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CONFLICT AND RECONCILIATION IN OTTOMAN CRIMINAL LAW: EXAMPLE OF LARCENY IN THE MODERNIZATION PERIOD (1839-1908)

OSMANLI CEZA HUKUKUNDA ÇATIŞMA VE UZLAŞMA: MODERNİZASYON ÇAĞINDA HIRSIZLIK ÖRNEĞİ (1839-1908)

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Abstract

Until the nineteenth century, the Ottoman Empire adopted both the Islamic law (*shari'a*) and the imperial orders (*kânunnâmes*) as two isochronous sources in the field of criminology. Thus, the divine law of Islam (*fiqh*) and secular rules that had been implemented by the sultans were in effect together, so as to regulate the common order and watch the safeness of the society out. Ottoman judicial system, which had developed under the intensive influence of the Islamic law for centuries, considered the social crimes as a 'wilful deed' and hence set the penalties accordingly by bearing in mind the specific cases as archetypes for its own use. On the other hand, the Ottoman penal mentality apprehended the crimes as the consequences of societal circumstances at some points. And they were treated with regard to the secular law of the time. Therefore, the Ottoman penal system routinely worked in a dichotomous and conflicted structure. In this paper, I shall argue over how the crime of larceny has been struggled by the interfering methods of Ottoman judiciary, as a crime of intention against individual and public properties in the light of Ottoman archival documents and between the years of 1839 and 1908 as a time-scale.

Keywords: Ottoman law system, Islamic criminal law, public goods, individual property, larceny/theft.

Özet

On dokuzuncu yüzyıla değin Osmanlı İmparatorluğu ceza hukuku alanında eşzamanlı olarak hem şeriat hükümlerinden hem de kânunnâmelerden faydalanmıştır. Böylece, kutsal İslamî hükümler bütünü olan fıkıh ile padişahlar tarafından yürürlüğe konulmuş olan seküler uygulamalar içtimaî düzeni ve güvenliği korumak adına bir arada geçerli olmuştur. Yüzyıllar boyunca İslam hukukunun yoğun etkisi altında gelişen Osmanlı yargı sistemi, sosyal suçları "kastî eylemler" olarak kabul etmiş ve bu nedenle de emsal davaları kendisi için bir çıkış noktası alarak cezaları bu vakalardan hareketle öngörmüştür. Diğer taraftan, Osmanlı ceza mantalitesi bazı suçları içtimai şartların birer sonucu olarak da değerlendirmiştir ve bu türden suçlar zamanın seküler kanunlarıyla cezalandırılmaya gidilmiştir. Bu yüzden de Osmanlı ceza sistemi çoğunlukla dikotomik ve çatışmalı bir yapıda işlemiştir. Bu çalışmada, 1839-1908 yılları arasında Osmanlı İmparatorluğu'nda vuku bulan hırsızlık olaylarını, yer aldıkları arşiv belgeleri aracılığıyla inceleyecek ve Osmanlı yargısal dizgesinin hırsızlık suçuna yaklaşımlarını sistemin içsel çatışmaları bağlamında analiz edeceğim.

Anahtar Kelimeler: Osmanlı hukuk sistemi, İslam ceza hukuku, kamu malları, bireysel mülkiyet, hırsızlık.

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Introduction

In the Ottoman Empire, Islamic law was effectively utilized in the field of criminal law as in the other types of adjudication. Along with the Islamic style of penal law, customary codifications were common applications as well. Islamic criminal codes were written in the canonical jurisprudence books (*kutûb al-fiqh*) and customary practices had been placed in the imperial orders (*kânunnâme*s) (Nacak, 2013: 21). The Ottoman sultans never attempted to implement the totality of sharia and preferred to apply the Hanafi school in specific and limited jurisdictions (An-Na'im, 2008: 16). The evidence of this situation is that the Ottoman sultans put a deal of secular rules in their times. For example, in the ages of Süleyman the Magnificent and Mehmed IV, some partial criminal law codes were promulgated but they were not regular and accurate (Şeyhanlıoğlu, 2010: 41-42). These applications were in the service of assisting the Islamic rules. Hence, most of the criminal cases were handled within the circle of the Islamic law in the Empire, whereas the legal affairs used the two types of the law, by considering the former cases of crime as legal models.

