chastise (*ta'zir*) (omitting: after . . . proved)

<sup>3</sup> Sa, Sb: for each stroke

Cf. DPC, § 39 (2).

63 <sup>1</sup> i.e. a Muslim.

<sup>2</sup> In the margin of Rb, Rc (referring to § 61 or § 62?): The injunction of the *shari'a* is valid; there is no *kānūn* in this matter.

64 <sup>1</sup> Va, Vb add: or strikes and kills (cf. § 112)

<sup>2</sup> Or, geese or hens or ducks (the same applies to the following sections). Aa, etc.: a goose or duck Kf: a hen or duck and [their] eggs

<sup>3</sup> Va, Vb add: after compensation has been paid [to the owner] Ka adds: the *cadi* shall hang the hen or duck round his neck and expose [him to public scorn], or else

<sup>4</sup> Fd., etc.: for each stroke Ba, Ca: for [every] four strokes

Cf. DPC, § 34 (1), (2).

65 <sup>1</sup> Ke marg.: goat

<sup>2</sup> The *shari'a* prescribes the fixed penalty (*hadd*) for theft (i.e. amputation of the hand) only if the stolen article has at least a minimum value, which, according to the Ḥanafī school, is 10 *dirham* (see *EI*<sup>1</sup>, art. 'Sārik' (Heffening); original

the *cadi* shall chastise [him] and a fine of one *akçe* shall be collected for each stroke.<sup>3</sup>

66 If [a person] steals a horse or mule or donkey<sup>1</sup> or head of cattle,<sup>2</sup> his hand shall be cut off.<sup>3</sup> If it is not cut off, a fine of 200<sup>4</sup> *akçe* shall be collected.<sup>5</sup>

67 If [a person] steals a purse<sup>1</sup> or a turban<sup>2</sup> or towels<sup>3</sup>—unless his hand is to be cut off,<sup>4</sup> the *cadi* shall chastise [him] and a fine of one *akçe* shall be collected for [every] two strokes or one *akçe* shall be collected for each stroke.<sup>5</sup>

68 If [a person] steals wheat or barley from [another] person's pit<sup>1</sup> or storehouse<sup>2</sup>—if it is not necessary to cut off his hand<sup>3</sup>

*fetvâ* of Ebu 's-Su'üd Efendi, Topkapı Sarayı Archives, Istanbul, E 12078); according to DPC, § 5 (2), it is apparently 10 *akçe*.

<sup>3</sup> Pb, etc. add: And if the [value of the] stolen property reaches the legal minimum, his hand shall be cut off [but] no fine shall be collected (Ph: and a fine of 200 *akçe* shall be collected). Aa, etc.: If [a person] steals a sheep or a beehive, a fine of 15 (Ba, Ca: 10) *akçe* shall be collected.

Cf. DPC, §§ 2 (1), 4; DLF, § 9.

66 <sup>1</sup> Pb, Ta: a camel or donkey      Ub: a cow

<sup>2</sup> Aa, etc. omit: or mule . . . cattle

<sup>3</sup> Pb, etc.: he shall be hanged (executed)      <sup>4</sup> Ba, Ca: 100

<sup>5</sup> Ta: If it is not cut off, 200 [*akçe*] shall be collected as a fine from a rich person, 100 [*akçe*] from a person in average circumstances, [and] from a poor person according to his circumstances. And if he has done [this] several times, he shall be hanged.

Aa, etc. (additional section): If [a person] steals a head of cattle [and] his hand is not cut off (Kraeplitz errs in translating *elin kesmiyeler* 'dessen Hand soll man nicht abschneiden'; cf. Bb, Ca: *elin kesmeseler*)—if he is rich, his property amounting to one thousand (Ca: six hundred) *akçe* or more, a fine of 100 (50) *akçe* shall be collected; if he is in average circumstances, 50 (30) *akçe*; [and] if he is poor, 40 or 30 (20 or 15) *akçe*.

Cf. DPC, § 2 (1); DFR, § 2 (?); DLF, § 7.

67 <sup>1</sup> Or, small bag often hung at a person's (or a horse's) side (see *Tarama Sözlüğü*, i-iv, s.v. *yancık* (*yancuk*); cf. also § 49, n. 1). Kraeplitz's translation, 'Pferdegesshirr', does not fit the context. Fp: large axe (cf. § 71)      Bb, La: beads (worn to avert the evil eye)

<sup>2</sup> The turban was used as a pocket for money and other valuables; 'c'est à cause de cela, qu'en Orient les voleurs tâchent surtout de s'emparer des turbans des passants' (R. Dozy, *Dictionnaire détaillé des noms des vêtements chez les Arabes*, Amsterdam, 1845, pp. 309-10).      <sup>3</sup> Aa, etc., omit.

<sup>4</sup> Kraeplitz makes the same mistake here as in § 66 (n. 5).

<sup>5</sup> Ff (Fq) add: The very same rule is applicable to infidels.

Cf. below, § 73; cf. also DPC, § 5 (2).

68 <sup>1</sup> i.e. subterranean depot. Kf adds: or threshing-floor

<sup>2</sup> Aa, etc.: If [a person] <Fb (Fc): [after] opening [another] person's storehouse or pit> steals his grain <Aa: or money>      <sup>3</sup> Kf adds: or his foot

according to the *shari'a*,<sup>4</sup> 40 *akçe* shall be collected as a fine from a rich person, 20 *akçe* from a person in average circumstances, and 10 *akçe* from a poor person.<sup>5</sup>

69 If a peasant steals grain from the threshing-floor, [the grain] that he has stolen shall be taken<sup>1</sup> as a fine [but] nothing else shall be collected.<sup>2</sup>

70 If [a person] steals a handful<sup>1</sup> [of ripe corn] from a field, it [being] a small quantity,<sup>2</sup> or if [a person] cuts and carries away green corn,<sup>3</sup> the *cadi* shall chastise [him, but] no fine shall be collected. And if liability<sup>4</sup> [for damage or loss] is incumbent<sup>5</sup> [on him],<sup>6</sup> he shall be compelled to pay compensation.

71 If [a person] steals an axe or pickaxe<sup>1</sup> or something similar—if it is not<sup>2</sup> necessary to cut off [his] hand, [the *cadi*] shall chastise [him] and a fine of one *akçe* shall be collected for [every] two strokes.<sup>3</sup>

72 If a son steals something from his father or mother, or a mother<sup>1</sup> [or] father from her or his son, or a wife from her husband, or a husband from his wife, or a brother [or sister] from his [or her] brother [or sister]<sup>2</sup> the *cadi* shall chastise [him or her] and a fine of one *akçe* shall be collected for each stroke.<sup>3</sup>

<sup>4</sup> Aa, etc. omit: if . . . *shari'a* Ta: his hand shall be cut off according to the *shari'a*; if [this] is not necessary

<sup>5</sup> Ba, Ca: 20 . . . 10 . . . 5 *akçe* Va, etc.: Another version says 100 . . . 50 . . . 25 [*akçe*].

Cf. DPC, § 5 (1).

69 <sup>1</sup> i.e. confiscated.

<sup>2</sup> Aa: If [a person] steals from a heap of threshed corn, [the grain] that he has stolen shall be confiscated.

Cf. DPC, § 31.

70 <sup>1</sup> Uc: a sheaf <sup>2</sup> Na, Od: be it a small or a large quantity

<sup>3</sup> i.e. unripe corn (see *Tarama Sözlüğü*, ii, E-İ, s.v. *gök ekin*).

<sup>4</sup> Pb: payment <sup>5</sup> For *lâzim* in this meaning see Schacht-Bergsträsser, 32.

<sup>6</sup> Rd adds: according to the *shari'a* Va, Vb: [And] if damage has been [done]

71 <sup>1</sup> *nacak* may also be a large axe with a hammer at the back. Ma, Ub: knife Kf, etc. add: or saw

<sup>2</sup> La, Pc: similar, it is not <sup>3</sup> Lb, Qa: for each stroke

72 <sup>1</sup> Aa, etc. omit: or mother, or a mother

<sup>2</sup> Fb, etc. add: no [severe corporal] punishment (*siyâset*) [shall be inflicted]

In the margin of Va, Vc: What is called [here] *siyâset* means the amputation of the [offender's] hand in accordance with the *shari'a*.

<sup>3</sup> Ba, Ca: for [every] two strokes

In the margin of Rb, Rc: [Only] if the injunction of the *shari'a* is binding [here]. In the margin of Fl: It is not [lawful] for a son to make [his] father

73 If a person snatches away a muslin [turban]<sup>1</sup> or forcibly [seizes and] carries off [another] person's belongings,<sup>2</sup> [the *cadi*] shall chastise [him] and a fine of one *akçe* shall be collected for each stroke.<sup>3</sup>

74 Furthermore, [a person] who steals a prisoner of war,<sup>1</sup> lures away a male or female slave [from his or her master], lures away<sup>2</sup> a boy<sup>3</sup> and goes away [with him],<sup>4</sup> breaks into a shop, enters a house [with intent to steal?] or patently commits theft<sup>5</sup> several times shall be hanged.<sup>6</sup>

75 [A woman] for whom(?) procuring is patently committed or [a person]<sup>1</sup> who practises procuring shall have his [or her] forehead branded.<sup>2</sup>

76 And if [a person] is [found] dead<sup>1</sup> in the midst of a body of people,<sup>2</sup> they shall be threatened [and] compelled to find the criminal. If they do not find [him], those people shall be arrested and put in prison and [the case] shall be submitted to the Sublime Court. Whatever irrevocable order<sup>3</sup> is issued with regard to them, action shall be taken accordingly.<sup>4</sup>

swear [that he is innocent when he is accused of stealing from his son?]; out of respect [for his father] he must not do [this].

73 <sup>1</sup> Cf. § 67, n. 2.

<sup>2</sup> *esbâb* could be the popular Turkish corruption of Arabic *esvâb*, 'clothes'.

<sup>3</sup> Cf. DPC, § 5 (2).

74 <sup>1</sup> Most probably, a prisoner of war who has been made a slave.

<sup>2</sup> Lb, etc.: seduces

<sup>3</sup> Servant?

<sup>4</sup> Qa, Qb: leaves the town [with him] Na, Nd: hides [him]

<sup>5</sup> Here apparently in this restricted sense and not in the meaning of 'crime'.

<sup>6</sup> Db (Da): And [a person] who steals or lures away a prisoner of war shall be liable to the same punishment as thieves . . . And [as to a person] who commits theft or persons who break into a shop, it is obligatory to hang them. And [a person?] who is known to have committed theft [repeatedly?] . . . shall be hanged.

Cf. DPC, § 5 (1).

75 <sup>1</sup> Fp: a woman

<sup>2</sup> Cf. §§ 30, 57. Cf. also DPC, § 14.

76 <sup>1</sup> Vb: is [found] killed Lc: And if a crime is [committed]

<sup>2</sup> Da, Db add: [and] this is [the result of] wrongdoing

<sup>3</sup> Lit., order which runs like a decree of Providence. Eb, etc.: Imperial

<sup>4</sup> Db: put in prison, and blood-money shall be imposed [on them].

Cf. § 44.

77 If a person is [found] dead<sup>1</sup> within a [town-]quarter or within a village,<sup>2</sup> or if a sudden attack is made on a caravan<sup>3</sup> and injury is [inflicted],<sup>4</sup> or theft or robbery is [committed somewhere] between villages, [the people in the vicinity] shall certainly be compelled to find<sup>5</sup> the criminals.

And if [they are not found<sup>6</sup> but] there are suspects, they shall be examined and compelled to pay compensation.<sup>7</sup> If there are no suspects, the inhabitants of the quarter or the people of the village shall be compelled to pay compensation.<sup>8</sup>

78 If the belongings of a person who [during a journey] makes a halt near<sup>1</sup> a village are stolen by night, the villagers shall certainly be compelled to find the thief. If he is not found, the villagers shall be compelled to pay compensation.<sup>2</sup>

79 And if a guest passes the night in a person's house and during that night something is stolen [in that neighbourhood], the master of the house shall be compelled to find his guest.<sup>1</sup> Whatever the *shari'a* and the customary law (*'örf*) require from him shall be done.

77 <sup>1</sup> Va, Vb: is found killed

<sup>2</sup> Va, Vb, Vc add: or a caravanserai

<sup>3</sup> Fb, etc.: a caravanserai Ia: a shop

<sup>4</sup> Fb, Fd add: on someone's property or person

<sup>5</sup> Ea, etc. add: [and] produce

<sup>6</sup> Thus in Pb, Pf.

<sup>7</sup> In the parallel section (§ 44): to bear the blood-money

<sup>8</sup> Sa, etc.: shall be examined. And whether there are [suspects] or not, [the case] shall be submitted to the Sublime Court and action shall be taken according to whatever order arrives. (Cf. § 76.)

Many E, F, G, I, K MSS. omit subsection (2). Ff, etc. (instead): Thus, if it is impossible to find [the criminals], blood-money (a fine) shall be imposed [on the people in the vicinity].

In the margin of Rb, Rc (referring to this section or to § 78?), and of Lb: The injunction of the *shari'a* is valid [here]. If according to the *shari'a* compensation is [to be paid, those concerned] shall be compelled [to pay]. If it is not, [they shall] not [be compelled to do so]. Furthermore, it is necessary that the theft be an established fact and be proved. If it is not proved, nothing is due on the strength of a claim only.

Cf. § 44; cf. also DPC, § 8. Cf. also Horster, 60 (97).

78 <sup>1</sup> Pe: in the middle of

<sup>2</sup> Da, Db: And if beasts of a caravan halting [somewhere] between villages are stolen [and] it is not known who has done [it, the villagers] shall be threatened [and] compelled to find the thief or [else] compensation shall be imposed [on them].

Cf. § 77, n. 8 (third paragraph).

79 <sup>1</sup> Who may have departed in the meantime.

**80** If a shop in the bazaar is broken into [by] piercing its wall or ceiling and goods are carried away, [the matter] shall be investigated and [the people in the vicinity] shall be compelled to find that<sup>1</sup> thief.<sup>2</sup> And if [the shop] is broken into through its door or window or its lock is forced—if there is a watchman, he shall be compelled to pay compensation;<sup>3</sup> if there is no guard, those who are suspected shall be examined and be compelled to find the thief.

**81** If a person, while proceeding along a road, takes [and carries] away yogurt or bread by force,<sup>1</sup> [the *cadi*] shall<sup>2</sup> chastise [him] and a fine of one *akçe* shall be collected for each stroke.<sup>3</sup>

**82** If something stolen<sup>1</sup> is found in a person's possession or in his house [and he claims that] he bought [it], he shall be compelled to find the person who sold [it to him]. If [the latter] is not found<sup>2</sup> [and] he [himself] is a suspicious [character] he shall be tortured,<sup>3</sup> unless [the seller] is found, brought and handed over to the *cadi*, or [the holder of the stolen goods] proves that he found [them] in a desolate area.

But when torture [is applied], care shall be taken that [the suspect] does not perish before [his guilt] is proved. If he dies during torture, there is no blood [to be avenged].<sup>4</sup>

But if he proves that he found [the stolen goods] in a desolate area, he shall be released.<sup>5</sup>

**83** If something is lost<sup>1</sup> in a caravanserai, [the people] who are in the caravanserai shall be compelled to find [the thief].<sup>2</sup>

**80** <sup>1</sup> Lit., its.

<sup>2</sup> Or, that thief shall be examined and compelled to produce [the stolen goods].

<sup>3</sup> This implies that in that case no measures are to be taken to find the thief.

**81** <sup>1</sup> Pb (instead): without [paying] money [for it] Ph adds: from a villager

<sup>2</sup> Aa adds: make [him] pay [damages and]

<sup>3</sup> Ba, Ca: for [every] two strokes Fa, Fe add: From infidels half the fine [imposed] on Muslims shall be collected, as mentioned before.

**82** <sup>1</sup> Da, Db: If a stolen beast

<sup>2</sup> Da, Db, Fa: If he does not find [the seller]

<sup>3</sup> Db (Da): he is [deemed to be] the thief (i.e. without having confessed under torture)

<sup>4</sup> Ea, etc.: A suit at law in regard to him (i.e. against those who caused his death) shall not be heard.

<sup>5</sup> The section is poorly constructed as a result of later additions.

Cf. DLF, § 8.

**83** <sup>1</sup> Oa: stolen

<sup>2</sup> Kf adds: unless [the thief] is found and that person (the thief) is handed over to the *cadi*.

**84** Furthermore, the keepers of caravanserais shall be trustworthy and reliable persons. Every morning they shall make an inspection and scrutinize and fully ascertain whether any person's belongings<sup>1</sup> have been stolen [during the night]. [Only] thereafter shall they open its gate and give [the travellers] permission [to leave].

If, after they have followed this [rule],<sup>2</sup> any person claims that his belongings<sup>1</sup> have disappeared, no action shall be taken.<sup>3</sup> If the keeper of the caravanserai gives [the travellers] permission [to leave] without [first] making an inspection,<sup>4</sup> he shall be compelled to pay compensation for the value of [any] belongings that have disappeared.<sup>5</sup>

**85** If [the wall of] a caravanserai is pierced from outside and belongings [of travellers] are carried away, [any person] outside who is thought to be guilty and is a suspicious [character] shall be arrested and examined.<sup>1</sup> [Thus] the thief shall be found and be compelled to produce the provisions and belongings he has carried away; they shall be handed over to their owner in accordance with the *shari'a*.<sup>2</sup>

**86** If it is suspected that people inside [the caravanserai] combined and conspired with a thief outside, [any person] among those inside who is a suspicious [character] shall be arrested, examined in accordance with the *shari'a* and the customary law and<sup>1</sup> compelled to find the thief. If he is not found [and] the caravanserai is [located] within a quarter [of a town], whatever rule is [applicable]

**84** <sup>1</sup> Ea, Fa: provisions and belongings

<sup>2</sup> Ea, Fa: after they have made inquiries and ascertained that nothing has been stolen or seized

<sup>3</sup> Ea, Fa, Ja: no hearing shall be given [to his claim]

<sup>4</sup> Ea, etc. add: [and] that night some [belongings] of people who stay in the caravanserai have been stolen (it being certain that they were stolen)

<sup>5</sup> Ea, etc. add: because he acted with gross negligence

In the margin of Rb, Rc (referring to § 85?; see its text, notes 2 and 4, and its trans., n. 1): After it has been proved in accordance with the *shari'a* that [the belongings] have [indeed] disappeared

**85** <sup>1</sup> Lc (here) and Lb (after 'carried away' in the next sentence) add the same clause as is added in the margin of Rb, Rc to § 84.

<sup>2</sup> Db (Da): If a caravan rests in a caravanserai and [its wall] is pierced and something is carried away, the keeper of the caravanserai shall be compelled to find [the thief].

**86** <sup>1</sup> Fa, etc. add: by threats

in a [case of] theft [committed] within a quarter [of a town] shall be applied also [in regard to the theft] in the caravanserai.<sup>2</sup>

87 If a criminal is a fief-holder (*sipāhi*),<sup>1</sup> he shall be put in prison and [the case] shall be submitted to the Sublime Court.<sup>2</sup>

88 If according to the customary law<sup>1</sup> it is proved and evident that a person has committed a crime, he who serves as *cadi*<sup>2</sup> shall give a certificate (*hüccet*) [to that effect] to the executive officers (*ehl-i 'örf*). In accordance with that certificate, the executive officers shall hang the person who incurs hanging and cut off a limb of the person who incurs the cutting off of a limb. And the *cadi* shall not prevent this<sup>3</sup> and shall not cause the punishment to be postponed<sup>4</sup> [but] let the punishment be<sup>5</sup> carried out at the place where the crime was [committed].<sup>6</sup>

89 If a criminal confesses under torture and there are also signs indicating [his guilt], his confession shall be valid [and capital or severe corporal] punishment shall be inflicted on him according to his crime.<sup>1</sup>

<sup>2</sup> Ja: If . . . the caravanserai is [located] within a [town-]quarter, the inhabitants of the quarter shall be compelled to find the thief.

87 <sup>1</sup> Ea, Fa add: [and] he incurs [capital or severe corporal] punishment

<sup>2</sup> Da, Db: . . . (*sipāhi*), his punishment shall be like that of [any other] criminal.

Cf. § 123, n. 8.

88 <sup>1</sup> As opposed to the *shari'a*. For proof according to the customary law see § 89.

<sup>2</sup> Fb, Ke: . . . a crime, he shall be brought before the *cadi*; the *cadi* shall hear [the case], and the *cadi* shall hand over the criminal to the executive officers and . . .

<sup>3</sup> Fb (Ke): In this matter, the *cadis* shall not [act] contrary to the old *kānūn* [by] preventing the [infliction of the] punishment that is due according to the customary law

<sup>4</sup> Nd: and the *subaşı* (i.e. one of the principal executive officers) shall not postpone the punishment

<sup>5</sup> Or, cause the punishment to be.

<sup>6</sup> Db (Da): If according to the customary law it is evident that a person has committed a crime, (Da: the *cadi*) shall take no further part [in the proceedings]. You (i.e. the *sancakbeği* to whom the *kānūnnāme* is sent) shall inflict [capital or severe corporal] punishment on every criminal according to his crime [and] in conformity with this *kānūnnāme* (*siyāsetnāme*).

Cf. Barkan, 5, § 29; 27, § 21; 70-1, § 44.

89 <sup>1</sup> Cf. (in a different matter) Da, Db: In [cases of] a person's confessing under torture, the *cadi* shall not interfere; [the criminal] shall be compelled to produce what he confesses [to having stolen] or pay [compensation].

**90** If a criminal<sup>1</sup> says of [another] person that he is his accomplice—if that person is a scapegrace and<sup>2</sup> suspicious [character], he shall be tortured;<sup>3</sup> if he is not, no action shall be taken [against him merely]<sup>4</sup> on the strength of the criminal's word.<sup>5</sup>

**91** If a person kills his father or his mother or another of his relatives,<sup>1</sup> whatever the *shari'a* orders shall be done.

**92** If a person<sup>1</sup> sets fire to another's house or shop<sup>2</sup> and small items of property are burnt in the house [or] shop, [and] if [this] is proved<sup>3</sup> in accordance with the *shari'a* and a person is suspected [of this act], [the people in the vicinity?] shall be compelled by threats to find the criminal.

If he commits [the offence] intentionally, he shall be hanged.<sup>4</sup>

**93** And if [this offence]<sup>1</sup> is [committed] in towns, the watchmen and guards shall be examined in accordance with a strict order<sup>2</sup> [of the Sultan]. If [the offence] is committed while they are inattentive, the persons guarding that place<sup>3</sup> shall henceforth not be employed in that function and, by way of administrative punishment, shall be expelled from the town.

**90** <sup>1</sup> Fa, etc. add: [who] is arrested, [whose] crime is proved and [who] incurs [capital or severe corporal] punishment

<sup>2</sup> Fb: that person was there at that time (was present when the crime was committed) and is a

<sup>3</sup> In the margin of Rb, Rc: [This] must [first] be submitted [to the Sultan].

<sup>4</sup> Fa, etc.: he shall not be tortured merely

<sup>5</sup> Fh, etc. add: This matter was regulated in this form by a noble firman of H.M. the Sultan, Asylum of the World, on 19 Zū 'l-Ķa'de of the year 910 (23 April 1505) (other MSS.: of the year 900, 915, 927).

In the margin of Va, etc.: Subsequent to that date, a firman to the very same effect in regard to this punishment is known to have arrived dated the first ten days of Şa'bān 985 (975) (October 1577 or January–February 1568).

**91** <sup>1</sup> Da (Db): his mother or brother or sister or son or daughter

**92** <sup>1</sup> Fd adds: in a fit of rage (i.e. maliciously)

<sup>2</sup> F MSS. (Kf), etc.: to houses (Db: shops) (Kf: or haystacks or hay-barns) in towns or villages (Fb: or uninhabited places)

<sup>3</sup> Lc, etc.: and if it is not proved . . . [who started the fire]

<sup>4</sup> Ta adds: If [this offence] is [committed] by mistake, he shall be expelled from the country.

Cf. DPC, § 36 (1) (?).

**93** <sup>1</sup> Arson.

<sup>2</sup> For the different meanings of *yasak* see Anhegger-İnalçık, Index, and Barkan, Index, s.v. Cf. also Beldiceanu, i, pp. 41–2.

<sup>3</sup> Va, Vb: [town-]quarter

94 If a person finds [stray]<sup>1</sup> animals in a desolate area, be they unbroken mares, horses, sheep or cattle, or finds an object of some value [there] and he conceals [the find] and does not cause [it] to be announced with the co-operation of the *cadi*<sup>2</sup>—if he is rich 40<sup>3</sup> *akçe* shall be collected as a fine, if he is in average circumstances, 20<sup>4</sup> *akçe*, and if he is poor, 10<sup>5</sup> *akçe*.<sup>6</sup>

95 And lepers<sup>1</sup> shall be prohibited [from living among the people];<sup>2</sup> they shall be expelled from the country.<sup>3</sup>

96 Some gipsies are not settled in small towns or villages and do not go peaceably about [their] business, but arm themselves, mount on horseback and roam the villages and countryside, oppressing and wronging the peasants. These [offenders] have since ancient times been called *يكي يكي كيكار*.<sup>1</sup> As an old *kānūn* prescribes that such mischief-makers shall be expelled and driven from the country, it has been commanded [by the Sultan] that the said people, too, be expelled from the country.

97<sup>1</sup> If [a person] causes it to be announced that he has found [stray] animals or provisions in a desolate area—if their owner is not found, they shall be handed over to the *cadi*<sup>2</sup> for safe-keeping.<sup>3</sup>

94 <sup>1</sup> Thus in Ma.

<sup>2</sup> i.e. through a public crier or in a similar way.

<sup>3</sup> Aa, etc.: 30 Ba, Ca: 15 <sup>4</sup> Ba, Ca: 10 <sup>5</sup> Ba, Ca: 5

<sup>6</sup> Continuation: § 97.

Cf. DPC, § 36 (3).

95 <sup>1</sup> Lit., leprous diseases. The meaning of the variants is not clear. Could that in Da, etc. be a corruption of *beñeklileri*, 'those marked with spots' (i.e. leprous)? Or should we read *yeñi gēñleri*, 'those who wear wide sleeves', and what would this mean? See also § 96. The copyists of Ff, Fg, where this section follows § 92, seem to have understood 'those who join [the incendiary] as accomplices'. The explanatory word in Fx means 'pander'.

<sup>2</sup> Or (perhaps), And concerning lepers the [Sultan's] order shall be carried out. (Cf. § 93, n. 2.)

<sup>3</sup> Db: people]; in whatever *sancak* they are found, the *sancakbeği* and his *subaşı* shall certainly expel and drive [them] from their country. [As to] those [officials] who do not expel [them](?), I (the Sultan) shall take away their *tımārs* and they will incur My rebuke. They shall not act negligently in this matter.

Cf. also the *ih̄tisāb k̄ānūnu*, in Nūrī, 418: And lepers shall not be allowed to walk about inside a town. in Ba: The lepers shall be expelled from the town; they shall not be allowed [to stay] in the town.

Cf. also Evliyā Çelebi, i, p. 475.

96 <sup>1</sup> See § 95, n. 1.

97 <sup>1</sup> Continuation to § 94.

<sup>2</sup> Ra, etc.: to the official in charge of stray animals and fugitive slaves (*yavacı*)

<sup>3</sup> Aa, etc.: to the *cadi* and the *cadi* shall have [somebody (the finder?)] keep [them] in safe custody

If [the finder] causes [them] to be announced and afterwards they are lost,<sup>4</sup> no fine shall be collected.<sup>5</sup>

**98** Furthermore, a person who bears false testimony or gives a forged legal certificate (*hüccet*) or makes active use of such shall be severely punished.<sup>1</sup> And a false witness shall be chastised and exposed [to public scorn]. And a person who patently commits a fraudulent and deceitful act shall be severely punished and have his forehead branded.<sup>2</sup>

And a person who forges a decree (*hüküm*) or legal certificate shall, if he does this habitually, have his hand cut off;<sup>3</sup> if he does not, he shall be severely punished.<sup>4</sup>

**99** If a counterfeiter's instruments<sup>1</sup> are found in a person's possession,<sup>2</sup> he shall be severely punished.<sup>3</sup> If his counterfeiting is proved and made evident,<sup>4</sup> [the case] shall be submitted to the Sublime Court.<sup>5</sup>

**100** Furthermore, a person who marries a woman before her waiting period ('*iddet*)<sup>1</sup> has come to an end shall be severely punished.<sup>2</sup>

<sup>4</sup> *yitirse* or *yitirse* and not, as Kraelitz read, *yeterse*, 'kommt'.

<sup>5</sup> Aa, Ca, etc. add: Whatever the injunction of the *shari'a* is shall be [carried out]. Cf. Barkan, Index, s.vv. *yava*, *yavacı*, *müddet-i 'örfiye*.

Cf. also DPC, § 36 (3).

**98** <sup>1</sup> Cf. Ba (*ihtisab kânunu*): shall be duly punished by the market inspector (*muhtesib*) provided [this] is proved before the *cađi*.

<sup>2</sup> In the margin of Lb, Rb, Rc: The injunction of the *shari'a* is valid [here]; there is no *kânun* in this matter. Cf. DPC, § 38.

<sup>3</sup> In the margin of Lb, Rb, Rc: the same note again as is translated in n. 2; then follows in Lb: [This] must [first] be submitted [to the Sultan]. As long as no order has been [issued by him, this penalty] shall not be inflicted.

<sup>4</sup> Ke marg., etc. add: [and] a fine shall be collected according to his [financial] circumstances

**99** <sup>1</sup> So in Ra, Rb, Ke marg. Sa: counterfeit coins

<sup>2</sup> Ra, etc. add: his property shall be confiscated and . . .

<sup>3</sup> Ke marg. adds: [and] a fine shall be collected from him according to his [financial] circumstances Ra adds: [and] a fine of one *akçe* shall be collected for each stroke

<sup>4</sup> Oa, Ob add: by finding [counterfeit] coins in his possession, and it is also proved that he made them Va, Vb add: If the person whose counterfeiting has been proved is the holder of a *dırlık* (i.e. an income provided by the State, such as from a fief, salary, grant, etc.)

<sup>5</sup> Cf. Anhegger-İnalçık and Beldiceanu, i, nos. 2, 5, 8, 9, 10.

**100** <sup>1</sup> The period a wife has to wait after the dissolution of her former marriage before she is allowed to remarry. For its length see Schacht-Bergsträsser, 86; Juynboll, 222.

<sup>2</sup> Rc, etc. add: and a fine of one *akçe* shall be collected for each stroke. And

**101** Furthermore, in every [town-]quarter and in every village, those who do not perform the ritual prayers shall be examined and<sup>1</sup> severely chastised; and a fine of one *akçe* shall be collected for [every] two strokes.<sup>2</sup>

**102** And [attendance at] the Friday prayer service is compulsory. [A person] who neglects [it]<sup>1</sup> or intentionally violates his fast [in the month of Ramazān] shall be severely punished; after he has been chastised, a fine of one *akçe* shall be collected for [every] two strokes.<sup>2</sup>

**103** And [persons] who make [loan] transactions in accordance with the *shari'a*<sup>1</sup> shall not be allowed [to take] more than eleven<sup>2</sup> for [every] ten [pieces of money lent].<sup>3</sup>

the *imām* of the man who contracted the marriage (the *imām* who conducted the marriage ceremony) shall be found and interrogated. If he has done [it], he too shall be punished in this way. And those who were his accomplices in this act shall be punished and a fine of one *akçe* shall be collected for [every] two strokes. Ra (Pe): And a *dānişmend* (*imām*) who conducts a false marriage ceremony of a woman before her waiting period has come to an end shall, by way of punishment, have his beard cut off (the *cadi* shall severely punish, chastise and expose him [to public scorn]).

**101** <sup>1</sup> Kf adds: if, after being warned, they [still] do not perform [them], they shall be

<sup>2</sup> Cf. *ihtisāb kânūnu*, in Ka, Pb: . . . those who do not perform the ritual prayers shall be arrested, exposed [to public scorn] and severely punished. in Ba: . . . shall be examined by the *imām* of [their] quarter and be punished.

In the margin of Rb, Rc (or referring to § 102?): The injunction of the *shari'a* is valid [here]; there is no *kânūn* in this matter.

Cf. Lugal-Erzi, 94-5 (decree of 1476 in the same matter).

For an order of the Sultan Maḥmūd II issued in 1837 requiring all Muslims to attend the prayers in the mosques and threatening those who do not with the bastinado, see H. Southgate, *Narration of a Tour through Armenia*, etc., New York, 1840, i. 168-9.

**102** <sup>1</sup> Va, Vb add: without an excuse

<sup>2</sup> Rd, Sa: for each stroke

See also § 101, n. 2. Cf. Ka (Ba) (*ihtisāb kânūnu*): And persons who do not observe the fast in the month of Ramazān shall be punished in accordance with the *shari'a* (duly) (and be exposed [to public scorn]).

**103** <sup>1</sup> Which theoretically prohibits the taking of interest. For the 'legal' transaction see below, n. 3.

<sup>2</sup> Ph, Qc: eleven and a half The same in sixteenth-century firmans (and *fetvās*) (see Ed, f. 98a; Eb, f. 142a-b; Horster, 45 (84)). Cf. Ba (*ihtisāb kânūnu*): twelve.

<sup>3</sup> i.e. more than ten per cent interest. Ph adds: If money amounting to more than eleven and a half [for every ten pieces of money lent] is taken as interest, [the borrowers] shall be allowed to recover [the excess]. R, V MSS., etc.: And no person shall by any means be allowed to lend money at interest without

**104** Furthermore, a person who informs against an [innocent] Muslim, [thereby] causing him to lose [part of] his property,<sup>1</sup> shall be severely punished and compelled to pay compensation.<sup>2</sup>

**105** And if [a person] enters [another's] garden or kitchen-garden<sup>1</sup> and carries away something<sup>2</sup> from there, [the *cadi*] shall chastise [him] and a fine of one *akçe* shall be collected for [every] two strokes.<sup>3</sup>

**106** And if a person commits a crime [and then] goes away and is not found, his connections<sup>1</sup> shall be ordered to find [and produce him]. As long as they do not find [and produce him]<sup>2</sup> they shall not be let off.<sup>3</sup>

**107** If a person is enjoined to find [and produce] another person,<sup>1</sup> the *kānūn* is that he shall search an area of seven *kādīlīks*.<sup>2</sup> If he has truly searched and [then] declares that he has been unable to find [him], provided there is no likelihood of [his] lying, he shall be absolved and released<sup>3</sup> [from his obligation].<sup>4</sup>

**108** If a person's horses or mules<sup>1</sup> or oxen enter [standing] corn,<sup>2</sup> he shall be given five strokes and be fined five *akçe* for each animal.

making a [loan] transaction (V MSS. : [property] transfer) in accordance with the *shari'a*.

(On this common way of evading the prohibition on taking interest by a fictitious double sale of the same property, the so-called *bay' al-'ina*, see Juynboll, 274-5; *EI*<sup>1</sup>, art. 'Ribā' (Schacht).)

Cf. also Nūri, 418 (maximum profits).

**104** <sup>1</sup> As a result of the authorities' exacting a fine, etc. from him.

<sup>2</sup> In the margin of Rb, Rc (or referring to § 107?): It is prohibited to inquire into the cause.

**105** <sup>1</sup> Ra: vineyard or garden (orchard)

<sup>2</sup> Ra, Rb, Rc: [some] fruit <sup>3</sup> Cf. DPC, § 34 (1).

**106** <sup>1</sup> Ka adds: [i.e.] those who are bound to find [and produce him]

<sup>2</sup> Reading *bulmayınca* (or *buldurınca*). <sup>3</sup> Cf. § 121.

**107** <sup>1</sup> Pb, etc. add: because [he stands] surety [for his person] (i.e. he is his *kefil bi'n-nefs*) or for another reason

<sup>2</sup> A *kādīlīk* (or *kaḏā*) is the district in which a *cadi* exercises his functions.

<sup>3</sup> Pb (Pe): he shall produce a certificate [to that effect] from each *cadi* so that he may be released

<sup>4</sup> In the margin of Lb, etc.: [Only] if according to the *shari'a* it is incumbent [on him] to find [the other person] shall he be compelled to find [him]; there is no *kānūn* in this matter.

See also § 104, n. 2 (in conjunction with n. 1 to this section).

**108** <sup>1</sup> Aa, Ab: mares Ba, Ca: unbroken mares Ff adds: or donkeys

<sup>2</sup> Cf. Barkan, 290, § 14: a field, vineyard, or garden (see also *ibid.*, 339, § 4).  
Ca adds: [and] cause damage Ub adds: if [this] is done intentionally [by the herdsman]

If cows enter, he shall be given<sup>3</sup> four strokes and be fined four *akçe* [for each animal].<sup>4</sup> If calves or sucking calves<sup>5</sup> enter, he shall be given<sup>3</sup> one stroke and be fined one *akçe* [for each animal]. If sheep enter, he shall be given<sup>3</sup> one stroke and be fined one *akçe* for [every] two sheep.<sup>6</sup>

But first<sup>7</sup> [this] shall be proclaimed<sup>8</sup> in the market-places and [the people thereby] warned.<sup>9</sup> Afterwards<sup>10</sup> action shall be taken<sup>11</sup> according to the [regulation] mentioned above.<sup>12</sup>

**109** It is not [lawful] to kill an animal that enters [standing] corn or to cut off its tail or ears. Action shall be taken exactly as stated above<sup>1</sup> and, in addition, the owner of the animal shall be compelled to pay compensation for the damage done [to the corn].<sup>2</sup>

<sup>3</sup> Lit., [the *cadi*] shall give [him].      <sup>4</sup> Aa, Fa omit: If cows . . . animal]

<sup>5</sup> Aa (Ab), etc.: If sucking calves (or sheep)

<sup>6</sup> Ab omits: If sheep . . . two sheep      Ab, Ca, etc. add: If pigs enter, he shall be fined two *akçe* and be given two strokes for each pig. (For *karacanavar* see Zübeyr-Refet, s.v.)

<sup>7</sup> Fd, etc.: when the grain is about to ripen

<sup>8</sup> Ke marg. adds: by order of the *cadis*

<sup>9</sup> Fd, etc. add: to watch their animals

<sup>10</sup> Aa (Ab), etc. add: if [the people] do not heed [the warning] and do not look after their animals [with the result] that they are found in the [standing] corn and cause damage to the [standing] corn

<sup>11</sup> Aa (Ab), etc.: [their owner] shall be fined and given strokes

<sup>12</sup> According to Ab, Ba, Ca, the same fines are imposed on non-Muslims.

In many provincial *kânünnâmes*, this matter is treated under the heading of *cerâyim-i hayvânât* or *resm-i ('âdet-i) deştbâni (deştbânlık)* (lit., 'field watching', Turkish *koruculuk*) or, in certain European *sancaks* (e.g. Bosnia, Srem), *resm-i polačina* (from Serbo-Croatian *poljačina, poljarina*). While some *kânünnâmes* (Barkan, 46, § 2; 49, § 8; 310, § 20) include regulations similar to the text above, others (*ibid.*, 69, § 37; 134, § 18; 176, § 15; 199, § 13; etc.) prescribe five strokes and a fine of five *akçe* whatever animals enter the corn, and a few (Kd, f. 103b; Tapu ve Kadastro Genel Müdürlüğü, Ankara, Kuyudu Kadime Defteri 62, f. 2b; see also Barkan, 158, § 11; 181, § 10) impose a fine (of five *akçe*) for damage done by horses, mules or cattle but not for that done by sheep or goats (except in the case of excessive damage). According to Barkan, 290, § 14, a fine of one *akçe* is to be paid for every three sheep or each pig.

A fixed *resm-i deştbâni* (such as two, four, or five *akçe* per *hâne*, i.e. family), irrespective of whether any damage has actually been caused, 'shall no more be collected' (Barkan, 69, § 37; 134, § 18; etc.; but see *ibid.*, 158, § 11; 290, § 14; 397, § 11; Tuncer, *Toprak Hukuku*, 224).

Cf. also DPC, § 33. Cf. also Anhegger-İnalçık, p. 73 (with the better reading in Beldiceanu, i, p. 145, n. 6).

**109** <sup>1</sup> In §108. Aa, Ab, etc. omit: It is . . . above

<sup>2</sup> Aa (Ab, Fa) add: He shall be threatened [so that the people] will look after their animals and not let [them] cause damage to the corn [so that] the grain and [standing] corn of the Muslims and infidels will not be ruined (end of section).

If [the owner of the corn] kills or strikes and mutilates the animal or cuts into some part of its body<sup>3</sup> with the excuse that he warned [its owner but the latter] did not watch over it, he shall be compelled to pay as compensation whatever is required by the *shari'a*, be it its [full] value or [the equivalent of] its decrease [in value].<sup>4</sup> Furthermore,<sup>5</sup> the owner of the animal shall be compelled to pay compensation for the damage done to the corn.<sup>6</sup>

**110** If corn is [standing] in the vicinity of a village or between villages or on the way to a watering-place for animals,<sup>1</sup> the owner of the corn shall be compelled to build a fence of brushwood<sup>2</sup> [round it].<sup>3</sup> If he does not do [so, any ensuing] damage will be his own [fault, and] no guilt will attach to the owner of the animals<sup>4</sup> unless they enter [the corn] at night or are driven into [it] intentionally.<sup>5</sup>

**111** Furthermore, the villagers shall not interfere with and trespass on one another's watering-places and pastures. Those who do shall be punished and restrained.

In this case, the *kānūn* is as follows: The area set apart as the commons of towns and small towns extends to a mile and a half, that of villages to one mile.<sup>1</sup> [Here] their animals and sucking calves may walk about [freely] and [the people] may procure and make

<sup>3</sup> Lb, etc. add: [while the animal is] right in the corn

<sup>4</sup> Lb, etc.: . . . over it, no claim shall (can) be raised [against the owner of the corn]

<sup>5</sup> i.e. on the other hand.

<sup>6</sup> Ra: [in value]. The owner of the corn shall [also] have to bear the damage [done to his corn].

Ra (Rd) then add: If [the owner of the corn] strikes and wounds [the animal] with a knife or another tool, he shall, if no [payment of compensation for its] decrease in value is required by the *shari'a*, be chastised and a fine of one *akçe* shall be collected for each stroke.

Cf. also Barkan, 310, § 20; 344, § 3. Cf. also DPC, § 33.

**110** <sup>1</sup> Aa, Fa, Fdd add: that is, a place through which animals pass

<sup>2</sup> For *avlağı* see *Tarama Sözlüğü*, ii, iii, iv, A-B; *Derleme Dergisi*, i; Zübeyr-Refet, s.v.

<sup>3</sup> Ib, etc. add: so that animals shall (can) not enter it; it shall be strong

<sup>4</sup> Lb: [and] the owner of the animals shall not be compelled to suffer [any] loss [by paying compensation] Cf. Barkan, 49, § 8 (adding): and the owner of the animal shall not be chastised.

<sup>5</sup> Aa, etc. omit: If he does not . . . intentionally.

Cf. Barkan, 46, § 2; 49, § 8; 310, § 21.

**111** <sup>1</sup> In the margin of Rb, Rc: The area in which since ancient times animals have been walking about is [considered] pasture-land; it has no [generally fixed] boundaries. There is no *kānūn* [in this matter].

use of threshing-floors. [This area] shall not be enclosed [for private use] and shall not be cultivated.

As to [the term] mile (*mīl*), this means the distance at which one cannot distinguish a man from a woman.<sup>2</sup> If any person cultivates [land]<sup>3</sup> beyond that area with the knowledge of the feudal lord (*sipāhi*), it becomes his and shall not be taken away from him.<sup>4</sup>

**112** If a person strikes and kills another's hen, dog, or other animal, he shall be compelled to pay compensation; [the *cadi*] shall chastise [him, but] no fine shall be collected.<sup>1</sup>

**113** Furthermore, disreputable men shall be prohibited from coming to places where women and boys go [to] fetch water or wash clothes. Those who do not submit to this prohibition shall be chastised and a fine of one *akçe* shall be collected for [every] two strokes.<sup>1</sup>

And [people] shall not gather and sit down in front of a public bath or on the way to a public bath.<sup>2</sup> And they shall not relieve themselves on a cemetery or a road. Those who after being warned do not submit to this prohibition shall be severely punished.<sup>3</sup>

**114** Some dealers in female slaves pay somewhat higher rent<sup>1</sup> [for lodging] at caravanserais, bring in dancing-girls and other female slaves and draw [them] to drinking-parties attended by the people [who stay there; as a result] debaucheries and similar lawless acts are committed. And it sometimes happens that a person [lodging] at the caravanserai obtains one [of these] female slaves by a sham(?) purchase; until that person leaves the caravanserai that female slave stays with him, and when he is about to leave, the slave-dealer buys [her] back

<sup>2</sup> According to a *kānūn* in the agrarian law (Dil ve Tarih-Coğrafya Fakültesi Libr., Ankara, İsmail Saib yazmaları, I, 53, f. 10a), a *mīl* is one-third of a *fersah* or 4,000 paces. The Islamic *mīl* was approximately two km. (see Hinz, p. 63; *ET*<sup>2</sup>, art. 'Farsakh' (Hinz)). <sup>3</sup> Pb, etc.: brings into cultivation [waste land]

<sup>4</sup> Cf. Barkan, 3, § 16; 78, § 9; 79, § 13; etc. (see Index, s.v. *Örü*); *Glasnik*, xxviii (1916), 438.

**112** <sup>1</sup> Ra adds: Another [version] says: [and] a fine shall be collected.

Cf. § 64, n. 1.

**113** <sup>1</sup> In the margin of Lb, etc.: If chastisement is required according to the *shari'a*, they shall be chastised; if not, there is (shall be) no chastisement and no fine [shall be collected].

<sup>2</sup> Which is frequented by women and boys. Ta: or near a spring

<sup>3</sup> In the margin of Lb, etc.: The injunction of the *shari'a* is valid [here]; there is no *kānūn* in this matter.

**114** <sup>1</sup> For *kuşt* in this meaning see *Derleme Dergisi*, iv, s.v. *kıstı*.

for a few *akçe* less than that [which he got for her]. To prohibit such acts, firmans have repeatedly been issued.

**115** Furthermore, the tax-farmers (*'ummāl*)<sup>1</sup> shall not be allowed to interfere<sup>2</sup> with [any person] and shall not<sup>3</sup> collect a fine from him merely on [the allegation of] his [having committed] misdeeds, without anything being proved against him in accordance with the *shari'a*. If they do collect [a fine], the *cadi* shall again<sup>4</sup> give judgment and let [him] recover [the fine he paid to them].

**116** The executive officers (*ehl-i 'örf*) shall not imprison and hurt any person unless [he is convicted] by the *cadi*.<sup>1</sup>

And [the executive officers] shall collect a fine according to the guilt of every [offender] and shall not collect more [than is due]. And if they do, the *cadi* shall give judgment with respect to the excess of the fine and let [the offender] recover [it].

**117** If a criminal flees [and then] comes and mingles with<sup>1</sup> members of the *yaya* or *müsellem* corps, the nomads (*yürük*), [the Sultan's] falconers (*doğancı*)<sup>2</sup> or [peasants on]<sup>3</sup> waqf [land] or freehold property,<sup>4</sup> they shall be compelled to find the criminal [and] shall capture [him]. And if they do not hand over the criminal, they shall bear his whole fine<sup>5</sup> and be compelled to pay [compensation for] what the criminal took away.

If the criminal belongs to one of these [groups], [capital or

**115** <sup>1</sup> For the role of the *'āmils* in the administration of criminal justice see below, pp. 242, 295-6.

Ra, etc.: the executive officers Pa (Pb): the tax-farmers and fief-holders  
O MSS.: the *sancakbeği's* man (men), *subay*(s), local *subay*s, fief-holders, tax-farmers and others

<sup>2</sup> Ob, Pb, etc.: shall not interfere La: shall not let any person interfere

<sup>3</sup> Ob, Oc, Pb: shall not let [any person]

<sup>4</sup> Nevertheless?

**116** <sup>1</sup> Cf. Barkan, 5, §30; 27, § 21; 71, § 49; 200, § 21.

**117** <sup>1</sup> i.e. enters the land of.

<sup>2</sup> Ib adds: the *voynuks* For them and the other military corps mentioned here see Gibb-Bowen, i. 53-5, 190-1, 248-52 and the sources quoted there. Their holdings are contrasted here with the lands of the ordinary fief-holders (*sipāhi*) and the Imperial domains.

<sup>3</sup> Thus in Fa, Fb, etc.

<sup>4</sup> Ta adds: and hides [there]

<sup>5</sup> *garāmet* may also refer to the blood-money due.

severe corporal] punishment shall be [inflicted] on him as [on] other people.<sup>6</sup> Thus shall they know.<sup>7</sup>

118 And if [a person] commits theft or [another] crime in one *sancak* and [then] flees and comes to another *sancak*, a man shall be sent [there] and [the criminal] fetched. Or, if he flees from the people of a [certain] *sancak* and comes to another *sancak*, he shall be punished in the *sancak* where he committed the crime.<sup>1</sup>

119 And if [a person] commits a crime and [then] goes away—if a fine is collected from him at the place to which he has proceeded, no fine shall be collected from him once more when he comes [back] to his [former] place [of residence]; and if no fine was collected [there], the fine shall be collected [here] in accordance with what is proved against him.<sup>1</sup>

120 And if a person goes from one place, comes to another place and commits an offence [there]<sup>1</sup>—if a fine was collected at the place where he committed the offence, no fine shall be collected once more when he comes back to his former place [of residence]; if no [fine] was collected at [his] former place,<sup>2</sup> it shall be collected [here].

## Chapter XV

### ON SUSPECTS AND THEIR CONNECTIONS<sup>1</sup>

121 If a person is accused of an offence and he is not found, his son—if he has a son—or his brother or his relatives or his companions or those standing surety [for his person] or the people of his village or the community of his quarter [of the town] or, if

<sup>6</sup> Some F MSS.: criminals

<sup>7</sup> The beginning of the concluding formula of a decree of the Sultan. The word 'they' refers to its addressees. This is the last section of the criminal code in many texts.

118 <sup>1</sup> Is the second sentence another version of the first?

But further on in the same text: In whatever *sancak* a criminal is [found, capital or severe corporal] punishment shall be [inflicted] on him in that place (there, or where he committed the crime?).

119 <sup>1</sup> Or (perhaps), in accordance with what is incumbent on him.

120 <sup>1</sup> Lit., comes and commits an offence at another place.

<sup>2</sup> i.e. the place where he committed the crime.

Heading <sup>1</sup> See § 106.

he stays at [another] person's house, that person shall be enjoined to find<sup>1</sup> [him] and hand [him] over to those who seek him.<sup>2</sup>

122 Furthermore, if in some place guards are [made responsible for] watching a dangerous pass (*derbend*)<sup>1</sup> and they are remiss and negligent in [carrying out] their guard [duty] and do not find [the robbers] who took away the belongings of the Muslims<sup>2</sup> lost [*sic*] on that road, they shall be compelled to pay compensation, because it is incumbent upon them to guard the pass and keep it under observation.<sup>3</sup>

123 Furthermore, if those who on the strength of an Imperial *berât*<sup>1</sup> hold the office and receive the salary of a *cadi*, *müderriis*,<sup>2</sup> *mütevelli*,<sup>3</sup> *nâzir*,<sup>4</sup> *seyh*,<sup>5</sup> *hañib*,<sup>6</sup> *imâm*,<sup>7</sup> and the like become liable to chastisement, they shall not be chastised. For such people it is chastisement [enough] if the *cadi* just tells [them] in harsh words never to commit such [an act] again.

And if they [deserve] to be imprisoned, they shall, if [someone] stands surety [for their person], not be imprisoned and [the matter] shall be submitted and officially notified [by the *cadi*] to My Sublime Court. If, however, [their offence] is a grievous outrage [and] there is a likelihood of [their resorting to] flight and, furthermore, there is nobody standing surety [for them], they shall be imprisoned.<sup>8</sup>

121 <sup>1</sup> Lit., . . . enjoined and shall be compelled to find.

<sup>2</sup> In the margin of Lb, etc.: [Neither] his companions nor the people of [his] village are enjoined [to find him]. It is [the obligation] of the person who stands surety [for him]; if there is no one standing surety [for him], it is [the obligation] of his relatives.

Cf. § 106.

122 <sup>1</sup> On the *derbend* system, see Uzunçarşılı, in *Bellekten*, xv (1951), 396-7; idem, *Kapukulu*, i. 109-11 [and now Cengiz Orhonlu, *Osmanlı İmparatorluğunda Derbend Teşkilâtı*, Istanbul, 1967]. <sup>2</sup> Ib: travellers

<sup>3</sup> In the margin of Rb, etc.: The payment of compensation is [a matter prescribed] by the *shari'a*. If compensation is not [required] by the *shari'a*, there is no (liability) [at all].

123 <sup>1</sup> Writ of appointment issued by the Sultan.

<sup>2</sup> Professor at a theological college (*medrese*).

<sup>3</sup> Administrator of a pious foundation (*waqf*).

<sup>4</sup> Superintendent of such a foundation.

<sup>5</sup> Religious leader, such as head of a dervish fraternity or monastery, preacher, teacher, etc.

<sup>6</sup> Official preacher in a mosque.

<sup>7</sup> Leader at public worship.

<sup>8</sup> In the margin of Lb, etc.: [Cases of] *cadis* and *müderriises* [and] all [other] servants (*kul*) of the Sublime Court and Exalted Palace as well as [of] *sipâhis* are

124 Furthermore, if the community of his (or her) [town-]quarter or of his (or her) village complains that a person is a criminal or a harlot and, saying 'He (or she) is not fit [to live with] us', rejects him (or her), and if that person has in fact a notoriously bad reputation among the people, he (or she) shall be banished, i.e. ejected from his (or her) quarter or village.

And if he (or she) is not accepted also in the place to which he (or she) moves, he (or she) shall be expelled from the town [altogether]. But [action] shall be suspended a few days to [see how things turn out:] If that person repents his (or her) former misdeeds and [henceforth] leads a righteous<sup>1</sup> life, very well.<sup>2</sup> If not, he (or she) shall be ejected from there too and be definitively expelled; he (or she) shall leave the town and go away.<sup>3</sup>

## Chapter<sup>1</sup>

### ON DISTURBERS OF THE PEACE

125 If a person is a disturber of the peace [who] is always engaged in mischievous activities and [whom] the Muslims tell to his face that they do not consider him a law-abiding person, the *cadi* and the *subaşı* shall take no part [in the proceedings against him]. The person who is entrusted with [the infliction of capital or severe corporal] punishment

[to be] submitted [to the Sultan]. [In the case of] other people this is not necessary; in regard to them, [the punishment] required by the *shari'a* is [to be] carried out. (Cf. § 87.)

Cf. Barkan, 180, § 28: The collection of a fine from fief-holders and *berât*-holders is contrary to the *kānūn*. Their [punishment in lieu of] fines is admonition (*te'dīb*) and reprimand (*gūşmāl*). And if they become guilty of a serious [offence], they shall be deprived of their office. And if a situation arises in which they are liable to [capital or severe corporal] punishment according to the *shari'a* and (or?) the customary law, it shall [only be inflicted] after [the case] has been submitted [to the Sultan].

Cf. Ottoman Penal Code of 1858, section 19, Addendum.

124 <sup>1</sup> Ua adds: and God-fearing

<sup>2</sup> Od: he (or she) shall not be interfered with

<sup>3</sup> In the margin of Lb, Rb: Banishing is prohibited; what is required by the *shari'a* shall be carried out.

However, harlots are known to have been expelled from their town when people bore witness before the *cadi* in respect to their misconduct (see, for instance, copy of a firman of 980/1572 in Mühimme Defteri, vol. 19, no. 628).

Heading: <sup>1</sup> No number. The chapter consists of one section only.

and [the execution of] the [Sultan's] order [to impose such penalty]<sup>1</sup> shall punish [him].

MATTERS PROHIBITED FROM BEING HEARD  
[IN COURT]

**126** It is prohibited to hear a suit in respect of the killing of a person whose wounded corpse has not been found unless his belongings and his animal have been found, indicating homicide. In that case, [the suit] shall be heard in accordance with the *shari'a*.

According to the *shari'a*, no blood-money (*diyyet*) is required for a person who fell from a tree, was buried under a wall, or fell from a horse and [thus] perished, or who was drowned in the water or was struck by lightning, fell from a bridge, a roof or a precipice or fell into a well.<sup>1</sup> For the same reason no 'tithe of blood-money' ('*öşr-i diyyet*)<sup>2</sup> is [to be collected] according to the *ḵānūn*.

And when the sea washes a drowned person ashore [and] no sign of strangling or wounding or other indications of killing are found on the corpse, it is, according to the *shari'a*, not permissible for the executive officers to demand 'tithe of blood-money' or for the heirs to demand blood-money for such a corpse thrown up by the sea.<sup>3</sup>

**125** <sup>1</sup> For *yasak* see § 93, n. 2. The official referred to is the *yasakçı* or *yasak kulu* (see Anhegger-İnalçık, Index, s.v., and Beldiceanu, i. 171, and Index, s.v.).

**126** <sup>1</sup> Ia, etc. mention further kinds of accidental death, such as falling into a fire, being torn by a wild animal, falling from a carriage (or cart), etc.

<sup>2</sup> For this term, see below, pp. 297-8.

<sup>3</sup> Cf. § 44.

## V

# TRANSLATION OF THE DULKADIR REGULATIONS

## THE DULKADIR PENAL CODE (DPC)

### *Introductory remarks*

FOUR texts of this code have been found (see above, pp. 44-5): A 998 and A 402—the so-called *Ḳānūnnāme* of 'Alā' al-Dawla; B 998 and B 155—the *Ḳānūnnāme* for Bozok.

The translation is chiefly based on the latter, but significant divergences from and additions to the B text are noted in round and angle brackets respectively, with their sources indicated within the brackets. The numbers of the sections are those supplied in the text published by Barkan (pp. 124-8), but some sections have been subdivided. For certain rules followed in the translation, see note to the translation of the Ottoman Criminal Code (above, p. 93).

### *Statutes Concerning Highway Robbers and Thieves*

**1** Any person who holds up travellers and commits highway robbery shall be hanged by his neck and severely tortured.<sup>1</sup>

**2 (1)** And any person who steals a horse or steals a mule shall, if his hand is not cut off, be fined 18 gold pieces.<sup>1</sup> And if he steals a camel [and] his hand is not cut off, he shall be fined 20 gold pieces. And if he steals a head of cattle (A: [and] his hand is not cut off), he shall be fined 12 (A: 14) gold pieces. And if he steals a sheep (A: or goat), he shall be fined four (A: five) gold pieces.<sup>2</sup>

<sup>1</sup> Cf. the *shari'a* penalties for *ḥat' al-tariḳ* (Schacht-Bergsträsser, 101; Juynboll, 306 et seq.).

<sup>2</sup> **(1)** <sup>1</sup> Lit., [a fine of] 18 gold pieces shall be collected [from him].

<sup>2</sup> Cf. OCC, §§ 66, 65; DFR, § 2(?); DLF, §§ 7, 9.

2 (2) And [if] the above-mentioned have accomplices and two or three (A: three or four) persons commit the theft, each of them shall pay the full fine.<sup>1</sup>

3 And if one person steals two horses or two camels or two head of cattle (A: or two mules) or two sheep or more than two, at once or on two occasions, he shall pay the full fine, whatever it may be, for each animal. If he steals more than three [animals] at once,<sup>1</sup> he shall still pay the fine for three animals [only].<sup>2</sup>

4 And if [a person] steals a beehive or a ploughshare or a horse-cloth or a fetter or a stirrup or a saddle or anything similar [and] its value is [at least] 10 *akçe*, he shall be fined four (A: five) gold pieces.<sup>1</sup>

5 (1) And if any person breaks into a house [and] his hand is not cut off, he shall be fined 20 gold pieces. And if he breaks into a pit [in which grain is stored]<sup>1</sup> (A: [and] his hand is not cut off), he shall be fined 14 (A: 15) gold pieces.<sup>2</sup>

5 (2) If [a person] snatches away a muslin [turban] or a robe at night or steals anything from the market or a house by day [and] its value is [at least] 10 *akçe*, he shall be fined 10 gold pieces.<sup>1</sup>

6 And [if] any thief has his hand cut off<sup>1</sup> (A: [and] the animal) which he stole [still] exists as it was,<sup>2</sup> its owner shall recover [it]; if it no [longer] exists, no compensation is to be paid [to him].<sup>3</sup>

2 (2) <sup>1</sup> Cf. OCC, § 42 (on another matter).

3 <sup>1</sup> For *bir def'akine* (Barkan, 125) read *bir def'a gene* (*yine*).

<sup>2</sup> Cf. OCC, § 42 (on another matter).

4 <sup>1</sup> Cf. below, § 5 (2), n. 1; DPC (B), § 55. Cf. also OCC, § 65; DLF, § 9.

5 (1) <sup>1</sup> While A 998 has *kapu*, A 402, B 998, and B 155 have *kuyu*, which is preferable.

<sup>2</sup> Cf. OCC, §§ 74, 68.

5 (2) <sup>1</sup> Only in B. But cf. A § 43 (Barkan, p. 123; addition?): If [the object] a person stole is [worth] not less than 10 *akçe*, his hand shall not be cut off [but] (or and if his hand is not cut off) he shall be fined one gold piece. According to the *shari'a*, [the sentence] is conditional on the testimony of two legally competent Muslims.

Cf. OCC, §§ 73, 67, 65.

6 <sup>1</sup> For the form *olunubdur* see Deny, p. 885.

<sup>2</sup> i.e. not having been killed (or sold to someone else?). Is *yüzile* in B a synonym of '*aynı ile* in A? The *shari'a* term is *ka'im*.

<sup>3</sup> This conforms with the prescription of the *shari'a* (see Schacht-Bergsträsser, 101).

7 And any person who strikes and kills a thief while he is committing the theft shall not be guilty. And if he pursues [him] after he has committed the theft and gone away, [and] strikes [and] kills [him], he shall likewise not be guilty.

8 And if any person is suspected of theft [and] he [is a person who] constantly steals and there is surmise (A: concerning him) [in this connection] he shall pay [compensation] in accordance with the customary law ('*örf*).<sup>1</sup>

9 If a person enters by night a house [which] it is not his common, that is usual, practice to enter [and] the master of the house strikes [and] kills [him, then], in accordance with the customary law ('*örf*), he (the master) shall not be guilty.<sup>1</sup>

#### *Statutes Concerning Fornication and Related Matters*

10 If any person commits fornication [and this] is proved in accordance with the *shari'a* [and] (A: or) the customary law ('*örf*)—if he is unmarried (A: [and] no fixed *shari'a* penalty (*hadd*) is inflicted), he shall be fined 12 (A: 13) gold pieces; if he is married [and] he is not stoned to death, he shall be fined 15 gold pieces.<sup>1</sup>

11 If any person approaches his fiancée [and] has sexual intercourse [with her, this] is [to be deemed] the same as fornication. But if he approaches [her and] has no intercourse [with her], he shall be fined five gold pieces.<sup>1</sup>

12 (1) And if any person enters a house with intent to commit fornication or touches or kisses [a person] without (A: with)<sup>1</sup> the consent of the person kissed, he shall pay the fine for fornication. And if he enters (A: or kisses) or touches [a person] with his (or her) consent<sup>2</sup> (A: by force),<sup>1</sup> he shall be fined five gold pieces.<sup>3</sup>

8 <sup>1</sup> i.e. without legal evidence, as required by the *shari'a*, having been produced. Cf. OCC, § 77.

9 <sup>1</sup> Cf. OCC, § 14 (but in the chapter on fornication).

10 <sup>1</sup> Cf. OCC, §§ 1-5; DLF, §§ 12-13.

11 <sup>1</sup> Cf. DFR, § 10.

12 (1) <sup>1</sup> Comparison of the penalties in this section proves that the version in A is faulty.

<sup>2</sup> The meaning of the following word in B (*yirden*, *yerden*, or perhaps *birden*) is not clear.

<sup>3</sup> Cf. OCC, §§ 9, 18, 20; DLF, § 5.

12 (2) And if [a person] causes a girl to comply with his wishes,<sup>1</sup> she shall not be given [in marriage] to him [and] he shall pay the fine for fornication. And if the girl willingly complied,<sup>2</sup> her father or her brother shall be fined 12 gold pieces. And if he makes her comply<sup>3</sup> by force, the girl's father (A: or brother) shall not be fined, (A: but) [the person] who made [her] comply<sup>4</sup> shall pay the fines (A: for fornication) [due] from both parties.<sup>5</sup>

12 (3) And if several persons associate in (A: suddenly attacking a house and) abducting a girl, each of the accomplices shall be fined eight (A: 15) gold pieces.<sup>1</sup> (A: If they wound a person, compensation (*diyyet*) for him<sup>2</sup> shall be collected and given to whom it is due according to the *shari'a*.)

13 And if a person sees his close female relative (*mahrem*)<sup>1</sup> play amorously and have sexual intercourse with a stranger (*nāmahrem*, A: *ecnebi*)<sup>2</sup> [and] kills them, he becomes guilty of homicide according to the *shari'a*,<sup>3</sup> [but] according to the customary law ('*örf*) he shall not be culpable. (A: He shall not be fined under the pretext that he has become culpable.)<sup>4</sup> And if he kills [them] on the strength of what somebody has told [him], he becomes culpable and guilty of homicide, unless there appears a witness [who can produce evidence] according to the *shari'a*.<sup>5</sup>

12 (2) <sup>1</sup> This section (in B) seems to refer to elopement and abduction, which are not otherwise dealt with, though the penalty is amazingly light as compared with that for the abduction of a boy (see § 15). For *uydurmak* in this meaning, see *Derleme Dergisi*, s.v. *uyduran*.

<sup>2</sup> A (from the beginning of the section): If [any person] kissed a girl, he shall pay the fine for fornication. If the girl willingly let [him] kiss [her]

<sup>3</sup> A: If he kissed [her]

<sup>4</sup> *evdir* in A is probably a copyist's error for *uydur[andan]*.

<sup>5</sup> Cf. OCC, §§ 10, 11 (if the reference is to elopement and abduction) or § 18 (if the reference is to kissing); DFR, §§ 5, 8.

12 (3) <sup>1</sup> In A this and the following clause form the first part of § 15. Cf. OCC, § 12.

<sup>2</sup> Or, their compensation.

13 <sup>1</sup> In Persian, *maḥram* has also the meaning 'wife' (see Steingass, s.v.); but see below, n. 3.

<sup>2</sup> i.e., a man who is not so closely related that marriage with him is unlawful, and who therefore is not allowed to enter the harem.

<sup>3</sup> Since even the *shari'a* makes it lawful for a husband to slay his wife and her paramour in such circumstances, this statement apparently does not refer to a wife but to a close female relative.

<sup>4</sup> The word '*örfen* in A should preferably be joined to the preceding clause.

<sup>5</sup> Cf. OCC, § 13.

14 If a person practises procuring<sup>1</sup> as his permanent profession, his face shall be blackened and he shall be exposed to public ignominy (A: [and] his nose and ear(s) shall be cut off). If it is not [his permanent profession], he shall be fined five gold pieces.<sup>2</sup>

15 <sup>1</sup>And if a boy is abducted, [the abductors] shall be castrated<sup>2</sup> or else be fined 24 gold pieces. And if [the abducted person] is a catamite (*muḥannes*),<sup>3</sup> the legal punishment (*hadd*)<sup>4</sup> for fornication shall be inflicted on both parties; if it is not inflicted, each of them shall pay a fine like that for fornication.<sup>5</sup>

16 If [a person], after abducting a girl by force and going away [with her], goes [and] marries [her], the marriage is [legally] defective (*fāsīd*)<sup>1</sup> [and] they shall be divorced (*tefrīk*), unless her guardian (*velī*)<sup>2</sup> looks upon what [the man] has done as permissible [and] marries [her to him]. Likewise, if [the man] thus (A: causes her to comply with his wishes<sup>3</sup> [and]) marries [her] with her consent [and] the guardian does not give his permission by reason that [the man] is not of equal birth (*kūfūv*),<sup>4</sup> it is lawful to divorce [them].<sup>5</sup>

17 And if small boys perform unchaste acts with each other, they shall be hurt and chastised (A: severely, but) no fine shall be collected.<sup>1</sup>

14 <sup>1</sup> The translation follows A.

<sup>2</sup> Cf. OCC, §§ 57, 30, 75.

15 <sup>1</sup> In A this clause is preceded by § 12 (3).

<sup>2</sup> For the root *ari-* in this meaning see *Derleme Dergisi*, i, s.v. *arımık*, 1; *ibid.*, iv, s.v. *arımā*.

<sup>3</sup> So in B 998, B 155, and A 402. In A 998: If [this] is [done] out of affection (*muḥabbet bile*)

<sup>4</sup> In the meaning of discretionary corporal punishment (*ta'zīr*). Cf. also below §§ 34 (5), 35.

<sup>5</sup> Cf. OCC, § 10.

16 <sup>1</sup> See *EI*<sup>1</sup>, art. 'Nikāḥ' (Heffening).

<sup>2</sup> The male next of kin or, if there is no male relative, the *cadi* or his representative.

<sup>3</sup> Cf. above, § 12 (2).

<sup>4</sup> Better than 'because this is unbelief (*kūfr*)' in A 998 and A 402. According to the *shari'a*, the guardian has the right to object to a marriage because of unequal birth (see Schacht-Bergsträsser, 82).

<sup>5</sup> Cf. OCC, § 15.

17 <sup>1</sup> Cf. OCC, § 35.

*Statutes Concerning Homicide and Related Matters*

18 (1) If any person commits homicide [and] he is liable to the death penalty,<sup>1</sup> [only] retaliation (*kıṣās*) shall be inflicted.<sup>2</sup> And if an agreement (*sulh*) is reached [between the heirs of the killed person and the killer]<sup>3</sup> or [by the nature of the offence<sup>4</sup> the latter is merely] liable to [pay] blood-money (*diyyet*), he shall pay a fine of 30 gold pieces apart from the blood-money.<sup>5</sup>

18 (2) If [a person] strikes or frightens a [pregnant] woman [and] causes [her] to give birth [to a dead foetus], he shall be fined eight gold pieces.<sup>1</sup>

19 And if [a person] knocks out [someone's] tooth<sup>1</sup> [and] the person whose tooth<sup>1</sup> is knocked out caused the fight,<sup>2</sup> half the compensation (*diyyet*) required according to the *shari'a* [as due to the injured person] shall be collected [as his fine]<sup>3</sup> and [the person] who knocked out the tooth<sup>1</sup> shall be fined eight gold pieces.<sup>4</sup>

20 And if [a person] breaks [someone's] finger or inflicts a gashing head-wound with a stone or a piece of wood or [another] hard object, he shall be fined four (A: five) gold pieces. (A: One of them shall be given to the person who suffered the gashing head-wound.)<sup>1</sup>

18 (1) <sup>1</sup> In many cases of murder, unless the heirs voluntarily agree to accept blood-money instead.

<sup>2</sup> But no fine is to be imposed.

<sup>3</sup> Commuting retaliation into the payment of blood-money.

<sup>4</sup> Homicide which does not entail the right of retaliation, such as accidental killing.

<sup>5</sup> Cf. OCC, § 41; DFR, § 1; DLF, § 10.

18 (2) <sup>1</sup> Probably in addition to the *ghurra*, the compensation to be paid according to the *shari'a* (see Schacht-Bergsträsser, 106).

19 <sup>1</sup> Teeth?

<sup>2</sup> Up to here, following A.

<sup>3</sup> Or (perhaps), [only] half the compensation . . . shall be recovered [by the victim].

<sup>4</sup> Cf. below, § 29. Cf. also OCC, § 50 and § 38; DFR, § 12.

20 <sup>1</sup> Cf. DPC (B), § 55 (Barkan, p. 129, later Ottoman addition). Cf. also OCC, §§ 40, 47; DFR, § 11; DLF, § 1.

