

THE TRANSFORMATON OF THE POLITICS OF PUNISHMENT
AND THE BIRTH OF PRISON IN THE OTTOMAN EMPIRE

(1845-1910)

by

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“The Transformation of Politics of Punishment and Birth of Prison in the Ottoman Empire (1845- 1910),” a thesis prepared by Hasan Şen in partial fulfillment of requirements for the Master of Arts degree at the Atatürk Institute for Modern Turkish History. This thesis has been approved and accepted by:

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Abstract

This work examines the governing mentality of the Ottoman Empire by looking specifically to its punishment politics in the nineteenth century. It was aimed to examine how new kinds of punishment politics were introduced in the Ottoman agenda. This thesis is an attempt to define the transformation of the State mentality in which the traditional perception of justice replaced with modern penal codes. Moreover, these changes discussed on the basis of how the state was able to replace corporal punishment with a new system of imprisonment. It attempts to find the reason of what makes prison as unavoidable outcome of modernization

process of the Empire in this thesis. Then it includes an evaluation how those people who were defined as criminals were subjected to some political practices by the central authority. The political practices that mostly underlined here are health care of the confined and improving the living standards of prisoners.

Özet

Bu çalışma on dokuzuncu yüzyıl Osmanlı yönetim mantığının modernleşme paradigmasıyla beraber nasıl değişip dönüştüğüne dair bir inceleme olmakla birlikte, Osmanlı ceza sisteminin ne gibi devinimler sonucunda pragmatik cezalandırmadan hapishaneye dönüştüğüne dair bir kısa değerlendirmeyi içermektedir. Temelde Osmanlı ceza sisteminin suçluların cezalandırılması noktasında hangi anlamda içerik olarak bedene yönelik eziyetten daha az katı ve daha rasyonel bir zemine çekildiğini, bu anlamıyla bu dönüşümün Osmanlı zihniyetinde hangi siyasi ve sosyal olaylar sonucunda gerçekleştiği incelenmiştir. Ayrıca bu değişim sürecinin hangi siyaset mekanizmalarına imkan verdiğine dair

bir araştırma olup, modern anlamda hapishanenin Osmanlı gündemine nasıl ve ne şekilde girdiği ve bu gibi kurumsal mekanların ne gibi sosyal ve politik anlamlar taşıdığına bakılmıştır. Özetle bu mekanlara konulan ve “suçlu” diye nitelenen grupların ne gibi siyaset pratiklerine maruz kaldıklarının bir değerlendirmesinden ibarettir.

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Introduction

In this thesis my primary concern is the change and transformation of punishment policies in the Ottoman Empire in the nineteenth century. My focus will be on the issue of how the Ottomans were involved in reformation act in its punishment practices from severe to milder one. In this process I will look at the position of the prison system under the certain paradigm how it was turned to be as one of the main policies of the Ottoman Empire in that century. Besides that I will also consider certain debates about the birth of prison in the domain of empire by stressing the impact and politics related to consequences of the shift pursued by the central authority. My intention here is to show the shift of such policy as a sign of how new govern-mentality does work for Ottoman in the Foucauldian sense. The main aim of my work is to show how Ottoman governing politics went into deep transformation specially examining its punishment policy from corporal one to restrict over individual freedom.

This work addresses the reasons behind the Ottoman tendency to get involved in reformation act, especially why they need to form a special place designed only for the confined and why they were treated in humanitarian manner. Here the argument is to see such changes as the result of a more complex relation surrounding all aspects of the society in the nineteenth century. The first reason for this govern-mental change as I conceived was the impact of urbanization in the ottoman domains. The second reason was western impact of rationalization of legality with help of western mind of elite over the form of politics; third reason was the need of intensive labor force replying the demands of the state. These three will be mentioned as the cause of change in the Ottoman system of punishment. Then I will

more emphasize the micro analysis of such system by looking at prison as a place where criminals were made to work on the basis of rehabilitation of the confined.

The history of prison had direct relation with European enlightenment and industrial life. In the first stage of historical work, prison was seen as an extension of linear perception in which history itself was perceived to be evolving through primitive to modern one. Then it was perceived by revisionist historians as an extension of the state to shape all forms of society according to its will. Therefore the prison was not alone in this process like other institution such as school, factory and insane asylum where modernity infused in every aspects of society. So the history of prison turns to be meaningful as much as it reveals some discursive meanings behind the enlightenment¹ The main critics about the form of prison came up with the French intellectual Michel Foucault. He was one who for the first time conceives the prison as a place of disciplinization of society. As he pointed out unlike enlightenment thinkers, the form of prison did not function on the purpose of rehabilitation; rather it worked on the principles of diffusing micro power into every aspects of society.² Therefore this work mainly benefited from Foucauldian critics about the prison in the Ottoman Empire. For the most part, my effort was to evaluate ottoman punishment politics and the birth of prison in modern sense from Foucauldian perceptive of power and disciplinization of confined. The main theme of this thesis was to consider how ottoman govern-mentality did work in the nineteenth century.

