

Bribery in Islam-Ottoman Penal Codes and Examples From The Bursa Shari'a Court Records of 18th Century

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Abstract: So as to ensure durable peace in the community, the authorities are expected not to show any discrimination against citizens, but rather equal treatment and utmost compliance with the current laws. In a community where widespread corruption prevails, not only the confidence towards the administration is undermined, but also the authority given to the state employees is abused. The harsh punishment, imposed by the state to those involved in corruption strengthens, the confidence for the administration, and enables the authority along with to provide the maintenance of the public order to a great extent. Furthermore this preserves the necessary discipline in the officials and helps the administration to function on a regular basis and for the benefit of the community.

One of the main characteristics of the Ottomans, who succeeded to retain power for nearly six centuries, is their ability to ensure justice in the community. However, in the course of time, corruption in the community became so common, especially among judges, that officials in charge of preventing corruption cases were themselves involved in such.

The 18th century, was a period of economic, social and political chaos and unrest for the Ottoman community. The golden era of grand conquests had been left behind, and wars which erupted one after another both in the west and east part of the empire undermined the Ottoman power in unstable way. Just as the land system whose structure dating from the classical period was disrupted inevitably contributed to the increase of the migration to the urban areas so did it led to drastic fall in agricultural production. All these negative circumstance which subsequently followed each other created a lack of confidence that was gradually getting profound between the state and the public. Consequently, it brought about a noticeable rise in corruption cases throughout the Empire. The dominance of such undesirable situation and its reflection on the city of Bursa is the basis of this study.

Key Words: Islam, Ottoman, Bribery, Penal Code, 18th Century, Bursa.

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Introduction

In its broadest sense, the concept of bribery “is having someone who is in authority do a favor by promising him or providing him with some benefits in ways that are against the fundamental principles and rules of society” (Mumcu 1985: 1-2). Since every human being is concerned, first and foremost, with securing his own interests, the crime of bribery and other forms of impropriety are psychologically rooted almost in every society as a great potential.

As a general rule, we observe fewer crimes of bribery being committed in advanced societies compared to developing and underdeveloped countries. However, even in the former societies it is not completely eliminated. Different theoretical perspectives attribute different motivations for bribery and corruption as with other forms of crime and deviance. For example, strain theories explain them by unusual socio-economic hardships and rapid changes that amount to what Durkheim has called social anomie. This implies that in both great economic recession and boom the established norms and rules of society get extremely worn out, while the new ones are yet to replace. Both extreme situations lead to a state of normlessness and loss of identity as a result of which unruly and immoral acts such as bribery and corruption may become normalized and justified. Interactionist theories suggest that a kind of labeling is the major cause of bribery and corruption as of other crimes. Neither socio-economic hardships nor the ‘wickedness’ of human nature are by themselves responsible for acts of bribery. Furthermore, the acts of bribery are not criminal elements in themselves. What defines it, deems it to be criminal, immoral or not is the labeling process that comes out as a result of social interaction. However, not all social strata hold equal power in the labeling process. Those with more economic and political power play the primary part in defining criminal and non-criminal acts. Thus, some acts are defined as criminal and immoral while others are not. As a result, some groups are labeled as being more criminal and corrupt compared to others. Needless to say, the deeds of the privileged are labeled as less offensive while those of the unprivileged are easily condemned. Control theories attribute offensive behavior to the so-called wicked human nature. Every human being is inclined to do evil. There is nothing the law or public morality can do concerning this, but exert as much controls and sanctions as they can over actual and potential criminals to deter them. Control theories are the closest approaches to commonsense understandings of crime and deviance and of preventing them. Hardening targets and increasing surveillance are the chief remedies for preventing or at least controlling criminal and immoral acts. Radical theories, based on the treatises of neo-Marxism, attribute human criminality including bribery to the irreconcilable structural inequalities and differences of class that are the fundamental

traits of modern capitalist systems. Criminality and immorality are further exacerbated by commercial adverts and consumerist ideology that awaken and deepen the sense of relative deprivation on the part of disadvantaged groups. Only through radical social restructuring and reformation can human criminality be controlled and can justice be permanently established (Downes 2000).

Modern jurists see bribery in the main as a crime committed by public personnel. Nevertheless, private sectors have also suffered great deterioration especially in the West over the last century, with the rise of private commercial and industrial giants where the owners or managers lost their control over the thousands of employees working in these institutions. Thus, bribery and corruption have become an important part of private sectors that are based on free enterprise as they coiled themselves up like serpents over the public sector (Mumcu 1985).

Equality among human beings before the law is a natural consequence of legal generality, objectivity, and neutrality. The crime of bribery, like other crimes, distorts these principles. A state official refrains from doing the task that he undertook toward society as required by committing. Bribery, and provides some individuals with privileges for any kind of personal benefits. Allowing such acts that break social equality and constitute illegally exceptional cases no doubt threatens social trust and peace. What is more, by committing bribery the public officials leave aside the principles of objectivity and impartiality. They induce the feeling in individuals that public services can be purchased, and that even unjust parties can obtain whatever they wish. The fact that such a feeling occurs to individuals, who constitute society, leads to important losses of probity on the part of public administration in the eyes of individuals, and distorts social mechanisms in ways that are difficult to restore (Erem 1959). By defining bribery as a serious crime and exerting heavy sanctions on it, the law aims at minimizing the possibility that some morally weak personnel might astray from integrity for personal benefits (Erem 1985).

The 18th century, which this study deals with, was a period of economic, social and political chaos and unrest for the Ottoman community. The golden era of grand conquests had been left behind, and wars which erupted one after another both in the west and east part of the empire undermined the Ottoman power in unstable way. Just as the land system whose structure dating from the classical period was disrupted inevitably contributed to the increase of the migration to the urban areas so did it led to drastic fall in agricultural production. All these negative circumstance which subsequently followed each other created a lack of confidence that was gradually getting profound between the state and the public. Consequently, it brought about a

noticeable rise in corruption cases throughout the Empire. The dominance of such undesirable situation and its reflection on the city of Bursa is the basis of this study.

This article is organized in three sections. The first section gives a brief summary of how bribery is treated in Islamic criminal law. Section two offers a concise history of bribery and corruption in Ottoman public life. Section three gives a more detailed account of how bribery is dealt with specifically in the Ottoman Criminal Law with numerous references to actual court cases. The samples of court cases submitted and analyzed in this paper are derived from the Bursa Shari'a Court Records (BŞS) of 18th Century through a comprehensive documental survey. In the conclusion section the nature of Ottoman law and practice concerning acts of bribery is analyzed in both synchronic and diachronic dimensions such as early and medieval Islamic rules and more contemporary approaches. The paper also speculates about how modern Turkish scholarship and policy-oriented evaluation treated the Ottoman legacy concerning deliberations on the control and prevention of corrupt behavior including bribery. This study is supplemented by a selection of original visual documents written in Ottoman script. In this article, original documents were also obtained from *Bursa Kütüğü* (the Bursa Register) besides the records of the Bursa Law-Court. The Bursa Register was prepared by Kamil Kepecioğlu between 1930 and 1945 completely with his handwriting in Ottoman script in the form of a documentary historical narrative, based on the Shari'a court records and other original documents. The work serves as a kind of Bursa encyclopedia for many scholars. This work is now available at Bursa Yazma ve Eski Basma Eserler Kütüphanesi (the Bursa Library of Manuscript and Old Printed Works) with the accession number: Kamil Kepecioğlu, Gen. Col. No. 4519-4522. When converting the dates in Muslim Lunar Calendar to those in the Gregorian Calendar, a standard date conversion guide was used, which was prepared by the Turkish History Institution (www.ttk.gov.tr). Finally, the Qur'anic verses concerning bribery and corruption were detected from *Kur'an-ı Kerim ve Türkçe Mealî* (The Qur'an and Its Turkish Description) and English version from (Meanings of Holy Qur'an by Marmaduke Pickthall, www.al-sunnah.com).