21 But if [a person] strikes [someone] with his [bare] hands and makes [him] bleed (A : and wounds<sup>1</sup> [his head](?)) or scratches [someone's] face with his nails<sup>2</sup> or rends his collar and tears [his] hair [or] beard, he shall be fined 30 *akçe*.<sup>3</sup>

22 The infliction of a dark bruise or an abrasion on the head with a stone, a piece of wood or the like is [to be] deemed equivalent to the infliction of a gashing head-wound.<sup>1</sup> If these are inflicted with the [bare] hands or the nails, they are equivalent to [making] the nose bleed.<sup>2</sup>

23 And if [a person] breaks [another person's] arm or leg or damages [another] part [of his body] [and the injured person] becomes bed-ridden, [the latter] shall be allowed to collect [from the assailant] wages according to the number of days he is prevented from earning, [and the assailant] shall be fined 14 gold pieces. And if [the injury] is [inflicted] unintentionally,<sup>1</sup> he shall be fined five gold pieces.<sup>2</sup>

24 And a person who knocks out [another person's] eye shall pay compensation (*diyyet*) for it<sup>1</sup> to whom it is due. [In addition] he shall be fined 14 gold pieces if it was [done] intentionally; if it was not [done] intentionally, he shall be fined five gold pieces.<sup>2</sup>

25 And if [a person] hits [another person's] ear with a stone or a piece of wood and makes [him] deaf, or if he cuts [off] his nose,<sup>1</sup> [this] shall be considered equivalent to [knocking out] an eye:<sup>2</sup> after [the injured person] has collected compensation (*diyyet*) for it<sup>3</sup> in accordance with the *shari'a*, [the assailant] shall, if it was [done] intentionally, be fined 14 gold pieces; if it was [done] unintentionally, he shall be fined five gold pieces.

21 <sup>1</sup> For *uvatmak* in this context see *Tarama Sözlüğü*, iv, s.v. (end). But in view of the light fine imposed it cannot here mean 'fractures [his skull]'.

<sup>2</sup> Omitting *yā* before *yüzün* in B.

<sup>3</sup> Cf. OCC, §§ 40(?), 36, 37, 39.

22 <sup>1</sup> See above, § 20.

<sup>2</sup> See above, § 21. Cf. also OCC, § 40, n. 9 to trans. (provincial *kānūnnāmes*); DFR, § 14; DLF, § 2.

23 <sup>1</sup> *Ḥatā* is either mistake or mishap (see *EI*<sup>1</sup>, arts. 'Khaṭā', 'Katl' (Schacht)).

<sup>2</sup> Cf. OCC, §§ 47, 45; DFR, § 15; DLF, § 11.

24 <sup>1</sup> Or, his compensation.

<sup>2</sup> Cf. OCC, § 50; DFR, § 13.

25 <sup>1</sup> So in A. B: *boynun*, 'his neck' (copying error for *burnün*?).

<sup>2</sup> See above, § 24.

<sup>3</sup> Or, his compensation.

**26** And if [a person] strikes [another person] with a hard object and inflicts a dark bruise, he shall be fined one gold piece. (A: If he does [it] with his [bare] hands or his fists or by kicking,<sup>1</sup> he shall be fined 30 *akçe*. If he tears [his] hair [or] beard, the same shall be [imposed].) If he strikes [him] with a sword, a knife or an arrow and wounds [him] (A: leaves a scar), he shall be fined eight (A: 10) gold pieces. If he strikes [him or at him] with a sword or a knife [or] shoots an arrow [at him but] does not wound [him, this] is [to be dealt with] exactly as if he had wounded [him].<sup>2</sup>

**27** If [a person] pursues [another person] with intent to kill or wound<sup>1</sup> [him] and [the pursued person], unable to escape,<sup>2</sup> (A: escapes and) turns round and wounds him or breaks his arm or leg (A: or finger), nothing at all<sup>3</sup> is [to be paid].

**28** If [a person] draws a sword or a knife or puts an arrow to the bowstring with intent to strike [or shoot and] does not strike or shoot,<sup>1</sup> he shall be fined 200 *akçe*. And if he strikes [another person] with a sword or a knife or hits [him] with an arrow [and] causes [him] to become bed-ridden, he shall be fined 12 (A: 14) gold pieces. If he strikes or shoots and does not wound [him], this is [to be dealt with] exactly as if he had wounded [him and] he shall be fined 10 (A: 14) gold pieces.<sup>2</sup>

**29** And if [the person] who caused a fight is wounded, half the compensation (*diyet*) required according to the *shari'a* [as due to him] shall be collected [as his fine].<sup>1</sup>

**30 (1)** And if [a person] conceals sheep from the teller (*sayıcı*),<sup>1</sup> he shall be fined one *akçe* for each sheep.<sup>2</sup>

26 <sup>1</sup> A 402: *depügüle* (see *Tarama Sözlüğü*, iii, C-D, s.v.).

<sup>2</sup> Cf. above, §§ 21-2 and below, § 28. Cf. also OCC, §§ 40, n. 9 (provincial *kânunnâmes*), 37, 39, 45, 48, 49; DFR, §§ 3-4, 14; DLF, §§ 2, 4.

27 <sup>1</sup> B 155 (as A): *paralamak*, 'to cut to pieces', i.e. 'to wound (severely)'

<sup>2</sup> B 155: *kurtlamasa*

<sup>3</sup> No fine or compensation.

28 <sup>1</sup> A (erroneously): and strikes (or shoots)

<sup>2</sup> Cf. above, § 26. Cf. also OCC, §§ 45, 48, 49; DFR, §§ 3-4; DLF, §§ 3-4.

29 <sup>1</sup> Or (perhaps), [only] half the compensation . . . shall be recovered [by the victim]. Cf. above, § 19.

30 (1) <sup>1</sup> The official who counts sheep for taxation. Cf. Anhegger-İnalçık, pp. 38-9, 54-5 (Beldiceanu, i, pp. 101-2, §§ 1-2; pp. 123-4, § 18).

<sup>2</sup> Continuation in A: see below, § 34 (1).

**30 (2)** And if a band of men arrives to attack a house suddenly, each of the attackers of the house shall be fined eight (A: two) gold pieces. If any one of the people whose house is attacked takes up arms, he shall not be guilty unless he kills or wounds [the attackers], but this applies only where those who attack the house do not endeavour to wound [anyone]. In short, whatever action those who attack the house may take, those whose house is attacked must not go beyond that.<sup>1</sup>

**31** And if [a person] conceals grain from measuring,<sup>1</sup> it shall be taken<sup>2</sup> [together] with its receptacles.<sup>3</sup>

**32** A peasant (*ra'iyet*, A: *fellāh*) must not lift up [his] hand against the feudal lord (*sipāhī*) to whom he is ordered to render service (*kulluk*).<sup>1</sup> If he lifts up [his hand], he shall be fined 10 gold pieces.<sup>2</sup>

*Statute Concerning Animals Entering a Corn[-field]*

**33** If an animal<sup>1</sup> enters a corn[-field], [the animal's] owner shall be given five strokes and be fined one *akçe* for each stroke (A: be fined five *akçe*). And if the animal that entered the corn[-field] is killed [by the proprietor of the field, the latter] shall be made to pay its value to its owner, but he shall not be fined and the owner of the animal shall pay [for] the damage [done] to the corn[-field].<sup>2</sup>

**34 (1)** And if [a person] steals a chicken or fruit grown in gardens, he shall pay their value to their owner and be fined 20 *akçe*.<sup>1</sup>

**34 (2)** And a person who steals a goose shall be fined 30 *akçe*.<sup>1</sup>

**30 (2)** <sup>1</sup> i.e. must not do more than is reasonably necessary to protect themselves. In A this section (addition?) follows § 41. Cf. DFR, § 6; DLF, § 6(?).

**31** <sup>1</sup> At harvest-time for the purpose of apportionment between the peasant and the feudal lord (or his agent) or the State. Cf. Anhegger-İnalçık, pp. 52, 54, etc. (Beldiceanu, i, p. 121, § 3; p. 123, § 17; etc.); Barkan, 114, § 11; 128, § 46.

<sup>2</sup> i.e. confiscated. <sup>3</sup> Cf. OCC, § 69.

**32** <sup>1</sup> Probably in the sense of *corvée* or forced labour. Cf. the *Ḳānūnnāme* of Meḥammed II (Kraelitz, p. 23, § 3; p. 25, § 16; p. 37, n. 7) and Barkan, 64, note; 67, § 25; 105-6, § 3; etc.

<sup>2</sup> Cf. below, §§ 37, 41.

**33** <sup>1</sup> As in OCC and many provincial *ḵānūnnāmes*, or animals?

<sup>2</sup> Cf. OCC, §§ 108, 109.

**34 (1)** <sup>1</sup> In A, this section is added to § 30. Cf. OCC, §§ 64, 105.

**34 (2)** <sup>1</sup> Cf. OCC, § 64.

34 (3) (A: If [a person] peeps through someone's door or window [into his harem], he shall be fined 40 *akçe*.)<sup>1</sup>

34 (4) And if a woman or a boy is accused<sup>1</sup> [and the accuser] has no spiteful motives [and] is a pious person (A: who belongs to the upper classes), his words shall be trusted; in the opposite case (A: if he belongs to the lower classes), he shall have to prove [his accusation] in accordance with the *shari'a*. If [what he said] (A: what a person of the lower classes said) is [found to be] a lie, he shall be fined five gold pieces or his tongue shall be cut off.<sup>2</sup>

34 (5) If [a person] demolishes the hedge of [another person's] cottage<sup>1</sup> (A 402: or the hedge of [his] vineyard (or garden)), corporal punishment shall be inflicted on him (*hadd vurulub*)<sup>2</sup> and he shall be fined 15 *akçe*.<sup>3</sup>

34 (6) A person who steals firewood shall be fined 15 *akçe*.

35 And if [a tradesman's] yardstick is [found to be] short, he shall be fined 100 *akçe*. And if he uses short weight,<sup>1</sup> he shall be fined one *akçe* for every *dirhem*<sup>2</sup> [by which the weight] of what he sold [is deficient]. And for both these [offences] corporal punishment shall be inflicted (*hadd urulub*)<sup>3</sup> [and the offenders] shall be exposed [to public scorn].

36 (1) And if [a person] intentionally demolishes<sup>1</sup> a cottage or a hut<sup>2</sup> or causes similar damage, (B 155: he shall pay compensation to its owner [and] be fined according to its value (A: five gold

34 (3) <sup>1</sup> Cf. OCC, § 55 (n. 1).

34 (4) <sup>1</sup> *bühtân* is used here in a looser sense than the usual one, which is *false* accusation, especially of sexual misconduct.

<sup>2</sup> Cf. below, § 39 (3). Cf. also OCC, §§ 25, 54, 55.

34 (5) <sup>1</sup> For *dam sıyub can yaksa* in Barkan, p. 127, read *dam sıyucın yaksa* (probably a mistake for *yıkısa*: see A 402 and below, § 36 (1)). *Sıyuc* in this meaning is used by Anatolian villagers to this day (see *Derleme Dergisi*, iii, s.v. *siyec*, 3 and Zübeyr-Refet, s.v. *siyec*, 1).

<sup>2</sup> In the looser sense of this term (see above, § 15, n. 4).

<sup>3</sup> This section is also found in this place in A 402.

35 <sup>1</sup> *nügü*, a weight widely used at the time in eastern Anatolia (see Barkan Index, s.v.; Hinz, p. 24) and known to this day (see *Derleme Dergisi*, iii, s.v.).

<sup>2</sup> A weight which varied at different times and in different places. It was generally a little more than three grammes. See Hinz, pp. 2 et sqq.

<sup>3</sup> See above, § 15, n. 4.

36 (1) <sup>1</sup> B 155 vocalizes *yıkısa* (and not *yakısa*, 'sets on fire').

<sup>2</sup> In B 155, as well as in both A 998 and A 402, *huğ*.

pieces). And if it was [done] unintentionally, he shall be made to pay compensation [but] shall not be fined.<sup>3</sup>

**36 (2)** And if any offence is committed by a woman, half the fine [imposed] on a man shall be collected.<sup>1</sup>

**36 (3)** And if [a person] publicly announces<sup>1</sup> [that he has found] a stray animal [and then] sells [it]<sup>2</sup>—if it is a camel, he shall be fined six gold pieces; if it is a horse, four gold pieces; if it is a head of cattle, two gold pieces; [and] if it is a sheep, one gold piece. He shall also pay its value to its owner. (A 402: The stray animal shall be given [back] to its owner.)

And if he does not announce [that he has found] the stray animal [and] sells it (A 402: goes away), whatever [animal] it may be, half the fine for theft<sup>3</sup> (A: one gold piece) shall be collected [from him and] its owner shall be allowed to recover its value [from him].<sup>4</sup>

**37** If a feudal lord (*sipāhī*), while strolling about,<sup>1</sup> hurts a peasant [and] the peasant beats that feudal lord, [the peasant] shall not be fined.<sup>2</sup>

**38** And if it is evident that [a person] deliberately bore false testimony or it is evident that he committed perjury, he shall have his face blackened and be exposed [to public scorn] or be fined five gold pieces. And if he retracts his testimony and admits that it was false, he shall be made to pay for whatever damage he has caused by [his] testimony.<sup>1</sup>

**39 (1)** And if [a person] swears [at another person], corporal punishment shall be inflicted [on him] (*hadd uralar*)<sup>1</sup> or else<sup>2</sup> he shall be fined 30 *akçe*.<sup>3</sup>

<sup>3</sup> If this section refers to arson (see n. 1), cf. OCC, § 92.

**36 (2)** <sup>1</sup> Not in A.

**36 (3)** <sup>1</sup> *şavır* is used today in this sense by Anatolian villagers (see Zübeyr-Refet, s.v.; *Derleme Dergisi*, iii, s.v.).

<sup>2</sup> Instead of handing it over to the proper authorities or waiting a certain time for the owner to turn up and claim it.

<sup>3</sup> See above, § 2 (1). <sup>4</sup> Cf. OCC, §§ 97, 94.

**37** <sup>1</sup> For *kolayına* see *Tarama Sözlüğü*, i, iii, iv, K-N, s.v.

<sup>2</sup> A: . . . hurts and beats a peasant, the feudal lord shall be punished.

Cf. above, § 32 and below, § 41.

**38** <sup>1</sup> The second part of this section, which is missing in A 998, is inserted in A 402 after § 40. Cf. OCC, § 98.

**39 (1)** <sup>1</sup> The parallel section in A (§ 44) (later addition?) adds: in the presence of the *cadi* <sup>2</sup> So also in A 402 (*ve illā*). <sup>3</sup> Cf. OCC, § 56; DLF, § 14.

39 (2) And if [a person]<sup>1</sup> drinks wine, he shall, after becoming sober again, be given 80 strokes or else be fined 80 *akçe*.<sup>2</sup>

39 (3) If a modest woman<sup>1</sup> (A, § 40: a chaste man or woman)<sup>2</sup> is falsely accused of committing fornication,<sup>3</sup> [the slanderer] shall be given 80 strokes or be fined 80 *akçe*.<sup>4</sup>

40 If (A: such offences) [are committed by] small boys [who] are not yet of age, i.e. are below the age of ten (A: fifteen), no fine shall be collected. But they shall be intimidated and chastised, i.e. beaten and hurt.<sup>1</sup>

41 If a feudal lord (*sipāhī*), without an order [having been given], demands a horse (*ulak*)<sup>1</sup> [from a peasant] or makes [him] slaughter an animal [of his, and the peasant] beats him, he (the peasant) shall not be guilty.<sup>2</sup>

42<sup>1</sup> On the abolition of illegal innovations:

If previously, in the days of the Dulkadırlı, a peasant<sup>2</sup> was [convicted as] a criminal, it was customary, after the full fine had been collected for the Public Treasury (*mīrī*), to collect another ten per cent of the fine from the peasant<sup>2</sup> as *nāyibceklīk*<sup>3</sup> and to

39 (2) <sup>1</sup> i.e. a Muslim.      <sup>2</sup> Cf. OCC, § 61.

39 (3) <sup>1</sup> *mestūre*. Cf. OCC, § 53, n. 1.

<sup>2</sup> *muḥşan* or *muḥşana*, but in A vocalized *muḥaşşın yā muḥaşşına*. For the *shari'a* definition of *muḥşan* in connection with a false charge of fornication (*ḥaḡf*), see Juynboll, 303.

<sup>3</sup> A, erroneously(?): this is [to be deemed] the same as fornication

<sup>4</sup> Cf. above, § 34 (4). Cf. also OCC, §§ 24-6, 54, 55.

40 <sup>1</sup> Cf. OCC, §§ 27, 52.

41 <sup>1</sup> For *ulak* in this meaning see *Tarama Sözlüğü*, ii, s.v.; cf. also *olāgh* in Persian ('horse', 'donkey').

<sup>2</sup> Not in A 998; but A 402 has the beginning of this section (as far as *istese*). Cf. above, §§ 32, 37.

A comparison of this section with the *Ḳānūnnāme* of Meḥemmed II (Kraelitz, p. 26, § 29; p. 27, § 33) raises the question whether this may not be the first of the sections added by the Ottomans to the Dulkadır code. In that case, the *sipāhī* demands the horse or the slaughter of the animal not for himself but for a courier (*ulak*) or other government official passing through his territory, and the 'order' is an order of the Sultan, as referred to in that *ḳānūnnāme*.

42 <sup>1</sup> Only in B.

<sup>2</sup> Or, any tax-paying subject (*ra'iyet*).

<sup>3</sup> Or *nāyibcīklīk* or *nayibceklīk* (*nāyibcīklīk*), i. e. tax levied for the *nā'ib*? He may here not be the deputy of a *cadi* but, as in the Mamlūk state, a governor.

In the Konya region (from the time of Karamanoğlu rule?) the *subaşı* (and the *'asesbaşı*) used to exact a fine from an offender after it had already been

collect another five per cent of the fine<sup>4</sup> as *divânbeğlik*<sup>5</sup> and another five per cent of the fine as *bulacılık*.<sup>6</sup> For example, if a fine of 500 *akçe* was collected from a peasant,<sup>2</sup> it was customary to collect [another] 50 *akçe* as *nâyibceklük* and 25 *akçe* as *divânbeğlik* and 25 *akçe* as *bulacılık*. The said *nâyibceklük* and *divânbeğlik* and *bulacılık* have [now] been abolished.

#### A REGISTER OF DULKADIR FINES (DFR)<sup>1</sup>

In the district (*nâhiye*) of Maraş [the regulations] concerning fines [have] since ancient times [been as follows]:\*

- (1) for homicide a fine of 300 *pâre*;
- (2) and from a thief a fine of 150 *pâre*;<sup>2</sup>
- (3) and for [hitting a person with] an arrow a fine of 150 *pâre*;
- (4) and for [hitting a person with] a sword a fine of 150 *pâre*;
- (5) and if a married man seizes (A: abducts) a girl or woman, a fine of 300 *pâre* from the man (*erkek cerimesi*);
- (6) and if people come from one quarter to an[other] quarter [of a town] and deliberately attack a house (1970: with intent to attack a house), a fine of 40 *pâre* from each [of the assailants];

collected according to the *kânûn* by the *nâ'ib*. This custom was abolished by the Ottomans (Barkan, 43, § 8; *TOEM*, 1329, suppl., 67).

Cf. also the Akkoyunlu taxes by the name of *nâyibcek* (*nâyibcik*) or *nâyibcelik* (Barkan, 149, § 9; 150, § 19; 151, § 26; 145, § 5) and *vâlicek* or *vâlicelik* (*ibid.*, 149, § 5; 145, § 5).

<sup>4</sup> For *nisif cerime* in Barkan's text read *nisf-i 'öyr-i cerime*, as in B 155.

<sup>5</sup> Imposition for the benefit of the *divân-beği*, who in Uzun Hasan's state was the head of the Great Divân (see *İA*, art. 'Akkoyunlular' (Yımaç), 263b)? Cf. *divâncek*, an annual tax of the Akkoyunlus, listed along with the *nâyibcek* in the *Kânûn* of Uzun Hasan (see Barkan, 149, § 10; 151, § 26).

<sup>6</sup> Or *bulasılık*?

<sup>1</sup> Three texts of this list have been found (see above, p. 50):

81: Bibl. Nat., Paris, MS. A.f. turc 81, f. 79a-b;

1970: Bayezit Libr., Istanbul, MS. Veliyüddin 1970, f. 82a-b;

A: Addition to the *Kânûnnâme* of 'Alâ' al-Dawla, published by Barkan (123, §§ 47-8).

The translation is chiefly based on 81.

\* [To find the parallel sections in OCC, DPC, and DLF, see the Concordance at pp. 158-63, below.]

<sup>2</sup> A comparison with the penalties for theft (and homicide) in DPC leads to the assumption that this section refers to a person who steals a horse, mule, camel, or head of cattle (see DPC, § 2 (1) as compared with § 18 (1)).

(7) and if it happens that a male slave runs away, or a horse, a camel or a mule strays<sup>1</sup>—

[the revenue from] all of these is said to have been since olden days enjoyed and collected by the Beğs of the Dulkadır.

On the other hand,

- (8) if a married man seizes (A: abducts)<sup>2</sup> a girl or woman, a fine of 150 *pāre* from (for?) the girl or woman (*dīši cerimesi*);<sup>3</sup>  
 (9) and if another (A: an unmarried) person seizes (A: abducts)<sup>2</sup> a girl or woman and gets her with child, a fine of 300 *pāre* from both of them;<sup>4</sup>  
 (10) and if a person approaches his fiancée [sexually], a fine of 100 *pāre*;  
 (11) and for inflicting a gashing head-wound (A: [a fine of] 50 *pāre*;  
 (12) and for knocking out [a person's] tooth (teeth?)) a fine of 120 *pāre*;  
 (13) and for knocking out [a person's] eye [a fine of] 150 *pāre*;  
 (14) and for [inflicting] a dark bruise a fine of 12 *pāre*;  
 (15) and for breaking [a person's] arm a fine of 80 *pāre*;  
 (16) and cases of runaways other than (*-dan gayrı*) a horse, a camel, a male slave (A: or a mule), and matters of the appointment of *kethudās*<sup>5</sup> of tribal clans (*boylar*)<sup>6</sup>—

(A: all these) are said to have been since ancient times controlled and beneficially enjoyed by the tribal chiefs (*boy beğleri*); [this] is re-confirmed in that manner . . .

And the fines that from ancient times were enjoyed by the Beğs of the Dulkadır shall belong to the [Ottoman] *sancakbeği*,<sup>7</sup> and the

<sup>1</sup> The form *yuva* (in 81), instead of *yava*, is still used in Anatolia (see *Derleme Dergisi*, iii, s.v. *yuva*). On the income from the seizure of stray animals and fugitive slaves see *TOEM*, 1329, suppl., 19–20; Anhegger–İnalçık, pp. 26–8, 70–1 (Beldiceanu, i. 89–91, 142–3); Barkan, Index, s.vv. *yava*, *yavacı*, *yuvacı*, *kaçkun*, 'abd-i âbık'; Dernschwam, 161; Bursa Sicilli, A 42, f. 143a (*yava cerimesi*) and many entries *ibid.*, A 21, ff. 213a–228b (*Daftar al-awâbik wa'l-ḡawâll*).

<sup>2</sup> Here rather in the meaning of 'elopes with'.

<sup>3</sup> If the girl or woman was willing? Cf. DPC, § 12 (2).

<sup>4</sup> That is, not from each of them? See n. 3.

<sup>5</sup> The *kethudā* was the head of an *oymak* (or *cemā'at*), a subdivision of the *boy* (see F. Sümer in *İkt. Fak. Mecm.*, xi (1949/50), 511–13).

<sup>6</sup> In 81 and 1970, erroneously, *bulnar(a)*.

<sup>7</sup> In a parallel clause in 81 and 1970: . . . shall, according to the old *kānūn* be made into a *hāşş* of the *sancakbeği* [of the district].

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remaining fines, which were enjoyed by the tribal chiefs, shall again belong to the tribal chiefs.

ANOTHER LIST OF DULKADIR FINES (DLF)<sup>1</sup>

[List] mentioning [the fines] which used to be collected according to the custom of the Dulkadır and which have now been abrogated.

Until now [the following fines] used to be collected:

- (1) If a person inflicts a gashing head-wound, 300 *akçe*;
- (2) and if a dark bruise is [inflicted], 72 *akçe*;
- (3) and if [a person] draws a knife, 600 *akçe*;
- (4) if he strikes and wounds [a person with it(?)], 800 *akçe*;
- (5) from [a person] who enters [another's] house [with criminal intent], 600 *akçe*;
- (6) and from [a person] who [aggressively] approaches [another person] on his way or, with intent to [start] a fight, comes to the [flat] roof of [another's] house, 400 *akçe*;
- (7) if [a person] steals a horse or a camel, 1,200 *akçe*;
- (8) and if something stolen is found in his possession, 1,800 *akçe* [*sic*];\*
- (9) and if [a person] steals a sheep or a beehive or a fetter [for animals], 300 *akçe*;
- (10) and if [a person] commits homicide, 1,800 *akçe*, after the plaintiff has made a composition (*sulh*) [with him];
- (11) if [a person] breaks [another's] arm or breaks a part of another of his limbs, 800 *akçe*, after the plaintiff has made a composition [with him];
- (12) and from a [male] fornicator, 600 *akçe*, after the chastisement to which he is liable according to the *shari'a* has been inflicted;
- (13) and from a fornicatress, 600 *akçe*\*\*
- (14) and if [a person] swears at [another] person, making reference to sexual intercourse (*cimā' lafzıyla*), or uses [bad] language

<sup>1</sup> This text is found in two MSS. (see above, p. 50 and n. 5):

315: Başbakanlık Arşivi, İstanbul, Tapu Defteri 315, pp. 2-4 (the better version);

366: Süleymaniye Libr., İstanbul, MS. Halet Ef. 366, ff. 61b-62a.

\* [pencil note:] For 1,000 [or] 800?

\*\* [pencil note:] Only in 315.

contrary to the *shari'a*, 40 *akçe*, after [the punishment] required according to the *shari'a* has been carried out.

The [fines] mentioned above have now been abrogated and [fines] have been fixed in accordance with the illustrious firman, as mentioned [below].<sup>1</sup>

<sup>1</sup> Here follows the Ottoman Criminal Code (MS. Ga).

## VI

### THE OTTOMAN CRIMINAL CODE IN PRACTICE

#### 1. *Later corrections to the criminal code*

IMPORTANT evidence of the development of Ottoman penal law is found in marginal notes<sup>1</sup> (and other additions) in several copies of the Criminal Code. In manuscripts Fm, Fv, Kd, Pd, Va, and Vb, such notes,<sup>2</sup> written (it seems) in the late sixteenth and the seventeenth centuries, state that certain statutes<sup>3</sup> are erroneous, abrogated, not to be enforced or, at least, are to be qualified. The authorship of these glosses is not indicated.

Much more numerous and important are the official corrections of the code in three other manuscripts: Rb, the text of which was copied in late Receb 971/March 1564, whereas the marginal notes, apparently in a different handwriting, were added later; Rc, an undated '*Ḳānūnnāme* of the late Sultan Selīm' (most probably Selīm II);\* and Lb, copied (both text and marginal notes) in Şafer 1047/July 1637. In the first two manuscripts, both of which are in Leningrad, corrections in almost identical form refer to a large number of statutes.<sup>4</sup> Most of these corrections are also found in the text<sup>5</sup> or the margin<sup>6</sup> of the third (Istanbul) manuscript, which otherwise differs considerably from Rb and Rc.

According to a note by the copyist of Rc (f. 31a),\*\* these corrections were made by 'the Nişāncı', to whom the original text

<sup>1</sup> Unfortunately it is not always clear to which statute, or which part of a statute, a marginal note refers.

<sup>2</sup> And in Fv, Gf an addition in the text of § 29.

<sup>3</sup> OCC, §§ 6, 24 (and 25), 29, 66.

\* [See above, p. 28, n. 8.]

<sup>4</sup> OCC, §§ 41, 43, 44, 53, 60 (59?), 63 (62?), 72, 78 (77?), 84 (85?), 90, 98 (1), 98 (2), 99, 101 (102?), 104, 107, 111, 113, 121-4.

<sup>5</sup> OCC, §§ 41, 85.

<sup>6</sup> OCC, §§ 43, 44, 53, 77 (78?), 98 (1), 98 (2), 107, 113, 121-4. See also the marginal note to § 50.

\*\* [See A. S. Tveritina's edition, p. 138. For the Nişāncı's authority as *müfti-i kânûn* (MTM, i. 516), see below, pp. 171-2, 175, 188-9.]

was submitted for examination. Unfortunately, the name of the Nişāncı mentioned on f. 31a (Celālzāde?) and in the marginal notes (Meḥmed?, Aḥmed?) cannot be established with certainty. MS. Lb also ascribes the corrections to 'the Nişānī' (or 'Nişāncı Paşa'),<sup>1</sup> but does not give his name. A marginal note on f. 8b proves that the corrections were not made before Cumādā II 975/December 1567, the date of a firman quoted by the Nişāncı in one of his glosses.<sup>2</sup> Thus the author of the notes cannot be the famous Nişāncı Celālzāde Muştafā, who had died about two months earlier.\* Moreover, he would hardly have abrogated statutes<sup>3</sup> which he himself, as discussed above,<sup>4</sup> seems to have added to the earlier version of the criminal code. The corrections may have been made by Kara Nişāncı Boyalı Meḥmed, who held this office in the years 1567-73, 1577-80, and 1588-9, or by Aḥmed Ferīdūn, the famous author of the *Munsha'āt al-Salāṭīn*, who was Nişāncı in 1573-6 and 1581-3.<sup>5</sup> But none of these corrections are to be found in the version of the *kānūnnāme* which was compiled in or after the reign of Sultan Murād III and which, in one of its copies,<sup>6</sup> is called 'Kānūnnāme of Ferīdūn Paşa the Nişāncı'.

Most of the marginal notes abrogate or correct statutes of the criminal code because they contradict the *shari'a*.<sup>7</sup> 'The injunction of the holy law is valid; there is no *kānūn* (in this matter)' (*emr-i şer' mu'teberdir, kānūn(i) yokdur*) is the most common note.<sup>8</sup> Some of these later corrections prescribe that torture or severe penalties must not be inflicted in certain cases until a special order to that effect has been received from the Sultan.<sup>9</sup> In some cases punishment is made dependent upon the production of adequate proof as required by the *shari'a*,<sup>10</sup> and its extent is limited to the

<sup>1</sup> This version bears the title *Ḳānūnnāme-i şaḥīḥ-i pādīşāhi ve kenār-i merḥūm nişāncı paşa*.

<sup>2</sup> In another note (f. 9a) a firman of early Muḥarrem 988/Fébruary 1580 is quoted, but since no *şahḥ minhu* is added, as in the other glosses, it is not certain that this note too was added by the same *nişāncı*.

\* [In Rebi' II 975, according to 'Atā'i, 114.]

<sup>3</sup> e.g. OCC, §§ 53, 111, 113.

<sup>4</sup> See pp. 23-6.

<sup>5</sup> See *ET*<sup>2</sup>, art. 'Ferīdūn Beg' (Mordtmann[-Ménage]).

<sup>6</sup> Qc.

<sup>7</sup> Sections in other chapters are sometimes corrected as being contrary to the *kānūn* (see, for instance, Lb, f. 14a).

<sup>8</sup> See §§ 60, 63, 98 (1), 98 (2), 101, 113, etc.

<sup>9</sup> e.g. §§ 90, 98, 99. See also the version of § 77 (2) in Rd, Sa, Sb.

<sup>10</sup> e.g. §§ 24 (and 25), 43, 77 (78?), 84, 85, etc.

*shari'a*'s injunctions.<sup>1</sup> Some *kānūn* penalties are to be replaced by those prescribed in the religious law.<sup>2</sup>

It is noteworthy that almost all the statutes which were abrogated as being contrary to the *shari'a* are regulations not found in the criminal codes prior to that of Süleymān the Magnificent. This indicates that a generation or two after the penal *kānūn* had reached its widest scope in the reign of Süleymān 'Kānūnī', the religious law began to reassert itself. It is significant that in the margin of the latest, i.e. seventeenth-century, version of the code,<sup>3</sup> compiled by the clerk of a *shari'a* law-court, relevant *fetvās* and quotations from authoritative *fikh* works are added, often contradicting the *kānūn* regulations in the text.

## 2. The code enforced

To what extent and until when were the penal regulations of the *kānūn* actually applied? An assessment of the importance of the Ottoman criminal codes largely depends upon the reply to this question.

During the heyday of Ottoman power in the fifteenth and sixteenth centuries the government certainly made strenuous efforts to enforce its criminal law. Interesting information to this effect is found in an '*adāletnāme*' addressed to Mehmed Paşa, Beğlerbeği of Anadolu,<sup>5</sup> and to the *sancakbeğis* and cadis of that province and dated early Ramazān 1003/May 1595, i.e. a few months

<sup>1</sup> See §§ 44, 66, 122, etc.

<sup>2</sup> See § 124 and the different version of § 11 in Va, Vc margin.

<sup>3</sup> Va, Vb, Vc, see above, pp. 32-3.

<sup>4</sup> An '*adāletnāme* is a circular firman (often a *ḥatt-i hümāyūn*) confirming the sultan's wish to see justice done to all his subjects, particularly the poor and helpless, and strictly forbidding all sorts of oppression by government officials. Such decrees were often issued when a new sultan succeeded to the throne. They used to be read out to notables and others in the law-courts or publicly proclaimed. The local cadis were instructed to copy them into their registers, where many have been preserved. For a fee of 50 *akçe* (or without any payment, at least to the cadi himself: see Mühimme Defteri, vol. 78, no. 4012, of 1018/1609), any citizen could ask the cadi for a certified copy, to be presented wherever it might be necessary. See Uluçay, *XVII. asırda*, pp. 213-14 [and now, H. İnalçık, *Adāletnāmeler*, in *Belgeler*, ii/3-4 (1965) (publ. 1967), 49-145, where the documents of 1018/1609 are published (pp. 123-33) with facsimile (Pl. II/1-9); for the 'free copies', see p. 132].

<sup>5</sup> He is Lālā Mehmed Paşa, the later Grand Vizier, of the Sokollu family (see *SO*, iv. 140). [He had been appointed Beğlerbeği of Anadolu in the previous year.]

after Sultan Mehemmed III's accession to the throne.<sup>1</sup> According to this document, 'in the days of justice of [the reign of] His Majesty the late Sultan Süleymān Hān (Süleymān the Magnificent), *ḵānūnnāmes* were written (copied) and a bound *ḵānūnnāme* [copy]<sup>2</sup> was deposited in the *cadi's* court of law in every town . . .' The *cadis* were to administer justice 'in accordance with the noble *shari'a* and the *ḵānūnnāmes* deposited in the courts of law . . . and from those who are to be fined, fines shall be collected in accordance with what has been laid down in My Imperial *ḵānūnnāme* . . .'

With the same object the *Ḵānūnnāme* for Egypt of 931/1525<sup>3</sup> orders that the *ḵānūnnāme* at present in force in the *Rūm vilāyeti*, i.e. the old dominions of the Sultan,\* is to be copied. A copy shall be kept in the *Dīvān* of Egypt and one copy be sent to each Egyptian *cadi*, who shall enter its text in his register and have it publicly proclaimed in his district.<sup>4</sup>

Copies of the 'new *ḵānūn*' of Sultan Süleymān the Magnificent, including the criminal code, were, as mentioned above,<sup>5</sup> sent to various *cadis* in Anatolia at their request, and strict instructions were given to them to see that it was implemented. Another, very similar version<sup>6</sup> of the same *ḵānūnnāme* seems also to have been sent out in the form of a *niṣān*, opening with the words *Sebeb-i taḥrīr-i miṣāl* . . .

In innumerable *firmans* and other decrees<sup>7</sup> the *cadis* were charged to administer justice and the governors (and their subordinates) to punish criminals 'in accordance with the noble *shari'a* and the exalted *ḵānūn*'. Capital and severe corporal punishment was to be inflicted 'in accordance with the Imperial *ḵānūnnāme*', and no fines were to be taken contrary to its regulations.<sup>8</sup>

<sup>1</sup> Its text is found in a *mecmū'a* in the Köprülü Library, MS. II, 360, ff. 89b-92a. Another, less good, version dated Rebi' II 1004/December 1595 has been published in Uluçay, *XVII. asırda*, pp. 163-9 [= İnalçık, op. cit. in n. 4, p. 150 above, pp. 104-8 and Pl. I/1-5].

<sup>2</sup> The order of an unnamed sultan to compile the Ottoman *ḵānūns*, including the criminal code, in a 'bound register' is also mentioned in the preamble to the code of Sultan Bāyezid II (*TOEM*, 1329, suppl., p. 2ā), see above; p. 19.

<sup>3</sup> Barkan, 362, § 13.

\* [See below, p. 288, n. 13.]

<sup>4</sup> For the preamble of this *ḵānūnnāme*, see further below, p. 176.

<sup>5</sup> See p. 25.

<sup>6</sup> Pb (see below, p. 176).

<sup>7</sup> See, for instance, Bursa Sicilli, A 33, f. 61a (firman of early 913/1507); MS. Fl, f. 51a (firman of 946/1539-40); MS. Fj, f. 18b (*berāt* appointing a new governor-general of Egypt in Cumādā II 928/1522).

<sup>8</sup> MS. Eb, f. 31b (*niṣān* of Muḥarrem 947/1540).

In fact, the law-court registers of the late fifteenth and the first half of the sixteenth centuries show that in that period at least<sup>1</sup> the *cadis* very often applied the criminal regulations of the *kānūn*. According to these registers, *subaşı*s or other executive officers (*ehl-i 'örf*) appearing in court demanded that the accused be fined or given another punishment 'in accordance with the Imperial *kānūn*'.<sup>2</sup> Private citizens, too, based their claims in a *cadi*'s law-court on the *kānūn*, for instance in cases of theft.<sup>3</sup> If an offender denied his guilt, the *cadi* sometimes ruled that 'in accordance with the Sultan's *kānūn*' he should be tortured.<sup>4</sup> In a criminal case referred to above,<sup>5</sup> a *cadi* even cited a passage from the Imperial *kānūnnāme* as the basis for his sentence. In other cases an offender who had admitted his crime in the *cadi*'s court was handed over to the *ehl-i 'örf* 'so that they may punish him in accordance with the *kānūnnāme* that is in their possession'.<sup>6</sup>

### 3. *The code discarded*

From the second part of the sixteenth century, however, the criminal code was more and more disregarded. The above-mentioned '*adāletnāme* of 1595 claims, perhaps with some idealization,<sup>7</sup> that in the reign of Süleymān the Magnificent the Imperial *kānūnnāme* was strictly enforced, and that thereby everybody was protected against oppression and injustice. But, the '*adāletnāme* goes on, 'the oppressive authorities<sup>8</sup> of the present time, treating that *kānūnnāme*, the guarantee of justice ('*adālet-żamīn*), like [the other] victims of [their] oppression (*mazlūmīn*), have flung it into the dungeon of a [locked] chest (*maḥbes-i şandūk*) and have introduced [any] illegal innovations they desired. Whilst for inflicting

<sup>1</sup> A thorough study of the *cadis*' registers for later periods would be required to find out when references to the *kānūn* begin to decrease.

<sup>2</sup> e.g. Üsküdar Sicilli, vol. 6, f. 46a; Bursa Sicilli, A 38, f. 57a; *ibid.*, A 21, f. 239b.

<sup>3</sup> e.g. Üsküdar Sicilli, vol 1, f. 114a.

<sup>4</sup> e.g. Bursa Sicilli, A 21, f. 251a.

<sup>5</sup> Bursa Sicilli, A 32, f. 88b. See also, *ibid.*, A 38, f. 90a.

<sup>5</sup> See p. 32.

<sup>7</sup> In still earlier reigns the situation was often far from being satisfactory. For instance, as early as 1502 complaints were made that during the preceding four or five years the *kānūn* fixing the prices of commodities, etc., had not been observed at Bursa (see *Tarih Vesikalari*, no. 7, p. 24).

<sup>8</sup> *hükām*, which may mean either judges or governors (see Heyd, *Ottoman Documents*, p. 49, n. 6).

a gashing head-wound<sup>1</sup> and similar offences it was customary to collect [a fine of] 200–300 *akçe*,<sup>2</sup> now 1,000 and [even] 1,500 *akçe* are collected as a fine . . .'. Taxes too are levied in gross excess of those laid down in the *shari'a*, the *ḵānūn*, and the cadastral registers.

Fines for criminal offences, one of the most common penalties prescribed in the *ḵānūn*, were in certain provinces officially abolished in the second half of the seventeenth century. The earliest *ḵānūnnāme* for Crete, compiled in 1081/1670–1, i.e. about a year after the conquest of the island, states<sup>3</sup> that for Crete the *rūsūm-i divāniye*,<sup>4</sup> i.e. the taxes imposed by the government (and not the *shari'a*), such as fines, the bride tax, the *deştbāni* tax,<sup>5</sup> the sheep tax (*resm-i aḡnām*), and many other 'illegal innovations' (*bida'*) have been totally abolished by Imperial firman. This is reconfirmed in a later *ḵānūnnāme* for Crete dated c. 1117/1705–6,<sup>6</sup> which adds that not a single farthing must be collected from the inhabitants of the island 'in contravention of the holy religious law'.<sup>7</sup> The *ḵānūn*, which laid down these fines and taxes, is no longer mentioned.

Similarly the *ḵānūnnāme* for the island of Midilli (Mytilene, Lesbos) in the cadastral register of 1121/1709–10<sup>8</sup> abolishes the fines and many '*örfi* taxes. According to a note at the end of the *ḵānūnnāme*,<sup>9</sup> these impositions had already been left out of the 'old register', probably that of 1082/1671–2 (or earlier).<sup>10</sup>

This new fiscal policy reflects an important change in the legal approach. The preamble to the above-mentioned *ḵānūnnāme* for Crete of 1081/1670–1 proclaims that by the Sultan's order taxation in the newly conquered island shall be based on the *sunna* of the Prophet, as it was applied in the countries occupied by the Muslims in the time of the first four caliphs (*ḥulefā-i rāṣidin*). Consequently, land registration is to be carried out 'in accordance

<sup>1</sup> See OCC, § 40, where a fine of 30 *akçe* and in serious cases of 30–100 *akçe* is prescribed.

<sup>2</sup> In Uluçay's version, 150–200 *akçe*.

<sup>3</sup> Başbakanlık Arşivi, Tapu Defteri 825. In the text published by Barkan (352, § 7) the relevant passage is omitted.

<sup>4</sup> In the later version (Barkan, 354, § 3): *rūsūm-i 'örfiye*.

<sup>5</sup> See p. 124, n. 12.

<sup>6</sup> Barkan, 354, § 3. For the date, cf. *ibid.*, § 1 (= Tuncer, *Toprak Hukuku*, p. 112).

<sup>7</sup> Barkan, 354, § 1 (end).

<sup>9</sup> Barkan, 338 (*Merfu'ât*).

<sup>8</sup> Barkan, 333, § 1.

<sup>10</sup> See Barkan, 333, § 3.

with the rules of the *shari'a* as set forth in the *fiqh* works' and only the *shari'a* taxes laid down there may be levied on the inhabitants.<sup>1</sup>

Moreover, on Crete and, at least partly, on Mytilene the land was not, as in most other parts of the Empire, considered State land (*arż-i mîri*) but, as *arāżi-i harāciye*, was recognized as the private property of the possessors. After their death it was divided among their heirs according to the rules of the *shari'a*,<sup>2</sup> which the 'feudal' system of the *kānūn* had for centuries succeeded in circumventing on State lands. With the rejection of this system for Crete (and Mytilene), fines and other non-*shari'a* impositions had necessarily to be abolished too.<sup>3</sup> This shows how closely connected the criminal *kānūn* was with the feudal system (and its *kānūn*).

An even stronger rejection of the *kānūn* in general was made in a firman addressed by Sultan Muşţafā II to the Deputy Grand Vizier in Zū 'l-Ķa'de 1107/June 1696.<sup>4</sup> The published text,<sup>5</sup> to which attention has been drawn by Barkan,<sup>6</sup> is to be corrected and completed by the version found in an undated *buyuruldu* sent to the Defterdār and ordering him to see to it that his department acts accordingly.<sup>7</sup> Stating that all public and private affairs are completely and exclusively regulated by the Ķur'ān and the *shari'a*, the Sultan adds:

Apart from the penalties<sup>8</sup> (*hudūd*) ordained by Allāh and the penalties ordained by the Prophet no penalties are to be laid down and chosen (*ihtiyār*), and interference by anyone else in the commands of the illustrious *shari'a* is null and is rejected. However, in some decrees which have the character of *kānūn* [the term] noble *shari'a* is followed by and connected with [the term] *kānūn*.<sup>9</sup> Not only is [the *shari'a* thus] quoted in a place unbecoming it. It is also highly perilous and most

<sup>1</sup> Barkan, 351, preamble, and 352, § 7.

<sup>2</sup> Barkan, 354, § 2; 352, § 4; 333, §§ 2, 4; but see 334, § 7. The reason for the establishment of this exceptional regime in these two islands seems to have been that both had limited agricultural resources. Their main forms of cultivation were gardens and vineyards (Barkan, 353, § 1; 333, § 3), and those were everywhere regarded as private property. On the other hand, after the reconquest of Morea in 1715 this more fertile province was considered State land (see Barkan, 326, § 1).

<sup>3</sup> See Barkan, xli-xlii.

<sup>4</sup> Mühimme Defteri, vol. 108, p. 293.

<sup>5</sup> Nūri, 568, note.

<sup>6</sup> Barkan, xix, n. 5.

<sup>7</sup> Bibl. Nat., Paris, MS. Suppl. turc 69, ff. 123b-124b.

<sup>8</sup> Or, prohibitions.

<sup>9</sup> Referring to the common formula 'in accordance with the *shari'a* and the *kānūn*' or the like.

sinful to juxtapose the [terms] *shari'a* and *kānūn*. Therefore in firmans and decrees all matters shall henceforth be based on the firm support of the noble *shari'a* only . . . and warnings are given against the coupling of the [terms] noble *shari'a* and *kānūn* . . .

These directives conformed with the policy of the famous Grand Vizier Köprülüzāde Fāzil Muṣṭafā Paşa (1689–91), a strict observer of the religious law, of abolishing many 'örfî taxes as 'illegal innovations' and enforcing the *shari'a* in his 'New Order' (*niẓām-i cedid*) of fiscal affairs.<sup>1</sup>

In the 'adāletnāme of 1595 cited above<sup>2</sup> the cadis had been enjoined to administer justice in accordance with both the *shari'a* and the *kānūn*, and the latter had been praised as the major protection of the people against oppression. Exactly a hundred years later, however, an 'adāletnāme issued by the new Sultan, Muṣṭafā II, in Ramazān 1106/April–May 1695<sup>3</sup> warned the cadis and other officials not to oppress the people 'in contravention of the *shari'a*'; the *kānūn* is no longer mentioned. The same applies generally to firmans<sup>4</sup> and other decrees from the seventeenth century onwards.

True, this upsurge of Muslim orthodoxy at the end of the seventeenth century did not completely eliminate all the penal regulations of the *kānūn*. In the *Ḳānūnnāme* for Rhodes of 1123/1711–12<sup>5</sup> several 'örfî taxes are still mentioned, and in that for Morea dated 1129/1716–17<sup>6</sup> fines are imposed for infringements of market regulations and for damage done to crops. Similarly, a firman of 1141/1728–9<sup>7</sup> refers to fines as part of the Grand Vizier's income from his *mālikāne* in accordance with the cadastral register. Even as late as the end of the eighteenth or the beginning of the nineteenth century, a decree refers to the execution of criminals who had acted 'contrary to the noble *shari'a*, the exalted *kānūn* and the Sultan's will . . .'.<sup>8</sup> But there can be little doubt that in the course of the seventeenth and eighteenth centuries the Ottoman Criminal Code was gradually discarded as a source of penal law, and finally completely forgotten.

<sup>1</sup> See Rāşid, i, ff. 158a–b, 170a (ii. 99, 148). Cf. Hammer, *GOR*, v. 547, 551–2.

<sup>2</sup> See pp. 150–1.

<sup>3</sup> British Museum, MS. Or. 7477, f. 36a–b (41a–b).

<sup>4</sup> See, for instance, the firmans of 1140–1/1727–9 published by M. Aktepe in *TD*, nos. 11–12, pp. 73–98.

<sup>5</sup> Tuncer, *Toprak Hukuku*, pp. 118–20.

<sup>6</sup> Barkan, 330, § 25; 331, § 25 (read 35).

<sup>7</sup> Başbakanlık Arşivi, Kalebend Defteri 2, f. 2a.

<sup>8</sup> Bibl. Nat., Paris, MS. Suppl. turc 1027, f. 193a.

The reasons for this decline and final discarding of the *kānūn* are manifold.

The cadis and other 'ulemā, whose political power and influence increased considerably during the seventeenth and eighteenth centuries, had never fully accepted the criminal regulations of the *kānūn*, particularly where they were contrary to the *shari'a*.\*

The military authorities (governors, fief-holders, and their subordinates) too were anxious to get rid of these regulations, which limited their freedom of action, especially in regard to the imposition of excessive fines.

The gradual degeneration of the 'feudal' system, with the replacement of *timār*-holding *sipāhīs* by salaried soldiers (*kapı kulu*, *levend*, etc.), and the abandonment of the periodical censuses of population led to a neglect of the provincial *kānūnnāmes*, which regulated both feudal and some criminal affairs.

All these factors resulted from the decline of the Central Government's power and its increasing inability to restrain its officials, whose corruption grew proportionally.

Another major reason, however, lay in the regulations themselves. Owing to the excessively rigid conservatism of the Ottoman institutions, the amount of fines fixed in *akçe* remained unchanged over several centuries, in spite of the enormous devaluation of Ottoman money. Thus, a *kānūnnāme* of 1716-17<sup>1</sup> prescribes exactly the same fine as Mehemmed II's code in the fifteenth century,<sup>2</sup> although during these two and a half centuries the *akçe* had been reduced to less than 15 per cent of its value then (in Mehemmed II's time a gold piece equalled 40-45 *akçe*,<sup>3</sup> in the early eighteenth century 300 or more).<sup>4</sup> No wonder that those authorized to collect fines completely disregarded the prescriptions of the *kānūn*.<sup>5</sup>\*\*\*

\* [For this question see further Part Two, ch. I, especially pp. 202-4.]

<sup>1</sup> Barkan, 331, § 25.

<sup>2</sup> Kraeplitz, p. 27, § 34.

<sup>3</sup> See above, p. 47 and n. 7.

<sup>4</sup> Cantemir, p. 141, n. 61; La Motraye, i. 184.

<sup>5</sup> See below, pp. 296-9. Incidentally, the same phenomenon is found in some areas of taxation. For instance, in the fifteenth century non-Muslims had to pay their feudal lord 25 *akçe* a year as *ispence* (Kraeplitz, p. 28), and the same amount is required from them in the second half of the seventeenth century (*MTM*, i. 543).

\*\*\* [pencil note:] Further possible reasons: (1) the *kānūn* was not modified to accord with changing needs and circumstances: no attempt was made, for example, to include regulations on the increasingly widespread punishment of

The decline of the *ḵānūn* did not, however, result in the assertion of the *shari'a* in the field of criminal justice. In a *ḵaṣīda* reproving the people of Istanbul, the poet Üveysī (the famous Veysī?) complained, in the reign of Murād IV, 'Ye follow not the Law of God, nor yet obey the canon law (*ḵānūn*)'.<sup>1</sup>

penal servitude on the galleys [for which see below, pp. 304-7]; (2) the secular authorities charged with executing the *ḵānūn* were usually men of military upbringing, lacking any legal training and incapable of revising the *ḵānūn*—even if they had wished to do so; (3) law, like other fields of inquiry, was affected by the general intellectual stagnation which prevailed in the later years of the Ottoman Empire.

<sup>1</sup> E. J. W. Gibb, *A History of Ottoman Poetry*, iii, London, 1904, p. 215; vi, London, 1909, p. 179.

## CONCORDANCE

THE objects of this Concordance are (1) to give a concise conspectus of the offences, etc., dealt with in the various criminal regulations discussed in the text; (2) to illustrate schematically the arguments in the text regarding the re-casting of the sections of the Ottoman code and the various accretions to it; and (3) to facilitate cross-reference to comparable provisions in the Dulkadir documents.

The figures on the extreme left refer to the sections of the Ottoman Criminal Code as published above at pp. 54-93, the 'short titles' indicating the principal subject treated in each statute. 'Titles' in square brackets indicate statutes not found in MSS. of the L group (see above, p. 54). The three columns next following give references to the equivalent statutes in the three previously published texts of Ottoman codes:

MSS. Aa, Ab: the relevant sections of the *kānūnnāme* published by Kraeplitz in *MOG*, i, pp. 19 et sqq., by *faṣl* and section, the latter according to Kraeplitz's numeration (divided where necessary, e.g. OCC, §§ 36, 37 = Kraeplitz, II § 1a, § 1b). See above, pp. 13-14.

E MSS.: the 'standard' *siyāsetnāme*, as published by E. Z. Karal in *Bulleten*, vi/21-2, pp. 41-4; the numeration has been supplied for the purposes of this table. See above, pp. 16-18.

F. MSS.: the relevant sections of the *kānūnnāme* published by Mehmed 'Ārif in *TOEM*, 1329, suppl., pp. 1-10, by *faṣl* and section, the latter according to M. 'Ārif's (unnumbered) paragraphs (divided where necessary, e.g. OCC, §§ 24, 25 = M. 'Ārif (p. 3, lines 1-5), § 10a, § 10b). See above, pp. 18-22.

The last three columns refer to the Dulkadir documents, DPC, DFR, and DLF, discussed above at pp. 44-53 and translated at pp. 132-44, 144-6, and 146-7 respectively; the numeration follows that of the translations. With reference to these it should be noted that cross-reference does not necessarily indicate that the same offence is under discussion but only that a part of the Ottoman statute has a relevant parallel in part of the Dulkadir statute: thus OCC, § 38 provides that the aggressor in a brawl is to pay a double fine, DPC, §§ 19 and 29 provide that an aggressor who is injured is to receive only half the normal *dīyet*, and DLF, § 6 punishes any aggressor, the common point being 'treatment of an aggressor'.

	MSS. Aa, Ab	E. MSS.	F MSS.	DPC	DFR	DLF
<b>I. SEXUAL OFFENCES</b>						
1. Fornication: by married man	I 1		I 1	} 10		} 12
2. by unmarried man	I 2		I 2			
3. by widow			I 4			
4. by unmarried woman	I 6					
5. by married woman	I 3		I 3			
6. consequences for husband condoning	I 4		I 5			
[ 7. one partner married, one unmarried						
8. by slave	I 8		I 8			
9. attempted	I 7		I 7	12 (1)		5 (?)
10. Abduction: of girl or boy		1	IV 1	15, 12 (2)	5	
[11. of woman or girl				12 (2)	5, 8	
[12. accomplices				12 (3)		
13. Killing of wife and paramour				13		
14. Wounding an intruder				9		
15. Forced marriage		2	IV 2-3	16		
16. Marriage of divorcée and paramour						
[17. Suspicion of fornication						
18. Molestation: of woman	I 9		I 9	12 (1), ? 12 (2)		
19. of female slave						
20. of boy				12 (1)		
[21. of woman						
[22. Intercourse with & another's slave or						
23. with divorced wife						
24. Accusation of fornication: woman						
accuses man	I 10		I 10a	39 (3)		
25. man accuses woman	I 11		I 10b	39 (3), 34 (4)		
26. man accuses man				39 (3)		
27. Sodomy: by boy				40		
28. Bestiality						
29. Failure to inform against fornicator, against thief	I 12		I 11			
30. Procuring: by a woman	I 5		I 6	14		
31. Infidel offenders			I 12			
32. Sodomy: by married man						

	MSS. Aa, Ab	E MSS.	F MSS.	DPC	DFR	DLF
33. by unmarried man						
[34. Marital intercourse <i>per anum</i>						
35. Sexual acts by boys				17		
II. BRAWLS, WOUNDING, HOMICIDE, etc.						
36. Fighting: tearing of collars	II 1a		II 1a	21		
37. tearing of hair or beards	II 1b		II 1b	21, 26		
38. heavier punishment for aggressor				19, 29		6
39. Assault: beating, tear- ing beard				21, 26		
40. head-wound	II 1c		II 3	20, 21?, 22, 26	II, 14	I, 2
41. Homicide	II 2	3	II 4	18 (1)	I	10
[42. by/of two or more				cf. 2 (2), 3		
43. Accusation of wounding						
44. Communal responsibility for homicide						
45. Wounding: with weapon	II 3		II 5	23, 26, 28	3, 4	4
[46. (two cases: death pen- alty for wounding)						
[47. Wounding: with stone or stick, breaking arm or leg				20, 23 26, 28	15	11 3
48. Assault: with weapon						
49. Cutting of purses, knifing		12	IV 15	26, 28		4
50. Knocking out eye or tooth	III 9		II 6	19, 24	12, 13	
51. Infidel offenders	p. 29, § 7		II 8 (II 21)			
52. Fighting: by small boys	III 10		II 7	40		
53. by women						
54. False accusation of fornication					39 (3), 34 (4)	
[55. Slander						
[56. Bad language				39 (1)		14
57. Procuring: by 'a person'				14		
58. Fighting: by slaves						

	MSS. Aa, Ab	E MSS.	F MSS.	DPC	DFR	DLF
[59. Beating: a woman						
[60. a parent						
III. WINE-DRINKING, THEFT, ARSON, etc.						
61. Wine: drinking	III 1		III 1	39 (2)		
62. pressing or selling						
[63. Attending a wine-party						
64. Theft: of poultry	III 2		III 2	34 (1), (2)		
65. of beehive, sheep, lamb	III 3			2 (1), 4		9
66. of horse, mule, etc.	III 5-6		III 3	2 (1)	2 (?)	7
67. of purse, turban, towel	III 4		III 4	5 (2)		
68. of grain from store	III 7		III 6	5 (1)		
[69. of grain from thresh- ing-floor	III 15			31		
70. of standing corn						
71. of axe, etc.						
72. within the family	III 8		III 7			
73. (?) from the person				5 (2)		
74. Sundry capital offences		4	IV 5	5 (1)		
75. Procuring		5	IV 6	14		
76. Communal responsi- bility: for homicide		6	IV 7			
77. for homicide, rob- bery, theft		7	IV 8	8		
78. for theft from a traveller						
[79. Host's responsibility for guest						
[80. Communal responsi- bility: for shop-breaking						
81. Theft of food by a traveller	III 18		III 9			
82. Possession of stolen goods		8	IV 9			8
83. Caravanserai: theft in						
84. morning inspection, etc.		9	IV, 10-12			
85. theft from without		10	IV 13			
86. suspicion of col- lusion		11	IV 14			
87. Punishment of <i>sipāhis</i> reserved to Sublime Court		16	IV 18			
8258125		N				

	MSS. Aa, Ab	E MSS.	F MSS.	DPC	DFR	DLF
88. Cadi not to hinder execution of <i>'orf</i>		17	IV 19			
89. Confession under torture		18	IV 20			
90. Torture of alleged accomplice		19	IV 21			
91. Homicide of close relative		13	IV 16			
92. Arson		14	IV 17	36 (1) (?)		
[ 93. responsibility of watchmen						
94. Stealing by finding	III 17a		III 8a	36 (3)		
95. Lepers		15				
[ 96. Gipsies						
97. Proclamation of animals, etc., found	III 17b		III 8b	36 (3)		
98. False testimony, forgery of official documents				38		
99. Counterfeiting of coins						
100. Marrying during <i>'iddet</i>						
101. Neglect of daily prayers						
[ 102. Neglect of Friday prayer, of fasting						
103. Permitted rate of interest						
104. False denunciation						
105. Theft: from garden				34 (1)		
[ 106. Responsibility to produce absconder						
107. extent of this responsibility						
108. Crop damage		p. 27, § 34	III,	33		
109. compensation		p. 31, § 29	10-12			
110. Fencing of crops		p. 27, § 35	III 13			
111. Commons						
112. Killing another's animal						
113. Indecent behaviour						
[ 114. Immorality in caravanserais						
115. No fine without the cadi's conviction						

	MSS. Aa, Ab	E MSS.	F MSS.	DPC	DFR	DLF
116. No imprisonment without the <i>cadi's</i> conviction; no excessive fines						
117. Absconding criminal: to be given up by <i>yaya</i> , etc.		20	IV 22			
[118. to be returned from another <i>sancak</i>						
[119. not to be fined twice						
[120. Returning criminal not to be fined twice						
XV. SUSPECTS						
121. Responsibility for finding absconder						
122. Responsibility of <i>derbendcis</i>						
123. 'Ulemā's liability to chastisement, to imprisonment						
124. Expulsion of habitual criminals and harlots						
[125. Habitual trouble-makers						
[126. Cases not to be heard						



PART TWO

THE ADMINISTRATION OF  
CRIMINAL JUSTICE  
IN THE  
OTTOMAN EMPIRE



# I

## THE LAW

### 1. *The term k̄ānūn*

IN the Ottoman sources the term *k̄ānūn* is used in four different meanings:

(a) legal rules or prescriptions generally, including those of the religious law of Islam: e.g. *k̄ānūn-i šer'*, *ḳavānīn-i šer'īye*;<sup>1</sup>

(b) a single statute of secular law enacted by the sultan, a regulation: e.g. *bu k̄ānūn k̄ānūna muḫālifdir*,<sup>2</sup> 'this *k̄ānūn* (statute) is contrary to the *k̄ānūn* (in the meaning of (*d*))';<sup>3</sup>

(c) a collection of such regulations relating to a certain matter or certain matters, a code or *k̄ānūnnāme*: e.g. *Ḳānūn-i Yürükān*, *Ḳānūn-i Alay*;<sup>\*</sup>

(d) the whole body or institution of such secular state law, as opposed to the *sharī'a*: e.g. *šer'a ve k̄ānūna muḫālif*.<sup>\*\*</sup>

Instead of *k̄ānūn* (or *k̄ānūnnāme*) the cadastral registers of Basra use *destūr ül-'amel* (*dastūr al-'amal*),<sup>4</sup> a common term for tax register and regulations in the Türkmen and Şafawī states.<sup>5</sup>

The Persian term *dastūr* was generally used instead of *k̄ānūn* (in the sense of tax, toll, and feudal regulations) in the eastern provinces of the Ottoman Empire, particularly those formerly belonging to the dominions of Uzun Ḥasan (Diyarbakır, Urfa, Siverek, etc.)<sup>6</sup> and the Transcaucasian regions conquered at a later period from the Persians.<sup>7</sup>

<sup>1</sup> Barkan, 239, § 8; 1, § 1.      <sup>2</sup> MS. Lb, f. 14a; see also below, p. 172.

<sup>3</sup> The Greek term *κανόν* is similarly used in two meanings (see N. Milasch, *Das Kirchenrecht der morgenländischen Kirche*, Mostar, 1905, p. 8). The same applies to the term *yasa* (see Juwaynī, *Ta'rikh-i-Yahān-gushā*, ed. Ḳazwīnī, i, Leiden-London, 1912, pp. 24-5).      \* [Barkan, 260; *MTM*, i. 531.]

\*\* [Barkan, 71, § 50; see p. 168 and n. 6.]

<sup>4</sup> e.g. Başbakanlık Arşivi, Tapu Defteri 282 (of 959/1552).

<sup>5</sup> H. Busse, *Untersuchungen zum islamischen Kanzleiwesen*, Cairo, 1959, p. 85, p. 129, n. 1; Minorsky, *Tadhkirat*, p. 176.

<sup>6</sup> Barkan, 146, § 12; 157, § 18; 171, § 11; 194, § 8; 195, § 11. Cf. also *ibid.*, 192, § 2. [pencil note:] Cf. also Minorsky, in *BSOAS*, xvii (1955), 449.

<sup>7</sup> Barkan, 196, § 5 and the heading following.

Synonymous with *kānūn* in meaning (b) is 'ādet.<sup>1</sup> The regulations of Uzun Ḥasan are also sometimes called 'ādāt.<sup>2</sup>

In the headings of the *kānūnnāmes* for some of the regions previously ruled by Uzun Ḥasan (Diyarbakır, Urfa, Mardin, Kemah, Ergani) as well as for Arabkir, the term *kānūn* is replaced by *yasa* (Persian plural, *yasahā*).<sup>3</sup>

In later centuries *nizām* was increasingly used in a meaning similar to that of *kānūn*.<sup>4</sup>

## 2. The term 'örf

The term 'örf ('urf), which originally meant 'common usage' and in Ottoman law often has the restricted sense of 'torture',<sup>5</sup> is used, it seems, as a synonym of *kānūn* in its last-mentioned meaning (d).<sup>6</sup> In many cases the expression *şer' ve 'örf* may have the same meaning as *şer' ve kānūn*.

'Örf is, however, also used side by side with the terms *shari'a* and *kānūn*.<sup>7</sup> If such usage is something more than a stylistic inclination to use synonyms, 'örf appears to denote a distinct source of law. Indeed, in some contexts 'örf is still used in a meaning close to its original significance, reflecting the fact that the Ottoman *kānūn*, like the *kānūns* of other rulers,<sup>8</sup> often confirmed existing local custom. Thus the collection of certain fines may be called 'örf-i ma'rūf,<sup>9</sup> 'the accepted usage', and the levying of certain taxes 'örf-i beled,<sup>10</sup> 'the local usage'. In this sense 'örf may be a synonym of 'ādāt-i ma'lūme, 'the well-known customs', which in the *Kānūnnāme* for Baghdad of Ramazān 943/1537<sup>11</sup> are confirmed, while later 'illegal innovations' (*bid'at*) are abolished.

<sup>1</sup> See *buyuruldu* of Maḥmūd Paşa, Grand Vizier of Meḥammed II, of Zū 'l-Ḥa'de 876/1472 (Topkapı Sarayı Archives, E 5439): . . . 'ādēt-i sultāni ve kānūn-i ḥākāni üzerine . . . See also Anhegger, 476.

<sup>2</sup> Bibl. Nat., Paris, MS. A.f. turc 81, ff. 82b-84a.

<sup>3</sup> Barkan, 145, 155, 158, 184, 149, and 171.

<sup>4</sup> Nūri, 567, n. 37.

<sup>5</sup> See below, p. 252.

<sup>6</sup> See, for instance, two versions of the same statute in Barkan, 27, § 21 (*şer'a ve 'örfe muḥālif*) and 71, § 50 (*şer'a ve kānūna muḥālif*). Cf. also *kānūn-i ma'rūfe* (sic), the opposite of which is *ḥayf* (ibid., 65, § 12), apparently meaning the same as 'örf-i ma'rūf (see below, and n. 9); and the phrase *ṭariḳ-i şer' ve kānūn-i 'örf üzre* (*zabt-i emvāl*, etc.), in Tursun Beğ, 25.

<sup>7</sup> Barkan, 27, §§ 21-2; 274, § 12.

<sup>8</sup> Such as Uzun Ḥasan, see V. Minorsky, in *BSOAS*, xvii (1955), 450.

<sup>9</sup> Barkan, 5, § 29; 71, § 48. Its opposite is called *ḥayf-i nā-ma'rūf*, 'unacceptable injustice' (ibid., 79, § 14).

<sup>10</sup> Ibid., 196, § 4.

<sup>11</sup> MS. Ed, ff. 82b-83a.

(It is to be noticed that the *sharī'a* term *bid'at* in official Ottoman usage signifies not only innovations contrary to the religious law but also those in contravention of the *kānūn*.)<sup>1</sup>

On the other hand, terms like 'örf-i pādīşāhī<sup>2</sup> or 'örf-i (münif-i) sultānī<sup>3</sup> suggest that 'örf here refers to the will or command of the Sultan.\* It may therefore in these contexts have the same meaning as Ibn Taymiya's term *al-'āda al-sultāniya*,<sup>4</sup> which, contrasted with *ḥukm al-sharī'a*, perhaps refers to the edicts of the (Mamlūk) Sultan in general.<sup>5</sup>

Thus one of the meanings of the term 'örf appears to be 'customary law', law not necessarily written, or perhaps even chiefly unwritten.\*\* But it may be said that 'örf includes *kānūn*, which is based on both forms of 'örf—the common usage and the sultan's will. (As to the latter, however, there seems to be no justification for the assertion that the source of the *kānūn* was the authority of the Sultan as 'Chef religieux (Kalif)').<sup>6</sup>

The officials who carry out the sultan's orders are called *ehl-i 'örf*, i.e. the agents of his political and executive authority.<sup>7</sup>

Tursun Beğ, the author of a history of Meḥemmed II, who in the second half of the fifteenth century rose from the rank of *tīmār*-holder to the position of *divān* secretary and finally *defterdār*, states<sup>8</sup> that 'in our (Ottoman) usage' ('örfimizce),<sup>9</sup> 'örf means *siyāset-i sultānī* or *yasāğ-i pādīşāhī*. These are defined as rational

<sup>1</sup> See Barkan, 40, § 1.

<sup>2</sup> *TOEM*, 1329, suppl., 36.

<sup>3</sup> *Ibid.*, 42; Barkan, 27, § 21.

\* [pencil notes expanded:] This connotation, of *lex principis*, was generally accepted in the West, e.g. by Toderini (i. 32, 38-9): 'la volontà e l'arbitrio del Principe' and Hammer (*Staatsverfassung*, i. 29: 'die Willkühr des Souveräns'; whence Lybyer, 152: the 'sovereign will of the reigning sultan'). The phrase *ber müceb-i 'örf-i 'oşmānī* in the title of MS. A.f. turc 39 of the Bibliothèque Nationale is explained by Anhegger-İnalçık (p. x) as meaning 'based on the Sultans' authority' (whereas Beldiceanu translates [i. 36, n. 4]: 'conformes aux coutumes ottomanes').

<sup>4</sup> Ibn Taymiya, *Fatāwā*, iv, Cairo, 1329, p. 193.

<sup>5</sup> But cf. Laoust, *Essai*, p. 54, where the phrase is rendered 'coutume régaliennne'.

\*\* [For the recognition of custom as one of the sources of Islamic law (*uṣūl al-fikḥ*), see below, pp. 182-3.]

<sup>6</sup> G. Young, *Corps de droit ottoman*, i, Oxford, 1905, p. viii.

<sup>7</sup> Cf. H. İnalçık, in *SBFD*, xiii (1958), 103.

<sup>8</sup> Tursun Beğ, p. 13. Cf. İnalçık in *SBFD*, xiii (1958), 125-6.

<sup>9</sup> For the use of 'örf in this meaning cf. Tursun Beğ, p. 12 ('örfimizce añā . . . dēnilür). İnalçık (loc. cit.) and, following him, Mumcu (p. 40) needlessly emend to 'urofāmızca, 'according to our sages'.

measures for maintaining the order of the 'apparent', i.e. material, world (*niẓām-i 'ālem-i ẓāhir iĉün*), and Jengiz Khan's 'conduct' (alluding to his *yasa*?) is significantly quoted as an example.

On a higher level, however, than this form of *siyāset* (which we may call political), there is, in Tursun Beğ's opinion, a (philosophical or religious) *siyāset*, which aims at the moral perfection of man and at ensuring not only the order of the material world, but also that of the 'hidden' (*bāṭın*), i.e. spiritual, world. The philosophers (*ehl-i ḥikmet*) call it *siyāset-i ilāhī* and its institutor (*vāzi*) they call rational law (*nāmūs*); in Islam it is called the *shari'a*, and the Prophet is considered its legislator (*ṣāri*).

Of whatever type the *siyāset* is, a sultan is constantly needed for its application. It is his *siyāset* alone that prevents permanent conflict among men and ensures co-operation among them by placing everyone in his proper place in society and preventing anyone from transgressing his own bounds and infringing the rights of others. . . .

In the view of a seventeenth-century Turkish historian, Hezārfenn Hüseyn,<sup>1</sup> the *kānūns* of the Ottoman sultans are much superior to foreign laws, such as the *kānūns* of Jengiz Khan which, as Hezārfenn explained in his *Tenkih-i tevāriḥ-i mülük*,<sup>2</sup> had served as basis for the organization of many powerful states in the past. The reason for this is that the Ottoman *kānūns* were joined to the *shari'a* of the Prophet of Islam and were based on the principles of philosophy, reason, and experience.