Prisons in the nineteenth century went through enormous transformations in the Ottoman Empire. As we already know that this century was the era in which “great awareness emerged in terms of governmental politics and governing

¹Ignatief Micheal, “State, Civil Society and Total Institutions: A critique of Recent Social Histories of Punishment”, *Social Control and the State*. Stanley Cohen-Stanley Scull(ed.), (Blackwell Oxford 1985), p.76

² Foucault Michel, *Discipline and Punish, The Birth of the Prison*, (London: Penguin, 1977), p.153

techniques constituted for the surviving of empire by the elite of the time. In fact this century could be named for the emergence of many different new kinds of governing politics and abandonment of old practices in terms of change of mental attitudes of the government.³

Undoubtedly the Ottoman reformation process had gained great speed towards the end of the nineteenth century. The Empire was searching the ways to deal with new problems which threatened the social and administrative sides of its institutions. Old techniques of administrative forms of the empire turned out to be inefficient in dealing with many problems that occurred in the strategies of the rulers. Therefore there appeared a huge attempt of reconsidering old practices of governing system similar to the attempts by other European States. These new attitudes was due to entangling with a new transformation tendency surrounded all of world politics. These changes can be summarized with concept of modernization paradigm and attempt of modern state practices enforcing the empire to reconsider the existed policy towards their ruled people. Of course this consideration might lead to bring many reformation acts within domains of empire. So prison and attitudes towards prisoner from the nineteenth century onwards needed to be explained here under these effects.

What was significant in terms of punishment policy of Ottoman was a new perception of criminals in the boundaries of state affairs. As in old habits of Ottoman punishments the confined were defined within forms of “consumed groups” (zararlı topluluk) by which I mean that criminals were subjects to severe punishment mainly quantified by pain. There was no rational base of quantification for the amount of punishment and it was conceived not being the result of humanitarian senses brought by enlightenment thinkers. Rather it was outcome of positivistic approach of looking

³ İlber Ortaylı, *İmparatorluğun En uzun Yüzyılı*, (İstanbul, İletişim Yay., 1999), pp.10-9

to every case with the concept of quantification.⁴ Therefore punishment based on pain could not be quantified; instead imprisonment of people according to time and space could be measured. In addition to that, this approach conceived the individual freedom as only source of divinity. So restriction on freedom will be the most valuable punishment for people according to positivistic view. This perception considers only the measurable value for its interpretation.

When we come back to Ottoman imprisonment, we find that the field of foundation and functioning system was not studied enough. When I started to search this subject, I have found that, unlike its European counterparts, Ottoman confining system never became as the subject of social sciences. This fact might be understood from its difficulty to clarify archival sources on theoretical framework. However the actual reason I concerned stems from old traditional work of Ottoman historian to write up in accordance with descriptive style by giving numbers of details of statistics to their readers. This kind of tendency is probably resulting from the need to bring the history closer to scientific methods which began with Annales School. While there are number of academic studies on Egypt for the nineteenth century, there is virtually none on Ottoman on the same issue. This fact of Egypt could be more or less explained with its historical experience along with colonialism and other factors. This point of view clarified by the Timothy Mitcheal as the fact in which the colonial world arranged by the colonizers according to its own will and it leads them to be as the place of scrutiny and searching area in terms of what is not similar to its own world.⁵In other words, it has been proposed that this particularity of Egypt could not be explained by its subjective position rather as something independent of its

⁴ Talal Asad, "On Torture, or Cruel, Inhuman, and Degrading Treatment", in Arthur Kleinman, Veena Das and Margaret Lock, ed., *Social Suffering*, (Delhi, Oxford University Press, 1999), pp.291-2

⁵ Mitchell Timothy, *Colonizing Egypt*, (Berkeley : University of California Press, 1991), pp.10-20

will. So it can be understood that while there are so many works on the issue, ottoman historians mainly were in fear of combining the social theoretical framework with its sources.