Bribery in Islamic Criminal Law

Anyone who acquires a property or benefit in an unjust manner is labeled *mürteşi* (receiver of a bribe) in Muslim canonical law regardless of his status and official position. The person who offers a bribe is called *râşî*. Concerning bribery, there are also persons who mediate or negotiate between the receivers and givers of bribes. Such an intermediary person is called *râiş*. The receiver acquires another person's possession without any merit or justification. The

offering party gives something of value in return for obtaining some benefit that he does not deserve at all. The mediator, on the other hand, participates in the act of bribery by serving as the tongs of one of the two parties. According to the Muslim canonical principle of *sedd-i zera'i* (limits to the means, pretexts, motives, or courses of attainment [of something]), something that leads to the emergence of a canonically forbidden or spoilt act wraps itself up with the same effects of the thing it caused. In this regard, as bribery is a legally and morally forbidden act for both the receiver and the giver, it is equally forbidden to help one or both of these parties (Şentürk 1996).

According to some Muslim jurists, in case the person appointed by the judge (qadi) to control the entrance and exit of the court-hall accepts anything in cash or in kind from incomers, the judge is indirectly deemed to be receiving bribes and is treated under the category of *mürteşî* because the guard at the court-door can demand something from and is offered something by the incomers only on the basis of the judge's power and influence. From this perspective, even though the judge does not literally, directly or apparently receive any bribes, he is still considered to be a major accomplice in bribery. In order to avoid this troubling and suspicious situation, the judge should abstain from laying hands on what is canonically sacred or forbidden, and should hire someone as the court guard who is satisfied with what is available to him. If the judge does not have such an opportunity at his disposal, then regular salaries are to be assigned for both the judge and the guard (Ümitli 2006).

For the crime of bribery to occur, the receiver should be supplied with or promised benefits such as money and gift. Here, every kind of benefit, both material and non-material and tangible or intangible, is taken into account, in its broadest sense. Thus, benefits obtained through bribery include both material values such as money or gifts and non-material favors, that is, any means that can lead the person in question to impropriety of any kind (Mumcu 1985). The concept of benefit or interest is divided into two categories as material and moral/virtual. Material benefits cover money and every kind of corporal goods, payments in kind, and gifts. Most Muslim jurists are of the opinion that bribery denotes money and other material benefits. In this context, they suggest that every business is based on money, revenue, valuable goods and tangible assets, every need can be met with them, and all human beings try to obtain them. In this regard, one who gives something of value to another gives it for an end that is to be realized in advance, by installments or in the long-run. As for the scope of moral or virtual benefits; we can consider any business offer, promise or giving of a position, doing favors and giving priority or privileges in reciprocal affairs, and benefiting from the credit or influence of the person in question (Önder 1994).

According to Muslim jurisprudence, the crime of bribery generally occurs in three stages:

1. The first stage is the preparatory or deliberative stage. According to Islam, the judge cannot give jurisdiction for what is in hearts or minds. He can do so only for what actually occurs and becomes a concrete reality. He refers what has not yet come out to God. Like other crimes, bribery has also a preparatory stage. The preparatory stage itself does not constitute a crime.

2. The act of proposal or attempt constitutes the second stage. All preparations and attempts of bribery are accepted as an initiative which amounts to a rebellion against divine authority. Yet, the rights of others are not still transgressed here. In other words, neither the offering nor the receiving party has yet physically violated the rights of others by their initiative to be involved in bribery. Human rights have not been impugned yet at this stage. Only the rights of God are offended here. It is hoped that offences committed against the rights of God may be pardoned by way of repentance. Thus, a person attempting at giving or receiving a bribe can give up committing this crime by conscience and repentance before it is completed.

3. The last stage is the completion stage. The crime of bribery is already completed for the person who proposed to give a bribe on whatever stipulations and under whatever circumstances. Concerning the receiving party, on the other hand, the crime is not consummated unless he accepts the proposal, receives the benefit offered, or he gives a positive response in return for the bribe offered to him. In a similar vein, the person from whom a bribe is demanded does not become criminal unless and until he accepts this demand. In bribery, the existence of an abstract proposal or demand that is not yet concretized is sufficient for the crime to be deemed consummated. The offering or demanding party is said to be criminal, while the other party is accepted innocent unless he gives a positive response to the offer or meets the demand in question (Şentürk 1996: 41-44).

In sources dealing with Muslim canonical law, the crime of bribery committed in the form of agreements by the involved parties is not mentioned. Nevertheless, when the protected legal utility is taken into account, the making of an abstract agreement suffices for the crime to occur. Concerning the crime of bribery, the agreement should be made between the parties by their free will or consent, and should be formulated before or during the business transaction that is subject to bribery is carried out. An agreement reached or a benefit provided after the completion of the business transaction in question does not constitute the crime of bribery. Yet, it is possible that the

agreed benefit be provided later provided that it is decided upon at earlier phases of the business transaction. The fact that the offering party did not keep his promise and the offered party could not receive the benefit assigned as the bribe for the service in question despite his completion of it does not stop the crime of bribery from occurring, because the crime is committed with the agreement reached between the relevant parties (Erem 1985).

Much of the evidence that bribery is forbidden in Islam can be found in the Qur'an and the hadith (sayings and deeds of Prophet Mohammed that were accepted by believers as the guidelines for being good Muslims). Although there are no direct references to the word 'bribery' in the Qur'an, the broader meanings of some verses cover bribery, among other criminal conducts. As one verse says: "And eat not up your property among yourselves in vanity, nor seek by it to gain the hearing of the judges that ye may knowingly devour a portion of the property of others wrongfully" (Meanings of the Holy Qur'an, Al-Baqara, 2/188). As can be seen, usurping the possessions of others in canonically evil ways is forbidden. The signification referred to in the verse is concerned more with bribery and unjust self interest than anything else. More direct, egregious and condemnatory utterances are found in a number of hadiths addressing bribery. Some examples read: "God has cursed those who give and take bribes concerning the realm of jurisdiction"; "the prophet of God has condemned those who give and receive bribes"; "the prophet of God has cursed those who give, receive, or mediate bribes". Curse denotes receding into a distance from divine mercy. This occurs only when great sins are committed. In this regard, bribery is one of the heaviest sins, and strictly forbidden (Ümitli 2006: 20).

There are also verses in the Qur'an where God addresses Prophet Mohammed concerning how to distribute justice among his Muslim fellows. Examples of such verses are: "... (Muhammad) judge between them or disclaim jurisdiction ..." (Meanings of the Holy Qur'an, Al-Maidah 5/42) and "Lo! We reveal unto thee the Scripture with the truth that thou mayst judge between mankind by that which Allah showeth thee. And be not thou a pleader for the treacherous" (Meanings of the Holy Qur'an, An-Nisaa 4/105). This implies that the judges under Mohammed's rule were required to be just and truthful in running the mechanisms of justice among Muslim fellows. Bribery is understood in two different ways concerning the judiciary. The first one is the bribe given in order to be appointed a judge. The second one is the bribe given to influence the judicial process in individual cases for biased, partial and often favorable decisions. Both types of bribery are strictly forbidden in Islamic law. For instance, when someone becomes qadi by giving bribes, his appointment is certainly not valid but null and void. Even though such a person has got all the qualifica-

tions to become a judge and give fair judgments, he cannot help being sinful. Concerning the second category of bribery, opinions differ about the decisions given by the judge. According to some, only the judgments for which he receives bribes are unjust and invalid while those that are not corrupted with bribery are fair and valid. Others suggest that in case he receives a bribe during the course of a single judgment, this renders all his judgments false and invalid. A third opinion contends that all his decisions must be valid whether or not he is involved in bribery. However, most Muslim jurists hold the first opinion, that is, only the judgments biased by bribery must be considered false and invalid (Şentürk 1996).