As Heyd pointed out in his great work, Ottoman sultans made a great effort at first, in order to abolish the dichotomy between the administrative (*idarî*) and judicial (*adlî*) members with the customary (*örfî*) and religious (*dinî*) law systems. These efforts were made at the same time and at different ways. Firstly, Ottoman sultans had attempted to set a number of codes so that they could restrict the judges who were out of *qadi*s and performing the punishments arbitrarily. Intending to produce that result, sultans did something that had never been seen in Islam until their times. They put detailed secular codes and their methods into effect which was called *kânûn* and declared *fermans* to collect them under the name of *kânunnâme* (Heyd, 1983: 634).

The Islamic view of crime, as it was internalized by the Ottomans, was given its shape by the Sharia norms as the Sharia envisions three different types of rights (namely, Allah's rights, individual rights, and other rights) and the violation of each right entails a different punishment for such crimes: (1) limitation (*hadd*), (2) reprisal and ransom, and (3) *ta'zîr* (retribution) (Uysal ve Bozkurt, 2008: 50). Qur'anic crimes (*hudud*); offences against the person (*qisas* or *jinayât*); and the discretionary power of state authorities (including the qadi) to punish sinful behavior and acts that endanger the security of the state or infringe upon public order *(ta'zîr* and *siyasâ*) (Peters, 1997: 71). When it is given an eye to the crimes against property, which contain larceny and robbery are violating the ensured rights and freedom, common point in the crimes against property is that they derogate or eradicate someone else's assets and thereby, prevent the real owner from utilizing them (Noyan, 2007: 1-2).

As for stealing the goods of state, there are extravagance, embezzlement of the goods, over-spend and making a payment for a certain person and then sharing it together. We can mention here about both larceny and treachery (Atay, 1997: 243). As the Ottomans used, Islamic penal law has accepted the deed of larceny as a crime, valued the personal possessions and respect it by being the mainstream of people. It is not lawful (*halâl*) somehow to violate somebody's properties. Islam is very severe on the theft and decided on amputating the hand as what by being larceny performed inpropriapersona. There is an example for those who think to steal someone's property. By this means, they cannot dare to touch the possessions of the people around them (Tiyek, 2008: 28).

1. Law and Order: The Crime of Larceny in the Old Criminal Codes and Pre-Islamic Turks

Larceny, as a crime could against be either the personal or the common properties, is a kind of act that we can trace its roots back to the ancient times. So, almost all of the

criminal law systems had mentioned about it and provided some penal codes for preventing it. Nevertheless, each penal system had presupposed some certain conditions on the being of this crime and set the rules accordingly. First of all, per chance we would like to talk over a crime whether it is larceny or not, there has to be a perpetrator and a victim. For, larceny essentially concerns both private and public ownerships, and if there is no owner and stealer, or one of them, we cannot claim that there is a real larceny crime. Secondly, the stolen property has to be movable and it must be taken away out of the owner's consent. Because, in the crime of larceny, property means that the things which have been defined to be used in the daily life and relationships. (Meran, 2011: 18). And thirdly, the property has to be stolen where it has been placed by the owner beforehand.

Whether we talk about the larceny against common goods, there are several important situations, as well. Firstly, the crime ought to be witnessed on the goods which belong to the public institutions. Secondly, it has to be executed in the places of worship. And thirdly again, the crime is supposed to be committed against the goods that have been allocated for the benefit of public interest and either the public or personal locked-up properties. Therefore, if we examine the issue under the scope of the verdicts of old criminal codes, we might run into a great deal of instances related to the crime of larceny. By digging the old criminal codes on the crime of larceny out, we might be able to observe the progress of the criminal law systems throughout the history in various societies. And it also will give us the possibility of comprehending their concepts of crime upon the larceny in a specific sense.

The very first and quaint instance could be given from the Hammurabi's law. According to him, a seignior was a member of an upper class for whom Hammurabi's penalties were markedly more severe than for lower classes. In law 7, Hammurabi is clearly concerned with more than theft. The victims of this particular class of theft are both of subordinate status, one being the son and the other the slave of a seignior: so in this case the crime of theft is exacerbated by the additional crime of exploitation of the weak. Theft by itself was a crime that Hammurabi treated with great severity, and one for which the seignior regularly faced a death penalty, where less privileged citizens faced only fines (Sassoon, 2004: 45). In addition to this, the law had put an emphasis on what the punishment would be, in case of stealing from the sacred places. Stealing from the gods meant that the criminal had insulted not only people, but also creators of himself:

> "If a man has stolen property from a god or from a temple that man shall be killed. Furthermore, anyone who has acquired stolen goods from him shall be killed" (Richardson, 2000: 45).