The other reason can be that the historians are not accustomed to these kinds of studies. However a new tendency who volunteers to combine social theory with historical study only could arise in the recent years. But this tradition has not get well enough position among academia. One of the last works on the prisons is of Gültekin Yıldız⁶ was one in exception in which he gathered many data about Ottoman prison and combined his work with historical background in a fine manner. His thesis is very good work that explained Ottoman prison reform within world context and it gave me very good sense of analysis about how to approach the case. In the first chapter I am going to give some references to this thesis. So, through the process of defining the prisons in the Ottoman Empire, there might be certain missing points; nevertheless I assume that this work will contribute to the study on this issue with its mingling social theory into historical work.

In the first part of this thesis, I will examine the functions of corporal punishment politics implemented in other parts of the world. Then I will try to examine the reasons behind the abolition of severe punishment, questioning that what enabled to give up from this act, how it could be explained the disappearance of this trend in the nineteenth century historical context. In the second part of it I address some theoretical approaches that have been conducted to explain the emergence of prison as main penalty in the world context giving reference to the definitions of some important scholars including Foucault, Ignatief, Talal Asad and

⁶ Gültekin Yıldız, “Osmanlı Devletinde Hapishane Islahatı (1839-1908)”, (unpublished M.A thesis submitted to Marmara University, Istanbul, 2002)

some others. Considering how corporal punishment evolved into prison; I come up with three approaches associated with the evolution process. These are Retribution, Deterrence and Rehabilitation. In order to examine the process successfully, I am going to search how this evolution developed in three states Egypt, England and Russia. This evaluation of the transformation of punishment will enlighten my research in terms of broadening the limits of the approach with the data from different places and different times.

In the second chapter, I am going to examine the laws and regulations on punishment in the nineteenth century the Ottoman Empire. All the efforts in the empire at that period were to make the laws of the central authority superior to all others; namely Sharia, Traditional Law (Örf). This era was to witness the declaration of the penal codes and prevent the roles of *qadis* in the decision making process. Here state was in an attempt to fix the regulation of central law. The interpretation practices were intended to be minimized. What the authority did for this target was to establish new courts (*Nizamiye Mahkemeleri*) for the aim of secularization. Then, I am going to scrutinize on the punishment policy of the ottoman in the nineteenth century. I will point out to the decrease in corporal punishments and death penalties depending on the archival sources. The cases in the archives are going to be used in order to explain how govern-mentality, as Foucault pointed out, worked for the Ottoman Empire. The chapter is going to end with the discussion of how the prisons entered in to the ottoman agenda and how they were established.

In the third chapter I argue that the “consumed people” from then on became the invested. From this perspective, I am going to scrutinize on the entrance of the concept of public health, and its implementation in the prisons. At that point, I will display the facts on this issue and how the concept of hygiene was defined differently

at different times. In addition to this, I am going to examine what kinds of implications it caused and how, beside that how the state made use of the concept for consolidating its power. I am going to benefit from some secondary sources for the issue. In this chapter, I will conclude with how medical treatment was received in prisons, with the help of archival documents.

The fourth chapter includes the discussion of the conditions in the prisons and the care for the confined. Herein, I will examine the legal regulations on prisons; primarily the 1880 laws issued about prisons will be examined in detail in order to get some sense of how it was received. What the state ordered in order to improve the living conditions of the confined will be studied. I will point out to one of the main aims of this thesis which explains how the state tried to satisfy its need for labor which is one of the major concerns of the nineteenth century by using the prisoners work in public affairs. Here I will examine the responses to the questions of why they were made to work, how this was practiced, and what they were consequences to encounter on condition that they rejected to work.

The arguments in this thesis, at some points might have some missing points as it is a new subject and lacks satisfactory secondary sources. Nevertheless, what claim throughout the thesis relies on the archival sources, while this work opens a new discussion, it welcomes all arguments that will broaden its scope as well.

Chapter I

The Abolition of Corporal Punishment

The nineteenth century was the century of the penitentiary. Mental and physical punishments in public sphere, from whipping to the death penalty, were gradually replaced by the less visible, less corporal sanctions of imprisonment. The reasons for such transition were explained by many scholars in different ways. Here I will not discuss all forms of interpretation conducted on the issue; but rather I will look at some of the arguments provided by functionalist theoreticians and some other important scholars who have been able to draw a line of how we can appropriate such tendencies of transformation in the politics of punishment system. M. Foucault, M. Ignatief, D. Melossi and Talal Asad and some other important scholars' views about this transformation will be examined in the following parts of this chapter.