Clearly showing the strong influence of Ibn Khaldūn's thought, Hezārfenn makes some interesting comments on the character of statutory and customary law and institutions. It is not practicable, he says, in every age to apply every detail exactly as it is laid down in writing. After all, there are differences between states in different periods.<sup>3</sup> In accordance with the nature of civilization and as a result of social changes, 'every age has its 'ōrf and every 'ōrf its requirements'. As the well-known saying goes, 'He who does not know the 'ōrf of his contemporaries is an ignorant person' (*man lam ya'rif 'urf ahl zamānihi fa-huwa jāhīl*). Consequently, 'the

<sup>1</sup> See the preface to his *Talkhiṣ al-bayān*, MS. Venice, ff. 2b-3a. This preface is reproduced by Barkan, p. xxiii, n. 6, and discussed at pp. xxiii et seq.

<sup>2</sup> For this work see Babinger, *GOW*, 229.

<sup>3</sup> Hezārfenn, MS. Paris, f. 78b.

desire to adapt the 'örf of these days to that of the past is a false and stupid idea which is born of ignorance.'<sup>1</sup>

### 3. *The legal character of the kânünnâmes*

The Ottoman *kânünnâmes* are collections of statutes (*kânüns*) which, as is well known,<sup>2</sup> were originally in most cases short summaries of firmans and other decrees of the sultan, each dealing with a particular case, the details referring to individual persons, places, and events having been eliminated.<sup>3</sup> In the Criminal Code and in many provincial *kânünnâmes*, remnants of firman formulas<sup>4</sup> or even almost complete firman texts<sup>5</sup> have been preserved.

The compilation of general *kânünnâmes*, i.e. those valid for the whole Empire, was usually within the authority of the Nişancı.<sup>6</sup> Many provincial *kânünnâmes*, on the other hand, were compiled by the superintendent, often an eminent 'âlim,<sup>7</sup> of a provincial land and population census (*tahrîr, kitâbet*), the results of which were laid down in a cadastral register. In many of the so-called 'detailed' (*mufaşşal*) registers the *kânünnâme* of the province or district was recorded,<sup>8</sup> generally at the beginning of the volume or of the part dealing with the area concerned. 'Whatever order is issued by Me', the sultan stated in many *nişâns* concerning cadastral surveys,<sup>9</sup> 'it is to be written (copied) on the fly-leaf<sup>10</sup> of the register. [Thereby] it becomes *kânün* and when need occurs it shall be consulted. Orders [to be] written shall be issued in accordance with it . . . '.

The general *kânünnâmes* were preserved in the Imperial Palace or in the offices of the Central Government, especially the

<sup>1</sup> Ibid., f. 136a; see *TM*, x (1951-3), 390.

<sup>2</sup> See *İA*, art. 'Kanûn-nâme' (Ö. L. Barkan), esp. p. 186, and Barkan, p. xxxv and n. 13.

<sup>3</sup> An example of such a decree which has not yet been given *kânün* form is OCC, § 46. [pencil note:] Cf. MS. Ka, f. 26a: . . . *dâyü fermân olunmağın hülâsa-i hükûm-i sultânî kânünnâmeye tesvid olundı.*

<sup>4</sup> e.g. OCC, § 16 in Ke marg.; and, for Aa and Ab, see above, pp. 8, 13.

<sup>5</sup> e.g. Barkan, 261, § 10.

<sup>6</sup> Cf. *MTM*, i, 77, 100.

<sup>7</sup> See Barkan, 39-41, 57. For a census carried out by the famous Ebu 's-Su'üd Efendi see below, p. 190, n. 6.

<sup>8</sup> Summaries of or extracts from such provincial *kânünnâmes* were often included in general *kânünnâmes* (e.g. *TOEM*, 1329, suppl., 42-3, etc.).

<sup>9</sup> e.g. MS. Ed, ff. 74b-75a, 89a; MS. Ba, f. 43a.

<sup>10</sup> This, and not 'at the end', seems to be the meaning of *çahrına*. [Cf. also Barkan, 349, § 2; 350, § 4.]

Chancery\* of the Imperial Dīvān and the Treasury. If a vizier, by his *buyuruldu*, ordered a certain firman to be issued, a reply might come back from the Chancery saying, 'This is contrary to the *ḵānūn*.'<sup>1</sup> A *nişāncı* often compared a new regulation with the existing *ḵānūn* and noted in the margin of a *ḵānūnnāme*: 'This *ḵānūn* [statute] is contrary to the *ḵānūn*.'<sup>2</sup>

In principle, a *ḵānūn* was valid only during the lifetime of the sultan who had enacted it. With the accession of a new ruler to the throne, the *ḵānūns*, as well as other decrees and treaties of his predecessor, had, theoretically at least, to be reconfirmed.<sup>3</sup> An example is the *Ma'rūzāt* of the famous Şeyhülislām Ebu 's-Su'ūd Efendi, in which, as will be discussed further on,<sup>4</sup> a new sultan was asked whether he maintained certain *ḵānūns* and firmans of Süleymān the Lawgiver.

In actual practice, however, the conservative character of the Ottoman state and the nature of the *ḵānūn* as a legalization of existing usage caused most *ḵānūns* to be confirmed, at least so long as political, economic, and social conditions had not changed fundamentally or unless the new sultan wished to prove his benevolence or religious righteousness by abolishing certain oppressive innovations (*bid'at*). In general, it may be said that the main object in enacting many *ḵānūnnāmes* was not to make new law but to lay down which of the earlier statutes were still in force.

Barkan holds<sup>5</sup> that most of the Ottoman *ḵānūnnāme* texts discovered so far are not law codes in the modern sense of the term. They are neither official and complete collections of all the *ḵānūns* in force at a certain time nor officially certified copies of the *ḵānūns* in their original form. Most of them are, in his view, private compilations, often made for scholarly or teaching purposes or to serve as practical manuals for the personal use of various officials. The compilers chose the regulations to be included in a subjective, arbitrary, and unsystematic way, frequently copied them in a summarized and corrected version, and added references to various firmans (and *fetvās*) as well as personal glosses and comments.

\* [pencil note:] In the 'bag' (*hise*) of the Re'is ül-Küttāb (MS. Kd, f. 34b).

<sup>1</sup> See *MTM*, i. 59, 99; Bibl. Nat., Paris, MS. Suppl. turc 1027, ff. 222b-223a.

<sup>2</sup> e.g. MS. Lb, f. 14a.

<sup>3</sup> See Ibn 'Ābidīn, *Radd al-muhtār*, Bülāk, 1286, iv. 531; Barkan, pp. xlv et seq.

<sup>4</sup> See below, pp. 183-5.

<sup>5</sup> Barkan, pp. xxii et seq., lvi et seq.; *IA*, art. 'Kanūn-nāme'.

Even the *ḵānūnnāmes* compiled by order of a sultan, such as those published by Kraeletz and in *TOEM*, 1329, suppl., which include the criminal code, cannot, in Barkan's opinion,<sup>1</sup> be necessarily and unreservedly regarded as official texts of the law. They are rather 'outlines (*taslak*) containing some general rules which were perhaps collected with a view to giving the Sultan or the administrators a general idea of the organization and institutions of the Empire. But they were far from being true texts of law which were referred to in [its] application.'

This opinion has already been challenged,<sup>2</sup> and Barkan himself<sup>3</sup> qualifies it to some extent with regard to certain *ḵānūns*, including the criminal ones. Many of Barkan's arguments in regard to the *ḵānūnnāmes* in general are certainly convincing, but there can be no doubt that the criminal *ḵānūns* of Bāyezīd II and Süleymān formed official codes of law.

It is, admittedly, correct to say that these codes do not contain *all* the criminal regulations which were in force in those times: additional ones are found in other *ḵānūns*. But in the field of penal law nothing is known of the existence of any other 'special and detailed *ḵānūns*' which 'continued to be the true and only authoritative source of law.'<sup>4</sup>

True, some of the most lavishly copied *ḵānūnnāme* manuscripts, probably written for the Sultan himself,<sup>5</sup> are incomplete and faulty copies, and many other copies of Bāyezīd II's code were written after the new code of Sultan Süleymān had been compiled. It cannot, however, be maintained that 'the existing texts are all late copies and books of private individuals' and that 'so far no certified and official copy has been found'.<sup>6</sup> A copy of Bāyezīd II's code written as early as 1501<sup>7</sup> has come to light, and another is included in an (official) cadastral register.<sup>8</sup>

Moreover, Sultan Süleymān is known to have ordered that a copy of the *ḵānūnnāme* in force in his reign should be deposited in

<sup>1</sup> Barkan, p. xxix. A similar view is expressed by B. Lewis in G. E. von Grunbaum (ed.), *Unity and Variety in Muslim Civilization*, Chicago, 1955, p. 324.

<sup>2</sup> See Anhegger-İnalçık, pp. xi-xiv; İnalçık in *SBFD*, xiii (1958), 111.

<sup>3</sup> Barkan, p. xxxiv; see also his article 'Kanûn-nâme' in *İA*, p. 189, col. a.

<sup>4</sup> Barkan, p. xxix; *İA*, loc. cit., p. 188a.

<sup>5</sup> Such as those in the Topkapı Sarayı Library, MSS. Revan 1935 and 1936 (MSS. Fh and Fi): see Barkan, pp. xxix-xxx.

<sup>6</sup> Barkan, p. xxix.

<sup>7</sup> MS. Fa. See above, p. 19.

<sup>8</sup> MS. Fb. See above, p. 21.

the law-court of every town,<sup>1</sup> and the texts of Bāyezid II's *Ḳānūnnāme* for Cephalonia and of Süleymān's new code were sent out in the form of *nişāns* under the Sultan's *tuğra*.<sup>2</sup> Whilst Barkan is right in pointing out that no original copy of these *ḳānūnnāmes* has been discovered, it can be assumed that some of the existing copies come very near to the original. One version<sup>3</sup> of the code of Süleymān, for example, was copied in the house of the Re'is ül-Küttāb, most probably from the, or an, official text.

As Barkan has clearly shown,<sup>4</sup> the sole legal basis of the *ḳānūn* was the sultan's will as expressed in Imperial decrees. To become valid and binding they did not, as Hammer had thought,<sup>5</sup> require the confirmation or sanction of the Şeyhülislām. Indeed there is no evidence whatever that the *ḳānūns* or *ḳānūnnāmes* were first submitted to the Şeyhülislām for his prior approval and acquired legal force only on the strength of his *fetvā*.

Only after, and in many cases long after, *ḳānūns* and other decrees of the sultan had been issued did *şeyhülislāms* and other *müftis* confirm (or, more rarely, reject) the legality of some of them in accordance with the *shari'a*. Their *fetvās* may have been issued at the request of the sultan or a member of the government or on the Şeyhülislām's own initiative. The object would then have been to eliminate any objection on the part of orthodox Muslims and to make the *ḳānūns* more easily understandable and palatable to the *medrese*-educated *cadis*, *müftis*, and other officials.

Thus it cannot be said that the *şeyhülislāms* and other *müftis* considered all matters regulated by the *ḳānūn* as being outside their sphere of competence and authority. True, Ebu 's-Su'ūd Efendi states in one of his *fetvās*: 'If they are questions of 'örf (customary law or the Sultan's will), the men of the *shari'a* cannot be concerned with them' (*eğer 'örfi ḳazāyā ise ehl-i şer'in āna 'alāḳası olmaz*).<sup>6</sup> But, as Hezārfenn points out,<sup>7</sup> Ebu 's-Su'ūd, more than most other *müftis*, dealt in his *fetvās* with many problems outside the sphere of *fikh*. He as well as other *şeyhülislāms* expounded the *timār* system as laid down in the *ḳānūn* and applied its regulations to cases submitted to him, although many

<sup>1</sup> See above, p. 151.

<sup>3</sup> MS. Pa. See above, p. 27.

<sup>5</sup> Hammer, *Staatsverfassung*, i. 73.

<sup>6</sup> Bayezit Libr., MS. Veliyüddin 1466, f. 221b.

<sup>7</sup> Hezārfenn, MS. Paris, f. 138a.

<sup>2</sup> MSS. Ba-Bc; Oa-Od, Pb.

<sup>4</sup> Barkan, pp. xxxiv et seq.; xl et seq.

basic features of it (e.g. inheritance regulations, taxes, fines, etc.) were in fact contrary to the religious law.<sup>1</sup>

Some of the *fetvā* collections which deal largely with non-*shari'a* matters are entitled *Fetāvā-i k̄ānūniye*.<sup>2</sup> The best-known of these is the 'Imperial *K̄ānūnnāme* [compiled] in the time of . . . the late Sultan Süleymān [the Magnificent] . . . and of the late Şeyhülislām Ebu 's-Su'ūd Efendi . . . which is [a collection of] *k̄ānūns* and questions (*mesā'il*) the conformity of which with the noble *shari'a* has been established and which are valid at present'. Published in *Millî Tettebbü'ler Mecmū'ası*,<sup>3</sup> it includes a large number of *k̄ānūns* and *fetvās*, not only of Ebu 's-Su'ūd but of earlier (İbn Kemāl) and particularly of later *şeyhülislāms*.<sup>4</sup>

In many *fetvās* included in this and similar collections, the *müftis* state what the *k̄ānūn*, the cadastral register (*defter-i hākāmī*), or the Sultan's decrees prescribe on the question asked.<sup>5</sup> In others they reply that such matters are not '*shari'a* affairs' (*şer'i maşlahat*) and should be referred to the ruler (*ülü 'l-emr*); his orders are to be carried out since 'it is obligatory (*vācib*) to obey an exalted (Imperial) decree which is [issued] for the sake of public order'.<sup>6</sup>

If the *şeyhülislāms* or *müftis* did not know what the *k̄ānūn* was they asked the Nişancı for authoritative information.<sup>7</sup> In many cases, however, no *k̄ānūn* had been laid down in the matter or the

<sup>1</sup> See Barkan, pp. xxxvii et sqq.; Barkan suggests, it should be noted, that Ebu 's-Su'ūd was here acting as *il yazıcısı*, not as Şeyhülislām; but see below, p. 190.

<sup>2</sup> e.g. Hüsrevbeg Libr., Sarajevo, MS. 922.

<sup>3</sup> *MTM*, i. 49-112, 305-37.

<sup>4</sup> The published copy, dated Cumādā I 1233/1818 (the year of compilation according to Barkan, p. xxvii), contains firmans and *k̄ānūns* of the period of Ahmed I (1603-17) and some as late as 1042/1632-3 and even 1071/1660-1 and 1129/1717.

<sup>5</sup> *MTM*, i. 55, 72, 313, 334; British Museum, MS. Or. 12463 (*fetvās* of the Şeyhülislām 'Abdu 'r-Rahīm), f. 42a.

<sup>6</sup> *MTM*, i. 306, 313. [pencil note expanded:] The Pir Mehmed who gave these *fetvās* is presumably the author of the well-known *fetvā*-collection *Mu'in al-mufti* (and also of *Zahir al-kuḍāt*, see below, p. 189; cf. also Blochet's description (i. 197) of MS. Suppl. turc 68). According to 'Aṭā'i (551-2) he was born a '*kul-oğlı*' and became a Janissary, but turned to the career of '*ilm*'; he was for many years *müfti* of Üsküb, where he died in 1020/1611-12 (but according to Kātib Çelebi, *Kashf al-Zunūn*, ed. Flügel, v. 645, no. 12461, in 1030/1620-1). He was very highly respected, '*Aṭā*'i calling him 'the best of the provincial *müftis*' (*kenār müftilerininin ekmei*); but it is apparently in error that he is sometimes referred to as Şeyhülislām (e.g. in *SBFD*, xiii (1958), 104; Mumcu, 42; Karatay, no. 1848).

<sup>7</sup> *MTM*, i. 59, 77; Barkan, pp. xxxix-xl.

validity of the existing regulations had become doubtful because of the passing of time, the accession of a new sultan to the throne, etc. The Şeyhülislâm then submitted the questions to the Sultan with a request for his decision. . . .

#### 4. *The criminal regulations*

The official Ottoman justification for issuing *kānūns* in the field of penal law is twofold, and clearly reflects the dual object of these regulations. On the one hand, the lengthy and so far unpublished preamble of the *Ḳānūnnāme* for Egypt of 1525<sup>1</sup> states that in the course of time crimes have increased to such an extent that disputes and feuds can no longer be decided by *tig-i zebān-i evliyā-i şeri'at*, 'the sword of the tongue of the guardians of the holy law', i.e. the cutting words of the cadis, but require *zebān-i tig-i vāliyān-i siyāset*, 'the tongue of the sword of the authorities charged with inflicting severe punishment', i.e. the military. Therefore, the preamble goes on, the Ottoman sultans, acting in conformity with the *shari'a*, have since olden times laid down regulations (*kānūn*), and anyone who commits a crime is to be punished in accordance with them.<sup>2</sup>

The chief object of the Ottoman penal codes, however, was not the protection of society against criminals but the protection of the common people against oppressive officials and fief-holders.

In the unique preamble to the criminal and feudal *kānūnnāme* in MS. Pb, the Sultan states:

The reason for writing [this] edict . . . is the following. My late father and grandfather<sup>3</sup> . . . looked and observed that oppressors tyrannized over the oppressed beyond measure [with the result that] the common people (*re'āyā*) were in great distress. For that reason, it is said, they laid down the Ottoman *kānūn*. I too have commanded that the *beğler-beğis*, *sancakbeğis*, *şeribaşis*, *subaşis*, and fief-holders shall demand [their] dues and taxes from the common people in accordance with this Ottoman *kānūn* . . .\*

<sup>1</sup> Aya Sofya Libr., MS. 4871, ff. 118b et sqq.; Süleymaniye Libr., MS. Hekimoğlu Ali Paşa 558, ff. 33b et sqq.

<sup>2</sup> MS. 4871, f. 120a; MS. 558, f. 35a.

<sup>3</sup> If this version of the *kānūnnāme* was sent out, as is most probable (see above, p. 29), by Sultan Süleymān, the reference is to Selim I and Bāyezid II.

\* [pencil note:] Cf. the claim that the function of the Assembly, to be set up by the constitution of 1876, would be to 'defend the interests of the people against the improper execution of the laws' (N. Berkes, *The Development of Secularism in Turkey*, Montreal, 1964, pp. 240-1).

The preamble to several similar versions of this *ḵānūnnāme*<sup>1</sup> also declares its main object to be the prevention of oppression (*ẓulm*). In the late fifteenth century the *Ḵānūnnāme* for the Christians of Cephalonia (which includes a penal code) had been issued 'because the people of the island . . . had submitted various complaints against the tax-farmers and others and had requested a *ḵānūnnāme*'.<sup>2</sup> About two centuries later, in a marginal note to a *ḵānūnnāme* manuscript,<sup>3</sup> the *ḵānūn* was defined, *inter alia*, as dealing with 'the protection of the common people against the oppression of the authorities' (*himāyat al-ra'īya min maẓālim al-ḥukkām*), a definition which shows the continuity of the concept of *maẓālim* jurisdiction.

So long as the *ḵānūn* was observed, it is frequently claimed,<sup>4</sup> nobody was tyrannized. In the reign of Sultan Süleymān the Lawgiver, Celālzāde states,<sup>5</sup> 'the gates of oppression and aggression were fastened with the nails of the *ḵānūns*'.

To achieve this aim the contents of the *ḵānūnnāmes*, as well as *siyāsetnāmes* and 'adāletnāmes, had to be brought to the knowledge of the people, so that every citizen would be aware of his rights or, more correctly, of the limits to the rights of the authorities. For this reason the cadis or governors to whom they were sent were often explicitly ordered to have them read out to the public.<sup>6</sup> For 120 *akçe* people could, in the sixteenth and seventeenth centuries, obtain a copy of a *ḵānūnnāme* from the Central Government,<sup>7</sup> and any citizen could, for a smaller fee, ask the local law-court for a certified copy of an 'adāletnāme,<sup>8</sup> so that he might present it wherever necessary to prove his rights.

As compared with other Ottoman *ḵānūns*, the criminal regulations are, in some respects, more similar to modern codes of law. Unlike many other *ḵānūns*, they are valid for all provinces of the

<sup>1</sup> Oa, Ob, Oc, Od.

<sup>2</sup> Preamble to Ba, Bb, Bc; see above, p. 14.

<sup>3</sup> Va and Vc (on the folio preceding f. 1); quotation according to Vc.

<sup>4</sup> e.g. in the 'adāletnāme of 1595 (Uluçay, *XVII. asırda*, p. 164 [= *Belgeler*, ii/3-4 (1965), 105]).

<sup>5</sup> Celālzāde, *Ṭabaḳāt*, f. 20b.

<sup>6</sup> For *ḵānūnnāmes*, see Barkan, 362, § 13 (Egypt) and MS. Ed, ff. 82b-83a (Baghdad); for *siyāsetnāmes* see above, pp. 17-18; for 'adāletnāmes, see above, p. 150, n. 4, and Başbakanlık Arşivi, Fekete catalogue, 4636.

<sup>7</sup> MS. Ba, f. 44 *bis a*; MS. Fj. f. 160a; Hezārfenn, MS. Paris, f. 143a.

<sup>8</sup> Köprülü Libr., MS. II, 360, f. 91b; Uluçay, *XVII. asırda*, p. 169 [= *Belgeler*, ii/3-4. 108]).

Empire and, with certain qualifications,\* for all the communities and classes of the population. They are also more compact and relatively better organized.

Nevertheless, they share with the other *kānūns* a great many deficiencies, such as incompleteness, repetition, contradictions between different sections, and interpolations.<sup>1</sup> The sections were not numbered, nor even clearly separated. Like the other *kānūns*, they were not conceived as a whole but were composed of statutes, mostly summaries of firmans, which were issued in different periods and were later put together, often in a piecemeal fashion. Unlike the *shari'a*, the *kānūn* generally does not define the legal terms used. Most important, it makes no attempt to elaborate general and basic principles of crime, punishment, evidence, etc., from which the detailed statutes could be logically derived. Though certain penalties are laid down for crimes committed deliberately, no systematic distinction is made between premeditated and accidental offences. Mitigating circumstances are almost unknown.

There is hardly any general treatment of criminal responsibility (knowledge of the law, majority,\*\* sanity, lack of constraint, etc.), attempted crimes, negligence, the status of accessories, etc.\*\*\*

The Ottoman *kānūn*, like the *shari'a*, does not clearly distinguish between criminal and other branches of law. From the very first, the statutes concerning penal matters formed part (generally the first part) of *kānūnnāmes* dealing chiefly with agrarian, 'feudal',

\* [See below, pp. 179-80.]

<sup>1</sup> For the unsystematic character of the Ottoman *kānūnnāmes* in general see Barkan, pp. liv et sqq., lxiii et seq. [and for discrepancies in OCC, see above, pp. 22, 31].

\*\* [pencil note:] But cf. DPC, § 40, and OCC, §§ 27, 52.

\*\*\* [slips:] Certain offences against religion (blasphemy, apostasy) are not dealt with in the *kānūn*, nor are such crimes as high treason, bribery, 'receiving', obtaining under false pretences, and incest.

A *shari'a* penalty (or perhaps rather 'sentence') not mentioned in the *kānūn* is 'renewal of the faith' and 'renewal of the marriage' (*tecdid-i imān*, *tecdid-i nikāh*). According to the *fetvās* of many Ottoman *müftis* (Fahir İz, *Eski Türk edebiyatında nesir*, I, Istanbul, 1964, pp. 54-6; Dubrovnik State Archives, Acta Turcarum, C-10, 35; cf. Bursa Sicilli, A 42, f. 123b; A 45, f. 181b), these 'renewals' are required in certain cases of conduct unworthy of a Muslim—merry-making with non-Muslims, claiming to have knowledge of occult matters, contempt of the *shari'a* and of the Sultan's orders, refusal to obey a summons to appear before the *cadi*. Such offences are regarded as implying apostasy (*irtidād*), which, *inter alia*, makes the marriage of the *murtadd* void (Schacht-Bergsträsser, 86).

and economic affairs (guilds, the market, etc.). The reason for this seems to be that the earliest criminal code, that of Mehemmed II, listed only offences that were punishable with fines, half of which at least were due to a feudal lord.

Though gradually most penal statutes were collected into three or four separate chapters, the latter were never given a general heading in the official *kānūnnāmes*. Only the latest version of the criminal code,\* which is a private compilation, groups them under one heading, 'Regulations on Penalties' (*siyāsāt kānūnları*).

Moreover, again in accordance with the tradition of Muslim law, no distinction was made between crimes and torts, or between substantive penal law and the law of criminal procedure. Consequently, there existed no separate criminal courts in the Ottoman Empire.

In the preamble to some versions of Bāyezīd II's criminal code,<sup>1</sup> to the *Ḳānūnnāme* for Egypt,<sup>2</sup> and to the re-confirmed *Ḳānūnnāme* of 'Alā' al-Dawla<sup>3</sup> it is stressed that these regulations of the Ottoman penal *kānūn* are to be applied without distinction of the person of the offender. Whoever commits a crime—be he rich or poor, of noble or humble origin, a tax-paying subject (*ra'īyet*) or a fief-holder (*sipāhī*)—will be punished in accordance with these statutes.\*\* In conformity with this principle, firmans warned governors against favouring criminals of noble descent, such as sons of Türkmen *beğs*. 'Everyone, whoever he may be, is equal before Me', the Sultan declared.<sup>4</sup>

Certain exceptions, however, were made in the Ottoman Criminal Code for fief-holders, soldiers, 'ulemā, *şerīfs* and others, as well as for non-Muslims, in regard to criminal procedure, the types of penalties imposed, and the method of their infliction.<sup>5</sup> Such distinctions in accordance with the offender's religion and social status were also made in the *sharī'a*. A general rule was that, so far as discretionary punishment (*ta'zīr*) was concerned, a

\* [See above, p. 32.]

<sup>1</sup> TOEM, 1329, suppl., p. zā.

<sup>2</sup> Aya Sofya Libr., MS. 4871, f. 119a.

<sup>3</sup> Barkan, 120.

\*\* [pencil note:] Cf. Ibn Jamā'a (d. 733/1333), *Tahrīr al-aḥkām* (ed. Kofler, in *Islamica*, vi (1934), 362): *wa-yusawwī [al-imām] fi 'l-ḥudūd bayn al-ḥawī wa'l-da'if wa'l-waḍī' wa'l-sharīf*.

<sup>4</sup> Firman to the Sancakbeği of Karası, of Ramazān 921/1515 (Edremit Sicilli, 42/1177, f. 24b).

<sup>5</sup> See below, especially chapter IV, *passim*.

person of standing was to be punished more lightly than a disreputable person who committed the same crime.<sup>1</sup>

In actual Ottoman practice, however, discrimination against non-Muslims as well as against Muslims of the lower classes went much further than was allowed by the *shari'a* and the *kānūn*.

### 5. Conflict of *kānūn* and *shari'a*

Theoretically the *kānūn* was supposed merely to amplify and supplement the *shari'a* but not to supersede it.<sup>2</sup> A *fetvā* of the Şeyhülislām Ebu 's-Su'ūd Efendi states: 'There can be no decree of the Sultan ordering something that is illegal according to the *shari'a*' (*nā-meşrū' olan nesneye emr-i sultānī olmaz*).<sup>3</sup> In fact, however, many such orders were issued and many such *kānūn* regulations were laid down.<sup>4</sup>

In the field of criminal justice, clashes between *kānūn* and *shari'a* were more numerous than in most other spheres. There are several reasons for this. In general, *kānūns* deal only with matters of public law, i.e. government, court, army, and 'feudal' institutions and the relationship between the individual and the State, on which the *shari'a* has laid down relatively few and rather deficient rules. On matters of penal law, however, the *Qur'an* and the *shari'a* in general are much more explicit. Moreover, owing to the lack of distinction in the Islamic tradition between criminal law and the law of torts, the penal *kānūns* treat of many questions of civil law, which was considered to be exclusively reserved to the *shari'a*. In addition, the important *kānūn* regulations on criminal procedure were in even more open contradiction to the *shari'a*.

Consequently, Barkan's view<sup>5</sup> that 'the matters regulated and controlled by the *kānūnnāmes* were outside the sphere of the *shari'a* law' has to be qualified with regard to criminal justice, just as he himself qualifies it<sup>6</sup> with regard to some aspects of land law.

<sup>1</sup> See, e.g., Māwardī, 399-400; Ibn al-Farrā', 263.

<sup>2</sup> Cf. Hezārfenn, preface (quoted in Barkan, p. xxiii, n. 6).

<sup>3</sup> Horster, 53 (91); Selle, 41 (91), § 10.

<sup>4</sup> For an admitted conflict between *shari'a* and *kānūn* on a relatively trivial matter (the fruit of trees growing on *miri* lands), see Köprülü Libr., MS. III, 99, f. 4a.

<sup>5</sup> Barkan, p. xxxvi.

<sup>6</sup> Ibid., pp. xlv et sqq.

It is true that in many regulations the *ḵānūn* merely reaffirms the religious law by imposing its fixed penalties<sup>1</sup> or by laying down that 'whatever punishment the *shari'a* prescribes shall be inflicted' or the like.<sup>2</sup> In other cases, too, it states that compensation or blood-money is to be paid (or not to be paid) or that stolen goods are to be returned 'in accordance with the *shari'a*'.<sup>3</sup> There are, in addition, statutes of the Criminal Code that conform to the religious law without explicitly saying so.

On the other hand, in numerous instances the penal *ḵānūn* diverges from the *shari'a*. While the Dulkadır Penal Code frankly states that one of its regulations<sup>4</sup> is opposed to the *shari'a*, the Ottoman *ḵānūn* is wary of doing so, at least so far as the substantive law is concerned. In regard to procedure, however, the Ottoman Criminal Code is less discreet.<sup>5</sup>

A number of its statutes were, as has been mentioned,<sup>6</sup> later abolished as being contrary to the religious law.

The most important difference between the substantive criminal law of the *ḵānūn* and the *shari'a* is the imposition of a fine (with or without strokes) upon criminals liable to the fixed penalties (*ḥudūd*), sometimes more severe, of the *shari'a*. Formally, of course, the *ḵānūn* cannot commute these penalties into lighter punishment. Consequently, it imposes fines for fornication only if no capital punishment is inflicted;<sup>7</sup> for homicide or for the knocking out of an eye or tooth only if no retaliation is, or is to be, carried out;<sup>8</sup> and for certain cases of theft only if the thief's hand is not to be cut off.<sup>9</sup> In some statutes, however, these conditions are not explicitly stated, and it is taken for granted that fines are the only penalty applicable to the crimes mentioned.<sup>10</sup>

In what cases such criminals are not liable to the *ḥadd* penalties is not stated. In addition to cases of homicide and wounding for

<sup>1</sup> e.g. retaliation for homicide and amputation of a hand for theft (OCC, §§ 41, 66). Cf. DPC, § 18 (1).

<sup>2</sup> e.g. OCC, §§ 15 (in Ea, Gd), 47, 79, 91, etc. Cf. DLF, §§ 12, 14. In some cases a fine is imposed in addition.

<sup>3</sup> See OCC, §§ 70 (in Rd), 85, 109, 126. Cf. DPC, §§ 12 (3), 19, 25, 29.

<sup>4</sup> DPC, § 13.

<sup>5</sup> See OCC, § 88.

<sup>6</sup> See above, p. 149.

<sup>7</sup> OCC, § 1. Cf. DPC, § 10.

<sup>8</sup> OCC, §§ 41, 50. Cf. DPC, §§ 18 (1).

<sup>9</sup> OCC, §§ 65, 66, 67, 68, 71. Cf. DPC, §§ 2 (1), 5 (1).

<sup>10</sup> e.g., in the older texts, OCC, § 1 (fornication) and § 68 (theft of grain from a pit, etc.) (but cf. DPC, § 5 (1)); Barkan, 180, § 28 (for homicide and wounding), which even adds *siyāset yokdur*, 'no capital or severe corporal punishment is [to be inflicted]'. Cf. DPC, §§ 19, 24, etc.

which the parties concerned agree on the payment of blood-money or compensation, they are probably those cases in which no sufficient evidence is produced or in which, as in the case of petty theft,<sup>1</sup> not all the conditions of the crime as defined in the *shari'a* are fulfilled. Here *ta'zir* punishment replaces the *hadd* penalties, as is already prescribed by the *shari'a*.

There is, however, reason to doubt whether this was done in such cases only. It seems that the *ḵānūn* reflects a general tendency of Islamic legal practice to restrict as much as possible the application of the severe *shari'a* penalties.<sup>2</sup> Furthermore, there can be little doubt that the Ottoman executive officers were much more inclined to impose fines, to which they themselves were entitled, than to inflict capital or severe corporal punishment.<sup>3</sup>

In other fields too the criminal *ḵānūn* takes into consideration old-established usage even when it contradicts the *shari'a*. An example is the statute permitting the taking of interest up to a certain rate.<sup>4</sup>

One way of justifying the *ḵānūn* as legally binding on every Muslim was to present it as a formalization of prevailing custom. Thus we find cited<sup>5</sup> such maxims and rules of law as 'Custom is like an authoritative text' (*al-'āda ka'l-naṣṣ*); 'Custom is one of the *shari'a* proofs in matters on which there is no written authority' (*al-'āda ihdā al-ḥujaj al-shar'iya fīmā la yunaṣṣ fih*); 'What the believers consider right is right with God' (*mā ra'āhu 'l-mu'minūn ḥasanan fa-huwa 'ind Allāh ḥasan*); 'What is proper according to common usage is like what is legal according to the holy law' (*al-ma'rūf 'urfan ka'l-mashrū' shar'an*). Regulations issued by the sultan to punish evil-doers are therefore binding, it is argued, provided they are consonant with the *shari'a*,<sup>6</sup> and every Muslim is obliged, as a religious duty, to obey them, as is laid down in the

<sup>1</sup> OCC, § 65. Cf. DPC, § 5 (2), n. 1.

<sup>2</sup> For the reluctance to inflict the *hadd* penalty (amputation of a hand) for theft in pre-Ottoman periods see Amedroz in *JRAS*, 1910, 793. Cf. also Schacht, in *Der Islam*, xx (1932), 211-12.

<sup>3</sup> See below, p. 270.

<sup>4</sup> OCC, § 103.

<sup>5</sup> The following arguments are found in the preamble to the *Ḵānūnmāme* for Egypt in Aya Sofya Libr., MS. 4871, f. 119a) and in the preface to the latest compilation of the Ottoman criminal *ḵānūns* (see Barkan, p. xxv, n. 9 [and above, p. 32]).

<sup>6</sup> Instead of *ṣer'-i mutahhara muzāf* (Barkan, p. xxv, n. 9, § 4) read, as in MSS. Va and Vb, . . . *muwāfiḵ*.

famous verse of the *Ḳur'ān* (4. 59/62), 'Obey God and obey the Prophet and those in authority among you' (*aṭī'ū Allāh wa-aṭī'ū 'l-rasūl wa-ūlī 'l-amr minkum*).

Although many Muslim legists, such as Ibn Khaldūn, did not recognize the legality of a separate secular law,<sup>1</sup> others did not object to the application of customary law in matters not dealt with or not prohibited by the *sharī'a*. Some even accepted custom as a fifth source of law in addition to the traditional sources of the *sharī'a* (*uṣūl al-fikḥ*), namely *Ḳur'ān*, *sunna*, *ijmā'* and *ḳiyās*. A ruling based on custom may even be preferred to one based on analogy (*ḳiyās*). According to some, custom which is approved by the '*ulemā*' could be recognized as consensus (*ijmā'*). All this, of course, on condition that custom does not run counter to the holy law.<sup>2</sup>

### 6. *The attitude of the müftīs*

The leading *ṣeyḫülislāms* of the sixteenth century, such as İbn Kemāl and Ebu 's-Su'ūd, made great efforts 'to make most of the *ḳānūns* correspond with the noble *sharī'a*'.<sup>3</sup> . . .

Even in criminal matters the Ottoman *ṣeyḫülislāms* based some of their *fetvās* on the *ḳānūn*. For example, when a *kādī-asker* suggested to the Sultan that a forger of the *tuğra* be banished to Cyprus, the *Ṣeyḫülislām*, most probably Şun'u'llāh (1599-1601, 1603, 1604-6, 1606-8), violently objected to such a lenient punishment and ruled that, at the least, 'according to the Sultan's *ḳānūn*<sup>4</sup> his (the criminal's) hand has to be cut off'.<sup>5</sup>

The most famous collection of such *fetvās* is the so-called *Ma'rūzāt Abi 'l-Su'ūd Efendi*, 'the Matters Submitted by Ebu 's-Su'ūd Efendi' to Sultan Süleymān the Lawgiver.<sup>6</sup> According

<sup>1</sup> Levy, *Social Structure*, p. 259 and n. 3, referring to Ibn Khaldūn, i. 342 et seq.

<sup>2</sup> İnalçık, in *SBFD*, xiii (1958), 103-4; Levy, *Social Structure*, 248; and references there given.

<sup>3</sup> Kātīb Çelebi, *Mizān al-ḥaḳḳ*, 116 (tr. G. L. Lewis, 128); and cf. 'Aṭā'i, 185, without the qualification of 'most': *el-ḥaḳḳ ḳavānin-i 'oṣmāniyeyi şer'-i şerife taṭbik . . . bunlarıñ* (scil. İbn Kemāl and Ebu 's-Su'ūd) *āṣār-i ictihādı . . . dir*.

<sup>4</sup> See OCC, § 98 (2).

<sup>5</sup> Süleymaniye Libr., MS. Şehit Ali Paşa 2865, p. 7.

<sup>6</sup> Their text has been published in *MTM*, i (1331/1915), 337-48, and more recently, in a scholarly edition with a German translation, introduction, and notes, by Paul Horster, as *Zur Anwendung des Islamischen Rechts im 16. Jahrhundert*,

to its preface, the great Ottoman *'ālim* had suggested to the Sultan that 'for the sake of the order of religion and State' the opinion of certain jurists (*müctehidîn*) of the past should be followed in a number of legal questions. The Sultan approved, and firmans were sent to governors and cadis to act accordingly. When, however, a new sultan (Selîm II?)\* ascended the throne, doubt arose as to whether he would confirm his predecessor's orders;<sup>1</sup> therefore some legal problems were submitted to him with the request for his decision. The course followed was to submit these *fetvās* of Ebu 's-Su'ūd, in many of which he had quoted Sultan Süleymān's firmans.

Most of the firmans cited by Ebu 's-Su'ūd were issued between the years 944/1537-82 and 958/1551,<sup>3</sup> particularly during the period in which he held the office of *Ḳāḍî-asker* of Rümeli (944-52).<sup>4</sup>

Some of these *fetvās* are also found in a *mecmū'a*<sup>5</sup> which, according to its flyleaf, contains *fetvās* of the late Ebu 's-Su'ūd Efendi 'concerning the order of the realm' (*niḡām al-mülk haḡ-ḡında*). Since these questions had to be brought before the Sultan, it is stated in the Preface (f. 2b), the Şeyḡülislām Ebu 's-Su'ūd submitted them (or the first two of them?)<sup>6</sup> to Sultan Süleymān on 9 Rebi' II 957/27 April 1550. The text of the questions and the order of the Sultan (. . . *dēyü buyuruldu*) follow.\*\*

Stuttgart, 1935. For some aspects of the character of the text, see Barkan, pp. 1 et sqq.; but his views are not entirely acceptable (see, e.g., M. Cavid Baysun, in *IA*, art. 'Ebüssu'ūd Efendi', pp. 95-6).

\* [pencil note expanded:] Or Murād III? Ebu 's-Su'ūd is referred to in the preface as dead, and he did not die until August 1574, four months before the death of Selim II and the accession of Murād III.

<sup>1</sup> See above, p. 172.

<sup>2</sup> The date 940 mentioned on p. 24, line 12 of Horster's edition seems to be mistaken; the versions quoted in the notes as well as the text in Belediye Libr., MS. Belediye 17, f. 109a and in *MTM*, i. 338, have the year 944.

<sup>3</sup> In Horster's translation (p. 69) the date of the latest firman (958: see p. 27) is erroneously rendered as 859/1455.

<sup>4</sup> *IA*, art. 'Ebüssu'ūd Efendi' (Baysun), p. 93; *EI*<sup>2</sup>, art. 'Abu 'l-Su'ūd' (Schacht). [pencil note:] The dates of later firmans, falling in the years when Ebu 's-Su'ūd was Şeyḡülislām, are 955 (Horster, p. 35); 957 (pp. 56, 59); 958 (p. 27: see n. 3 above).

<sup>5</sup> University Libr., Istanbul, MS. T 3586. See also Süleymaniye Libr., MS. Lala İsmail 706, f. 265(261)a-b.

<sup>6</sup> Which also in Horster's edition (pp. 56, 59) are dated 957.

\*\* [Heyd had begun a collation of the contents of this MS. and of the *Ma'rū-ḡāt*, and was evidently intending to pursue further the problem of the latter's character and date.]

Other, much shorter, versions of this text<sup>1</sup> do not refer to the items as 'fetvās' but as 'problems' (*każāyā*) submitted by Ebu 's-Su'ūd to Sultan Süleymān. Unlike the text published in *MTM* and by Horster, they present each of them in the form of 'Question of Ebu 's-Su'ūd Efendi' and 'The Sultan's reply'.

The Sultan's decision was requested on a wide range of matters.

One major group consists of questions, in a variety of spheres, on which the great legists of the past had disagreed. Ebu 's-Su'ūd seeks to ensure that the individual *cadi* is *hılāfıyāt dan maħcūr*,<sup>2</sup> i.e. not permitted freely to choose whose opinion he will follow, but obliged to adjudicate in accordance with the sultan's directives. The latter may choose and impose whatever opinion he considers preferable for the good of the State or of society or for any other reason.<sup>3</sup>

For instance, if a guest is killed in somebody's house and the murderer is not known, blood-money is to be paid, in Abū Ḥanīfa's opinion, by the owner (*mālik*) of the house (or, if it is waqf, by the waqf). However, according to Abū Yūsuf, another high authority of the Ḥanafī school, the occupant (*mutaşarrıf*), if he is a different person, is to be held responsible. Whom should the Ottoman *cadi* follow? Ebu 's-Su'ūd suggested to the Sultan that Abū Yūsuf's opinion should be adopted, since this would lead the actual occupants to be more vigilant. His suggestion was accepted, and a firman was issued ordering the *cadis* to act accordingly.<sup>4</sup>

In the early eighteenth century a *miŕfti* issued a *fetvā*<sup>5</sup> addressed to the Sultan (and not formulated in usual fashion) concerning the definition of what is a dangerous weapon (*ālet-i cāriha*) in homicide cases. He states that in this matter the opinion of the *imām-i a'zam* (Abū Ḥanīfa) differs from that of 'the two *imāms*' (Abū Yūsuf and al-Shaybānī).\* The view of the former, he says, is followed on

<sup>1</sup> Köprülü Libr., MS. III, 99, ff. 1b et sqq.; Süleymaniye Libr., MS. Hüsrev Paşa 812, ff. 35b et sqq.

<sup>2</sup> Horster, 29 (71).

<sup>3</sup> Barkan, pp. xlvi-xlvii. [pencil note:] Cf. the view of Ibn al-Muḳaffa' (d. ?142/759) on the authority of the caliph as legislator (Rosenthal, *Political Thought*, 72 et sqq.). See also Tyan, *Histoire*, 353-6.

<sup>4</sup> Horster, 58-9 (95-6); Belediye Libr., MS. M. Cevdet K 525, p. 143. For other examples see Horster, 33-6 (75-7), 50-1 (88-9).

<sup>5</sup> Topkapı Sarayı Archives, E 12079.

\* [Bilmen, i, p. 323, § 43.]

questions of religious duties ('*ibādāt*) and that of the latter in matters concerning relations between men (*mu'āmelāt*), and this includes the case in question (homicide). But, he concludes, 'the command belongs to His Majesty my Sultan'.

Directions to follow the opinion of certain Muslim legists on disputed questions are given in some statutes of the criminal *kānūn*, although this is not explicitly stated.<sup>1</sup>

While generally the sultan chose only between the divergent opinions within the official Ḥanafī school, the *şeyhülislāms* exceptionally referred in such cases also to those of other *mezhebs*.<sup>2</sup>

In particular, in some cases,<sup>3</sup> the sultan's permission was sought for the application of the principle of *istihsān*, i.e. the infringement of certain theoretical rules of the *shari'a* for the sake of the benefit of society.

Many other cases in which the sultan issued orders to the cadis concerned questions of procedure, criminal or other, on which there was no disagreement among the jurists, such as the statute of limitation, the competence of the cadi, testimony by witnesses, etc.<sup>4</sup>

In addition, the sultan's directives were aimed at safeguarding and regulating Muslim religious worship, as well as many social and economic questions not generally connected with criminal affairs, such as agrarian relations, waqf, maximum rates of interest, etc.\*

The Şeyhülislām, as the head of the religious establishment in the Ottoman Empire, possessed, and often used, the right to issue a *fetvā* declaring a certain firman or *kānūn* invalid because

<sup>1</sup> See, for instance, OCC, § 42. Cf. also Barkan, 4, § 24.

<sup>2</sup> See Selle, 41, § 11; Horster, 34-5 (76-7); cf. also *ibid.*, 50-1 (89). [pencil note expanded:] Although the sultans could direct the cadis to follow the opinion of one or other of the 'four *imāms*', it would be anachronistic to see in this a deliberate policy of eclecticism, the method used by the modernists in order to promote reforms in the law (cf. Schacht, *Introduction*, pp. 68, 106).

<sup>3</sup> See, for instance, Horster, 53-4 (91-2); Selle, 40 (88-9), § 1. In the version of this *fetvā* of Ebu 's-Su'ūd which is found in University Libr., Istanbul, MS. T 3586, f. 5a, the 'answer' runs: 'It has been ordered that *istihsān* is to be applied

<sup>4</sup> See Horster, 56 (93-4), 48 (86-7), 36 (77).

\* [pencil note:] For the right of the *walī al-amr* to prohibit, if the public welfare demanded it, an action not prohibited by the *shari'a*, to issue regulations on matters not regulated by the *shari'a*, and to prescribe as authoritative one of the divergent opinions of the *fuḳahā'*, see Barkan, in *Hukuk Fakültesi Mecmuası*, xi/3-4 (1945), 205 n., and *Kanunlar*, xiii, n. 1.

it was contrary to the *shari'a*. Nevertheless he had no authority to direct the cadis how to apply the law, not even the religious law of Islam. This authority was theoretically reserved to the Sultan, on whose behalf the cadis administered justice.<sup>1</sup> In practice, the firmans giving such directives to the cadis were issued by the Grand Vizier or (as may be assumed) very often by, or on the advice of, the *kādi-askers*.

Although the *fetvās* of the *müftīs*, and especially those of the *Şeyhülislām*, were accorded due respect, they were not legally binding on the cadis, whereas the Sultan's firmans were. Hence, even such a powerful *şeyhülislām* as Ebu 's-Su'ūd was obliged, if he wished to see his legal opinion applied in the *shari'a* courts, to submit it to the Sultan and to request the latter to issue his decision and order to the cadis.

The Ottoman *şeyhülislāms* seem generally to have held the view that *prima facie*, i.e. so long as the contrary has not been established, the *kānūns* and other decrees of the sultans are valid also according to the *shari'a*. Significantly, in many of their *fetvās*<sup>2</sup> the regulations laid down in such *kānūns* and decrees are called '*meşrū'*.' Furthermore, in Ottoman official usage the term *şer'an*, 'according to the *shari'a*', tended to acquire the meaning of 'legally' in the broadest sense. For example, a '*Kānūn* on the *kādi-askers*'<sup>3</sup> lays down that the *Kādi-asker* of Anadolu must not adjudicate in the *Dīvān*; if, however, the Grand Vizier explicitly allows him or orders him to hear a case, 'then it is *şer'an* permissible (or lawful [*cā'iz*])' for him to do so. Similarly the *shari'a* term *bid'at*, i.e. 'illegal innovation contrary to the religious law', was used also in reference to a market tax that exceeded the amount fixed in a *kānūnnāme*.<sup>4</sup> Thus the distinction between *shari'a* and *kānūn* (or '*örf*') became increasingly blurred.

Moreover, since the cadis had to accept the Sultan's *kānūns* and firmans as binding sources of law, the *şeyhülislāms* could not refuse to give their legal opinions on points of this law and, generally, to confirm it or to rule in accordance with it.

<sup>1</sup> *Kudān vilāyeti şahib-i hilāfetiñ izni ile icāzetinden müstefādır* (Horster, 29 (71)). For the legality of the ruler's directives to the cadis cf. also Māwardī, 112-14.

<sup>2</sup> e.g. *MTM*, i. 55, last line; 58, end of first *fetvā*; etc.

<sup>3</sup> Drawn up by the *Tevkī'i 'Abdu 'r-Rahmān Paşa* in the seventeenth century (*MTM*, i. 540) [and see below, p. 209, n. 2].

<sup>4</sup> Trabzon Sicilli, 42/1815, f. 57b (dated 23 Rebi' I 965/1558). [See also p. 169.]

This becomes even more plausible if one recalls that before reaching their supreme office the *şeyhülislâms* had served for very many years as *cadis*. After following the *kânûn* for so long in their law-courts, how could they suddenly, on their promotion to the position of chief *müftî*, come to regard it as a matter of no concern to them, or even of doubtful legality?

Barkan<sup>1</sup> is certainly right in drawing attention to the legal fictions used by the *şeyhülislâms* in their attempt to find foundations in the *sharî'a* for various *kânûns* and decrees of the sultans and to deny the existence of any clash between the secular law and the religious law. But he seems to go too far when he regards the *fetvâs* copied in collections such as that published in *MTM* (i. 49-112 and 305-48) as having been written, by something of a subterfuge, with the chief object of proving the legality of the *kânûns* and firmans concerning state land and 'feudal' relations. For instance, to issue a *fetvâ* saying that a certain transfer of *mîrî* land is possible 'by a new order [of the Sultan]'<sup>2</sup> is hardly 'an acceptance or confirmation of what is required by an 'örf regulation, ostensibly with the authority of the *sharî'a* in the deceptive form of a *fetvâ*.<sup>3</sup> It seems much more probable that such *fetvâs* were issued in the normal way, i.e. in response to the question of a private individual who, in connection with a lawsuit or for some other reason, wished to receive the legal opinion of a religious authority. And since the *sharî'a* does not deal with the matters concerned, the *şeyhülislâms* based their rulings on the *kânûn* or on other decrees of the sultans.\*

One question, however, remains to be answered. As Barkan justly stresses,<sup>4</sup> on problems of the *kânûn* the 'men of the *kânûn*' did not request the opinion of the *şeyhülislâms* or the *müftis*, but the latter sometimes asked the former for authoritative information. Why then did people ask these 'ulemâ for a *fetvâ* rather than turn to the competent secular authorities? The answer may well stem simply from practical convenience. To obtain authoritative

<sup>1</sup> Barkan, p. xli.

<sup>2</sup> *MTM*, i. 72.

<sup>3</sup> Barkan, p. xxxix; *IA*, art. 'Kanûn-nâme', p. 191, col. b.

\* [slip:] While the *şeyhülislâms* to a large extent acquiesced in the regulations of the *kânûn*, their attitude to the executive organs of the government (*ehl-i 'örf*) was rather cool. Ebu 's-Su'ûd, for instance, ruled that the testimony of a tax-farmer ('*âmil*) (as well as that of a person who does not perform the ritual prayers) is not to be accepted, since he is not '*âdil*' (see below, p. 245).

<sup>4</sup> *IA*, art. 'Kanûn-nâme', p. 191, col. b.

written information from the office of the Nişāncı, 'the *müftî* of the *kānûn*',<sup>1</sup> or from any other department of the government, the citizen had to come to Istanbul and submit a petition, probably expensive, to the Sultan. It was much easier to ask the local *müftî* or even the Şeyhülislām at Istanbul for a *fetvā*.

Thus Barkan's view<sup>2</sup> that the *şeyhülislāms* were not and did not consider themselves competent to reply to questions concerning state law (such as 'feudal' regulations) has to be qualified. True, they could give no rulings on these matters 'in conformity with the principles and methods of the *shari'a* law'.<sup>3</sup> But—and this is the important conclusion—the Ottoman *şeyhülislāms* and other *müftîs*<sup>4</sup> regarded themselves as being authorized to issue legal opinions not only with regard to the rules of the religious law but also on points of State law as laid down in *kānûns*, firmans, capitulations,\* etc. Their occasional applications to the Sultan or the Nişāncı meant only that they wished to receive authoritative legal information on which to base their rulings on such non-*shari'a* matters.

A well-known Ottoman 'ālim, Üskübî Pîr Mehmed Efendi,<sup>5</sup> compiled, in addition to a manual for *müftîs* (*Mu'in al-Muftî*), a treatise on the *kānûn*, which he significantly entitled *Zahîr al-Kuḍāt*, 'The Cadis' Assistant'.<sup>6</sup> This treatise too is a collection of *fetvās* of various *müftîs*, among them famous *şeyhülislāms*.<sup>7</sup> The *fetvās* generally relate to non-*shari'a* matters, such as agrarian, 'feudal', and fiscal questions. In their replies the *müftîs* refer to the *kānûn* or to *kānûnnāmes*, cadastral registers, firmans, the decisions of the sultans or 'those in authority' (*ülû 'l-emr*), and so on. Sometimes they rule that a certain case is not a *shari'a* matter

<sup>1</sup> *MTM*, i. 516.

<sup>2</sup> Barkan, pp. xxxviii–xl.

<sup>3</sup> *Ibid.*; *IA*, art. 'Kanûn-nâme', p. 191, col. b.

<sup>4</sup> For the latter see, for instance, British Museum, MS. Or. 12423, ff. 154b et sqq.; and Pîr Mehmed's treatise, discussed in the next paragraph.

\* [pencil note:] e.g. *fetvās* of local *müftîs* forbidding the authorities from taking from Dubrovnik merchants more customs duty than is laid down in the Capitulation ('*ahdnâme*') (Dubrovnik State Archives, Acta Turcarum C-10, 19, 44).

<sup>5</sup> For Pîr Mehmed, who flourished in the early seventeenth century, see above, p. 175, n. 6.

<sup>6</sup> Süleymaniye Libr., MS. Esad Ef. 852. See also Bayezit Libr., MS. Bayezit 4789, ff. 49b et sqq.; *MTM*, i. 306.

<sup>7</sup> The *fetvās* of some of them (Yaḥyâ, Behâ'i, Ḥanefî, etc.) seem to be later additions to Pîr Mehmed's work.

(*şer'i maşlahat*) but should be submitted to the *ülü'l-emr* and that the orders given by them for the sake of public order must be obeyed. Interestingly, many *fetvās* state that '[without the Sultan's order] the old-established state of affairs must not be altered'.

It is significant for the attitude of the Ottoman *müftīs* to non-*shari'a* questions that in many of their *fetvā* collections<sup>1</sup> a separate chapter (often the last one) deals with land problems, i.e. mainly *tīmār* questions and other matters outside the religious law.

Whereas, as is mentioned above, İbn Kemāl and Ebu 's-Su'ūd systematically defined and explained, in *shari'a* terms, the principles of the *kānūns* concerning the 'feudal' system on State (*mīri*) land, neither they nor any other *şeyhülislām* did anything similar with regard to the penal regulations of the *kānūn*. Might the reason for this be that, as Barkan suggests,<sup>2</sup> Ebu 's-Su'ūd wrote one such summary of the principles underlying the 'feudal' law (which is preserved in his own handwriting)<sup>3</sup> not in his capacity as *Şeyhülislām* but at an earlier period, when he was serving as *il yazıcısı*, i.e. the official in charge of the land and population census of a certain province? This seems rather doubtful. As Barkan himself states,<sup>4</sup> Ebu 's-Su'ūd wrote this summary after the annexation of Hungary in 948/1541-2. But from Rebi' I 944/1537 until his appointment as *Şeyhülislām* in Cumādā I or Şa'bān 952/1545 he held the office of *Qāḍī*-'asker of Rümēli;<sup>5</sup> and in this period he would hardly have served as *il yazıcısı*. Moreover, there are other, and even more detailed, expositions of this type that are obviously given in the form of *fetvās* of *şeyhülislāms*, such as İbn Kemāl and Ebu 's-Su'ūd.<sup>6</sup>

An explanation for this indifference of the '*ulemā* to the principles of the criminal *kānūn* may rather be found elsewhere. Penal affairs, unlike matters of land law, waqf, inheritance, etc., were traditionally outside their jurisdiction. Moreover, the *kānūn* regulations on criminal law and (particularly) criminal procedure could

<sup>1</sup> e.g. İbn Kemāl, *Fetvā*, Belediye Libr., MS. M. Cevdet O 44, end; Yeñişehirli 'Abdu'llāh Efendi, *Bahjat al-Fatāwā*, Istanbul, 1266, pp. 640 et seqq.

<sup>2</sup> Barkan, pp. xxxvii et seq.

<sup>3</sup> Barkan, 296-7 and photograph no. 55.

<sup>4</sup> Barkan, 296, note.

<sup>5</sup> See above, p. 184 and n. 4.

<sup>6</sup> See *MTM*, i. 51-6. On the other hand, Barkan is certainly right in pointing out (p. xxxviii) that a similar summary in *MTM*, i. 56-8 was written by Ebu 's-Su'ūd when he was charged with the census of the districts of Üsküb and Salonica.

not so easily have been brought into harmony with the rules of the *shari'a*.

Famous Ottoman *şeyhülislāms* did sometimes, however, openly object to certain regulations of the *kānūn*. Ebu 's-Su'ūd and 'Abdu 'r-Rahmān, for example, declared in *fetvās* that the pig tax (*resm-i ħunzīr*) and the bride tax (*resm-i 'arūsāne*) respectively, both of which were prescribed in many *kānūnnāmes*, were illegal.<sup>1</sup> (According to another *fetvā*, however, the bride tax (*gerdek ħakķı*), though unknown to the *shari'a*, is not an unlawful (*ħarām*) income for the fief-holders provided it is offered as a free gift (*teberru'*)!)<sup>2</sup>

So far as criminal law was concerned, İbn Kemāl, for instance, states in one of his *fetvās*<sup>3</sup> that a *cadi* who gives the *ehl-i 'orf a ħüccet* for the execution of a person liable to this penalty in accordance with the 'orf [only] is committing a sin (*āşim olur*) if this punishment is contrary to the *shari'a*.

Ebu 's-Su'ūd, though in many ways most anxious to reconcile the *kānūn* and the *shari'a*, says (as we have noted)<sup>4</sup> in a *fetvā*: '. . . If they are 'orf cases, the men of the *shari'a* (i.e. the *cadis*) cannot be concerned with them.' On the other hand, he admits that the *nā'ib* (of a *cadi*) 'interferes (*karışur*) in a thousand 'orf matters' (and therefore should not serve at the same time as *imām*).<sup>5</sup> It is noteworthy that in one case of a clash between the *kānūn* and the *shari'a*, Ebu 's-Su'ūd quotes the rulings of both without making any further comment.<sup>6</sup>

Sometimes a *şeyhülislām* tried to disregard a statute of secular law which contradicted the *shari'a* by claiming that in fact it was never meant to be laid down. For example, Ebu 's-Su'ūd ruled<sup>7</sup> that foreign residents or other *müste'mins* could not testify against

<sup>1</sup> MS. Vc, f. 60a marg.; MS. Na, f. 23a marg.

<sup>2</sup> Pîr Mehmed Efendi, *Zahir al-Kudāt*, Süleymaniye Libr., MS. Esad Ef. 852, f. 5a. Cf. also the question of the legality of *cadis'* fees (below, p. 213), and the payment *teberru'an* of damages and fines (pp. 248, 289).

<sup>3</sup> Selle, 19, § 21. [See also below, p. 218.]

<sup>4</sup> See above, p. 174 and n. 6.

<sup>5</sup> Bayezit Libr., MS. Veliyüddin 1466, f. 222a-b. In another *fetvā* however (ibid., f. 222b), Ebu 's-Su'ūd permits the combination of these offices on certain conditions. The same *fetvās* appear in Selle, 20, §§ 6-7.

<sup>6</sup> *MTM*, i. 112. [pencil note:] Cf. a *fetvā* of İbn Kemāl in Bayezit Libr., MS. Bayezit 4789, f. 41a (on a *timār* question): 'According to the *shari'a* he cannot do so, but according to the 'orf . . .'

<sup>7</sup> Horster, 53 (91); Selle 41 (91), §§ 10-11. Selle's text and Horster's translation require corrections.

non-Muslim subjects of the Sultan (*zimmî*); if nevertheless the Capitulations (*'ahdnâme*) granted them such a right, this was nothing but a mistake made by the ignorant scribes who had written the text of the Capitulations. This is the context in which Ebu 's-Su'üd gave his ruling\* *nā-meşrû' olan nesneye emr-i sulţānî olmaz*, 'There can be no decree of the Sultan ordering something that is illegal according to the *sharī'a*.'

### 7. *Punishment siyāseten*

Various penalties may, as we have seen,<sup>1</sup> be inflicted *siyāseten*, i.e. as an 'administrative punishment' for administrative or political reasons. Such punishment is not based on the *sharī'a*, but on the Sultan's will. In conformity with long-established Muslim practice and old Turkish and Mongol traditions, the ruler has the right, if the public interest or *raison d'état* require it, to inflict severe punishment on criminals who are, according to Islamic law, liable only to a lighter penalty (or to no penalty at all).<sup>2</sup>

Theoretically, the authority to inflict capital punishment *siyāseten* was held by the Sultan (and his *alter ego*, the Grand Vizier) only.<sup>3</sup> In practice, however, governors and other high officials used to usurp this authority and to order executions without first obtaining an Imperial firman.<sup>4</sup>

Just as the Sultan (or the Grand Vizier) might impose the death penalty *siyāseten*, so he could pardon a criminal or commute his punishment to a lighter one.<sup>5</sup>

As to the procedure for imposing punishment *siyāseten*, the seventeenth-century Ottoman historian Hezārfenn Hüseyn strongly urged the Sultan to obey the religious law and not to order any execution 'without a judicial sentence having been [passed] in accordance with the *sharī'a*'.<sup>6</sup> And indeed, in many cases this rule was observed:<sup>7</sup> after establishing the guilt of the accused, the *cadi*

\* [See above, p. 180. For the privileges of *müste'mins* see below, pp. 223-4.]

<sup>1</sup> OCC, §§ 46, 49 n., etc.; see further below, pp. 259 et sqq.

<sup>2</sup> Mumcu, 19 et sqq.

<sup>3</sup> Exceptionally, this authority may be delegated to others, such as commanders in the field (see Mumcu, 83).

<sup>4</sup> See Mumcu, 72-84.

<sup>5</sup> For examples see Mumcu, 143 et sqq.

<sup>6</sup> Hezārfenn, MS. Venice, f. 35b; MS. Paris, ff. 55b-56a.

<sup>7</sup> See, for instance, OCC, § 46 (1).

issued a *hüccet* in which he left the decision on the proper penalty to 'the authorities' (*man lahu 'l-amr*), i.e. the Sultan or the Grand Vizier.<sup>1</sup> Very frequently, however, any suspect (and not only a *kul* of the sultan)\* was punished (and more particularly executed) *siyāseten* without having been tried in a *cadi's mahkeme* or in another court of law (such as a *divān*). This was done especially when the accused was caught *flagrante delicto* or when nothing could be legally proved against him.<sup>2</sup> In many cases the Sultan or the Grand Vizier first asked for a *fetvā* legalizing such punishment,<sup>3</sup> but they often considered it unnecessary to obtain the consent of the 'ulemā.<sup>4</sup>

The Ottoman criminal codes do not list all the crimes liable to punishment *siyāseten* and their penalties;<sup>5</sup> many more are to be found in individual firmans. The reasons for this may be two. First, the *ḵānūnnāmes* were not complete codes of law.<sup>6</sup> Secondly, they were conceived as regulations imposed on the governors and other executive organs of the government. But the Sultan and his deputy the Grand Vizier, who alone had the right to inflict punishment *siyāseten*, were (formally at least) not limited by the *ḵānūn*, whose regulations they could alter at any time. Though subject to the *shari'a*, they were, so far as the *ḵānūn* is concerned, 'above the law'.

According to the Criminal Code, firmans, and other documents, punishment *siyāseten* was to be inflicted for various crimes not covered by the *shari'a* and for many offences which could not be proved in accordance with the *shari'a's* strict rules of criminal procedure. The penalties were either those known to the religious law (execution, amputation of a hand, strokes, banishment) or others, such as castration, branding of the forehead, servitude on the galleys, exposition of the criminal with a knife or an arrow thrust through his arm or ear, shaving off of the beard,

<sup>1</sup> Başbakanlık Arşivi, Cevdet catalogue, Adliye 5576, f. 5a (*kürek* penalty [on which see below, p. 304] for attempted theft).

\* [See below, p. 262.]

<sup>2</sup> Şam'dānizāde, f. 316a; Mumcu, 101 et sqq.

<sup>3</sup> See below, pp. 195 et sqq.

<sup>4</sup> See Rāşid, ii. 120a (iv. 102-4); cf. Hammer, *GOR*, vii. 186-7.

<sup>5</sup> The *kürek* penalty, for example, is not mentioned at all, but this may be because it became a common punishment only after the compilation of the last official penal *ḵānūnnāme* in the reign of Süleymān.

<sup>6</sup> See above, p. 178.

destruction of the offender's property, etc.\* Fines, though also a non-*shari'a* punishment, were, however, technically not included among the punishments *siyāseten* and are not mentioned in the *siyāsetnāmes*.<sup>1</sup>

According to a well-known statute of a *ḵānūnnāme* of Meḥemmed II,<sup>2</sup> a sultan on acceding to the throne might or should order the execution of his brothers 'for the sake of the order of the world' (*niḵām-i 'ālem iḵün*), i.e. to prevent civil war. This, the *ḵānūnnāme* states, had been declared lawful by 'most 'ulemā'. Though this regulation was a confirmation of a traditional political measure, it could be construed as a rule of criminal law prescribing the liquidation of 'potential offenders', i.e. those who might revolt against the ruler, as a punishment *siyāseten*.<sup>3</sup>

The application of the principle of imposing a penalty *siyāseten*, i.e. as an administrative (and not a judicial) measure inflicted for administrative or political reasons, was bound to lead to arbitrary and unrestrained punishment, often of innocent people, even before the general decline of the Ottoman Empire set in. A particularly gruesome example is given by the historian and Nişāncı Celālzāde Muştafā, who recounts an event of his own time.<sup>4</sup> In 1528 the house of a Muslim in Istanbul was attacked at night by unknown persons, all its inhabitants were killed and its contents were looted or destroyed. The perpetrators were not found, but suspicion, supported by certain 'indications', fell on a certain group of non-Muslim vagrants (*levend*) who in the past had been repeatedly suspected of, or charged with, similar crimes. Thereupon about eight hundred (!) such people were rounded up in the markets, taverns, etc. and publicly executed *siyāseten*.

Celālzāde's comment on this story is most interesting and significant for the moral and legal attitude of an Ottoman scholar and high government official, who had had a *medrese* training and had, as mentioned above,<sup>5</sup> for many years played a major role in

\* [See below, chapter IV, *passim*.]

<sup>1</sup> See above, pp. 15-16.

<sup>2</sup> KAO, p. 27. For the 'law of fratricide' see A. D. Alderson, *The Structure of the Ottoman Dynasty*, Oxford, 1956, 25-9.

<sup>3</sup> Mumcu, 183 et seq., 193 et seq. [Cf. also below, p. 196.]

<sup>4</sup> *Tabakāt*, f. 120a (the story is summarized by Cezar, *Levendler*, p. 134, following MS. Emanet Hazinesi 1427).

<sup>5</sup> See pp. 25-6.

the codification and development of the *ḵānūn* in the reign of Sultan Süleymān the Magnificent. He says:

Though outwardly this event is not free from [causing] constraint and distress, it is evident that most [people] lack the [necessary] knowledge and discernment in this matter. For that reason the divine will\* became manifest; a warning example was given to the trouble-makers, and terror spread among the criminals and rebels. Since that time no similar atrocity<sup>1</sup> has occurred in the well-guarded city of Istanbul. In truth, it is in the nature of the common people, so long as they have no fear of the sword, to dare to engage in all sorts of plots [and] to indulge in all kinds of wickedness and agitation . . .

A very similar view is expressed in the following century by Hezārfenn.<sup>2</sup> The very existence of the realm, he says, depends on the threat of the Sultan's punishment (*siyāset*), and public order would break down if the people did not live 'between fear and hope'.

#### 8. *Sā'i bi'l-fesād*

To justify punishment that went beyond the normal *sharī'a* penalties, the sultan or high government officials sometimes asked the Şeyhülislām or other high-ranking *müftis* for a *fetvā*. The Topkapı Sarayı in Istanbul preserves a bunch of original *fetvās* of this kind issued in the first part of the eighteenth century,<sup>3</sup> and an undated, very well written, collection of copies of *fetvās* dealing mainly with crimes against the State.<sup>4</sup> According to some of these *fetvās*, people whose offences are not, according to the religious law, capital may yet be executed if it is proved, in accordance with the *sharī'a*, that it is their 'constant habit' (*'ādet-i müstemirre*) to commit such crimes.<sup>5</sup>

Such a habitual criminal was held to come into the category of *sā'i bi'l-fesād* or, more fully in Arabic, *sā'in fi 'l-arḍ bi'l-fasād*, 'fomenter of corruption in the world'.<sup>6</sup> The *Ḳur'ān* (5. 32/37) says

\* [pencil note expanded:] For the currency of the belief that the Sultan acted by 'divine impulse' see Cantemir, 71, n. 2, confirmed by Toderini, i. 39 n.

<sup>1</sup> Referring, of course, to the sacking of a Muslim's house by unbelievers.

<sup>2</sup> Hezārfenn, MS. Venice, f. 35b; MS. Paris, f. 56a.

<sup>3</sup> Topkapı Sarayı Archives, E 12079. Some of these have been published by Mumcu (docs. 2, 3, 14, 15, 20, 22).

<sup>4</sup> Topkapı Sarayı Libr., MS. Hazine 1650.

<sup>5</sup> Cf. also Horster, 32 (74); Feyžu'llāh, ff. 52b, 53a.

<sup>6</sup> See the *fetvā* (original) in Topkapı Sarayı Archives, E 12079; published in Mumcu, doc. 22. [pencil note:] Cf. also the phrases *sā'i bi'l-fesād ve muḡvrr*

that 'those who . . . study to act corruptly in the world (*yas'awn fi'l-ard fasādan*) . . . shall be slain, or crucified, or have their hands and their feet cut off on the opposite [sides], or be banished the land'. Consequently, the authoritative *fiqh* works prescribe the death penalty for such offenders.\*

In the application of this rule, the Ottoman *şeyhülislāms* and other *müftīs*<sup>1</sup> left wide discretion to the Sultan as 'Pādişāh of Islam' (and hence *velī ül-emr*) and 'fountain-head of the order (or 'of the reform') of the world' (*sebeb-i niẓām-i*, or *işlāh-i*, 'ālem). To protect the public interest (*maşlahat*) or the people (*siyāneten li'l-'ibād*), to preserve public order (*niẓām-i memleket* or *emni-i bilād*), and to give a deterrent example to others ('*ibreten li's-sā'irin*), he may order the execution of such offenders 'as an administrative punishment' (*siyāseten*) or within the framework of his discretionary powers (*ta'ziren*).<sup>2</sup> The *ta'zīr* penalties included, in contradiction to the opinion of certain Muslim legists, capital punishment.<sup>3</sup>

A few examples will illustrate the wide range of offences covered by this principle.

Though no clear precedent could be found in the *fetvā* collections for the execution of a counterfeiter, a *şeyhülislām* decided that 'there was no harm' (*be's yokdur*) in the Sultan's putting such a criminal to death, provided his guilt was proved according to the *shari'a*.<sup>4</sup> In another case, already mentioned,<sup>5</sup> a *şeyhülislām* even

*li'l-'ibād* (Sünbülzāde, f. 14b) and *mükibb 'ale 'l-fesād* (E 12079, no. 9). [See also Mumcu, p. 53 and n. 126.]

\* [Heyd was proposing to revise this passage, and there does indeed seem to be a lacuna in the argument. The Qur'ānic verse here quoted is the proof-text in *fiqh* for the punishment of the crime of highway robbery, *kaṭ' al-tariḳ* (Juynboll, 306-7; Schacht, *Introduction*, 180-1; cf. Bilmen, iii. 289, §§ 810 et sqq.): execution by the sword for homicide alone and crucifixion for homicide and robbery (both as *ḥadd*-punishments). The Ottoman 'ulemā, however, with their use of the expression *sā'i bi'l-fesād*, appear to have widened the application of the text to embrace other offences against public order. On this point they may have been influenced by the doctrine of *siyāsa shar'iya*, for which see below, pp. 198-204 and especially p. 200.]