As it is flatly seen in the code, Hammurabi had paid a great importance to the crime of larceny. But when the crime occured in the sacred places, it earned a more severe punishment. Because, the thief was breaking the divine law of gods at this point, and he was also flying in the face of gods themselves. Interestingly enough, Hammurabi had commanded to kill the people who were in a relationship with the thief, too. They were considered as unscrupulous persons who were working for the disadvantage of the society and religion. So, they had brought what they deserved for their acts on themselves.

When our attention is turned to the Sumerians, we can see that they, too, implemented a variety of punishments against larceny from making paid double or triple the amount of the stolen property to killing the theft. For instance, drilling the wall of a house in order to rob it should have brought death to the criminal and he was to be buried at the bottom of the mentioned wall. In the same way, in case that a

person who was in charge of putting out the fire had benefited from the rush of the place and stolen something, he was to be burned to death (Menekşe, 1998: 11).

In this context, Assyrian criminal codes show a milder attitude to the crime of theft. Indeed, Assyrians had not put the punishment of stealing in the way of executing the criminal. Instead, they had resorted to compensating the loss of the victim. So and so, An Assyrian penal code which was interested in stealing states:

> "If a man steals an animal or something, and the accusation comes true by proof and he is convicted, he shall pay x mana coins and they bash him by 50 stick and he shall serve to the king for x days. Judges of the land decided so. If it comes to the king (if the court is arrenged in front of the king), he shall pay for what he has stolen more or less, besides he shall serve the sentence which has been given by the king himself" (Tosun ve Yalvaç, 2002: 259).

Another striking example on the larceny comes from the Greek tradition. They had separated the thieves related to their insitus. Thus, wrongful takings by private citizens were falling into two major categories in Athenian law, which categories, for the sake of simplicity, may be labelled 'aggravated theft' and 'unqualified theft' (Cohen, 1982: 125). We may recon it on a clear level in the *Law*s of Plato. He separated people those of who were in the tendency of stealing under two different categories as 'curable' and 'non-curable' persons:

> "If someone should steal some public thing, he must undergo the same judicial penalty, whether it be great or small. For he who steals something small has stolen under the influence of same erotic passion, but with less power, while he who moves a greater thing that he didn't set down is unjust to the full extent. So the law would not decide to assign a lesser judicial punishment to either of them on account of the size of the theft, but only because one of them is perhaps still curable and the other incurable. In fact, if someone should convict in court a stranger or a slave of stealing something public, the judgment as to what the person ought to suffer, or what penalty he ought to pay, should be made on the grounds that it's likely that he's curable. But if a member of the city, brought up in the way he will have been brought up, should be convicted pillaging or doing violence to the fatherland (whether he's caught in the act or not), he's to be punished with death, on the grounds that he's practically incurable" (Plato, 1988: 342-342).

It is gripping to note here that Plato made a distinction amongst criminals as 'curable' and 'incurable' ones. It must be one of the consequences of multi-layered society. Actually, Greeks thought that people had been given some certain functional qualifications and for instance, there were natural-administrators or philosophers as there were natural-criminals. And so, it was accepted that crimes mostly stemmed from the very nature of humans and it had already been decided before they were born. That is the reason why Plato claimed that there were two kinds of persons. Nevertheless, when the religion was in question, there was no distinction between the people. As Draco, the merciless law-giver of Athens, had dictated by an implacable religion, which saw in every fault an offence against the divinity, and in every offence against the divinity an unpardonable crime. Theft was punished with death, because theft was an attempt against the religion of property (de Coulanges, 2001: 268). On the ground of the fact that they had perceived the crime of theft in a parallel way, we may assert that in Babylon and Ancient Greek, larceny was usually deemed as a religious crime, not secular.

In the ancient China and India, theft was considered such an important crime that affects the society in a bad way and punished. Exempli gratia, a person who had stolen someone's property had to pay in retaliation more than possession's own price to the real owner. But these payments differentiated with regard to the social class of the thief. Besides, not only the thief but also the state was held responsible to find the stolen properties and in case that the state cannot find them, it had to return the possessions to the victim somehow (Akalın, 2006: 23-23).

