



Making, using and resisting the law in European history / edited by Günther Lottes, Eero Medijainen, Jón Viðar Sigurðsson. - Pisa : Plus-Pisa university press, 2008. - (Thematic work group. 1., States, legislation, institutions ; 3)

349.4 (21.)

I. Diritto - Europa - Storia I. Lottes, Günther II. Medijainen, Eero III. Sigurðsson, Jón Viðar

CIP a cura del Sistema bibliotecario dell'Università di Pisa

This volume is published thanks to the support of the Directorate General for Research of the European Commission, by the Sixth Framework Network of Excellence CLIOHRES.net under the contract CIT3-CT-2005-006164.

The volume is solely the responsibility of the Network and the authors; the European Community cannot be held responsible for its contents or for any use which may be made of it.

Cover: Marc Chagall (1887 - 1985), *Moses and the Golden Calf*, oil painting, private collection, St. Paul de Vence  
© 1990 Photo Scala, Florence

© 2008 by CLIOHRES.net

The materials published as part of the CLIOHRES Project are the property of the CLIOHRES.net Consortium. They are available for study and use, provided that the source is clearly acknowledged.

cliohres@cliohres.net - www.clioehres.net

Published by Edizioni Plus – Pisa University Press

Lungarno Pacinotti, 43

56126 Pisa

Tel. 050 2212056 – Fax 050 2212945

info.plus@adm.unipi.it

www.edizioniplus.it - Section "Biblioteca"

Member of



Association of American  
University Presses

ISBN: 978-88-8492-549-7

Linguistic revision

Neil Herman

Informatic editing

Răzvan Adrian Marinescu

# The Making of *Kanun* Law in the Ottoman Empire, 1300-1600

KENAN İNAN

Karadeniz Technical University

## ABSTRACT

This chapter analyses the making of *kanun* law in the Ottoman classical period. After considering the origins of *kanun* law in other Islamic states, it focuses on the same process in the Ottoman Empire. Some early examples of *kanun* are mention and special attention is paid to the idea and the justification of *kanun* in the Empire. However, it is also important to note that the Ottoman authorities who prepared the *kanun* had to be very careful in order to obtain the consent of the religious authorities without which the *kanun* could not be implemented. The chapter closes with a brief consideration of the relation between *kanun* law, which was secular, and *şeriat* law, which dealt with religious matters.

*Osmanlı Devleti'nin kuruluşuyla birlikte yeni ve orijinal bir hukuk sistemi başlamış değildir. Osmanlı hukuku denilince İslam hukuku, Roma hukuku, Anglo-Sakson hukuku gibi bütün esasları ve kurumlarıyla kendine has bir hukuk anlaşılmalıdır. Diğer İslam devletlerinde olduğu gibi Osmanlı Devleti'nde de hukuk esas itibarıyla İslam hukukundan oluşmaktadır. Ancak Osmanlılar İslam hukukunu uygularken zamanın gerektirdiği düzenlemeleri ve ilaveleri yapmışlardır. Bunu yaparken İslam hukukunun devlet başkanına tanıdığı geniş takdir ve düzenleme yetkisinden faydalanmışlardır. İslam hukukunun özellikle Kitap ve Sünnet tarafından teferruatlı olarak düzenlenmemiş alanlarda devlet başkanına belirli bir takdir hakkını tanımış olması Osmanlı padişahlarının uzun asırlar boyunca özellikle ceza hukuku ve mali hukuk alanında yaptıkları düzenlemelere müsait bir zemin hazırlamıştır. Osmanlı padişahlarının münferit ferman ve kanunlarıyla yapılan bu düzenlemeler zaman içerisinde önemli bir yekûna ulaşınca oluş biçimine bakılarak kendi içinde bir bütün olarak değerlendirilmiş ve ayrı bir isimle anılmaya başlamıştır. İşte Osmanlı hukuku esas itibarıyla şer'i hukuk ile bunun yanında zaman içerisinde oluşan örfi hukuktan ibarettir. Tarihi kaynaklarda örfi hukuk terimine ilk defa Fatih döneminde rastlanmaktadır. İlk örfi verginin bir Pazar vergisi olarak Osman Gazi zamanında konulduğu göz önüne alınırsa örfi hukukun devletin kuruluşuyla birlikte ortaya çıkmaya başladığını söylemek mümkündür. Örfi hukuk denilince bir örf ve adet hukuku anlaşılma-*