<sup>1</sup> e.g. Pīr Mehmed (f. 74a).

<sup>2</sup> *Fetvā* of the Şeyhülislām 'Abdu'llāh Efendi in a firman of late Cumādā I 1140/1728 published by Münir Aktepe in *TD*, viii/11-12 (1955), 77-9. [See also below, p. 271 and n. 7.]

<sup>3</sup> Mumcu, 47 et sqq.

<sup>4</sup> Topkapı Sarayı Archives, E 12079, no. 10. [pencil note:] The Şeyhülislām was Ebū İshāk İsmā'il (1128/1716-1130/1718), a protégé of Nevşehirli İbrāhīm Paşa ('*İlmīye Sālnāmesi*, 506).

<sup>5</sup> See above, p. 183 and n. 5.

promised God's reward to the Sultan if he ordered the execution of a 'fomentor of corruption' who had forged the Sultan's *tuğra*. According to the *fetvā* of another *şeyhülislām*,<sup>1</sup> a person caught while attempting to break into the Imperial Treasury (*hazine-i 'āmiri*) might be sentenced to death by the Sultan *siyāseten*, although no theft was actually committed. In the case of a murder committed by an official of the Imperial Palace within its compound, another *fetvā*<sup>2</sup> authorized the Sultan immediately to order the criminal's execution *siyāseten*, without waiting for the victim's heirs to come and bring action (and possibly accept blood-money), as the *shari'a* prescribes. In addition, the *şeyhülislāms* considered legal (*meşrū'*) the execution, on the Sultan's order, of governors and other government officials who had oppressed the people, as well as of people who had committed high treason or had habitually incited the populace to disorders.<sup>3</sup>

Incidentally, some of these *fetvās* show that, contrary to a common opinion,<sup>4</sup> the Sultan was hesitant (at least in later periods) to put to death even one of his 'slaves' (*kul*) without first receiving a formal authorization from the *Şeyhülislām*.\*

It is interesting that the consent of the *Şeyhülislām* or another *müfti* to the execution of such a criminal is sometimes given as his second choice. For instance, in an anonymous *fetvā* copy, apparently written for the Sultan's use,<sup>5</sup> it is ruled that Jews and Christians who habitually sell clipped coins as having full weight are liable to severe chastisement and a long prison term. Underneath on the same paper, however, the same *müfti* is asked, in a supplementary

<sup>1</sup> Topkapı Sarayı Archives, E 10751. For a photographic reproduction of this *fetvā* see *Arşiv Kılavuzu*, ii. doc. 22. [pencil note:] The *Şeyhülislām* was 'Abdu'r-Rahīm (1127/1715-1128/1716), who was notoriously prone to yield to the wishes of the authorities (Uzunçarşılı, *Osm. Tarihi*, iv/2. 464).

<sup>2</sup> Topkapı Sarayı Archives, E 12079, no. 8; published in Mumcu, doc. 3. [pencil note:] The *Şeyhülislām* was 'Abdu'llāh (1130/1718-1143/1730), also a protégé of İbrāhīm Paşa (*İlmiye Sāhnāmesi*, 507-8).

<sup>3</sup> Topkapı Sarayı Archives, E 12079, nos. 1 (Mumcu, doc. 15), 2 (Mumcu, doc. 14), 5; 6; 7. For further examples see Mumcu, 52 et seq.

<sup>4</sup> D'Ohsson, iii. 241; Lybyer, 55; Gibb-Bowen, i. 45; and see below, p. 262.

\* [pencil notes:] A later example: in 1826 the *Şeyhülislām* issued a *fetvā* permitting the execution *siyāseten* of certain Bektaşī *şeyhs*, although their crimes had not been proved against them individually (as the *shari'a* required) (Aḥmed Luṭfī, *Ta'riḥ*, i. 150; Cevdet, xii. 182). These examples show that some at least of the sultans' acts of 'arbitrary despotism' were carried out with the legal sanction of the highest-ranking '*ulemā*'.

<sup>5</sup> Topkapı Sarayı Libr., MS. Hazine 1650, ff. 9b-10a.

question,\* whether according to the *shari'a* it would be legal to kill the offenders if the Sultan considered this to be in the public interest (*maşlahat*). His reply is 'Yes'.

Though the *şeyhülislâms* sometimes went out of their way to accede to the demands of the Sultan (or the Grand Vizier) for a legalization of severe punishment, there is evidence that in certain cases they refused to do so. For example, Ebu 's-Su'ud stated<sup>1</sup> that it would be illegal to seize the property of executed non-Muslim brigands and to make their wives and children slaves. In the eighteenth century the Şeyhülislâm 'Abdu'llâh refused to apply the term *sā'i bi'l-fesād* too loosely and to agree to the execution of people who, owing to false rumours, had temporarily obstructed the execution of an order of the Sultan.<sup>2</sup>

### 9. *The doctrine of siyāsa shar'īya*

For their acquiescence in the Sultan's regulations in the field of penal law the Ottoman *ulemā* may have found some justification in the old Islamic theory of *siyāsa shar'īya*.<sup>3</sup> This is indicated by the very many manuscripts in Turkish libraries of an Arabic treatise on that subject, *Risālat al-siyāsa (al-siyāsāt) al-shar'īya*, written by an Ottoman *'ālim* of the sixteenth century, Dede Efendi,<sup>4</sup> and translated at least twice into Turkish under the title of *Siyāset-nāme*.<sup>5</sup>

Dede Efendi's treatise is the best-known Ottoman discussion of *siyāsa* penal law. His views may therefore be assumed to reflect

\* [For the form of such a 'supplementary question' see U. Heyd, in *BSOAS*, xxxii (1969), 42-3.]

<sup>1</sup> See below, p. 264 and n. 2.

<sup>2</sup> Topkapı Sarayı Archives, E 12079, published by Mumcu, doc. 22. [pencil note:] Cf. also the refusal of the Şeyhülislâm Muştafâ Efendi (1067/1657-1069/1659) to give a *fetvâ* for the execution of Deli Hüseyin Paşa ('*İlmiye Sâlnâmesi*, 475; Uzunçarşılı, *Osm. Tarihi*, iii/2. 476-7).

<sup>3</sup> On *siyāsa (shar'īya)* see E. Tyan, 'Méthodologie et sources du droit en Islam', in *Studia Islamica*, x (1959), 101 et sqq.; idem, *Histoire*, 343, 446 et seq.

<sup>4</sup> His name is given in many different forms: İbrâhîm Kemâl ed-Dîn, Dede Cöngî, Kara Dede, Minîkârîzâde, etc. He is said to have died in 973/1565-6 or 975/1567-8. For his biography see Süleymaniye Libr., MS. Çelebi Abdullah Efendi 362, last page; 'Atâ'i, 119-20; OM, i. 305; Brockelmann, *GAL*, ii<sup>2</sup>. 593; Suppl., ii. 665.

<sup>5</sup> The latest, the rather free and enlarged translation by Mehmed 'Arif Efendi, who from 1854 to 1858 was Şeyhülislâm, was published at Istanbul in 1275/1858-9.

or to have influenced the attitude of many Turkish *'ulemā* over a long period.<sup>1</sup>

There is, however, very little original thought in Dede Efendi's work. He mainly quotes various authorities in the field of public and especially penal law, such as al-Māwardī,<sup>2</sup> Ibn Taymiya<sup>3</sup> and his disciple, Ibn Qayyim al-Jawziya,<sup>4</sup> Shihāb al-Dīn Aḥmad b. Idrīs al-Ḳarāfi,<sup>5</sup> author of the Mālikī treatise *al-Dhakhira*, and, in particular, 'Alā' al-Dīn 'Alī b. Khalīl al-Ṭarābulusī,<sup>6</sup> the Ḥanafī caḍi of Jerusalem in the fifteenth century and author of *Mu'in al-ḥukkām*. In fact, most parts of Dede Efendi's treatise are merely shorter versions of some chapters of the *Mu'in*.<sup>7</sup>

*Siyāsa shar'iya*, not very felicitously translated 'politique juridique',<sup>8</sup> 'politique canonique',<sup>9</sup> or 'politique jurisprudentielle',<sup>10</sup> in general means government or administration in accordance with the religious law.\* So far as penal affairs are concerned, Dede Efendi expresses the generally accepted opinion that for the sake of maintaining public order and ensuring the welfare of society the Muslim ruler is given a broad discretion to deal with criminal offences, provided his acts do not blatantly run counter to the principles of the *sharī'a*. In particular, he has the right to inflict much wider and more severe punishment on criminals than is possible under the limited and rigid rules of *sharī'a* penal law and criminal procedure. This extra-canonical authority of the ruler is called *siyāsa*.<sup>11</sup> So long as he acts with the object and within the limits mentioned, his *siyāsa* is just (*'ādila*) and approved by the

<sup>1</sup> See al-Sayyid 'Abdu'llāh Jamāl al-Dīn, *al-Siyāsa al-shar'iya fi siyādat al-rā'i wa-sa'ādat al-ra'iya*, Cairo, 1319, p. 19.

<sup>2</sup> *al-Aḥkām al-sultāniya*, ed. Enger; tr. Fagnan.

<sup>3</sup> Especially his *al-Siyāsa al-shar'iya fi iṣlāḥ al-rā'i wa'l-ra'iya*, Cairo, 1951. Translated by H. Laoust, *Le Traité de droit public d'Ibn Taimiya*, Beirut, 1948.

<sup>4</sup> In particular, his *al-Ṭuruḥ al-ḥukmiya fi 'l-siyāsa al-shar'iya*, Cairo, 1380/1961.

<sup>5</sup> Died in 684/1285 (see Brockelmann, *GAL*, i<sup>2</sup>. 481; Suppl., i. 665). His name is mis-spelt in most copies of the *Siyāsetnāme* and its translations.

<sup>6</sup> He is said to have died in 844/1440 (see Brockelmann, *GAL*, ii<sup>2</sup>. 98-9; Suppl., ii. 91).

<sup>7</sup> See *Mu'in al-ḥukkām*, 164-74.

<sup>8</sup> Laoust, *Traité*, p. xii.

<sup>9</sup> Laoust, *Essai*, 229.

<sup>10</sup> Tyan, *Histoire*, 343, 573.

\* [pencil note:] Cf. Rosenthal, *Political Thought*, 52: 'administration according to and by means of the *Shari'a*'.

<sup>11</sup> It should not be rendered, as in Rosenthal's translation of Ibn Khaldūn (i. 457; ii. 36, 37; etc.), 'political (establishment)', 'political leadership', 'political authorities', etc.

religious law (*shar'īya*),<sup>1</sup> as opposed to the arbitrary and oppressive administration of penal justice (*siyāsa ḡālīma*). Some Muslim legists go even further, and claim that the *siyāsa shar'īya* is not merely compatible with but forms part of the *sharī'a* law.<sup>2</sup>

To prove the legality of the *siyāsa shar'īya*, Dede Efendi, following *Mu'in al-ḥukkām* and *al-Dhakhira*, quotes a few Ḳur'ān verses but refers chiefly to the *sunna*, the acts of the Prophet and his Companions, as well as those of the first, i.e. the 'righteous', caliphs. All of them, he claims, on many occasions inflicted punishment *siyāsatan*, i.e. penalties unknown to the *sharī'a* or more severe than those prescribed by it, and often without the guilt of the accused having been proved in accordance with its strict rules.<sup>3</sup>

This view may be summed up in the well-known saying, 'God deters [people from transgression] more through the ruler than through the Ḳur'ān' (*inn Allāh layaza' bi'l-sultān akthar mim mā yaza' bi'l-ḡur'ān*).<sup>4</sup>

Another argument advanced to justify the *siyāsa shar'īya* is that penal justice has to conform to the public welfare (*al-maṣlaḡa al-'āmma*), and since the latter varies at different places and in different times\* criminal law and procedure must also change accordingly (*wa-'khtalafa 'l-aḡkām bi-'khtilāf al-aṣmān*). Thus, the increase in crimes against public order and security (*fasād*) as compared with earlier times necessitates broader legal measures in the form of *siyāsa* regulations.<sup>5</sup>

According to many Muslim jurists, these regulations are to be applied by the ruler and, through his delegation, by the secular judges (*wālī al-maṣālim*, *wālī al-jarā'im*) only. Consequently, the latter's jurisdiction in criminal affairs is considered much wider, freer, and more efficacious than that of the cadis. Dede Efendi,

<sup>1</sup> Or *dīniya*? See Māwardī, 375. For Ibn Khaldūn's use of this term see *Muḡaddīma*, i. 342.

<sup>2</sup> Ibn Ḳayyim al-Jawziya, *Ṭuruk*, 5, 17; *Mu'in al-ḥukkām*, 164-8. Some Mālikī *fiḡh* works even include the *siyāsa* rules in their exposition of criminal law (see Tyan, in *Studia Islamica*, x (1959), 105).

<sup>3</sup> Dede Efendi, ch. I.

<sup>4</sup> Māwardī, *Adab al-dunyā wa'l-dīn*, Cairo, 1375/1955, p. 121. Cf. Ibn Ḳayyim al-Jawziya, *Ṭuruk*, 311; Ibn Khaldūn, i. 345-6.

\* [pencil note:] See I. Goldziher, *Vorlesungen über den Islam*, Heidelberg, 1925, pp. 258-9, 378-9 (n. 14).

<sup>5</sup> Dede Efendi, MS. 697, ff. 66b-67b (M. 'Arif's trans., 12-13, 15 et sqq., 19), following *Mu'in al-ḥukkām*, 172-3. Cf. Ibn Ḳayyim al-Jawziya, *Ṭuruk*, 21.

however, rejects this opinion. After quoting two lists of differences, given by Māwardī<sup>1</sup> and his followers, between the competence of the secular judges and that of the cadis, he cites other, mainly Ḥanafī, authorities to prove that most of these alleged differences are unfounded and that the cadis too are authorized to apply the *siyāsa* regulations.<sup>2</sup>

For this assertion he finds further support in the teaching of Ibn Ḳayyim al-Jawziya. This great Ḥanbalī legist of the fourteenth century held that the *shari'a* has not laid down any definite rule concerning the competence of the religious and the secular judges in criminal matters. Whether or not the cadis may, like the military authorities, apply *siyāsa* regulations depends, according to Ibn al-Ḳayyim, on the usage and practice (*al-'urf wa'l-iṣṭilāḥ*) in a certain place and at a given time.

In his basic approach Dede Efendi follows the school of thought whose leading representative was Ibn Taymīya (661/1263–728/1328).<sup>3</sup> Unreconciled to the age-long dichotomy between the oppressive practices of the secular rulers and the teachings of the religious law, Ibn Taymīya and his followers demanded that the public law of the Muslim state should be based on the *shari'a*. They understood, however, that their object was unattainable unless the religious law, though theoretically immutable, was in some way developed and adjusted to contemporary political and social conditions. In the field of penal law this meant that the principles of criminal justice as practised for centuries by the Muslim rulers and their executive organs had to a certain extent to be recognized as compatible with the religious law or, as Dede Efendi put it<sup>4</sup> in the words of 'Alā' al-Dīn al-Ṭarābulusī,<sup>5</sup> that the *siyāsa* had to be combined or harmonized with the *shari'a*.

In many points of principle and detail the Ottoman penal *kānūn* bears a close similarity to the *siyāsa shar'iya* as elaborated by the Muslim legists.\* Like it, the *kānūn* is conceived as a supplement to the *shari'a*, theoretically inferior to it but prevailing over it in practice. It too claims to help in achieving the fundamental objects

<sup>1</sup> *al-Aḥkām al-sultāniya*, ed. Enger, 141–2, 376–8.

<sup>2</sup> Dede Efendi, MS. 697, ff. 69a–71a (M. 'Ārif's trans., 31–46), largely copied from *Mu'in al-ḥukkām*, 169–72.

<sup>3</sup> On the teachings of Ibn Taymīya see Laoust, *Essai*.

<sup>4</sup> *Siyāsetnāme*, preface.

<sup>5</sup> *Mu'in al-ḥukkām*, 164.

\* [pencil note:] And to the principles of *maẓālim* jurisdiction; see Māwardī, 141–2. [Cf. also above, p. 177.]

of the *shari'a* by making it easier to bring the truth to light, to punish criminals adequately, and to deter potential offenders. The main emphasis is placed on the protection of society, and not, as in the *shari'a*, on safeguarding the rights of the individual. The *kānūn* is chiefly inspired not by principles of law and justice but, like the *siyāsa*, by the need to improve the administration and to safeguard public order. Just like the *siyāsa*, it can, and should, change in accordance with changes in social conditions.

To achieve its objects, the *kānūn*, like the *siyāsa*, permits the imposition of preventive punishment such as imprisonment and of heavier penalties than those prescribed in the *shari'a* (e.g. execution for repeated crimes). It also renders it much easier to convict a suspect: it allows the *cadi* to investigate and take into consideration the criminal record or reputation of the accused, as well as the *communis opinio* concerning facts (*tawātur*, *istifāda*);<sup>1</sup> it accepts indirect and circumstantial evidence (*amārāt*, *ḡarā'in*), such as stolen goods being in the possession of a person accused of theft;<sup>2</sup> it permits imprisonment or the use of force (including torture) to obtain a confession; it admits the testimony of people who, according to the *shari'a*, are not competent to testify; etc.

A final resemblance is that the Ottoman rulers, in issuing their penal *kānūns*, were attempting to achieve the very same objects as the exponents of the *siyāsa shar'iya*, namely, to bridge the gulf between the two separate jurisdictions, the religious and the secular, by making the *cadis* too apply the criminal regulations outside the strict *shari'a* law.

In view of these striking similarities it is significant, and at first sight surprising, that Dede Efendi does not mention the penal *kānūn* as a realization, at least partial, of his idea of *siyāsa shar'iya* or *siyāsa 'ādila*: for though he uses terms like *al-ḡawānīn li'l-siyāsa*,<sup>3</sup> he does not refer even once in his treatise to the existence of an Ottoman criminal code.<sup>4</sup>

This attitude may be the result of the fact, already mentioned, that Dede Efendi was not an original scholar. Since his sources, all

<sup>1</sup> For the *siyāsa* see Ibn Ḳayyim al-Jawziya, *Ṭuruḡ*, 233-5.

<sup>2</sup> Ibid., 8: *wa-hādhihi 'l-ḡarīna aḡwā min al-bayyina wa'l-iḡrār*.

<sup>3</sup> In the meaning of *siyāsa* regulations in general (MS. 697, f. 67a). Cf. *Mu'in al-hukkām*, 172.

<sup>4</sup> It is an interesting point that modern scholars studying the *siyāsa shar'iya*, like Laoust (e.g. *Traité*, p. xli), also fail to point out any relationship between it and the Ottoman *kānūn*.

of them pre- or non-Ottoman, did not mention the Ottoman *ḵānūn*, he too ignored it. Moreover, despite the numerous similarities between the *siyāsa shar'īya* and the *ḵānūn*, many 'ulemā most probably objected to the *ḵānūn* on principle. Unfortunately, no polemic works of theirs have so far come to light, and it is even doubtful whether by Dede Efendi's time any 'alim had dared openly to express his opposition to the Sultan's *ḵānūn*-making. Thus it can only be surmised what the 'ulemā's attitude may have been. First, they may have found fault in the *ḵānūn*'s being based on the arbitrary will of the ruler and not on the traditions of Islam (*sunna*). In Ibn Khaldūn's terms, these *ḵawānīn siyāsīya* were laid down by men and based on reason (*siyāsa 'akliya*); they were not issued by God through his Prophet as part of the religion of Islam (*siyāsa dīniya*).<sup>1</sup> Secondly, the *ḵānūn* was a written codified secular law (a dangerous innovation in Islam). Thirdly, it commuted or presupposed the commutation of *ḥudūd* penalties into lighter punishments (while the *siyāsa* generally provides only heavier punishment than the *shari'a*). On many other points too the *ḵānūn* diverges further from the religious law than does the *siyāsa shar'īya*. In particular, unlike some Mālikī legists,\* most adherents of the Ḥanafī *mezheb*, the official school of law in the Ottoman Empire, may have disapproved of the integration of the cadis in the non-*shari'a* administration of criminal justice.

Veiled opposition to man-made criminal laws can however be discerned in one of the most famous Ottoman works on ethics, the *Aḥlāk-i 'Alā'i* by Kınalızāde 'Alī Efendi, a leading 'alim (he rose to the rank of *ḵāḍī-asker*) under Süleymān and Selīm II.<sup>2</sup> For Kınalızāde the only valid law is the divine *shari'a*, which includes the *siyāsāt*. Secular law enacted by a ruler, such as the once widely accepted *yasa* of Jengiz Khan, is bound to be gradually disregarded as the power of that ruler's dynasty wanes. On the other hand, the holy law of Islam, though almost a thousand years old, has preserved its vitality unimpaired.<sup>3</sup>

Kınalızāde regards as particularly dangerous any deviation from the *shari'a* in the field of penal law. No criminal liable to

<sup>1</sup> Ibn Khaldūn, i. 342.

\* [See p. 200, n. 2.]

<sup>2</sup> For his life and works see *IA*, art. 'Kınalı-zāde 'Alī Efendi' (A. Adnan-Adıvar); *EI*<sup>1</sup>, art. 'Kınalızāde I' (Babinger). [pencil note:] See also, for his place in the tradition of Islamic thought as a successor of Naṣīr al-Dīn Ṭūsī and al-Dawwānī, Ş. Mardin, *The Genesis of Young Ottoman Thought*, Princeton, N.J., 1962, 98-102.

<sup>3</sup> See *Aḥlāk-i 'Alā'i*, Bülāk, 1248, ii. 73-4.

execution according to the *shari'a* must be pardoned. Even more strongly does he condemn capital punishment not sanctioned by the *shari'a*, which is inflicted as *siyaset* and for the effective control of the country (*zabt-i memleket*). It is the devil who suggests to the 'emirs of the age' that in this time of increasing lawlessness it is no longer possible to maintain public order by merely applying the criminal regulations of the *shari'a*. Those who yield to such insinuations tend to become eager to punish people on mere suspicion and to develop a passion for the shedding of blood. In contrast Nūr al-Dīn, the twelfth-century Syrian ruler, is referred to as a brilliant example of a just prince who firmly rejected all 'false *kānūns* and novel *siyāsāt*' and who thereby succeeded in suppressing crime in his dominions.<sup>1</sup>

The strong opposition of certain Ottoman 'ulemā to the whole concept of secular regulations in the field of penal law is reflected also in a unique passage inserted in one copy (unfortunately undated) of Dede Efendi's Arabic treatise.<sup>2</sup> Almost at the end of the preface the copyist quotes a commentary to a Qur'ān verse (58. 4/6) as stating that this verse contains 'a grave warning to the bad kings and *amīrs*, that is, to those who have laid down statutes in contravention of the *shari'a* and called them *siyāsāt* and *kānūn*'. He goes on: 'He who believes that the Sultan has the right to permit what is forbidden [by the religious law] and to forbid what is permitted [by it] is an unbeliever, [since] the law is God's [alone].'

Since this passage is inserted at the end of a section condemning those who practise *siyāsa ḡālīma*, it is obvious that in the opinion of the copyist the Ottoman *kānūn* and its *siyaset* punishment belong to this oppressive *siyāsa*, which is to be rejected as unlawful by the religious law.

#### 10. *The concept of ḥaḳḳ al-salṭana*

Most Ottoman 'ulemā had too little regard for non-*shari'a* matters, and the secular officials had too little training and interest in legal theory, to engage in a study of the fundamental concepts of the *kānūn*, including its relationship to the *shari'a*. Even the Ottoman writers on political theory, such as Kınalızāde, Kātīb Çelebi, and

<sup>1</sup> *Aḥlāk-i 'Alā'i*, Bülāk, 1248, iii. 11-13.

<sup>2</sup> Köprülü Libr., MS. II, 203, ff. 57b-58a.

others, generally refrained from dealing with this subject. One reason for this may have been that their teachers, the great medieval philosophers and political scientists of Islam, had been chiefly interested in establishing parallels between the *nomos*, the man-made law of Greek philosophy based on reason, and the Muslim *shari'a*.<sup>1</sup>

This lack of interest is to be regretted, since some of those concepts might have given rise to a development of Ottoman jurisprudence. One example may be given. Theft is regarded by the *shari'a* as a violation of both a *ḥaqq Allāh*, a right of God (for which the thief may be mutilated) and of a *ḥaqq ādamī*, a right of a human being (to whom the stolen property has to be returned). Homicide and wounding, on the other hand, are in general considered, chiefly if not solely, a violation of a *ḥaqq ādamī*, for which the *shari'a* entitles the heir of the murdered person or the injured person himself to demand retaliation (*kīṣās*) or blood-money (*diyyet*).<sup>2</sup> The *kānūn*, however, prescribes that if *diyyet* is agreed upon, the criminal must, in addition, pay a fine to the authorities.<sup>3</sup> In practice the Ottoman *shari'a* courts in the sixteenth century acted in accordance with this principle. For example, when two men came before the *cadi* accusing each other of assault and finally renounced their claims, both of them were nevertheless sentenced to a fine.<sup>4</sup>

Thus the *kānūn* may be said to establish by implication that homicide and wounding, just like theft, also have an aspect which involves public law. In other words, it regards these crimes too as offences, if not against Allāh, then—in modern terms—against society or the State. To the traditional legal concepts of *ḥaqq Allāh* and *ḥaqq ādamī* a third one is added, which could be called *ḥaqq al-saltāna*, the right of the State.

This term is indeed found in Māwardī's *al-Aḥkām al-sultāniya* (as well as in the treatise with the same title by his contemporary

<sup>1</sup> See Rosenthal, *Political Thought*, 4, 116 et sqq., 215, 223. [pencil note:] On man-made laws see also Ibn Khaldūn, i. 342-3; ii. 126-8.

<sup>2</sup> As has been pointed out by E. Gräf (*ZVRW*, lix (1957), 104), however, in the view of some legists a right of God is involved here too; Mālik b. Anas, for instance, holds that if the next of kin waives his or her claim to retaliation the offender is to be sentenced to strokes and banishment. Even according to Abū Yūsuf, the great Ḥanafī jurist, if retaliation for an injury is not possible the judge shall not only impose damages but punish and imprison the criminal (*Kitāb al-Kharāj*, 90).

<sup>3</sup> OCC, §§ 41 (esp. in Va), 42, 50.

<sup>4</sup> Üsküdar Sicilli, vol. 1, f. 20b.

Ibn al-Farrā'<sup>1</sup> as a separate category of rights, side by side with the 'rights of God' and the 'rights of man'. For instance,<sup>2</sup> for some offences, such as abuse (*shatm*) and assault (*muwāthaba*), *ta'zīr* punishment is to be inflicted because of the violation of both a right of an individual and a right of the 'State' (*salṭana*); therefore the judge is not allowed to refrain from punishing the offender unless the victim forgives him. But the judge may choose whatever he considers more suitable (*aṣlah*), punishment or pardon, in cases in which only a *ḥaḳḳ al-salṭana* has been infringed. An example for the latter is the offence of a man who has been involved in mutual abuse and assault with his son: here the son has no right to demand *ta'zīr* punishment to be inflicted on his father, but the 'State' does have the right to inflict it.

The object of punishment for the violation of a 'right of the State' is *taḳwīm*, 'reform', and *tahdhīb* '[moral] improvement [of the offender?]', as required in the public interest (*al-maṣlaḥa al-'amma*).<sup>3</sup> By this definition of Māwardī the 'rights of the State' become rather similar to the 'rights of God', which are also said to be involved in many cases of offences against the public interest.<sup>4</sup> The same identification of the 'rights of God' with those of the Muslims in general, i.e. the rights of society, is found in Ibn Taymīya.<sup>5</sup>

In general, Māwardī does not accord the *ḥaḳḳ al-salṭana* equal rank with the other two categories of rights,<sup>6</sup> probably because there are no fixed *sharī'a* penalties (*ḥudūd*) for them. Consequently, he makes little effort to define and analyse them. He even uses the term *ḥaḳḳ al-salṭana* (or *ḥuḳūḳ sultāniya*) in another meaning, viz. as opposed to *ḥuḳūḳ shar'īya*: thus, for instance, for using measures that lack the official stamp of the *muḥtasib* and are deficient, a

<sup>1</sup> Abū Ya'lā Muḥammad b. al-Ḥusayn b. al-Farrā', *al-Aḥkām al-sultāniya*, Cairo, 1357/1938.

<sup>2</sup> Māwardī, 401-2. See also Ibn al-Farrā', 266. [pencil note:] It is interesting that the following discussion is incorporated in Dede Efendi's *al-Siyāsa al-shar'īya* (MS. 697, f. 75a-b; not translated by M. 'Arif).

<sup>3</sup> Māwardī, 401-2. Cf. Ibn al-Farrā', 266; Ibn al-Ukhuwwa, 193 (punishment in such cases is a *ḥaḳḳ al-maṣāliḥ al-'amma*).

<sup>4</sup> As, for instance, a person's erecting a building where he has no right to do so (Māwardī, 118). See also *ibid.*, 52, and cf. some of the offences dealt with by the *muḥtasib* [below, pp. 229 et sqq.].

<sup>5</sup> *al-Siyāsa al-shar'īya*, 66 (trans. Laoust, 59). Cf. also D. Santillana, *Istituzioni di diritto musulmano Malichita*, i. Rome, 1926, p. 9: '... Dio è ormai sostituito, nel concetto musulmano, all'antica idea della *civitas*.'

<sup>6</sup> See Māwardī, 414.

trader is to be punished as having infringed both the former (by disobedience to an order of the ruler) and the latter (by fraud).<sup>1</sup> The author seems here to be confounding two different 'rights' with two separate sources of law.

<sup>1</sup> Ibid., 424. See also the example on p. 425.

## II

# THE COURTS

### I. *Introductory*

CRIMINAL justice in the Ottoman Empire was administered by two classes of officials—the cadis (and *nā'ibs*) and the military, i.e. (outside Istanbul), chiefly the governors and their subordinates, special commissioners of the Sultan and, to some extent, the fief-holders. The higher courts of justice were the various *dīvāns* of the Grand Vizier, while the supreme judicial authority was, at least theoretically, vested in the Sultan himself, who delegated it to whatever authorities he wished. What part each played in fact cannot easily be established. Not until the reforms of the nineteenth century was any attempt made to introduce a clear division of powers, unknown to traditional Islam, between the executive and the judiciary.

In the older Muslim states the cadis often administered criminal justice only so far as litigation between individuals was involved. At other times they had concurrent jurisdiction in penal affairs with secular officials, such as military governors or police chiefs. The procedure adopted in criminal trials depended on the type of tribunal before which the case was brought.<sup>1</sup>

According to Ibn Khaldūn, in the fourteenth century the cadis were authorized to impose *ta'zīr* and *hudūd*, i.e. *sharī'a*, penalties for crimes that were proved according to the requirements of the religious law. Defendants whose guilt was only suspected were to be dealt with by secular officials (*wālī*, [*ṣāhib al-]shurṭa*) in accordance with the *siyāsa*. The latter frequently used force to extort confessions and, in Mamlūk Egypt, were charged with inflicting both the fixed penalties (*hudūd*) of the *sharī'a* and the *siyāsa* punishments, 'as required in the public interest'.<sup>2</sup>

<sup>1</sup> Ibn Khaldūn, i. 397; Māwardī, 375-6.

<sup>2</sup> Ibn Khaldūn, i. 401; ii. 30-2. Rosenthal's translation of the first of these passages (i. 457) is somewhat misleading. Cf. also Ibn Taymiya's treatise on the *ḥisba* in the collection of his *risālas*, Cairo, 1323, ii. 38-9, and Ibn Kayyim al-Jawziya, *Ṭuruk*, 280.

This concept of the major role to be played in criminal justice by the military governors goes back to medieval Islamic practice as well as theory. Māwardī holds<sup>1</sup> that the *cadi's* main function is to adjudicate in litigation between private parties and his chief duty to protect the rights of the individual. The military governor (*amīr*), on the other hand, is charged with the maintenance of public order and security and has to consider the interests of society.

Consequently, Māwardī adds, criminal cases involving 'rights of man' (homicide, wounding, false accusation of fornication) may be dealt with, according to the wish of the plaintiff, either by the *cadi* or by the governor. Violations of 'rights of God' (such as fornication, etc.), on the other hand, belong to the sphere of public interest, in which the governor has the greater competence. . . .

## 2. The 'secular' authorities

A fundamental rule as to the respective functions of *cadis* and governors in the administration of criminal justice in the Ottoman Empire was laid down in a seventeenth-century *ḳānūnnāme*.<sup>2</sup> The *cadis*, it says, 'are to carry out the laws of the *shari'a* . . . but are ordered to refer matters relating to public order (*niḣām-i memleket*), the protection and defence of the subjects, and the capital or severe corporal punishment (*siyāset*) [of criminals] to the [local] representatives of the Sultan (*vükelā-i devlet*),<sup>3</sup> who are the governors in charge of military and serious penal affairs (*hükkām-i seyf ve (ü) siyāset*).'<sup>4</sup>

<sup>1</sup> Māwardī, 52.

<sup>2</sup> The *ḳānūnnāme* of 'Abdu 'r-Rahmān Paṣa the Niṣāncı (or Tevki'i), published in *MTM*, vol. i, no. 3 (1331), pp. 497-544. He was ordered to compile this collection of (apparently older) *ḳānūns* in 1087/1676-7, but refers in it (pp. 511, 522, 532) to events that took place in 1088 and 1089/1677-8. For his career and works see Babinger, *GOW*, 227-8.

<sup>3</sup> Cf. *MTM*, i, 528: *ṭaraf-i sulṭāniden tevki olunmuş vāliler ve hākimler*.

<sup>4</sup> *Ibid.*, 541. [pencil notes expanded:] Cf. Hezārfenn, *MS*, Paris, f. 182a: *emr-i siyāset kendüye* [scil. the *cadi*] *müte'allik olmamağın*. . . . The question remains, however, whether this represents a seventeenth-century development (cf. Gibb-Bowen, ii, 87) and *cadis* had in earlier times had competence in matters of law and order.

The text of the *ḳānūnnāme* here quoted does not mention specifically *iḳāmet-i ḥudūd*, and it was a debated matter whether the *cadis'* authority embraced this. In some pre-Ottoman diplomas of appointment for *cadis* the imposition of *ḥadd*-punishments is mentioned, in others not (Tyan, *Histoire*, 354). Surviving Rūm Seljuk diplomas do not mention *iḳāmet-i ḥudūd* (Turan, *Vesikalar*,

The authorities here referred to are the *beğlerbeğis* (of *vezir* and *mirmirān* ranks)<sup>1</sup> and the *sancakbeğis*, whose power in their provinces or districts was similar to that held by the Grand Vizier in relation to the whole Empire. Like him<sup>2</sup> they are to execute the law of the *shari'a* and, in particular, to remove injustice and oppression (*maẓālīm*). To effect this, the *beğlerbeğis* are to hold *divāns* in which they hear cases, or to summon cadis to their presence and charge them to do so. In order to institute such hearings and redress grievances they are to issue written orders (*buyuruldu*) in accordance with the *shari'a* and the *kānūn*. A governor of *vezir* rank, on the way to or from his province, is to administer justice even in the provinces through which he passes, unless they are held by governors of the same rank as himself.<sup>3</sup>

The same function was performed by the Ottoman Lord High Admiral (*Kapudan Paşa*), who was *ex officio* Governor-General of the Aegean archipelago and might or might not be of *vezir* rank. When in Istanbul, he heard cases and punished criminals in the quarter of Kāsım Paşa, where the Imperial dockyard and maritime arsenal were located. Similarly, when cruising with the fleet, he heard cases wherever he landed, with the assistance of a special cadi he took with him (*donanma-i hümāyūn kādisı*).<sup>4</sup>

According to the theory of Islamic penal justice,<sup>5</sup> the governors and other secular judges were authorized to inflict punishment on their own only when a crime had obviously been committed or the accused had confessed; in all cases where legal proofs were required

docs. 36-40), nor is it mentioned in some Ottoman *berāts* (e.g. MS. Fj, ff. 24b-26a, 41b-42b, 45a-47a, 47a-48a; in one document, ff. 82b-83a, it is stated that the *mübāşir*, appointed to carry out a *teftiş* [see below, p. 228], and not the cadi, is to inflict *hudūd*).

As to the governors' authority, in fact very little is known about their *divāns* and the matters dealt with in them. The jurisdiction of an Ottoman *beğlerbeği* appointed in 873/1468 included *kaṭ'-i kaẓāyā ve faşl-i huşūmet* (Lugal-Erzi, p. 74); cf. also the *berāt* of 855/1451, in Feridūn, i. 269; *ikāmet-i hudūd* is not mentioned in either. The *Kānūnnāme* for Egypt lays down explicitly that the *vālī* is to adjudicate only in co-operation (*ma'rifet*) with the cadi, and that the *subaşı* is to act (i.e. punish offenders?) only after the cadi has pronounced sentence (Barkan, 382, § 41).

<sup>1</sup> Cf. a fifteenth-century *berāt* for the appointment of a *Beğlerbeği* of Anadolu (MS. Ed, ff. 112b-113a).

<sup>2</sup> See below, p. 224.

<sup>3</sup> *MTM*, i. 500, 528-9.

<sup>4</sup> *Ibid.*, 536, 538; Nūrī, 915-16; H. Grenville, *Observations sur l'état actuel de l'Empire ottoman* [1766], ed. A. S. Ehrenkreutz, University of Michigan, 1965, pp. 6-7.

<sup>5</sup> See Māwardī, 51.

or there was a difference of opinion among the legists on points of law involved, the defendant had first to be convicted by a *cadi*. This distinction was hardly ever observed in practice. Though the Ottomans charged the *cadis* to establish the 'rights of God' and the 'rights of man' in a criminal trial, the sphere of the 'rights of the State'<sup>1</sup> was largely left to the secular authorities.

Interesting information is preserved in the *kānūnnāme*<sup>2</sup> on customs duties and other taxes for the fortress town and port of Akkerman (Russian Belgorod-Dnestrovsky, in Rumanian Cetatea Albă) dated end of Receb 889/23 August 1484, i.e. a few weeks after the conquest of the town by Sultan Bāyezīd II.<sup>3</sup> According to these regulations, *shari'a* cases among the soldiers and sailors are in the *cadi's* jurisdiction, other (i.e., probably, military) cases in that of the warden of the fortress (*dizdār*) or of the naval commander (*kapudan*) respectively, while certain *divānī* (fiscal and the like?) cases concerning either the soldiers and sailors or the local Christian population are to be dealt with by the *sancakbeği* in accordance with the customary law ('*örf*').

Foreign observers<sup>4</sup> pointed out that criminal cases were often or even generally tried by the *subaşı*, while the *cadis* dealt with people who did not take part in the public prayers, did not fast in Ramazān, cursed, drank wine, etc.

In spite of innumerable firmans instructing provincial governors to administer criminal justice in strict accordance with the law, governors (and their men) in all periods often acted in an arbitrary and oppressive fashion. Individuals who were wronged by their actions could appeal to the Sultan and ask for an investigation (*teftiṣ*) to be held; they used to go to Istanbul and procure a firman to this effect addressed to their local authorities.<sup>5</sup>

To redress more general grievances of the population, the Sultan sometimes dismissed or transferred a particularly unjust governor and then ordered a special judge (*müfettiṣ*) to investigate his misdeeds.<sup>6</sup> An example is the inquiry, held at the local *shari'a*

<sup>1</sup> See above, pp. 204 et sqq.

<sup>2</sup> Bibl. Nat., Paris, MS. A.f. turc 85, f. 239b. [For this document see N. Beldiceanu, in *Südost-Forschungen*, xxiii (1964), 72 et sqq.]

<sup>3</sup> See *ET*<sup>2</sup>, s.v. 'Ağ Kirmān' (A. Decei).

<sup>4</sup> e.g. Menavino, 52, 54-5.

<sup>5</sup> See, for example, Bursa Sicilli, A 42, f. 1b.

<sup>6</sup> In the case of an oppressive *subaşı*, the local *sancakbeği*, the *cadi*, and

law-court, into the tyrannical acts of Sinān Paşa,<sup>1</sup> former Governor-General of the province of Damascus, and his *subaşı*. Its records are 'preserved in an exceptionally well-written register of 197 folios dated (f. 8b) Rebi' I 956/March–April 1549.<sup>2</sup> Many people came forward and brought suits against Sinān's 'legal representative' (*vekil-i şer'*) and the *subaşı*. They claimed that the governor or his men had unjustly imprisoned them, accused them of various offences and, without any proof or even trial, collected from them exorbitant 'fines', such as 25 gold pieces for the drinking of wine (f. 35b), 300 gold pieces for murder (f. 55b), etc. One complainant stated that Sinān Paşa had charged his (the plaintiff's) son with swearing at (*söğmek*) the Paşa's *kapucu* and had ordered the culprit to be impaled (*kazuga urmak*). The desperate father had counted out 400 gold pieces in the presence of the Paşa's *çavuşbaşı*, put them in a kerchief, gone to see the Paşa, kissed his knees and given him the money, whereupon the son had been released (f. 5a–b). In many cases the judge ordered the governor's representative or the *subaşı* to return the money which had been extorted. But Sinān Paşa, apparently, was not punished. . . .

### 3. *The cadis*

The aim of preventing the 'military' from abusing their authority in the field of criminal justice could be achieved only if the cadis maintained a high standard of integrity. This seems generally to have been the case in the first centuries of the Ottoman Empire, although some complaints about the dishonesty of cadis were already made in the reign of Bāyezīd I.<sup>3</sup> In the sixteenth century, however, a decline set in. As early as 1524, Celālzāde observed as he travelled through Anatolia that the Sultan's prosperous dominions were ruined by the oppression and injustice of both the governors and the cadis.<sup>4</sup> Whereas in olden times many '*ulemā* had been unwilling to accept an appointment as *cadi*, since it might

a *müderriş* were ordered to hold a public inquiry (Trabzon Sicilli, 42/1815, f. 29a (Muḥarrem 965/1557)).

<sup>1</sup> (Ḥādīm) Sinān Paşa had held this post since 952/1545–6; he died in 957 (Laoust, *Gouverneurs*, 184; SO, iii, 106).

<sup>2</sup> Topkapı Sarayı Archives, D 162.

<sup>3</sup> Fr. Giese, *Die altosmanischen anonymen Chroniken*, i, Breslau, 1922, pp. 30 et sqq.; Luṭfī Paşa, *Tevārīḥ*, 47.

<sup>4</sup> Celālzāde, *Tabakāt*, f. 84a.

lead them into sin,<sup>1</sup> they now eagerly sought such positions and even paid bribes to obtain them.<sup>2</sup>

One reason for the corruption of the cadis was that they were not paid fixed salaries.\* With the exception of those of higher rank who were granted *arपालiks* etc.,<sup>3</sup> they derived a substantial proportion of their income from fees paid by the parties.\*\* The first *kānūn* regulating these fees is said to have been issued in 796/1393-4, in the reign of Sultan Bāyezīd I.<sup>4</sup> For entering a case in the records of their court they were in the fifteenth and sixteenth centuries entitled to collect 6-8 *akçe* as *resm-i sicill* (*resm-i tescil, sicill akçesi*), for a certified copy of such an entry (*şüret-i sicill*) 10-14 *akçe*, for a *hüccet* 20-32 *akçe*, etc.<sup>5</sup> Later on, the cadis took much higher fees.<sup>6</sup>

These and other fees were, in the view of strictly orthodox Muslims, a rather dubious income for a cadi, as indeed was any remuneration paid to him.<sup>7</sup> One way of making the fees 'lawful' (*helāl*) was to consider them a 'free gift' (*teberru'*) paid willingly (*rızāları ile*) by the parties in a lawsuit.<sup>8</sup> Indeed, some *kānūns*<sup>9</sup> state that though the cadi's fee for the issue of a *hüccet* etc. is fixed, the recipient of the document is entirely free to pay, of his own free will and as a gift (*hedīye*), any amount he wishes. When

<sup>1</sup> For this attitude in pre-Ottoman periods see Tyan, *Histoire*, 322 et sqq. For the early Ottoman 'ulemā cf. Giese, op. cit., 30.

<sup>2</sup> Luṭfi Paşa, *Tevāriḥ*, 46. Cf. Tyan, *Histoire*, 291.

\* [pencil note expanded:] Some cadis, in the early Ottoman period and in certain districts at least, were granted *timārs*; see, e.g., H. İnalçık, in *Studia Islamica*, ii (1954), 108-9.

<sup>3</sup> See *EI*<sup>2</sup>, art. 'Arपालik' (Bowen); Gibb-Bowen, ii, 108-9; Uzunçarşılı, *İlmiye*, 118-21.

\*\* [pencil note:] The other significant source of income was *resm-i kısmet*, the fee for supervising the division of inheritances.

<sup>4</sup> *MTM*, i, 326; Giese, op. cit., 33; Luṭfi Paşa, *Tevāriḥ*, 48.

<sup>5</sup> KAO, 29; MS. Lc, f. 44a; *MTM*, i, 325, 327; Bursa Sicilli, A 40, f 21a; *Bulleten*, xi/44 (1947), 700, doc. 10; MS. Nb, f. 31b (= MS. Nd, f. 57a). In addition, the employees of the law-court also received small fees.

<sup>6</sup> See, for instance, Şam'dānizāde, f. 334a. For the claim that in some periods the cadis also received fines see below, p. 295. [pencil note:] Cf. also, for fees, Uzunçarşılı, *İlmiye*, 84-6.

<sup>7</sup> See, for pre-Ottoman times, Tyan, *Histoire*, 333 et sqq. For a Mamlūk decree prohibiting cadis from levying litigation fees see J. Sauvaget, in *B. Ét. Or.*, xii (1947-8), 43. [pencil note:] The İlkhān Ghāzān prohibited the cadis from taking fees but provided them with salaries (Rashīd al-Dīn, 218, 228, 242; d'Ohsson, *Mongols*, iv, 446).

<sup>8</sup> *Fetvās* of İbn Kemāl and Ebu 's-Su'ūd in Selle, 24, §§ 1-3; see also *ibid.*, 25, §§ 10-11. (For the bride tax regarded as a 'free gift' see above, p. 191.)

<sup>9</sup> See *MTM*, i, 325.

Ebu 's-Su'ūd was asked whether the fees a *cadi* collected in accordance with the *kānūn* were to be considered a lawful income from the point of view of the *shari'a*, he gave, as so often, an evasive reply, saying that it was lawful provided the fee was reasonable (*ecr-i mişl*). Asked then what fee could be so regarded, he referred to that agreed upon by 'experienced people' (*ehl-i vukūf*).<sup>1</sup>

In order to secure a large income from fees the *cadis* were interested in having as many lawsuits and trials as possible brought before them. In later periods, therefore, they used to set out to tour (*devre çıkmak*) their districts and collect fees (often excessive), illegal fines, and 'gifts'. Decrees were repeatedly issued to prevent *cadis* and *nā'ibs* from making such 'circuits', unless they had been specifically ordered by the Sultan or requested by litigants so to do.<sup>2</sup>

The honesty of the *cadis* was put to an even more severe test when the duration of their appointments became shorter and shorter. In the seventeenth century the great *mollās* were appointed for one year and the *cadis* in smaller towns for two years, but in practice for twenty months only.<sup>3</sup> Having expended much money in order to secure their posts, the *cadis* tried to collect, in various ways, as much money as possible in a short time. One way, strictly prohibited by the Sultan, was for the *cadis* to 'sell law-courts' in their jurisdiction to *nā'ibs* for a fixed price.<sup>4</sup> The *nā'ibs* often co-operated with the executive officers in oppressing the people.<sup>5</sup>

Even more widespread became the *cadis*' readiness to accept bribes.<sup>6</sup> Thus Galland, a generally reliable observer, claims<sup>7</sup> that in 1673 a *cadi* took half the blood-money paid by an offender for himself. The facts that their sentences were generally not open to appeal and that they need not fear capital punishment even for the grossest misbehaviour\* made the *cadis* much less apprehensive of the Sultan's wrath than other officials had to be.

<sup>1</sup> Bayezit Libr., MS. Veliyüddin 1466, ff. 224b-225a.

<sup>2</sup> Nürî, 890 = *MTM*, i. 327 (sixteenth-century *berât* for a *cadi*); MS. Eb, ff. 29b et seq.; Uluçay, *XVII. asırda*, 292-4 (firman of Rebi' I 1054/1644); Bibl. Nat., Paris, MS. Suppl. turc 69, ff. 148b-149a (*buyuruldu* of the late seventeenth or early eighteenth century). <sup>3</sup> *MTM*, i. 541.

<sup>4</sup> Barkan, 382, § 41. For this practice in earlier periods see Tyan, *Histoire*, 303 et seq.

<sup>5</sup> See, for instance, the *fetvâ* in '*İlmîye Sâlnâmesi*', 389.

<sup>6</sup> Porter, ii. 2 et sqq.

<sup>7</sup> Galland, ii. 105.

\* [See below, pp. 257-8; 263, 269-70.]

When lawlessness increased more and more in the provinces, the cadis were often afraid to convict the most notorious criminals. Typical, perhaps, is the case of a cadi of Bursa in the latter part of Süleymân the Magnificent's reign. When called upon to report the misdeeds of robbers in his district to the government, he refused to do so, saying 'I fear for my head.' 'You fear for your head,' a special commissioner of the Sultan retorted, 'but do you not fear the Pâdişâh?' The cadi replied: 'The Pâdişâh will deprive me of my post, [but] they (the robbers) will deprive me of my head.'<sup>1</sup>

The growing corruption of the cadis\* in the period of Ottoman decline was bound to undermine the people's trust in the judiciary. Many victims of criminal offences preferred to keep the matter secret, for they feared that the cadi, instead of investigating the case and punishing the criminal, would impose on them all sorts of arbitrary penalties under the pretext that they had failed to produce the offender, had no proof of their accusation, and so on.<sup>2</sup>

#### 4. *The cadis and the kânûn*

In earlier Muslim states the cadis had usually applied the *shari'a* while the secular tribunals had acted to a large extent in accordance with the *siyâsa* and the customary law. The Ottomans attempted to abolish this dichotomy by laying down the same penal law for all courts.

So far as the various *divâns* presided over by a vizier (or a governor) were concerned, an eighteenth-century Ottoman treatise on government<sup>3</sup> states figuratively that the viziers hold two swords, in one hand the *shari'a* and in the other the *kânûn*; so too in practice, in very many firmans the sultans ordered the

<sup>1</sup> Bursa Sicilli, A 66, f. 124b (Muharrem 967/1559). For the situation in the following century see Na'imâ, i. 527 (iii. 117-18); cf. Hammer, *GOR*, v. 146.

\* [pencil note:] Further examples: an '*adâletnâme* of Receb 1018/1609, quoted by Uzunçarşılı, *İlmiye*, 250-2 [and now published in full in *Belgeler*, ii/3-4 (1965), pp. 123-33] reproves cadis for collaborating with certain *ehl-i 'örf* in their illegal exactions [*Belgeler*, 129]. Instances cited in Cezar, *Levendler*, 126, on the basis of Mühimme Defteri, vol. 73 (of 1003-4/1594-5); yet the same register shows that other officers and officials were responsible for ten times as many abuses as were the cadis (Cezar, 127).

<sup>2</sup> Febvre, *État*, 162; Pouillet, i. 137; de Tott, i. 202-3.

<sup>3</sup> Şehrizâde Mehmed Sa'id, *Tâj al-Kawânin*, Topkapı Sarayı Libr., MS. Emanet Hazinesi 2064, f. 21a.

provincial governors to administer justice in accordance with both the religious law and the statutes of the *ḵānūn*.

The main innovation of Ottoman public law, however, was that the cadis too had to apply both the *shari'a* and the *ḵānūn*.<sup>\*</sup> True, in their *berāts* of appointment<sup>1</sup> they were charged only with implementing the *shari'a* law, and nothing was said about the *ḵānūn*; and similarly, according to the titles of many cadis' registers,<sup>2</sup> these *sicillāt* record only '*ḵazāyā shar'iya*'. But in innumerable firmans cadis were ordered to investigate (*teftis*) a case 'according to the *shari'a* and the *ḵānūn*',<sup>3</sup> to 'pass sentence (*hükme etmek*) in accordance with the *shari'a* and the '*örf*',<sup>4</sup> or to administer justice 'according to the noble *shari'a* and the *ḵānūnnāmes* deposited in the law-courts'.<sup>5</sup> *Ḵānūnnāmes* which included the penal code were sent to the cadis with an order to apply them,<sup>6</sup> and when a new *ḵānūnnāme* was compiled in the reign of Süleymān several Anatolian cadis (as has been mentioned)<sup>7</sup> requested a copy of it for their own use.

The competence of the cadis in non-*shari'a* matters is clearly stated by the clerk of a *shari'a* law-court, presumably himself an '*ālim*', who in the first half of the seventeenth century compiled the latest version of the Ottoman Criminal (and 'Feudal') Code.<sup>\*\*</sup> In the preface to this work he states:<sup>8</sup>

The judges of the sacred law (i.e. the cadis) are not restricted to hearing *shari'a* cases only but are appointed and ordered to decide disputes and terminate litigation in regard to both *shari'a* and '*örf*' matters. Therefore, just as on *shari'a* questions *fiḵh* works are studied, so it is considered [their] duty in regard to '*örf*' matters to study the registers of the Sultan's *ḵānūns*.

In fact, the Ottoman cadis are known to have adjudicated in

\* [pencil note:] For the cadi's responsibility in *ḵazāyā-i 'örfiye* cf. Barkan, 27, § 21; 71, § 51; see also *ibid.*, 350, § 4.

<sup>1</sup> For the text of such *berāts* see, for instance, MS. Eb, ff. 6b-7b; *MTM*, i. 326-7; Uzunçarşılı, *İlmüye*, 112 et sqq.

<sup>2</sup> e.g., Bursa Sicilli, A 4, f. 1a.

<sup>3</sup> Üsküdar Sicilli, vol. 9, f. 23b.

<sup>4</sup> e.g., Bursa Sicilli, A 33, f. 61a; A 201, f. 138b (firmans of early 913/1507 and 926/1520, respectively); see also Edremit Sicilli, 42/1177, f. 40a (firman of Şa'bān 921/1515).

<sup>5</sup> See above, p. 151.

<sup>6</sup> MS. Ba, f. 141b; see above, p. 14.

<sup>7</sup> See above, p. 25.

\*\* [See above, p. 32.]

<sup>8</sup> MS. Vc, page preceding f. 1a, published in Barkan, p. xxv, n. 9, § 3.

many cases concerning questions of fiefs, the rights and duties of *sipāhīs*, etc., which were regulated by the *kānūn* only.<sup>1</sup>

In general, the duty of the *cadi* is to investigate (*teftiṣ*) the accused,<sup>2</sup> to establish the facts, and to declare the defendant either guilty or innocent. But in regard both to the rules of evidence and to the penalties to be inflicted he (as well as the governor) is to apply the law appropriate to the case. As is laid down in an early *siyāsetnāme*,<sup>3</sup>

the criminals of the said *sancak* shall be examined by the *cadis* holding office in that *sancak*. In cases where there is evidence [as required] by the *shari'a* [that a crime has been committed], the injunction of the *shari'a*, whatever it may be, shall be [carried out]. And in those cases where [the crime] has not been proved according to the [requirements of the] *shari'a* but [only] according to the customary law (*'orf*), the criminal shall be punished in conformity with this *siyāsetnāme* . . . And if it is evident according to customary law (*'orf*) that a person has committed a crime, the *cadi* shall take no [further] part [in the proceedings] (*aradan çıka*); they<sup>4</sup> shall punish the criminal in conformity with this *siyāsetnāme*.<sup>5</sup>

What is meant here comes out more clearly in a statute of the Criminal Code.<sup>6</sup> In *'orf* cases the *cadi* shall give the *ehl-i 'orf a hüccet* (which establishes the facts) and must not try to prevent the punishment (hanging, or amputation of a limb) from being

<sup>1</sup> Cf. *MTM*, i. 76, 94, etc. The *cadis* were also charged with the verification of the registers of the sheep-tax collectors (*resm-i aḡnāmcı defteri*) (*ibid.*, i. 327), although this tax was imposed not by the religious law but by the *kānūn* (see above, p. 153; see also Barkan, 230, § 14).

<sup>2</sup> According to a *siyāsetnāme* (Db), the role of the governor in such an investigation is 'to threaten and intimidate' (*tehdidāt ve tahviṣāt etmek*), but not to examine, the accused. See also Kraelitz, *Osm. Urkunden*, no. 17. In several *niṣāns* of the fifteenth century (Anhegger-İnalçık, nos. 2, 5, 8; *Belleten*, xi/44 (1947), 697, doc. 2), however, both the *cadi* and the *sancakbeḡi* or the *subaşı* are ordered to investigate and pass sentence; but cf. Anhegger-İnalçık, nos. 9, 10, 31, 32, etc. (only the *cadi*). [pencil note:] See also the letter of a daughter of Bāyezid II, the wife of Hersezkāde Aḡmed Paṣa, of the late fifteenth century: 'the *cadi* of Bursa investigated (*tafaḡḡuṣ*) according to the *shari'a* and the *subaşı* according to the *'orf*. When the offence was proved according to the *shari'a* and the *'orf*, punishment was inflicted . . .' (Ç. Uluçay, *Haremden mektuplar*, Istanbul, 1956, pp. 54-5).

<sup>3</sup> Da. [See above, p. 16.]

<sup>4</sup> In the parallel version (Db): 'you', i.e. the *sancakbeḡi* to whom the *siyāsetnāme* has been sent.

<sup>5</sup> In Db: '*kānūnnāme*'. For the Turkish text of this last passage see OCC, § 88, n. 7. Cf. Ibn Khaldūn, ii. 31.

<sup>6</sup> OCC, § 88.

carried out, although the conviction or the punishment may not be in accordance with the *shari'a*.<sup>\*</sup> This may also have been the intention of the Şeyhülislâm Ebu 's-Su'ud in stating in one of his *fetvâs* that the men of the *shari'a* have no concern with 'örf cases.<sup>1</sup> The Şeyhülislâm İbn Kemâl,<sup>2</sup> however, is, as so often, more forthright. When asked about a *cadi* who (as required by the *kānūn*) issued *hüccets* for the hanging of people deserving execution according to the 'örf, he replied: 'He has committed a sin if [his sentence] is contrary to the *shari'a*.'<sup>3</sup>

Thus, the *cadis* were ordered to deal with the cases brought before them according to the *shari'a* or, if this could not be applied (or could not be applied exclusively), in accordance with the *kānūn* or the 'örf. The latter situation occurred, for instance, when the evidence brought against the defendant was, according to the rules of the *shari'a*, insufficient, but he was known, and was recorded in the *sicill*, as being a person with a criminal past.<sup>4</sup>

The *cadis* acted in accordance with these rules. They issued *hüccets* confirming that the accused 'was investigated according to the *shari'a* and the 'örf'<sup>5</sup> (which may include torture).<sup>6</sup> They imposed the fines (to be collected by the *ehl-i 'örf*)<sup>7</sup> and other non-*shari'a* penalties.<sup>8</sup> When a *cadi* could not convict the accused (e.g. of theft) because he did not confess and there were no witnesses to prove his guilt, the *cadi* often had the case submitted to the secular authorities, who pronounced sentence (e.g. for amputation of the accused's hand).<sup>9</sup>

With the decline of the *kānūn* in the seventeenth century,<sup>10</sup> however, the attempt to bridge the gulf between *shari'a* and

\* [pencil note expanded:] For cases where the *ehl-i 'örf* are to carry out punishment according to the *kānūn*, the *kānūnnāme*, a *firman*, or the 'örf, see Bursa Sicilli, A 25, f. 27b; A 32, f. 88b; A 35, f. 400b; A 38, f. 90a.

<sup>1</sup> See above, p. 174.

<sup>2</sup> In the text: Ahmed.

<sup>3</sup> Selle, 19, § 21 (see above, p. 191).

<sup>4</sup> MS. Ed, f. 67a; Mühimme Defteri, vol. 3, nos. 196 and 321; British Museum, MS. Or. 9503, ff. 52b-53b. [See also below, pp. 250-1.]

<sup>5</sup> Bursa Sicilli, A 4, f. 142b.

<sup>6</sup> See below, pp. 252-4.

<sup>7</sup> See MS. Kd, f. 12b (and below, pp. 294-5). [slip:] For certain offences the *cadis* were instructed to arrest the culprits and to enable the *subaşı* to collect a fine; examples are negligence by the inhabitants of Istanbul with regard to precautions against fire, possession of clipped coins, etc. (see *firman*s in Refik, *Onuncu*, pp. 87, 99).

<sup>8</sup> Such as *küreke* (for which see below, pp. 304 et sqq.) or, generally, the '*siyâset-i jāhi* in accordance with the *kānūn*' (Üsküdar Sicilli, vol. 9, f. 23b).

<sup>9</sup> Jabartî, iv. 144 (trans., viii. 327).

<sup>10</sup> See above, pp. 152-7.

*ḵānūn*, as well as that between the cadis and the military authorities, and to establish a unified system of administration of criminal justice seems to have been given up. Toderini<sup>1</sup> may be right when he states in the late eighteenth century that the 'ulemā do not intervene in questions of *ḵānūn* and 'orf, either in theory or in practice, since such matters belong entirely to the secular authorities.

### 5. Friction between cadi and governor

The Ottoman cadis, like the cadis in other Muslim states, were not independent of the executive branch of the government. Most of them were appointed by—or on the recommendation of—the *ḵādī*-'askers, who, together with the other high-ranking cadis, were in their turn appointees of the Grand Vizier.<sup>2</sup> In the provinces the cadis had to obey the orders of their *beğlerbeği* and *sancakbeği*, who, according to Ottoman protocol, took precedence of them. When the chief cadi of a province (*vilāyet ḵādīsı*) died, the *beğlerbeği* was authorized to appoint a *mollā* who would serve until a new cadi arrived from Istanbul.<sup>3</sup> In certain cases of a cadi's misconduct the *beğlerbeği* was empowered to remove him from his post, imprison him, and report the matter to Istanbul.<sup>4</sup>

Moreover, orders to hear a certain case were issued to the cadis not only by the Sultan's firmans<sup>5</sup> but also by *buyuruldus* of a vizier<sup>6</sup> or letters of a lower-ranking governor.<sup>7</sup> Viziers, including provincial governors of vizier rank, could instruct cadis not to give a hearing to lawsuits in which, for instance, no legally recognized plaintiff appeared.<sup>8</sup> The executive also interfered in the administration of justice by their decision whether or not to carry out the cadis' sentences.<sup>9</sup>

<sup>1</sup> Toderini, i. 32. Cf. also Eton, 32.

<sup>2</sup> *MTM*, i. 498, 538–40; Hammer, *Staatsverfassung*, i. 63. Even after the high-ranking *mollās* were appointed on the recommendation of the Şeyhülislām (from the second half of the sixteenth century), the Grand Vizier had to give his approval (Uzunçarşılı, *İlmiye*, 87, 156, 159, 179–80).

<sup>3</sup> *MTM*, i. 528–9; MS. Fj, f. 40a (*berāt* for the appointment of a *sancakbeği*).

<sup>4</sup> Barkan, 382, § 41; 383, § 42.

<sup>5</sup> See above, p. 216.

<sup>6</sup> See, for example, *MTM*, i. 528 (for a *beğlerbeği*) and 536 (for the Kapudan Paşa).

<sup>7</sup> For the text of such a letter see Bibl. Nat., Paris, MS. Suppl. turc 97, ff. 5b–6a.

<sup>8</sup> Uluçay, *XVII. asırda*, 405–6. Cf. also *Mecelle*, § 1801.

<sup>9</sup> See below, p. 255.

On the other hand, it has to be stressed that the cadis, who were appointed by Imperial *berât*, derived their judicial authority directly from the Sultan and not from the governor of their province or district. Consequently, they were entitled to write direct to the Sultan and also received his orders by firmans addressed directly to them (or jointly to them and the governor). Furthermore, it was regarded as one of the primary duties of the cadi to prevent oppression of the people by the executive and to uphold the *shari'a* and the *kānūn* against any infringement by the governors and their subordinates. If unable to do so, he was to report their actions to the Sultan. Failure to fulfil this duty would entail the cadi's dismissal.<sup>1</sup>

Theoretically at least, the leading 'ulemā were most jealous of their rights in the administration of justice. A particularly strongly worded *fetvā* of the Şeyhülislām Ebu 's-Su'ūd may serve as evidence.<sup>2</sup> A *sancakbeği* rebuked someone for having brought a claim not before himself but before the cadi's court, and had him chastised. Such an oppressive governor, Ebu 's-Su'ūd declares, who prefers his secular authority (*hükümet-i 'örfiye*) to the sacred law, is to be considered an infidel and will be liable to capital punishment.

However, in the field of criminal justice the Men of the Sword always tended to overstep the bounds of their authority and to infringe that of the cadis. How far they succeeded depended on their local power, on the cadis' moral conviction and personal courage, and on the extent of the Central Government's willingness and ability to restrain its executive organs. Conscientious cadis often gave sentences in open disregard of the wishes of the governors and their men, but the latter even more frequently refused to conform with them.<sup>3</sup> The general trend seems to have been a gradual decline of the cadis' part in the administration of penal justice.<sup>4</sup> The general rule of the *kānūn* that a criminal must not be punished by the executive officers unless he has been duly convicted by a cadi<sup>5</sup> was largely disregarded. European observers<sup>6</sup> claim that the cadi dealt mainly with minor offences, while serious

<sup>1</sup> MS. Kd, f. 98b; Barkan, 270, § 20. [See also below, pp. 296-7.]

<sup>2</sup> See Bayezit Libr., MS. Veliyüddin 1466, f. 119a.

<sup>3</sup> See, e.g., Galland, i. 200-1.

<sup>4</sup> Du Mont, 282; Febvre, *État*, 171; idem, *Théâtre*, 85.

<sup>5</sup> OCC, §§ 88, 115-16. See also below, p. 266.

<sup>6</sup> Menavino, 52 et sqq.; Rauwolff, 40-2; Bassano, 29 (65).

crimes were tried by the governor's *subaşı*s or other executive officers.

In a petition submitted in 1195/1781, for instance, the *cadi* of Kayseri complained of the interference of the governors and their men in criminal justice. Since olden times, only the *cadis* had been authorized to imprison and release offenders convicted in accordance with the *shari'a*. Now the governors had given instructions to the fortress commandant (*dizdār*) not to confine or release anyone without their order. Thus they were able to extort large sums of money and oppress the people in other ways.<sup>1</sup>

### 6. *Special courts and privileges*

Members of certain classes of the population were tried not by the ordinary *cadis* but by special courts.

Soldiers, though punished by their own officers,<sup>2</sup> were to be tried by a *cadi*, at least—it seems—for non-military offences.<sup>3</sup> There is evidence that in the sixteenth century this rule was applied.<sup>4</sup> According to the *Ḳānūnnāme* for Akkerman already noted,<sup>5</sup> lawsuits and trials involving soldiers and sailors (*hiṣār eri*, 'azeb, re'is) were to be heard by the local *cadi* if they referred to *shari'a* law; but by the military and naval officers (*dizdār*, *kapudan*) if they did not.

European observers,<sup>6</sup> however, claim that soldiers as well as employees of the Imperial Court were tried by their own commanders. In later periods this privilege caused many criminals to ask for admission into the local unit of the Janissary corps in order to evade punishment.<sup>7</sup>

If a civilian brought an action against a soldier, the latter might refuse to appear before an ordinary *cadi* and demand to be tried by a *ḳāḏi*-*asker*.<sup>8</sup>

So far as members of the 'ulemā corps were concerned, a *firman* of the year 1011/1602-3<sup>9</sup> lays down that *cadis* and *müderrişes* charged with a criminal offence shall not be brought to trial before

<sup>1</sup> Başbakanlık Arşivi, Cevdet catalogue, Adliye 4733 (original).

<sup>2</sup> See below, pp. 232, 267, 272 (n. 7), 275.

<sup>3</sup> For a list of military offences see Hezārfenn, MS. Paris, f. 112b.

<sup>4</sup> See, for instance, Bursa Sicilli, A 32, f. 68b. <sup>5</sup> See above, p. 211.

<sup>6</sup> e.g. Postel, 126; Guer, ii. 430. See also Cantacasin, 214 et sqq.

<sup>7</sup> Tournefort, ii. 32, 44.

<sup>8</sup> *Fetvā* of İbn Kemāl in Belediye Libr., MS. M. Cevdet O 44, f. 148a.

<sup>9</sup> Published in Ahmed Luṭfī, 65-9 (copied from Ferīdūn, ii. 225-6).

(nor be punished by) the provincial authorities, but be tried by the *kādi-askers* in the Imperial *Dīvān*.

Dervishes, too, were, according to a European source,<sup>1</sup> not subject to ordinary justice; but this assertion requires further proof. The same applies to the claim<sup>2</sup> that descendants of the Prophet (*şerîf*, *seyyid*) were tried not by the cadis but in Istanbul by their chief, the *naķib ül-eşrāf*, and in the provinces by his deputies.

For violations of the *kānūn-i ihtisāb*\* (and for other crimes) artisans were often punished by the heads of their guild, the *kethudā* or the *yığıtbaşı*, often acting on the advice of the *ihtiyārlar* or, in later periods, the guild council (*lonca hey'eti*). The penalties awarded were the bastinado, fines, temporary imprisonment, exposition to public scorn, penal servitude on the galleys or elsewhere, the closing of the workshop, expulsion from the guild, and prohibition from following the trade. In more serious cases they were apparently to bring the offender to trial before the *cadī*. Their criminal jurisdiction was, however, much restricted, at least in later periods.<sup>3</sup> (This whole matter requires further investigation.)

In Istanbul the Architect-in-Chief (*mi'mār başı*) is said to have had the authority to punish master builders who did not observe the building regulations, even if their customers did not complain.<sup>4</sup>

The Ottoman courts of law tried all subjects of the Sultan, including the non-Muslims, and Christian and Jewish religious dignitaries had only very limited jurisdiction in penal matters involving members of their communities. Thus the Greek Orthodox patriarchs and metropolitans were authorized to arrest violators of their religious law and to inflict on them certain penalties (exclusion from church services, refusal of religious burial, excommunication). They could also order the shearing of

<sup>1</sup> Tournefort, ii. 31-2.

<sup>2</sup> Businello, i. 79-80; Zuncunçarsılı, *İlmiye*, 167 ('in cases of offences against the *kānūn* and the customs'). Cf. Rycout, book II, chap. vi. For the status of the *şarîfs* in the time of the 'Abbāsīd caliphate see Māwardī, 166 et sqq.

\* [See below, pp. 229 et sqq.]

<sup>3</sup> Uluçay, *Ziraat*, 102, 111, 113, 115, 118, 120-1, 174-5; Fr. Taeschner, 'Das Zunftwesen in der Türkei', in *Leipziger Vierteljahrsschrift für Südosteuropa*, v (1941), 184; Nürī, 567, 578, 613, 638-40; Mantran, *Istanbul*, 383-4.

<sup>4</sup> Guer, ii. 186. Evliyā Çelebi (i. 121) too counts the *mi'mārbaşı* among the 'police authorities' (*hākim*) of Istanbul; cf. Mantran, *Istanbul*, 128, 165.

the hair of clerics who refused to pay State or church taxes. In such cases the Muslim authorities were not allowed to intervene and collect fines.<sup>1</sup> Similarly, the rabbis (*hāhām*) could ask the Ottoman authorities to inflict chastisement on Jews who violated their religious law.<sup>2</sup>

Certain cases involving non-Muslim subjects were not to be heard in the ordinary law-courts but had to be brought before the Imperial *Dīvān* (or another *dīvān* of the Grand Vizier) in the capital. This privilege was, for instance, given to the Jews with regard to false accusations frequently made against them, such as ritual murder,<sup>3</sup> vituperation of the Muslim religion, apostasy after embracing Islam, etc.<sup>4</sup> The same applied to certain lawsuits concerning the Christian communities.<sup>5</sup>

Foreign non-Muslim residents in the Ottoman Empire (*müste'min*) too were granted certain privileges in regard to criminal justice.<sup>6</sup> According to the Capitulation of 1535 (1536?) with France, which served as the model for similar treaties with other European states, all cases, both civil and criminal, between French subjects were to be tried by the French ambassador or consul in conformity with their laws; no *cadi* or other Ottoman official was allowed to interfere, even if requested by the parties to do so. The *subaşı*s and other officials of the Sultan were, however, to help in carrying out the sentences passed.<sup>7</sup>

If a Frenchman committed a crime against an Ottoman subject, action could not be brought before an ordinary judge but only

<sup>1</sup> See *berāts* of appointment of metropolitans in Scheel, 39, 41-2, 45, 48; and of a patriarch in Ubcini, ii. 435-43, following d'Ohsson, iii. 48-55.