In the fundamental sources of Muslim canonical law, bribery is neither defined in detail nor assigned clear sanctions and punishments. This faced later Muslim jurists with great difficulties in their struggle against bribery. Although they devoted deeper deliberations and insights into the theoretical front of bribery, in practice, however, they suffered lack of agreement that often led to weaknesses and inefficacies in enforcing measures against acts of bribery and corruption (Mumcu 1985).

The principle of individuality concerning penal liability in Islam requires that only the perpetrator of a crime is responsible for it, and no one can be punished unless he himself has committed a crime for any offence committed by someone else. The due punishment is inflicted solely on the perpetrator. Thus, everybody is responsible for his own acts (Dağcı 1999). The Qur'an also refers to this principle in a variety of verses. It states that what each person does shall affect only himself, and no responsible person shall undertake the liability of another's crime (Meanings of the Holy Qur'an, Al-An'am 6/164; Fatir, 35/18; and An-Najm, 53/38). This principle is rendered valid both for this world and hereafter.

For an act to be considered a crime in Muslim law, it must be of an illegitimate nature in the face of the law. In other words, even the act corresponds to the definition of the law, it is not considered a crime unless it transgresses the rights of others. In this sense giving bribes to correct an injustice does not constitute the dimension of outlawry on the part of the crime. Therefore, Muslim law has accepted acts of bribery directed to eliminate dangers or threats against one's life, property and family, as inoffensive according to the conjecture of rightful anchors. Furthermore, Muslim jurists attached full legitimacy to giving bribes in order to maintain the freedom of creed and worship. The fact that Mohammed commanded the assignment of valuable properties to poets who defame religion in their works in return for giving up their false propaganda prepared a traditional-legal ground for bribery in order to prevent assaults directed to religion and piety when necessary. In

such a case the giving party is not said to have committed for he acts in the name of holy symbols. The receiving or demanding party, on the other hand, is deemed to be criminal for the acts on an unjust ground (Ümitli 2006).

One important point here is that gift and bribery should be separated. In some of his hadiths prophet Mohammed encouraged giving and receiving gifts among his followers. "Give and receive from one another gifts, love each other, exchange greetings so that enmity among you disappear"; "exchange gifts among you because the gift uproots the hatred in the heart" (Ümitli 2006: 58-60).

Muslim jurists consider gift under three titles. The first one includes mutual gifting that is legitimate for the giver but makes an unjust gain for the receiver. Gifts that are given to get rid of any unfair treatment, danger or false accusation fall within this category. Such gifts are not considered as bribery in Muslim law for they are deemed to be compatible with law on the basis of conjectural rightfulness. Thus, the giving party is not labeled with the act of bribery while the receiving party is deemed to be criminal for he obtained unjust gains based on evil pretexts. The second type includes mutual gifting that is legitimate for both parties. Gifting based on mutual love and intimacy is of this kind. Prophet Mohammed encouraged gifting exclusively in this sense. The third category includes gifting that is illegitimate for both sides. Gifts that are given to the sultan, members of the judiciary, civil servants, other incumbents or mediators for the actualization of a particular end that is not endorsed by the law are of this kind (Ümitli 2006).

In Muslim law, punishments assigned for bribery become invalid and inapplicable only through the death of the perpetrator, amnesty, prescription, and repentance by the offender (Şentürk 1996). Factors that aggravate the due punishments for the crime of bribery are the fact that the criminal is a member of the judiciary or the government and the recurrence of the crime (Ümitli 2006).

Despite these detailed conceptualizations concerning business and commercial life as well as public administration, rules and regulations concerning public, civil and penal law have often proved to be mere ideals rather than practices that remained in theory as unattainable guiding principles. As clearly stated by Juynboll (1960b: 864):

It is true that, according to the theory of the law-books, these regulations are in all respects of equal value with the prescriptions concerning religious duties, and every Muslim is bound to regard them as obligatory, but in practice it is impossible to observe them, particu-

larly those which concern commercial and other contracts. Everywhere the demands and customs of the commercial intercourse and local manners and customs prevent even the most pious Muslim from observing these regulations; very often the observance of them is hindered by the arbitrary behavior and tyranny of the local authorities. Pious Muslims often ask the advice of able lawyers as to the religious rules concerning matters of commerce, but in practice they find themselves compelled to act contrary to this advice.

What is more, rules and regulations in the Qur'an do not by themselves amount to a complete legal system. Few matters such as murder, adultery, and theft are dealt with specifically and assigned clear sanctions. Most of other criminal acts are left to the discretionary jurisdiction of the qadi. This calls for arbitrary practices, interference from outside, both from local notables, and especially from superior authorities of the central government. There are no clear and direct references to corruption and bribery with fixed penalties (*hadd*). They have been derived from the relevant Qur'anic verses as mentioned above and from the *sunnah* of Muhammed as well as from the *fikh* books, that were written by learned Muslim jurists (Juynboll 1960a, 1960b). This also lead over time to the rise of a secular branch of law based on local customs and administrative disposals almost in all Muslim lands to supplement the divine law. In practice, however, secular law gained primary importance, and rendered its supplementary role to the Shari'ah (Juynboll 1960b, Heyd 1973).

Bribery and Corruption in Ottoman Public Life

The roots of modern Turkey are no doubt anchored in the rich historical and cultural legacy of the Ottoman Empire. Societies can have a chance to create a vision concerning the future only when the historical process is evaluated with an objective perspective. The aspects of Ottoman history of which modern Turks can be proud abound. However, it must be admitted that, according to historians, bribery and corruption are among the fundamental causes that paved the way for the collapse of the empire. It is known that after the *Tanzîmât* (Reform Edict of 1839) both the sultan and high-ranking state officials started to swear in the name of the Qur'an by placing their hands upon it not to receive any bribe. This is quite revealing when the higher rate of bribery especially in appointing and promoting civil servants is taken into account. There was a powerful central authority in the country until the end of the 16th century, exerting its dictates even to the farthest lands of the empire with its strong and well-disciplined cadres. The state had established a highly developed budgetary system within the confines of the time. Little or no lameness concerning fiscal affairs had been tolerated (Cem 1989).

Information comes down to us from the historical accounts of Neşrî showing the existence of bribery even in the earliest periods of the Ottoman Empire. According to one example, during the establishment of foot regiments in the reign of Orhan Bey, one of the first steps of the imperial military organization, the qadi of Bursa, Çandarlı Kara Halil Paşa, was said to have taken bribes. The historical account concerning this reads: "... many persons implored the qadi and gave him bribes, saying 'enlist me to be at the service of the sultan'" (Neşri 1995: 155). Whether this account is true or not, yet it shows that the concept of bribery is well known from the earliest periods onwards in the empire. It is observed that bribery entered even the judicial institution during the reign of Bayezid I. Bribery increased among qadis as a result of which the state took preventive measures (Lütfi Paşa 2001). In a poem written by Fuzulî to Süleyman the Magnificent from the place to which he had been sent in exile, one line is quite telling for it shows how far bribery had become common; "I greeted people but they did not acknowledge it saying that it is not a bribe" (Karahana 1948: 70).

In later periods, history books say that the first one to smear bribery to the Ottoman state apparatus was Şemsi Paşa. According to one account of the historian Peçevi who wrote by referring to another historian, Şemsi Paşa, one of the viziers of Murat III, convinced the sultan on a pseudo-pretext to receive a bribe of 40.000 akçes in order to take the revenge of his ancestors, the Kızıl Ahmetli family. He himself told the historian Ali how he smeared bribery to the highest echelon of the state. The same Şemsi Paşa continued after this incidence to take important sums of bribe in return for accepting and processing the petitions submitted to the sultan. He started to give part of the bribes he had received to the sultan, thus acting like a commissioner (Mumcu 1985).