*malıdır. Örfi hukuk bir kanun hukukudur. Örfi hukuk hukukçuların ilmi içtihatlarıyla değil padişahların koydukları kanunlarla teşekkül etmiştir. Osmanlı Devleti'nde örfi kanunların hazırlanmasında Divan-ı Hümayun'un ve özellikle örfi hukuktan sorumlu bulunan nişancıların önemli rolleri vardır. Osmanlı Devleti'nde örfi hukukun şer'i hukukla çatışmamasına özel bir itina gösterilmiştir. Örfi hukuk şer'i hukukun hükümlerini ortadan kaldırmak veya değiştirmek iddiasıyla ortaya çıkmış değildir. Bilakis şer'i hukukun tanıdığı yetki çerçevesinde veya bu hukukun düzenlememiş bulunduğu alanlarda hüküm koyması söz konusudur. Esasen Osmanlı Devleti'nde her iki hukukun aynı kaza mercii tarafından uygulanması, bir diğer ifadeyle örfi hukuk için ayrı mahkemeler kurulmayıp şer'îyye mahkemelerince tatbik edilmesi bu iki hukukun belli bir bütünlük içerisinde yürütülmesinde müspet bir rol oynamıştır<sup>1</sup>.*

This chapter analyses the making of *kanun* law in the Ottoman classical period<sup>2</sup>. The Ottoman state was founded at the turn of the 14th century, and eventually absorbed the holdings of the Byzantine Empire (including much of south-eastern Europe) and the Middle East, including Egypt. While it was by far the greatest power in the eastern half of the Mediterranean throughout the early modern and much of the modern periods, and the most powerful state within the Islamic world as a whole, signs of decline began to appear in the 1590s. Thus the decades around 1600 marked the main dividing line in Ottoman history and can be seen as end date of what is traditionally called the classical age<sup>3</sup>.

A principal focus of interest for researchers of Ottoman law during this era is its general structure and its religious and secular characteristics. Some scholars hold that Ottoman law was simply the implementation of Islamic Law, while others believe that it borrowed little from Islamic law and thus must be regarded as something wholly new<sup>4</sup>. However, the Ottoman Empire was not founded upon an original legal system of its own. Instead, it borrowed heavily from the financial, administrative, and legal systems of the Turkish-Islamic states of Middle Asia and the Middle East<sup>5</sup>. Among these borrowings was what became known as *kanun*, or decrees dealing ostensibly with non-religious matters.

## OTTOMAN *KANUN* LAW MAKING

As in other Turkish and Muslim states, law in the Ottoman Empire was Islamic. However, in implementing this law the Ottomans made certain modifications, and added regulations when it was necessary. This was done in accordance with Islamic legal tradition, which gave the ruler authority to add regulations relating to matters which were not dealt with in the Holy Quran and in the Sunnah<sup>6</sup>. This made it possible for the Ottoman sultans to legislate in the fields of criminal and financial law. In doing so they

drew on the preceding political and administrative systems of the Abbasids, the Ilkhanids, and the Seljuks<sup>7</sup>.

The 15th-century Ottoman historians Aşıkpaşazade<sup>8</sup> and Tursun Bey provided important information about the Ottoman rulers' making of *kanun*. One extract from Aşıkpaşazade's history in which Osman Gazi, the founder of the Ottoman principality, proclaims *kanun*, reads as follows:

*Kadı* and *sübaşı* were appointed. And a market was opened. And *hutbe* was delivered after the Friday prayer. And these people began to ask for *kanun* to be established. A person came from *Germiyan*<sup>9</sup> and said "sell the *bac* of this market place to me". The people answered "you should go to the Khan". That person went to the Khan and repeated his words. Osman Gazi said "What is *bac*?" and the person answered "Whoever comes to sell something in this market will give me some money". Osman Gazi said "Do the people of this market owe you something? The person said "My Khan! This is *töre* and it is in use in all cities and the rulers take it". Osman Gazi said "was it ordered by God or did the rulers order it? That person again said "It is a *töre*, my Khan, and it has been in use for a long time". Osman Gazi got angry with the person and said "when someone earns money why should other people have a share in it? The one who earns it owns the money. I did not put money in his trade and so I cannot ask him to give me money. O man! Go away and do not say these words any more to me or I will punish you". This time the people said "My Khan it is an *adet* that when a person watches a market place he is expected to get some money from the traders". Osman Gazi said "since you put it like this, anyone who brings goods to the market and sells them will give two *akças*, if he does not sell he will not give any money". And he added "whoever breaks my *kanun* God may disturb [in] his religion and [in] his world... may God be pleased with whoever follows my *kanun* ..."<sup>10</sup>

The quotation shows that one of the first *kanuns* ever proclaimed in the Ottoman Empire was about *bac*, or market dues. Aşıkpaşazade's explanation proves that *kanun* was in effect in the Ottoman Empire from the beginning of the 14th century.