<sup>2</sup> Moritz Levy, *Die Sephardim in Bosnien*, Sarajevo, 1911, pp. 66-7.

<sup>3</sup> See U. Heyd, 'Ritual murder accusations in 15th and 16th century Turkey' (in Hebrew with English summary), in *Sefunot*, v (1961), 137-49.

<sup>4</sup> Firmans of Şafer 921/1515, Zū 'l-Ĥicce 927/1521, and Şafer 946/1539, copied in Bursa Sicilli, A 42, f. 56a and A 44, f. 4b. They renew firmans given earlier to the Jews of Istanbul and Edirne. Another firman (of 951/1544-5) is referred to in a *fetvā* of Ebu 's-Su'ūd (Horster, 36 (77)).

<sup>5</sup> See Scheel, 38, VIII; 43, XXIV; 45, X.

<sup>6</sup> On penalties for non-Muslim foreigners according to Islamic law and treaties with Christian states in the twelfth and thirteenth centuries, see Heffening 65-70, 125. For trials of foreign residents in the Rūm Seljuk state see Turan, *Vesikalar*, 116, 131-2.

<sup>7</sup> Noradounghian, i. 84. The main part of these regulations was confirmed in the Capitulations with France of 1604 (art. 24) and 1673 (art. 16) (Noradounghian, i. 98, 139).

before the *divān*<sup>1</sup> presided over by the Grand Vizier or his deputy, in which the testimony of a foreign resident was accepted.<sup>2</sup> According to later Capitulations,<sup>3</sup> no criminal trial of a foreign national or protected person was to be held unless his ambassador or consul or their representative was present.

Another article in some Capitulations<sup>4</sup> forbids the arrest or molestation of a foreign resident because a compatriot of his is charged with an offence and has fled, unless he is the latter's bondsman.<sup>5</sup> The later Capitulations<sup>6</sup> also placed certain restrictions on the 'gens de justice' and other officers with regard to forcible entry into the homes of foreign residents.

Foreign embassies had their own prisons. In many cases offenders were punished, even executed, in the embassy or were sent for punishment to their home country.<sup>7</sup>

### 7. *The Grand Vizier's divāns*

The highest courts of law in the Ottoman Empire were the *divāns* of the Grand Vizier. As 'representative plenipotentiary' (*vekil-i muṭlak*) of the Sultan, his numerous duties included 'the infliction of the fixed penalties of the *shari'a* (*hudūd*), the *lex talionis* (*kıṣās*), imprisonment, banishment, and the various forms of discretionary punishment (i.e. strokes) (*ta'zīr*) and capital or severe corporal punishment (*siyāset*), the hearing of cases, the implementation of the laws of the *shari'a* and the removal of wrongs (*mazālim*) . . . , in short, . . . the hearing of all *shari'a* and 'ōrf cases and the execution [of the sentences given] in them'.<sup>8</sup>

<sup>1</sup> This is what is meant by the term 'Excelse-Porte'.

<sup>2</sup> Noradounghian, i. 84. [pencil note expanded:] Rycaut, however, had little confidence in this protection: ' . . . I doubt, were any matter in question Criminal, . . . the Capitulations would be forced to yield to the *Mahometan Law* . . . ' (book I, chap. ii).

<sup>3</sup> Capitulations with England of 1675 (see J. L. Farley, *Turkey*, London, 1866, pp. 291-316), art. 42, and with France of 1740, art. 65 (Noradounghian, i. 294; see also the note by Bianchi at p. 305).

<sup>4</sup> e.g. the Capitulations with England of 1675 (Turkish text: Bodleian Libr., Oxford, MS. Or. 256), art. 11, and with the Netherlands of 1680, art. 30 (2) (Noradounghian, i. 149, 176).

<sup>5</sup> This rule is important in view of OCC, § 121.

<sup>6</sup> e.g. the Capitulation with France of 1740, art. 70 (Noradounghian, i. 295).

<sup>7</sup> White, i. 147-59 (for the first part of the nineteenth century).

<sup>8</sup> *MTM*, i. 498. See also *ibid.*, 508. For the judicial functions of the *wazir* in the classical Islamic state cf. Māwardī, 39.

The Grand Vizier carried out these functions, which were those of a *mazālim* judge, in his different *divāns*.\* Until the second part of the seventeenth century the most important of these was the Imperial *Dīvān* (*dīvān-i hümāyūn*), which until then used to meet four times a week (on Saturdays, Sundays, Mondays, and Tuesdays) under his chairmanship in the Sultan's Palace. Apart from its functions as the Ottoman 'cabinet', dealing with political, military, financial, and administrative affairs, the Imperial *Dīvān* served as the supreme tribunal. Here the Grand Vizier gave sentence in all kinds of lawsuits and trials in accordance with the *shari'a* and the *kānūn*, or asked the *Ḳāḍi*-'asker of Rümeli and, if the cases presented were too numerous, the *Ḳāḍi*-'asker of Anadolu, both of whom were permanent members of the *Dīvān*, to do so.<sup>1</sup>

In addition, the Grand Vizier presided over *divāns* held in his own mansion to deal, among other matters, with lawsuits and trials in a similar way. On Fridays he was joined only by the two *kāḍi*-'askers and on Wednesdays by the cadis of Istanbul, Galata, Eyüb (*havāṣṣ-i Koṣtanṭīniye*), and Üsküdar. Several times a week he also held such *divāns* in the afternoon (*ikindi divān*) or the early forenoon (*ḍuhā divān*).<sup>2</sup> When travelling, he held *divāns* at halting-places.<sup>3</sup>

In the Grand Vizier's absence from the capital his judicial functions too were taken over by his deputy (*kā'im-makām*). In the latter's *divāns* the cadi of Istanbul replaced the *kāḍi*-'askers, who would be accompanying the Grand Vizier.<sup>4</sup>

\* [pencil note:] Hence the statement by B. Lewis: 'The administrative, commercial, military, and equity courts which had existed under the Caliphate disappeared [in the Ottoman state]' (*Emergence*, 107) needs to be modified.

<sup>1</sup> *MTM*, i. 508, 540. [pencil notes expanded:] The *Şeyhülislām* (or other *müfti*) was not a member. The Ottoman Imperial *Dīvān* in this respect differed from comparable *divāns* in other Muslim states, e.g. the Mamlūk *dār al-'adl*, where four *müftis* were present (Tyan, *Histoire*, 224), and the Mogul Emperor's *dīvān-i mazālim* (see Ibn Hasan, *The Central Structure of the Mughal Empire*, New Delhi, 1936, pp. 318, 342). For the ruler's tribunal in fourteenth-century Tunis, where the chief jurists—cadis and *müftis*—sat together, see R. Brunschvig, *La Berbérie orientale sous les Hafṣides*, Paris, 1940-7, ii. 141-3.

<sup>2</sup> *MTM*, i. 499-503, 540; Deshayes, 210. For a different order in the eighteenth century see Cantemir, 352, n. 5. According to Hildebrandt (p. 123), an eyewitness, in the seventeenth century the cadis of Istanbul, Galata, and 'Asia' (Üsküdar?) sat in judgment without the Grand Vizier being present. Cf. also Olivier, i. 161.

<sup>3</sup> Celälzāde, *Ṭabaḳāt*, f. 84a.

<sup>4</sup> *MTM*, i. 523-4.

A European observer in the late eighteenth century<sup>1</sup> claimed that the Grand Vizier himself administered justice only in 'police matters' (probably meaning 'orf cases) or in cases where the plaintiffs and defendants were government officials.<sup>2</sup> Otherwise the sentences were given by the cadis and executed by order of the Grand Vizier, just as in the provinces they were carried out by order of the governors. This seems to be confirmed by legal documents of that century, in which such a *divān* is called 'shari'a court (*meclis-i şer'*) held in the Grand Vizier's *divān*' or 'held (on Friday) in the Grand Vizier's presence in the (i.e. his) 'arż odası'.<sup>3</sup>

Such a division of labour between the Grand Vizier and the cadis would conform to the principles of the old *mazālim* jurisdiction, in that the various *divāns* headed by the Grand Vizier were not only courts of appeal<sup>4</sup> or tribunals for special or major cases. Every subject of the Sultan, Muslim or non-Muslim, rich or poor, could bring his case, however trivial, before them.<sup>5</sup>

It seems that in these *divāns* the plaintiff often did not plead his case orally but submitted it in the form of a petition ('*arż-i hāl*'), which was read out by a *tezkereci*.<sup>6</sup> (In this respect too the Ottoman *divāns* followed the practice of earlier *mazālim* courts.)<sup>7</sup> In many criminal cases the sentence given in a *divān*, as well as one given by the Grand Vizier or the Sultan personally, was based on the facts submitted in a note (*tezkere*) of a high official in the capital (the Re'īs Efendi, the Subaşı of Istanbul, etc.), in a report ('*arż*') of a provincial governor, in a notification (*i'lām*) or certificate (*hüccet*) of a cadi, or in an extract from a law-court register (*süret-i sicill*).<sup>8</sup>

<sup>1</sup> Olivier, i. 179.

<sup>2</sup> Cf. Na'imā, ii. 425 (v. 351-2).

<sup>3</sup> See the *şakk* works of Mūsāzāde (ff. 140a, 143b) and Debbāğzāde (p. 173), as well as Ragıp Paşa Libr., MS. 3742, ff. 22a, 121a (cases brought before the *divān*). See also Aḥmed Luṭfī, *Ta'riḥ*, iv. 168.

<sup>4</sup> For their function as courts of appeal see below, pp. 257-8.

<sup>5</sup> Schweigger (1578-81), 172; Deshayes (1621), 210; Du Loir (1639-41), 79; Olivier (1796), i. 160-1.

<sup>6</sup> *MTM*, i. 502, 508; Hildebrandt, 124 (who mentions that the *Supplicationes* were written on small sheets by 'Advocaten', i.e. scribes, sitting in the street near the *Divān*); Cantemir, 352, n. 5; 446; Chishull, 66-7.

<sup>7</sup> See, for the Fātimid period, W. Björkman, *Beiträge zur Geschichte der Staatskanzlei im islamischen Ägypten*, Hamburg, 1928, p. 28.

<sup>8</sup> See, for instance, the registers (cited below, p. 305) of criminals sentenced to servitude on the galleys.

8. *The Sultan*

Formally and theoretically, the supreme judicial authority resided in the Sultan, who, according to a *ḥadīth*,<sup>1</sup> is 'God's shadow on earth, in whom every wronged person takes refuge' (*ya'wi ilayhi kull maẓlūm*).<sup>2</sup> In the early periods of Ottoman history the sultans held *maẓālīm* courts: an Egyptian visitor at the end of the fourteenth century observed that people could bring their complaints before Sultan Bāyezīd I, who dealt with them personally on the spot.<sup>3</sup> In the fifteenth century, however, the sultans ceased to take part in the meetings of the Imperial Dīvān and no longer administered justice personally. Most of the firmans concerning criminal codes, too, though issued in the Sultan's name, were in fact written by order of the Grand Vizier, his deputy (*kā'im-makām*), or another high official.

The Ottoman sultans considered themselves 'guardians of God's country against oppression and tyranny . . . and dispensers of justice'.<sup>4</sup> As Allāh's viceregent in this world, the Sultan was regarded not as a tyrannical autocrat but as a remote supreme power which punished the executive organs of his government for their oppressive acts against the people. Not only had the common people been placed by God in his (and their) safe-keeping (*re'āyā ve berāyā selāṭīn ve ümerāya vedī'at-i ilāhīye olduğundan gayri*); the people were the economic foundation of the State, and would perish if deprived of justice (. . . *wa-lā ra'īya illā bi'l-'adl*).<sup>5</sup>

This traditional image of the ruler as the redressor of wrongs was maintained, and every subject, Muslim and non-Muslim, could submit a petition to the Sultan. The most picturesque and dramatic form of such submission was to present a petition when the Sultan set out for the Friday prayer in one of the Imperial mosques or for a hunting expedition. It then happened, as an

<sup>1</sup> See *EI*<sup>1</sup>, art. 'Sultān' (Kramers) and references there given.

<sup>2</sup> A phrase found in many Ottoman decrees. See, for instance, the preamble to the *Ḳānūnnāme* for Egypt (Aya Sofya Libr., MS. 4871, f. 119b) and a sixteenth-century *berāt* in Süleymaniye Libr., MS. Hekimoğlu Ali Paşa 558, f. 72a.

<sup>3</sup> Ibn Ḥajar al-'Askalānī, *Inbā' al-Ghumr bi-Abnā' al-'Umr*, quoted by Şevkiye İnalçık in *AÜDTCFD*, vi (1948), 195.

<sup>4</sup> Preamble to the *Ḳānūnnāme* for Midilli of 1121/1709-10 (Barkan, 332).

<sup>5</sup> A much-used Islamic formula. See, for instance, Kātib Çelebi, *Dustūr al-'amal*, Istanbul, 1280, p. 124.

'*adāletnāme* put it,<sup>1</sup> that the Sultan's wrath was roused as 'the smoke of the sighs of those pleading for justice reached heaven' (*dādih'āhlarñ dūd-i āh eflāke peyveste olmağın*). This Persian expression seems not to be a mere metaphor. According to European sources,<sup>2</sup> at the time of such processions petitioners, standing in a line, held pieces of burning or smoking mat over their heads to draw attention to their miserable plight. The Sultan's followers collected the petitions, which might or might not be brought to his personal attention. It was even said that a party in a lawsuit or trial who considered himself wronged would warn the judge with the words *haşır yakarım*, 'I will light a straw-mat', i.e. would threaten to appeal to the Sultan.

### 9. Teftiş

Often when lawlessness, such as murder, robbery, and offences against public morals, increased in a certain region the local authorities proved unable or unwilling to cope with it. Already in the beginning of Süleymān the Magnificent's reign *sancakbeğis* and *subaşı*s were even known to abet and assist such criminals and, if the latter were caught, to set them free after obtaining money from them.<sup>3</sup> In such cases the Central Government used to appoint and send out a *beğlerbeği* or *sancakbeği* (or a former holder of such office) and a *cadi*—usually one who at that time was out of office (*ma'zūl*)—as investigators (*müfettiş*), and, often, also a *çavuş* of the Palace as special commissioner (*mübāşir*).<sup>4</sup> They were charged with the investigation (*teftiş*), i.e. the arrest, trial, and punishment, of the criminals, and the local *cadis* were instructed to lend them every assistance. The commission's task was not only to deal with com-

<sup>1</sup> '*Adāletnāme* of 1595, in Köprülü Libr., MS. II, 360, f. 90b. In the text published in Uluçay, *XVII. asırda*, 166 [emended in *Belgeler*, ii/3-4 (1965), 105] the relevant passage is corrupted.

<sup>2</sup> De Peyssonnel, 45-6; Eton, 37-8. Cf. also Thornton, 144-6.

<sup>3</sup> For this point, and for those following, see MS. Ed, ff. 66b-67a (firman of Rebi' I 935/1528); MS. Fj, ff. 82b-83a (appointment of *mübāşir*); British Museum, MS. Or. 9503, ff. 52a-54a (firmans of Zū'l-Ḥicce 956 or 958/1550 or 1551); *ibid.*, ff. 57b-59a (firman of Cumādā I 957/1550); Mühimme Defteri, vol. 3, no. 196; vol. 12, no. 944; Başbakanlık Arşivi, Kâmil Kepeci catalogue, 677; Uzunçarşılı, *İlmiye*, 127-8 (firman of late 978/1571); Feridün, ii. 223-4 (firman probably of c. 1011/1602; for the Feyzullāh Efendi there mentioned see 'Atā'i, 540).

<sup>4</sup> Sometimes the executive officers (governors, *çavuşes*, Janissary officers, etc.) and not a *cadi*, are called 'investigators' (see Uluçay, *XVII. asırda*, 412, n. 791; etc.). For an investigation in Istanbul, only a former *cadi* and a *kapucubaşı* of the Palace were appointed (Feridün, *loc. cit.* in preceding note).

plaints or accusations brought against specific persons and to punish those whose offences were proved (including people previously convicted by a *cadi* but, for some reason, not punished).<sup>1</sup> They also had to discover actual or potential criminals by rounding up and investigating all those who, according to the registers of the local law-courts or the information given by the local *imāms*, *mü'ezziins*, etc., had a criminal past (*töhma-i sâbika*). If they found any one of them to be still actively engaged in mischief (*yaramazlık üzre*)—a very elastic definition—they were to send him, together with other trouble-makers arrested, in chains to Istanbul to serve in the galleys.\* With each batch of criminals a register (*defter*) of their names and copies of their criminal records (*şüret-i sicill*) had to be forwarded. Care was to be taken that those sent to the galleys were not old men or invalids but strong and fit. During an investigation in Istanbul, criminal elements were to supply bondsmen or to be imprisoned, their cases were to be submitted, and the suspects were to be punished according to the Sultan's order.

An interesting *fetvâ* of Ebu 's-Su'ūd<sup>2</sup> seems to refer to such investigations (*teftiis*) ordered by Imperial firman, in which the *cadi* asks the neighbours of the accused about his conduct. The Şeyhülislâm rejects a general statement made by them that he is a 'good-for-nothing' (*yaramaz*) as not being a legal (*şer'i*) testimony, i.e. a testimony sufficiently precise to be acceptable.

Similar investigations were ordered when the population of a certain region complained of continuous oppression by the local authorities (governors, *subaşıs*, *cadis*, *fief-holders*, etc.).<sup>3</sup>

#### 10. İhtisâb: *the supervision of markets and of public morals*

A separate penal jurisdiction existed for market delicts and offences against public morals. Since early Islamic times such transgressions had been dealt with by the *muhtasib*, who in the Ottoman Empire was called *muhtesib*, *ihtisâb ağası*, or *ihtisâb emini*. His

<sup>1</sup> An interesting example is a man who had been recorded in the *sicill* as having admitted intentionally killing his father; in the course of the 'investigation' he again confessed his crime, and since 'the time had passed', i.e. the statute of limitation of 15 years for a capital punishment, he was sentenced to penal servitude on the galleys (Kâmil Kepeci catalogue, 677, f. 45a).

\* [For penal servitude in the galleys see below, pp. 304-7.]

<sup>2</sup> Selle, 38 (85), § 8.

<sup>3</sup> Uzunçarşılı, *İlmiye*, 128-9 (with firman of early 976/1568. [See also above, pp. 211-12.]

authority was based on the Qur'anic prescription of *al-amr bi'l-ma'ruf wa'l-nahy 'an al-munkar*, 'enjoining good and forbidding evil actions'. The *ihtisāb* or *hisba* regulations were therefore an integral part of the religious law of Islam.<sup>1</sup>

Separate *ihtisāb kânunnāmes* of different types were issued for the three capitals of the Ottoman Empire, Istanbul, Bursa, and Edirne, the last two at least being compiled in mid Zū 'l-Ḥicce 907/June 1502. Their text as found in two manuscripts<sup>2</sup> has been published by Barkan,<sup>3</sup> as has a French translation of the first-mentioned by Mantran.<sup>4</sup>

Other *kânunnāmes* in this field were also originally separate codes. One of them is known to have been compiled in the beginning of Zū 'l-Ḥa'de 927/October 1521.<sup>5</sup> Later they were incorporated in the Criminal Code of Sultan Süleymān the Magnificent (L-U MSS.), to form two chapters (mostly at or near its end) under the headings *İhtisāb* (or *Ḳânûn-i Muhtesibân*) and *Ehl-i şanāyi' ve cerāyim-i işān*, 'The tradesmen and their offences'.<sup>6</sup>

Some of the statutes in these *kânûns* are also found, with certain changes, in the general criminal code. Examples are the regulations concerning lepers, false testimony and the forgery of documents, neglect of the ritual prayers, failure to observe the fast of Ramazān, and usury.<sup>7</sup> The penalty for selling at a price higher than that officially fixed is prescribed also in several provincial and other *kânunnāmes*.<sup>8</sup>

<sup>1</sup> On the *hisba* see Māwardī, 404-32 (Fr. trans. by Behrmauer, in *JA*, 1860, ii, 145-90; summarized and discussed by Amedroz, in *JRAS*, 1916, 77-101, 287-314); Ibn al-Ukhuwwa, ed. Levy; Ibn Khaldūn, i, 405-7; Ibn Taymiya, *Hisba* (cited above, p. 208, n. 2); Nūrī, 309-26; Labib, 179-83; Tyan, *Histoire*, 617-50; Levy, *Social Structure*, 334-8; *EI*<sup>2</sup>, art. 'Hisba' (Cahen-Talbi; Mantran; Lambton; Ansari).

<sup>2</sup> Topkapı Sarayı Libr., MSS. Revan 1935 and 1936. Other copies are found in MS. Ba, ff. 60b-102a and MS. Fv, ff. 211a-256a.

<sup>3</sup> *Tarih Vesikaları*, no. 5 (Feb. 1942), pp. 329-40; no. 7 (June 1942), pp. 15-40; no. 9 (Oct. 1942), pp. 168-77.

<sup>4</sup> *Les Cahiers de Tunisie*, iv, no. 14 (1956), pp. 213-41

<sup>5</sup> MS. Ka, ff. 28b-34a. See also MS. Kc, ff. 59b-66b.

<sup>6</sup> One version of these chapters as found in a late-17th-century manuscript has been published in Ahmed Luṭfī, 82-9, and copied from there in Nūrī, 404-8. Another, ampler version is given in Nūrī, 409-18. A French translation, not free of mistakes, is found in Mantran, *Istanbul*, 330-47, where these texts are erroneously entitled 'Règlement de Mehmed IV (1091 = 1680)'. See also MS. Va, ff. 115a-122b; MS. Vb, ff. 85b-90a; Uluçay, *Ziraat*, 23-5.

<sup>7</sup> OCC, §§ 95, 98, 101, 102, 103 respectively.

<sup>8</sup> Barkan, 43, § 5; 134, § 21; 179, § 27; 400, § 23; *MTM*, i (1331), 505; see also Djikiya, 4, and Tuncer, *Toprak Hukuku*, 276, 348. At the end of Muḥarrem

The *ihtisāb kānūns* prescribe penalties for a wide range of offences against the public interest, mainly market delicts. The most important ones are selling at a price higher than the official maximum market price (*narh*)<sup>1</sup> as fixed by the local *cadi* and *muhtesib*, who normally were to allow a profit of 10–20 per cent, but in some cases (e.g. for books, i.e. manuscripts) of up to 40 (and even 50) per cent; profiteering; using false or unstamped weights and measures; and producing or selling adulterated, spoiled, or otherwise inferior wares. Also punishable are, for instance, tailors who do not deliver garments by the promised date, builders and carpenters who (in the sixteenth century) demand more than their fixed wages of 8–10 *akçe* a day with food, slave-dealers who before delivering a male or female slave to the purchaser take away his or her clothes, and public bath attendants who do not use separate razors, towels, etc. for Muslims and infidels. A significant sign of consideration for animals<sup>2</sup> is the penalty prescribed for letting horses, mules, and donkeys work without horseshoes and overloading them, 'since they are dumb animals' (*dilsüz cānāver*).<sup>3</sup> . . .

Like the other secular authorities administering criminal justice, the *muhtesib* was chiefly, though not exclusively, concerned with public law and order, i.e. with offences that violate a right of God.<sup>4</sup>

In Istanbul, the Grand Vizier himself, accompanied by the *cadi* of the capital, the *Ağa* of the Janissaries, the *muhtesib*, various other officials and many soldiers (or by the *Ağa* or the *cadi* alone), used regularly to tour and inspect the markets (*kol dolaşmak* or 1242, i.e. a few weeks after the destruction of the Janissaries in Zū 'l-*Ḳa*'de 1241/June 1826, a new *Ihtisāb ağalığı niżāmnamesi* was enacted (text in *TOEM*, no. 9, pp. 572–84, and no. 10, pp. 640–8, and in *Nürî*, 338–54).

<sup>1</sup> The usual definition of this offence is [*narhdan*] *eksik satmak*, i.e. to sell (for a given sum) less than the officially fixed quantity of a commodity; Mantran's rendering (*Istanbul*, 330, §§ 4–5, etc.) is to be corrected. On *narh* see *MTM*, i. 505; *Nürî*, 393 et sqq., 419 et sqq. [pencil note:] On the problem of the legality, according to the *shari'a*, of laying down fixed prices (*tas'ir*) see Ibn *Ḳayyim al-Jawziya*, *Ṭuruk*, 285.

<sup>2</sup> Which drew the attention of European observers (see, for example, Busbecq, 105 et sqq., 114 et sqq.). The prevention of cruelty to certain animals was a traditional duty of the *muhtesibs* in Islam (see, for instance, *Māwardî*, 429).

<sup>3</sup> Not, as Mantran (*Les Cahiers de Tunisie*, iv, no. 14, p. 239) translates the passage in *Tarih Vesikalari*, no. 5, p. 339: 'car c'est une monstruosité inqualifiable'.

<sup>4</sup> For that reason the *muhtesib* did not deal with crop damage by animals, since they are not capable of *ma'siyet* (*Nürî*, 325).

*gezme*). Common people who had violated the market regulations were given the bastinado on the spot or received *siyâset* punishment (including execution) without delay. *Berât*-holders were brought to the Grand Vizier's mansion and strokes were administered to them there. Soldiers and other recipients of an income from the government (*dirlik*) were handed over to their officers for punishment.<sup>1</sup> The last-mentioned category became increasingly important in the seventeenth and eighteenth centuries, when more and more Janissaries were artisans or shopkeepers.

Generally, however, market delicts and offences against public morals (neglect of public prayer and the Ramazân fast, drinking of wine, etc.) were dealt with by the *muhtesib*, an official appointed for every town, often by Imperial *berât*.<sup>2</sup> In the period under review the *muhtesib* farmed the revenue of his office, paying a *bedel-i mukâta'a* or *bedel-i iltizâm*. Sometimes his *berât* entrusted to him also the duty of *işzâr*, i.e. of presenting accused persons before the *cadi*.<sup>3</sup> In carrying out his duties, the *muhtesib* acted under the orders of the local *cadi*. Though he too held a 'religious office' (*wazîfa dinîya*),<sup>4</sup> he was usually not, unlike many *muhtesibs* in earlier periods, a member of the 'ulemâ class.<sup>5</sup> The *muhtesib* generally dealt with relatively minor offences, which were not worthy of the *cadi*'s attention.

In essence the office of the *muhtesib* was an administrative one, although it included certain judicial functions. In many cases the *muhtesibs* (like the *subaşıs* or their subordinates) brought people before the *cadi*, charging them with violation of the market regulations.<sup>6</sup> If convicted, the culprits were often given the bastinado by order of the *cadi* and then handed over to the *muhtesib*'s man, who was 'to carry out what is required by the 'orf' or 'to collect his fine according to the *kânûn*'.<sup>7</sup>

<sup>1</sup> *MTM*, i. 503-5, 510; Evliyâ Çelebi, i. 120; iii. 258; Hildebrandt, 148.

<sup>2</sup> For texts of such *berâts* see, for instance, MS. Eb, ff. 135b-136a and MS. Ed, f. 95a-b.

<sup>3</sup> See below, pp. 236-8. In 927/1521 the *ihtisâb* and *işzâr* of Mudanya near Bursa, for example, was farmed out for 1,250 *akçe* a year (Bursa Sicilli, A 15, f 17b). See also Fekete, *Rechnungsbücher*, 444 et sqq. and Index III, s.v. *işzârîye*.

<sup>4</sup> Ibn Khaldûn, i. 405-6.

<sup>5</sup> Nürî, 311, 327-9. In 993/1585, for example, the *muhtesib* of Bursa was a *çavuş* of the Palace (Dağlıoğlu, no. 190).

<sup>6</sup> See, for instance, Bursa Sicilli, A 44, ff. 5b-26a, where many hundreds of such cases are recorded.

<sup>7</sup> e.g. Bursa Sicilli, A 25, ff. 64a, 60b; Ahmed Luţfî, 82, 89.

Frequently, however, the *muhtesib* dealt with such offenders on his own, i.e. without a trial before the *cadi*. He was authorized to sentence only criminals who admitted their guilt, who were caught *flagrante delicto*, or whose offence was otherwise notorious or patent or established by the *muhtesib* himself while performing his duties. Prying or the ferreting out (*tecessüs*) of misdeeds\* was outside his competence. He could not hear legal evidence (*beyyine*) or administer clearing oaths. Technically, he was not even authorized to give judicial decisions (*hüküm*). On the other hand, he was not bound by the rigid rules of evidence of the *shari'a*. Unlike the *cadi*, he could institute proceedings without action being brought against the offender by an injured party, and could sentence an accused person on the strength of indirect or circumstantial evidence.<sup>1</sup> He also punished people for a wide range of transgressions (*münkerât*), such as the drinking of wine by a minor or fornication by a madman, which were not regarded as punishable offences (*ma'siyet*) by the religious law.<sup>2</sup>

In some respects indeed, the *muhtesib's* function bore a closer resemblance to the *mazâlim* jurisdiction than to that of the *cadi*, his superior. While the latter, according to Māwardī's well-known definition,<sup>3</sup> renders justice 'in moderation and with dignified gravity', the *muhtesib* acts as agent of the awesome power of the sovereign's authority, and his main object is to intimidate, to repress, and to deter evil-doers. He too is concerned, first and foremost, with the maintenance of law and order and the protection of the interests of the public.

If the *muhtesib* fails to check violations of the price and other market regulations or secretly comes to an 'arrangement' with the tradesmen, he is to be punished and dismissed by the *cadi*. (If he holds his office by Imperial *berât*, however, the *cadi* can only submit the case to the Sultan.)<sup>4</sup> Nevertheless, the *muhtesibs* and their men sometimes collected a fixed tax (*kesim*) instead of the

\* [pencil notes expanded:] See Qur'ân, 49. 12. Cf. Ghāzān's decree against drunkenness (Rashīd al-Dīn, 325-6), which forbids pursuing inquiries into private houses. All the same, the Ottoman police authorities employed spies (see, e.g., Mantran, *Istanbul*, 160-1) and it was not unknown for the Sultan to tour the streets in disguise in order to detect wrongdoers (e.g. Murād IV; see Evliyā Çelebi, trans. Hammer, i. 121, a passage omitted in the Turkish edition, i. 228).

<sup>1</sup> Ibn Qāyīm al-Jawzīya, *Turuk*, 276, 311; Nūrī, 309.

<sup>2</sup> Nūrī, 309, 323, 325.

<sup>3</sup> Māwardī, 407.

<sup>4</sup> MS. Ob, f. 69b; MS. Ph, p. 20.

finer due to them.<sup>1</sup> Every shopkeeper had to pay them half an *akçe*, one, two, or even five to ten *akçe* a day, as a kind of consolidated fine for the violations of the market regulations which they were held to be regularly committing. In return, the *muhtesib* shut his eyes, and refrained from prosecuting tradesmen who produced or sold faulty goods or who overcharged their customers. When an official investigation was held at Bursa in the early sixteenth century and the *muhtesib* was asked how he could condone such lawlessness, he finally admitted the facts, after at first denying any knowledge of such practices, but tried to excuse himself by saying, 'When I came I found this so' and 'From where [otherwise] am I supposed to pay the money due to the State?'<sup>2</sup> The shopkeepers often welcomed such an arrangement, which was advantageous to them also, but the government strictly prohibited it as being contrary to the *kānūn*.<sup>3</sup>

This is a telling example of how rampant corruption was in two major cities of the Empire in the early sixteenth century, and how even in this golden age of Ottoman power officials could not be trusted to implement the *kānūn*.

It is noteworthy that members of a certain trade often engaged themselves in the *cadi's* court to produce their goods in accordance with fixed standards or to sell them at the official price, and declared that they agreed to certain fines or whatever other punishment would be inflicted for any transgression.<sup>4</sup> Similarly, non-Muslims who promised to close their wine-shops declared in court that they agreed in advance to suffer severe punishment if they established taverns and sold wine again.<sup>5</sup>

The efficiency of the Ottoman market police impressed foreign observers. In the seventeenth century Thévenot related<sup>6</sup> that even a child could be sent to the market, since nobody would dare to cheat him.

<sup>1</sup> Cf. the *resm-i deştbāni* (below, p. 280).

<sup>2</sup> Probably referring to the fixed sum he owed for farming the office and the revenues accruing to it. The same system of the *muhtesib's* buying his office was customary in Mamlūk Egypt (Labib, 412). [By an oversight, Heyd has omitted to give the reference for this incident, presumably recorded in the Bursa Sicilli.]

<sup>3</sup> *Tarih Vesikalari*, no. 7, pp. 16-19, 23, 30, 36 (for Bursa); Barkan, 43, § 5 (incomplete version in *TOEM*, 1329, suppl., 66) (for Konya).

<sup>4</sup> See MS. Ed, f. 118b; Nūri, 430, 442-3, 609.

<sup>5</sup> Trabzon Sicilli, 42/1815, f. 67b (Rebi' II 965/1558).

<sup>6</sup> Thévenot, 126-7.

### III

## TRIAL

### I. Arrest

ACCORDING to the Ottoman *kānūn*, the arrest of a criminal is in many cases (especially those violating private rights) the responsibility not of the 'police' authorities but of certain private individuals.

In cases of murder, robbery, theft, assault, or arson, the people living in the vicinity of the place where the crime was committed are obliged to find the offender<sup>1</sup> and produce him.<sup>2</sup> If something is stolen at night by someone's guest, it is up to the master of the house to find the thief;<sup>3</sup> if the theft occurred in a caravanserai, this duty is incumbent on the people staying there or living in the surrounding quarter.<sup>4</sup> If the people mentioned do not find the criminal, they have to pay the blood-money, compensation, etc.

A more general statute<sup>5</sup> prescribes that if a person who has committed a crime absconds, his 'connections' (*ta'allukāt*) are to find and produce him. Who they are is defined in another regulation,<sup>6</sup> according to which the accused's son is obliged to find him and hand him over to those who seek him; if he has no son, this duty is to be discharged by his brother, other relatives, companions, neighbours, the master of the house in which he stayed or his bondsmen (*kefil*). A later correction of this regulation,<sup>7</sup> however, excuses the companions and neighbours from this obligation and imposes it only on his bondsmen or, if there are none, on his relatives. In the case of robbery, a firman<sup>8</sup> lays this duty also upon the receivers of the stolen goods (*yatak ve turaklar*). If the thief is a slave, his master has to find him.<sup>9</sup> A jailer who lets a prisoner escape has to

<sup>1</sup> OCC, §§ 44, 76, 77, 78, 80, 86 (in Ja), 92.

<sup>2</sup> Ibid., § 77, n. 9; cf. also Horster, 60 (97).

<sup>4</sup> Ibid., §§ 83, 86.

<sup>5</sup> Ibid., § 106.

<sup>3</sup> OCC, § 79.

<sup>6</sup> Ibid., § 121.

<sup>7</sup> Marginal note to § 121 in Lb, Rb, Rc. The same manuscripts have another correction (to § 107), which recognizes only the rules of the *shari'a* (and not those of the *kānūn*) with regard to a person's obligation to find a criminal.

<sup>8</sup> Firman of Rebi' I 935/1528 in MS. Ed, f. 67a; see also Bursa Sicilli, A 4, f. 29a.

<sup>9</sup> Bursa Sicilli, A 34, f. 178a.

recapture him; otherwise he is to suffer the penalty which was to be inflicted on the prisoner.<sup>1</sup>

A foreign non-Muslim resident must, according to the Capitulations,<sup>2</sup> not be arrested or molested if one of his compatriots commits an offence and then absconds, unless he is the criminal's bondsman.

Criminals often fled to Imperial domains and other 'free' land,<sup>3</sup> such as certain fiefs, waqf, and privately owned land, since they hoped that the governor of the place where they had committed the crime could not reach them there. According to the Ottoman Criminal Code<sup>4</sup> and innumerable firmans,<sup>5</sup> however, the fief-holders, administrators, or owners of such 'free' lands are obliged to arrest and hand over the fugitives to the governor's men, who are to bring them to trial before the *cadi* of their district.

If a criminal flees to another *sancak*, an official (*muhâzır, yasağçı, 'ases*) is to be sent there to bring him back.<sup>6</sup> The authorities, i.e. the governor or the *cadi*, of the place where the crime was committed used to give this official a letter in which they requested their colleagues in that district to arrest the criminal and hand him over to their man.<sup>7</sup> If their colleagues did not comply, the matter was to be submitted to the Sultan,<sup>8</sup> who then sent a firman to the recalcitrant authorities ordering them to surrender the criminal without delay.<sup>9</sup>

The arrest of fugitives from justice was sometimes obstructed by the special privileges of certain powerful guilds. The saddlers or leather-workers (*serrâc*) of Istanbul, for instance, claimed to possess a firman of Sultan Mehemmed II, reconfirmed by later sultans, which prohibited police officers, such as *subaşı*s, from entering their workshops or bazaar. Similar privileges had been given to the traders in the *Mısr Çarsusu*, the *bedestân*, and other markets of Istanbul. In the seventeenth century Evliyâ Çelebi

<sup>1</sup> Mühimme Defteri, vol. 7, no. 261.

<sup>2</sup> See p. 224.

<sup>3</sup> See below, pp. 290-1.

<sup>4</sup> OCC, § 117.

<sup>5</sup> e.g., in the sixteenth century, Mühimme Defteri, vol. 23, nos. 140 and 250; vol. 58, no. 412; vol. 62, no. 80; vol. 64, no. 198; vol. 67, no. 58.

<sup>6</sup> OCC, § 118.

<sup>7</sup> Mühimme Defteri, vol. 12, no. 441. For the text of such letters see Bursa Sicilli, A 51, f. 187a (letter from Ebu 's-Su'ud Efendi, later Şeyhülislâm, who at that time was *cadi* of Bursa) and *ibid.*, f. 63b.

<sup>8</sup> See Mühimme Defteri, vol. 58, no. 372.

<sup>9</sup> For such a firman, see Bursa Sicilli, A 51, f. 63b.

recounts that the tanners (*debbâğ*) at Istanbul and Edirne never hand over to the authorities any murderer, thief, or robber who has fled into their workshops. However, he adds, the criminal cannot escape from them either; they make him do the dirtiest work, until he repents, is accepted by them, and eventually becomes an expert artisan.<sup>1</sup> The guilds lost their privilege only by a decree issued in Muḥarrem 1242/August–September 1826, i.e. two or three months after the dissolution of the Janissaries, many or most of whom had been artisans and traders in the bazaar.

Other places of refuge where criminals found at least a temporary sanctuary from prosecution were, it is claimed, certain dervish monasteries,<sup>2</sup> the sacred cauldron of the Janissaries,<sup>3</sup> and the stirrup of a great personality, especially the Sultan himself.<sup>4</sup>

According to a European observer,<sup>5</sup> anyone who witnesses a crime being committed in the street is obliged to seize the offender and bring him to trial. Otherwise he will be punished.

In the eighteenth century d'Ohsson<sup>6</sup> claims that anyone can have a person arrested in the street by crying out 'I have a legal claim against him'. Thereupon any watchman is obliged, against a payment of 12 *pāra*, to arrest the accused person and bring him to the nearest police officer, who, after an interrogation, will hand the parties over to the authorities.

If a person charged by another with having committed a crime obstinately refuses to comply with the plaintiff's demand that he appear at the law-court, he may be brought there by force.<sup>7</sup> One person, for instance, who at the demand of his legal adversary was several times summoned by the *muḥzîr* but refused to come to court, was finally brought there by a Janissary and given strokes (*ta'zîr*) for his obstinacy.<sup>8</sup> According to the *fetvâ* of an Ottoman

<sup>1</sup> Evliyâ Çelebi, i. 422, 594; iii. 463; Nûri, i. 347, 595–7.

<sup>2</sup> O. Reşer, 'Einige Notizen über das Asylrecht im islamischen Orient', in *Fuad Köprülü Armağanı*, Istanbul, 1953, p. 420.

<sup>3</sup> Aḥmed Cevād, *Ta'riḥ-i 'askeri-i 'oşmāni*, i, Istanbul, 1297, p. 212; see also Hammer, *Staatsverfassung*, ii. 198.

<sup>4</sup> White, iii. 266.

<sup>5</sup> Du Loir, 188.

<sup>6</sup> D'Ohsson, iii. 214.

<sup>7</sup> Barkan, 27, § 21; 5–6, § 30 (for *berây-ı takdîr* or *berây-ı ta'zîr* read *ber ân takdîr* as in MS. Fo, f. 146a–b); Barkan, 71, § 50; 200, § 21.

<sup>8</sup> Bursa Sicilli, A 44, f. 64a. For the report of a *cadi* in regard to a criminal who refused to appear before the law-court see Mumcu, doc. 1 (p. 210) (for *makbul* read *makṭûl*).

*şeyhülislām*,<sup>1</sup> a defendant who had refused to appear before the *cadi* had to pay the fee (*ücret*) of the *mübāşir* employed by the plaintiff to fetch him.\*

Often an official (*subaşı*, *çavuş*, *kapıcı* of the Palace, etc.) was appointed 'assistant of the *shari'a* [court]' (*mu'in-i şer'*) and charged with bringing an accused person to justice. In this case the plaintiff paid him a certain remuneration (often from 50 up to a few hundred *akçe*) as *ayak deri (teri)*,<sup>2</sup> 'sweat of the foot', or *ücret-i kadem*, 'foot fee'.<sup>3</sup>

On the other hand, measures were taken to prevent the executive officers from arresting innocent people. A *nişān* of Muḥarrem 947/1540<sup>4</sup> lays down that if someone claims to have been the victim of a serious offence the *voynodas* shall arrest the accused only with the assent (*ma'rifet*) of the local *cadi* or *nā'ib*.<sup>5</sup> If, however, there is no *cadi* or *nā'ib* in the neighbourhood and a delay may enable the accused to escape, the *voynodas* have the right to make the arrest without such authorization, but must of course bring the prisoner to trial before the *shari'a* court.

## 2. Suretyship

Surety for the person was given in many different cases. A *kefil bi'n-nefs* might guarantee the availability of a person accused of a crime or of someone imprisoned (but capable of escaping) who is awaiting trial or the execution of his punishment.<sup>6</sup> Similarly, those accused of a crime in a court of law but not convicted by the *cadi* because of lack of proof usually had to provide a surety before being set free.<sup>7</sup> Even after conviction and punishment, or after a settlement had been made with the plaintiff, they often had to do so.<sup>8</sup> More generally, according to an 'old *kānūn*', *kefils* were often

<sup>1</sup> *İlmiye Sālnāmesi*, 508.

\* [pencil note:] On one occasion the *mübāşir* was the *kapucubaşı* of the *sancakbeği* (Trabzon Sicilli, 42/1815, f. 50a, entry dated Rebi' I 965/1557-8).

<sup>2</sup> Cf. the term *ayak derliği* (below, p. 298).

<sup>3</sup> Larende Sicilli, vol. 1, pp. 71, 204, 230, 232, 234, 335, 402.

<sup>4</sup> MS. Eb, f. 31a.

<sup>5</sup> See also Barkan, 27, § 21.

<sup>6</sup> Bursa Sicilli, A 20, f. 340a; A 32, f. 68a; A 42, f. 214a.

<sup>7</sup> Ibid., A 21, f. 237a; A 32, ff. 69a and 79b.

<sup>8</sup> Kayseri Sicilli, vol. 1, no. 322; Bursa Sicilli, A 7, f. 50a. [pencil note:] In such cases the intention was no doubt to ensure the offender's good behaviour in future.

demanded from those who had a criminal record and from those commonly known to be criminals.<sup>1</sup>

These sureties (*kefâlet*) were registered in the cadis' *sicillât*, often in Arabic.<sup>2</sup> Some were recorded at the request of an executive officer, such as a *subaşı*;<sup>3</sup> others state that they are acceptable to the plaintiff.<sup>4</sup> The fees for arranging a surety (in the fifteenth century?) were thirty-two *akçe*. Of this sum, eight *akçe* were due to the cadi as 'registration fee', four to the Sultan's *çavuş* who served as *harç emîni*, one to the chief of the night-watchmen (*re'îs-i 'ases*), and one to the clerk of the law-court (*kâtib*); the remaining (?) ten *akçe*, which belonged to the State (*mîri*), were put in a box to be transferred to the Imperial Treasury.<sup>5</sup> In view of the very large number of such *kefâlets* registered in the cadis' records, their income from this source must have been considerable.\*

The *kefil* engages himself to see to it that the bailee, whenever required to do so, presents himself at the law-court. If the latter has fled, the *kefil* is to find and produce him. Otherwise, he is obliged to pay whatever is due from the fugitive (blood-money, fine, compensation, etc.).<sup>6</sup>

A *kefil bi'n-nefs* or anyone else who is legally compelled to find and produce a person accused of a crime is given letters to the cadis in whose districts he intends to search for the fugitive.<sup>7</sup> These letters most probably identified the bearer as having the right to seize and bring back the suspect. The searcher is granted a certain period of grace (*mühlet*) (twenty days or one month) in which he is to find and produce the missing person. But before he sets out on his search, he has to provide two or three *kefils* for himself.<sup>8</sup> When he finds the fugitive, he can ask the local executive officers (*subaşıs*,

<sup>1</sup> See the '*adâletnâme* in MS. Nb, f. 31a and MS. Nd, f. 57a [and below, pp. 282-3]. <sup>2</sup> For their form see, for instance, Bursa Sicilli, A 32, f. 68a-b.

<sup>3</sup> e.g. *ibid.*, A 42, f. 64a.

<sup>4</sup> e.g. *ibid.*, A 32, f. 68a.

<sup>5</sup> See the '*adâletnâme* cited above (n. 1), loc. cit. In both texts eight of the 32 *akçe* remain unaccounted for. Perhaps the cadi collected eight *akçe* from the bailee and another eight from the person who requested the surety. (The text in MS. Nd has indeed *sekizer* . . . as against *dört* . . . *bir* . . . *bir* . . . *on*, but the total fee is fixed as *otuz ikişer akçe*.)

\* [pencil note:] One of the abuses condemned in the '*adâletnâme* of 1595 is that '*âmils* caused *kefils* to be registered 'in their absence' (i.e. without their consent?), see Uluçay, *XVII. asırda*, 165-6 [= *Belgeler*, ii/3-4 (1965), 105, 106]; Köprülü Libr., MS. II, 360, f. 90b.

<sup>6</sup> Bursa Sicilli, A 28, f. 117b; A 32, f. 84a; A 42, f. 64a.

<sup>7</sup> *Ibid.*, A 14, f. 35a; A 35, f. 274b.

<sup>8</sup> *Ibid.*, A 4, f. 18b (entry of Muḥarrem 889/1484); A 35, f. 274b.

etc.) to arrest him, bind him, and enable the searcher to take him back to the appropriate authorities.<sup>1</sup> Having done this, he can ask the *cadi* for a certificate (*veşiķa*) to prove that he has fulfilled his obligation.<sup>2</sup>

If, however, *kefils* or other persons obliged to find a criminal fail to produce him, they (or their own *kefils*) are liable to punishment (fine, banishment, etc.) in his stead.<sup>3</sup> They may, however, excuse themselves by proving that they have done their best and have searched for the criminal over a wide area, 'seven judicial districts (*kādīlk*)', without being able to find him and (as is added in one version of the text) have received a certificate to that effect from each of those *cadis*.<sup>4</sup> This statute of the Criminal Code was actually applied. On presenting certificates signed by the seven *cadis* whose districts they had searched sureties could be released from their obligations.<sup>5</sup>

### 3. *Limitation*

At first, the Ottoman statute of limitation (*mürür-i zamān*) seems not to have been generally fixed.\* In a murder case tried at the end of the fifteenth century, the period of limitation was twenty years.<sup>6</sup> According to an Imperial order of 9 Rebī' I 957/1550,<sup>7</sup> however, no criminal case (or any other case except those concerning land, at least State land (*mīri*)) shall be heard if fifteen years have passed since the commission of the crime and the plaintiff has no legal excuse ('*özr-i şer'i*') for his delay. By special firman, however, the Sultan can make exceptions to this rule.

According to some *müftis*,<sup>8</sup> in fornication or rape cases no witnesses are to be heard after a month has passed, but on certain conditions Ebu 's-Su'ūd Efendi<sup>9</sup> lays down more flexible rules. . . .

<sup>1</sup> Bursa Sicilli, A 14, f. 35a.

<sup>2</sup> *Ibid.*, A 20, f. 340a.

<sup>3</sup> *Ibid.*, A 35, f. 274b; A 42, f. 214a.

<sup>4</sup> OCC, § 107 (especially in the version of Pb, Pe).

<sup>5</sup> Bursa Sicilli, A 45, f. 203a.

\* [pencil note:] Decrees of Ghāzān confirmed the orders of the sultans of old and of Jengiz Khan that a *cadi* should not hear a case after thirty years had passed (Rashīd al-Dīn, 219, 221-2, etc.; d'Ohsson, *Mongols*, iv. 455).

<sup>6</sup> G. Elezović, *Turski Spomenici*, i/2, Belgrade, 1952, pp. 89, 92 (firman of Receb 903/1498).

<sup>7</sup> See the *fetvā* of the Şeyhülislām Ebu 's-Su'ūd, in Belediye Libr., MS. Belediye 71, f. 470b; Horster, 56 (93-4); Selle, 59-60; *MTM*, i. 316-17. Cf. d'Ohsson, iii. 235.

<sup>8</sup> Çavuşzāde, i. 107; Debbāğzāde, 292.

<sup>9</sup> Selle, 37 (84), § 1.

#### 4. Competence of the *cadi*

Criminal trials are to be held at the law-court of the district where the offence was committed. If the criminal has fled he must, as discussed above, be brought back and tried here.<sup>1</sup>

According to a *fetvā* of Ebu 's-Su'ūd,<sup>2</sup> however, the *cadi* of Istanbul was in 944/1537-8 authorized by a firman to hear suits between people from all parts of the Empire, even if one of the parties objected. This authorization, it seems, included criminal cases, such as a charge of theft brought by someone from the provinces who had followed the fugitive thief to Istanbul.

In criminal, as in other, matters, a single *cadi* or *nā'ib* adjudicated in the *sharī'a* law-court. In the mid seventeenth century d'Arvieux observed that in the law-court of Sidon the *müfti* was always present; he did not take part in the court's deliberations, but was consulted by the *cadi* in difficult cases.<sup>3</sup> In certain criminal cases brought before the *Dīvān* in the capital too the advice of the *müfti* (Şeyhülislām?) was sought.<sup>4</sup> . . .

#### 5. Plaintiff and defendant

According to Muslim law, crimes violating 'rights of men' cannot be dealt with by the *cadi* unless action is brought by the injured person himself (or his representative) or, in the case of murder, by his next of kin.<sup>5</sup> Other plaintiffs, such as the *ehl-i 'orf*, may seek to institute criminal proceedings only if a murdered person has no known heir<sup>6</sup> or if 'rights of God' have been violated.<sup>7</sup>

In principle, at least, this distinction was maintained in Ottoman legal practice. As is shown by the *cadis'* registers and other Ottoman documents, charges of homicide and wounding<sup>8</sup> were usually

<sup>1</sup> See above, pp. 235 et sqq. Cf. Tyan, *Histoire*, 355.

<sup>2</sup> Horster, 52 (90); Bayezit Libr., MS. Veliyüddin 1466, f. 123a. Cf. also Horster, 47-8 (86).

<sup>3</sup> D'Arvieux, i. 445. See also Tavernier, i. 127. For the practice, common in earlier periods, of *fuḳahā'* attending as the *cadi's* advisers see Tyan, *Histoire*, 214-18, 222, 281.

<sup>4</sup> Cantemir, 183, n. 22.

<sup>5</sup> Māwardī, 118; Ibn al-Farrā', 50. See also Tyan, *Histoire*, 356.

<sup>6</sup> See Belediye Libr., MS. M. Cevdet O 18, f. 7b.

<sup>7</sup> See *fetvā* of Ebu 's-Su'ūd in Belediye Libr., MS. Belediye 17, f. 240a. [pencil note:] Cf. Mūsāzāde, 146a; Debbāğzāde, 164.

<sup>8</sup> An example of another charge is the action brought by a private person (in this instance an *imām*) against a man for entering the plaintiff's house with the intent to commit fornication with his wife (Bursa Sicilli, A 24, f. 526a).

made by private individuals. The *ehl-i 'örf*, on the other hand, brought people to trial in *shari'a* courts for sexual offences, the drinking of wine, non-attendance at public prayer, market delicts, and similar crimes. Thefts, which violated both the property rights of a private person and a right of God, were dealt with by the *cadi* on the complaint of either the injured person<sup>1</sup> or the *ehl-i 'örf*<sup>2</sup> or both.<sup>3</sup>

The *ehl-i 'örf* seem to have brought action also in many cases where merely private rights were violated. According to d'Ohsson,<sup>4</sup> they were authorized to do so not only if a murdered person had no heir but also if the accused had, by repeatedly committing such offences, become a 'public' criminal. Evidence of the *ehl-i 'örf*'s abuse of their authority is found in firmans prohibiting them from bringing action in criminal cases in which the *shari'a* required the claim to be made by a private plaintiff.<sup>5</sup>

Islamic and Ottoman law does not know the office of a specific public prosecutor. If criminal action was to be brought by the *ehl-i 'örf*, this function could, to judge from the *cadis*' registers, be fulfilled by a wide variety of officials, such as a *subaşı* (*za'im*), a tax-farmer or tax-collector (*'āmil*, *emīn*), a *voyvoda*, a night-watchman (*'asesbaşı*, *'asesler kethudāsi*, or a simple *'ases*), a *yasakçı* or *yasakçıbaşı*, a *muhtesib*, an *imām*, a military officer (*bölükbaşı*, *'azeb*), a *kapıcıbaşı* of the Palace, and others. In many cases the man who had arrested the prisoner and brought him before the law-court was also the plaintiff.

When private individuals brought a criminal action, they sometimes first obtained and presented at the law-court an Imperial firman ordering the local governor and/or *cadi* to investigate the matter.<sup>6</sup> This is reasonable enough in cases where the wife or a relative of a man put in prison asked for such an order.<sup>7</sup> But it seems astonishing that even for a most trivial matter a plaintiff might proceed to Istanbul to obtain a firman (surely not without paying for it) and that the government was willing to issue a firman

<sup>1</sup> See, for instance, Başbakanlık Arşivi, Fekete catalogue, 3468 and 4158.

<sup>2</sup> Ibid., 3469; Bursa Sicilli, A 32, f. 8b; Üsküdar Sicilli, vol. 6, f. 56b.

<sup>3</sup> Trabzon Sicilli, 42/1815, f. 5b (end of 964/1557).

<sup>4</sup> D'Ohsson, iii. 249-50, 274.

<sup>5</sup> Uluçay, XVII. asırda, 405-6.

<sup>6</sup> Bursa Sicilli, A 24, f. 526a; A 67, f. 154b. For the ruler's commissions to *cadis* to inquire into *mazālīm* cases see Māwardī, 160, 163.

<sup>7</sup> e.g. Bursa Sicilli, A 34, f. 155a.

in such a case. For instance, a man from the Malkara region went to the capital and received there a firman ordering his local *cadi* to investigate the theft of some sheaves of corn from a field.<sup>1</sup>

Revealing evidence of how such firmans were obtained is found in an entry in the records of the Bursa law-court, of Ramazān 898/1493.<sup>2</sup> A man whose brother had been imprisoned on a murder charge went to Istanbul and arranged that a firman in this matter was sent to Bursa. When after his return he was apparently taken to task for having given untruthful information at Istanbul, he defended himself with these words: 'When I had that firman written (*ol hükmi ben yazdırdıkda*) I stated that . . .; the scribe thought that . . . and wrote accordingly.' This entry shows that an ordinary citizen, probably for an appropriate 'fee', had direct access to the office of the Central Government where firmans were prepared and could personally tell the scribe what to write in a 'noble decree' which the Sultan was to send to one of his governors or *cadis*.\*

In general, no trial might be held, no witness heard, and no sentence passed by the *cadi* unless the plaintiff and the defendant were present.<sup>3</sup> According to a *fetvā* of Ebu 's-Su'ūd,<sup>4</sup> however, if the crime was a violation of the 'rights of God', the *ehl-i 'orf* might present to the *cadi* proofs of the offender's guilt even in his absence.<sup>5</sup>

In Ottoman courts of law the parties, it seems, usually pleaded their cases themselves, the European usage of having professional lawyers in the Western sense of the term to represent the parties being unknown.<sup>6</sup> Very many entries in the Ottoman court registers show, however, that some plaintiffs (such as a woman,<sup>7</sup> a minor, someone injured, etc.) did not appear in person but, as permitted according to the *shari'a*,<sup>8</sup> sent a duly authorized representative

<sup>1</sup> MS. Bb, f. 76a.

<sup>2</sup> Bursa Sicilli, A 11, f. 103a.

\* [pencil note:] Cf. the firman (of 1177/1764) addressed to the Re'is ül-Küttāb, in Refik, *On ikinci*, 197-8.

<sup>3</sup> *Fetvā* of İbn Kemāl in Belediye Libr., MS. M. Cevdet O 44, f. 148b.

<sup>4</sup> Belediye Libr., MS. Belediye 17, f. 240a.

<sup>5</sup> Cf. above, p. 241.

<sup>6</sup> Deshayes, 221-2; d'Arvieux, i. 445-6; d'Ohsson, iii. 220.

<sup>7</sup> A woman of the upper classes (*muhaddere*) is entitled to be represented by a *vekil* (Ebu 's-Su'ūd, in Selle, 50 (103), §§ 4-5). Often, however, women plaintiffs appeared in person at the law-court.

<sup>8</sup> See Tyan, *Histoire*, 262 et sqq.

(*vekil*). The general tendency, however, was to discourage the appointment of such representatives where there was no special reason for it.<sup>1</sup>

Whereas in the Grand Vizier's *divāns* the statements of the parties in a lawsuit were read out from the petitions they had submitted,<sup>2</sup> litigants in the cadis' courts stated their cases orally.<sup>3</sup>

With a view to strengthening their cases, the parties often produced *fetvās* they had obtained from local *müftis* concerning the general legal aspect of the case.<sup>4</sup>

### 6. Procedure

The procedure of an Ottoman criminal trial as reflected in the cadis' registers seems to have been quite simple and generally in conformity with the well-known rules of Muslim religious law.

First the plaintiff stated his case, and demanded that the defendant be interrogated, that the latter's statement or reply be recorded, and that punishment be meted out to him in accordance with the *shari'a* or\* with the *shari'a* and the *kānūn*. If the plaintiff was an official, he sometimes also asked for the fine due to him, while a private citizen requested retaliation, blood-money, damages, the return of the stolen property, or the like.

After the plaintiff had finished his statement the *cadi* asked the defendant to reply to the charge. If he admitted (*ikrār*, *i'tirāf*) his guilt of his own free will (*tav'an*, etc.), his confession was recorded in the *cadi's* register. In some cases the criminal explained his offence by saying '*şeytāna uydum*', 'I yielded to the devil'.<sup>5</sup>

The number of cases in which, according to the law-court registers, the defendant acknowledged his guilt is amazingly large. The reasons may have been a relatively high degree of truthfulness even among criminals, their reluctance to perjure themselves when required to take an oath (see below), their awe of the *cadi* as representing both religion and the Sultan, the fear of being subjected to torture, or a combination of several of these motives.\*\*

<sup>1</sup> Barkan, 382-3, § 42 (Egypt) (= Digeon, ii. 261; Hammer, *Staatsverfassung*, i. 133).

<sup>2</sup> See above, p. 226.

<sup>3</sup> Cf. Deshayes, 221-2; d'Arvieux, i. 445-6.

<sup>4</sup> e.g. Bursa Sicilli, A 67, f. 154b.

\* [pencil note:] As in Bursa Sicilli, A 168, f. 7b.

<sup>5</sup> e.g. Bursa Sicilli, A 38, f. 112a.

\*\* [pencil note:] A voluntary admission of guilt did not procure a decreased penalty.

It may be suggestive that in cases in which men and women were jointly accused of an offence, the men sometimes denied the charge while the women admitted their guilt.<sup>1</sup>

A defendant who later retracted his confession (*ikrārından rücū'*) was, in the *cadi's* view (in accordance with the *shari'a* rule), not liable to the *ḥadd* penalties,<sup>2</sup> such as the amputation of a thief's hand; but the secular authorities might sentence him to servitude on the galleys.<sup>3</sup>

If the defendant denied (*inkār*) the accusation, the plaintiff or prosecutor was asked by the *cadi* to produce legal evidence (*beyyine*) for his charge. In accordance with the requirements of the *shari'a*, the most important evidence was the testimony of witnesses.

In the trial of a Muslim, generally the testimony of two male Muslim witnesses was required.<sup>4</sup> The testimony of a non-Muslim subject (*zimmī*) was, with certain exceptions,<sup>5</sup> only accepted against another infidel,<sup>6</sup> and that of a non-Muslim foreign resident only against another *müste'min*, not even against a *zimmī*.<sup>7</sup>

Before accepting their testimony, the *cadi* had to establish that the witnesses were 'of good character' ('*adl* or '*ādīl*').\* Among the many people whose way of life made them, according to Ottoman *müftīs*, unfit for testifying<sup>8</sup> in any lawsuit or trial were the tax-farmers ('*āmil*) and the men who co-operated, or made agreements, with the executive officers (*ehl-i 'orf*).<sup>9</sup> Interestingly, Ebu 's-Su'ūd rules<sup>10</sup> that an infidel who does not go to church (or synagogue) is not competent to testify. In the opinion of another *müftī*, the

<sup>1</sup> e.g. Bursa Sicilli, A 32, f. 67b.

<sup>2</sup> Pir Mehmed, 68b.

<sup>3</sup> Başbakanlık Arşivi, Cevdet catalogue, Adliye 5576, f. 6a.

<sup>4</sup> Bursa Sicilli, A 32, ff. 67b, 71b; Deshayes, 221-2; Febvre, *État*, 152; Driesch, 193; d'Ohsson, iii. 225.

<sup>5</sup> See Selle, 34 (79), § 19 (*fetvā* of Ebu 's-Su'ūd). Cf. Ibn Qayyim al-Jawziya, *Turuḥ*, 206 et sqq.

<sup>6</sup> Başbakanlık Arşivi, Kâmil Kepeci catalogue, 677, ff. 19b, 59a; T. Gök-bilgin, in *İTED*, iii (1960), 123-4 (and cf. 118-19).

<sup>7</sup> Horster, 53 (91); Selle, 41 (91), §§ 10-11 (*fetvās* of Ebu 's-Su'ūd). But see the regulations in the Capitulations with regard to trials in the Grand Vizier's *divân* and the testimony of foreigners against *zimmīs* in general (above, pp. 223-4).

\* [pencil note:] On *tazkiya* or *ta'dīl* see Tyan, *Histoire*, 238 et sqq.

<sup>8</sup> See, for instance, Selle, 33 et sqq. (77 et sqq.) (*fetvās* of İbn Kemāl and Ebu 's-Su'ūd).

<sup>9</sup> *Ibid.*, 33 (78), § 5; 34 (78), § 10; Belediye Libr., MS. Belediye 17, f. 247b.

<sup>10</sup> Selle, 34 (79), § 15. See also *ibid.*, § 18 (*dāmince 'ādīl*, 'competent according to [the requirements of] his religion').

testimony of a peasant (*re'āyā*) against a feudal lord (*sipāhī*) is acceptable 'unless there is some other impediment (*māni*)'.<sup>1</sup>

According to another *fetvā*,<sup>2</sup> the plaintiff may testify as witness only in cases where a 'right of God' has been violated.

While the *shari'a* generally does not prescribe that witnesses must take the oath,<sup>3</sup> several Ottoman *müftis* ruled that 'in our days' the *cadis* might administer it if they considered it necessary.<sup>4</sup> (This is another example of a rule of the *siyāsa shar'īya* procedure for secular judges<sup>5</sup> being adopted by the *cadis*.) Entries in the court registers show that *cadis* did in fact do so.<sup>6</sup>

In the view of the *shari'a*, a Muslim is neither legally nor morally obliged to bear witness against a criminal who has violated a 'right of God', for which he is liable to a *ḥadd* penalty.<sup>7</sup> The Ottomans even regarded it as humane not to assist in such cases in the conviction of a fellow Muslim.<sup>8</sup> It is for this reason that the Ottoman Criminal Code<sup>9</sup> does not impose a fine on a person who fails to inform the *cadi* of a case of fornication, but does fine anyone who fails to do so in a case of theft: the former is only a 'right of God', while the latter also violates a 'right of man', since if a thief is not convicted the injured person may lose the chance of recovering the stolen article or obtaining compensation for it.<sup>10</sup>

In many cases the *cadi* ordered certain people to produce the required evidence by making a special investigation (*keşf*).<sup>\*</sup> For instance, physicians or surgeons were asked to examine the body of a dead person and find out whether he had indeed been killed or, as happened in one case,<sup>11</sup> had died from the plague. More often a clerk of the law-court or another '*ālim* was sent out to investigate

<sup>1</sup> Selle, 34 (79), § 13.

<sup>2</sup> Belediye Libr., MS. Belediye 17, f. 248a (Ebu 's-Su'ūd).

<sup>3</sup> [Juynboll, 317; Schacht, *Introduction*, 190.] But see Ibn Kāyym al-Jawziya, *Turuḥ*, 167 et sqq.

<sup>4</sup> Horster, 61 (97); Selle, 43 (94), §§ 7-8 (Ebu 's-Su'ūd); '*İlmiye Sālnāmesi*, 446, and *MTM*, i. 316 (Şeyḫülislām Yaḫyā).

<sup>5</sup> See Māwardī, 142.

<sup>6</sup> Edremit Sicilli, 42/1178, f. 33a; Trabzon Sicilli, 42/1815, f. 15b; Bursa Sicilli, A 51, f. 119b.

<sup>7</sup> Schacht-Bergstrasser, 118; Juynboll, 292-4.

<sup>8</sup> D'Ohsson, iii. 225.

<sup>9</sup> OCC, § 29.

<sup>10</sup> Cf. also Selle, 38 (85-6), §§ 6, 9, 10.

<sup>\*</sup> [pencil note:] This again may be *siyāsa shar'īya* procedure: see Māwardī, 141-2, §§ 5, 10, and cf. M. 'Ārif's translation of Dede Efendi, p. 30, lines 10-11 (*keşf ü taharri*).

<sup>11</sup> Bursa Sicilli, A 47, f. 8ob.

(for example) whether a person had committed suicide, to ask an injured man to state who had attacked him, or to inquire into complaints that a certain person led an immoral life.<sup>1</sup> A man who found his wife committing fornication with her lover and killed both of them went to the law-court and asked for a *nā'ib* to be sent to the scene.<sup>2</sup> Sometimes the clerk of the court was charged with establishing the guilt of offenders by surprising them in the act, for example a married woman who was meeting with a strange man.<sup>3</sup>

On many of these errands the *cadi's* emissary was accompanied by several people who were to act as witnesses. He established the facts, wrote them down on the spot, and then reported to the court. In all these cases the *cadi* acted in accordance with a *firman* he had received, or at the request of people wishing to expel an undesirable neighbour or to free themselves from any responsibility for what had happened. Only in the last-mentioned case was the request made by the *subaşı*, who applied in the name of the religious duty of *al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar*<sup>4</sup> (and, most probably, wanted to collect the fine due to him according to the *kānūn*).<sup>5</sup>

To enable the prosecutor or plaintiff to produce witnesses, the *cadi* sometimes granted an adjournment (*mühlet*) of the trial for a few days.<sup>6</sup> This was one of the few reasons why a criminal trial was not, as was usual, concluded in a single session.<sup>7</sup>

### 7. Composition and damages

When a private individual charged another with an offence, such as theft, killing his relative or his slave, or wounding himself or a relative or a slave of his, the parties often settled their dispute by a composition (*sulh* or *muşālaḥa*), with or without the mediation of conciliators (*muşliḥ*).<sup>8</sup> The *cadis'* registers show that such an amicable arrangement was often reached out of court or after the

<sup>1</sup> Hācibzāde, ff. 126a, 119b-120a; Hıdr b. 'Oşmān, f. 122a.

<sup>2</sup> Şānī, MS. Istanbul, ff. 77b-78a. Cf. OCC, § 13.

<sup>3</sup> Hācibzāde, f. 126a.

<sup>4</sup> See above, p. 230.

<sup>5</sup> See OCC, § 17.

<sup>6</sup> Hasköy Sicilli, vol. 1, p. 43; Bursa Sicilli, A 21, f. 261a; Trabzon Sicilli, 42/1815, f. 19b.

<sup>7</sup> A trial requiring four sessions (Bursa Sicilli, A 38, f. 90a) was quite exceptional.

<sup>8</sup> Such a settlement was sometimes made between the suspect and an official investigating a murder case (see Bursa Sicilli, A 23, f. 323a).

plaintiff had brought an action at the law-court (and had been unable to prove his accusation); but it was, or should be, brought to the *cadi's* knowledge and duly registered in his records.

The injured person or his next of kin formally declared that he renounced (*ferāġat*) any claim against his adversary or that he released him from any liability (*zimmatini ibrā ve iskāt*). Sometimes he added: 'I have no [more any] claim [against] or dispute [with him]', or 'If hereafter any action in this matter is brought by me, it shall be null and void and not be heard by the judges', or the like.\* The accused declared that he confirmed (*taṣḍīk*) the plaintiff's statement and accepted the discharge (*ibrā*).

If the plaintiff made a settlement with the offender, or pardoned him, in regard to injuries which the latter had inflicted on him (or on his close relative), he often added that this arrangement would not hold if he (or his relative) died of the wounds received.<sup>1</sup>

In general, the plaintiff agreed to such a settlement in return for the payment of damages (*bedel-i ṣulh*) by the accused. Sometimes such damages were paid, just as were fines,<sup>2</sup> by a third person as a free gift (*teberru'an*).<sup>3</sup> According to the *cadis'* registers of Bursa for the late fifteenth century,<sup>4</sup> damages for homicide, for instance, mostly ranged between slightly under 1,000 and a little over 10,000 silver '*dirhem*', i.e. *akçe*.<sup>5</sup> In the following century the sum of 50 gold pieces was agreed upon in one case.<sup>6</sup>

It is interesting that, again as in the case of fines,<sup>7</sup> the accused often made a settlement and paid such damages *inkārdan* ('*an al-inkār*'), i.e. while denying his guilt. A person accused of theft sometimes indemnified the plaintiff for the whole loss which the latter claimed to have suffered;<sup>8</sup> more often, however, the agreed sum amounted to only a half or even a fifth of what was alleged to have been stolen.<sup>9</sup> In such cases the plaintiff seems to have contented himself with the terms of the settlement because he was not sure that he could produce sufficient evidence to support his charge in court.

\* [pencil notes:] See, e.g., Bursa Sicilli, A 60, f. 104a; A 67, f. 154b.

<sup>1</sup> Bursa Sicilli, A 5, ff. 58b, 73a.

<sup>2</sup> See below, p. 289.

<sup>3</sup> Bursa Sicilli, A 40, f. 111a; A 67, f. 154b.

<sup>4</sup> Ibid., A 3 and A 4.

<sup>5</sup> For the use of *dirhem* in the meaning of *akçe* see, for instance, *ibid.*, A 3, ff. 84a and 146b: 'new silver *dirhems* coined by Sultan Meḥemmed [II] Ḥān'. See also Beldiceanu, ii. 55, n. 5.

<sup>6</sup> Trabzon Sicilli, 42/1817, f. 74a (Cumādā I 969/1562).

<sup>7</sup> See below, p. 289.

<sup>8</sup> Bursa Sicilli, A 3, f. 18b.

<sup>9</sup> *Ibid.*, A 14, f. 364a; A 33, f. 69a; A 28, f. 117b.

But why did a person who claimed to be innocent pay any damages at all? One explanation would be that he was in fact guilty and feared that his adversary might be able to prove it, thus making him liable to a higher payment and to a punishment in addition. In other cases he may have preferred to settle the matter out of court since, though not guilty, he thought that false witnesses might testify against him. It might happen, however,<sup>1</sup> that a person paid damages even though the plaintiff had been unable to produce in court the evidence required by the *shari'a*. In this case the accused was probably afraid that he might be tortured to force him to confess or be punished by the secular authorities in accordance with the *kānūn* or the Sultan's order.