Severe punishment was common throughout the world in the Middle Ages. The use of corporal punishment, torture, and capital punishment reached its greatest level between the seventh and thirteenth centuries. From the eighteenth century onwards, with the emergence of the Enlightenment intelligentsia, the meanings of such punishment practices were critically examined by many scholars. First they revised the meanings of punishment and defined it as more cruel act of human behavior. They also paid attention to the meanings attributed to human dignity to justify changes in civil law. These forced European states to revise criminal law and penal practices being followed.⁷

⁷ The philosopher was not the first to attack torture, capital and corporal punishment. Many of medieval writers had found many of same acts as faults according to Bruce F. Adams in his work *The Politics of Punishment: Prison Reform in Russia 1863-1917*. He proposed that one of medieval thinker John H. Langbein believed that torture for example survived not because its failures but it was not known any other forms of punishment to replace it with new one. Until the eighteenth century no alternative ways could fulfill the corporal punishment.

In this part, we need to explain the reasons behind such tendency not just in terms of the impact of the western idea of the humanistic view but rather other causes that enforced governing elite to think about new attitudes towards the confined should be explained.

Rudolph Peter at this point explains the reasons that caused to form limited life standards for the confined. He pointed out that all developments remaining from the old habits of punishment techniques of states in nineteenth century, like abolition of torture and then in both the constitution of prison in institutional body, then improving conditions in its interior together with claim of made life in it as bearable, could not be explained with the claim of the western impact over the Empire. But it should be understood from other point of view in which the growing concern of public health services in prisons were the result of having a better organization of the state apparatus to infuse its power into all areas of society. In addition, it was a consequence of the idea behind penal reform which implied that judicial punishment should be conducted not on the basis of the body but should rely more on quantification. As he underlined that in a new sense of this era mainly nineteenth century, arbitrary quantification was limited and new way to quantify the punishment was offered by the positivistic approaches. This interpretation conceived that the quantification in suffering could be administered to individual offenders. The implementation of such ideas need to act with “rational” way of punishment based on law but not on others and it need to be fixed on the limitation of individual freedom.⁸

This debate has an important part in my discussion on whether the idea of punishment in prison is the result of the humanitarian victory of Enlightenment values or not. In the first place, it should be testified whether the theory of R. Peters

⁸ Rudolph Peters, “Controlled Sufferings: Mortality and Living Conditions in 19th-Century Egyptian Prisons”, *International Journal of Middle East Studies*, 36 (2004), pp. 387-8

is valuable for the politics of punishment of the Ottoman in the nineteenth century or not. Since we know that this era is the long century in the Ottoman history as İlber Ortaylı pointed out, it is a time of rehabilitation for all malfunctioned parts of the state. The main care was to implement all forms of centralization apparatus in every forms of society.

Discussions on how criminal cases have evolved through punishment by torture to more rational methods have not been clearly defined yet. But an important scholar, Khaled Fahmy has worked on the issue of how Egyptian history became involved in this process in the developmental sense. When we look at Khaled Fahmy's description of the Egyptian case, we see that like many other scholars writing on Egypt, he claims that the developmental sense of mental change of time experienced in Egypt should be considered with the radical change in the definition of quantifying the amount of punishment. The previous traditional act of torture on the body and public punishment in Egypt was measured through amount of pain felt by the convicted. The pain was the outcome of crime in which if it was so injuries it referred to high burden of criminals. The shift was to bring reasonable, measurable and concrete certain things for the punishment in order to bring equality and some standards.⁹ He points out by giving reference to Talal Asad's work that public punishment just considers the amount of pain which was not quantified. Like Foucault, Talal Asad's statement that since penal reformers accepted positivistic approach of the universal definition of individual liberty as desired by all people, depriving individuals of their liberty must be equally by standardizing it according to time and this could be happened only by imprisonment. The calculation ideas of

⁹ Khaled Fahmy,, "Anatomy of Justice: Forensic Medicine and Criminal Law in Nineteenth-Century Egypt", *Khedival Egypt*", *Islamic Law and Society*, V. 9 Number 2, 1999, p.2

crime and punishment will restrict the durability of process of decision and could be able to ease the judge to save from time.¹⁰

Asad questions the claim of the progressivist story of defining why the punishment system based on physical pain was banned in eighteenth century. He also looks for the claim of why such tendency about torture was banned, was suddenly labeled as “uncivilized” and he calls that a “scandalous practice.” According to him the problem with corporal punishment for Enlightenment thinkers was not physical punishment but the problem of quantifying the pain. It was the incommensurability of the pain that enforced such groups to consider torture as inhuman, because it was difficult to compare it and deduce that it affected people equally.¹¹