Another vital term for understanding Ottoman *kanun* lawmaking is *örf*. This is what is known as in the western legal tradition as *lex principis*, and refers to local usage or custom<sup>11</sup>. In Islam, the term *örf* is used to describe the decrees of a ruler outside the sphere of religious law. As far as the Ottoman sources are concerned the term *örfi hukuk* was mentioned for the first time during the reign of Mehmed II (1451-1481)<sup>12</sup>. In *Tarih-i Ebül-Feth* (1444-1488)<sup>13</sup>, or "History of the Father of Conquest", Tursun Bey wrote a long introduction in which he attempted to prove society's need for the existence of a ruler<sup>14</sup>. Quoting from the famous Tusi<sup>15</sup>, Tursun Bey justified the existence and the supremacy of the Sultan and his authority to make *kanun*. He further argued that in society both *örf* and *şeriat* are needed to preserve order. The ruler proclaimed *kanun* or *örf* in order to preserve society, and *örf* was based on reason<sup>16</sup>. It seems, therefore, that Tursun's purpose in writing this passage was to defend the increase in *kanun* lawmaking during the reign of Mehmed II<sup>17</sup>. Significantly, from the second half of the 15th century

the Ottoman sultans' personal *fermans* and *kanuns* were gathered together and called *kanunnames*. A great number of these dealt with penal and fiscal regulations<sup>18</sup>.

### THE PREPARATION OF *KANUN*

In the preparation of *kanun* law the *Divân-ı Hümayun* – which consisted of the Vezir-i Azam, the Vezirler, the Defterdar, the Kazasker, and the *Nişancı* – played a significant role. The *Kanun* was formed in meetings of the Imperial Chancery. The *Nişancı* – an official whose role in preparing official documents resembled that of western chancellors – played an essential part in preparing the *kanun* decrees. He was always chosen from among the people who had graduated from the *medrese* and had, therefore, been educated in Islamic law. In Islamic history the *Nişancı* is also referred to as *muvakkî*, *tevkîi* and *tuğrai*. The first Islamic administrations, especially during the Abbasid period, used the title *tavki*. Later the Abbasids, the Seljuks, and the Anatolian Seljuks also retained this post in their governments. For example in the Seljuk Empire, among the high government officials, there was an officer called *sahib-i tuğra* or *tuğrai* who performed exactly the same tasks as the Ottoman Empire's *nişancı*. A great deal of information about the duties and the responsibilities of this important official is provided in the *kanunname* of Mehmed II<sup>19</sup>.

The *Nişancı* was important until the beginning of the 18th century. The *Nişancı* knew *kanun* law well and had the power to compile and to compare the new legislation with older religious legal principles. His thoughts and remarks on the *kanun* and related subjects were respected in the *Divân-ı Hümayun*. In addition to this he wrote rough drafts of the important *fermans* and *berats*. For this reason he was sometimes called *müftî-i kanun*.

*Kanun* law had to be accepted by the sultan before it could be implemented. The validity of a *kanun* was limited to the life of the sultan who had created it. For this reason when a new sultan succeeded to the throne the *kanuns* had to be renewed. In fact, *kanun* law was formed slowly and according to the evolving needs of the Ottoman Empire. This was especially the case in the fields of land and tax laws, where custom, tradition, and local conditions were taken into consideration. Thus, instead of making a general *kanun* for the whole empire the Ottomans created laws designed for the peculiarities of specific regions. During the reigns of Sultan Bayezid II (1481-1512)<sup>20</sup>, Yavuz Sultan Selim (1512-1520), and Kanuni Sultan Suleyman (Suleiman the Magnificent, 1520-1566) *kanunnames* were officially codified. Why did the sultans make laws? And why were these laws put together as the *kanunnames*? One reason was the need to establish the authority of the *kanun* and to prevent office-holders from acting illegally. In numerous *kanunname*, judges and provincial administrators were urged not to act against the *kanun*. In addition to this, and in order to reinforce the domination of the

law, copies of the *kanunnames* were sold to the public at a low price. It is also known that public criers sometimes read *kanunnames* aloud to the people<sup>21</sup>.