The fiscal system besides the administrative mechanism of the empire started to deteriorate after the 16th century. The state lost its authority gradually and this led to an opportune ground for bribery and corruption. One factor supporting this situation is the increasing problems of subsistence suffered by low-income state officials stemming from the great fiscal bottleneck into which the empire fell towards the end of the century. As a result, their probity and respectability was influenced to a large extent for the negative. Thus, the general distortion of the system as well as the increasing pressures created by great financial shortages on the public officials prompted bribery to become a contagious phenomenon reaching the degree of a well established habituation over time in the course of relations between the Ottoman-Turkish administration and the general populace (Bayar 1979).

According to the observations of the Ottoman Minister of Finance (*defterdâr*), Sarı Mehmet Paşa, corrupt transactions amply increased as of the 16th century. Especially the increased chances of owning private lands, the expansion of tax-farming system (*iltizâm*) and the opening of new fields of business drew civil servants' attention to lucrative activities. They were engaged in obtaining private lands, maintaining herds of sheep and cattle, and trafficking in contraband goods with great ease derived from their official titles and influence (Defterdar Sarı Mehmet Paşa 1969).

From the 17th century onwards, bribery gained further momentum depending on the degree of economic retrogression in state and societal life. Especially the commercialization (the state of being sold and purchased for money) of state services played an effective part in the increase of bribery. The historian Naima states that in the Ottoman state as well as in other states taking bribes for appointing nominees to public positions had always been a commonplace that is impossible to repel from public life. He adds that bribery deeply rooted in the state apparatus, and each public position had a price to be bought or abused (1967, 4: 284-285).

The Ottoman land system began to be spoiled in the hands of feudal lords and tax-farmers from the mid-16th century onwards. The peasant populace often suffered lack of safety concerning their life, property, and honor under their oppression. People had to escape from the yoke of brigands as well as of those who had been acting in the name or with the support of the state. Many authors who were also state officials, deal in their works with the negative aspects of bribery in the said period, and propose remedies for its elimination and prevention. Most important examples of such works include *Asaf-nâme* (book of advices directed to viziers) written by Lûtfi Paşa in the 16th century, *Hırzû'l-Mülûk* (amulets of the sovereigns) by an anonymous author that is accepted to be submitted to Murat III, the *Risale* (treatises) written by Koçi Bey in the 17th century that is remembered by his own name, *Telhisü'l-Beyan fi Kavanin-i Al-i Osman* (Summary Descriptions of the Sublime Ottoman Laws), written by Hezarfan Hüseyin Efendi, a Seventeenth-Century thinker, and some works belonging to the same period by anonymous authors, such as *Kitâb-i Müstetâb* (book of satires), *Kitabu Mesâlihi'l Müslimîn ve Menâfi'i'l-Mü'minîn* (book for the public affairs of Muslims and benefits of Muslim believers), as well as the work named *Nesayih'ul-Vüzera V'el-Ümerâ:Kitab-ı Güldeste* (book of advices to viziers and administrators: a collection of poems) submitted by the Defterdar (minister of finance) Sarı Mehmet Paşa to Ahmet III in the 18th century (Yücel 1988).

It is known that sultans themselves took initiatives to prevent bribery. Orhan Bey and Murat II, for example, used to listen to the problems and complaints

of their subjects from a vantage point or at the spot near the palace gate. One of the chief duties of *Divân-ı Hümâyûn* (Council of State / Sublime Court) was to listen to complaints. The Ottoman sultans used to preside over the sessions of the *Divân* till the end of Mehmed II's reign. However, later sultans left this royal tradition, replacing it with a new and more distanced form of supervision. They began to observe important litigations handled at the *Divân* from a separate unit called *Adâlet Kôşkû* (Mansion of Justice) which had a window directly opening to the *Divân*. Mehmet IV ordered his constructionists and architects to make some physical changes to that end in the palace of Edirne (Adrianopole). This tradition had passed from the Anatolian Seljukids to the Ottoman sultans. The sultans used to go about in disguise (*incognito*) as they could find enough time slots in order to see whether things were being done according to the rules of the establishment. It is also known that some sultans hired spies to submit reports in cipher about corrupt and unruly acts. In addition, the sultan or his grand vizier could send out an inspector or charge a reliable local official upon the complaints of the *reâyâ* (the ruled) for investigation. As a result of these processes when some misdemeanors were discovered, judicial firmans were issued for correction. In these firmans special emphases were given to the protection of the *reâyâ*'s rights, the prohibition of bribery and similar corrupt conducts, and the severe punishments that the state officials who acted in contravention to these rules would incur (Cem 1989: 261-262).

The trends of corruption continued in the 18th century as well, even at greater lengths, and rather than capable persons those who could give more money were appointed to public positions. This situation did not lose any level in the 19th century either. What is more, it is observed that bribes in the form of gifts became widespread in this period. What is worse is that brigands and highway burglars began to give some of the violated and smuggled possessions to officials as bribes in order to secure a foothold and their willful blindness. This means that the rulers were protecting brigands in return for bribes they received (Uluçay 1955). In later periods, bribery became so increased that most literary works made it their chief subject (Karakartal 1995).

Bribery and Corruption in the Ottoman Criminal Law: Examples From the Bursa Shari'a Court Records of 18th Century

We had better make a principal distinction between the classical age (15th and 16th centuries) of the Ottoman Empire, and its later periods, particularly the 19th century, regarding the existence of clear and direct references to the crime of bribery in imperial laws. As shall be seen below, most of the clauses directly referring to bribery appear in later legislation, particularly in the pe-

nal code of 1858 and the civil code of 1876 (*Mecelle*). The *kanunnâmes* (codes of law) of the classical period, the most important ones among which are those issued by Mehmed II (conqueror) and Süleyman the Magnificent, on the other hand, give much emphasis to religious and moral crimes, adultery, homicide, theft, highway robbery, brigandage, and a number of property crimes. Only in a few clauses do we see references to crimes that remind us bribery and similar corrupt actions. Articles 115 and 116 of the common or composite *Kanunnâme* derived by Uriel Heyd taking the texts issued by Mehmed II and Süleyman the Magnificent as the base and incorporating small variations appearing in other codes of law into it have the most relevant definitions:

Article 115: Furthermore, the tax-farmers ... shall not be allowed to interfere with [any person] and shall not 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 give judgment and let [him] recover [the fine he paid to them] (Heyd 1973: 127).

Article 116: The executive officers (*ehl-i örf*) shall not imprison and hurt any person unless [he is convicted] by the *cadi*.

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] (Heyd 1973: 127).

However, lack of direct references to bribery in the law codes of the golden age does not necessarily mean that there was no bribery in Ottoman society at the time; nor does it mean that criminals of bribery were not convicted and ultimately not punished. Most offences committed by state officials and public administrators, especially by those in higher ranks were dealt with in a separate judicial process that was called *mazâlim* (oppression) jurisdiction. *Mazâlim* jurisdiction was chiefly concerned with the oppressive behaviors of public officers towards people. Since their prominence and rank was most of the time equal to or higher than that of ordinary *qadis*, their cases were dealt with by the Sultan himself and more commonly by the *Divân-ı Hümâyûn* (Sublime Court). Concerning such offenders, *qadis* did the reporting to Istanbul and executed the *firmans* sent from it. *Mazâlim* jurisdiction used to function on the basis of complaints submitted to the Sublime Court by the people of local areas where oppressive administration started to upset many persons.

The Mazâlim of Sinan Paşa, former Governor General of the Province of Damascus, are quite notorious. Sinan Paşa and his men used to commit habitually a wide range of atrocities including such as imprisoning people without justification, accusing them of various offences, and collecting from them exorbitant fines even for minor crimes like drinking wine. One complainant brought suit against him stating that

Sinan Paşa had charged his (the plaintiff's) son with swearing at (söğmek) the Paşa's kapıcı [doorman] and had ordered the culprit to be impaled (kaziğa vurmak). The desperate father had counted out 400 gold pieces in the presence of the Paşa's çavuşbaşı [chief guard], put them in a kerchief, gone to see the Paşa, kissed his knees and given him the money, whereupon the son had been released. In many cases the judge ordered the governor's representative or the subaşı [chief of the police] to return the money which had been extorted. But Sinan Paşa, apparently, was not punished ... (Heyd 1973: 212).