It is noteworthy that such a settlement might be made not only by a person directly accused of a crime. When in 894/1488-9 a woman was found killed in a quarter of Bursa and its inhabitants were called upon to find the murderer,<sup>2</sup> they came to a settlement with her heir *inkārdan* (which here seems to mean that they denied that any of them had committed the crime), and paid him 3,000 *akçe*.<sup>3</sup> Similar compositions were made with the people of a village where property of the plaintiff had been stolen.<sup>4</sup>

The damages paid in accordance with such a settlement (*bedel-i şulh*) differed from blood-money (*diyyet*)\* in that they were not fixed by the *shari'a* but agreed upon by the parties concerned.<sup>5</sup> In other aspects, however, they bore a close similarity to it.

The following case will help in clarifying their character. When in 902/1496-7 two people at Bursa were accused of murder, someone who wished to save them made a settlement with the heir of one of the victims, paying him 8,800 *akçe*. He stipulated, however, that in case the Sultan put the criminals to death 'as an administrative punishment' (*siyāseten*) the heir (or his bail) was to return the money received. In fact, one of the robbers was subsequently executed and the other died from torture in prison. The settlement thus became null and void (*münfesih*) and the person

<sup>1</sup> e.g. *ibid.*, A 33, f. 69a.

<sup>2</sup> Cf. OCC, §§ 44, 76-7.

<sup>3</sup> Bursa Sicilli, A 7, f. 289a.

<sup>4</sup> Üsküdar Sicilli, vol. I, f. 114a.

\* [On which see below, pp. 308-11.]

<sup>5</sup> In later periods the amount of the *diyyet* too is said to have been a matter for bargaining between the murderer and the heir (see d'Ohsson, iii. 249-50; d'Aubignosc, i. 150-1). (Or are these writers confusing *diyyet* and *şulh*?)

who had made it obtained a firman from the Sultan (and a *fetvā*) entitling him to demand his money back.<sup>1</sup>

A settlement of this kind could be made only in regard to a *ḥakḥ ādamī*, but not if a 'right of God' was violated and a *ḥadd* penalty was to be inflicted.<sup>2</sup> Nor did a settlement affect the 'right of the State'\* (*ḥakḥ al-salṭana*) to impose a punishment. Thus, even when a person accusing another of wounding him failed to prove his case and the parties finally agreed to a settlement, the *subaşı* was allowed to collect a fine (of 100 *akçe*).<sup>3</sup>

The next of kin of a murdered person, particularly, it seems, if they were poor and not certain that they could prove their case in court, often made a settlement with the murderer, renouncing retaliation in return for an agreed sum of damages. Such a procedure, though permitted by the *shari'a*,<sup>4</sup> was not in the interest of the State, since it diminished criminals' fear of severe punishment and was bound to increase the crime rate in the country. For this reason firmans<sup>5</sup> gave strict orders to bring all alleged murderers to trial and to punish those proved guilty.

An even more blatant deviation from the *shari'a* rules is found in a firman<sup>6</sup> giving the order to inflict (in a case of murder) *siyāset* punishment, namely, as is stated further on in the same document, '*kuşāş* according to the *shari'a*', although the plaintiff had demanded blood-money only.

### 8. Exculpatory oaths and 'compurgation'

If the prosecutor or plaintiff could not produce witnesses to prove his allegation or if the witnesses' evidence did not meet the requirements of the *shari'a*, the *cadi* often acted in accordance with the *kānūn*:\*\* he inquired whether the defendant had a criminal record or called in the defendant's neighbours and asked them to testify to his character and conduct.<sup>7</sup> In many cases the standing of a per-

<sup>1</sup> Bursa Sicilli, A 14, ff. 172b, 231b.

<sup>2</sup> Debbāğzāde, 173.

\* [See above, pp. 204-7.]

<sup>3</sup> Larende Sicilli, vol. 1, p. 352.

<sup>4</sup> Schacht-Bergsträsser, 105 [; Schacht, *Introduction*, 148, 181].

<sup>5</sup> e.g. Mühimme Defteri, vol. 10, no. 573.

<sup>6</sup> *Ibid.*, vol. 9, no. 155.

\*\* [pencil notes:] And the *siyāsa shar'īya* rule: see Māwardī, 376; cf. also Dede Efendi, chap. iii (MS. 697, f. 70b; M. 'Ārif's trans., p. 38) and chap. iv (MS. 697, f. 72a; M. 'Ārif, pp. 46 et sqq.). Cf. also the procedure for *teftiṣ* (above, p. 229).

<sup>7</sup> Üsküdar Sicilli, vol. 1, f. 114a; Bursa Sicilli, A 32, f. 67b.

son in his community as reflected in such a testimony<sup>1</sup> seems to have been a material factor in the decision reached.<sup>2</sup>

When the defendant's guilt could not be proved and he had no criminal record or bad reputation, the *cadi* often asked him, on the demand of the plaintiff, to clear himself by swearing that he was innocent. This procedure is laid down in the Ottoman Criminal Code,<sup>3</sup> but a later correction<sup>4</sup> limits it, in accordance with the *shari'a*,<sup>5</sup> to crimes that violate the 'rights of men'. Its application in cases, such as fornication, where a right of God is infringed and the *shari'a* imposes a *ḥadd* penalty is forbidden.<sup>6</sup>

When it occurred that a person was found killed at or near a village, the next of kin, if he was unable to prove anyone's guilt, sometimes demanded that fifty men chosen by him from among the villagers should swear that they had had nothing to do with the crime and did not know the murderer.<sup>7</sup> This is the well-known *ḥasāma* procedure of the *shari'a*.<sup>8</sup>

A Muslim took the oath on the *Qur'ān* (*kelām-i kadīm*), a Christian on the Gospels (*incil*), and a Jew on the Old Testament (*tevrāt*).<sup>9</sup> According to a seventeenth-century European observer,<sup>10</sup> the declarant first washed his hands and then swore with his left hand placed under the holy book and his right hand upon it.

After taking the oath (or if at the last moment the claimant absolved ('*afv*') him from taking it),<sup>11</sup> the defendant was usually acquitted and the plaintiff (but not, it seems, an official who had brought the action) was sentenced to a punishment for false accusation.<sup>12</sup> In the case of *ḥasāma* mentioned above, the oath of the fifty men released their fellow-villagers from retaliation (though not from paying blood-money).<sup>13</sup>

However, the *cadis'* registers of the late fifteenth and the sixteenth centuries show that in an astonishingly large number of

<sup>1</sup> Cf. OCC, §§ 124-5.

<sup>2</sup> See Bursa Sicilli, A 51, f. 119b.

<sup>3</sup> OCC, §§ 24, 25, 55.

<sup>4</sup> See the marginal notes to OCC, § 24, in Pd, Va (Vb).

<sup>5</sup> See, for instance, Ibn al-Farrā', 241.

<sup>6</sup> Cf. *Ziyā ed-Dīn*, 150-1; d'Ohsson, iii. 217.

<sup>7</sup> See the *cadi's* sentence in a *ṣakk* collection in Süleymaniye Libr., MS. Reşid Ef. 281, f. 26b.

<sup>8</sup> Schacht-Bergsträsser, 104-5.

<sup>9</sup> Bursa Sicilli, A 51, f. 119b; A 38, f. 70b; A 52, f. 15b.

<sup>10</sup> D'Arvieux, iii. 230.

<sup>11</sup> See Larende Sicilli, vol. 1, pp. 204, 205.

<sup>12</sup> OCC, §§ 24-6, 54-5; Bursa Sicilli, A 41, f. 64b.

<sup>13</sup> Cf. OCC, §§ 44, 77; and see below, p. 310.

cases<sup>1</sup> the defendants refused to take the oath (*yeminden nükül*), although they thereby brought upon themselves conviction and punishment. The reasons for this may be partly the same as those which, as suggested above, led many accused persons to acknowledge their guilt from the beginning.

### 9. Torture

As is shown by the cadis' registers of the period surveyed, it often happened that though the defendant denied his guilt and nothing could be proved against him according to the rules of the *shari'a* he was not acquitted but was handed over to the executive officers for further interrogation. This was done if the accused had a criminal record (*tö Ahmet-i sâbıkâ*), if there was strong circumstantial evidence against him,\* or if his statements in court had been contradictory or confused.<sup>2</sup> Such suspects (*mazanne*) were imprisoned 'in order to threaten and correct them' (*tehdiden ve te'diben*)<sup>3</sup> or, very often, tortured in order to force them to confess their crimes.

Although in general the *shari'a* does not recognize as valid a confession obtained by force or threats,<sup>4</sup> torture was widely used in the Ottoman Empire to elicit an admission of guilt.<sup>5</sup> It is called *işkence* or *örf* (*'örf-i ma'rûf*), the latter term meaning literally '(accepted) [procedure of] secular State law' or, euphemistically, '(common) usage'.<sup>6</sup>

According to the Ottoman Criminal Code,<sup>7</sup> torture is to be applied when strong circumstantial evidence indicates a person's guilt and he is a suspect character (*müttehem*). Mere accusation (as for instance by the person who alleges that he has been wounded

<sup>1</sup> e.g. Bursa Sicilli, A 38, f. 71b; A 44, f. 76a. Cf. Selle, 57, § 4.

\* [pencil note:] On the admissibility of circumstantial evidence see Māwardī, 141, § 3. Cf. Dede Efendi, chap. iii (MS. 697, f. 70b et seq.; M. 'Arif, pp. 38-9, 42).

<sup>2</sup> Bursa Sicilli, A 32, ff. 72a-b, 73b, 84a; A 25, f. 39b.

<sup>3</sup> Ibid., A 32, f. 84a.

<sup>4</sup> Abū Yūsuf, 107. Some legists, however, ruled that such a confession is valid 'since obviously thieves do not confess willingly' (Topkapı Sarayı Archives, E 12079, end). On the use of force to obtain a confession according to the *shari'a* and the *siyāsa shar'īya* see Māwardī, 375, 377; Dede Efendi, MS. 697, ff. 70b et seq., 73a; M. 'Arif, pp. 39, 43, 52 et sqq.

<sup>5</sup> For the different forms of torture see Guer, ii. 162-3.

<sup>6</sup> See above, p. 168.

<sup>7</sup> OCC, §§ 43 (but later abolished as contrary to the *shari'a*), 82, 88-90. See also Mühimme Defteri, vol. 12, no. 441; vol. 21, no. 237.

by him or by someone who claims to have been his accomplice) is not enough to justify it. Though care must be taken that the tortured person does not die before his guilt is proved, no action for homicide can be brought if he does. A confession made under torture is valid if supported by 'signs' (*'alāyım*) of the suspect's guilt, and the *cadi* must not raise any objection to his being punished.<sup>1</sup>

Firmans of which copies have been preserved show that these regulations were applied in cases where the suspect was 'registered [in the law-court records] as having committed (?or been suspected of) a crime in the past' (*tö Ahmet-i sâbıka ile müseccel*).<sup>2</sup> Sometimes, however, suspects were tortured although they had no criminal record, particularly if neighbours testified that they were not law-abiding citizens.<sup>3</sup>

According to one *kânûn* statute and a firman,<sup>4</sup> torture was to be administered with the *cadi's* assent (*ma'rifet*). The suspects were handed over to the *ehl-i 'örf*, who applied it 'at the demand of the plaintiffs' or 'according to the Sultan's order' or 'in accordance with the Imperial *kânûn*'.<sup>5</sup>

The executive officers sometimes applied torture illegally, and orders were given to the *cadis* to prevent them from doing so.<sup>6</sup> A foreign observer in the early sixteenth century<sup>7</sup> alleges that in the towns the *subaşı*s first tortured the suspects and elicited admissions of guilt, and only then brought them before the *cadi*, who convicted them on the strength of such confessions. There is also evidence that people forced to make statements under torture later retracted them and admitted in the law-court that they had lied.<sup>8</sup>

No wonder then that many *müftis* took strong exception to the application of torture by the *ehl-i 'örf*. In particular, if the latter tortured an innocent person and as a result he died, the *müftis* declared them to be obliged—in contradiction to the regulation of the *kânûn*<sup>9</sup>—to pay blood-money (*diyet*); moreover, the private

<sup>1</sup> But see the case recorded in *Mühimme Defteri*, vol. 6, no. 625 (a *cadi* did not consider such confession valid).

<sup>2</sup> *Mühimme Defteri*, vol. 3, no. 1245; vol. 12, no. 441; vol. 14, no. 722; Bursa Sicilli, A 38, f. 9a (copy of firman to *sancakbeği* and *cadis*).

<sup>3</sup> *Mühimme Defteri*, vol. 3, no. 1307; Dağlıoğlu, no. 41.

<sup>4</sup> OCC, § 43; *Mühimme Defteri*, vol. 21, no. 237.

<sup>5</sup> Bursa Sicilli, A 21, f. 251a-b; A 25, f. 28b; *şüret-i sicill* in Başbakanlık Arşivi, Kâmil Kepeci catalogue, 677, f. 42b.

<sup>6</sup> Bursa Sicilli, A 66, f. 124a.

<sup>7</sup> Cantacasin, 211. Cf. also Menavino, 52.

<sup>8</sup> Bursa Sicilli, A 43, f. 92a.

<sup>9</sup> OCC, § 82 (2).

individual whose false accusation had led to the torture was to be punished with many strokes and a long prison term.<sup>1</sup>

#### 10. Sentence

After examining the evidence presented, the *cadi* either acquitted the accused (*berā'etine hüküm*) or convicted him of the crime (*hırsızlığına hüküm*).

If acquitted, a defendant was often required, 'in accordance with the 'örf',<sup>2</sup> to provide one or more bails (*kefil bi'n-nefs*), who made themselves answerable for his appearing again in court whenever summoned.<sup>3</sup>

On finding the accused guilty of certain offences the *cadi* sentenced him to chastisement (*ta'zîr*), but generally did not record in his register the number of strokes to be administered. This penalty was usually inflicted on the spot. In some cases the *cadi* recorded that he had sentenced the accused also to the payment of a fine.<sup>4</sup> Its amount is usually not mentioned in the court registers; but exceptionally it is stated that the *cadi* imposed one *akçe* for every stroke.<sup>5</sup> Besides these penalties, the *cadis* gave sentences of exposition to public scorn, imprisonment, and banishment. For homicide, theft, or wounding, the *cadi* passed the death sentence,<sup>6</sup> ordered the amputation of a hand,<sup>7</sup> or imposed blood-money, often stating the equivalent of the fixed *shari'a diyet* in current Ottoman money.<sup>8</sup>

In most criminal cases recorded in the court registers of the fifteenth and sixteenth centuries, however, no penalty is mentioned at all. Often it is not even stated whether or not the *cadi* found the defendant guilty. The only function the *cadi* seems to have fulfilled here was to establish the facts. At the demand of the prosecutor or the plaintiff, and for a fixed fee,<sup>9</sup> he entered the facts

<sup>1</sup> See a *fetvâ* of the Şeyhülislâm Ebu 's-Su'üd Efendi in Bayezit Libr., MS. Veliyüddin 1466, f. 126b; see also Belediye Libr., MS. Belediye 17, ff. 382a, 400b.

<sup>2</sup> Üsküdar Sicilli, vol. 4, f. 70a-b.

<sup>3</sup> See above, pp. 238 et sqq.

<sup>4</sup> Üsküdar Sicilli, vol. 1, f. 20b; vol. 2, f. 13a; Bursa Sicilli, A 25, f. 60b.

<sup>5</sup> e.g. Üsküdar Sicilli, vol. 6, f. 4a.

<sup>6</sup> See original *hüccets* dated 1102/1690-1 in Başbakanlık Arşivi, İbnülemin catalogue, Adliye 86.

<sup>7</sup> Hâcibzâde, f. 119b.

<sup>8</sup> For the text of such a sentence see Sâni, MS. Paris, f. 71b. See also Hâcibzâde, ff. 118a-119a.

<sup>9</sup> See above, p. 213. In certain cases the fee was to be paid by those authorized to collect the fine (MS. Nb, f. 31b).

in the records and on request, and again in return for a fee, issued a copy of the entry (*şüret-i sicill*) or a legal certificate (*hüccet-i şer'ıye*)<sup>1</sup> setting out the facts of the case (and sometimes also his sentence). If the same person was in future again charged with an offence, this registration served as proof of his criminal past (*tö Ahmet-i sâbıkâ*).<sup>2</sup>

At the conclusion of the trial the convicted persons were generally handed over to the *ehl-i 'örf* (*subaşı, voyvoda, muhtesib*, etc.). These received, either directly or through the private plaintiff, a *hüccet* of the *cadi* authorizing or requesting them to punish the offender.<sup>3</sup> Since the executive officers probably did not keep any records, very little is known about the penalties actually inflicted. European travellers<sup>4</sup> claim that they often did not carry out the *cadis'* sentences.<sup>5</sup>

One reason why in many cases the *cadis* did not sentence the accused to a specific penalty is that the result of their investigation was to be submitted to the Sultan, who by *firman* indicated the proper punishment. This procedure was mandatory if a fiefholder, *berât*-holder, or other 'servant' (*kul*) of the Sultan had committed a serious crime for which he was liable to capital or severe corporal punishment,<sup>6</sup> and in some other cases.<sup>7</sup> In actual practice many more criminal cases seem to have been submitted to the Sultan, especially cases of murder and robbery and other offences against public order and security. Often, it seems, the *cadi* (or governor) asked for the Sultan's decision because the accused could not (or could not adequately) be punished according to the *shari'a*. This happened, for instance, if there was not sufficient evidence to convict him,<sup>8</sup> or if the accused had merely made an attempt to commit a crime,<sup>9</sup> or if he had committed a crime repeatedly and his neighbours considered him a bad character.<sup>10</sup> In some of these cases the *cadi* first made an investigation and

<sup>1</sup> Also called *temessük* (Bursa Sicilli, A 21, f. 239b).

<sup>2</sup> See the *firman* in MS. Nd, ff. 56b-57b.

<sup>3</sup> Cf. OCC, § 88. For the text of such a *hüccet* (or *müräsele*) in later periods see *Sünbülzâde*, ff. 2a, 13a, 14b.

<sup>4</sup> e.g. Rauwolff, 40-1; Tavernier, i. 127; d'Arvieux, vi. 430; and others.

<sup>5</sup> For the various penalties inflicted see below, chapter IV.

<sup>6</sup> OCC, §§ 87, 123; *Mühimme Defteri*, vol. 7, no. 225; Ongan, nos. 1083-5.

<sup>7</sup> See OCC, §§ 21, 76, 77 (in Sa, etc.), 99.

<sup>8</sup> e.g. *Mühimme Defteri*, vol. 3, no. 851; vol. 21, no. 237.

<sup>9</sup> *Ibid.*, vol. 3, no. 168.

<sup>10</sup> *Ibid.*, vol. 7, no. 447.

suggested in his report that the accused be punished 'for the sake of public order' (*niẓām-i 'ālem için*) (and not 'in accordance with the *shari'a*').<sup>1</sup>

Usually, it may be assumed, the report (*i'lām*) of a *cadi* was not submitted to the Sultan himself but to a *kādi-asker* or the Grand Vizier. Above the *i'lām* this dignitary often noted his decision in the form of a *buyuruldu*, an order to a subordinate official.<sup>2</sup> (The Grand Vizier and, in *shari'a* law cases, the *kādi-askers* were authorized to order, by a *buyuruldu*, the issue of firmans in the Sultan's name.)<sup>3</sup> The *buyuruldu* registers<sup>4</sup> contain a large number of such decisions in criminal matters, giving orders to inflict torture or capital or severe corporal punishment, etc. Above some of the entries is found a note saying *hüküm yazıldı*, 'A firman has been written [to this effect]'.<sup>5</sup>

In other cases a private individual, such as the victim of a highway robbery, submitted a petition to the Sultan and, it appears, attached to it a *hüccet*, in which the *cadi* who had investigated the case certified that the criminals had confessed. After examining the *hüccet*, the *Qādi-asker* of Rümeli noted down (*işāret*), most probably on the *hüccet* or the petition, what penalty should be inflicted on them (amputation of their right hands and left feet). Thereupon a firman was sent to the *cadi* and to the *mütesellim* of the district where the crime had been committed ordering them to carry out this punishment.<sup>6</sup>

Finally, there is some evidence to show that the sentence was occasionally passed by the Sultan himself. There are, for instance, in the Turkish State Archives<sup>7</sup> several original documents, written in late 1010 and early 1011/1602, which deal with thieves who had confessed their crime in the law-court. On the lower part of longish sheets of paper were copied the facts of the case as entered in the *cadi's* records, together with the date and the names of the

<sup>1</sup> See the document cited in the following note.

<sup>2</sup> *I'lām* (original) of the *cadi* of Balıkesir dated Rebi' I 995/1587 in Başbakanlık Arşivi, Fekete catalogue, 1475; published by İ. H. Uzunçarşılı in *Bellekten*, v/19 (1941), 295.

<sup>3</sup> See KAO, p. 16.

<sup>4</sup> Such as *Mühimme Defteri*, vol. 2 for parts of the years 963-4/1556-7.

<sup>5</sup> e.g. *ibid.*, no. 536.

<sup>6</sup> Uluçay, *XVII. asırda*, 406-7 (firman of late 1084/1674). [pencil note:] See also *Mühimme Defteri*, vol. 3, nos. 168, 472; vol. 4, no. 1951; vol. 12, no. 523.

<sup>7</sup> Başbakanlık Arşivi, Fekete catalogue, 3468, 3469, 4158.

witnesses. Above this *şüret-i sicill* (or *hüccet*), the correctness of the copy was certified by the clerk and its date<sup>1</sup> added. In this form the documents were submitted to the Central Government. Then, it seems, the order *telhîş oluna*, 'Let a summary be made [for submission to the Sultan]', was written in the upper right-hand margin. Below it the case was stated again, generally in a form very similar to the *sicill* text, but in a larger and more easily legible hand. Finally, in the upper left-hand corner of the document, the Sultan (in these documents, Mehemmed III)<sup>2</sup> with his own hand (*haftt-i hümayün*) noted his decision, such as *şer'le ne lâzım gelürse oluna*, 'What is required by the *shari'a* shall be done', or *şer'le hakkında geline*, 'He shall be punished in accordance with the *shari'a*', or the like.

At first sight it is surprising that the Sultan should have dealt personally with such apparently trivial matters as (in one of these documents) a theft committed by a woman in a public bath.\* But it should be remembered that every subject had the right (though hardly the means) to bring his case before the Sultan and that in their administration of justice the Ottomans made no distinction in principle between trifling and important matters.<sup>3</sup>

## II. Appeal

According to the *shari'a*, the sentence, including the death sentence, of any *cadi* was final, and in general, unless it was contrary to the law, no appeal could be made against it.\*\* Consequently, no trial could be heard in an Ottoman *cadi's* court if the case had previously been examined and a sentence given (*bir def'a şer'le görülüb*, or *sorulub, faşl olmuş*),<sup>4</sup> except by special order of the Sultan. Even in that case the verdict was not subject to change provided that the sentence had been passed in accordance with the *shari'a*.<sup>5</sup>

<sup>1</sup> The dates show that the copies were made either immediately after or within a few weeks of the date of registration in the *sicill*, i.e. the day of the trial.

<sup>2</sup> For his handwriting see Uzünçarşılı, *Osm. Tarihi*, iii/2, resim 10.

\* [pencil note expanded:] On the other hand, this case perhaps involved a point of law: whether a public bath constituted a place of custody (*hırz*), so that the theft entailed a *hadd*-penalty (cf. Abū Yūsuf, 104; Bilmen, iii. 272, § 748).

<sup>3</sup> See also above, pp. 227-8. Similarly, the Imperial Divān dealt with the most trivial matters of general administration side by side with major state affairs.

\*\* [Juynboll, 321; Schacht-Bergsträsser, 117.]

<sup>4</sup> The standard formula in firmans. See also Barkan, 362-3, § 13.

<sup>5</sup> *Fetvās* of Ebu 's-Su'ūd (Horster, 52 (90); Selle, 20, § 3). See also Selle, 46 (98), § 7; 61-2, § 5.

In practice, however, a revision of the sentence could be, and often was, made by the governors and by high officials in the capital. It goes without saying that their decisions were usually not based on strictly legalistic considerations.<sup>1</sup>

Moreover, the principle of *mazālim* jurisdiction allowed certain forms of legal appeal against a *cadi's* sentence. The party considering itself wronged could appeal to the Sultan or the Grand Vizier by submitting a petition, and the judgment then given did not always confirm the *cadi's* sentence.<sup>2</sup> In particular, if a *cadi* did not act according to the *firmans* sent to him by the *ḫādī-ʿasker*, litigants could go to Istanbul and appeal to the latter, and he would intervene in their favour.<sup>3</sup>

<sup>1</sup> Deshayes, 219-20; d'Ohsson, iii, 220-2.

<sup>2</sup> Cf. Cantemir, 446-7. See also above, pp. 224-8.

<sup>3</sup> For an example, apparently in the early sixteenth century, see Belediye Libr., MS. M. Cevdet K 122, p. 146.

## IV

### PUNISHMENT

#### 1. *Introductory*

THE Ottoman *kānūn* does not systematically distinguish between the various degrees of criminal offences.<sup>1</sup> The only major distinction made is between 'grave offences' (*cürm-i ğalīz*), which generally entail capital or severe corporal punishment (*siyāset*), and all the others, for which chastisement (*ta'zīr*) or a fine or, very often, both (and/or exposition to public scorn, imprisonment, etc.) are to be inflicted. Sometimes, however, a third class of offences is mentioned separately—'petty offences' (*hurde*, or *cüz'î*, *cerāyim*; *mādūn şenāyi'*, *mādūn cerīme*), for which the *shari'a* prescribes chastisement and imprisonment.<sup>2</sup> According to the *kānūn*, these are mostly punishable with chastisement and light fines.<sup>3</sup> According to one *kānūn* at least,<sup>4</sup> a fine is regarded as a heavier punishment than exposition to public scorn.

#### 2. *Siyāset: capital punishment and severe corporal punishment*

##### (a) *The term\**

*Siyāset* is one of the most equivocal terms in Ottoman legal language. In its widest sense it seems to denote 'punishment' in general, which may include strokes and banishment.<sup>5</sup> As a

<sup>1</sup> Such a classification was made for the first time, under the influence of French law, in the Ottoman Penal Code of 1858: *cināyet* ('crime'), *cünha* ('délit'), *ķabāhat* ('contravention').

<sup>2</sup> *Mühimme Defteri*, vol. 70, no. 152. This and many other firmans (*ibid.*, vol. 14, no. 1358; vol. 55, no. 375; vol. 58, no. 402; vol. 78, no. 123) refer to two classes of offences only—'grave' and 'petty'.

<sup>3</sup> Barkan, 5, § 29; 71, § 48; 129, § 55. According to an '*adāletnāme* (Köprülü Libr., MS. II, 360, f. 91a; Uluçay, *XVII. asırda*, 167 [= *Belgeler*, ii/3-4 (1965), 106]), however, no fine whatever is to be collected.

<sup>4</sup> *Tarih Vesikaları*, no. 5, p. 337, § 16.

\* [This section, which was going to bring together various points mentioned elsewhere in the text, is incomplete and tentative.]

<sup>5</sup> See Barkan, 181, § 10; OCC, § 93. [pencil notes:] It may also refer to penal servitude on the galleys, as opposed to a fine (Refik, *Aşiretler*, no. 59). Cf. also

technical term, however, it generally means either execution\* or severe corporal punishment or both.

Execution is often called *şalb*. Though literally meaning 'crucifying', in the Ottoman *kānūn şalb* seems to be mostly synonymous with *asmak*, 'hanging'.<sup>1</sup> Very common is the term *şalb ve (ü) siyāset* or, more rarely, *siyāset ve (ü) şalb*,<sup>2</sup> an alliterative expression,<sup>3</sup> which signifies either the death penalty<sup>4</sup> or both it and severe corporal punishment (mainly the amputation of the hand).<sup>5</sup>

*Siyāset* may refer to a punishment inflicted in accordance with the *shari'a*,<sup>6</sup> as well as to one decreed by the *kānūn* (or, generally, by the Sultan's will).<sup>7</sup> As has been discussed above,\*\* penalties not in conformity with the *shari'a* and inflicted by the secular authorities are often said to be carried out *siyāseten*, i.e. 'as an administrative punishment'. . . .

### (b) Crimes punishable by death

Capital punishment is prescribed in the *kānūn* for a rather the phrase *siyāseten teşhîr* in OCC, § 49, n. 5. See too the heading in the V MSS. (above, p. 32).

\* [pencil note:] Cf. *yasa* in Persian, which in the Mongol period was also used in the sense of 'execution' (*ba-yasa rasānidān*, etc.).

<sup>1</sup> See OCC, § 66, n. 4; § 88, n. 3; cf. Bursa Sicilli, A 43, f. 84b (*kendü nefsinî şalb etmek*); Hācibzāde, f. 126a (*kendüni . . . cevîz ağacına şalb edüb*). The translations in Horster, 95 ('gekreuzigt') and in Mantran-Sauvaget, 88, § 9 and 101, § 8 ('l'exposition au pilori') are erroneous. [pencil note:] In the phrase *bārgîr maşlûb bulunub* (Bursa Sicilli, A 38, f. 40a) *maşlûb* seems to mean merely 'killed'.

<sup>2</sup> Barkan, 274, § 12; 286, § 53. This latter form proves that *şalb ve (ü) siyāset* cannot be a corruption of *şalb-i siyāset*, with the meaning 'execution as an administrative punishment'.

<sup>3</sup> Cf. below, *cürm ve (ü) (cürm-i?) cināyet, ta'zir ve (ü) te'dib, dem ve (ü) diyet*, at pp. 276, 271, 308 (n.\*) respectively, and also *seyf ve (ü) siyāset* at p. 209, above.

<sup>4</sup> e.g., Barkan, 315, § 17; Mühimme Defteri, vol. 3, no. 196; MS. Eb, f. 30a.

<sup>5</sup> Barkan, 136, § 28; 274, § 12; 286, § 53; Mühimme Defteri, vol. 6, no. 88.

<sup>6</sup> See OCC, § 15 (in Ea, etc.), § 72, n. 3; MTM, i. 504; Barkan, 180, § 28; Mühimme Defteri, vol. 10, nos. 76 and 208; vol. 12, no. 523; vol. 61, no. 192 (where it is synonymous with *kışâş*). [pencil note:] In some contexts, however, the word *siyāset* seems to be used in contrast to *shari'a*: thus the Kapudan Paşa attends to *aḥkām-i şeri'at ve umūr-i siyāset* (MTM, i. 538; cf. above, p. 210). Similarly, the passage translated above at p. 209 is perhaps to be interpreted 'the infliction of *shari'a* penalties (*ḥudūd . . . ta'zir*) and non-*shari'a* penalties (*siyāset*)'.

<sup>7</sup> In that case it is sometimes called *siyāset-i şāhi* (Üsküdar Sicilli, vol. 9, f. 23b). See also Barkan, 396, § 4 (*siyāset-i pâdişāhi*), and Bursa Sicilli, A 21, f. 239b (*siyāset-i sultāni*). In the penal law of 1254/1838-9 the term *siyāset-i 'örfiye* is used (R. Kaynar, *Mustafa Reşit Paşa ve Tanzimat*, Ankara, 1954, p. 296).

\*\* [See pp. 192 et sqq.]

limited number of crimes, so far as ordinary citizens are concerned. Homicide committed with a lethal weapon (*ālet-i cāriha* or *ālet-i ḥarb*)<sup>1</sup> is, in accordance with the *shari'a*, punishable with retaliation (*kisās*), but under certain conditions blood-money and a fine may be paid instead.<sup>2</sup> Arson, too, is punishable with death.<sup>3</sup> While a thief is generally to have his hand cut off or to be chastised and/or fined,<sup>4</sup> some versions of the Criminal Code<sup>5</sup> prescribe capital punishment for the theft of a horse, etc. Another statute<sup>6</sup> prescribes hanging for the stealing of a prisoner of war, luring away a slave or a boy,<sup>7</sup> breaking into a shop, entering a house [with intent to steal?], and repeatedly committing thefts. A provincial *ḵānūnnāme*<sup>8</sup> goes even further, laying down that thieves and robbers generally shall not be fined but be subjected to capital or severe corporal punishment unless, a very similar *ḵānūnnāme* for Arabkir adds,<sup>9</sup> 'the offence they committed is petty'.

Also punishable with death are many offences against public order and security,<sup>10</sup> the possession of fire-arms by civilians (in Egypt),<sup>11</sup> serious violations of market regulations,<sup>12</sup> counterfeiting,<sup>13</sup> acts of disobedience against the Sultan and the spreading of calumnies about him,<sup>14</sup> the illegal sale of grain and export of arms to foreign (Christian) countries,<sup>15</sup> etc. A large number of offences mentioned in the *Ḵānūnnāme* for Egypt<sup>16</sup> and in those for the various corps of soldiers<sup>17</sup> are also to be punished with *siyāset*, i.e., probably, death.

<sup>1</sup> See Mühimme Defteri, vol. 6, no. 625; Başbakanlık Arşivi, Kâmil Kepeci catalogue, 677, f. 6a. For the definition of such a weapon see the *fetvā* in Topkapı Sarayı Arşivi, E 12079 [cf. above, p. 185].

<sup>2</sup> OCC, § 41.

<sup>3</sup> OCC, § 92.

<sup>4</sup> OCC, §§ 64-73, 105, etc.

<sup>5</sup> OCC, § 66 (in Pb, etc.).

<sup>6</sup> OCC, § 74.

<sup>7</sup> According to a *fetvā* of Ebu 's-Su'ūd Efendi (Belediye Libr., MS. Belediye 71, f. 281a), it is in conformity with the religious law to execute someone who habitually commits sodomy with non-consenting boys.

<sup>8</sup> Barkan, 180, § 28.

<sup>9</sup> MS. Bb, f. 134a.

<sup>10</sup> OCC, § 46 (1) and (2); Bursa Sicilli, A 14, ff. 172b, 231b; A 42, f. 1b.

<sup>11</sup> Barkan, 356.

<sup>12</sup> Guer, ii. 183-4; Porter, ii. 109.

<sup>13</sup> Anhegger-İnalçık (and Beldiceanu, i), docs. 2, 5, 8, 9, 10; Evliyā Çelebi, i. 567.

<sup>14</sup> D'Ohsson, iii. 241.

<sup>15</sup> Mühimme Defteri, vol. 14, no. 969; Bibl. Nat., Paris, MS. Suppl. turc 69, ff. 190b-191b.

<sup>16</sup> Barkan, 355-87.

<sup>17</sup> Barkan, 248, § 8; 261, § 9; 398, §§ 15-16; 399, § 17; etc.; *TOEM*, 1329, suppl., 48.

Other crimes, not dealt with in the *kānūn*, were capital offences according to the *shari'a*; examples are heresy,<sup>1</sup> vituperation of the Prophet,<sup>2</sup> apostasy by a convert to Islam,\* etc.

The Sultan, the Grand Vizier, and the other viziers (including the provincial governors of vizier rank) had the right to put to death any of their officers or officials,<sup>3</sup> except members of the 'ulemā corps,<sup>4</sup> at their discretion, the legal justification for this authority being that such officials were *kuls* of the Sultan. They had the same right with regard to people who were accused of rebellion, fomenting sedition, and the like.<sup>5</sup> (Murād IV one day had fifteen to twenty high army officers executed for smoking tobacco, which he had forbidden.)<sup>6</sup> Nevertheless, as a matter of form, a *müfti* was sometimes first asked to issue a *fetvā* legalizing the execution.<sup>7</sup>

Other subjects, however, could not (in principle) be legally put to death, even by the Sultan, without a proper trial and conviction by a *cadi*;<sup>8</sup> but this fundamental rule remained largely ineffective until the reforms of Sultan Maḥmūd II in the nineteenth century.

### (c) *Methods of capital punishment*

In general, the Ottoman *kānūn* does not specify in what form the death penalty shall be inflicted. A few statutes prescribe hanging (*asmak*),<sup>9</sup> and some Imperial decrees either hanging,<sup>10</sup> impaling (*kazuğa urmak*),<sup>11</sup> decapitation (*boyun urmak*),<sup>12</sup> cutting

<sup>1</sup> Celalzāde, *Ṭabaḳāt*, ff. 118a-119b.

<sup>2</sup> Mühimme Defteri, vol. 7, no. 2263; vol. 10, no. 76; vol. 12, no. 523; Horster, 32-3 (74-5).

\* [*ET*, art. 'Murtadd' (Heffening).]

<sup>3</sup> Irrespective of whether they were former Christian subjects pressed in their youth into the Sultan's service under the *devşirme* system or born as free Muslims (see Mumcu, 62-7).

<sup>4</sup> See below, pp. 269-70.

<sup>5</sup> Hammer, *GOR*, vii. 375-6.

<sup>6</sup> Kātib Çelebi, *Mizān al-ḥaḳḳ*, 36 (trans. G. L. Lewis, 51-2). For other examples see Mumcu, 93 et seq.

<sup>7</sup> Tournefort, ii. 35; Olivier, i. 164; and see above, p. 197.

<sup>8</sup> Olivier, i. 171.

<sup>9</sup> OCC, § 74 (in Db, Ea, Fa, Gd, etc.), § 92 (in Fa). Cf. also DPC, § 1.

<sup>10</sup> Anhegger-İnalçık, pp. 5, 9, etc. (Beldiceanu, i. 67, 71, etc.).

<sup>11</sup> Mühimme Defteri, vol. 12, no. 441; MS. Ed, f. 67a (for highway robbers and thieves).

<sup>12</sup> The normal form of execution in the *shari'a* (see Ibn Taymiya, 86). Some Ottoman *fetvās* (e.g. Pîr Meḥmed, 337b) state that, according to the *shari'a*, execution is to be carried out by the sword, not by hanging (*şalb*).

the criminal into two (*iki biçmek*), or throwing him into the sea.<sup>1</sup> According to Ottoman mining regulations, dishonest supervisors, subconcessionaires, etc. are to be thrown into the pits, a form of punishment found in the earlier Serbian regulations.<sup>2</sup>

Stoning to death (*recm*), though prescribed in many Ottoman *fetvās* as the required penalty for certain cases of fornication,<sup>3</sup> seems to have been inflicted only in very rare cases.<sup>4</sup> Janissaries were often strangled and their bodies thrown into the sea.<sup>5</sup>

A singular form of execution was practised by the Janissaries who guarded the training-grounds (*ta'limhâne*) for archers, the famous Okmeydanı on the outskirts of Istanbul: they sometimes hung suspects by bowstrings on trees and used them as targets for their arrows.<sup>6</sup>

The *'ulemā* were generally exempt from capital punishment,<sup>7</sup> although in exceptional cases, mainly political, even *şeyhülislām*<sup>8</sup> were executed at the Sultan's order. The *'adāletnāme* of 1595<sup>9</sup> threatens cadis who do not inform the Sultan of the oppressive acts of the local executive officers with pounding to death in (stone) mortars (*dibekde döğilmek*).

This punishment of the *'ulemā* is also mentioned by contemporary European writers,<sup>10</sup> who give detailed descriptions of many further forms of execution, such as strangling (with the famous bowstring,\* or by a cord), flaying, 'ganching', burning, etc.<sup>11</sup>

<sup>1</sup> MS. Fj, f. 18b; MS. Eb, f. 109a (for soldiers). [pencil note:] For the case of a harlot apparently thrown into the sea see Mumcu, 140.

<sup>2</sup> Anhegger, 247, § 38; 258, § 78; 274; 485-6, § 29; Beldiceanu, ii. 254, § 45; 266, § 25.

<sup>3</sup> e.g. İbn Kemāl, in Belediye Libr., MS. M. Cevdet O 44, f. 52a-b; 'Abdu'r-Rahīm, in British Museum, MS. Or. 12463, f. 68a.

<sup>4</sup> Hammer, GOR, vi. 363-4 (a stoning in the Hippodrome in 1091/1680); cf. d'Ohsson, iii. 259.

<sup>5</sup> Na'imā, ii. 425 (v. 352).

<sup>6</sup> Evliyā Çelebi, i. 121.

<sup>7</sup> See below, pp. 269-70.

<sup>8</sup> e.g. Aḫizāde Hüseyn Efendi in 1634, Hocazāde Mes'ūd Efendi in 1656, and Seyyid Feyzullāh Efendi in 1703 (see Hammer, GOR, v. 168, 652; vii. 89; and the list of *şeyhülislām*s in Danişmend, iii, nos. 37, 49, 66). For the execution of other *'ulemā* see Mumcu, 126-9, 132.

<sup>9</sup> Köprülü Libr., MS. II, 360, ff. 90b-91a; Uluçay, XVII. asırda, 166 [= *Belgeler*, ii/3-4. 106].

<sup>10</sup> Rycaut, book II, chap. iv; Cantemir, 184-5, n. 25; de Tott, i. 28.

\* [pencil note:] In pre-Ottoman Turkish states the bowstring had been the instrument of execution for members of the royal house in order to avoid shedding their blood, see Fuad Köprülü, in *İkinci Türk Tarih Kongresi (İstanbul, 1937)* . . . *tebliğler*, Istanbul, 1943, p. 409, n. 58 and in *Türk Hukuk Tarihi Dergisi*, i (1944), 1-9. See also Mumcu, 118-19.

<sup>11</sup> Menavino (1505-14), 52; Postel (1549), 124-5; Dernschwam (1553-5), 69,

Their moral indignation at the cruelty of Ottoman criminal justice seems somehow to ignore some of the hardly less inhuman penalties inflicted at the time in Christian Europe.

The confiscation (*muşādere*) of a convicted offender's property, although practised from early periods of Islam, is not a *shari'a* penalty.<sup>1</sup> The Şeyhülislām Ebu 's-Su'ūd Efendi ruled in one of his *fetvās*<sup>2</sup> that the property left by non-Muslim brigands who suffered capital punishment must not be carried off as booty (and that their wives and children must not be made slaves). The Ottoman *kānūn* (for Egypt) too lays down<sup>3</sup> that the property of criminals put to death shall not be seized for the Public Treasury but handed over to their heirs, if they have any.

In the case of brigands and rebels, however, the men charged with their execution are allowed to seize their property,<sup>4</sup> or it may be confiscated for the Public Treasury.<sup>5</sup> Decrees of the fifteenth century also prescribe the confiscation of the property (*rızık*) of coiners sentenced to death.<sup>6</sup> If the person executed (or otherwise punished) was a 'slave' (*kul*) of the Sultan, his property used to be confiscated, since it was regarded as belonging to the ruler, his master. As an act of mercy, however, the Sultan sometimes left it, or part of it, to the dead man's family.<sup>7</sup>

#### (d) *Severe corporal punishment*

In Ottoman usage *siyāset* may, as mentioned before, also mean severe corporal punishment in various forms. The most common one is the *shari'a* penalty of the amputation of a hand.<sup>8</sup> Unlike the religious law, however, the *kānūn* imposes this punishment not

111-12, 141; Rauwolff (1573-7), 41; Schweigger (1578-81), 173 (with drawing); Mundy (1608-28), 55-6 (with drawing); Deshayes (1621), 222-3; Du Loir (1639-41), 179; Thévenot (1655-7), 130-1; Febvre (1670), *État*, 172-4; d'Arvieux (1653-83), i. 219-22; v. 274-7; Pouillet (1658), i. 153; Russell (1740-53), i. 333; Dallaway (1797), 33, 80; and many others. See also d'Ohsson, iii. 241, 267.

<sup>1</sup> See *IA*, art. 'Musādere' (Baysun).

<sup>2</sup> Original *fetvā* in the archives of Topkapı Sarayı, E 12078, published by Mumcu, doc. 18.

<sup>3</sup> Barkan, 362, § 13 (1). See also Ongan, no. 182.

<sup>4</sup> Barkan, 362, § 12.

<sup>5</sup> Mumcu, 140, n. 357; 149, 152.

<sup>6</sup> Anhegger-İnalçık, pp. 5, 9, 13, etc. (Beldiceanu, i. 67, 71, 75, etc.); Beldiceanu, ii. 256.

<sup>7</sup> Mumcu, 148-51, 160 et seq.

<sup>8</sup> See OCC, § 72 (in Va marg., Vc marg.); *TOEM*, 1329, suppl., 49.

only in certain cases of theft<sup>1</sup> but also for knifing people habitually<sup>2</sup> and for habitually forging decrees or legal certificates.<sup>3</sup> As an administrative punishment (*siyāseten*)<sup>4</sup> it was inflicted also for counterfeiting as well as for clipping (*kırmak*) coins.<sup>5</sup>

Other severe corporal penalties in the *ḵānūn* are unknown to the *shari'a*: castration for abducting (or attempting to abduct, or complicity in abducting) a woman, girl, or boy,<sup>6</sup> and, according to one manuscript, for sodomy;<sup>7</sup> the branding of the forehead for procuring and for fraud;<sup>8</sup> according to a rare statute,<sup>9</sup> the branding of the vulva of a woman or girl who voluntarily elopes with a man; the slitting of the nose<sup>10</sup> or cutting off of the ear of an army deserter in the case of a first offence;<sup>11</sup> and, according to non-standard *siyāsetnāmes* only,<sup>12</sup> the cutting off of the nose of a professional procuress. (The last-mentioned penalty, it may be noticed, is prescribed for the same offence in the Dulkadır Penal Code,<sup>13</sup> which also imposes castration for abduction.)<sup>14</sup>

On the other hand, it cannot be mere coincidence that all the Ottoman statutes which lay down severe non-*shari'a* penalties for civilians were later superseded by milder regulations<sup>15</sup> or explicitly abolished.<sup>16</sup>

From the evidence found in cadis' registers and in other Ottoman (and European) sources in regard to the actual infliction of punishment, it is not clear how common was in normal practice the *shari'a* penalty for theft, i.e. the amputation of a hand or foot. This penalty seems to have been often replaced either by more lenient punishment (strokes, fines, etc.) or by more severe penalties (execution).<sup>17</sup> This does not mean, of course, that it was abolished.

<sup>1</sup> OCC, §§ 65 (in Pb, etc.), 66, 68 (in Ta).

<sup>2</sup> OCC, § 49.

<sup>3</sup> OCC, § 98 (2).

<sup>4</sup> Bursa Sicilli, A 26, f. 398b.

<sup>5</sup> See firman of Şafer 902/1496 in Bursa Sicilli, A 26, f. 398b and firman of 986/1578 in Dağlıoğlu, no. 132. See also Mühimme Defteri, vol. 7, no. 1393.

<sup>6</sup> OCC, §§ 10, 11, 15 (1) (in Da, Db).

<sup>7</sup> OCC, § 32 (in Ra).

<sup>8</sup> OCC, §§ 75, 98 (1). According to European observers (Menavino, 53; Du Loir, 81; etc.), also for bearing false witness.

<sup>9</sup> OCC, § 11.

<sup>10</sup> Cf. also Anhegger-İnalçık, p. 31 (Beldiceanu, i. 95).

<sup>11</sup> TOEM, 1329, suppl., 48-9.

<sup>12</sup> OCC, § 57 (in Da, Db).

<sup>13</sup> DPC, § 14 (in A).

<sup>14</sup> DPC, § 15.

<sup>15</sup> OCC, §§ 10 (so far as accomplices are concerned: see § 12); 11 (see version in Ta, Va, Vc marg.); 15 (1) (in Da, Db), 32 (in Ra), 57 (in Da, Db) (see all other versions); 75 (see §§ 30 and 57).

<sup>16</sup> OCC, § 98 (1), § 98 (2). [See above, p. 149.]

<sup>17</sup> Cf. Russell, i. 334; d'Ohsson, iii. 266.

For example, a firman of 995/1587<sup>1</sup> orders the amputation of a non-Muslim's hand for theft; in the following century a firman<sup>2</sup> gives orders, on the recommendation of the Kāḍī-'asker of Rūmēli, that the right hands and left feet of robbers who had confessed their deeds are to be cut off; and a firman of 1135/1722-3<sup>3</sup> refers to a thief who had one hand and one foot amputated.

(e) *The procedure for carrying out siyāset punishment*

Capital or severe corporal punishment is to be inflicted only after the offender has been duly tried and convicted by the *cadi*, who issues a legal certificate (*hüccet-i şer'īye*) to this effect to the executive officers (*ehl-i 'örf*) and records the case in the register (*sicill*) of his court.<sup>4</sup> According to a provincial *ḵānūnnāme*,<sup>5</sup> the local governor is not to adjudicate in a trial instead of the *cadi*, and the *subaşı* must not carry out any penalty not imposed by a *cadi*; if, after being warned, he goes on doing so, he will be dismissed and even subjected to *siyāset* punishment. A person unjustly subjected to severe corporal punishment, such as amputation of the hand, by an executive officer can sue him and claim compensation (*dīyet*) from him.<sup>6</sup>

Generally, *siyāset* punishment is to be carried out by the executive officers (*ehl-i 'örf*),<sup>7</sup> such as a *subaşı* or a *voyvoda* (both often called *za'im*)<sup>8</sup> acting on behalf of the governor (*beğlerbeği* or *sancakbeği*),<sup>9</sup> a special commissioner of the Sultan (*yasakçı* or *yasak kuh*),<sup>10</sup> *mübāşir*,<sup>11</sup> a *kāşif* (in Egypt),<sup>12</sup> and others.

On certain lands that are 'free', the governors' *ehl-i 'örf* are instructed to inflict the punishment in co-operation (*ma'rifet*) with

<sup>1</sup> Mühimme Defteri, vol. 62, no. 228.

<sup>2</sup> Uluçay, *XVII. asırda*, 406-7.

<sup>3</sup> Kalebend Defteri 1, p. 2.

<sup>4</sup> OCC, §§ 88, 116; Barkan, 71, § 50; 264, § 14; 286, § 53; 314, § 16; etc.; MS. Kd, f. 16a; Mühimme Defteri, vol. 67, no. 140; Bursa Sicilli, A 51, f. 55a.

<sup>5</sup> For Egypt: Barkan, 382, § 41.

<sup>6</sup> Uluçay, *XVII. asırda*, 347.

<sup>7</sup> OCC, § 88.

<sup>8</sup> Cf. Celälzāde, *Ṭabaḳāt*, f. 87a; Konya Sicilli, vol. 1, p. 144.

<sup>9</sup> Barkan, 70, § 44; 274, § 12; Bursa Sicilli, A 51, f. 55a (appointment of *subaşı*); MS. Fj, f. 18b (appointment of governor). For the two kinds of *subaşı*, the *sancak subaşı* and the *toprak subaşı*, see *ITED*, iii (1960), 123.

<sup>10</sup> Anhegger-İnalçık, pp. 80, 83, 85 (Beldiceanu, i. 153, 155, 157; cf. 171); Beldiceanu, ii. 256, § 5. See also OCC, § 125; Barkan, 104-5, § 1.

<sup>11</sup> Often a *çavuş* of the Palace (Mühimme Defteri, vol. 12, no. 944). See also above, p. 228.

<sup>12</sup> Barkan, 362, §§ 12, 13 (1); 364, § 17.

the local fief-holders, *emîns*, tax-farmers (*mültezim*), or officers of the nomads and soldiers.<sup>1</sup>

For military and, it seems, other offences too, *siyâset* punishment is to be inflicted on soldiers by their own officers.<sup>2</sup> A Janissary liable to capital punishment was handed over to the '*asesbaş*'. On receipt of an Imperial order to carry out the punishment, he was strangled after the evening prayer and his body, with a stone tied to the neck, was thrown into the sea. A Janissary's execution used to be announced by a cannon-shot, but this was prohibited in the seventeenth century.<sup>3</sup>

Members of nomad tribes (*yürük*) suffered *siyâset* punishment at the hands of their own officers.<sup>4</sup>

Criminals who were according to the *shari'a* subject to retaliation (*kıyâs*) by the victim or his next of kin seem in Ottoman practice to have mostly been punished by the *ehl-i 'örf*.<sup>5</sup> The '*adâletnâme* of 1595<sup>6</sup> lays this down as a general rule. In the eighteenth century de Tott claims<sup>7</sup> that whereas in the Crimea the next of kin carry out retaliation themselves, in Turkey they only attend the execution. Significantly, *kıyâs* and *siyâset* (or *katl* by the public executioner) are in Ottoman usage often synonymous terms.<sup>8</sup>

The executioner (*cellâd*)<sup>9</sup> was often a man of the *subaş*,<sup>10</sup> sometimes a night-watchman ('*ases*)<sup>11</sup> or (in Istanbul) a subordinate of the Muḥzir Ağa.<sup>12</sup>

<sup>1</sup> Mühimme Defteri, vol. 23, no. 250; Barkan, 136, § 28; 264, § 14; 247, § 7; Maliye Defteri 546, p. 3; 2775, p. 1451; Refik, *Aşiretler*, no. 37. But see Mühimme Defteri, vol. 3, no. 355.

<sup>2</sup> *TOEM*, 1329, suppl., 49; Barkan, 248, § 8; 261, § 9; MS. Eb, f. 109a; Bursa Sicilli, A 32, f. 68b; *MTM*, i. 510.

<sup>3</sup> Hezârfenn, MS. Paris, ff. 88b-89a. But see Russell, i. 333 (for Aleppo).

<sup>4</sup> MS. Kd, ff. 15b-16a; MS. Ia, f. 67b; MS. Id, p. 14; *MTM*, i. 307-8.

<sup>5</sup> Already Mâwardî (p. 398) holds that the next of kin must not carry out retaliation himself without the ruler's permission.

<sup>6</sup> Köprülü Libr., MS. II, 360, f. 91a; Uluçay, *XVII. asırda*, 166-7 [= *Belgeler*, ii/3-4. 106]. See also British Museum, MS. Or. 9503, ff. 52b-53b.

<sup>7</sup> De Tott, i. 350-1; see also i. 200.

<sup>8</sup> e.g. Mühimme Defteri, vol. 61, no. 192; Hezârfenn, MS. Paris, f. 88a-b.

<sup>9</sup> See Bursa Sicilli, A 42, f. 1b. For the executioners, sometimes called *meydân ustaları*, and their chief (*cellâd-baş*) in later periods see Bibl. Nat., Paris, MS. Suppl. turc 1027, f. 193a and Evliyâ Çelebi, i. 518. Cf. also White, i. 129.

<sup>10</sup> Schweigger, 174.

<sup>11</sup> Bursa Sicilli, A 44, f. 45a; Evliyâ Çelebi, i. 517; Nürî, 901-2 (the '*asesbaş*' in Istanbul was a Janissary officer). For the executioners in the Sultan's Palace see Mumcu, 118.

<sup>12</sup> Mumcu, 139. [He too was a Janissary officer, see, e.g., Gibb-Bowen, i. 325.]

Capital and severe corporal punishment are to be inflicted *yérinde* (*mahallinde*), i.e. at the place where the crime was committed. After the offender is convicted, it is strictly forbidden to take him for punishment to another *cadi's* district or to any other place, even his permanent residence.<sup>1</sup> The reason for this is probably that it was feared that he might find a way to evade punishment. If a criminal liable to execution escapes from prison by bribing his jailer (a *vojvoda*, 'āmil, etc.), the latter is to recapture him or to be executed in his stead.<sup>2</sup>

There seem to have been few fixed places for public executions. According to eighteenth- and nineteenth-century European writers,<sup>3</sup> it was often carried out at the scene of the crime. Tradesmen often paid the hangman for not performing his office near their shop. A firman of 992/1584 prohibits the execution of criminals at Bursa in front of a caravanserai and shops which belong to the waqf, since guests and customers may cease to come there and thus reduce the income of the endowment.<sup>4</sup> In later periods at least, criminals in Istanbul were often executed at the Imperial Gate (*Bāb-i hümayün*), the first gate of the Sultan's Palace,<sup>5</sup> or below the nearby *Alay köşkü*,<sup>6</sup> opposite the Sublime Porte (*Bāb-i 'ālī*),<sup>7</sup> or near the so called *siyāset çeşmesi* in the Imperial Palace.<sup>8</sup> Sometimes executions were carried out in front of a Christian church.<sup>9</sup>

According to a seventeenth-century European source,<sup>10</sup> no executions were carried out during the month of Ramazān.

After the execution of officials, rebels, and brigands, their heads were often sent to Istanbul and exposed there to public view.<sup>11</sup> The corpses and severed heads of those executed in Istanbul too were frequently exposed, those of non-Muslims in a particularly ignominious fashion.<sup>12</sup>

<sup>1</sup> OCC, § 88; Barkan, 264, § 14; 268, § 10; 286, § 53; etc.; MS. Eb, f. 33a.

<sup>2</sup> Barkan, 397, § 9; Đurđev, *Kanuni*, 50; and, more generally [see above, p. 236 and n. 1], Mühimme Defteri, vol. 7, no. 261.

<sup>3</sup> Driesch (1719-20), 384; Lüdeke (1771), i. 306-7; de Tott (1755-74), i. 200; Dallaway (1797), 80; White (1844), i. 130-1.

<sup>4</sup> Dağlıoğlu, no. 181. <sup>5</sup> See *EP*<sup>2</sup>, art. 'Bāb-i Hümayün' (Heyd).

<sup>6</sup> See Uzunçarşılı, *Saray Teşkilâtı*, 25.

<sup>7</sup> Copy of late-eighteenth- or early-nineteenth-century decree in Bibl. Nat., Paris, MS. Suppl. turc 1027, f. 193a. <sup>8</sup> Uzunçarşılı, *Saray Teşkilâtı*, 23.

<sup>9</sup> Mumcu, 122.

<sup>10</sup> Febvre, *État*, 71.

<sup>11</sup> Mumcu, 122-4, 140. For the texts of placards exposed with the severed heads and stating the crimes of the executed officials see Mumcu, docs. 5, 8.

<sup>12</sup> D'Ohsson, iii. 241; White, i. 130.

The corpse of a person put to death, including the clothes, belonged to the executioner (*cellād*); the relatives could buy it from him for a price varying in accordance with the dead person's rank.<sup>1</sup>

(f) *Special cases*

If a fief-holder, 'ālim, official, soldier, or other 'slave' (*kul*) of the Sultan committed a serious crime, he must be imprisoned and the matter be submitted to the Sultan. In the case of fief-holders, the *sancakbeği* or *cadi* had first to report to his *beglerbeği*. If after a thorough investigation the latter was convinced of the guilt of the accused, he was to imprison him. No penalty was to be inflicted before an order had been received from Istanbul.<sup>2</sup>

If a fief-holder incurred *siyāset* punishment (but not if he had committed a minor offence), his fief was to be given to someone else.<sup>3</sup> Similarly, religious and waqf officials appointed by *berāt* who were guilty of a major crime were to be deprived of their posts.<sup>4</sup>

In order to ensure a certain degree of supervision, the provincial authorities were, at least in the sixteenth century, enjoined to draw up and submit periodically, every four months or every year, a detailed list of the criminal cases they had dealt with, the penalties, especially capital and severe corporal punishment, they had inflicted and the property they had seized from the criminals. Governors who in their administration of criminal justice violated the *shari'a* and the *kānūn* were threatened with punishment.<sup>5</sup>

Out of respect for religion and its functionaries, members of the 'ulemā class were generally not liable to any *siyāset* punishment.<sup>6</sup> As will be discussed below,<sup>7</sup> the penalties they suffered were not

<sup>1</sup> D'Ohsson, iii. 241.

<sup>2</sup> OCC, § 87; § 123, note (Lb marg.); Barkan, 96, § 24; 180, § 28; Dağhoğlu, no. 30 (text of such a *buyuruldu*); no. 66 (firman); MS. Eb, f. 53a-b.

<sup>3</sup> Barkan, 267, § 4; MS. Sb, f. 40a; MS. Eb, ff. 52b (better version in MS. Ed, f. 62b), 53a-b, 130b. But according to a firman of 967/1568, a *sipāhi* (or other soldier) is to be deprived of his fief (or *dirlik*) merely for drinking wine (Mühimme Defteri, vol. 7, no. 1691).

<sup>4</sup> OCC, § 123; cf. Barkan, 180, § 28.

<sup>5</sup> Edremit Sicilli, 42/1177, f. 25a (firman of Ramazān 921/1515 to the Sancakbeği of Karası); Bursa Sicilli, A 42, f. 142a (firman of Ramazān 950/1543 to the Sancakbeği and the *cadis* of Bursa). See also Barkan, 365, § 18 (for Egypt).

<sup>6</sup> See Hezārfenn, MS. Paris, f. 135a.

<sup>7</sup> See pp. 274, 289.

even strokes or fines but dismissal and banishment.<sup>1</sup> From the late sixteenth century, however, governors and other high secular officials gave orders for the hanging in public of cadis and other 'ulemā. Firmans<sup>2</sup> had to be issued to prohibit this and to ensure that, if accused of crimes, 'ulemā were tried only by the *ḫādī-askers* in the Imperial Divān.\*

Sometimes exiled 'ulemā were secretly poisoned or otherwise put to death by order of the Sultan.<sup>3</sup> Some rebellious 'ulemā in the early eighteenth century, it is said, were first granted a horse-tail (*tuğ*), the standard of a military governor; they could then be 'liquidated' like any other 'man of the sword'.<sup>4</sup>

For counterfeiting, even a former cadi could be sentenced to have his hand cut off.<sup>5</sup>

### (g) Bedel-i siyāset

Offenders sentenced to *siyāset* punishment are not to pay any fine in addition.\*\* Nor may their punishment be commuted to the payment of a fine (*bedel-i siyāset*). The cadis are warned to prevent such abuse by the *ehl-i 'orf*; if they are not able to do so, they are to report such cases to the government.<sup>6</sup> If a *sancakbeği* releases a person who deserves *siyāset* punishment without the cadi's consent, the *beğ* shall be considered 'guilty' and his men who let the criminal go shall be liable to *siyāset*.<sup>7</sup>

The innumerable firmans in this matter<sup>8</sup> indicate that these prohibitions were very often ignored by the executive officers. The latter naturally preferred collecting a fine (or a bribe) to the infliction of the legal *siyāset* penalty, though they thereby obviously weakened the deterrent effect of the criminal regulations.<sup>9</sup>

<sup>1</sup> See Dağlıoğlu, no. 80 (firman of Rebi' I 976/1568).

<sup>2</sup> e.g. a firman of 1011/1602-3 published in Ferīdūn, ii. 225-6 and copied in Aḥmed Luṭfī, 65-9. \* [See above, pp. 221-2.]

<sup>3</sup> Uzunçarşılı, in *TM*, v. 244; Zinkeisen, vi. 24; de Crouzenac, 22.

<sup>4</sup> *Relation*, 121, 125-7; Perry, 106-9; Pococke, i. 170; Toderini, i. 42. For the punishment of 'ulemā by being pounded to death in a mortar see above, p. 263.

<sup>5</sup> Mühimme Defteri, vol. 7, no. 1393.

\*\* [pencil note:] See below, p. 278. But see the (exceptional) provision in OCC, § 65 (reading of Ph).

<sup>6</sup> Barkan, 71, § 44; 180, § 28; 274, § 12; etc.

<sup>7</sup> *Ibid.*, 27, § 21.

<sup>8</sup> e.g. Mühimme Defteri, vol. 3, nos. 120 and 1399; vol. 78, nos. 4012, 4013; MS. Nb, f. 32a; MS. Eb, ff. 30a-31a [= *Belgeler*, ii/3-4. 111-12]. See also Lüdeke, i. 306-7.

<sup>9</sup> The public disorder resulting from this abuse (in relation to the *ḫudūd* penalties of the *shari'a*) was already deplored by Ibn Taymiya in the early-

Sometimes, however, the term *bedel-i siyāset* is apparently used to mean some type of fine.<sup>1</sup> It may perhaps refer to a fine exacted when the *siyāset* punishment could not be inflicted for lack of adequate proof<sup>2</sup> or because no private plaintiff had come forward and demanded the penalty.<sup>3</sup> In the latter circumstance, however, the imposition of a fine was prohibited and it was ordered that the accused be sent for punishment to Istanbul. An entry of 950/1543-4 in the register of the *cadi* of Bursa<sup>4</sup> mentions that a *solak* farmed out the *bedel-i siyāset* of certain places from the *subaşı* (*za'im*) of Bursa, but that these dues had been abolished by *firmans*.

### 3. *Ta'zīr*: the 'bastinado'

In Ottoman usage *ta'zīr* generally means corporal chastisement, i.e. strokes.\* Exceptionally, the term *ta'zīr bi'l-ḍarb* is used to distinguish it from *ta'zīr bi'l-māl*, i.e. fines,<sup>5</sup> *ta'zīr bi'l-teḥḥīr*, i.e. exposition to public scorn,<sup>6</sup> and *ta'zīr* in its widest sense, i.e. discretionary punishment by order of the ruler, which may even include execution (*ta'zīren ḳatl*).<sup>7</sup>

Often found as synonyms of *ta'zīr* are the vaguer terms *ḥaḳḳından gelmek*<sup>8</sup> or *te'dīb* (also *te'dīb ve (ü) ta'zīr* or *ta'zīr ve (ü) te'dīb*),<sup>9</sup> 'to punish'. In fifteenth-century decrees<sup>10</sup> *söküdmek* (*sekidmek*) may have been used in the same meaning.

The Ottoman Criminal Code lays down that unlike the *siyāset* punishment (see above) *ta'zīr*, being a *shari'a* punishment, is to fourteenth-century Mamlūk state (see *al-Siyāsa al-shar'iya*, 74; trans. Laoust, 67).

<sup>1</sup> Bursa Sicilli, A 51, f. 16a (a case of attempted fornication).

<sup>2</sup> Barkan, 27, § 21; 71, § 44.      <sup>3</sup> MS. Nb, f. 32a (firman of 999/1590-1).

<sup>4</sup> Bursa Sicilli, A 42, f. 114a.

\* [pencil notes:] On *ta'zīr*, see Māwardī, 399-403. For a *Risāla muta'allika bi'l-ta'āzīr*, by Çivizāde (? Muḥiyü 'd-Dīn, d. 954/1547, or his son, d. 995/1587), see Süleymaniye Libr., MS. Esad Ef. 697, ff. 41b-64b.

<sup>5</sup> MS. Bd, f. 208a; Barkan, 49, § 8; Lugal-Erzi, 94.

<sup>6</sup> Debbāğzāde, 287-8.

<sup>7</sup> *Fetvā* of Şeyḫülislām 'Abdu'llāh Efendi in firman of late Cumādā I 1140/1728, published by Münir Aktepe in *TD*, viii/11-12, 77-9. For the controversy whether the *shari'a* permits such punishment see Ibn Ḳayyim al-Jawziya, *Ṭuruḳ*, 124-5.

<sup>8</sup> OCC, §§ 58, 61.

<sup>9</sup> OCC, § 35; Barkan, Index, s.v. 'Te'dīb'; Bursa Sicilli, A 44, f. 59a. For Arabic *adab* in the meaning of discretionary punishment see Abū Yūsuf, 89.

<sup>10</sup> Anhegger-Inalcık, pp. 7, 13-15, 64, 73; p. viii, n. 1a; Beldiceanu, ii. 329, last line.

be carried out by the *cadi*.<sup>1</sup> It was left to his discretion how many strokes were to be administered in each case;<sup>2</sup> the *kānūn* does not fix their number. The only exception is the penalty for damage done by animals to crops etc.,<sup>3</sup> prescribed in a statute which originally<sup>4</sup> did not form part of the penal code; in this case the reason may be that the number of strokes is fixed in accordance with the number and type of animals involved.

Unlike Ottoman law, however, the Dulkadır Penal Code<sup>5</sup> prescribes the number of strokes also for the drinking of wine and for false accusation of fornication (*kaḫf*), in both cases 80 strokes. But this is the punishment laid down in the *shari'a* as a *ḥadd* penalty (not *ta'zīr*): it is in Ottoman sources often called *ḥadd (v)urmak*, and was inflicted for these offences in the Ottoman Empire too.<sup>6</sup>

After a person had been condemned to *ta'zīr* punishment, the strokes were generally administered on the spot, in or near the law-court, i.e. in the presence of the *cadi*,<sup>7</sup> in the courtyard of the Grand Vizier's palace, or even in (or near) the hall of the *Dīvān*.<sup>8</sup> Only afterwards was the offender, if the sentence required it, handed over to the *ehl-i 'örf* who were entitled to collect a fine from him.<sup>9</sup>

In many cases, however, the defendant was not brought before a *cadi* at all but was given the strokes by order of an executive officer (the Grand Vizier, the *Yeñiçeri Ağası* or another Janissary

<sup>1</sup> *Te'dīb* punishment of soldiers, which in many cases may also have been in the form of strokes, was, however, inflicted by the offenders' officers (Barkan, 355, § 1; 357, § 3; 359, § 5).

<sup>2</sup> See OCC, § 30.

<sup>3</sup> OCC, § 108.

<sup>4</sup> See Aa (and Ab, Ba) [and above, pp. 13-14].

<sup>5</sup> DPC, § 39 (2) and (3).

<sup>6</sup> Trabzon Sicilli, 42/1815, ff. 11a, 12b (Şevvāl 964/1557); Debbāğzāde, 290; *Ziyā ed-Dīn*, 153. For fornication by a non-*muḫṣan* 100 strokes were to be administered as *ḥadd* punishment (*Ziyā ed-Dīn*, 150 [cf. Juynboll, 301-2]).

<sup>7</sup> Barkan, 265, § 3; Bursa Sicilli, A 32, f. 6b; Üsküdar Sicilli, vol. 1, f. 8b. The strokes were administered by the *muḫẓir* of the law-court (Hasköy Sicilli, vol. 1, p. 33), by the *ağa* of the offender (a soldier) in the court (Trabzon Sicilli, 42/1815, f. 12b), etc. Cf. d'Arvieux, i. 445; vi. 430.

<sup>8</sup> Deshayes, 210; d'Ohsson, iii. 363. In the Imperial *Dīvān* the punishment was inflicted by *kapucıs* of the Palace, elsewhere by the *Muḫẓir Ağā*'s men (*MTM*, i. 510).

<sup>9</sup> Barkan, 265, § 3; Bursa Sicilli, A 35, ff. 362b, 399a; A 41, f. 20a. Sometimes the offender disappeared after undergoing the *bastinado* without paying his fine (*ibid.*, A 36, f. 38b).

officer, a governor, *subaşı*, *muhtesib*, *yasakçı*, etc.), often immediately after arrest and on the spot.<sup>1</sup>

According to the *kānūn*, the *ta'zir* punishment was carried out by beating the offender with a stick (*ağaç*, *değnek*, *çomak*). More specifically, an *ihtisāb* regulation<sup>2</sup> prescribed that the strokes were to be administered on the soles of the offender's feet (*tabanına*)—the famous bastinado (*falaka*). (Evliyā Çelebi, however, mentions<sup>3</sup> that the '*asesbaşı* and *subaşı* in Istanbul punished criminals with the scourge (*kırbac*) and lash (*tāziyāne*.)

The very common spectacle of the bastinado<sup>4</sup> has been described in great detail by many European observers.<sup>5</sup> Generally, the culprit was laid on the ground and his feet were immobilized between a stout pole or board (*falaka*) and a rope passed through two holes at its ends. Two men lifted the pole so that only the offender's shoulders touched the ground. Two others then inflicted strokes on his bare soles (and other parts of the body) with long pliant sticks about one finger thick. A seventeenth-century Turkish miniature<sup>6</sup> depicting a raid on a tavern in Istanbul shows a fifth man, who, perhaps, is counting the strokes.

According to many Muslim legists of the Ḥanafī school, *ta'zir* as discretionary punishment must not exceed 39, 75, or 79 strokes, but Abū Yūsuf is reported to have allowed more than 100 to be given.<sup>7</sup> An Ottoman *müfti*<sup>8</sup> demanded that in fixing the penalty the *cadi* should take into consideration, besides the crime committed, the status of the offender and his endurance.

<sup>1</sup> *MTM*, i. 503-5. See also above, pp. 231-2.

<sup>2</sup> *Tarih Vesikaları*, no. 5, p. 336, § 12.

<sup>3</sup> Evliyā Çelebi, i. 121. See also d'Ohsson, iii. 256-7.

<sup>4</sup> See *EI*<sup>2</sup>, art. 'Falaka' (Lecomte).