We do not have decent knowledge of how the penal system was regulated in the pre-Islamic Turkish societies. However, it is obvious to us that the authority on punishing had been transferred to the administration and the right of retaliation (*ihkâk-ı hak*) was abolished from the very beginning of the Turkish states (Aydın, 2005: 17). According to the penal systems of the old-Turkic cultures, there were two types of crime. First one was the major crime and needed the penalty of death and the second one was the minor offense and usually compensated by monetarily payments (Cin ve Akgündüz, 1995: 43). Rebellion, fornicating with a married woman, stealing a tied horse and repeating the theft was punished with death (Demir, 2011: 26). For example, In Kök Turk state, if a person had stolen something that did not belong to him, he would have to pay tenfold price for the stolen property. And if the thief was caught in the act or he had stolen a tied horse, he was to be executed (Uğurlu, 2010: 43). There is a striking point here. As it is known very well, pre-Islamic Turks had a highly war-like characteristic feature and so, they were dealing with horse feeding and taming them for the incoming wars. If this situation is taken into account, it will be more understandable to us why they had attributed a great importance to horse stealing and seen it as a crime that deserving the penalty of death.

2. Qur'anic Approach and Tradition of Hadith on the Crime of Larceny (*Sirqāt*)

Moral and legal obligations and prohibitions, in any religious tradition and not just Islam, are enforced by way of threats and promises of good rewards. Not only purely religious ordinances are supported by such a system; but also mundane or civil laws are backed by threats of physical punishments and acts of violence that are seen as a just way of seeking redress and re-establishing the boundaries (*hudûd*) (Souaiaia, 2008: 36). When it is considered in this sense, one can see that Islamic *sharia* developed into a variegated network of opinions, interpretations and judgments derived from various sources but always predicated on staying within divine law (Akgündüz, 2010: 253).

In the field of Islamic penal law, a considerable place is given to bodily punishments, such as emasculating the seducer, hanging incendiaries and certain thieves and housebreakers, cutting off the hands of forgers and coiners 'where it is customary', and, as an alternative to fines, of thieves (which revives this particular *hadd* punishment), and the use of torture when there is circumstantial evidence of theft or receiving (Schacht, 1982: 91-92). The *ratio* of the theft penalty encompasses five attributes: (1) the object stolen must have been taken away by stealth; (2) it must be of a minimum value; (3) it must in no way be the property of the thief; (4) it must be taken out of custody; and (5) the thief must have full legal capacity. All of these attributes must obtain for an act to qualify as theft, an act punishable by cutting off the hand. In the thought of Abu Hanifa, which the Ottomans adopted Hanafi tradition, all attributes must exist together; no single one by itself suffices to produce the *ratio legis* (Hallaq, 2009: 23-24). The person who has stolen something is to be punished by being amputated the right hand of him, if he repeats the very same crime, his left heel is to be cut and in case that he repeats his crime again he is to be imprisoned until he repents. If the stolen property remains, it is given back to the owner, if not, compensation is not mentionable (Bor, 2009: 40-41). Unlike homicide or bodily harm, the prosecution of theft is not a private matter. Once the case has been reported to the

government (the *imâm*) and the victim has demanded the application of the fixed penalty, he cannot pardon the defendant. But he can prevent the amputation (*qat' al yad*) of the thief 's hand by other legal means, as for instance by donating the stolen property to him, in which case he can no longer reclaim it. The return of the stolen goods by the thief before the judgment also has the same effect (Peters, 2005: 57).

> "And *as for* the man who steals and the woman who steals, cut off their hands in retribution of their offense as an exemplary punishment from Allāh. And Allāh is Mighty, Wise" (Qur'ān, 2004: 122).

Larceny is such a crime that no one finds it approvable, or recognizes it right. The Quran has forbidden it so. Because, in theft, exceeding the limits, encroaching on someone else's property and consuming unlawful (*harâm*) things come together and its very unique structure renders the crime of larceny contradictory with respect to Islamic morality and law. Larceny actually infuses guardedness, mistrust and unrest in the community. In contrast, the damaged incurred by embezzlement is less severe because the harm is limited to the property stolen and to the relationship between the offender and the victim (Ramadan, 2006: 49). This shows us that Islamic judicial tradition on the crime of larceny is akin to the old criminal systems in the very first apercu with regard to its harshness. But on the other side, the jurists had an additional reason to try to limit the incidence of the punishment of amputation. One of the fundamental premises of Islam is that one's external acts will not damn an individual to hell if the individual has in fact attempted to make repentance, and repentance can be solely internal. And that is why a malefactor is encouraged to be silent and seek forgiveness in God's eyes (Forte, 1985: 66).