The document recording Sinan Paşa's tyrannical acts is dated 1549. Following the classical age, we can both conjecture and assume the increase of financial crimes including in the first place bribery, nepotism, and more general forms of favoritism especially with the weakening of the central government and with the change of land and tax collecting system from public ownership to private initiatives. The composite *kanunnâme* of the classical period compiled by Heyd includes only 126 articles in total dispersed in four chapters. Later codes of law such as the penal code of 1858 and the *Mecelle* (civil code) of 1876 include up to two thousand articles. *Mecelle*, alone, consists of 1851 articles scattered in its preamble and 16 chapters that follow. These law codes retain Islamic principles concerning family law and private life while borrowing elements from the positive jurisprudence of the West, particularly from the French legislation, concerning public administration, business life, and criminal law related to public issues. Thus, bribery as a universal crime and the forms of sanctions due to it appear in these documents with higher frequency and with more direct or clearer expressions.

The crime of bribery could only be handled in the court and upon litigation, because the qadi was not able to prophesy the legal problems of individuals; nor was he entitled to force them to search for their rights. He was not authorized to interfere in this matter (*Mecelle* [civil code adopted in 1876], article 1829).

The victim of bribery is someone who faced danger or suffered damage concerning his legal rights and benefits. The state administration is also a victim in the crime of bribery (Erem 1985). As a matter of fact, the law aims

at maintaining people's trust in an impartial and just public administration via the punishments it assigned to bribery. In other words, its chief concern is to defend the principle that the state services and activities cannot be sold and purchased. Individuals who suffered from unjust treatments and had to give bribes in order to eliminate such wrongs are also victims of bribery. Although victims of this kind seem to be in a criminal position formally and nominally according to law, yet they are not deemed to be genuine criminals due to the unjust treatments they received and material as well as spiritual damages they suffered thereof. The law forgives them on the basis of their conjectural rightfulness (Ümitli 2006). To put differently, they did not choose to be involved in bribery but had to do so under duress.

If the giving party gave a bribe to the qadi, he had the right to reclaim it from him. In Muslim jurisprudence, the judge is liable, as a principle, to return the money or goods he received from a person who brought a case to him. Even when the qadi causes through injustice one of the parties to lose the case and to pay a sum as a fine or compensation to the other party, the victim can reclaim his losses directly from the qadi in lieu of his legal competitor. The giving party is also entitled to bring suit against the mediators involved in the bribery. Nevertheless, he can only open litigation about the mediators of the receiving party. He cannot submit a legal complaint against his own mediator(s) who serve as his attorney(s). His mediator's part ends when he takes the bribe to the person assigned. That is why the giver cannot bring suit against his own mediator. Instead, he can directly charge from the receiver what he has given to him. As for the mediator of the other party; he has received the bribe in the name of the receiver. In this case there is a relationship between the mediator and the receiver similar to legal proxy. Thus, the giving party can reclaim what he has given first from the mediator rather than the real receiver because he is also in a legally responsible position like his receiving patron. The mediator cannot get rid of legal responsibility even after the receiver dies. In sum, the giver can at any time bring suit against him (Şentürk 1996). As these legal identifications show, the mediator is tied to either receiver or giver of bribe with a legal bond. That is why the mediator cannot be called as witness to the case of bribery of which he is already an integral part, for the existence of conflicts of interest (Mumcu 1985).

In Ottoman judicial system proof is chiefly a responsibility of the plaintiff. The law assumes an individual to be innocent and under no obligation unless otherwise is proven (*Mecelle*, article 8). Therefore, the defendant is not obliged to prove that he is innocent or under no obligation of any sort.

The crime of bribery can be classed among financial crimes. The proof of financial crimes is possible by way of confession, testimony, taking an oath, abstaining from taking an oath (*nükûl*), and some inferences from accompanying circumstances (*karîne*). When a person, who had to give a bribe under duress, opens litigation, the court invites both the plaintiff and the defendant(s) for hearing. The defendant is asked about whether or not he admits the accusations directed at him in the suit brought against him. If he admits the blame, the plaintiff does not need to do anything else to prove his case because the defendant is said to have confessed his crime (Şentürk 1996).

In Islamic-Ottoman law not every crime is assigned clear punishments. Only the major crimes that violate the rights of individuals and public order are assigned clear and separate punishments. Sanctions to be inflicted for other offences are left to the legislative body (*ulu'l-emr*) of the time. Punishments concerning the crime of bribery fall under this second category (Şentürk 1996).

One of the punishments assigned for bribery is confiscation. In confiscation the ownership rights of a culprit are ended in part or in total in return for his crime. His rights are devolved to an official institution. If the receiver has alienated the bribe he had received by converting it into some form of possessions or assigning it to someone else, the alienated property is confiscated in full. If the money or property received as a bribe is no more available either in its initial or alienated form, its equivalent is taken back and returned to the giving party provided he gave it under duress. In case the giving party has died, it is returned to his legal heirs. Similarly, if the receiver has died his heirs are legally obliged to return the bribe itself or its equivalent to the giver. If they cannot find the receiver, they give the bribe to the poor as alms (*ta-sadduk*) (Şentürk 1996).

Muslim jurists have different opinions about confiscation of property as a form of discretionary punishment (*ta'zîr*) assigned for the crime of bribery. Most jurists in the *Hanbalî*, *Hanafî*, and *Shafiî* schools of Islam object to the infliction of discretionary punishment on the culprit, suggesting that it is not canonically permissible. The *Malikî* jurists, on the other hand, contend that if the offence of the criminal is relevant to the possession itself or its equivalent, the sum to be returned to the victim can be taken from it (Şentürk 1996).

Dismissal from office is another form of discretionary punishment given for the crime of bribery. Most jurists hold the opinion that the judge who receives bribes must be dismissed from his office. These punishments applied to judges are also valid for all officials. A third form of punishment for bribery is *kalebendlik* (confinement in a fortress), a form of prison sentence or penal servitude for convicted state officials.

The articles of the imperial criminal code of 1858 concerning the crime of bribery and the punishments to be inflicted on the giver, receiver, and mediator read as follow:

Article 74: If a person, who had already been convicted of the crime of bribery and served his due sentence, commits this crime a second time, the bribe he received is taken from him doubly, he is confined in a fortress for not less than five years, and he is deprived of official duty for life (Akgündüz 1986: 846).

Article 75: In recurrence of the crimes of giving or negotiating bribes, confinement in a fortress for not less than five years plus deprivation of rank and official duty are inflicted as due punishments (Akgündüz 1986: 846).

One example of dismissal from office as a penalty for bribery is found in the Shari'a Court Registers of Bursa (BŞS). The case is about Mahmut Efendi who was the scribe of the law-court of Bursa. He used to take money from the poor in ways that are contrary to the Shari'a, engaging in trickery in collaboration with other public administrators. Additionally, when two adversaries came to the court for the legal resolution of their conflict, he took bribes from the unrighteous party and made him righteous, thus inhibiting the implementation of the Shari'a. Because a number of complaints were submitted to the court concerning his oppressive behaviors victimizing many people, the sultan sent a firman in 1744, ordering his dismissal from the position of court scribe on the following pretext: "during my reign, the effect of which is happiness, I show absolutely none of my sublime mercy to the harassment and oppression of anyone from among the poor" (BŞS B 158 33a).