## THE RELATION BETWEEN THE ŞERİAT AND *KANUN*

The Ottomans took great care that the *şeriat* and the *kanun* did not contradict each other because conflicting regulations could cause difficulties in people's daily lives. In the Imperial chancery two representatives of religious law were present. This suggests that the codification of *kanun* law was closely controlled. *Kanun* law was not to abrogate or contradict the principles of religious law. The Ottoman sultans were very careful not to declare a *kanun* on matters where the *şeriat* already contained a regulation. Moreover, *kanun* law was checked by the *Şeyhülislam* to see if there were any points contrary to religious law. Sometimes the *Şeyhülislams* were opposed to the *kanuns* and other regulations of the sultans. For example, in the so-called capitulations or treaties with foreign powers non-Muslims who were not Ottoman citizens were given the right to testify before courts, but *Şeyhülislam* Ebussuud Efendi rejected the idea, arguing that "something which is not legitimate cannot be ordered"<sup>22</sup>.

## CONCLUSION

It is clear that the Ottomans followed Islamic law and made amendments and additions according to the needs of the government. The ruler's authority to legislate in this area derived from Islamic law. This made it possible for Ottoman rulers to make fiscal and criminal law for centuries through the device of either *fermans* or *kanuns*. After a while Ottoman legal language started to employ the terms *şer'i* and *örfi* law. Though we know that *kanun* was in use in the Ottoman Empire from its inception, the term *örfi hukuk* was first used during the time of Mehmed II. In the preparation of *kanun* law the *Divan-ı Hümayun* and the *Nişancı* had significant responsibilities. Government officials were very careful not to make a *kanun* that contradicted the *şeriat*. *Kanun* law was required to establish order in society but could not impinge upon a principle of religious law. In fact, up until the *Tanzimat* (1839) period cases related to *kanun* and *şeriat* applications were brought to the same court, that is to the tribunal of the *kadi*. This helped to ensure that both codes complemented each other.

## NOTES

<sup>1</sup> F. Emecen, *Osmanlı Devleti ve Medeniyeti Tarihi*, Istanbul 1994, pp. 375-389.

<sup>2</sup> For the meaning of and detailed information concerning *Kanun* see C.I. Huart, *Kanun*, in *İslam Ansiklopedisi*, Eskişehir 1997, vol. 6, pp. 167-168. In this chapter technical terms appear in their original forms, and are explained in the glossary at the end of the text. Further explanation of the terms used can be found in V. Bahadır Alkım, N. Antel, R. Avery, J. Eckmann, S. Huri, F. İz, M. Mansuroğlu, A. Tietze (eds.), *Türkçe-İngilizce Redhouse Sözlüğü*, Istanbul 1992.