Islam views all wealth as emanating from God and therefore belonging to him. This does not prohibit Muslims from producing wealth and using it to obtain their own goods as long as the wealth is not gained through coercion, cheating, and theft. Islam teaches, however, that human beings descend to the level of animals if they hoard wealth and do not share it with fellow Muslims (Kia, 2011: 136). So, Islam, from the very beginning of it, has always tried to provide the social balance through *zakat* and preventing the crime of larceny thanks to it. At this point, Islam suggests that larceny stems from the poverty of some *strata*s in the society and if the Islamic state desires to vanish this crime, social balance must be regulated by distributing the wealth as a voluntary assistance among the people. Thus, the sharia puts a burden into the arms of the people to help each other in livelihood and assumes that if this principle is spread within the society, larceny will diminish to a degree.

Equally insupportable to the modernist view was the traditional form of criminal jurisdiction, not only because such potential penalties as amputation of the hand for theft and stoning to death for adultery were offensive to humanitarian principles; nor because the notion of homicide as a civil injury, acceptable though it might to be a tribal society, was no longer suited to a state organised on a modern basis; but more particularly because modern ideas of government could not tolerate the wide arbitrary powers vested in the political sovereign under the sharia doctrine of "deterrence" or *ta'zîr* (Coulson, 1964: 150).

3. Conflict and Reconciliation in Ottoman Law: Larceny and its Punishment During the Modernization Period (1839-1908)

During the fifteenth and sixteenth centuries, the Ottomans developed a system of law enforcement that used fines as either the only penalty or in conjunction with other forms of punishment. Consistent with the practice in previous Muslim states, Ottoman law also prescribed discretionary measures (*ta'zîr*), such as flogging, bastinado (*falaka*), banishment, and imprisonment. A novel characteristic of the

Ottoman criminal code for some offenses was to impose a monetary fine in conjunction with chastisement, possibly a practice borrowed from the Byzantine Empire (Coşgel v.d., 2011: 5). For example, the caught criminals of theft were beaten with up to three hundred sticks on their belly, back or feet sole in the classical age. If the criminal was a rich Jewish, Christian or a Muslim, he had to pay one coin for each one of the three hundred sticks (And, 2009: 232). Crimes were intensifying in the capital city, Istanbul. Indeed, in the district of Istanbul, the area surrounding the Grand Bazaar outside the gates was a particular area in which the scene of many crimes against property were seen. For this reason, the Grand Bazaar itself was well protected and was completely closed off at night by gates. The office of the night watchman kept a very close eye on thieves around the area. Guards patrolled the bazaar throughout the night and stopped strangers. Thieves used force to get into shops outside the gates at night and were sometimes caught by the owners, the night watchman, the market police, or other officials (Zarinebaf, 2010: 75-76).

In the opinion of certain Islamic legists, both the *ta'zir* and the *hudûd* penalties aimed at 'reforming and restraining' the criminal (*ta'dib istislah wa-zajr*). The Ottoman *kânûn*s 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 (*islah* or *islah-i nefs*). 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' (*nizam-i memleket içün*), to serve as a 'deterrent example and a warning to others' (*sayirlere mucib-i 'ibret* or *ba'iş-i pend-i nasihat*), to ensure the safety of the people and to cleanse the country' (*te'min-i 'ibad ve tathir-i bilad*), or the like (Heyd, 1973: 312).

However, as the social and economic structures of the Empire had deteriorated, a great and rapid ascending on the crime rates was begun appearing. Naturally, the legal attitudes against criminals became more and more harsh. Once the Ottoman bureaucratic (*kalemiye*) and religious elites (*ulema*) had comprehended that they could not deal with the increasing crimes by use of the old styles of punishment, they commenced to penalize them not only with *ta'zir* or *hadd*, but also they started to use appointment, exile, shackle, confinement, penal servitude, imprisonment and even execution of the criminals more effectively than they had done before. There is no doubt that these kinds of applications had been in force, from the very beginning of the Ottoman penal system. But now, when it is compared with the classical age, system was running highly difficulty with catching the criminals and bringing them into justice as fast as before. So, as a result of this new situation, the state preferred to expand its judiciary grid so that distribute equities in a more efficient and common way in the society. Now, let us get into the details of the six especial ways of punishing the thieves in the late Ottoman Empire.

3.1. Exile and Appointment With Restriction (*Nefy* and *Ta'yin*)

The general character of the exiles in the eighteenth century of Ottoman Empire could be stated as this: First of all, the exiles, as it seems, were implemented not only between far distances, but also through the neighbourhoods. Secondly, we can say that there was no religious segregation on the punishments of exile. The same penalty was carried out for the Muslims, was also in effect for non-Muslims. Besides, if there was a harm to the state or society, compensated in the first place and then the punishment of exile was fulfilled (Daşçıoğlu, 2007: 203-204). In case that the criminals had reiterated their acts of larceny, they could be compelled to settle in a certain area (*mahalle*) in order not to leave it anymore. To exemplify, in the year of 1790, two criminals who had been caught and judged with exile were then forgiven by the judge. But when they attempted to steal again, this time they were deported to a neighbourhood in Bursa and they were not permitted to leave the place any longer

(B.O.A., 16: 782). Or we can give a woman as an instance who had involved in some cases of larceny, who had insisted on stealing and was deported to Bozcaada, for good (B.O.A., 16: 761).