Secondly, Talal Asad gives reference to John Langbein who sees the abolition of judicial torture as the outcome of the diminishing role of confession and increasing power of legal proof for Europe in the seventeenth century.¹² According to Langbein, the abolition of corporal punishment in Europe could not have relational ties with Enlightenment thought. He considers that it was totally the outcome of change in the system of the proof capacity of the state in criminal cases. Therefore the previous role of confession and eye witnessing in previous centuries in the judicial system was rendered.¹³ So, he does not appreciate such an impact of Enlightenment thinkers in this process by drawing a line of periodical shift before and after the seventh century. It is thus important to evaluate the transformation of the state mentality of punishment through establishment of new institutions within the state apparatus which were dedicated on principles finding legal evidence in the

¹⁰ Talal Asad,, “On Torture, or Cruel, Inhuman, and Degrading Treatment”, in Arthur Kelinman, Veena das and Margaret Lock (ed), in *Social Suffering*, Delhi, (Oxford University Press, 1998), pp. 285-308

¹¹ Ibid., p.291

¹² Khaled Fahmy, p.4

¹³ John Langbein, *Torture and law of Proof : Europe and England in the Ancien Régime*,(Chicago, University of Chicago Press, 1977), p. 20-50

process of judgement. In that level, the founding mechanism of who were actual criminal's lead to bring intensive increase over institutions in which it was needed to inspect the criminal facts and proof in a judicial court. The form of police institution and modern courts within domains of the Ottoman could accelerate such transition from "uncivilized to civilized."

Theoretical Approach to the Birth of Prison

The process of punishment throughout history has evolved in a different manner. It started with capital punishment then it turned into jail and finally it evolved within the concept of rehabilitation. The functionalist theory about such cases considers that from industrial revolution onwards, prison became an institution which functioned to separate people as "normal and a-normal." It socialized a-normal groups for the benefits of labor needs in industrial fields. According to this approach, it formed a strict relation between prison and labor. When there were no needs of human labor in the industrial fields, people was becoming the object of imprisonment. They were considered to get some skills for any needs of labor. So the rules and programs as well as living standards between prison and factory were arranged in a very similar way to each other. The rules were declared clearly and they were well aware of what would happen to them if they violated any of these rules. Therefore it is not surprising to see that prison at the beginning of the process was founded in the vicinity of the industrial area.¹⁴

The increasing power of the center and the bureaucracy brought all institutions and old politics under reconsideration in the Ottoman Empire. The awareness of ruling elite about the needs of prisons which were founded on the principles of rehabilitation of criminals in certain places as in the Foucauldian sense

was the result of the change of govern-mentality and the infusion of micro power over the body. Here Foucauldian critics will take more position in this chapter since unlike the enlightened thesis of the humanitarian approaches concerning the notion of punishment from the “cruel to civilized” direction whereas Foucault rejects this claim of a linear developmental approach. He looks at the claim of the enlightenment interpretation with a critical perspective which looks to that institution as a place of rehabilitation for the confined. This point of view has been strictly criticized by him and he proposed that the prison like all other institutions of the state was formed as a special place where confined became the subjects of discipline and elimination.¹⁵

For Foucault, modern societies are the subject of disciplinary mechanism of power in an observational situation. Discipline, together with punishment goes beyond its function from the prison to all aspects of society in which it covers all of the relational attitudes of all human beings on the bases of checking and controlling. For him there is no difference between factories and prison.¹⁶

Foucault argues that there is an inter-relation between “normality and punishment” the modern state has aimed to control all subjects in a good manner. It tries to adjust individuals to its norm and rules in which they should be very hard-working. The power holder in implementing its apparatus over societies produces dilemmas over healthy and ill, mad-sane, normal and abnormal.¹⁷ His analysis will be mentioned in detail here, since most part of my arguments will take positions from his critical point of view when I look to the process of how the Ottoman punishment practices turns to be involved in huge transformation in the nineteenth century.

¹⁴ Ibid., p.238

¹⁵ Michael Foucault, *Discipline and Punish, The Birth of the Prison*, (London: Penguin, 1977), pp.254-5

¹⁶ Michael Foucault, *İktidarın Gözü* translated by Işık Ergüden, (İstanbul: Ayrıntı Yayınları, 2003), p.24

¹⁷ Foucault, (2003), p.262

Ignatieff discusses how punishment has evolved through the historical process. He rejects the theory of punishment that is considering it as a benevolence given for the confined due to a humanitarian sense among elites, instead he thinks that it was a more stable orderly and coherent social order that required a new strategy of class relations. He points out that the attitudes of modern states towards the concept of punishment from severe to more relaxed ones and forms of prison in this process together with state attempt to introduce medical care for prisoners needs to be considered in the sphere of disciplining criminal groups and shaping their bodies and minds to new order of class system which was enforced by the capitalistic system. This argument is very sensible when we look at the daily activities of prisoners designed on the principles of how they should be organized for useful labor in hard work of many state infrastructures. Many of states in this process used such labor and this mainly favored rehabilitation theory. In fact, at the same level, what we have seen both in Ottoman and Egyptian prison cases, these transformations were also applied in their sphere. The new trends about the concepts punishment among ruling elite concerns dismiss of old habits of punishment practices of the state and proposed a new alternative one that was the construction of prison.