- <sup>3</sup> For a succinct introduction to this period, see H. İnalçık, *The Ottoman Empire: The Classical Age, 1300-1600*, London 1997.
- <sup>4</sup> For a discussion of the origins of Ottoman law and later developments see H. İnalçık, *Osmanlı'da Devlet, Hukuk, Adalet*, İstanbul 2000; H. İnalçık, *Essays in Ottoman History*, İstanbul 1998.
- <sup>5</sup> Emecen, *Osmanlı Devleti* cit., p.375. For detailed information on the origins of the Ottoman institutions, see İ. Hakkı Uzunçarşılı, *Osmanlı Devleti Teşkilatına Medhal*, Ankara 1988 (4th edition); M. Fuad Köprülü, *Bizans Müesseselerinin Osmanlı Müesseselerine Tesiri*, İstanbul 1981; Yahya b. Mehmed el-Katib, *Menahicü'l-İnşâ*, in Ş. Tekin (ed.), *The Earliest Ottoman Chancery Manual*, Roxbury MA 1971, pp. 9-12.
- <sup>6</sup> *Obey Allah, and obey the Messenger, and those charged with authority among you* in “Qur'an, Sura” VII.171, Al-Madinah Al-Munawarah 1990.
- <sup>7</sup> Emecen, *Osmanlı Devleti* cit., pp. 381-382.
- <sup>8</sup> The dating of Aşıkpaşazade's history continues to be debated. According to Çiftçiöğlü the text dates from 1478. For detailed information on the Ottoman historian Aşıkpaşazade and his work see N. Atsız Çiftçiöğlü, *Osmanlı Tarihleri, Aşıkpaşazade Abmed Aşık Tevarih-i Al-i Osman*, İstanbul 1949; H. İnalçık, *How to Read Ashık Pasha-zade's History*, in his *Essays in Ottoman History*, İstanbul 1988, pp. 31-50; V.L.Menage, *The Beginnings of Ottoman Historiography*, in B. Lewis, P.M. Holt (eds.), *Historians of the Middle East*, London 1962, pp. 169-179.
- <sup>9</sup> “Germiyan” or “Germiyanogulları” was one of the strong principalities established in western Anatolia after the collapse of the Anatolian Seljuk Empire in the early 14th century. The principality was annexed to the Ottoman territory in the first half of the 15th century.
- <sup>10</sup> Çiftçiöğlü, *Osmanlı Tarihleri* cit., p. 104; F. Reşit Unat, M. Altay Köymen, *Mehmed Nefri, Kitab-i Cihan-nüma Nefri Tarihi*, Ankara 1949, vol. I, pp. 111-113.
- <sup>11</sup> *Lex Regia* (Law of Imperial Authority) or more properly *Lex de Imperio Principis*. For more details see W. Smith, *A Dictionary of Greek and Roman Antiquities*, London 1875, p. 697.
- <sup>12</sup> For Mehmed II's life and reign see, H. İnalçık, *The Policy of Mehmed II toward the Greek Population of Istanbul and the Byzantine Buildings of the City*, in *The Ottoman Empire, Conquest, Organization, and Economy: Collected Studies*, London 1978, pp. 231-249; S. Tansel, *Osmanlı Kaynaklarına Göre Fatih Sultan Mehmed'in Siyasi ve Askeri Faaliyeti*, Ankara 1999.
- <sup>13</sup> There are six manuscripts of Tursun Bey's *Tarih-i Ebu'l-Feth*. For detailed descriptions see A. Sırrı Levend, *Gazavât-nâmeler ve Mihaloğlu Ali Bey'in Gazavât-nâmesi*, Ankara 1956, p. 16; H. İnalçık, R. Murphey, *The History of Mehmed the Conqueror by Tursun Bey*, Chicago 1978. The *Tarih-i Ebu'l-Feth* was most probably written between the years 1490 and 1495. Tursun Bey, *Tarih-i Ebu'l-Feth*, Haz. M. Tulum, İstanbul 1977, p. 24. Further analysis of this text can be found in K. İnan, *The Effects of Ornamented Prose Style on Ottoman Historiography: The Tarih-i Ebu'l-Feth [History of the Father of Conquest] of Tursun Bey*, in J.S. Amelang, S. Beer (eds.), *Public Power in Europe: Studies in Historical Transformations*, Pisa 2006, pp. 125-141.
- <sup>14</sup> For information on Tursun Bey's life see H. İnalçık, *Tursun Beg, Historian of Mehmed the Conqueror's Time*, in “Wiener Zeitschrift für die Kunde des Morgenlandes”, 1977, 69, pp. 55-71. The historian gives his name as Tür-ı Sinâ, adding that he was known as Tursun Beğ, a nickname that had been given to him. Tursun Bey, *Tarih-i Ebu'l-Feth*, edited by M. Tulum, İstanbul 1977, p. 5. In his *Tezkire*, Sehi Bey also mentions in connection with Tursun Bey's name that the poet Hayati was killed because of a couplet which he wrote for Tursun Bey. See M. Şükrü (ed.), *Tezkire-i Sehi*, İstanbul 1907, p. 69.
- <sup>15</sup> The famous philosopher and astronomer was born in Tus in 507 AD and died in Baghdad in 692 AD. Tusi claimed that he wrote his book *Ahlak-ı Nasiri* at the wish of the ruler of Kuhistân, Nasiriddin Abdurrahim b. Ebu Mansur. He entitled it after the name of his sponsor. See C. Rieu, *Catalogue of the*

*Persian Manuscripts in the British Museum*, London 1879, vol. I, p. 441. For detailed information about Tusi's life see Nasır al-Din Tusi, *The Nasirean Ethics*, trans. G.M. Wickens, London 1964.