In case where some people were appointed to certain official duties on the basis of bribery, they are dismissed from office upon denunciation. One of such persons is Mehmet Şeyh, known as Çavuşoğlu. When he was a standard-bearer of the Janissaries, he was not a modest person. He had always been influencing *qadis* and their assistants (*nâibs*), trying to have the court cases being cancelled by bribery, causing the destruction of the houses of many Muslims, and reserving open public positions by the force of *qadi* for himself despite his inadequate merits or for his son who was a disgrace like him rather than for those who really deserved them. A complaint was submitted about his corrupt deeds, according to which he used to occupy with false patents the sheikhdome of Seyyid Nasır Lodge, the imamate of Başçı İbrahim Bey Mosque, the trusteeship of about ten different pious foundations, and the duties of reciting the Qur'an, presidency, scribing, and tax collecting in about twenty different pious foundations. It was understood

through a legal investigation that all of the accusations were true. Thus, all these duties were taken from him and distributed to others who really deserved them in 1724 (Kepecioğlu, 3: 288).

As said before, one of the discretionary penalties given for bribery was prison sentence. According to the penal code of 1858, this form of punishment was also applicable to women. Women, who had given, received, or negotiated bribes, were to be punished with a one-year prison sentence (Akgündüz 1986).

Exile as a form of another discretionary punishment consists of removing the culprit from his place of settlement to another for some time. The duration of exile was determined by the judge. The former chief military judge (*kazasker*) of Anatolia, Veliyüddin Efendi who had been accused of taking bribes was sent in exile to Mytilene (anc. Lesbos) in order to keep the imputers in silence and repose (Mumcu 1985). The duration of exile was determined to be six years in the imperial penal code of 1858 (Akgündüz 1986).

Like all kinds of penal applications, the punishment of exile aims, in the first place, at the regret and rehabilitation of culprits. However, some people who were involved in bribery and punished with exile thereof made this crime a habit of themselves and even went to great lengths as to kill some innocent individuals without any justification, without being satisfied with bribery alone. In a way, some forms of punishments like banishment led to a kind of “deviation amplification spiral” in some perpetrators instead of redressal (Downes 2000). One of such incorrigible offenders is Numan Efendi. He was sent in exile a number of times for acts of bribery and greed. Since some of his corrupt and disgraceful acts had been heard by the sultan during his tenure as the governor of Edirne, he was banished to Bursa. When a notorious rebel named Abaza Hasan incited an upheaval against the government and sieged Bursa, he undertook unexpectedly the defense of the city, organizing the local notables as well as the local populace into a defense line in the fortress. His heroic courage, valiance, and leadership prevented the fall of the town and the subjugation of its people to offending brigands. His valiant deeds were highly appreciated by the sultan and, as a result, he was awarded with the office of qadi in Bursa. Nevertheless, when the rebellion was repulsed, the passion for money and property characterizing his temperament resumed. He started to collect money by force from the wealthy notables of Bursa and of its whereabouts, saying to some “you supported the brigands [during the siege]” and “brigands entrusted some of their possessions to you for safekeeping” to others. His oppressive behaviors included even the killing of some persons to that end. Besides these, he collected money from many people by threatening them with prison sentence. When

the sultan visited Bursa, local people complained about his atrocities to him. After a comprehensive legal investigation it was understood that the claims of complainants were true. He was executed on the eve of *Bairam* (the sacred day of Muslims) in Bursa upon the *fetwa* given by the *Sheikhulislam* (the head of dignitaries, who occupied the third place in imperial protocol after the sultan and the grand vizier), Esirî Mehmet Efendi (Kepecioğlu, 3: 457).

Rich people with good reputation in their places of settlement were known as the *ayan* (local notables) in the Ottoman history. These people were highly influential in the maintenance of law and public order as well as in that of peace and repose among local populace. According to a *firman* sent to Bursa in 1779, it was learned that some people had the governors and the *qadis* enlist themselves to the class of *ayan* by giving them bribes or serving at their retinue. These people started to oppress the poor by writing extra illegal amounts to their yearly tax-book. They also dared to have the governors and *qadis* punish those people with whom they were at odds by showing them guilty through imputations and false accusations. In order to eliminate such oppressive cases the *firman* ordered the selection of *ayan* through elaborate investigations. It also ruled out the issuing of any mandate or letter of appointment by governors and *qadis* to anyone for their entry into the class of *ayan* anymore (Kepecioğlu, 1: 203).

In addition to this, although capital punishment was officially meted out to some heavy criminals, they were forgiven thanks to the protection of some influential administrators or local notables. One such legally privileged person is Osman Agha from the Yenişehir district of Bursa, known as Sarıcaoğlu, who was exempted from death penalty. Since he was a rich local notable, he was asked to join the army with 500 soldiers at his retinue. However, he used his power and men to plunder the possessions of people. As a result, his execution was ordered, but thanks to the patronage of Ali Bey, the *vaivode* (mayor or governor in Slavic languages) of Bilecik, he was forgiven in 1814 provided that he returned what he had usurped to their owners (BŞS B 76 5a-b).

We also encounter in Ottoman history some people who were either subject to imputations or who were engaged in false witnessing in the process of bribery. One example found in Bursa register concerning with such events is about Kaşif Mehmet Efendi, the son-in-law of Sair Ibrahim Efendi who was one of the scribes of *Divan-ı Hümayun* (Council of State). Upon the death of Ibrahim Efendi, the large fief conferred upon him with an annual produce equivalent to four purses of gold pieces (40.000 gold pieces in Ottoman usage) was turned over to Kaşif Mehmet Efendi. The fief had originally been

granted to maintain the well-being of Ibrahim Efendi's family although he had not been legally entitled to it for he had not got a son. Therefore the transfer of the property to the embezzlement of his son-in-law was legally invalid. Probably when investigated by a newly appointed qadi or public administrator after change of duty, Kaşif Mehmet Efendi defended his unjustified entitlement to the fief in question saying "I gave 1.500 gold pieces as bribe to Hacı Salih Efendi, the treasurer of the grand vizier Silahtar Mehmet Paşa for the passing of the said fief to myself". Upon his claim, a *firman* was sent to the *qadi* of Bursa in 1781 for a detailed judicial investigation of the case. Although Hacı Salih had not interceded or beseeched at all as he had not been occupying this office and the transfer of this property to him had been put into effect during the former grand vizier Halil Paşa's office as the chief scribe before his grand vizierate, Kaşif Mehmet Efendi made a false explanation with the testimony of a false witness named Müezzîn Halil during the court session held in the esteemed presence of the current grand vizier a weak ago. During the trial Kaşif Mehmet Efendi said that he had given the bribe in the treasure room. Müezzîn Halil, too, said: "he had given the 1.500 gold pieces in the treasure room during my presence and testimony". When he was asked to show where the treasure room was, he said before more than 200 hundred audiences: "I cannot identify the treasure room; it is not a place at which I had arrived that I can show it". Thus, the accusation proved to be false. The fief was taken over from him, and he was banished to Bursa as required by the court verdict. However he was forgiven 124 days later upon the request of his mother-in-law, who stated that his wife and child were in wretchedness (Kepecioğlu, 3: 192).

In some instances where some people were falsely blamed for taking bribes and were found to be innocent after judicial investigations, imperial firmans were sent to rule out imputations about these people. On example of this sort is about Hacı Mustafa. He was known as '*mütevelli*'. Many people from Bursa submitted a complaint about him to the court. They claimed that he was not an inoffensive person, that he was an intriguer not afraid of sin, that he was always in thick with judges and officers, that he was sneakily spying against people and causing them to be punished unjustly, and that he spread the habit of taking bribes. A *firman* was sent to Bursa which ordered to severely threaten him not to do such mischief anymore and to abstain from them entirely. In the meantime, many persons from the local notables, ordinary populace, and tradesmen came to the court and defended Hacı Mustafa stating that he was an inoffensive person frightened of even his own shadow and calculating the consequences of all his actions, that he hated oppressors, that he devoted himself to charity, philanthropy and altruism, and that all of what had been reported about him to the sultan was nothing but lies, deceits, frauds, and

misinformation. Since the qadi of Bursa had reported his good character and conduct to the Sublime Court, a second firman was sent to the qadi of Bursa in 1742. The new firman ordered that no one act in enmity towards him contrary to the Shari'a (Kepecioğlu, 3: 409).