The prison construction in mid-nineteenth century in Ottoman context like its European counterparts was functioned to provide some important amount of labor specifically in the work of constructing infra-structure in the domains of the Empire. For example in Egypt, most prisoners were sent to work in a place where they became main work force for railway construction and in harbor construction. This kind of work was also assigned to people who were judged to work under the control for a certain time period in the Ottoman judge system as well. So like Ignatieff pointed out that the form of prison and care of confined in terms of medical sense

was considered by the Enlightenment as a trace of civilizing tendency among human being but he did not consider such claim instead he proposed that and the introduction of modern medical treatment for confined should be evaluated on the forms of a new relational designation of the modern state politics sovereign to the nineteenth century.¹⁸

The decreasing tendency in the modern state about the behavior criminals in corporal manner signified that nineteenth century turns to be as a process of reordering new understanding of governing-mentality. Together with this transformation, the designation of prison according to modern principles and the growing concern about health condition for such institutions and the rights of confined lead us to regard the issue of punishment within the context of change in the mentality of governing practices endured by rulers of the time. From this point of view we have seen that many orders sent by the center to local administrations in the nineteenth century of the Ottoman history reflected this trend of behavior. They emphasized how local authorities should behave towards the confined and what kinds of demands should be fulfilled. Many practices towards confined were written in the forms of text and issued by the center. The rights and duties of each confined and as well as officials were bounded how to behave according to law issued. These laws included many details administration practices, even these orders could interfere the issue of how much of food the prisoner should be given or under what conditions these criminals could be released.

The important function of the orders in terms of social historian is stem from its validity of functionalist approach in the interpretation of prison case. In this point

¹⁸ Micheal Ignatief, "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment", *Social Control and the State*, Stanley Cohen-Stanley Scull(ed.), (Blackwell Oxford 1985), pp.70-80

of view it could be pointed out here that all these developing attempt of central authority over rights of confined in the Ottoman realm can not be just evaluated from the Enlightenment point of view. As we know that this view stressed that these kinds of changes were all the outcome of progressive role of human-minds just considering divinity of human but not anything else. However by looking to archival materials, the issue of such orders signify more complex relation which enforced empire to think about new ways to provide the its subject with new paths of ruling practices.

When we come back to Foucault's theory of how corporal punishment abolished in Europe and alternatively birth of prison, he emphasizes that the object of punishment shifted from the body to the soul as a result of the emergence of centralized powerful states in Europe. The increasing capacity of such states made possible to introduce criminal laws and a way to catch criminal groups in the turn of century. He stresses that the corporal punishment was valid for the state in where there is no enough power to control the subjects. When the modern state could establish its tools of observation over the society, it could pursue trace of evidence in criminal cases. Whereas, in the absent of such apparatus, what the pre-modern state did was only to teach society how to refrain from those actions defined in sphere of crime. After the increasing power of the modern state after 1800 all over the world, especially by looking at France, he saw that the ruling powers were able to use the ways of controlling mechanism by use of punishment in the formation of disciplining the society. So the emergence of prison was like that of all other intuitions, like schools, and the army constituted in this era, has reflected the same way of educating and disciplining society.¹⁹

¹⁹ Foucault M., *Discipline and Punishment; Birth of Prison*, Translated by Alan Sheridan, (New York, Vintage Books, 1977), pp.140-44

Other important scholars, Melossi and Pavarini, in *The Prison and Factory*, see a functional connection between prisons and the capitalistic mode of production. They argue that the capitalist organization of labor shapes the form of prison as it does all other institutions. This view gives enormous power to capitalism in shaping all forms of society. According to that view, the system designed all kinds of institutional forms of society.²⁰ The definitions made by Steven Spitzer stresses this issue in which he conceives that the regulation of social life under capitalism obviously requires the use of force to secure public order and intimidate the working class. In the capitalistic order, it is a feature of crime control with it's emphasizing on the overt and repressive control of labor by capital which has received the majority of the new criminology's attention.²¹ So the emergence of the prison like all others was founded on the basis of such demands. These analyzes had very good sense of interpretation in the work of prison, since when we look at the nineteenth century of Ottoman, the definition of criminal groups were considered to be a significant attention of politics by central authority. There was seen very sensitive act of imperial ruling elite in providing some policy against the issue of crime and criminals in this era, so what is significant here is to be able to see such transition of capitalistic order in the making process of politics of Ottoman in the nineteenth century.