- <sup>16</sup> Tursun Bey, *Tarih-i Ebü'l-Feth* cit., pp. 12-13.
- <sup>17</sup> According to İnalçık, Mehmed II made tremendous efforts to build a unified and centralized empire. He needed large resources for military expeditions and his radical financial measures created a very tense atmosphere in the country in his later years. These measures included: minting a new silver coin; extending state ownership over most of the agricultural lands which were in possession of the old families in the forms of *mülk* [real estate] or *wakf* [pious foundation]; extending the monopolistic tax-farming system to many necessities of life and the strict implementation of the laws governing these monopolies. Further details in his *Mehmed The Conqueror (1432-1481) and His Time*, in *Essays in Ottoman History*, Istanbul 1988, pp. 108-109. For law-making during this reign and Mehmed II's *kanunname* [law book], see H. İnalçık, R. Anhegger, *Kanunnâme-i Sultâni Ber Müceb-i Örf-i Osmâni, II. Mehmed ve II. Bâyezid Devirlerine ait Yasakname ve Kanunnâmeler*, Ankara 1956; *Fatih Sultan Mehmed Kanunname-i Al-i Osman (Tablil ve Karşılaştırmalı Metin)*, edited by A. Özcan, Istanbul 2003.
- <sup>18</sup> Emecen, *Osmanlı Devleti* cit., pp. 383-384. See for example, İnalçık, Anhegger, *Kanunnâme-i Sultâni Ber Müceb-i Örf-i Osmâni* cit.; Y. Yücel, S. Pulaha, *I. Selim Kanunnamesi (Tirana ve Leningrad nüshaları – 1512-1520)*, Ankara 1995; A. Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tablilleri*, Istanbul 1994; H. İnalçık, *Osmanlı'da Devlet, Hukuk, Adalet*, Istanbul 2000.
- <sup>19</sup> For the post of *Nişancı* see M. Tayyib Gökbilgin, "Nişancı", in *İslam Ansiklopedisi*, Eskişehir 1997, vol. 9, pp. 299-302.
- <sup>20</sup> For detailed information on Bâyezid II's life see S. Tansel, *Sultan II. Bâyezid'in Siyasi Hayatı*, Istanbul 1966.
- <sup>21</sup> Emecen, *Osmanlı Devleti* cit., pp. 378-381.
- <sup>22</sup> *Ibid.*, p. 386.

## BIBLIOGRAPHY

- Akgündüz A., *Osmanlı Kanunnameleri ve Hukuki Tablilleri*, Istanbul 1990-1993, 6 vols.
- Anhegger R., İnalçık H., *Kanunname-i Sultani Ber Muceb-i Örf-i Osmani*, Ankara 1956.
- Aydın Mehmet A., *İslam Osmanlı Hukuku*, Istanbul 1985.
- Barkan Ömer L., *Kanunname*, in *İslam Ansiklopedisi*, Eskişehir 1997, Vol. 6, pp. 185-196.
- Coulson N.J., *A History of Islamic Law*, Edinburgh 1978.
- Düzdağ Mehmet E., *Şeyhülislam Ebussu'ud Efendi'nin Fatvalarına Göre Kanuni Devrinde Osmanlı Hayatı*, Istanbul 1998.
- Eryılmaz B., *Osmanlı Devleti'nde Millet Sistemi*, Istanbul 1992.
- Gerber H., *Sharia Kanun and Custom in the Ottoman Law: The Court Records of 17th-Century Bursa*, in "International Journal of Turkish Studies", 1981, 2, 1, pp. 131-147.
- Gibb H.A.R., Bowen H., *Islamic Society and the West*, London 1969, vols. 1-2.
- Heyd U., *Studies in Old Ottoman Criminal Law*, Oxford 1973.
- İnalçık H., *Kanun*, in *Encyclopaedia of Islam*, second edition 1975, 4, pp. 556-562.
- Id., *İslam Osmanlı Hukuku*, Istanbul 1985.
- Id., *The Ottoman Empire in the Classical Age 1300-1600*, London 1997.
- Jennings R., *Kadi, Court, and Legal Procedure in 17th Century Ottoman Kayseri*, in "Studia Islamica", 1978, 48, pp. 133-172.



Karatepe Ş., *Osmanlı Siyasi Kurumları Klasik Dönem*, İstanbul 1989.

Levy R., *The Social Structure of Islam*, Cambridge 1979.

Lewis B., *Modern Türkiye'nin Doğuşu*, Ankara 1970.

MacGowan B., *Economic Life in Ottoman Europe: Taxation, Trade and Struggle for Land, 1600-1800*, Cambridge-Sydney 1981.

Ortaylı İ., *Hukuk ve İdare Adamı Olarak Osmanlı Devletinde Kadı*, Ankara 1994.

Uzunçarşılı İsmail H., *Osmanlı Devleti Teşkilatına Medhal*, Ankara 1970.