<sup>5</sup> Bassano (1537), 28 (63); Busbecq (1555-62), 155-6; Dernschwam (1553-5), 69; Rauwolf (1573-7), 42; Schweigger (1578-81), 174; Du Loir (1639-41), 187; Thévenot (1655-7), 129-30; de Dreux (1665-9), 131; Le Brun (1678-84), 83, 138; de Saumery (1719), ii. 102-5; Lüdeke (1771), i. 305-6; Slade (1829-31), ii. 47; and many others.

<sup>6</sup> T. Menzel, *Mehmed Tevfik, Das Abenteuer Baudem's*, Berlin, 1911, frontispiece; also in F. Taeschner, *Alt-Stambuler Hof- und Volksleben*, i, Hanover, 1925, pl. 23, and in Pallis, Fig. 36.

<sup>7</sup> *Fetvā* of an early-eighteenth-century *şeyhülislām* in *Arşiv Kılavuzu*, ii, doc. 22. [pencil notes expanded:] The *ta'zir* punishment thus exceeded the maximum number of strokes inflicted as *ḥadd*, as some (Māliki) jurists had considered permissible (*Mu'in al-ḥukkām*, 191). According to d'Ohsson (iii, 270 n.), such penalties exceeding the generally accepted legal maximum had been permitted by some *müftis* and were termed *ta'zir-i şedid*.

<sup>8</sup> Pir Mehmed, 68a.

In practice, the number of strokes administered was often much higher than the legal maximum permitted by the *shari'a*. It was, of course, greatly to the interest of the executive officers that the *cadi* should impose a large number of strokes, since in many cases the amount of the fines they received depended on it.

The Ottoman *cadis*, when recording a *ta'zir* punishment in their registers, generally do not mention the number of strokes given. But an Ottoman document refers to 200 strokes,<sup>1</sup> and European travellers mention still heavier penalties, of up to 300, 400, and even 500 strokes.<sup>2</sup> People given such severe punishment were unable to walk for a long time, and some even died as a result of the beating.<sup>3</sup> On the other hand, it often happened that some person present interceded in favour of the offender before he had received the full number of strokes.<sup>4</sup>

In accordance with the *shari'a* rule for *ta'zir* punishment,<sup>5</sup> Muslims and non-Muslims, free Muslims and slaves, civilians and soldiers, men and women were liable to the same penalty; women, however, were generally beaten on the buttocks.<sup>6</sup>

The only people not to be subjected to this degrading punishment (just as they were not subject to fines)<sup>7</sup> were religious dignitaries and waqf officials (*cadis*, *müderries*, *şeyhs*, *hatıbs*, *imāms*; *mütevellīs*, *nāzırs*, and the like) and, probably, fief-holders, who held their office on the strength of an Imperial *berāt*; they were only to be severely reprimanded by the *cadi* and warned not to commit their offence again.<sup>8</sup> However, an Ottoman *şeyhülislām* ruled in a *fetvā* that a *cadi* was liable to *ta'zir* punishment for striking and expelling from his law-court people who had come to

<sup>1</sup> Bursa Sicilli, A 27, f. 31b.

<sup>2</sup> See, e.g., Dernschwam, Du Loir, Le Brun, cited above, p. 273, n. 5.

<sup>3</sup> According to a *fetvā* by Pır Mehmed (f. 68a), if a person dies after receiving more than 100 strokes the Public Treasury (*beyt ül-māl*) has to pay half the blood-money for homicide.

<sup>4</sup> Russell, i. 334; H. von Moltke, *Briefe über Zustände und Begebenheiten in der Türkei*, Berlin, 1876, p. 85 (chap. 19).

<sup>5</sup> Debbāğzāde, p. 285 in margin [; Bilmen, iii. 310, § 846].

<sup>6</sup> See the sources cited above, p. 273, n. 5.

<sup>7</sup> See below, p. 289.

<sup>8</sup> OCC, § 123; cf. Barkan, 180, § 28. [pencil notes:] For the preferential treatment of the higher classes with regard to *ta'zir* see Māwardī, 399-400 (cited above at p. 180) and the *risāla* of Çivizāde (above, p. 271, n. \*), f. 44a. According to White, ii. 336-7, however, an offender's higher status was sometimes held to entail heavier punishment.

lodge a complaint against an oppressive official.<sup>1</sup> In fact, it is known that *paşas* sentenced *cadis* to strokes.<sup>2</sup>

According to later *kānūnnāmes*,<sup>3</sup> the Grand Vizier used to sentence military officers and civilian officials to chastisement which was not carried out in public. They were either beaten in the *Dīvān* hall or handed over for punishment to their superiors, unless—one version adds<sup>4</sup>—they were descendants of the Prophet.

These last (*şerif*, *seyyid*) were treated with special consideration.<sup>5</sup> In the seventeenth century d'Arvieux recounts<sup>6</sup> that when a *şerif* was condemned to the bastinado his green turban was first respectfully removed, placed on an embroidered handkerchief and covered with another one; only then was the punishment inflicted.

A detailed description of the *ta'zīr* punishment of a Janissary, which was termed *meydān étmek*, is given by Hezārfenn.<sup>7</sup> After the matter (a military offence?) has been submitted by his *odabaşı* to his *çorbacı* and permission given for his punishment, his fellow-soldiers are summoned to assemble after the evening prayer and supper in a nearby open space (*meydān*). The *odabaşı* first makes a speech admonishing the soldiers to abstain from such offences. The offender is then laid on the ground, with two men holding him, and by the light of a candle is given the required number of strokes by the *odabaşı*—40 for a petty offence or 80 for a graver one. If the offence is still more serious the punishment is repeated on the two following nights. Thereafter he is put in chains for a number of days. During the month of Ramazān<sup>8</sup> and on the nights from Thursday to Friday no punishment must be carried out, since Hāccī Bektaş, the patron of the Janissaries, is said to have disapproved of this.

#### 4. Fines

##### (a) Terms

In the Ottoman *kānūnnāmes* monetary fines are called *kınlık* (or

<sup>1</sup> *İlmīye Sālnāmesi*, 407.

<sup>2</sup> L. Fekete, *Das Heim eines türkischen Herrn in der Provinz im XVI. Jh.*, Budapest, 1960 (Studia historica Academiae Scientiarum Hungaricae, no. 29), p. 15.

<sup>3</sup> *MTM*, i. 504, 510, 524.

<sup>4</sup> Nūrī, 637–8.

<sup>5</sup> See Businello, i. 79–80, and above, p. 222.

<sup>6</sup> D'Arvieux, i. 84–5. See also Rycout, book II, chap. vi.

<sup>7</sup> Hezārfenn, MS. Paris, f. 88a–b [; cf. Uzunçarşılı, *Kapukulu*, i. 622–3].

<sup>8</sup> In pre-Ottoman times the *cadis'* courts did not function during this month of fasting (see Tyan, *Histoire*, 284).

*kınluk*),<sup>1</sup> *cürm*,<sup>2</sup> *cerime*,<sup>3</sup> or by the *shari'a* term, *ta'zir bi'l-mâl*.<sup>4</sup> Often they are called *cürm-i cināyet* or *cürm ve cināyet*. The latter expression, probably pronounced in the Persian way *cürm ü cināyet*,<sup>5</sup> presents a problem, for whereas *cürm* means both 'crime' and 'fine', *cināyet* has (strictly) in Turkish the former meaning only.<sup>6</sup> *Cürm ve (ü) cināyet* cannot therefore be understood as 'les amendes et les pénalités pour blessure'.<sup>7</sup> It may perhaps be an abbreviation of some fuller expression, such as the rather rare *resm-i cürm ve (ü) cināyet*.<sup>8</sup> Alternatively, it might be a corruption of *cürm-i cināyet*, 'the fine of (i.e. for) a crime'.<sup>9</sup> In any case, the original meaning seems later to have been forgotten, as is evidenced by forms like *cürmleriniñ ve cināyetleriniñ*,<sup>10</sup> in which the two words are regarded as synonyms, both with the meaning 'fine'.

In some Ottoman mining *kānūns* fines are called *udav* (*udava*) *cürm*, the first word being the Serbo-Croat term for monetary penalty.<sup>11</sup>

<sup>1</sup> See OCC, § 5, n. 2 to trans. *Kınamak* or *kınatmak* is 'to fine' and *kınanmak* 'to be fined' (see *TOEM*, 1329, suppl., 49; Barkan, 249, § 4; 250, § 7; Bayezit Libr., MS. Veliyüddin 1466, f. 124b (*fetvā* of Ebu 's-Su'üd Efendi)). [pencil notes:] 'To fine' may be also *tecrim etmek* and *tağrim etmek* (original *fetvā* in University Libr., Istanbul, MS. T 4401, f. 80); cf. Barkan, 314, § 16: *tecrim ve takrim* (read *tağrim*?).

<sup>2</sup> Pronounced, and in some vocalized *kānūnnāme* MSS. even written, *cürüm*.

<sup>3</sup> In popular parlance (d'Ohsson, iii. 213-14) and sometimes in vocalized texts (Kayseri Sicilli, vol. 4, pp. 83, 168, etc.; Babinger, *Sult. Urkunden*, 204, line 3; cf. also *ibid.*, 258, line 7) *cereme* or *cerime*.

<sup>4</sup> See Barkan, 49, § 8; MS. Bb, f. 208a.

<sup>5</sup> Thus vocalized in some MSS., e.g. MS. Fh, f. 25a.

<sup>6</sup> In Muslim law *jināya* (plur. *jināyāt*) means 'tort, delict'. However, in medieval Arabic *jināyāt* also signified 'indemnifications, fines', e.g. for murder (see Ibn Taymiya, 42; Dozy, s.v.). In Persian too *jināyat* may mean 'fine' (see Rashid al-Dīn, 254, 263).

<sup>7</sup> Mantran-Sauvaget, 75-6, 78, 101-2, etc.

<sup>8</sup> *TOEM*, 1329, suppl., 47; MS. Oa, f. 81a. Cf. Beldiceanu, i. 119, who renders *cürm ve (ü) cināyet* '[les amendes dues] pour les délits et les crimes'. [pencil note:] This interpretation is supported by the phrase *al-jarā'im wa'l-jināyāt*, '[revenue from, i.e. fines for] offences and crimes' found in a treatise written by an official of the Mongol treasury at Tabriz in the middle of the fourteenth century and revised in the fifteenth (see W. Hinz, *Die Resālā-ye Falakiyyā*, Wiesbaden, 1952, p. 187); cf. also . . . *jurm u jināyat bisitānand* in a decree of the Ilkhān ruler Ghāzān (1295-1304) (Rashid al-Dīn, 290).

<sup>9</sup> Cf. the corrupted form *cürm ü* (spelt *ve*) *ğalız*, 'serious crime', in the copy of a firman in Mühimme Defteri, vol. 58, no. 40. [pencil note:] This interpretation is supported by the phrase *cināyāt muğābelesinde vaz' olman cerā'im* (Barkan, 81, § 19).

<sup>10</sup> Başbakanlık Arşivi, Tapu Defteri 194, p. 3. [pencil note:] Cf. also *cürmün ve cināyetin*, in Bursa Sicilli, A 21, f. 136b, and *cürmine ve cināyetine*, Barkan, 236, § 8.

<sup>11</sup> Anhegger, 260, 262, 263, 266, 267; 406-7.

(b) *Offences punishable by fines*

The Ottoman *ḵānūn* prescribes fines for a large number of offences, including offences liable to *ḥadd* penalties of the *sharī'a*, such as fornication, false accusation of fornication, theft,<sup>1</sup> the drinking of wine, etc. In addition to the offences listed in the Ottoman Criminal Code, in the market (*iḥtisāb*) regulations, and in the *ḵānūns* relating to soldiers, certain other offences are known, from provincial *ḵānūnnāmes* and especially from cadis' registers, to have been punished with fines. Examples are hunting, or scaring, animals in a hunting-ground reserved for *beğs*,<sup>2</sup> disturbing falcons in a region where they were bred for the Sultan's hunt,<sup>3</sup> prostitution,<sup>4</sup> selling unstamped (*tamğasız*) cloth,<sup>5</sup> etc. Sometimes fines were imposed *ad hoc*, as in an amusing case when Sultan Meḥemmed II, it is alleged, fined some weavers five *akçe* for letting a fox escape from their workshop and had the fine registered as revenue of the local *subaşı*.<sup>6</sup>

Fines are either the only penalty prescribed or are imposed in addition to chastisement (and/or imprisonment).<sup>7</sup> The first case is found chiefly where the fine is a substitute for the capital or severe corporal punishment prescribed by the *sharī'a* in certain circumstances, such as stoning for fornication,<sup>8</sup> retaliation (*ḵiṣās*) (which can be replaced by the payment of blood-money (*dīyet*)) for homicide<sup>9</sup> or for the infliction of serious injuries (knocking out an eye or a tooth),<sup>10</sup> and the amputation of a hand for serious theft.<sup>11</sup> In these cases<sup>12</sup> the Ottoman Criminal Code generally does not impose strokes (*ta'zīr*) but only a fine.<sup>13</sup>

<sup>1</sup> According to some exceptional statutes (Barkan, 180, § 28; MS. Bb, f. 134a), however, thieves (and robbers) shall not be fined but be subjected to capital or severe corporal punishment (*siyāset*), unless, the version in MS. Bb adds, their offence is 'minor' (*cüz'i*).

<sup>2</sup> Barkan, 26, §§ 18-19 (§ 19 should begin at *Ahur Dağı* . . .).

<sup>3</sup> Galabov-Duda, no. 904.

<sup>4</sup> Larende Sicilli, vol. 1, p. 341.

<sup>5</sup> *Ibid.*, vol. 1, p. 188.

<sup>6</sup> Sa'deddin, i. 562. Cf. Hammer, *GOR*, ii. 147.

<sup>7</sup> OCC, §§ 20, 60.

<sup>8</sup> OCC, §§ 1 et sqq. In practice, however, fornicators were punished with both a fine and strokes (Postel, 10).

<sup>9</sup> OCC, § 41.

<sup>10</sup> OCC, § 50.

<sup>11</sup> OCC, §§ 66, 68; see also § 94. For highway robbery (*ḵat'-i ṭarīḵ*), however, the *sharī'a* penalty of execution or amputation of a hand cannot be commuted to a fine; see also DPC, § 1.

<sup>12</sup> In provincial *ḵānūnnāmes* (Barkan, 71, §§ 45-8; 180, § 28) too, these offences, except theft (but including the infliction with a weapon of serious wounds other than the knocking out of an eye or a tooth), are made punishable with fines only;

[Notes 12 and 13 continued on p. 278]

In very many other cases the *shari'a* penalty of chastisement (*ta'zir*)<sup>1</sup> is supplemented by the imposition of a fine. Nowhere in the Ottoman Criminal Code, however, is the penalty *either* a fine *or* strokes, as it is in a few Dulkadir statutes<sup>2</sup> and in some exceptional Ottoman regulations.<sup>3</sup>

No fine, according to a fundamental rule of Ottoman law,<sup>4</sup> is to be collected from people subjected to capital or severe corporal punishment (*kıyas, siyaset*, etc.). This may be compared with the *shari'a* regulation that a thief whose hand is amputated does not owe compensation.<sup>5</sup> A few additional rules can be deduced from an analysis of the statutes of the Criminal Code. Fines are not imposed in addition to the exposition of the offender to public scorn (*teşhir*)<sup>6</sup> and/or his suffering some other ignominy, such as having his beard cut off.<sup>7</sup> (The reason for not inflicting a fine in the last case may also be that the offender is a man of religion (*dānişmend* or *imām*).)<sup>8</sup> Furthermore, in some cases compensation seems to be regarded as a fine and no further monetary penalty is required,<sup>9</sup> possibly because these are often trifling offences, which

one *hānūnnāme* (180, § 28) explicitly adds: 'No capital or severe corporal punishment is [to be inflicted].' [Cf. p. 181 and n. 10.]

<sup>13</sup> Certain soldiers (*müsellem, voynuk*) who fail to go to war are also liable only to a fine (of 250, 500 *akçe*) (Barkan, 129, § 52: for *hasıl* read *hāşş*; Galabov-Duda, nos. 173, 174, 253). In earlier versions of the Code a few further offences are treated in the same way (OCC, §§ 40 (1), 40 (2), 45, 65, in Aa, etc.). [pencil note expanded:] A fine alone is prescribed also in § 29 (2) (concealment of theft), §§ 32-3 (sodomy), and § 94 (failure to announce property found). The first and the third of these offences are presumably regarded as equivalent to theft, while sodomy is treated like fornication (see § 32 in Ta); so that here too the fine seems to be a substitute for the severe *shari'a* penalty.

<sup>1</sup> Or, exceptionally, *hadd* (OCC, § 54; cf. DPC, §§ 34 (5), 35). It is interesting that when the fine is a supplementary penalty to strokes as a *ta'zir* punishment it is higher than when it supplements strokes as a *hadd* punishment.

<sup>2</sup> DPC, § 39 (1), (2), (3).

<sup>3</sup> Barkan, 26, § 19; Başbakanlık Arşivi, Tapu Defteri 402, p. 32 (concerning falconers).

<sup>4</sup> OCC, §§ 11, 32 (in Ra), 41 (1), 50, 65 (in Pb), 66; Barkan, 71, § 44; 180, § 28; etc. Cf. DPC, §§ 2, 5 (1), 15, 18 (1), etc.

<sup>5</sup> Māwardī, 387; Schacht-Bergsträsser, 101.

<sup>6</sup> OCC, §§ 48 (1), 49, 98 (1), 100 (in Ra, Pe), 101 (in Ka, Pb), 102 (in Ka, Ba) and, most explicitly, 64 (in Ka): *teşhir* or a fine. The exceptional § 57 may be a garbled version of §§ 30, 75. Cf. DPC, §§ 14, 38. See also *Tarih Vesikalari*, no. 5, p. 336: *tahta külâh* [for which see below, p. 300] or a fine.

<sup>7</sup> OCC, §§ 15 (2), 100 (in Ra). See also Anhegger-Inalcık, pp. 29, 61, etc. (Beldiceanu, i. 93, 133, etc.).

<sup>8</sup> See below, p. 289.

<sup>9</sup> OCC, §§ 69, 70, 104, 112; but see § 64 in Va, Vb, § 81 in Aa, §§ 108-9 (and § 117, if *garâmet* here means 'fine').

in general are punishable with chastisement only.<sup>1</sup> A person imprisoned until an order of the Sultan arrives fixing his punishment is also not to be fined.<sup>2</sup> Finally, some statutes impose only strokes (as an unspecified punishment) where other versions or parallel sections demand that the offender be also fined.<sup>3</sup>

Certain offences are, according to the *ḵānūn*, not liable to any punishment. This is the case with offences committed by minors<sup>4</sup> as well as with certain acts which, though technically or at first sight violations of the law, are, for various reasons, not considered offences: justifiable homicide or wounding,<sup>5</sup> intercourse with one's not yet irrevocably divorced wife or certain female slaves,<sup>6</sup> abstaining from informing against a fornicator,<sup>7</sup> and neglect in detaining a stray animal found and duly announced.<sup>8</sup>

### (c) *Their fiscal character*

Fiscally, the fines formed part of the *rūsūm-i 'örfīye* (or *'ādiye*). Sometimes they were included in the *bād-i havā*,<sup>9</sup> 'casual income', but often they figured side by side with the *resm-i 'arūs, niyābet, bād-i havā, beyt ül-māl, māl-i gāyib, mal-i mefkūd, yava, and kaçkun*.<sup>10</sup> Of all these, they were most closely connected with the bride tax. At times they were farmed out together with this tax alone.<sup>11</sup>

Indeed, in character the Ottoman fines were rather similar to taxes. It is significant, even though exceptional, that the gipsies in the Niğbolu region paid, as a substitute for fines (*cürme bedel*), a fixed tax of six *akçe*, by the name of *ḵaftānhk*,<sup>12</sup> for every head of

<sup>1</sup> See OCC, §§ 36, 58.

<sup>2</sup> OCC, § 21.

<sup>3</sup> OCC, § 26 (but see §§ 54-5) (in DPC, § 39 (3) strokes or a fine); § 100 (but see § 100 in Rc); § 113 (2) (but see § 113 (1)).

<sup>4</sup> OCC, § 52 and (so far as the offenders themselves are concerned) § 27. But cf. DPC, §§ 17, 40.

<sup>5</sup> OCC, §§ 13, 14; cf. DPC, §§ 7, 9, 13, 27.

<sup>6</sup> OCC, § 23.

<sup>7</sup> OCC, § 29 (1).

<sup>8</sup> OCC, § 97.

<sup>9</sup> Barkan, 271, § 31; 332, § 26; MS. Ia, f. 86a; MS. Id, p. 52; *TOEM*, 1329, suppl., 38. [pencil notes:] See *EI*<sup>2</sup>, art. 'Bād-i hawā' (B. Lewis). Cf. also the term *ḵayyārāt*, with the same meaning and also including fines (Pakalın, s.v.), and the term *hawā'i*, apparently with the sense of an arbitrary and illegal imposition, in a sixteenth-century Şafawī inscription (Hinz, in *Belleten*, xiii/52 (1949), 759, 766).

<sup>10</sup> e.g. Başbakanlık Arşivi, Maliye Defteri 15450, p. 2.

<sup>11</sup> See Bursa Sicilli, A 28, f. 95b.

<sup>12</sup> Barkan, 250, § 11. See also above, pp. 233-4, for a similar 'tax' paid to the

a family and bachelor. In place of (? or in addition to\*) fines for crop damage by animals, a fixed tax (*resm-i deştbānī*) was collected in some districts.<sup>1</sup> Each falconer was to pay to his chief (*doğancıbaşı*) 300 *akçe* as the lump sum of various taxes, including fines.<sup>2</sup> Lastly, some census officials who compiled the cadastral registers (*muḥarrir*) had to be ordered to cease registering a fixed amount (17–18 *akçe*) per head of the (adult male?) population (*nefer başına*) as the estimated total revenue from the fines and various 'örf taxes.'<sup>3</sup>

The peculiar character of the Ottoman fines, as being both a penalty and a tax, is reflected in the division of the fines (collected from villagers on small fiefs) between the *sancakbeğis* (the *subaşı*s, and others), who were charged with the maintenance of law and order and the punishment of offenders, and the fief-holders, to whom most of the revenues of a certain region were allotted.\*\*

#### (d) Fines and the *sharī'a*

Monetary fines are unknown to the criminal law of the *sharī'a*. In general, the *fukahā'* disapproved of them as tyrannical innovations (*bid'at*). In particular they strongly warned against replacing the *ḥadd* penalties for fornication, theft, etc. by fines, even if they were paid to the Public Treasury. This would be tantamount to those in authority accepting bribes, and 'if bribery enters through the door, honesty leaves through the window'. Such fines are to be regarded as illicit revenue of the 'State'.<sup>4</sup> Abū Yūsuf, the great Ḥanafī jurist of the second/eighth century, however, taught that the ruler was allowed 'to inflict discretionary punishment by taking money' (*al-ta'zīr bi-akhdh al-māl*).<sup>5</sup> His opinion was

*muḥtesib*. [pencil note:] The etymology of the term is obscure: it cannot here (as at 225, § 27) mean 'quantité nécessaire pour faire une robe' (Mantran-Sauvaget, 29); perhaps < *kubṭiyān-lk*.

\* [pencil note:] So explicitly in Barkan, 290, § 14.

<sup>1</sup> See OCC, § 108, n. 12 to trans. (in particular Barkan, 69, § 37 and 158, § 11).

<sup>2</sup> Galabov-Duda, no. 518.

<sup>3</sup> Firman of Şafer 979/1571 in Mühimme Defteri, vol. 14, no. 1497.

\*\* [See below, pp. 291–2.]

<sup>4</sup> Ibn Taymiya, pp. 42, 72, 75–6, 105, etc. (trans. Laoust, 38, 65, 67–8, 100, etc.). See also an anonymous, apparently Ottoman, *risāla* in Aya Sofya Libr., MS. 2954, ff. 122b–124a.

<sup>5</sup> J. Krčsmárik, in *ZDMG*, lviii (1904), 560, quoting Ibn 'Ābidin, *Radd al-muḥtār*. Cf. also Ibn al-Ukhuwwa, 194.

accepted by many later jurists,<sup>1</sup> including some Ottoman 'ulemā,<sup>2</sup> provided that the imposition of a fine was considered to be in the public interest or deemed proper by a *cadi* or a governor. Referring to certain acts of the Companions of the Prophet and of the 'righteous caliphs', they reject the view that all property penalties had been abrogated (*mansūkh*).<sup>3</sup>

Ebu 's-Su'ūd Efendi admitted in one of his *fetvās*<sup>4</sup> that *kınlık akçesi ehl-i şer' huzūrında şābit olan cürm-iñ 'ukūbet-i 'orfīyesidir*, 'the fine is the 'orf (i.e. non-*shari'a*, secular) penalty for an offence proved before the *shari'a* judge'. Some Ottoman *müftis*,<sup>5</sup> however, did not consider it lawful for *cadis* to collect,<sup>6</sup> or even to let the executive officers (*ehl-i 'orf*) collect,<sup>7</sup> a fine from a Muslim who neglects the ritual prayers (*tārik al-şalāt*), although this was stated in an Imperial decree<sup>8</sup> dated 1476 to be in accordance with the *shari'a*. At least, these *müftis* rule, the money must be returned to the offender after he has mended his ways. But such statements may only refer to the imposition of fines in lieu of the *ta'zir* in the form of strokes<sup>9</sup> required by the *shari'a*, or they may merely mean that fines are not penalties recognized by the religious law. In any case, in the fifteenth and sixteenth centuries the Ottoman 'ulemā at least acquiesced in the *kānūn* regulations according to which the *ehl-i 'orf* collected fines in addition to the *ta'zir* punishment imposed by the *cadi*. In many *fetvās*<sup>10</sup> well-known *şeyhülislāms* gave opinions on whether or not it was legal to impose a fine in a

<sup>1</sup> Cf. Tūghān Shaykh al-Muḥammadi al-Ḥanafī al-Zāhiri, *al-Muḥaddima al-Sultāniya fi 'l-Siyāsa al-shar'iya*, Süleymaniye Libr., MS. Fatih 3519, ch. 12 (for the author and the work see Brockelmann, *GAL*, ii<sup>2</sup>. 168); *Mu'in al-hukkām*, 190.

<sup>2</sup> Dede Efendi, MS. 697, f. 75b (omitted in M. 'Arif's trans.); Çivizāde [see p. 271, n. \*], f. 43a.

<sup>3</sup> On this point see also Ibn Qayyim al-Jawziya, *Fi 'l-kiyās* (printed after Ibn Taymiya, *al-Kiyās fi 'l-shar' al-islāmī*), Cairo, 1375, p. 88.

<sup>4</sup> Bayezit Libr., MS. Veliyüddin 1466, f. 124b. But see Pîr Mehmed, *Zahir al-kuḍāt*, MS. Esad Ef. 852, f. 25a: *cürm-i cināyet ma'kulesi ḥalāl olmaz*.

<sup>5</sup> MS. Veliyüddin 1466, f. 117a and Belediye Libr., MS. M. Cevdet O 44, f. 149a (*fetvās* of İbn Kemāl); British Museum, MS. Add. 7834, f. 76b.

<sup>6</sup> According to the Ottoman *kānūn* too, fines were collected not by the *cadis* but by the *ehl-i 'orf*; see below, pp. 294-5.

<sup>7</sup> Belediye Libr., MS. Belediye 17/2, f. 434b.

<sup>8</sup> Lugal-Erzi, p. 94.

<sup>9</sup> Thus in the *fetvā* in the British Museum MS. (n. 5 above).

<sup>10</sup> e.g. Belediye Libr., MS. Belediye 17/1, f. 101b; Bayezit Libr., MS. Veliyüddin 1466, f. 124b. See also a *fetvā* in the Dubrovnik State Archives, Acta Turcarum C-10, 57 (. . . *şer'an cürm ü cināyete müstahḳḳ olur mi*).

particular case, thereby implying their lack of opposition to fines in principle.

The same hesitancy in the 'ulemā's attitude towards fines is reflected in other *fatwās*. Mehmed b. Būstān, who during the period 1589-98 twice held the office of Şeyhülislām, stated that 'örfî taxes, including fines, could not be made into waqf.<sup>1</sup> In another *fatwā*, however, he ruled, in reply to a supplementary question, that if a *mütevelli* has collected and spent revenue from fines and other *bād-i havā* dues over a long period this income of the waqf is not to be considered illegal.<sup>2</sup>

Pecuniary fines were not an Ottoman innovation in the Muslim countries. Naşır al-Dīn al-Ṭūsī (1201-74) in a short memorandum presented to a Mongol ruler (Hülāgū, Abāka?)<sup>3</sup> says that the [earlier] great kings (*pādshāhān*) considered it unworthy of them to use four sorts of revenue [which are now collected?], the first of which is *bāj* (tolls), etc., and the last 'money (fines) collected from people because of [their] crimes, such as killing and beating [and drinking wine\*]'.<sup>4</sup>

An *inşā* work of the late Seljuk period in Anatolia contains a Persian patent of appointment of a governor (*takrīr-i iyālat*) in which he is enjoined to punish the criminals 'and collect fines (*jurm*) in accordance with [their] guilt'.<sup>5</sup>

As to the introduction of fines in the Ottoman Empire, vague, and so far unique, information is given in a firman (or 'adāletnāme) of Rebī' I 999/December 1590-January 1591, copies of which are

<sup>1</sup> MS. Kd, ff. 150b-151a (quoted by Barkan in *THİTM*, ii (1932-9), 148-9). [See also below, p. 291.]

<sup>2</sup> MS. Kd, f. 40b.

<sup>3</sup> *Risāla'i dar rasm u āyin-i pādshāhān-i ḡadīm-i Irān-zamīn* (Bayezit Libr., MS. Veliyüddīn 2542 *mükerrer*, f. 47a); cf. Yalṭkaya, in *THİTM*, ii (1932-9), 7-16. See also the edition, based on two other MSS., translation, and discussion of this text by M. Minovi and V. Minorsky, in *BSOAS*, x (1940-2), 755-89.

<sup>4</sup> Added in the text published by Minovi and Minorsky (p. 763).

<sup>5</sup> Ḥasan b. 'Abdi 'l-Mu'mīn el-Höyī, *Gūnyetu'l-kātib ve mūnyetu't-tālib—Rusūmu'r-resā'il ve nucūmu'l-fazā'il*, ed. A. S. Erzi, Ankara, 1963, pp. 29-30. For the author and his work, written in 690/1291, see Mükrimin Halil Yınanç, in *III. Türk Tarih Kongresi: Tebliğler*, Ankara, 1948, pp. 95-103, and Turan, *Vesikalar*, pp. 174 et sqq. [pencil notes:] Other references: fines in the reign of Sanjar (d. 1157) are mentioned in Badī' Atabeg al-Juwaynī's 'Atabat al-kataba' (ed. 'A. İḳbāl, Tehran, 1329/1950), p. 25; for the reign of Ghāzān (d. 1304), see above, p. 276, n. 6. For fines in Mamlūk Egypt, see above, pp. 39-40, and cf. Ibn Taymiya (cited above, p. 280, n. 4).

found in an Istanbul and a Vienna library.<sup>1</sup> It states that in olden times the collection of fines was considered to be contrary to custom (*'āda*) and the *ḵānūn*. Criminals were punished, in accordance with the *sharī'a*, by amputation of the hand or by execution. When, however, criminals greatly increased among the inhabitants of Bursa and it was found impossible to prove, in accordance with the requirements of the *sharī'a*, the offences which they had committed in secret, a *ḵānūn* was enacted. This 'old *ḵānūn*', it seems, did not exactly introduce fines, but required people with a criminal record to give sureties (*kefil*) and, in this connection, to pay certain fees to the local *cadi*, to certain officials, including the chief night-watchman (*re'īs-i 'ases*), and to the Public Treasury (*mīrī*). Moreover, according to the 'old *ḵānūn*', the *cadi* was entitled to demand a share of the fines which the watchmen and other police officers had collected from people whom they had arrested and not brought before him.

(e) *Types and scales of fines*

Fines are of three main types. The first is a fixed amount of money, as is usual in the Dulkadır codes, in many statutes of the Ottoman Criminal Code, and in most Ottoman provincial *ḵānūnnāmes*, when *ta'zīr* punishment (i.e. strokes) is not mentioned. Unlike the Dulkadır law, however, many Ottoman statutes do not lay down one fine for a given offence but, like the *sharī'a* regulations for the poll-tax (*cizye*) and for the instalments of the blood-money (*dīyet*) to be paid by the murderer's '*ākīla*,\* graduate the fine in accordance with the financial circumstances of the offender: 'rich' (*a'lā, bay, gamī*), 'in medium circumstances' (*evsaṭ, vasaṭ* or *mütevassıṭ ül-hāl, orta ḥāllü*), 'poor' (*ednā, fakīr*), and, in many cases, 'very poor' (*gāyet fakīr, daḥı aṣağa ḥāllü*).<sup>2</sup> The ratio for these grades varies: 4:3:2, or 8:4:2:1, or 10:5:3, etc., with further variants in some versions.

Meḥemmed II's *ḵānūnnāme* and many later ones<sup>3</sup> define as rich a man who owns 1,000 *akçe* or more, as a man in medium circumstances someone whose property amounts to 600 *akçe*, and as poor

<sup>1</sup> MS. Nb, f. 31a; MS. Nd. f. 57a. [This document is cited also at p. 297, and in footnotes at pp. 213, 239, 254, 255, 270, 271.]

\* [See, e.g., *EI*<sup>2</sup>, art. 'Djizya, ii' (Inalcık); Māwardī, 394; respectively.]

<sup>2</sup> Similarly, the bride tax is sometimes graded in this way (*TOEM*, 1329, suppl., 38-9; Barkan, 4, § 23; 400, § 22). Cf. also *MTM*, i. 84 (concerning *ev yeri tapusu*).

<sup>3</sup> See *OCC*, §§ 1, 2, 40, 41, etc.

the owner of 400 *akçe*.<sup>1</sup> These are amazingly low figures. According to a study by İnalçık,<sup>2</sup> of 319 deceased persons whose property was in 872-3/1467-8 registered in the *tereke defteri* of the *cadi* of Bursa, about 75 per cent left an estate worth over 1,000 *akçe*. İnalçık ranks as 'middle class' those (nearly 60 per cent) who had property of between 1,000 and 10,000 *akçe*. Even if one takes into account the facts that at that time Bursa was a very prosperous industrial and commercial centre and that not all estates were registered, these figures are striking.

The above-mentioned grading laid down in the *ḵānūnnāmes* became entirely unrealistic when the *akçe* was depreciated from the sixteenth century onwards.<sup>3</sup> Interestingly, a Hebrew source<sup>4</sup> relates that for the purpose of the poll-tax an Ottoman Jew in the late sixteenth century was considered rich if he owned 40,000 *akçe* or more, and poor if his property was less than 5,000 *akçe*.

In the Ottoman Criminal Code the fixed fines vary between 10 and 400 *akçe*, but the few criminal statutes found in Meḥemmed II's *Ḵānūnnāme* on the Government and Court<sup>5</sup> prescribe much higher fines, up to 3,000 *akçe*.<sup>6</sup> According to a fifteenth-century firman,<sup>7</sup> a broker (*dellāl*) who does not register his transactions has to pay a fine of 1,000 *akçe*. The same fine is laid down for a State falconer (*doğancı*) who conceals a falcon he has caught.<sup>8</sup> Compared with these fines, those prescribed in the Criminal Code even for the most serious crimes appear to be rather light.

A rare example of a very high collective fine is found among the regulations concerning the non-Muslim subjects. If Christians (or Jews), having been given permission by firman to repair a ruined church (or synagogue), add a single stone to the original structure, they are to pay a fine of 10,000 *akçe*; if they enlarge it by as little as a span or two, they are to be fined 40,000 *akçe*. Furthermore, in both cases the building is to be destroyed.<sup>9</sup>

<sup>1</sup> For a different grading of Christians see below, p. 287. Cf. also Barkan, 321, § 20.

<sup>2</sup> H. İnalçık, '15. asır Türkiye iktisadî ve içtimai tarihi kaynakları', in *İkt. Fak. Mecm.*, xv (1953-4), 55-6.

<sup>3</sup> See above, p. 156.

<sup>4</sup> Responses of Eliyāhū ben Ḥayyim, in *Mayyim 'Ammuqqim*, Venice, 1647, no. 59 (= A. Hananel and E. Eşkenazi, *Fontes hebraici ad res oeconomicas socialesque terrarum balcanicarum . . . pertinentes*, i, Sofia, 1958, no. 214).

<sup>5</sup> KAO, p. 28.

<sup>6</sup> See OCC, § 41, n. 10 to trans.

<sup>7</sup> Anhegger-İnalçık, p. 58; Beldiceanu, i. 129.

<sup>8</sup> Başbakanlık Arşivi, Tapu Defteri 402, p. 32.

<sup>9</sup> MS. Ph, p. 26.

According to an Ottoman mining *kānūn*, which confirms the old Saxon (German) law in force in Serbia before the Turkish conquest,<sup>1</sup> miners are to pay a fine of 25 perpers (*perpere* or *ferfere*) for many different offences.<sup>2</sup> (In the beginning of Süleymān the Magnificent's reign<sup>3</sup> one perper equalled 12 *akçe*.)<sup>4</sup>

The second type of fine, which is predominant in the Ottoman Criminal Code, has no precedent in the non-Ottoman penal regulations so far known.\* Here the fine is linked with the *shari'a* punishment of *ta'zir*, i.e. strokes whose number is fixed in every case by the *cadi*. The *kānūn* prescribes only the number of *akçes* the offender has to pay for every stroke inflicted on him. In most cases one *akçe* is exacted for each stroke. Less common is the ratio of one *akçe* for every two or even every three strokes;<sup>5</sup> the payment of two *akçe* for every stroke<sup>6</sup> is exceptional. A unique passage in one copy of the Criminal Code<sup>7</sup> states that fines shall be collected only for strokes actually administered, which may mean that the offender must not be permitted to buy himself off from the full measure of corporal punishment due to him.<sup>8</sup>

The payment of one *akçe* for each stroke administered is confirmed by European writers of the sixteenth century.<sup>9</sup> Observers in the following century,<sup>10</sup> however, speak of the collection of one piastre or one 'écu' for each stroke.

<sup>1</sup> For this law see Beldiceanu, ii. 59–66. Whether the penal regulations referred to here are part of 'the ancient Saxon law' or are only 'the custom of the miners' (Anhegger, 239) has yet to be established (cf. Anhegger, 14–16, 475–7). They are not included in the 'Saxon *kānūnnāme*' summarized by Beldiceanu (ii. 257–68).

<sup>2</sup> Anhegger, 260, §§ 86, 87, 89, 90, 91; 262, §§ 99, 100; 263, § 105; 267, §§ 122, 123. See also Beldiceanu, ii. 182, § 4 (a fine of 500 perpers).

<sup>3</sup> According to Beldiceanu (ii. 47), the *kānūn* was issued between 1520 and 1525.

<sup>4</sup> Anhegger, 260, § 89. According to Beldiceanu (ii. 298–9), in the fifteenth century three perpers had equalled one Venetian ducat.

\* [pencil note:] In DPC, § 39 (2), (3), there is laid down the 'rate' of one *akçe* per stroke, but as an alternative (not a supplementary) punishment and for a *ḥadd* penalty (see above, p. 272).

<sup>5</sup> OCC, §§ 54, 63; *kānūn-i ihtisāb* in Aḥmed Luṭfī, 89 (cruelty to animals).

<sup>6</sup> OCC, § 22.

<sup>7</sup> Rd, after § 28 (end of its first chapter): '*urulmyan ağacıñ akçesini almyalar . . .*'

<sup>8</sup> Cf. d'Ohsson, iii. 274.

<sup>9</sup> Menavino, 55; Rauwolff, 42; Schweigger, 174.

<sup>10</sup> D'Arvieux, i. 62, 82; Pouillet, i. 348.

Finally, and this is the third type, there are fines the amounts of which depend on the extent of the injury inflicted, such as damage to standing corn by animals.<sup>1</sup> Similarly, for every one or two<sup>2</sup> *dirhems* of weight<sup>3</sup> wanting in a price-controlled commodity the vendor is to pay a fine of one *akçe*,<sup>4</sup> as is already laid down in the Dulkadır Penal Code.<sup>5</sup> Again, for the theft or illegal export of silver the offender is to pay two *akçe* for every *dirhem*.<sup>6</sup>

In certain cases where blood-money (*diyyet*) is to be paid, the fine is fixed according to a principle similar to that fixing the *diyyet*. Thus, the fine for knocking out an eye<sup>7</sup> amounts to half the fine for homicide.<sup>8</sup> In some provincial *kānūnnāmes*<sup>9</sup> too the fine for this crime, as well as for crippling(?) a hand, is fixed as 'half the fine for [taking] a life'. If someone kills more than one person or if homicide is committed by two or more persons, the fine (like the *diyyet*) has to be paid according to the number of the killed and not of the killers.<sup>10</sup> But in the case of theft by several people, the Dulkadır code<sup>11</sup> prescribes that each of them shall pay the full fine. . . .

(f) *Non-Muslims and other special cases*

A most interesting principle of Ottoman criminal law is that in many cases non-Muslim subjects are required to pay only half the fine imposed on Muslims for the same offence. This rule is laid down in Bāyezid II's *Ḳānūn* for the Married Infidels<sup>12</sup> as well as in § 31 (sexual crimes) and § 51 (homicide and wounding) of the Ottoman Criminal Code.<sup>13</sup>

<sup>1</sup> OCC, § 108. In the parallel section in DPC (§ 33 in B), however, here too one *akçe* is to be collected for each stroke given.

<sup>2</sup> For *elli dirheme* in Barkan, 43, § 5 read *iki dirheme*, as in *TOEM*, 1329, suppl., 66.

<sup>3</sup> A *dirhem* equalled a little over three grammes (Hinz, p. 3).

<sup>4</sup> That this is the meaning of the statute is clearly shown by the version in Barkan, 400, § 23.

<sup>5</sup> DPC, § 35.

<sup>6</sup> Anhegger-İnalçık, pp. 8, 14, etc. (Beldiceanu, i. 70, § 2; 76, § 4; etc.); Beldiceanu, ii. 256, §§ 4, 6. [pencil note:] Cf. also Refik, *Onuncu*, 172 (*ihtisāb*).

<sup>7</sup> OCC, § 50 (but also for knocking out a tooth or teeth).

<sup>8</sup> OCC, § 41.

<sup>9</sup> See Barkan, 71, § 47; 5, § 29.

<sup>10</sup> OCC, § 42. For the *diyyet* rule see Māwardī, 395.

<sup>11</sup> DPC, § 2 (2).

<sup>12</sup> Kraeplitz, 29, § 7 (45, § 7) (read *kınluk*, 'fine', for *kanlık*, 'Blutgeld': see above, p. 96).

<sup>13</sup> But according to one version of § 51 (MSS. Rb, Rc), the infidels have to pay the same fines as Muslims. See also below, p. 288 and n. 6.

In fact, criminal codes for the Christian population in various parts of the Empire<sup>1</sup> do indeed contain regulations prescribing their fines at half, or about half, of the amount Muslims have to pay either as a fixed sum<sup>2</sup> or in proportion to strokes.<sup>3</sup> For some offences, however, the fines for non-Muslims are the same, or about the same, as for Muslims;<sup>4</sup> and some provincial *ḵānūnnāmes* neither mention any lower fines for Christians nor even state explicitly that the infidels are liable to the same fines as the Muslims.<sup>5</sup>

In some Christian districts this preferential treatment of the non-Muslims is partly cancelled out by their being graded, as regards financial status, in a different way. Whereas, as discussed above, a Muslim is legally considered 'rich' (and therefore liable to pay the highest amount of fine) if he possesses 1,000 *aḵçe* or more, the *Ḵānūnnāme* for Montenegro defines as 'rich' a Christian who owns only 600 *aḵçe*.<sup>6</sup>

This surprising privilege of non-Muslims is in Bāyezīd II's law explained by economic and fiscal considerations: *tā ki ḥarāc-güzārlar zāyi' olmaya*, 'so that the poll-tax payers shall not vanish'.<sup>7</sup> About a hundred years later, the *Ḵānūnnāme* for Yeñi İl (near Sivas)<sup>8</sup> dated 991/1583 states that in spite of this rule non-Muslims are here forced to pay the same fines as Muslims, and that 'since they are, because of their disbelief, held in contempt, subdued and unable to defend themselves' even higher fines are exacted from them. Henceforth, however, the general rule is to be enforced in this region also, in order to ensure its populousness and prosperity. This emphatic reconfirmation of the old regulation is perhaps to be explained by the fact that many villages in the Yeñi İl region belonged to the *hūṣṣ* or waqf of the Sultan's mother.<sup>9</sup> Indeed one of the reasons for the lower fines imposed on non-Muslims may

<sup>1</sup> Such as those for Cephalonia (Ba, Bb, Bc) and Montenegro (Ca) (see above, pp. 14-15).

<sup>2</sup> See OCC, §§ 1, 2, 6, 29, 40, 41, 45, 50, 66, 68, 94.

<sup>3</sup> See OCC, §§ 18, 30, 64, 72, 81.

<sup>4</sup> See OCC, §§ 24, 37, 67, 108.

<sup>5</sup> Barkan, 5, § 29; 71, §§ 45-8; 180, § 28; Beldiceanu, ii. 202, § 10; 207, § 10.

<sup>6</sup> See OCC, §§ 1, 2, 40, 41, 45, 66 in Ca. But a Christian of Cephalonia was considered 'rich' (see OCC, §§ 2, 40, 41, etc. in Ba) or 'very rich' (*ḡāyet bay*) (MS. Ba, ff. 137b-138a) if he possessed 1,000 *aḵçe* or more.

<sup>7</sup> Kraelitz, 29, § 7 (45, § 7). [pencil note expanded:] Might the explanation be analogy with the rule for slaves (see below, p. 288)? In *fiḵh* slaves are liable to only half the *ḥadd* punishments for *zinā* and *ḵazf*, 'li-naḵṣihim bi'l-riḵḵ' (Māwardī, 382, 390).

<sup>8</sup> Barkan, 81, § 19.

<sup>9</sup> Barkan, 75.

well have been that, if too heavily fined by their local governors or fief-holders, they might no longer be able to pay their poll-tax to the Sultan.

Incidentally, the same principle of demanding from non-Muslims half the dues paid by Muslims is observed in some *ḵānūnnāmes* compiled in the fifteenth and sixteenth centuries (or based on such) with regard to the bride tax (*gerdek değeri*, *resm-i 'arūs* or *'arūsāne*),<sup>1</sup> which fiscally is closely related to the fines.\* According to a *ḵānūnnāme* of the middle of the seventeenth century,<sup>2</sup> however, non-Muslims are liable to pay the same bride tax as Muslims, and according to another, compiled in 1129/1716-17,<sup>3</sup> even twice as much.<sup>4</sup>

The foreign non-Muslim resident in the Ottoman Empire (*müste'min*) has, according to one manuscript,<sup>5</sup> to pay the same fines for certain offences as the non-Muslim subjects of the Sultan, namely half the fines of a Muslim; according to another version,<sup>6</sup> however, his fines are the same as those of the Muslim.<sup>7</sup>

Women pay the same fines as men (while the Dulkadır Penal Code<sup>8</sup> prescribes for them half the fine).

From slaves, at least for certain offences, half the fines of free Muslims is demanded,<sup>9</sup> just as they pay half the free Muslim's bride tax.<sup>10</sup>

According to the *Ḵānūnnāme* for Egypt of 931/1525,<sup>11</sup> Egyptian fellahs have to pay the same fines (and no more) as are collected for the same crimes<sup>12</sup> in *Rūm vilāyeti*, i.e. the old (pre-Selīm I) Ottoman dominions.<sup>13</sup>

<sup>1</sup> Kraelitz, 29, § 6 (45, § 6); Beldiceanu, ii. 201, § 10; 223, § 7; Barkan, 324, § 11; 321, § 25; 317, § 11; *MTM*, i. 111.

\* [See above, p. 279.]

<sup>2</sup> Barkan, 339, § 4.

<sup>3</sup> *Ibid.*, 329, § 15.

<sup>4</sup> In this period of Ottoman decline, reassertion of the *shari'a*, and growing anti-Christian feeling, non-Muslim subjects had, according to the first-mentioned *ḵānūnnāme*, also to pay increased customs duties (*ibid.*, 338-9, § 1). See also above, pp. 153-5.

<sup>5</sup> OCC, § 51 in Ra.

<sup>6</sup> *Ibid.*, in Rb, Rc.

<sup>7</sup> On the different opinions of the Muslim legists concerning the penalties for foreign non-Muslim residents see Heffening, 65-70.

<sup>8</sup> DPC, § 36 (2), but this statute is missing in version A.

<sup>9</sup> OCC, §§ 8, 51.

<sup>10</sup> Barkan, 96, § 21.

<sup>11</sup> Barkan, 362, § 13.

<sup>12</sup> Instead of *ḥiyānāt* (Barkan), other versions (Bibl. Nat., Paris, MS. A.f. turc 82, f. 25a and Aya Sofya Libr., MS. 4871, f. 135b) have *cināyāt*.

<sup>13</sup> Not the province of Sivas (cf. Heyd, *Ottoman Documents*, p. 68, n. 1), nor Rūméli (as in Hammer *Staatsverfassung*, i. 105, following Digeon, ii. 203). [For the meaning of *zī'f* (Redhouse: 'double') see rather Meninski: 'par, aequalis; tantundem'.]

According to some provincial *ḵānūnnāmes*,<sup>1</sup> no fines shall be imposed (just as no *ta'zīr* is to be inflicted)<sup>2</sup> on fief-holders<sup>3</sup> and holders of a *berāt*, the latter including religious dignitaries, such as cadis, *müderresses*, *şeyḥs*, and *imāms*, as well as waqf officials such as *mütevellīs* and *nāḡirs*. Their privileged status\* entitled them to different criminal procedure and punishment. This regulation is another indication that fines are, on the one hand, a form of *ta'zīr* punishment and, on the other, a kind of tax, neither of which can be imposed on members of these classes.

Nothing is said in the *ḵānūnnāmes* about criminals who are unable (or unwilling) to pay their fines. It is known, however, that in practice the fines were often paid by a person other than the offender, sometimes a relative, 'as a free gift' (*teberru'an*) or 'beyond his obligation' (*fuzūli* [*tariḳıyla*]).<sup>4</sup> The same term is used when a person charged with a crime denied having committed it but nevertheless paid a fine to the *subaşı*.<sup>5</sup> In some cases the person who paid such a fine formally renounced any future claim against the *subaşı* (for the return of the fine).<sup>6</sup>

### (g) *The recipients of the fines*

Since fines were one of the most common penalties in Ottoman law, the question who was entitled to receive them was of great economic importance. One fundamental rule was *cürm ve (ü) cināyet topraḡa tābī'dir*,<sup>7</sup> 'The fines belong to the land [on which the offence was committed]', i.e. to the *şāhib-i arz*,<sup>8</sup> the person

<sup>1</sup> The *Ḵānūnnāme* for the district of Mosul in the reign of Murād III (1574-95) (Barkan, 180, § 28) and that for Arabkir (MS. Bb, f. 134a).

<sup>2</sup> OCC, § 123; see above, p. 274.

<sup>3</sup> And other soldiers? This may be the correct interpretation of an obscure passage in a fifteenth-century *nişān* (Anhegger-İnalçık, 63, lines 25-7), the translation of which by Beldiceanu (i. 135, § 10) seems to be mistaken.

\* [pencil note expanded:] Through their appointment by *berāt*, these religious dignitaries counted as '*askerī*', as opposed to *re'āyā*; see, e.g. H. İnalçık in *İkt. Fak. Mecm.*, xv (1953-4), 53, n. 9, and in *Belleten*, xxiii/92 (1959), 596-7.

<sup>4</sup> e.g. Bursa Sicilli, A 59, ff. 16a and 18b (Rebī' I 942/1535); A 40, f. 221a (Zū '1-Hicce 944/1538); A 36, f. 38b (940/1533-4); A 67, f. 297b (962/1554-5); etc. [Cf. above, p. 248, with regard to *şulh*.]

<sup>5</sup> e.g. Bursa Sicilli, A 53, f. 124a (Rebī' I 953/1546).

<sup>6</sup> e.g. *ibid.*, A 57, f. 80b (958); A 59, ff. 4b and 69a (942) (*subaşı ile . . . da'vām ve nizā'im yokdur*). [Cf. above, p. 248.]

<sup>7</sup> *Bibl. Nat.*, Paris, MS. Suppl. turc 70, f. 111b (undated firman). The same rule applied to the income from the capture of a fugitive slave (*kaçkun*) (*TOEM*, 1329, suppl., 20).

<sup>8</sup> *Mühimme Defteri*, vol. 10, no. 444.

entitled to the taxes from this land. In most cases this formula was equivalent to another, *ra'iyet (re'âyâ) kimiñ ise cerîme[yi] ol alur*,<sup>1</sup> 'To whomever the peasant [who has committed a crime] belongs, he collects the fine'. But if a peasant of a certain feudal lord commits an offence on the land of another fief-holder, he has to pay his fine to the latter (as *şâhib-i arz*) and not to the lord he is registered with (*şâhib-i ra'iyet*).<sup>2</sup>

These rules, however, applied only to the so-called 'free' (*serbest*) lands, i.e. lands free from the interference and demands of the local governors and their subordinates (*subaşı*s, *voyvodas*, etc.) with regard to fines and certain taxes. According to the *kânûn*,<sup>3</sup> this category includes the *hâşş* fiefs of a vizier, *beğlerbeği*, *sancakbeği*, *defterdâr*, *defter kethudâsı*, *nişancı*, *mîr-'alem*, etc.,<sup>4</sup> the large holdings (*zi'âmet*) of a feudal lord, as well as the fiefs (*timâr*) of an *alaybeği*, *subaşı*, *dizdâr*, *çerisürücü*, *çeribaşı*,<sup>5</sup> *çavuş* (generally),<sup>6</sup> *ser'asker*, *defter kâtibi*, *doğançı* (in some cases),<sup>7</sup> holder of an *arpalık*, and many other officials. Peasants living on such land pay their entire fines to their feudal lord.<sup>8</sup>

In addition, the Imperial domains (*havâşş-i hümayûn*), the *başmaklık* fiefs granted to ladies of the Sultan's family,<sup>9</sup> the land in private property (*emlâk*), and many waqf lands are also considered 'free'.<sup>10</sup> From people on Imperial domains the fines are collected for the Public Treasury (*beğlik*, *mîri*).<sup>11</sup> In some districts, peasants on privately owned land are to pay their fines to the Sultan's Private Treasury (*hâşşa-i hümayûn*).<sup>12</sup> But those who were granted

<sup>1</sup> MS. Bb, f. 134a; Barkan, 180, § 28. In *MTM*, i. 323 the formula is *kime ki ra'iyet yazılmış ise anıñ olur*. See also OCC, §§ 117-18.

<sup>2</sup> Belediye Libr., MS. M. Cevdet K 227, ff. 6a, 11b; MS. Ua, f. 11a.

<sup>3</sup> Barkan, 13, § 50; 19, § 1; 28, § 3; 233, § 6; 234, § 15; 236, § 8; 243, § 2; 274, § 10; 287, § 54; 302, § 26; 314, § 17; 318, § 15; etc.; *MTM*, i. 323.

<sup>4</sup> Sometimes defined as *timâr*, not as *hâşş*.

<sup>5</sup> According to the correction of a *nişancı*, only if he holds an imperial *berât* (MS. Lb, f. 14b). In *MTM*, i. 323 the same, it seems, is said with regard to all the five last-mentioned fief-holders.

<sup>6</sup> But see the correction mentioned in the preceding note.

<sup>7</sup> See Barkan, 28, § 3.

<sup>8</sup> Barkan, 5, § 28; 27, § 21; MS. Ia, f. 63a-b.

<sup>9</sup> See *IA*, s.v. 'Başmaklık' (M. Tayyib Gökbilgin).

<sup>10</sup> Barkan, 19, § 1; 28, § 3; 287, § 54; 302, § 26; 314, § 17; MS. Ia, f. 63a-b; *Mühimme Defteri*, vol. 67, no. 140; Belediye Libr., MS. M. Cevdet K 227, f. 1b.

<sup>11</sup> Başbakanlık Arşivi, Maliye Defteri 15367, p. 1; see also Barkan, 96, § 24 (concerning the Sultan's slaves); Bursa Sicilli, A 28, f. 86a.

<sup>12</sup> Barkan, 207, § 9 (*gibi* should be read *ki*); Başbakanlık Arşivi, Tapu Defteri 181, p. 3.

land as private property by an Imperial *mülknâme* (*temliknâme*) were often authorized to collect the fines for themselves.<sup>1</sup>

Even more complicated are the regulations concerning waqf. On certain waqf lands the peasants had to pay their fines to the Sultan's Treasury; many others, however, were registered as 'free', i.e. as entitled to the fines from their peasants.<sup>2</sup> In fact, very many firmans were issued to prohibit the local governors and their men, as well as officials and tax-farmers of Imperial domains, from collecting fines (and other 'örf taxes) from peasants on waqf land, especially on that of a Sultan's endowment, since they belonged to the waqf.<sup>3</sup> One of these firmans, given by Sultan Bâyezîd II, was confirmed by his son, Selim I, and renewed by his grandson, Süleymân.<sup>4</sup> On the other hand, the income from 'örf taxes of waqf villages was by the Sultan's order sometimes 'detained' (*ifrâz*) from the endowment and allotted to his Private Treasury.<sup>5</sup> A firman of Muḥarrem 942/1535<sup>6</sup> explicitly states that fines and other 'örf impositions levied on waqf villagers are, according to the *sharī'a*, not proper (*ṣālīḥ*) income for a religious endowment and shall therefore be collected for the Sultan's Treasury.

A large part of the land in the Ottoman Empire was, however, not regarded as 'free'. It consisted of the fiefs of the ordinary *tīmār*-holders (*sipāhī*), including fortress soldiers (*ḥiṣār eri* or *müstahfiz*) and sometimes also falconers (*doğancı*)<sup>7</sup> and others. The fines from peasants living on such land did not belong entirely, or did not belong at all, to their feudal lord. Already the earliest extant Ottoman code, the *Ḳānūnnâme* of Meḥemmed II,<sup>8</sup> prescribes that 'the *subaşı* shall take half the fines obtained from the peasants of a fief-holder (*süvārī*) and the fief-holder the [other]

<sup>1</sup> British Museum, MS. Or. 9503, f. 1b (of the year 960/1553); Bayezit Libr., MS. Veliyüddin 1970, f. 57a-b (945/1538); Caskel, in *Documenta Islamica Inedita*, Berlin, 1952, p. 254, § 10 (1049/1640); Hammer, *Staatsverfassung*, i. 216 (1017/1601).

<sup>2</sup> e.g. Başbakanlık Arşivi, Tapu Defteri 181, p. 3; 283, p. 7; Barkan, 207, § 9; 208, § 13; Mantran-Sauvaget, 83-4, 88, etc.

<sup>3</sup> e.g. Bursa Sicilli, A 30, f. 327b; Başbakanlık Arşivi, Maliye Defteri 2775, p. 1451; Refik, *Aşiretler*, no. 80.

<sup>4</sup> Bursa Sicilli, A 28, f. 86b.

<sup>5</sup> Ibid., A 38, f. 50a.

<sup>6</sup> Ibid., A 52, f. 68b. [Cf. also above, p. 282.]

<sup>7</sup> For the lower status of the *ḥiṣār eri* and the *doğancı* see also *MTM*, i. 160, 312.

<sup>8</sup> Kraelitz, 25, § 17; the editor (ibid., 40) misunderstood the text. See also the *Ḳānūnnâme* for Cephalonia (Ba, f. 139a; Bb, f. 247a-b).

half'.<sup>1</sup> Accordingly, in many districts the fines collected on the small fiefs, which were not 'free', were divided—one half was given to the fief-holder and the other half to the *sancakbeği* (or *beğlerbeği*) or the *subaşı*, or to the *sancakbeği* and the *subaşı*, each taking a quarter.<sup>2</sup>

This sharing of the fines between two authorities was bound to cause conflicts and oppression of the people. Significantly, some *kānūnnāmes*<sup>3</sup> lay down that when a fine is to be exacted from an offender, the fief-holder or his representative shall be present in order to prevent the *sancakbeği*'s men from taking more than their share.

The only fines that are due in their entirety to the fief-holder even if his land is not 'free' are those for crop damage by animals (*deştbanī*).<sup>4</sup> Their earlier assignment, in some regions, to the *sancakbeği* had caused much hardship to the peasants.<sup>5</sup>

On the other hand, in some districts the full fines from people living on land that is not 'free' belong to the *sancakbeği*. Such regulations are found in *kānūnnāmes* for Montenegro,<sup>6</sup> Bolu,<sup>7</sup> Tripoli in Syria,<sup>8</sup> and Aydın.<sup>9</sup> As the reason for this regulation the earliest *kānūnnāme* for Tripoli, which is dated 925/1519, states that in the past, i.e. under Mamlūk rule, it was not the 'law of the country' (*kānūn-i diyār*) to register the fines (and the bride tax) as due to the holders of small fiefs (*sipāhī*). In the district of Aydın, too, the fines were originally due in their entirety to the *sancakbeği*, but later (before 935/1528–9) the penalty of the small

<sup>1</sup> Cf. also Mehemmed II's other *kānūnnāme* (KAO, 28) concerning the fine for homicide which is due to the *mīri subaşıları* or the *ehl-i timār subaşıları*. For the division of the fines according to Dulkadir law see above, pp. 51–3.

<sup>2</sup> Barkan, 234, § 15; 235, § 6; 207, § 9; 5, § 28; 27, § 21; etc. In the province of Karaman the other half was at one time allocated to the *hāşş* fiefs of an Imperial prince (*şehzāde*) (TOEM, 1329, suppl., 38), probably a prince who served as governor of the province (Cem Sultan?, see *ibid.*, 66 [and above, pp. 19–20]).

<sup>3</sup> Barkan, 286, § 53; MS. Ee, f. 89a.

<sup>4</sup> OCC, § 108. Barkan, 22, § 3; 49, § 8; 72, § 56; 199, § 13; 234, § 15; 274, § 11; 286, § 52; but see *ibid.*, 339, § 4; Đurdev, *Kanuni*, 77. [pencil note:] Perhaps, however, what is meant here is not fines for offences actually committed but a fixed *resm-i deştbanī* (see above, p. 280), and hence in effect a tax.

<sup>5</sup> Barkan, 36, § 9. Cf. also *ibid.*, 397, note to § 11.

<sup>6</sup> Đurdev, *Kanuni*, 174–5.

<sup>7</sup> Barkan, 28, § 2. See also TOEM, 1329, suppl., 38.

<sup>8</sup> Barkan, 552, §§ 4 and 7. See also, *ibid.*, 216, § 13.

<sup>9</sup> *Ibid.*, 13, § 50; 14, § 52. The same rule applied at some places in the neighbouring *Vilāyet-i Germiyān* (MS. Ud, f. 14a–b).

fief-holders induced the government to introduce here too the common division of the fines between the *sancakbeği* and the *sipāhi*.

If the cadastral register of a district does not state to whom the fines and other *bād-i havā* impositions are due, they are to be collected by the *mevkūfçı*.<sup>1</sup>

The regulations discussed so far do not apply to the members of certain social groups which enjoy a large measure of separate jurisdiction. Among the soldiers, for instance, the *müsellems*, *yayas*, and *yamaks* pay fines to their own *sancakbeğis*,<sup>2</sup> the *voynuks* to their *çeribaşıs*, *ser'askers*, or *beğs*,<sup>3</sup> and the *cānbāzes* to their *subaşı*.<sup>4</sup> The fines of certain *tatars*, of the falconers, and of the *esb-keşān* (*at çekenler*)<sup>5</sup> belong to the Public Treasury.<sup>6</sup> From *yürüks* and certain other *tatars* fines are due to their *subaşı* or, in some cases, to the Sultan's Treasury.<sup>7</sup> Fellahs in Egypt are fined by their local *kāşifs*,<sup>8</sup> Kurds by their *beğs*,<sup>9</sup> and gipsies by their own *sancakbeğis* or the feudal lords.<sup>10</sup> Of the fines paid by the Wallachs (*Eflāk*) to the *sancakbeği*, ten per cent is due to their own (Christian) village notables (*knez*).<sup>11</sup>

In the early sixteenth century the Ottomans abolished, as *bid'at*, the earlier custom prevalent in some districts according to which after the payment of the legal fines some officials exacted additional fines, such as the *nāyibceklük* and other dues levied in the Dulkadir state,<sup>12</sup> the supplementary fine exacted (it seems) by

<sup>1</sup> Marginal note in a *kānunnāme* (Süleymaniye Libr., MS. Esad Ef. 2362, f. 16a). For *mevkūfçı* see *TOEM*, 1329, suppl., 12; *EI*<sup>1</sup>, art. "Timār" (Deny), p. 772; Gibb-Bowen, i. 151.

<sup>2</sup> *TOEM*, 1329, suppl., 45, 47; Barkan, 244, § 7; Bursa Sicilli, A 33, f. 126b; *Glasnik*, ii (1947), 155.

<sup>3</sup> Barkan, 265, § 3; MS. Fh, f. 40b; Başbakanlık Arşivi, Maliye Defteri 81, p. 1; 546, pp. 3-4.

<sup>4</sup> Barkan, 247, § 3.

<sup>5</sup> See *TOEM*, 1329, suppl., 63.

<sup>6</sup> Barkan, 288, §§ 60-1; *Glasnik*, ii (1947), 158; Galabov-Duda, nos. 499, 518.

<sup>7</sup> Barkan, 260, §§ 2, 7; 263, §§ 7, 10; 12, § 45. For fines from tribes see also *Glasnik*, ii (1947), 154.

<sup>8</sup> Barkan, 362, § 13.

<sup>9</sup> *Ibid.*, 207, § 9; Başbakanlık Arşivi, Tapu Defteri 181, p. 3.

<sup>10</sup> Barkan, 249, §§ 5-6; *Glasnik*, ii (1947), 155.

<sup>11</sup> Barkan, 325, § 4; *TOEM*, 1329, suppl., pp. 63-4; MS. Fh, f. 6a; according to a marginal note in MS. Ke, f. 14a, this regulation was later abrogated. For *knez* see Barkan, 306, § 11; Beldiceanu, i. 164, and the literature cited there; and ii. 118.

<sup>12</sup> See DPC, § 42.

*subaşı*s and night-watchmen in the Konya region,<sup>1</sup> and the *hakk-i siyâset* which *voyvodas* used to collect in Bosnia.<sup>2</sup>

In the towns, fines were generally collected by the *subaşı*, the night-watchmen ('*ases*'), or the *muhtesib*, the last-mentioned dealing chiefly with market delicts.<sup>3</sup> The night-watchmen used to levy a tax ('*asesiye*') of one *akçe* (or two *akçe*) a month on every shop they watched in the bazaar, but were forbidden to exact a similar 'watching' tax (of five *akçe*) for every virgin in their ward. The *kânûn* also prohibited their fining innocent people walking in the streets after dark. On arresting drunkards or thieves at night, however, they were in certain districts (Mosul, Diyarbakır) entitled to ten per cent of the fine collected by the *subaşı* (or for the Public Treasury).<sup>4</sup> In other provinces, people arrested at night while loitering in the market or other places had to pay a fine, one half of which was taken by the night-watchmen or their chief ('*asesbaşı*') and the other by the *subaşı*<sup>5</sup> (or *nâyiğ*).<sup>6</sup>

According to an 'old' Ottoman *kânûn* already mentioned,<sup>7</sup> the watchmen ('*ases*, *pâsbân*) and other police officers had to pay to the local *cadı* a part of the fines, small or large, which they had collected from people arrested at improper hours (*bî-vakıt*) of the night on roads, in towns or in villages, and not brought before him. This money was due to the *cadı* as (i.e. instead of?) 'registration fee' (*resm-i sicill*), i.e. the fee for recording an offender's deed in the register of the law-court.\*

In some special cases fines were due to other people, such as the chief of the miners (*kuyucubaşı*) for certain offences against mining regulations.<sup>8</sup>

The Ottoman Criminal Code prescribes that whilst chastisement (*ta'zîr*) is inflicted under the supervision of the *cadı*, the fines are

<sup>1</sup> TOEM, 1329, suppl., 67.

<sup>2</sup> Barkan, 397, § 8. In the version published in Đurđev, *Kanuni*, 36 the additional fine is called *bedel-i siyâset* [see above, p. 271] and in a later version (*ibid.*, 49) *siyâset-i cerime* (so read by the editor, p. 55, n. 9; perhaps *siyâset cerime(sî)*).

<sup>3</sup> See above, pp. 232 et seqq.

<sup>4</sup> Başbakanlık Arşivi, Tapu Defteri 998, p. 60 (*Kânûnnâme* for Mosul); Barkan, 69-70, § 41; 134-5, § 22; 179, § 23.

<sup>5</sup> Barkan, 400, § 24.

<sup>6</sup> Bibl. Nat., Paris, MS. A. f. turc 42, f. 7b (*sicill* entry of Muḥarrem 918/1512). [pencil note:] A summary punishment inflicted (? only in the nineteenth century) on suspects apprehended at night not carrying a lantern was to set them to work in the stoke-hole (*külhân*) of a nearby public bath (Nûrî, 964, n. 70), whence the still current term *külhanbeyi* for a rough, a rowdy.

<sup>7</sup> See above, p. 283 and n. 1.

\* [See above, p. 213.]

<sup>8</sup> Beldiceanu, ii. 183, §§ 4-5.

collected by the executive officers (*ehl-i 'örf*).<sup>1</sup> Some European writers of the seventeenth and eighteenth centuries,<sup>2</sup> however, claim that the criminals sentenced to the bastinado paid their fines to the *cadi*. Moreover, they say,<sup>3</sup> in certain cases the *cadis* received part of the blood-money imposed on criminals or some types of fines in addition to it. These statements, if correct at all, may not apply to the usage in earlier times. Ottoman sources confirm only that *cadis* sometimes collected fines from people who did not take part in the public prayers, a practice which was considered illegal by the *müftis*.<sup>4</sup>

European observers also asserted<sup>5</sup> that criminals had to pay, in addition to the fines, a certain 'remuneration' to those who inflicted the strokes and to the man who counted them, but these statements too need further proof.

Whoever actually received the fines, the general rule is that no offender shall be fined twice.<sup>6</sup> Therefore a fugitive who has paid his fine at the place to which he fled is not to be fined again after his return; and anyone who has committed an offence at a place other than his permanent residence and has been fined there has not to pay another fine when he comes back.<sup>7</sup>

#### (h) *The farming of fines*

In many places the fines were collected by tax-farmers (*'āmil*),<sup>8</sup> since it was customary to farm out (*mukāṭa'aya vèrmek*) the revenue from fines, as well as that from other '*örf* impositions. The estimated income from the fines of any one place, as laid down in the cadastral registers, is rather low,<sup>9</sup> and consequently the amounts

<sup>1</sup> OCC, §§ 18, 30, etc. (in Fb).

<sup>2</sup> Pococke, ii, part 2, p. 12; Guer, ii. 162; Febvre, *État*, 147; d'Ohsson, iii. 214 (but see *ibid.*, 241); and others.

<sup>3</sup> Galland, ii. 105; de Saumery, ii. 191-2; Febvre, *État*, 150. For the custom in Umayyad times to pay half the blood-money for a non-Muslim to the Public Treasury, see Goldziher, in *ZVRW*, viii (1889), 409-10.

<sup>4</sup> See above, p. 281.

<sup>5</sup> Busbecq, 156; d'Arvieux, i. 62-3, 82; and others.

<sup>6</sup> See *TOEM*, 1329, suppl., 67 (= Barkan, 43, § 8). Cf. also Barkan, 86, § 29.

<sup>7</sup> OCC, §§ 120, 119.

<sup>8</sup> See OCC, § 115; Barkan, 397, § 8; Anhegger-İnalçık, p. 73 (Beldiceanu, i. 145); and the *cadis*' registers. Sometimes a *subaşı* was the '*āmil* of his district (or vice versa?) (Bursa Sicilli, A 52, f. 14b). For the farming out of the *subaşı*'s office see Uluçay, *Ziraat*, 182; see also 171, n. 340.