The work over how to define the birth of prison was discussed until now within definitions of new capitalistic order. In such argument one of important scholar view should be also underlined here for understanding of how the prison should be constructed and what will make it as special if it is used on the purpose of

²⁰ Melossi D. and Pavarini M. *The Prison and Factory; Origins of the Penitentiary System*, (Macmillan, London, 1981), pp.12-20

²¹Spitzer Steven, "The Rationalization of Crime Control in Capitalist Society", *Contemporary Crises*, Vol. 3, 1979, p.312

rehabilitation. Jeremy Bentham is one of whom considers founding of new type of prison in which it could have power observation over all prisoners. In his work, he underlined that limitation of human freedom was the only way to rehabilitate criminals. He proposed a very special type of prison which he called a *Panopticon*, which it would be designed so that none of confined would be able to see each other. The observational mechanism would be designed so that the guards in the tower would have to capacity to observe all sections of prison. He also favored a claim about necessary work of confined in the industrial fields. Since, they were set free on the assumption that they would have to know how to survive on the outside. They were given the ways of how to get one professions in the prison after they released.²²

Defining the Position of How Prison was Appropriated in the Final Stage of Punishment Practices of the Ottoman Empire

Here, I would like to also emphasize that many policies provided towards criminal groups by defining them in the forms of “dangerous” concept and state attempt of controlling and defining the concept of crime in the beginning of nineteenth century turned to be as the means of disciplinization of society and control of masses. The policy developed by the center towards the criminal class is concerned here within the analyses of the Foucauldian conception of social control. Therefore transitional forms of punishment policy from corporal to rehabilitative one for many states in the nineteenth century was reflecting controlling tendency of modern state over its ruled people on the bases of complex relation. This relation will be discussed on the bases of how it was defined in the Ottoman realm in the following parts of this thesis.

²² Jeremy Bentham, *The Panopticon Writtings*, ed. Miran Bozovic, (London, 1995), pp. 29-95

One of approach about the emergence of how prison was formed explained that it was constituted by the modern state as means of eliminating potential threat against its authoritative power. The increase of interest of the power holders in the concept of controlling and disciplining society was the result of fear of the mobilization that happened at the turn of nineteenth century. The great depression of social mobilization occurred in the boundaries of the Ottoman Empire specifically as a result of the war and defeats in the borders, economic depression and burdens of such cases had dramatic result on the effect of policy makers of the time. Together with social mobilization within the lines of state brings about huge immigration from periphery to center.²³In the result of that mobilization some of groups were considered to be a potential threat to “social peace of society.” They were conceived as uncontrollable and non-qualitative objects who could not adapt to the society. Nadir Özbek writes that the state during the Abdulhamid era, in order to deal with uncontrollable social groups like beggars, provided them with some practical programs. One of this was to enforce to these people (defined as criminal groups) leaving from capital Istanbul. They were confronted with certain controlling mechanism in which if they could not give up and go along with the rules of authority in the process of moving up, they were put into jail. The main reception of center towards these people was to consider them within sphere of controlling in the crises situation, since these groups of people were viewed as dangerous individuals who able to threaten the social order of state in any time.²⁴ So the form of prison as unlike before, was conducted on certain policy that was pursued from middle of nineteenth century onwards on the bases of social benefit of society. It was

²³ Kemal Karpat, “Population Movements in the Ottoman State in the Nineteenth Century”, *International Journal of Middle East Studies*, 9 1978, pp.60-76

²⁴ Nadir Özbek, “II. Meşrutiyet İstanbul’unda Dilenciler ve Serseriler”, *Toplumsal Tarih*, 64 (Nisan, 1999), pp.34-43

conceived that in order to get good sense of peace for the community, such groups had to be checked or be picked up among society and put into special place which was imprisonment. In such situation they were considered to be subject to the rules of power. These characters of the policies imply in Foucauldian perception of controlling masses in capitalistic order, two aspect of the disciplinary power, that is, it seeks to increase the productive capacity of body and, at the same time, attempts to turn “the power that might result from it” into relation of subjection and obedience.²⁵