## SOURCE

This introductory passage from the imperial secretary Tursun Bey's panegyric of the reign of Mehmed II written in the early 1490s mentions the need of the people for the existence of the Sultan as the Shadow of God. For the original text, see Tursun Bey, *Tarih-i Ebü'l-Feth*, edited by M. Tulum, İstanbul 1977, pp. 12-13; for the meaning of the terms in Turkish, see the Glossary below.

...Ve bu nev-i şerîf, bunca kemâlât ile, Fâ'il-i muhtâr ihtiyâriyle müdenî bi't-tab' vâkî' olmuştur; ya'nî emr-i intiâşında ve abkâm-ı mâ'âşında ictimâ'î -ki ana temeddün dirler ki, örfümüzce ana şeh'r ve köy ve oba dinülür-. anı tabi'atten ister, ve nice istemeye ki yardımlaşmak için birbirine muhtâcdur. Ve bu emr-i te'âvün müyesser olmaz, illâ bir arada cem' olmağla olur. Ve insân eğerçi ünsten müştakdur dimişler, ammâ devâ'î-i ef'âli ve merâtib-i ahvâli muhtelif ve mütenevvî'dür. Lâ-cerem bu ihtilâf'ü tebâyün ve tefâvüt ü temâyüzden -ki anâsır-ı beşeriyette mecbûldür- lâzım geldi ki metâlib-i tavâ-yif-i ehl-i âlem ve me'ârib-i tabakât-ı evlâd-ı benî âdem muhtelifü mütefâvit ola... Pes eğer tabi'atleri muktezâsınca konulurlarsa, aralarında şol kadar tenâzü'ü temânü' ve husûmet ü tedafü' vâkî' ola kim asl-ı ictimâ'dan maksûd olan te'âvün ve yardımlaşmak hâsıl olmaz; belki birbirin ifsâd ü ifnâ eder. Zarûrî nev'-i tedbîrden gereklü oldı ki her birini müstahk olduğı menzilde koya; kendü hakkına kâni idüp dest-i tasarrufını hukûk-ı gayrdan kûtâh kila. Ve benî nev' arasında umûr-ı te'âvünü mütekeffil suğl ne ise ana meşğûl eyleye. Ve bunun gibi tedbîre siyâset dirler. Ve eğer söyle ki bu tedbîr ber vefk-ı vücûb ve kâ'ide-i hikmet olursa -ki mü'eddî ola bir kemâle ki bi'l-kuvve benî-nev'ün eşhâsında konulmuştur ki ol kuvvet iktisâb-ı saâdeteyndür- ana ehl-i hikmet siyâset-i İllâhi dirler, ve vâzî'ına nâmûs dirler. Ve ehl-i şer' ana şer'at dirler, ve vâzî'ına şâri' utlâk iderler ki, peygamberdür. Ve illâ, ya'nî bu tedbîr ol mertebede olmazsa belki mücerred tavr-ı akl üzre nizâm-ı âlemi zâhir için, meselâ tavr-ı Cengiz Han gibi olursa, sebebine izâfet iderler, siyâset-i sultâni ve yasağ-ı pâdişâhi dirler ki, örfümüzce ana örf dirler. Keyfî mâ-kân, her kankısı olursa, anun ikâmeti elbette bir pâdişâh vücûduna mevkuf. Hattâ şöyledür ki, her rûzgârda vücûd-ı şâri' hâcet değüldür; zâvâ ber-vaz'-ı İllâhî, meselâ din-i İslâm "alâ vâzî'ihî efdalü's-selâm" nizâm-ı âlem-i zâhir ü bâtin için, "ülâ yevmi'l kıyâm" kâffe-i enâm üzre kâfdür, bir peygamber dahı hâcet değüldür; ammâ her rûzgârda bir pâdişâhun vücûdî hâcettür ki anun tasarruf-ı cüz'iyâtta, ber haseb-i maslahat, her karn u her rûzgâr vilâyet-i kâmilî vardur...