<sup>9</sup> For an extreme case see Fekete, *Rechnungsbücher*, 754, n. 7.

paid by the tax-farmers for the right to collect the fines are very small. In the reign of Selim I (1512–20), for instance, the fines (including *deştbāni*)<sup>1</sup> of two villages near Bursa were farmed out for 360 *akçe* a year;<sup>2</sup> somebody paid 6,500 *akçe* a year for the fines and a great many taxes of the town of İzmit;<sup>3</sup> and 8,500 *akçe* was required from two men who farmed the fines (and '*siyāset*')<sup>4</sup> of the city of Bursa for a year.<sup>5</sup>

The farming out of fines, as of other revenue, often gave rise to scandalous oppression. Sometimes fines were farmed out to dishonest people, who put up as sureties men of their own type. With a large retinue they toured the villages, forcibly seized the peasants' livestock, fodder, and foodstuff, and collected illegal as well as excessive fines.<sup>6</sup>

In view of the continuous oppression of the people by the so-called *para voyvodaları*, who bought or farmed the *niyābet* and *bād-i havā* impositions (which presumably included the fines), orders were given to abolish this system and to have these dues collected by the ordinary *voyvodas*, i.e. subordinates of the governors and other fief-holders, in accordance with the *shari'a*, the *kānūn*, and the land and population registers (*defter*).<sup>7</sup>

(i) *Illegal and excessive fines*

One of the chief objects of the sultans in enacting their criminal codes was to prevent the fining of innocent people and the exaction of excessive fines.<sup>8</sup> Many *kānūns* and firmans stressed that the executive officers must not fine people without a conviction by the *cadi* or collect more than the fines prescribed in the *kānūnnāmes*. The local *cadis* were to report offenders to the government; otherwise they themselves were to be held responsible and be

<sup>1</sup> For *deştbāni* see above, p. 124, n. 12.

<sup>2</sup> Bursa Sicilli, A 20, f. 361b.

<sup>3</sup> Üsküdar Sicilli, vol. 1, f. 7a.

<sup>4</sup> ? = *bedel-i siyāset* (see above, p. 271).

<sup>5</sup> Bursa Sicilli, A 25, f. 110a. The figure seems low; at about that time the bride tax (*gerdek değeri*) of Bursa was farmed out for 30,000 *akçe* (ibid., A 201, f. 270a). [pencil notes:] Further examples: (1) In 925/1519 the annual income from fines and various *örf* taxes for the town of Malatya and several villages was estimated at 45,000 *akçe* (Başbakanlık Arşivi, Maliye Defteri 15450, p. 2). (2) In 991/1583–4, the fines, bride tax, and other *bād-i havā* of the city of Aleppo were estimated at 146,000 *akçe* per year (Mantran-Sauvaget, 118).

<sup>6</sup> *TOEM*, 1329, suppl., 68 (= Barkan, 44, § 13).

<sup>7</sup> MS. Eb, ff. 29b–36b (*nişān* of Muḥarrem 947/1540) [= *Belgeler*, ii/3–4 (1965), 110–16].

<sup>8</sup> See OCC, §§ 115–16; Barkan, 5, § 30; 71, § 49.

liable to dismissal and punishment.<sup>1</sup> These restrictions, however, were of no avail. From the sixteenth century, the abuses increased. The officials more and more ignored the prescribed amounts of the fines, which, despite the considerable depreciation of the Ottoman currency, had remained unchanged. Fief-holders, *subaşı*s, *āmils*, and others exacted excessive fines. Often they fined innocent people without any proof of their guilt or even without any trial before the *cadi*. At times they imprisoned, threatened, and tortured them until they succeeded in obtaining large amounts of money. When summoned before the *cadi* to justify their actions, they refused to appear.<sup>2</sup>

The *cadis*' registers of the sixteenth century record very many complaints in this matter. In some cases *subaşı*s, night-watchmen, and others were sentenced by the *cadi*, or ordered by *firman*, to return the fines they had collected from falsely accused persons, as is prescribed by the Criminal Code;<sup>3</sup> moreover, the oppressive night-watchmen were punished with strokes.<sup>4</sup> According to a *firman* (or *adāletnāme*) of Rebi' I 999/December 1590–January 1591,<sup>5</sup> however, the fines collected by executive officers without the *cadis*' knowledge were to be seized for the Public Treasury and the officers dismissed. According to a *fetvā* of 'Aḥmed', i.e. İbn Kemāl, a person fined by the *ehl-i 'orf* with the permission of a *cadi*'s *nā'ib* could claim the money back from the latter if the fine had been imposed contrary to the *shari'a* and the *kānūn*.<sup>6</sup>

In the course of the seventeenth century these abuses increased. Muṣṭafā Paşa, a favourite companion (*muṣāḥib*) of Sultan Meḥmed IV and titular governor (*mutaşarrıf*) of the *sancak* of Saruḥan, sent instructions to Manisa in Şevvāl 1084/1674 to prevent the exaction of various illegal fines in his district and to oblige officials to act in accordance with the *shari'a*.<sup>7</sup>

One type of illegal fine frequently collected in later centuries was the so-called '*öşr-i diyet*, 'the tenth of the blood-money'. This

<sup>1</sup> Barkan, 44, §§ 12–13; 274, § 13; 268, § 9; 270, § 20; 362–3, § 13; 397, § 8; MS. Fl, ff. 36b–37b; Đurdev, *Kanuni*, 166; Mühimme Defteri, vol. 73, no. 1245; etc.

<sup>2</sup> Barkan, 44, § 13; Edremit Sicilli, 42/1183, f. 18a; Bursa Sicilli, A 67, f. 166a; MS. Nb, f. 31a; MS. Nd, f. 56b; etc. <sup>3</sup> OCC, § 115.

<sup>4</sup> e.g. Bursa Sicilli, A 32, f. 79a; A 43, f. 86a; A 60, f. 73a; A 190, f. 26a.

<sup>5</sup> MS. Nb, f. 32a.

<sup>6</sup> Selle, 19, § 19.

<sup>7</sup> Uluçay, *XVII. asırda*, 405–6.

seems to be not another term for the fine prescribed in the Criminal Code for homicide\* but a monetary penalty which governors or their subordinates (*kethudās, voyvodas*, etc.) inflicted (on the people of the neighbourhood) when the murderer was not known or even when no murder had been committed at all.<sup>1</sup> In the Ottoman *ḵānūn*<sup>2</sup> it is mentioned only as an illegal penalty in cases of accidental death, for which of course no *diyyet* is to be collected either. According to an *'adāletnāme* registered in Receb 1018/1609,<sup>3</sup> rapacious governors touring their districts with two or three hundred horsemen would swoop down on villages where an accidental death through freezing, drowning, or falling from a tree had occurred or the body of a person killed by wounding had been found. By violent measures they extorted large sums of money (and other goods) as *kan 'öşrü*, which seems to be synonymous with *'ösr-i diyyet*, ruining the village and causing the peasants to disperse. The levy of this illegal fine is strictly prohibited as being contrary to both the *shari'a* and the *ḵānūn*.<sup>4</sup>

The same scandalous dishonesty of the executive organs is witnessed also in regard to other impositions payable for crimes. For instance, a special official (*kul*) sent out to investigate the case of a man found killed between two villages<sup>5</sup> collected 16,000 *akçe* from their inhabitants as payment for a settlement (*şulh*), i.e. as or instead of blood-money. Of this sum he took 1,000 *akçe* for himself as fee for his trouble (*ayak derliği*);\*\* 5,000 *akçe* he gave to the son

\* [*Kan cürmi*, see OCC, §§ 41, 42.]

<sup>1</sup> See Mühimme Defteri, vol. 78, no. 123 (Receb 1018/1609) (*'ösr-i diyyet* of 8,000 *akçe*); Uluçay, *XVII. asırda*, 346-7, 427-8 (even higher *'ösr-i diyyet*); Süleymaniye Libr., MS. Şehit Ali Paşa 2865, p. 5 (*buyuruldu* of a governor to his *kethudā* ordering him to collect *'ösr-i dem (ü) diyyet*, seventeenth century).

<sup>2</sup> OCC, § 126.

<sup>3</sup> Mühimme Defteri, vol. 78, nos. 4012 and 4013. Published, with some errors, in Uluçay, *XVII. asırda*, 208-14, and in Cezar, *Levendler*, 385-93, 473-80 (photostats of the originals) [and now by H. İnalçık in *Belgeler*, ii/3-4 (1965), 123-33 and plates II/1-9; see especially pp. 126, 127].

<sup>4</sup> This prohibition on collecting *'ösr-i diyyet* was re-confirmed in an *'adāletnāme* of 1153/1740 (see Uluçay, 18. ve 19. yüzyıllarda, 192-5). See also the prohibition on the collecting of *'kan-bahā'*, of 1197/1783 (*Tarih Vesikaları*, no. 10, pp. 279, 282). The abuse continued into the nineteenth century (see Bianchi in Noradounghian, i. 304). [pencil note:] Compare on this question the abolition by the Mamlūk Sultan in about 906/1500 of an illegal fine levied on the inhabitants of a quarter in which a person had been killed but the murderer had not been found (J. Sauvaget, in *B. Ét. Or.*, ii (1932), 44 et seq.).

<sup>5</sup> See OCC, §§ 44, 76, 77.

\*\* [For this term, see above, p. 238.]

(and heir) of the man killed, but the rest, also due to the son, he failed to hand over. The son appealed to the *cadi* and eventually succeeded in recovering 1,000 *akçe* from the official, but he had to renounce his claim to the remaining 9,000 *akçe*. This case occurred not in the period of Ottoman decline but in 919/1513, early in the reign of the powerful Sultan Selīm I.<sup>1</sup>

### 5. *Teşhîr*: exposition to public ignominy

For a number of offences the Ottoman law prescribes exposition to public ignominy (*teşhîr*),<sup>2</sup> sometimes in addition to chastisement.\* This penalty, which is called *ta'zîr bi'l-teşhîr* in the *shari'a*,\*\* is inflicted by the *cadi*.<sup>3</sup> Liable to this punishment are false witnesses (just as in the Dulkadir Penal Code),<sup>4</sup> procurers and procuresses,<sup>5</sup> and, according to the *ihtisâb kânûnu*, also those who neglect the ritual prayers,\*\*\* do not observe the fast of Ramazân, or commit certain market delicts.<sup>6</sup> 'Ulemâ who habitually marry girls or women to the men who have abducted them<sup>7</sup> or marry women before the end of their waiting period ('*iddet*)<sup>8</sup> are, in addition, to have their beards cut off.<sup>9</sup> The Dulkadir codes and some fifteenth-century Ottoman decrees prescribe that certain offenders are to be exposed with their faces blackened.<sup>10</sup>

A person who cuts purses or knives people (but does not commit such acts habitually) or who shoots at another with an arrow is to be led through the streets with the knife or arrow thrust through his arm (or ear).<sup>11</sup> This penalty was in fact inflicted in the early sixteenth century.<sup>12</sup>

<sup>1</sup> Bursa Sicilli, A 23, f. 323a.

<sup>2</sup> In DPC, § 14: *rûsvâ-i 'âmm etmek*; in OCC, §§ 48, 49 also *gezdirmek*.

\* [pencil note:] But generally not in addition to a fine (see, however, DPC, § 35 in version B).

\*\* [pencil note:] See, e.g., Debbâğzâde, 287–8. [Cf. also Mâwardî, 403.]

<sup>3</sup> OCC, § 64 in Ka.

<sup>4</sup> OCC, § 98. Cf. DPC, § 38. See also the Ottoman *fetvâ* (of Ma'lûl-zâde Mehmed Efendi) in *İlmiye Sâlnâmesi*, 401.

<sup>5</sup> OCC, § 57 (but see §§ 30 and 75).

\*\*\* [pencil note expanded:] See also the *nişân* (?*yasaknâme*) of Şafer 881/1476 in Lugal-Erzi, 94–5 (where the penalty is called *ihânetle teşhîr*).

<sup>6</sup> OCC, § 101 in Ka and § 102 in Ba, etc. See also DPC, § 35.

<sup>7</sup> OCC, § 15 in Db.

<sup>8</sup> OCC, § 100 in Pe.

<sup>9</sup> For this penalty see also Anhegger-İnalçık, pp. 29, 61, etc. (Beldiceanu, i. 93, 133, etc.) and *TOEM*, 1329, suppl., 49.

<sup>10</sup> DPC, §§ 14, 38; Anhegger-İnalçık, p. 30 (Beldiceanu, i. 94).

<sup>11</sup> OCC, §§ 49, 48 (1).

<sup>12</sup> Cantacasin, 212.

Several fifteenth-century *yasaknāmes*<sup>1</sup> prescribe that people who violate the government's salt monopoly or certain customs regulations or who steal rice from State plantations shall have their noses split or have them pierced and be led around the town by a cord passed through them.

The thief of a hen, duck, etc. shall, according to one version of the Criminal Code,<sup>2</sup> be publicly exposed with the bird hung around his neck. Similarly, people who despite the warnings of the *çöplük subaşı*, the officer in charge of keeping the town clean,<sup>3</sup> throw animal carcasses into the street are to be paraded through the town with the animal's head hung from their necks (or be given five strokes).<sup>4</sup>

These bizarre forms of punishment were actually applied. European observers<sup>5</sup> recount how a tradesman who charged more than the officially fixed price or used short measures and weights was often led through the streets with his face plastered with mud, his turban replaced with a ridiculous hat,\* or his head put through a very heavy wooden board (*tahta külâh*)<sup>6</sup> to which a small placard had been affixed and on which his commodities were exhibited. If the offender was a baker, in some places a string was passed through his nose and a loaf of bread hung on it.

Another common penalty was, at least in the seventeenth and eighteenth centuries,<sup>7</sup> for such offenders to be nailed by their ears to the door-post of their shop or to a wall with their toes just touching the ground; they were left in this position for several hours.

False witnesses, harlots, and other offenders were led through the streets sitting backwards on a donkey and holding its tail instead of a rein. Their faces were blackened or smeared with filth and entrails of sheep or oxen were hung around their necks and

<sup>1</sup> Anhegger-İnalçık, pp. 29, 31, 45, 63, 75 (Beldiceanu, i. 93, 95, 109, 135, 147).

<sup>2</sup> OCC, § 64 in Ka.

<sup>3</sup> On this officer see Nürî, 954 et sqq.

<sup>4</sup> MS. Eb, ff. 102a, 126b; MS. Ed, f. 82a.

<sup>5</sup> Menavino, 56-7; Du Fresne, 97-8; Deshayes, 222; d'Arvieux, i. 81-3; Thévenot, 127; Pouillet, i. 347-8; Febvre, *État*, 179; Pétis de la Croix, 27, n. 2; d'Ohsson, iii. 274-5.

\* [pencil note:] Cf., for this headgear, Dozy, s.v. *turtür*; Tyan, *Histoire*, 650; Labib, 183.

<sup>6</sup> See *Tarih Vesikalari*, no. 5, pp. 336-7; no. 6, p. 452. For the *tahta külâh* in Safawî Persia, see Minorsky, *Tadhkirat*, 83, 149-50. [pencil note:] For an eighteenth-century miniature showing a dishonest tradesman covered in feathers see Pallis, Fig. 19.

<sup>7</sup> Du Loir, 187; La Motraye, i. 259; Lucas, i. 35; Dallaway, 78.

shoulders. Sometimes a public crier went in front of them announcing *yalan şahidiñ hâli budur*, 'This is what happens to a false witness.' The spectators pelted them with mud and dung.<sup>1</sup>

According to the register of the *cadi* of Bursa,<sup>2</sup> a Jewish woman accused of arson was put on a horse, daubed with pitch which was set on fire, and thus led through the town before being strangled. European travellers recount similar methods of leading criminals to their place of execution.<sup>3</sup> After a fire broke out in Istanbul two Christians were paraded through the streets with candles hung from their pierced noses.<sup>4</sup>

'This exposition to public scorn', an eighteenth-century Turkish historian remarked,<sup>5</sup> 'though not capital punishment is worse than capital punishment.'

It is interesting that the old penalty of *teşhir* continues even now to be inflicted in Turkey. When in 1959 a band of thieves was arrested in Nazilli, they were paraded through the streets of the town with the carpets and clothes they had stolen draped round them and with placards, probably explaining their misdeeds, attached to their backs.<sup>6</sup>

## 6. Imprisonment

As was the case in antiquity and in medieval Europe, imprisonment was not a very common penalty in the Ottoman Empire,\* at least not in its earlier periods and for criminal offences. (Debtors were often put in prison.)<sup>7</sup> Though known to Muslim religious law and frequently mentioned in Ottoman *fetvās*,<sup>8</sup> it is rarely prescribed in the Ottoman Criminal Code. According to this, certain persons charged with an offence are to be imprisoned until the Sultan's decision on the appropriate punishment arrives.<sup>9</sup>

<sup>1</sup> Menavino, 53, 55-6; Postel, 10; Dernschwam, 73-4, 77, 84-5; Schweigger, 174; Mundy, 57; Pouillet, i. 348; d'Arvieux, i. 83-4; d'Ohsson, iii. 262; Dallaway, 79-80. See also Jabartī, iv. 215.

<sup>2</sup> Bursa Sicilli, A 42, f. 1b.

<sup>3</sup> Rauwolff, 41; Lucas, i. 35-6.

<sup>4</sup> Dernschwam, 118.

<sup>5</sup> Şam'dānizāde, f. 427a.

<sup>6</sup> *Cumhuriyet*, Istanbul daily newspaper, 16 August 1959.

\* [pencil note:] Penal servitude on the galleys (for which see below, pp. 304-7) in effect took its place.

<sup>7</sup> See for example Bursa Sicilli, A 8, f. 129b; M. T. Gökbilgin, *Edirne ve Paşa Livâsı*, Istanbul, 1952, p. 107.

<sup>8</sup> Often as a penalty inflicted in addition to *ta'zir*, i.e. strokes (see Horster, pp. 32, 38, 45, etc.).

<sup>9</sup> OCC, § 76 (but see § 76 in Db), § 87; Barkan, 364, § 18; 382, § 41; 383, § 42.

*Berāt*-holders, such as 'ulemā and waqf officials, however, are to be put in prison only if nobody is willing to stand surety for their persons and there is a likelihood of their resorting to flight.<sup>1</sup>

Imprisonment as a penalty is inflicted, often in addition to chastisement (*ta'zīr*) and a fine, for a few sexual offences<sup>2</sup> and for a man's beating his father or mother.<sup>3</sup> According to the *ih̄tisāb k̄ānūnu*,<sup>4</sup> butchers who fail to provide meat are also to be put in prison until it is supplied. A firman<sup>5</sup> imposed life imprisonment on a *müderris* who had killed one subordinate of the governor and wounded others.

An offender was to be imprisoned either by the *cadi*<sup>6</sup> or, after the *cadi* had convicted him, by the executive officers (*ehl-i 'örf*).<sup>7</sup>

Often, however, the latter, in violation of the *k̄ānūn*, put a person in prison without any trial in order to extort money from him.<sup>8</sup> If, while in prison, a peasant, with his feudal lord's consent, transfers his land to the executive officers in lieu of a fine in order to secure his release, the transaction is, according to the *k̄ānūn*, considered invalid because it was made under duress. After his release from prison, the peasant is entitled to recover his land.<sup>9</sup>

The *k̄ānūn* does not usually prescribe the length of the prison term. According to a *fetvā* of the Şeyhülislām Ebu 's-Su'ūd,<sup>10</sup> there is no fixed limit for a 'long' prison term (*h̄abs-i medīd*); it is left to the discretion of the judge, who fixes it in accordance with the offence committed. Many Ottoman *fetvās*<sup>11</sup> lay down that the criminal is to stay in prison until 'his repentance and moral improvement have become manifest' (*tövbe ve şalāhı zāhīr olınca*). In many cases bail was provided to secure a prisoner's release.<sup>12</sup>

In later periods many criminals were imprisoned in fortresses in various parts of the Empire. Extensive information on such

<sup>1</sup> OCC, § 123. But see Barkan, 382, § 41; 383, § 42.

<sup>2</sup> OCC, §§ 10 (in Da, Db), 20, 21.

<sup>3</sup> OCC, § 60.

<sup>4</sup> Aḥmed Luṭfī, 83; Nürī, 410. In later years, imprisonment became a common penalty for market delicts (Nürī, 637).

<sup>5</sup> Mühimme Defteri, vol. 24, no. 63.

<sup>6</sup> OCC, § 20.

<sup>7</sup> OCC, § 116. [pencil note expanded:] A document of 995/1587 (published by Uzunçarşılı, in *Bellekten*, v/19 (1941), 294-6) refers to people detained, *sicill-i k̄ādī ile*, in what the *subaşı* calls 'my prison' (*h̄absim*).

<sup>8</sup> Barkan, 200, § 21; Djikiya, p. 4, lines 18-19.

<sup>9</sup> State Public Libr., Leningrad, MS. Dorn 535, f. 7a; Topkapı Sarayı Libr., MS. Revan 1938, f. 65a-b.

<sup>10</sup> Selle, 26, § 1.

<sup>11</sup> Horster 45 (84); 'İlmīye Sālnāmesi, 340; İbn Kemāl, in Belediye Libr., MS. M. Cevdet O 44, f. 53a; *Arşiv Kılavuzu*, ii, doc. 22. Cf. Nürī, 914-15.

<sup>12</sup> See Nürī, 639.

people (*kal'e-bend*) and their misdeeds is found in the Başbakanlık Arşivi at Istanbul in a register of the years 1115-22/1703-11<sup>1</sup> and in the 44 large volumes of the Kalebend Defteri series, the oldest of which begins in the year 1134/1721-2.<sup>2</sup> Apart from imprisonment for a wide range of offences, these registers record innumerable cases of banishment,\* including some of high-ranking *'ulemā*. The penalties were inflicted by firman, often in response to a petition submitted to the Sultan by a governor or *cađi* and in accordance with the latter's official notification (*i'lām*) or legal certificate (*hüccet*). For a study of Ottoman criminal justice in the eighteenth and early nineteenth centuries these registers deserve thorough investigation.

### 7. Banishment

Another penalty rarely prescribed in the Ottoman Criminal Code is banishment (*nefy*),\*\* a punishment also known to the *sharī'a*. It is to be inflicted on persons who unintentionally set fire to houses, etc.,<sup>3</sup> watchmen who through lack of attention fail to prevent arson in towns,<sup>4</sup> refractory gipsies,<sup>5</sup> lepers,<sup>6</sup> and, most important, such undesirable elements as notorious criminals and harlots, whom their neighbours in a town or village reject as being unfit to live among them.<sup>7</sup>

In the last-mentioned case the penalty is qualified to some extent by giving these people a chance to mend their ways before final expulsion. In the margin of some manuscripts the penalty in such cases is declared to be abolished altogether as being contrary to the *sharī'a*. In actual practice, however, harlots and men notorious

<sup>1</sup> Kāmil Kepeci catalogue, 678.

<sup>2</sup> See M. Sertoğlu, *Muhteva bakımından Başvekālet Arşivi*, Ankara, 1955, p. 25, no. 15.

\* [See next section.]

\*\* [pencil note:] Also *tagrib*, *iclā*, as in Topkapı Sarayı Archives, E 12079 (5) = Mumcu, doc. 22. [For banishment as a form of *ta'zir* see Bilmen, iii. 307, § 845.9; for a discussion of the meaning of *yunfaw min al-arđ* in the Qur'ānic verse cited above (p. 196)—execution, banishment, imprisonment, or imprisonment elsewhere—see Bilmen, iii. 290-1.]

<sup>3</sup> OCC, § 92 (in Ta). See also § 95 in Ff, Fq (accomplices of incendiaries).

<sup>4</sup> OCC, § 93.

<sup>5</sup> OCC, § 96.

<sup>6</sup> OCC, § 95. Leprosy was dealt with almost as if it were an offence: somebody 'accused' of it could, after an examination by doctors, be declared 'acquitted' (*berīyü 's-sāha*) (Bursa Sicilli, A 4, f. 6b).

<sup>7</sup> OCC, § 124.

for whoring and wine-drinking were banished by the *cadi* or by a *firman* at the request of their neighbours.<sup>1</sup>

Other offenders, such as usurers, profiteers, informers, people who neglected the ritual prayers, and others were also liable to banishment with their families. The deportation of whole communities was often carried out for reasons of state, as, for example, when after the conquest of Cyprus in 1571 the Ottoman Government was most anxious to settle Muslims in the island.<sup>2</sup> In later periods tradesmen who charged more than the official fixed price were liable to banishment.<sup>3</sup> Many other offenders sentenced to banishment are listed in the *Kalebend Defteri* volumes mentioned above.

In the course of time banishment became a very common penalty, which was inflicted both for political reasons<sup>4</sup> and for a wide range of crimes, just as undesirable elements in England were condemned to transportation to Australia.

### 8. *Penal servitude on the galleys*

From the sixteenth century onwards, a penalty unknown to both the *shari'a*\* and the Ottoman Criminal Code became an increasingly common punishment—*kiirek*, i.e. penal servitude on the galleys. This punishment was inflicted almost indiscriminately, and the principles laid down in sixteenth-century *firman*s were often contradictory. Some decrees<sup>5</sup> imposed this penalty only on those whose offences were 'minor'\*\*\* and prohibited the commutation of *siyaset* punishment to servitude on the galleys. According

<sup>1</sup> Bursa Sicilli, A 43, f. 96a (954/1547); Trabzon Sicilli, 42/1815, f. 73b (Rebî' II 965/1558); Mühimme Defteri, vol. 19, no. 628 (*firman* of Rebî' II 980/1572); vol. 61, no. 141 (*firman* of 994/1586); Refik, *Onuncu*, p. 55. See also Lüdeke, i. 306.

<sup>2</sup> Mühimme Defteri, vol. 12, no. 1046; vol. 16, no. 525 (*firman*s of Şevvâl and Zû 'l-Ka'de 979/February-April 1572. See also Lewis, *Notes*, 29 et seq.; Heyd, *Ottoman Documents*, 163, 167-8.

<sup>3</sup> *Buyuruldu* of Şevvâl 1138/1726 in Nürî, 433.

<sup>4</sup> See, for instance, M. Çağatay Uluçay's study 'Sürgünler' in *Belleten*, xv/60 (1951), 507-92.

\* [pencil note:] It could presumably be justified as a *siyasa shar'iya* punishment: a habitual criminal may be imprisoned for life (Māwardî, 377; cf. Dede Efendi, MS. 697, f. 72b = M. 'Ārif's trans., 52).

<sup>5</sup> Mühimme Defteri, vol. 3, nos. 300 (966/1559) and 924 (967/1560); vol. 7, no. 939 (975/1568); vol. 14, no. 1358 (978/1571); vol. 55, no. 375 (993/1585).

\*\*\* [See above, p. 259.]

to other firmans,<sup>1</sup> however, those people, or only those people, who had committed 'serious offences' punishable with execution<sup>2</sup> or the amputation of a limb were to be sent to the galleys. From the wording of these firmans it seems that the latter rule was applied particularly in times when the Ottoman fleet urgently needed more oarsmen.

Important evidence concerning the almost unlimited range of offences punishable with *kürek* is found in a number of official registers preserved in the Başbakanlık Arşivi at Istanbul. The three oldest ones<sup>3</sup> list offenders sentenced to the galleys in the last few years of Süleymân the Magnificent's reign. A fourth,<sup>4</sup> entitled *Defter-i mücrimân der zindân-i tersâne-i 'âmire*, 'Register of the Criminals in the Imperial Dockyards', was compiled in Cumādā II 1119/1707, and a fifth<sup>5</sup> records criminals sent to the galleys in the years 1132-40/1719-28.

According to these registers, *kürek* punishment was inflicted for:

(a) offences punishable, according to the *shari'a* and/or the *kānūn*, with death, such as murder, apostasy, highway robbery, arson, etc., or with severe corporal punishment, such as certain cases of theft, abduction of a girl or boy, etc.<sup>6</sup>

(b) offences for which the Ottoman Criminal Code imposes strokes and/or fines, exposition to public ignominy, and the like. Examples are various sexual crimes, inflicting bodily harm, the drinking of wine,<sup>7</sup> cutting purses, quite minor thefts, giving false evidence, using forged documents and counterfeit coins, denunciation, and many other offences.

(c) offences not mentioned in the criminal *kānūnnāmes*, such as gambling (*kumār-bāzlık*), selling a free person into slavery, a slave's disobedience of his master, smearing a person's door with

<sup>1</sup> Mühimme Defteri, vol. 10, nos. 203 (979/1572) and 542 (979/1571); vol. 61, no. 192 (994/1586); vol. 64, no. 178 (997/1589); vol. 70, no. 152 (1001/1593).

<sup>2</sup> But, according to vol. 61, no. 192, excluding those liable to *kıyās*.

<sup>3</sup> (a) İbnülemin catalogue, Adliye, no. 3: 8 folios, register of the years 967-8/1559-61. (b) Kâmil Kepeci catalogue, no. 677: 87 folios, part of the beginning is missing. The date (955) recently supplied on the cover is wrong; the entries refer to the years 969-73/1561-6. (c) İbnülemin catalogue, Adliye, no. 4: fragments of several small registers for the years 972-4/1564-7.

<sup>4</sup> Cevdet catalogue, Adliye, no. 5576: 6 folios.

<sup>5</sup> Maliyeden müdevver, no. 729: 347 pages.

<sup>6</sup> See also the firman in Mühimme Defteri, vol. 64, no. 178.

<sup>7</sup> See also the firman in Dağlıoğlu, no. 131. But see the decree cited in the preceding note.

tar, submitting unjustified complaints against cadis or governors (in one case merely submitting a petition to the Sultan), refusal to pay the tithe to a waqf, in the early eighteenth century the adoption of the Catholic religion by orthodox Armenians, and many others. Further offences punishable with *kürek* are mentioned in firmans: the use of muskets by peasants for hunting,<sup>1</sup> supplying grain to foreign Christians,<sup>2</sup> etc. Worst of all, this punishment was meted out to people who, according to the *shari'a* and the *kānūn*, should have been acquitted by any law-court (such as suspects against whom nothing could be proved and who even had no criminal record; people who had committed homicide but had paid blood-money) and to people whose crime, coming under the statute of limitation, was no longer punishable.

The convicts were sent, together with a copy of the cadi's record of their crime (*şüret-i sicill* or *şüret-i cerime*),<sup>3</sup> to various ports or naval bases, such as the Imperial maritime arsenal (*tersâne*) at Istanbul, Lepanto (İnebahtı), Nauplia (Anabolu), Kavala, and others.<sup>4</sup>

The length of penal servitude on the galleys is generally not fixed in the sentence or order. In some cases, however, the penalty is inflicted for life (*mü'ebbed kürek*).<sup>5</sup> People who committed even 'minor' offences are known to have served terms of five to ten years.<sup>6</sup> In a very touching petition, the original of which has been preserved,<sup>7</sup> a Muslim peasant from the Bozok district of Anatolia complains that having been sent to the galleys for a trivial matter he has been serving there during the past twenty years.

According to one firman,<sup>8</sup> the convicts are to serve 'for some time' and 'should not be forgotten and left on the galleys'. In many cases the sentence states that they shall not be released until special order is given. Indeed, above some entries in the *kürek* registers a note is added a few years later saying 'released'. Sometimes people were released (or not sentenced to servitude in

<sup>1</sup> Dağlıoğlu, no. 87.

<sup>2</sup> Mühimme Defteri, vol. 64, no. 178.

<sup>3</sup> Ibid., vol. 3, nos. 168 and 300; vol. 6, no. 98; etc.

<sup>4</sup> For the reminiscences of a galley-slave see Fr. Seidel, *Denkwürdige Gesandtschaft an die Ottomannische Pforte*, Görlitz, 1711, pp. 44-9.

<sup>5</sup> See Mühimme Defteri, vol. 64, no. 178; vol. 78, no. 4012; and the *kürek* registers.

<sup>6</sup> Mühimme Defteri, *ibid.*

<sup>7</sup> Başbakanlık Arşivi, Kâmil Kepeci catalogue, 677, between f. 65 and f. 66.

<sup>8</sup> Mühimme Defteri, vol. 7, no. 417.

the first place) when they were able to provide a personal surety (*kefil*).\* The latter was sent to the galleys if the offender (or alleged offender) committed, or was accused of having committed, another offence and could not be arrested.

The almost indiscriminate imposition of the *kürek* punishment for practically all kinds of offences was the result of the growing need of the Ottoman Government for oarsmen on warships, as well as on boats for the transportation of stone, corn, and other commodities. Since there were not enough prisoners of war or other slaves available, the only way of obtaining these rowers was to send criminals or alleged criminals to the galleys, without paying much attention to the *shari'a* and the *kānūn*. It is significant that many firmans to this effect were issued in times of great naval activity, such as the invasion of Cyprus in 1570-1 and, with special urgency, after the destruction of the Ottoman fleet at Lepanto in October 1571.<sup>1</sup>

#### 9. *Payment of compensation*

In addition to suffering one or more of the penalties already discussed, some offenders are required by the *kānūn* to pay compensation (*taẓmīn*) to the person wronged. This is explicitly prescribed if somebody has killed a hen, dog, etc.<sup>2</sup> or stolen perishable objects of little value, such as fowls,<sup>3</sup> green corn or a small quantity of ripe corn from a field,<sup>4</sup> or taken by force some yogurt or bread while passing along the road.<sup>5</sup> Grain stolen by a peasant from a threshing-floor is, however, to be confiscated.<sup>6</sup>

If a thief or robber is not found or not convicted, compensation has to be paid either by those suspected of committing the crime or by the people in the neighbourhood<sup>7</sup> or by the watchmen<sup>8</sup> or,

\* [pencil note:] This was done particularly in cases where there was no private plaintiff (*da'vāci*). [Cf. above, p. 241.]

<sup>1</sup> Mühimme Defteri, vol. 9, nos. 20 and 86 (Ramazān 977); vol. 14, no. 1358 (Ramazān 978); vol. 10, nos. 203, 208, 542, 560 (Muḥarrem-Şevvāl 979).

<sup>2</sup> OCC, § 112. No fine is to be paid in this case.

<sup>3</sup> OCC, § 64 in Va, Vb.

<sup>4</sup> OCC, § 70. Here too no fine is to be collected. <sup>5</sup> OCC, § 81 in Aa.

<sup>6</sup> In lieu of a fine: OCC, § 69. Cf. also Barkan, 138, § 33 and 164, § 10 (the wine in a village from which wine has been brought into town illegally is to be seized).

<sup>7</sup> OCC, §§ 77 (2), 78.

<sup>8</sup> If a shop has been broken into: OCC, § 80.

in certain circumstances, by the keepers of caravanserais<sup>1</sup> or the guards of dangerous passes or roads (*derbendci*, *voynuk*).<sup>2</sup> If the thief flees and hides among peasants on 'free' land, they have to pay the compensation for what has been stolen if they do not find and hand over the criminal.<sup>3</sup>

For damage done by animals to standing corn, etc., the owner of the animals is held responsible.<sup>4</sup> It is interesting that some provincial *kānūnnāmes*<sup>5</sup> demand the payment of compensation before the owner is chastised and fined. But if the proprietor of the crop kills or wounds such animals he is, according to some versions of the Criminal Code,<sup>6</sup> to pay compensation for them.

Finally, a person who informs against an innocent Muslim has to compensate him for any loss of property he suffers as a result.<sup>7</sup>

In some cases,<sup>8</sup> however, the payment of the compensation is made dependent on the rules of the *shari'a*.

The payment of smart money or of the cost of medicaments and the doctor's fee to a wounded person is prescribed in provincial *kānūnnāmes* only.<sup>9</sup>

In general, as compared with the Dulkadır Penal Code<sup>10</sup> the Ottoman *kānūn* awards compensation only to a rather limited extent.

#### 10. *Diyet: blood-money*

According to the *shari'a*,<sup>11</sup> the blood-money (*diyet*)\* for a free man killed is 10,000 silver *dirhems*. With the gradual depreciation of the Ottoman currency, the equivalent of the 'legal dirhem' (*dirhem-i şer'i*) rose from 4 *akçe* in the fourteenth century<sup>12</sup> to 8 *akçe* in 1595,<sup>13</sup> 9½ *akçe* in the first part of the seventeenth century,<sup>14</sup>

<sup>1</sup> OCC, § 84 (2).

<sup>2</sup> OCC, § 122; Barkan, 398, § 16.

<sup>3</sup> OCC, § 117 (1). [For 'free' land see above, pp. 290-1.]

<sup>4</sup> OCC, §§ 109-10.

<sup>5</sup> Barkan, 134, § 18; 176, § 15; 199, § 13; etc.

<sup>6</sup> OCC, § 109 (2).

<sup>7</sup> OCC, § 104.

<sup>8</sup> In OCC, §§ 70 (in Rd) and 109 (2) and in the marginal notes to §§ 77 and 122.

<sup>9</sup> OCC, § 45, note 5 to trans.

<sup>10</sup> See above, pp. 49-50.

<sup>11</sup> [See, e.g., *EI*<sup>2</sup>, art. 'Diyā' (Tyan); Schacht, *Introduction*, 185;] Debbāğzāde, 167; Çavuşzāde, ii. 236 et sqq.

\* [pencil note:] In Ottoman sources also *dem ve (ü) diyet*.

<sup>12</sup> Hezārfenn, MS. Paris, f. 135b; Sa'deddīn, i. 40; Hüseyn, *Badāyi'*, i. 207 (25 *akçe* equals 6 *dirhem*).

<sup>13</sup> *Adāletnāme* in Köprülü Libr., MS. II, 360, f. 91b; Uluçay, *XVII. asırda*, 169 [= *Belgeler*, ii/3-4 (1965), 108].

<sup>14</sup> *Sānī*, MS. Istanbul, f. 76b.

12-14 *akçe* in 1670-1,<sup>1</sup> and 19-20 *akçe* in the beginning of the eighteenth century.<sup>2</sup> Consequently, in Ottoman money the *diyyet* amounted in the mid sixteenth century to 40,000-60,000 *akçe*.<sup>3</sup> It then steadily rose until in the second half of the following century it amounted to 2,500 *guruş* (piastres) (or 7,500 francs).<sup>4</sup>

Since homicide and wounding are considered in Muslim law exclusively matters of private law (*ḥakḥ ādamī*), the heir(s) of the person killed or the wounded person himself could choose between demanding retaliation (*kişās*) or blood-money (*diyyet*) or, *hisbeten li'llāh*, 'in hope of being rewarded by God',<sup>5</sup> he could renounce any claim against the offender. There is no clear evidence to show how common it was for heirs to agree to a money-settlement in cases of murder.<sup>6</sup>

Complications might arise in practice if the heir demanded blood-money and the murderer, who had confessed the crime, refused to pay it and asked for *kişās*, i.e. to be executed. In this case, according to the opinion of the authoritative legists, neither penalty could be inflicted.<sup>7</sup>

To protect surgeons against claims for *diyyet*, it seems to have been normal practice that people formally engaged themselves in the law-court not to bring an action against a surgeon who, at their request, was about to treat or operate upon themselves or their next of kin, in case something went wrong.<sup>8</sup> This was certainly a necessary precaution, since a circumciser who by misadventure cut off a boy's glans penis (*ḥaṣefe*) had in Receb 941/1535 to pay his father 42,000 *akçe* as damages.<sup>9</sup>

<sup>1</sup> Barkan, 333, § 2; 352, § 8. Cf. Debbāğzāde (d. 1114/1702-3), p. 166 (12½ *akçe*). But according to Galland, ii. 105, the *diyyet* for one eye, i.e. half the full blood-money, in 1673 was only 40,000 *akçe* (or 1,000 francs). [This concerned a non-Muslim, but in Ḥanafī doctrine the non-Muslim is not differentiated from the Muslim (Māwardī, 394).]

<sup>2</sup> Barkan, 337, § 16; Feyzullāh, f. 188b; Yeñişehirli 'Abdu'llāh Efendi, *Bahjat al-Fatāwā*, Istanbul, 1266, p. 582.

<sup>3</sup> Dernschwam, 177 (40,000 *akçe*) (but to be paid to the authorities, i.e. as fine?); Postel, 125-6 (60,000 *akçe*). [pencil note:] Thévenot (1655) records however (p. 127) that only 45,000 *akçe* is to be paid (if the murderer is not discovered).

<sup>4</sup> D'Ohsson, iii. 244 n. [pencil note:] According to White (i. 102) the statutory sum of 10,000 silver *dirhems* was in 1842 equivalent to 30,000 *guruş* or £280 sterling.

<sup>5</sup> Sānī, MS. Istanbul, f. 77b.

<sup>6</sup> For the eighteenth century see Montagu, Letter 42 (pp. 407-8); de Tott, i. 200.

<sup>7</sup> Ḥācibzāde, f. 120a. Cf. Māwardī, 392.

<sup>8</sup> e.g. Bursa Sicillī, A 5, ff. 74a, 386a. Cf. Guer (1746), ii. 429.

<sup>9</sup> Bursa Sicillī, A 36, f. 315b.

If the heirs of a person killed were minors, the murderer was imprisoned, it is reported,<sup>1</sup> until they came of age and could choose between *kişâş* and *diyēt*.

If, however, a murder was committed in the course of an attack by highway robbers (*kaī' al-ṭarīk*), the case was a violation of a right of God (*ḥakk Allāh*) and had therefore to be punished with a fixed *shari'a* penalty (*ḥadd*) which the heir could not renounce (and which neither the *cadi* nor even the Sultan could abstain from inflicting).<sup>2</sup>

If the murdered person had no heirs or his heirs were not known, the Sultan could choose between the criminal's execution (*kişāsan ḥatl*) or, if the latter agreed, his paying blood-money to the Public Treasury.<sup>3</sup>

A major problem of Ottoman criminal law, as indeed of Muslim criminal law in general, was posed if the murderer was not known. According to the *shari'a*, the blood-money has to be paid by the inhabitants of the house, of the village, or of the quarter of the town, etc., in (or near) which the body of a person killed is found. The Ottoman Criminal Code<sup>4</sup> in the main considers it sufficient to reiterate the rules of the *shari'a* in this matter. It stresses, however, the neighbours' obligation to find the criminal.<sup>5</sup> According to one statute,<sup>6</sup> if they do not find him they are to be imprisoned until the Sultan decrees what action shall be taken regarding them.

This collective responsibility of the people living near a place where a serious crime had been committed must have had some beneficial results. It impelled the population to prevent the commission of crimes in their vicinity. If nevertheless a crime was committed, it was in their interest to do their best to find the perpetrator; and if he could not be found, the heirs of the victim could receive compensation from them.

On the other hand, this rule was obviously most unfair in that it forced completely innocent people to pay blood-money and/or fines (or exactions passing as such). For instance, when an officer

<sup>1</sup> Le Brun (1678-84), 137.

<sup>2</sup> D'Ohsson, iii. 266.

<sup>3</sup> Mühimme Defteri, vol. 6, no. 625; Belediye Libr., MS. M. Cevdet O 18, f. 7b; 'Alī Efendi, *Fetāvā*, Köprülü Libr., MS. III, 123, f. 262a; Sānī, MS. Paris, ff. 71a-72b; Debbāğzāde, 168; d'Ohsson, iii. 249-50.

<sup>4</sup> OCC, §§ 44, 76-7, 126.

<sup>5</sup> See above, p. 235. [Cf. also the case at p. 251.]

<sup>6</sup> OCC, § 76; see also § 77 in Sa.

of the Sultan's Palace suddenly died in a caravanserai all the people who had dined with him were obliged to pay between 4,000 and 8,000 *akçe* each.<sup>1</sup> Moreover, in Ottoman practice it gave rise to scandalous abuses. The bodies of persons killed were left in certain places, often non-Muslim quarters, in order to extort large sums of money from the inhabitants. Even more serious was the fact that the governors and their men, anxious to collect fines from the people in whose neighbourhood the body of a murdered person was found, often made little effort to arrest and punish the criminal.<sup>2</sup>

The foreign residents, however, were protected by the Capitulations: if somebody was found killed in their quarter and their guilt was not proved, they were exempt from paying blood-money<sup>3</sup> or a fine.<sup>4</sup>

<sup>1</sup> Blount (1634), 92-3 (who was an eyewitness of the incident).

<sup>2</sup> Pouillet (1658), i. 347; Du Mont (1691), 283.

<sup>3</sup> Capitulation with France of Şafer 1084/1673, in Bibl. Nat., Paris, MS. Suppl. turc 1197, f. 15b; Noradounghian, i. 145.

<sup>4</sup> Capitulation with France of 1740, art. 42 (Noradounghian, i. 288). See Bianchi's note, *ibid.*, 304.

## CONCLUSION

In the opinion of certain Islamic legists,<sup>1</sup> both the *ta'zîr* and the *hudûd* penalties aimed at 'reforming and restraining' the criminal (*ta'dîb istiṣlâḥ wa-zajr*). The Ottoman *kânûns* and decrees, however, make a clear-cut distinction. According to them, the object of punishing an offender with strokes, fines, imprisonment, or penal servitude on the galleys is 'to reform' him (*iṣlâḥ* or *iṣlâḥ-i nefis*).<sup>2</sup> On the other hand, the death penalty and severe corporal punishment (such as amputation of a hand) are inflicted 'for the sake of the order of the country' (*niẓâm-i memleket içün*), to serve as a 'deterrent example and a warning to others' (*sâyirlere mücib-i 'ibret* or *bâ'is-i pend ü naṣîhat*), 'to ensure the safety of the people and to cleanse the country' (*te'mîn-i 'ibâd ve tathîr-i bilâd*), or the like.<sup>3</sup> As to the other two aims of any punishment, retribution was the motive for *kıyâs*, the right of a private individual, and expiation was the object of such strictly religious penalties as *keffâre*.

According to a well-known Turkish saying, *şerî'atîñ kesdiği parmak acımaz*, 'A finger cut off by the *shari'a* does not hurt', i.e. just punishment is not resented. This feeling may not have been restricted to punishment meted out by the Ottoman authorities in accordance with the *shari'a*. For European observers of the first half of the nineteenth century<sup>4</sup> claim that among the Ottomans the various penalties were not considered degrading, and that the convicted criminal was the object of compassion rather than of contempt. After the penalty of a crime had been paid, no moral blemish adhered any longer to the honour of the offender or of his family; the son of an executed criminal, it was even said, did not feel ashamed of his father. Indeed some tombstones in Christian cemeteries indicated the fate of the person buried there by the carved figure of a hanged or a decapitated man. This attitude was

<sup>1</sup> e.g. Māwardî, 399; Ibn al-Farrâ', 263.

<sup>2</sup> Mühimme Defteri, vol. 6, no. 88; Başbakanlık Arşivi, Cevdet catalogue, Adliye 5576, ff. 2a, 5a, 6a, etc.; Kalebend Defteri, *passim*.

<sup>3</sup> Barkan, 70, § 44; MS. Eb, f. 52b (firman); Mühimme Defteri, vol. 62, no. 228; vol. 67, no. 80; Sünbülzâde, f. 14b. [Cf. above, p. 196.]

<sup>4</sup> Ubcini (1850), i. 47-8, 120; White (1844), i. 104-5; D. Urquhart (1831-2), *Turkey and Its Resources*, London, 1833, p. 39, note.

explained by the people's resignation to the will of God, their fatalistic belief in predestination, and their submission to an age-old despotism which struck at random, without distinguishing the innocent from the guilty. If this observation is correct, it presumably holds good for earlier periods as well.

European observers in the sixteenth, seventeenth, and eighteenth centuries were impressed by the efficiency, effectiveness, and even fairness of the Ottoman administration of criminal justice. In their view, it compared favourably with the long-drawn-out and very costly lawsuits and trials in Europe. They noticed with astonishment that in the Ottoman courts a case was generally dealt with in a single session; there were no lawyers who would drag out the procedure unnecessarily, and appeals were relatively rare. The speedy and often severe punishment meted out, together with the efficient police methods and the collective responsibility of the whole village or town-quarter for any crime committed there, were in their opinion the main reasons for the amazingly low crime rate, especially in the cities.<sup>1</sup>

The negative aspects of Ottoman criminal justice, however, were not overlooked.<sup>2</sup> Little value was attached to the life, limb, property, and honour of the individual. Punishment was often hasty, arbitrary, and excessively cruel. Suspicion often passed as proof. As a seventeenth-century Western traveller rightly observed,<sup>3</sup> Ottoman justice 'will rather cut off two innocent men, than let one Offender escape; for in execution of an innocent, they think if he be held guilty, the example works as well as if he were guilty indeed'.\*

<sup>1</sup> See Maurand (1544), 250-1; Chesneau (1547-55), 47-8; Schweigger (1578-81), 176; Deshayes (1621), 219-20, 246-7; Du Loir (1639-41), 79-80; Thévenot (1655-7), 124-7; Pouillet (1658), i. 347; La Motraye (1698-1710), i. 258; Montagu (1716-18), Letters 38 and 42 (pp. 373, 408); Porter (1746-62), ii. 53-5; Lüdeke (1771), i. 307; Dallaway (1797), 80; and others. [pencil note:] For a similar evaluation, by a seventeenth-century European observer, of justice in Mogul India, see Bernier, quoted in Muhammad Akbar, *The Administration of Justice by the Mughals*, Lahore, 1948, pp. 65-6.

<sup>2</sup> For critical views by generally rather anti-Turkish observers see, for example, Rycout (1661- ), Book 1, chap. i; Febvre (1670), *Théâtre*, 69-87; Du Mont (1691), 280; de Saumery (1719), ii. 108.

<sup>3</sup> Blount (1634), 12.

\* [pencil notes expanded:] Even in the 'Golden Age' of the Empire, there were inherent weaknesses in the Ottoman system: appeal from sentence was practically impossible; many classes of the population were not subject to, and could flout, the *cadi's* jurisdiction; and, perhaps most fundamental, there was no clear division of authority between the governor and the *cadi*.

## APPENDIX I

### A NOTE ON SOURCES

IN the Ottoman Empire, the authoritative legal opinion given by a *müfti* in response to a question submitted to him by a private individual, a *cadi*, another official, or the Sultan (*fatvā*, Turkish *fetvā*)\* might concern not only religious rites and the other principal domains of the religious law, such as marriage, divorce, inheritance, obligations, waqf, and criminal law. Though *fetvās* usually apply only the regulations of the *shari'a*, those of Ottoman *müftis*, and especially of *şeyhülislāms*, also have regard to the *ḳānūn*, especially in connection with agrarian and 'feudal' matters (there is a chapter *fi 'l-arāzi* at the end of many *fetvā* collections) as well as taxation.<sup>1</sup> Ottoman *müftis* also acknowledged the authority of the Sultan to punish criminals in accordance with the public interest or *raison d'état*. Thus their *fetvās* are important not only as reproducing actual cases and practical problems but also as reflecting certain developments of the law, including criminal law, in the Ottoman Empire. Since Ottoman *fetvās* were often, or usually, not reasoned and did not cite authorities for the opinions given, the *müftis* enjoyed a certain liberty from the religious law, which theoretically was unchangeable.

The relatively few original *fetvās* preserved and the very numerous *fetvā* collections,<sup>2</sup> both printed and manuscript, do not, however, provide much material for the study of the practice of Ottoman criminal justice. *Fetvās* might or might not have been taken into decisive consideration by the *cadi*. More particularly, the *müftis'* legal opinions on criminal affairs were most probably of even less practical importance than were other *fetvās*, since so much of the administration of penal justice was in the hands not of the *cadis*, who as fellow-*'ulemā* were obliged to pay at least some attention to a *fetvā* presented by a party to a suit, but of the military authorities. Finally, the usual brevity of Ottoman *fetvās* generally precludes the mentioning of any factual details

\* [See now Heyd's posthumously published article 'Some aspects of the Ottoman *fetvā*', in *BSOAS*, xxxii (1969), 35-56.]

<sup>1</sup> A *müfti* might even refer in a *fetvā* to an *'ahdnāme* ('Capitulation'), ruling, for example, that no higher customs duties might be levied than is there laid down. [See above, p. 189 and n. \*.]

<sup>2</sup> Particularly in the chapters *al-ḥudūd*, *al-sariḳa*, *al-kafāla*, *al-ḳaḍā'*, *al-shahāda*, *al-jināyāt wa'l-diyāt*, etc.

which might throw light on the administration of criminal justice in practice.

Much information on criminal justice is to be found in firmans, copies of which are registered in the Mühimme Defteri. Unfortunately this source does not cover the first centuries of Ottoman history: the oldest register so far discovered contains firmans of 1544-5.<sup>1</sup>

An examination, which of course cannot be claimed to be exhaustive, of a large number of sixteenth-century registers<sup>2</sup> as well as of some firmans copied in *inşā* works<sup>3</sup> shows that the Central Government, often at the request of a *ḳādī-asker*, issued firmans on criminal matters mainly in the following cases:

(a) general orders to cadis and governors to punish criminals according to the holy law, the *ḳānūn*, and the *’ōrf*, to enforce the law in full, but not to go beyond it;

(b) instructions as to criminal procedure in cases where fief-holders, soldiers, or *’ulemā* are involved, where criminals have fled or found refuge on ‘free’ lands, where there is no heir who, according to the *shari’a*, is entitled to demand retaliation, where the criminal has confessed under torture, etc.;

(c) commands concerning specific offences and crimes, particularly conspicuous among them being the counterfeiting of coins, the giving of false evidence, denunciation, murder, kidnapping, and some offences not dealt with in the penal code;

(d) very frequently orders to punish criminals for various offences (whether or not they are dealt with in the code) with a sentence to servitude in the galleys.

Another important source for the administration of criminal justice in the Ottoman Empire is the registers (*sicill*, *sicillāt*) of the *shari’a* law-courts (*mahkeme*).<sup>4</sup> They contain copies or summaries of the cadis’ decisions, reports, and certificates (*i’lām*, *hüccet*, etc.), as well as records of the manifold judicial and administrative matters brought before them. Firmans, *buyuruldus*, and *berāts* addressed to or concerning the local authorities (cadis, governors, etc.) were also copied into these registers.\*

<sup>1</sup> See Heyd, *Ottoman Documents*, p. xviii.

<sup>2</sup> Vols. 3, 4, 6-19, 21, 23, 24, and a few later ones.

<sup>3</sup> e.g. Bibl. Nat., Paris, MS. A.f. turc 81 (Blochet, i. 32); British Museum, London, MS. Or. 9503.

<sup>4</sup> On the *sicillāt* in general see J. Kabrda, ‘Les anciens registres turcs des Cadis de Sofia et de Vidin et leur importance pour l’histoire de la Bulgarie’, in *Archiv Orientální*, xix (1951), 329-92, 642-3; M. Çagaṭay Uluçay, ‘Manisa şer’iye sicillerine dair bir araştırma’, in *TM*, x (1951-3), 285-98; Ongan, pp. v-xxxix; Galabov-Duda, pp. 1-8.

\* [pencil note:] No copy of a *ḳānūnnāme*, however, has yet been found in a cadi’s register.

Thousands of such registers for various parts of the Ottoman Empire have been preserved; the oldest to survive, those of Bursa, go back to the reign of Meḥammed II. For the purpose of this study an examination was made of some of the oldest registers of Bursa, of the fifteenth century (now located in the Museum of Bursa), the earliest registers of Kayseri, of the end of the fifteenth century (Ethnographical Museum, Ankara), a few of the registers of Edremit, of the first part of the sixteenth century (Topkapı Sarayı Museum, Istanbul), many sixteenth-century registers of some quarters and suburbs of Istanbul (Balat, Hasköy, Galata, Üsküdar) (İstanbul Müftülüğü Archives), the register of Larende (now Karaman) of 939-40/1533-4 (Museum of Konya, no. 324), as well as the published summaries of the register of Ankara of 991-2/1583-4<sup>1</sup> and those of the early registers of Sofia,<sup>2</sup> which consist of entries of 957/1550 and the first half of the seventeenth century. In addition, a number of original *i'lāms* and *hüccets* preserved in the Başbakanlık Arşivi at Istanbul were consulted. More systematic research into and publication of *sicillāt*, especially of later periods, can be expected to bring much additional material to light.

The innumerable works of European travellers in the Ottoman Empire are disappointing so far as information on Ottoman criminal law and justice is concerned. With very few exceptions the travellers—at least until the eighteenth century—were ignorant of the written sources of Ottoman law, both religious and civil, and never witnessed the meetings of a *cadi's* court.<sup>3</sup> Moreover, many of them related not what they had observed or even what they had been told, but simply copied earlier works. Their main contribution is the information they give concerning the various forms of punishment inflicted, as well as the comparisons they draw between Ottoman and European criminal justice in their time.

<sup>1</sup> Ongan.

<sup>2</sup> Galabov-Duda.

<sup>3</sup> A notable exception is d'Arvieux, who made friends with the *cadi* of Sidon (Şaydā) and was often present at lawsuits (d'Arvieux, i. 445 et seq.).

## APPENDIX II

### PENAL LAW IN MOGUL INDIA

ONE interesting parallel to the Ottoman penal *kānūns* is found, as has been mentioned,\* in the Mogul Empire in India. Like the Ottoman sultans, the Mogul rulers attempted to strengthen their control over the 'ulamā' and the administration of justice, both religious and secular. In the field of criminal justice they wished to enforce the *shari'a* in the form approved by them and, side by side with it, extra-canonical law (*siyāsat*) as laid down in their regulations.

Already in 1579 Akbar induced the leading 'ulamā' to sign the famous declaration often miscalled the 'Infallibility Decree'. In it they accepted the sovereign's right to issue binding decrees concerning the *shari'a* law in case of disagreement between the *mujtahids*. They also threatened with severe punishment in this world and the next anyone who opposed an order of the ruler, provided it was issued in the public interest and was not contrary to the injunctions of Qur'ānic law.<sup>1</sup>

Aurangzēb 'Ālamgīr, the last great Mogul Emperor (1658-1707), went even further. With a view to creating a systematic reference-work of Muslim (Ḥanafī) law as it was applicable in his realm, he ordered several great legists of his time to compile an authoritative *fatwā* collection, which was entitled in his honour *al-Fatāwā al-'Ālamgīriya*.<sup>2</sup>

Moreover, in the field of criminal justice he enacted regulations similar to the Ottoman penal *kānūns*. The most important ones are laid down in a *farmān* of thirty-three sections issued in June 1672 and addressed to the chief revenue officer (*dīwān*) of the province of Gujarat.<sup>3</sup> Like the Ottoman *kānūns*, the *farmān* instructs both the cadis and the secular authorities (*mutaṣaddiyān-i 'adālat*, etc.) how to punish criminals. While the former are to inflict the *ḥadd* penalties, the latter are charged with carrying out *siyāsat*, i.e. extra-canonical punishment.

\* [See p. 2.]

<sup>1</sup> See Sri Ram Sharma, *Mughal Government and Administration*, Bombay, 1951, pp. 169-70; idem, *The Religious Policy of the Mughal Emperors*, London, 1962, pp. 31-2.

<sup>2</sup> See *EI*<sup>2</sup>, s.v. (Bazmee Ansari).

<sup>3</sup> The Persian text of the firman is found in Ali Muhammad Khan, *Mirat-i Ahmadi*, i, Baroda, 1928, pp. 277-83 and (in photostat) in Muhammad Basheer Ahmad, *The Administration of Justice in Medieval India*, Aligarh, 1941. For an English translation (not without mistakes) see J. Sarkar, *Mughal Administration*, 3rd edn., Calcutta, 1935, pp. 125-32.

Penalties are laid down for many offences liable to discretionary (*ta'zīr*) punishment, such as homicide without the use of a weapon, attempted fornication, the selling of wine, counterfeiting, denunciation causing loss of property, etc., as well as others not listed in the Ottoman codes, among them the exhumation of corpses, gambling, castration, the propagation of *bida'*, etc.

It is interesting that no death penalty is to be inflicted in some cases when a serious crime is committed by a person for the first time (§§ 2, 14, etc.). On the other hand, just as in the Ottoman regulations, severe *siyāsāt* punishment (death or the amputation of a hand) is enforced for repeated crimes or for the sake of the public interest (*naḥ'-i 'āmm*) (§ 9). Such punishment may be inflicted not only where guilt has been proved in accordance with the *shari'a* but also in cases depending upon circumstantial evidence, the bad reputation of the accused, and overwhelming suspicion (*ẓann-i ghālib*) of his guilt (§ 10).

In many cases the accused is to be imprisoned until his repentance becomes manifest (*āthār-i tawba ẓāhir gardad*), the same formula as is found in Ottoman sources.\* Other penalties are strokes, exposition to public scorn, and banishment, but—and this is the main difference from the Ottoman codes—no fines are mentioned. Indeed a few years later, in 1089/1678–9, another decree of Aurangzēb to the *diwān* of Gujarat explicitly forbade the collection of fines, 'since *ta'zīr bi'l-māl* is not permissible according to the *shari'a*'.<sup>1</sup>

Aurangzēb's criminal regulations were part of his determined efforts to halt the decline of his Empire by a return to Muslim orthodoxy. While he persecuted the Hindus and reimposed on them the *shari'a* poll-tax (*jizya*), he abolished very many customary taxes as being contrary to the religious law of Islam.<sup>2</sup> It is noteworthy that these measures were taken in Mogul India in the same period that the Köprülü Grand Viziers, as mentioned above,<sup>3</sup> adopted a very similar policy, with equally little effect, in the Ottoman Empire.

\* [See above, p. 302.]

<sup>1</sup> *Mirat-i Ahmadi*, i. 293.

<sup>2</sup> See *Mirat-i Ahmadi*, i. 286–8; J. Sarkar, *Studies in Mughal India*, Calcutta–Cambridge, 1919, pp. 169–87; idem, *Mughal Administration*, pp. 93–105.

<sup>3</sup> See pp. 153–5.

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If a term is mentioned both in the text and in a footnote on the same page, only the page number is quoted. For the Ottoman Criminal Code, references are normally given to the pages of the translation, and only exceptionally to those of its text. A figure in bold type indicates a main entry or the point at which a term is explained. (G.) indicates that a term is included in the Glossary following this index, (lex.) that the reference is to a lexical note. No explanation is given for the names of officers and para-military groups mentioned only incidentally. (A.) indicates a term cited only from an Arabic context and therefore transcribed as for Arabic (see p. xxxi).

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## GLOSSARY

This glossary has no pretensions to be exhaustive. It gives summary definitions only of some of the more important terms of Islamic law and of Ottoman administration mentioned in the text.

*‘ākila* (A.), in *fiḥh* any natural group (kin or tribe and also, in Ḥanafī doctrine, craft, army unit, neighbours, etc.) who share with the actual culprit responsibility for the payment of compensation for homicide or bodily harm (*dīya* / *dīyet*).

*alaybeği*, the principal officer, after the *sancakbeği*, of the fief-holders of a *sancak*, responsible primarily for mustering them before a campaign.

*ālet-i cāriha*, a lethal implement, the use of which by an assailant implies deliberate intent and hence entails retaliation (*ḫiṣās*).

*arpalık*, lit. ‘barley money’ (scil. for maintaining horses), a supplementary allowance or pension, in the form of a fief, made to leading officers of the State, both military and religious.

*bād-i havā* (P.), lit. ‘wind of the air’, in Ottoman fiscal terminology casual, unpredictable income (to the fief-holder) from (e.g.) bride tax, *yava*, *kaçkun* and (sometimes) fines.

*beğlerbeği*, lit. ‘commander of the commanders’ (etymologically synonymous with P. *mürmürān*), i.e. ‘governor-general’, of one of the (at first) two principal administrative divisions of the Empire, Rümeli and Anadolu, each consisting of a group of *sancaks*. In later years the number of such governorates greatly increased, and the holder of the office might be of the rank of vizier (entitled to three *tuğs*) and so superior to a *mürmürān* colleague (entitled to two).

*berāt*, ‘writ of appointment’, a decree in the form of a *nişān* (‘letters patent’) issued by the Sultan and stipulating the date from which and the conditions under which the grantee was to hold his appointment (civil, military, or religious).

*beyt ül-māl*, in general, the Public (State) Treasury (also *beğlik*, *mürī*); more specifically, a group of casual revenues due in principle to the Public Treasury but sometimes assigned elsewhere.

*bid‘at*, pl. *bida‘*, ‘novelty, innovation’, originally a practice with no precedent in the *sunna* (q.v.), and consequently popularly regarded as reprehensible; hence, an unjust or illegal practice.

*buyuruldu* (T.), lit. ‘it has been ordered’, the command of a high official to a subordinate, written either as an independent document or as a ‘minute’ on an incoming document.

*çavuş*, an usher or marshal, often employed as a messenger, in the Imperial Palace or in the retinue of a dignitary.

- çeribaşı* (T.; synonymous with P. *ser' asker*), an officer of the feudal troops of a *sancak*; also, an officer of other military or para-military groups (*müsellem, voynuk, yaya, yürük*).
- defterdār* (P.), lit. 'keeper of the register(s)', the head of a finance department. There was at first one chief *defterdār* (with a seat in the Imperial Divān); later, a second was made responsible for Anadolu and a third for the further provinces.
- derbendci*, lit. 'one concerned with a pass', a member of the 'peasant' (*ra'iyet*) class granted certain privileges (of exemption from taxation) in return for the assumption of responsibility for security in areas exposed to banditry.
- divān*, in Ottoman usage (1) the council of the chief officers of state, presided over at first by the Sultan, later by the Grand Vizier: the 'Imperial Divān', *divān-i hümayūn*; (2) a similar provincial council under the presidency of the *beğlerbeği*.
- diyyet* (A. *diya*), the blood-money or compensation payable in certain cases of homicide and of bodily harm upon a proportionate scale according to the degree of incapacity or injury caused.
- emīn*, lit. 'trusted', a salaried agent of the central government responsible for (e.g.) the collection of revenue (taxes, customs dues, etc.), the carrying out of a land census (*tahrīr*), disbursements on behalf of the Sultan (*harc emīni*).
- firman* (P. *farmān*), 'command', a written decree emanating from or purporting to emanate from the Sultan and authenticated by the superscription of the *tuğra* by the Nişāncı. The term is usually restricted to decrees directed to named recipients, who are addressed in the second person.
- hadd* (A.), pl. *hudūd*, 'limit', 'restrictive ordinance', one of the fixed penalties laid down in the *sharī'a* for the five offences of *zinā, kazf*, wine-drinking, theft, and highway robbery, which therefore, whether or not they also infringe the rights of an individual, are essentially regarded as crimes against God.
- haqq 'abd / ādamī* (A.), 'the right of a human being' (as opposed to *haqq Allāh*), a private, personal, claim for redress, which in Islamic law embraces *inter alia* actions against alleged murderers and perpetrators of bodily harm.
- haqq Allāh* (A.), a 'right' or 'claim' of God, i.e. against a sinner who has broken a divine command (to perform the ritual prayers, to fast, etc.) and also against an offender whose misdeed entails a *hadd* (q.v.) penalty.
- hāṣṣ*, a 'special' fief; in general, a fief yielding 100,000 *akçes* or more annually, but in principle a fief pertaining to an office, and consequently changing hands with the change of incumbent (whereas the fief of an ordinary timariot was, in practice and within certain limits, quasi-hereditary).

*ḳāḏī*-*‘asker*, lit. ‘judge of the army’; from 1481 onwards two in number, ‘of Rūmēli’ (the senior) and ‘of Anadolu’, both being permanent members of the Imperial Dīvān. Besides their duties on campaign, they appointed the cadis (up to a certain rank) in their respective provinces and had the oversight of various legal matters, civil and criminal, concerning all members of the *‘askerī* class.

*ḳiṣās*, ‘(just) retaliation’ as a divine ordinance, i.e. in certain cases of deliberate homicide an equal (free, slave) life for a life, and in cases of deliberate bodily harm the infliction of the same injury when strict equality is possible—a hand for a hand, a tooth for a tooth, etc.; in other cases, *diyyet* is paid. The plaintiff (next of kin or injured victim) is permitted to pardon the culprit altogether or to make a settlement (*ṣulḥ*) with him.

*müftī*, a jurisconsult (often, in the Ottoman Empire, a *müderris*) recognized by general consent or officially as competent to give a *fetvā*, ‘the’ Müftī (scil. of Istanbul) being the Şeyḫülislām (q.v.).

Nişancı (also *Tevḳī‘ī*), lit. ‘the affixer of the (royal) sign (i.e. the *tuğra*)’ as their authentication to official documents. He was a member of the Imperial Dīvān, and his principal duty was to check the correctness of official documents in the light of existing statutes and precedents.

*şakk* (A.), pl. *şukūk*, a model formulary for a legal document; a collection of such formularies.

*sancakbeği*, lit. ‘lord of the standard’, the governor of a *sancak*, the basic administrative unit of the Ottoman Empire. The *sancak* was divided into smaller administrative districts variously termed *vilāyet*, *nāḥiye*, and (later the regular term) *ḳazā*.

*subaşı* (strictly *sū-başı*), lit. ‘army leader’, in Ottoman usage a prefect of police responsible for the maintenance of law and order. The chief *subaşı* of a *sancak*, stationed in its *chef-lieu* and appointed from Istanbul, was termed *sancak subaşısı*; of lower rank were the *toprak* (‘local’) *subaşısı* (in a *ḳazā*) and the *köy subaşısı*. A town *subaşı* (also termed simply *zā‘īm*), the chief local representative of the *ehl-i ‘orf*, was the principal adjutant of the *cadi* and had under his command the various ‘police’ forces (e.g., *ases*, *yasakçı*, a Janissary unit).

*sunna* (A.), lit. ‘custom, usage’, in the context of Ottoman law the sayings and practice of the Prophet (and sometimes also of the ‘rightly guided’ caliphs) as an authoritative precedent for conduct and one of the four theoretical bases of Islamic law (*uṣūl al-fīḳḥ*).

Şeyḫülislām, in pre-Ottoman times an honorific title accorded to eminent *müftīs*; in the Ottoman Empire, the title accorded to the *müftī* of Istanbul. Already under Meḫemmed II this *müftī* is termed ‘head’ (*re‘īs*) of the *‘ulemā*, but perhaps only as a title of honour; the authority of the post increased rapidly in the first decades of the sixteenth century, to become, by the time of Ebu ‘s-Su‘ūd (in office 1545–74), comparable in dignity and influence to that of the Grand Vizier. The Şeyḫülislām was officially recognized as the head of the corporation of the *‘ulemā*;

- and he possessed, at least in theory, the power of influencing public policy by according or withholding his *fetvā*.
- ta'zīr* (A.), 'deterrence', punishment imposed for offences that carry no prescribed (*ḥadd*) penalty. Hence, and also because its object is not retribution but primarily reformation, the severity of *ta'zīr* punishment lies in the judge's discretion: a private or a public reprimand, exposition in public (*teṣhīr*), flogging, banishment, imprisonment, and even (in the view of some jurists), at the discretion of the ruler, death. In everyday Ottoman usage, however, the term generally implies the bastinado (as being the most common form of summary *ta'zīr* punishment).
- '*ulemā*, pl. of '*ālim*, lit. 'learned (scil. in the religious sciences)'; in the Ottoman Empire all members of the minutely organized and controlled 'religious institution', headed by the Şeyḫülislām and including cadis of all ranks, *müftīs*, *medrese*-teachers, *imāms*, etc.
- ülū 'l-amr* (A.), 'those possessing authority', obedience to whom, after God and the Prophet, is laid down in the *Ḳur'ān* (4. 59/62) as a religious obligation. The constitutional theorists having derived from the phrase the doctrine of *wilāya*, 'sovereign power granted by God', the person exercising such power, either as the ruler or by delegation from the ruler, is *walī al-amr*. In Ottoman *fetvās* (e.g. Mumcu, p. 221), this term (*velī ül-emr*) is used of the Sultan and, with its implicit appeal to the *Ḳur'ānic* command, concedes to him very wide discretionary power.
- voynoda* (Slavonic), lit. 'army leader', a term adopted in Ottoman administration to signify usually the agent of a governor or of fief-holders who was charged with administering and collecting the revenue from 'free' (*serbest*) fiefs. Such fiefs not being subject to the authority of the local *subaşı*, the functions of *subaşı* were (usually? occasionally?) exercised by the *voynoda*, so that in some contexts the terms are (not only etymologically) synonymous.
- zinā*, illicit sexual intercourse, i.e. intercourse between persons not linked either by a contract of marriage or by the relationship of master and slave-concubine. If the offence is proved—which in practice (short of a confession) is unlikely, since four witnesses are required—it entails the *ḥadd* penalty of stoning for the *muḥṣan* and 100 strokes for other free Muslims.