When a case was submitted to the court, the fee to be paid to the court usher and the court fee received for other services were taken from the party who was found to be guilty at the end of the trial. According to a firman dating 1764, some people in both Anatolia and Rumelia used to oppress people by bringing forged suit against innocent persons for vengeance or for other hidden agendas. Such forged litigations harassed people not only living in big cities but also in small towns and even in villages. To that end, such evil-doers even went to Istanbul. They could find a way out for submitting their false cases to the Sublime Court through the writ or petition usually they obtained by giving bribes. Although their claims were unfounded, yet they were able to hurt and frighten the people who were put by fraud into the position of defendants. What is more, despite the common practice that, according to *fatwa*, all court fees including the sum to be paid to the usher were being collected from the losing party, they did not pay at all, casting all that liability to the defendants who had been found totally innocent by the court. When the sultan heard that many people had been victimized through such unfair actions and procedures, he sent the firman in question which ordered the interdiction and elimination of such evil practices as well as the collection of the court fees from the evil-doers even if they were in the position of plaintiffs, and not from defendants (BŞS B 183 2a).

The unjust treatments received by the people of lands under Ottoman rule from local administrators were criticized at every period by some intellectuals or other figures of prominence, particularly the Sunnî Sufis. One of the openly criticized treatments was the administrative discriminations committed against the Bektashi community. Abdullah, son of Abdülvehhab, from Tetova of Mecedonia, the sheikh of the Nakshibendi order, popularly known as İlhami Baba (d. 1821) was the foremost critic of the pressures and ill-treatments directed towards the Bektashi lodge in Tetova province. He clearly stated that he did not approve the oppressive initiatives taken by local administrators in Tetova. In fact, İlhami Baba's criticisms were concerned with the social injustices caused by politicians when trying to establish their domination, ill-treatments conducted by the local administrators and civil servants towards people, inequalities practiced in the collection of taxes and the involvement of officials in bribery and corruption. However, İlhami Baba had to pay the cost of his reactions with his life. He was executed on the basis of various accusations, real or virtual (Cehajic 1999).

It is observed that some local officials used to oppress people through various threatening means known as *ziyâret* (visit) or *hediye* (gift). Some public figures even went to great lengths as to use these means as a trump to seize money and valuable objects from people. Karabey, whose name is found in Bursa registers, is one of such figures. Karabey was from the Karasel village of Yenişehir district of Bursa. He used to seize money from pashas and captains of irregular military forces by threatening them with sending visitors to them. Since the inhabitants of Koçi, Boğaz, Barçin, Ebe, Subaşı and many other villages submitted a complaint about Karabey, the qadi of Yenişehir, Ali Efendi, reported the case to the retinue of the sultan during a state occasion in 1715. It was then ordered that the said person be searched in Kütahya and Yenişehir as well as in their surroundings and be confined to the nearest fortress if the accusations made about him could be proved at the court according to the Shari'a. A major tactic through which he used to oppress people was going to a village and saying to the peasants "give me 500 akçes, otherwise I will invite the governor of Bursa to your village". The peasants used to give what he wanted being afraid of a greater plundering which would result from the visit of the governor and his men. In case the peasants did not give the money demanded by him, he used to go to the governor of Bursa and request him to pay a visit to the village at issue. The governors were generally inclined to accept his request. Governors used to visit villages with a crowd of men at his retinue or they used to send their men under the command of one of his representatives. When the governor came to a village, the poor villagers were ruined because the governor was accompanied by at least 150-200 horsemen. These men used to eat whatever they could find in the village like chicken, sheep, goat, and, in addition they used to collect whatever amount of money they wished from the peasants (Kepecioğlu 3: 48).

A final but probably one of the most interesting examples of bribery is about Bezm-i Âlem Valide Sultan, who was the wife of Mahmut II and the mother of Abdülmecit. Ahmet Paşa, the governor of Ottoman Egypt at the time sent as present a set of musical instruments consisting of *kemençes* (small violins with three strings played like a cello), *uds* (lute-like instruments with six pairs of strings played with a plectrum), *kanuns* (zither-like musical instruments with 72 strings) and Arab *defs* (tambourines with cymbals) as well as a team of very well-trained musicians including *hânen-des* (singers) and *sâzen-des* (players of musical instruments). This was found quite revealing at the time. Cevdet Paşa implies in his *Tezâkir* (memoranda) that Ferec Yûsr, one of the greatest merchants of Jidda, made great profits by exchanging the gold pieces he had bought from the state treasure at low rates for quite higher prices at towns of the Hejaz, and that he used to give bribes to persons of top authority and influence in Istanbul including Bezm-i Âlem Valide Sultan in order to maintain

such commercial privileges conferred upon him. Cevdet Paşa also implies that she used to obtain some crucial gains from such regulations as these and other affairs concerning customs duties with her title of mother to the sultan. Another figure favored by Bezm-i Âlem Valide Sultan is Tahsin Bey, a former *reîsü'l-ulemâ* (the highest ranking of the military judges of Rumelia) who was later appointed as the *nakîbü'l-eşrâf* (representative of the Sherif of Mecca at Istanbul). The aim of this office was to give certificates to descendants of prophet Muhammed, prevent the making of forged documents to obtain this quality and to protect the purity of Muhammedan line in Istanbul. Cevdet Paşa states that Tahsin Bey could make a lot of money from the sales of *iltizams* (title-deeds for collecting state taxes and revenues) thanks to his special connections with Bezm-i Âlem Valide Sultan (Cevdet Paşa 1986: 94). What renders this case so interesting is that it involves a woman, an extremely elite one. In none of the examples we cited so far was there a woman involved in bribery as taker, giver, or negotiator. This can be explained by a couple of reasons. First, women are generally less inclined to commit crimes compared to men. Second, much crime is left unreported (Downes 2000). Those committed by women may be more so than those committed by men due to cultural factors attaching women to private life and to men's guardianship.

Conclusion

The fundamental aim of criminalizing and thus punishing bribery is, above all, to maintain the public trust in state administration. Other aims include enforcing discipline in public administration, maintaining peace and solidarity in society. Bribery, which is no doubt a bleeding wound almost in all societies, may stem from a variety of economic, sociological, psychological, moral, and educational reasons individually or in combination of some or all of these. Administrators as well as civil societal organizations and ordinary citizens should play important collective as well as individual roles in preventing bribery and its negative discontents. The enforcement of an effective judicial system maintaining the rule of law, and invoking a strong sense of justice among populace based on the legitimacy of the political system and its institutional agents are the keys of eradicating or at least of minimizing bribery. Citizens, professional associations, and NGOs must communicate and cooperate with public institutions and judicial authorities with feelings of conscience, attachment, participation, and dedication especially in uncovering the unruly acts and their perpetrators.

The Ottoman state adopted the principles of Islam that had been re-interpreted or reformulated by the Hanafi School which reserved the largest room for the secular legislative among the four major schools of Islam. This choice on the part of the Ottoman rulers was of course not accidental, since

the Empire descended from the autonomous, non-Islamic and Shamanist traditions of Central Asia as much as it did from the canonical principles of Islam. Thus, the Ottoman law codes were never purely Islamic or purely secular. Rather, they evolved as a blend of them, retaining most of the time the characteristics of Islamic law only in form and nominally. In substance and contents, however, they were reverberate of the priorities set by the sovereign and the state apparatus according to the needs and requirements of time and circumstances. Although the laws were strictly and imperviously stated, the applications of them were not of course automated. Had the laws been easily and automatically implemented in a society on an equal basis for everybody, all criminal problems would have been solved in entirety.