The state also was observing the movements of the notorious people who had a register in the hands of the police department and watch their malices. For instance, in Koniçe town, Mehmed, son of Beşir, who had broken in the houses and stolen goods from the people of the town was confined with staying home at nights in 1840 (B.O.A., 85: 4221). In conjunction with those regular ones, there were also a number of specific examples that encompass the local officers. In one of them, Hamis Pasha who was the proprietor of Bayat town, a place where is in the mountain pass of Çorum, had insulted the people of town after they had won the engagement against the thieves was punished with *te'dib*, but then he was forgiven and appointed as the proprietor of Maraş province (B.O.A., 273: 13634). The method of sending criminals to distant places or restrict them in there was a very common solution of the Ottoman penal system.

3.2. Shackle (*Pranga*)

Shackling was perhaps the most common and ancient punishment in the Ottoman Empire. We can claim so, because a great number of archival documents approve it, as well as the diaries of visitors in the Ottoman lands. For example, Baron Wratislaw who had paid a visit to the Empire at the end of the sixteenth century was captured by the Ottomans and imprisoned for a time. While he was writing his memoires, he spoke of pranga as below:

> "They then threw an iron ring over the neck of each and passed a chain through it. Upon this each of us fled hither and thither wherever we could, as though we were mad. Though I had been some weeks ill of dysentery, and could not stand on my feet, nevertheless, seeing what was happening to my comrades, I did not remain in bed, but crept up as his as possible under the rafters, springing from one to the other in such a dangerous manner, that, if I had fallen, I should have been dashed into a hundred pieces. Finally, I crept quite unconsciously back to my bed; and when the Turks had already got all my companions fastened by chains, and had also laid their hands on and divided everything they could find, the sub-pasha came to me, and one said to him: -"This lad is young and sick, he must get well and become a Mussulman; let us leave him here till we return, and place him in Ferhat Pasha's serail" (Wratislaw, 1862: 119-120).

After being put into arrest, Wratislaw and his companions imprisoned for two years in Sarıcapasha Tower, which is in the vicinity of Rumelia and known by the strangers as the Black Tower. They were in *pranga* there, too. Each captive was encircled on his foot and these circles were clinched to a chain. Also, sometimes their feet were tied with tree logs (Saner, 2007: 170).

As it is seen in the passage, the Ottomans adopted a number of pranga styles. They sometimes put the person in chains and sometimes tied his feet to a log and restrained him. The punishment of shackling usually was not shorter than one year. For instance, in the year of 1841 and in Bursa, a man whose name was Sepetcioğlu Mustafa earned a punishment of pranga for three years for his robbery and larceny crimes (B.O.A., 1: 54). Sometimes the administration could produce different solutions about the criminals who were to be shackled, such as Hacı Ömer of Kilis and Mehmed of Yozgad. They had broken in a shop and committed the crime of larceny. So, the administratives decided to put them into 'pranga' in the building of police forces along two years (B.O.A., 7: 8).

3.3. Confinement in a Fortress (*Kalebendlik*)

Another punishment which was akin to both exile and imprisonment was confinement in a fortress (*kalebendlik*). In this penalty, state sent a criminal to a far away fortress and put a task on him for a certain time period. This was one of the most common punishment in the Ottoman Empire, indeed. *Kalebendlik* as a mild response to small crimes was applied to almost all crimes in the Empire. For example, a man whose name was Seyyid Hasan had been appointed as *kalebend* to Castle of Limni because of his stealing from mosques and *tekke*s (B.O.A., 38: 1865). Sometimes authorities preferred not to kill the criminal and send him to a castle in return for his life-time. In an early year, 1812, a thief who robbed the barracks of janissary was being sent as *kalebend* to the Castle of Cyprus (B.O.A., 1314: 51212).