...And this noble kind, with so much perfection, was created by God with a civic nature; that is to say, in his creation and living statutes the assembly was given to him. That is called

'*temeddün*', or becoming civilized according to our *örf*, it is also called *şehir*, *köy*, and *oba*. Men want this naturally and in order to get help they need each other. And this mutual assistance cannot take place unless they live in a society, and although men started out being sociable, because of variousness and diversity of their deeds and conditions of ranks which arose from the disputes, inconsistency, difference, and privileges that are natural to men since their beginnings, it was necessary that the classes of the demands and wishes of men in the world and the wishes of the different ranks of Adam's sons be various and dissimilar... If men be left to their own nature, quarrels, impediments, enmity, and mutual repulsion will happen among them and the aims of society, which are mutual assistance and help, cannot be obtained, rather they will corrupt and destroy each other. Of course, one requires an administration that each one may be content with. It will restrain each man's hand from depredation and from contravention of the rights of others, and man will content himself with collaboration. Such a regulation is called *siyaset*\*. And if it so happens that this regulation is in accordance with necessity and wisdom, and if it leads to the perfection which potentially is implanted in individuals, then this potential is called the acquisition of *iktisab-ı sadeteyn*. The philosophers called it *Siyaset-i İlahi* and they call the legislation of it *namus*, and the religious scholars call it *şeriat* and the person who lays down the religious law is called *şari*, he being a prophet. If this measure is not at that high level but simply a rational measure for the good ordering of the external world, for instance like the manner of Chingiz Khan, then it is referred to as reason, and they call it *Siyaset-i Sultani ve Yasağ-ı Padişahi*, which in our common usage, is called *örf*. In all cases its existence is dependent upon the existence of a Sultan who has perfect authority in the disposal of particulars for the *maslahat* in every age and century...\*\*

\* For the term "*siyaset*" and its meaning in the Ottoman Empire see M. Zeki Pakalın, *Osmanlı Tarih Deyimleri ve Terimleri Sözlüğü*, Istanbul 1993, vol. 3, pp. 240-241; Tursun Bey, *Tarih-i Ebül-Feth* cit., pp. 10-30; Ahmet Mumcu, *Osmanlı Devletinde Siyasetin Katl*, Ankara 1985; A. Yağar Ocak, *Osmanlı Toplumunda Zındıklar Ve Mülbidler (15.-17.Yüzyıllar)*, Istanbul 1998, pp. 71-103.

\*\* Tursun Bey, *Tarih-i Ebül-Feth* cit., pp. 12-13.

## GLOSSARY

*Adet*: Custom, practice, usage, habit.

*Akça*: Small silver coin, asper (the basic unit of the ancient Ottoman money system, one third of a para).

*Bac*: Market dues.

*Berat*: Royal or imperial diplomas, letter of privileges.

*Defterdar*: Minister of finance.

*Divan-ı Hümayun*: The Imperial State Chancery.

*Ferman*: Imperial edict, command, order.

*Hutbe*: Sermon delivered after the Friday prayer.

*Kadı*: Judge of Islamic canon law, and, in Ottoman history, governor of a kaza.

*Kanun*: means law, order, rule, system and regulation. The development of trade and industry, and the establishment of regular armies in the Islamic empires of the Umayyad and the Abbasids, resulted in contact with nations which had already codified kanuns. These developments forced governments to issue special decrees using the principle of örf, or custom. These decrees were named kanun.

*Kanunname*: Code of laws, law book.

*Kazasker*: Chief military judge, high official in the hierarchy of the Muslim judiciary.

*Köy*: Village.

*Maslahat*: The proper course, the right thing to do.

*Medrese*: Muslim theological school.

*Müfti-i kanun*: Official expounder of the kanun.

*Muvakki*: The person who affixes a signature to documents.

*Namus*: Law.

*Nişancı*: Title of an officer whose duty it was to inscribe the Sultan's imperial monogram over all imperial letters-patent.

*Oba*: Encampment.

*Örf*: Custom or common usage.

*Örfi hukuk*: Common law.

*Şari*: Law giver, legislator.

*Şehir*: City.

*Şeriat*: Religious law.

*Şeyhülislam*: Dignitary responsible for all matters connected with canon law, religious schools, etc. Next to the Grand Vizier in precedence.

*Siyaset*: Managing, governing, ruling, government.

*Siyaset-i İlahi*: Divine Government.

*Siyaset-i Sultani*: Sultanic *siyaset*.

*Subaşı*: Police superintendent.

*Sunnah*: Practices and rules not laid down in the Quran but derived from the Prophet's own habits and words.

*Tanzimat*: The political reforms of Abdulmejid in 1839 and the period following.

*Tevkii*: The Sultan's signature.

*Töre*: Custom; rule; law.

*Tuğrai*: Employee in the office where the imperial monogram was inscribed on documents.

*Vezir*: Vizier, minister.

*Vezir-i Azam*: The Grand Vizier.

*Yasağ-i Padişahi*: Imperial Law.