Concerning bribery or other offences, the application of Ottoman laws can best be understood from a legal anthropological perspective (Gerber 1994) according to which justice is distributed through a process of power relations and tension among different players, each trying to gain his own interests the top priority through interpreting legal principles on a casuistic basis. Who would gain and who would lose in the process of jurisdiction depended most of the time on how much resources (economic power, support of judicial authorities, favor of the sovereign, sympathy of the other influential third parties) that could be judicially mobilized.

Nevertheless, this does not mean that the Ottoman law and its practice was totally arbitrary and changeful as formulated in the Weberian concepts of Sultanic justice and qadi justice where the Sultan can interfere with the judicial process at any time and as he wishes while the qadi produces impromptu solutions out of his instant imaginations to legal cases submitted to him. Despite its substantial patrimonial characteristics, the Ottoman justice system had, no doubt, a certain degree of predictability (Gerber 1994).

Western travelers and scholars have had different opinions about the form and functioning of the Ottoman judicial system. While some were impressed by its efficiency, deterring effect, and expediency, others found it arbitrary, unpredictable, and even tyrannical. Both evaluations are equally stereotypical taking the entire system on a wholesale basis. Yet, still others who had examined the system discretely in its component parts found good things as well as bad things in it.

Charles XII took refuge with the Ottoman Empire and had to govern his state from far off when he was defeated by the Russians in 1709. Inspired by the institution of Sheikhulislam in the Ottoman Empire, Charles opened a bureau of ombudsman to check his civil servants. Al Wahab argues in his article "The Swedish Institution of Ombudsman" that this institution was inspired by the

Ottoman administrative system and Islamic law (http://www.tbmm.gov.tr/komisyon/yolsuzluk_arastirma/kaynaklar/Kisim_1.pdf).

The office of ombudsman entered the judicial systems of the West first time in 1809 in Sweden as a constitutional institution. However, it was derived from Islamic and Ottoman precedents. Its historical traces can be found in such Muslim institutions like *Divan-ı Mezalim* (Court of Oppressions), *Dâr'ül-Adl* (House of Justice), and *Divân-ı Hümâyûn* (Sublime Court or Council of State) that had been an integral part of administrative and judicial systems of all major past Muslim states including the Abbasid, Omayyad, Seljukid, and the Ottoman.

The concept of ombudsman as a universal institution of modern democracies was recommended to member states by the European Parliament during the 1971 Vienna Conference on Human Rights. It recommended the member states "to establish an institution in line with the functioning of the Scandinavian bureau of ombudsman to receive and examine the individual complaints about the treatments of governmental units based on the right to complaint" (http://www.tbmm.gov.tr/komisyon/yolsuzluk_arastirma/kaynaklar/Kisim_1.pdf).

The parliament went a step further towards putting this institution into action by encouraging the 25 member states to that end.

In modern Turkey we do not yet have an institution of ombudsman. Only recently, concerning the legislative harmonization packages passed by the Turkish Parliament in line with Turkey's perennial project of joining the European Union, have some discussions started about establishing a bureau of ombudsman in the Turkish public. The inspirations for these debates came more from the EU and other international circles than from internal dynamics. This is quite in tandem with Turkey's Westernization, modernization, and democratization processes. Especially during the single-party period, Turkey turned its face towards the West for its future, and its ancient history in Central Asia for its past, thus neglecting its Islamic and Ottoman legacy. This Western-oriented policy line led Turkish governments to adopt all important reforms from Western institutions. Adoption of the Swiss civil code, Italian penal code, and French constitutional law are just few examples. While Turkey is examining the Swedish practice for establishing an office of ombudsman, the Swedes have already found it in, and adopted from, the Islamic-Ottoman legal tradition. Thus, Turkey still maintains its position since the establishment of the Republic in 1923 as a state appreciating the assets of its own history only when they are adopted and used in the West, probably without being aware of their Turco-Islamic origins and precedents.

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İslâm-Osmanlı Ceza Hukukunda Rüşvet ve 18. Yüzyılda Bursa Şer'iyye Sicillerine Yansıyan Örnekler

Ömer Düzbakar*

Özet: Toplumda huzurun sağlanabilmesi için görevlilerin yasalara uygun davranması, vatandaşlara eşit muamele ederek herhangi bir ayrıcalık yapmaması gerekmektedir. Rüşvetin yaygın olduğu bir toplumda idareye duyulan güven sarsılmakla kalmayıp, idarenin görevliye verdiği yetki de suiistimal edilmektedir. Devletin rüşvet suçunu işleyenleri cezalandırılması öncelikle idareye duyulan güveni, bunun arkasındaki kamu düzenini, görevlilerde bulunması gereken disiplini korumakta, idarenin düzenli ve toplum yararına uygun olarak çalışmasını sağlamaktadır.

Altı asır ayakta kalan Osmanlının en önemli özelliklerinden biri de toplum içinde adaleti sağlamasıdır. Fakat zamanla başta yargı olmak üzere rüşvet toplumda yaygın hale gelmiştir. Öyle ki rüşveti önlemekle görevli kişilerin adının karıştığı olaylar görülmektedir.

18. yüzyıl Osmanlı toplumu için ekonomik, toplumsal ve siyasal bunalımın derinleştiği bir dönem olmuştur. Artık yapılan fetihlerle dolu başarılı dönemler çoktan geride kalmış, doğuda ve batıda birbiri ardınca gelen savaşlar toplumun gücünü iyice zayıflatmıştır. Klasik dönemdeki yapısı büyük ölçüde çözülen toprak düzeni kentlere göçü arttırdığı gibi tarımsal üretimde de büyük düşüşlere yol açmıştır. Tüm bunların oluşturduğu olumsuz ortam devlet ile halk arasında gittikçe derinleşen güvensizlik ve bu ortamın bir sonucu olarak rüşvet olaylarındaki artışı beraberinde getirmiştir. Böyle bir ortamın Bursa'ya rüşvet olayları açısından yansıması bu araştırmanın temelini oluşturmaktadır.

Anahtar Kelimeler: İslam, Osmanlı, Rüşvet, Ceza Hukuku, 18. Yüzyıl, Bursa.

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Коррупция в османском исламском уголовном праве и примеры из реестра шариатского суда г.Бурсы 18 века

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Резюме: Для сохранения спокойствия в обществе, необходимо чтобы должностные лица действовали в соответствии с законом и обеспечивали равное обращение с гражданами без каких-либо проявлений дискриминации. В обществе, где преобладает широко распространенная коррупция, не только подрывается доверие к администрации, а также имеют место злоупотребления государственных служащих предоставленными им полномочиями. Жесткие наказания лиц, причастных к коррупции, укрепляют доверие к администрации, а также позволяют поддерживать общественный порядок, сохранить необходимую должностную дисциплину, обеспечить регулярное функционирование администрации на благо общества. Одной из основных характеристик османидов, правивших в течение шести столетий, является их способность обеспечивать справедливость в обществе. Однако, с течением времени, коррупция получила широкое распространение в обществе, особенно среди судей. Причем настолько, что должностные лица, обязанные предупреждать различные случаи коррупции, были сами в нее вовлечены.

18 век был периодом обострения экономического, социального и политического кризиса Османской империи. Золотая эпоха великих завоеваний осталась позади, и войны, которые вспыхивали одна за другой как на западе, так и востоке империи, значительно ослабили силы государства. Структура земельных отношений классического периода была нарушена и способствовала увеличению миграции в городские районы, в свою очередь это привело к резкому падению сельскохозяйственного производства. Все эти негативные обстоятельства способствовали возникновению и углублению недоверия между государством и общественностью, а также привели к заметному росту коррупции по всей стране. Влияние подобной нежелательной ситуации и ее отражение с точки зрения взяточничества в городе Бурса является основой настоящего исследования.

Ключевые Слова: Ислам, Османиды, Взяточничество, Коррупция, Уголовное Право, 18 Век, Бурса.

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