In some cases, interesting situations could also be seen. For example, in 1864, Property Caisson of Sultan Hisarı was stolen approximately five thousands coins and the manager of the department, whose name was İsmail, had sent for an oracle to find the stolen money. The oracle blamed two men as criminals and İsmail tortured them in vain. When the incident was spreaded all over the area, authorities sent İsmail as *kalebend* to Midilli for five years (B.O.A., 35: 2078). The amount of money or a stolen good was not differing too much in some cases. In 1876, a man named Muhiddin Effendi, one of the officers of Beirut Taxes Department had been acknowledged in stealing some stamps from the office and he was decided to pay the double amount of the stolen stamps along with being *kalebend* in Aleppo for five years (B.O.A., 9: 43).

3.4. Penal Servitude (*Kürek*)

It had become a custom punishing the people who were not acknowledged criminals by the shari'a with penal servitude in the late periods of the Ottoman Empire. When corruption was become common in a province (and this gradually increased in the recession times of the Ottomans), the government used to send there a local judge (*qadi*) as an inspector and a governor of a sanjak (*sancak beyi*) or a member of the court (*mahkeme âzâsı*) as a court crier (*mübâşir*). And these officers inspected all the possible criminals with prison record and arrest them providing that they were physically suitable, then send all of them with a file which contained their misdeeds as a whole to naval armory in Istanbul or to other harbors in condition of them being laboured as penal servants (Heyd, 1983: 651). Thence, penal servitude can be claimed as a supply for the need of Ottoman naval army and criminals were thought as potential servants. It seems that the Ottoman authorities were very vigilantes on this situation for providing people to the army when they needed.

People in the Empire were easily punished with penal servitude by being charged with any kind of small crimes and theft was one of the most common one amongst them. In 1840, for instance, Köleoğlu Veli and his comrade Mehmed Ali from Anesto Sarıkaralı tribe were sentenced with three years of penal servitude owing to their theft (B.O.A., 7: 104). There was no difference between Muslims and non-Muslims when it came to punishment. Another example tells us that Ömer from the town of Cuma-i Atik had been released because of his family needed him a lot (B.O.A., 25: 18). A Jew man named Abraham was put in penal servitude for six months thanks to his stealing actions (B.O.A., 17: 18). Or Serkiz from Eğin had been sent to penal servitude in Tersane for three years out of theft (B.O.A., 111: 65).

3.5. Imprisonment (*Habs*)

There is not a determined length of time for the crime of larceny in Islamic law. Whilst some few suggest that the time of imprisonment depends upon the amelioration of lifestyle and behavioural condition of the thief himself, and the others leave the issue to the comment of judge (Hülagü, 1996: 49). Ottoman authorities followed the same path what Islamic law stipulated about imprisonment of the thief. Thieves were

imprisoned when they were caught with the suspicion or allegation of stealing. But if they were caught on action that was another situation and needed a most severe punishment. And sometimes, when the thief repented from stealing again, authorities could free him. In some cases of theft, authorities could come to a decision about a notorious thief and send him to his homeland. For example, in 1845, a man who was subject of Iranian nation was decided to send to Iran due to his stealing over and over again (B.O.A., 23: 16). Or in another case, Tahir who was from Egypt submitted a petition of forgiveness by claiming that his family was not in a good condition in his absence. Authorities decreed that he was going to be released for this reason (B.O.A., 74: 62).

3.6. Execution (*Katl*)

In some conditions, people (*rayah*) were given the penalty of death (*siyaseten katl*). Nonetheless, the punishment of larceny was decided in the Holy Qur'an and thus, it is contradictory in terms of Islamic law to punish this crime with death which had already been punished with *hadd* (B.O.A., 2007: 119). At this juncture, we confront with a paradoxical situation. As a matter of fact, sharia was the criterion of the Ottoman law system and it always had been declared that it was so. But this is very dazzling to come clearly across here that the Ottomans did not find any harm to replace it with the traditional law (*hukuk-ı örfi*) when the occasions had arisen and especially combined crimes. Come to that, we must lay an emphasis on the pragmatic character of the Ottoman judiciary system and the Ottoman administrative discourse on the inner and outer threats was very rigorous. The Ottoman elites, indeed, found an effortless solution on especially the combined and repeated crimes by executing the criminals. At the first look, it seems that the project of regeneration of Ottoman law system and modernization of the society was not decently working out. But, Ottoman pragmatism had always existed throughout the centuries and now it was becoming clearer in the eyes of the administratives of the country. So, they attempted to create a new sort of law and under the leadership of Ahmad Djavdat Pasha, they produced The Ottoman Courts Manual (Al majalla al Ahkâm al Adliyyah) by the Hanafi tenet. But again, it was a compilation of semi-religious codes. So the ruling position of Islamic law codes sustained their very existences. We should examine the late Ottoman law system by keeping this in mind.

For example, in a case, the Ottoman administration had sent a number of *fatwa*s through the *sheikh ul-Islam* of the period to the Ameer of Mecca (*Emir ul-Mekke*) in order to give him the authority of slaying a Bedouin tribe, which was located on the way of Madinah city (*Medine-i Münevvere*). Since, with respect to the fatwas, the tribe was denying the essential duties of Islam and even was not hesitating to kill people and steal their belongings (B.O.A., 95: 5721). In another case of larceny, which had been dated 1802, some of the ten Croatian thieves who had committed a number of theft crimes in Bosphorus were told to the Austrian ambassador as they were under the protection of Austria at that time. Not that, the ambassador had declared that they would not give these criminals any privileges and so, they were hung in the various districts of Istanbul (B.O.A., 82: 3389). Ten years later than that, two thieves had come to Tırnova in order to attempt stealing a pack of animals. But they were caught in the act and their heads were cut immediately (B.O.A., 41: 2031).

It is also interesting to see that the Ottoman administration sometimes had set a price on criminal's head, namely, as it is called today, they had rented some 'bounty hunters to catch the culprits with whom they had difficulty catching. In 1819, a Tatar man was rewarded by the state for bringing the heads of five men whose names were Alikoçoğlu Osman, Sakonoğlu Abdi, Nebioğlu Osman, Kerimoğlu Ramazan and Korkulakoğlu Süleyman, those of who were involved in a great deal of larceny and usurpation crimes in the vicinity of Manisa (B.O.A., 1547: 11). On the other side,

'bounty hunters were not only rewarded with money, but they also were awarded with being praised by the governors and promoted in their works. For example, civil chief inspector Aron Effendi was awarded due to the effort on catching Petro the Greek, who was sentenced to death because of killing a watchman and a police officer while he was attempting to rob a house that belonged to a soldier in Fatih district of Istanbul (B.O.A., 603: 39).

Conclusion

Ottoman criminal law was consisted of two major traditions. On one side, there was the sharia which meant almost everything to the Ottoman law system and there were secular edicts in order to fill the blank in the system on the other. Until the age of modernization, this dichotomic system worked well and efficiently. However once the modernization movements began in the Empire, inevitably the Ottoman law system got under influence of the new applications. Thus a separation in practice emerged in the area of law. Naturally, criminal cases were handled with the new practices of Western style law codes but Ottomans were stunned in the face of recent developments in actual fact. Because Ottoman elites intended to create a new law system that based upon the Western principles, they neglected the Islamic rules to an extent. Meanwhile, some Ottoman intellectuals attempted to combine the sharia and Western style law codes within a new Islamic framework. So it ended up with a great mess for the area of law.

As for Ottoman criminal law, it definitely showed a set of new tendencies. But in a general look, we can say that Ottoman criminal system was not change at all. Despite the fact that a number of secular law codes settled in the penal law books, still the *kânunnâmes* were highly effective in the area. Islamic criminal codes helped the secular ones, but usually traditional codes came before the Islamic ones. Hence, now there were three branches in the law system. One of them was sharia, the other one was secular/traditional codes and the last one was Islamic-Western style law. A dichotomous structure now turned into a triangle application and this deteriorated the stability of the decision making in the Empire. Besides, it was very dangerous so as to build a solid law system as well. For, this new triangle could change itself in accordance with person or region of the Empire. And this complication would maintain until the formation of Republican Turkey.

Lastly, when it is given an eye to our real *problematique* here, namely the crime of larceny/theft we can say that it changed region to region, person to person and even some needs of the state as soldiers to hire. So it is not a surprise to observe that the crime of larceny was treated as before the modernization period. Along with this, we can think and claim that the unflagging wars and economic crisis that shook the Empire radically pave the way for more severe precautions against crimes and criminals. We tried to show and argue about the six basic ways of punishing the thieves in the Empire. In order of harshness, they were exile and appointment with restriction (*nefy* and *ta'yin*), shackle (*pranga*), confinement in a fortress (*kalebendlik*), penal servitude (*kürek*), imprisonment (*habs*), and execution (*katl*). When we examine the documents in the archives, we can easily see that the most common punishment of larceny was penal servitude and confinement in a fortress. Interestingly enough, these documents make us think that the state was conscious to some extent when it was implementing the verdicts of punishment against larceny because it needed workers or servants more and more. So it was not coincidence to see that these two kinds of punishment were too common.

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