A new strategy of a controlling approach stressed that it was a difficult and expensive to change human behavior according to social principles of community. So it was aimed to limit the behavior sphere of human beings and the tendency towards criminal acts. Due to having those principles enabled western societies to think with “crises” moments. The main problem with these crises was about its difficulty in defining problems within the society since it is difficult give answer to the question of how they should overcome with such crises. Here the prison has functioned through its implicit and explicit ways of dealing with the concept of crime in these crises moment.²⁶ These crises moments are very potential and unpredictable. So those who are willing to keep their sovereignty search for ways to improve certain control mechanisms. The fear of ruling elite against mass can be explained by the possibility of potential eruption of such crises. In that moment the demands of subaltern and power holders turns into conflict and both sides has involved in attempt of taking position against each other.

The argument about the evolution of punishment practices from corporal to imprisonment has been discussed from many points of view. What I would like to do here is to continue discuss the transformational forms of crime and punishment on

²⁵ Paul Rabinow, ed. *The Foucault Reader*, (New York: Pantheon Books, 1984), pp. 179-185

the bases of how it turns to be in a shape of specific form of prison. These behavioral practices have to be questioned here, since this evaluation will lead us to think more on the question of the governmental practices of new regime on issue of crime and punishment in the history of Ottoman Empire. For that purpose here I will mention the three stages of how punishment practices were put into evolutionary process of which it evolved from corporal punishment to retribution, deterrence and rehabilitation. The focus of each section is on discussions which argue for, critically examine a particular theory. My aim here will not be to give attention to any one punishment theory in the development, maintenance, and machinery for the administration of justice.²⁷ Rather I will only look at its different stages and how it could differentiate from a new tendency towards the concept of crime in the context of Ottoman history.

Retribution

The retributivist defends the desirability of a punitive response to the criminal by saying that the punitive reaction is the pain the criminal deserves. It is assumed to be an expression of society's natural feelings towards the disapproval of criminal acts. It is argued that this definition stresses the criminal law and in so doing helps to unify society against crime and criminals. It is the retributive response which gives meaning to the label criminal. Therefore we see criminals of lower status than that of law-abiding citizens and it must be concerned within cultural context. The punitive

²⁶ Hudson, B. , Punishment and Control, M. Mike, Morgan, R. & R. Rainer, (eds), *The Oxford Handbook of Criminology*, (Oxford: Oxford University Press,), p.247

²⁷ It is stressing point in the history of the Ottoman Empire before to modernization process that punishments policy together with its justice policy remains absolutely in a cycle. That is to say the tradition after Halil İnalcık a great classical age historian of ottoman stressed the "circle of justice" for the administration policy of classical age of empire. In that theory, they pointed out that ottoman has the perfect harmony of tax, juridical and administrative system. In lack of any of them system goes into collapse. Therefore ottoman gave so many attentions to the harmony of three elements in circle which it is order itself.

response therefore can change from time to place. Today sustained solitary confinement or complete isolation of the criminal is generally viewed as extreme punishment.²⁸ However in the 1800s, isolation was seen as a vehicle for rehabilitation and a way for the criminal to repent and make peace with his god.²⁹ Today we rarely hear the argument that penal sanctions should be cruel or means for giving vent to our purely emotional reactions, while we may reject cruel and extreme forms of punishment, but it is not easy to explain how we can explain our retributive expression? Therefore we have to define our legitimacy for the sake of our retributive demands. But how can the severity of punishment are measured? There are numbers of question that can not satisfy the dilemmas of the method for punishment theory itself. By these sample questions, I mean that the punishment politics of Ottoman in the nineteenth century was in a process of quantifying the responses given to crime. So the Ottomans abolition of physical punishment was result of inefficient tools of retributions to fulfill such demands.

The most part of Islamic law represents this kind of tendency in which it tries to combine community against criminal acts. The main stress of *Sharia* over the compensation of crime, called *Kisas* work under that principle. In that system, those who commit crimes have responsibility of compensating its burden in which if one kills somebody else, one should pay a certain substitution. It could be money or the death of the murderer. In cases of murder, the family of the victim can demand money or the death of murder, it depending on their will. However, this form of

²⁸ The recent discussion on the special type of prison in Turkey called “F” type was became as major humilitative action towards confined mainly conceived by the human right defenders. Hundred and thousand people resist against policy of government in abolition of such prison type. The idea such resistant groups underlined that it was constructed for prisoners to be isolated from each other and cut of communication among them. It is assumed to be very brutal punishment techniques not apt to modern time’s mentality.

²⁹ Grupp E, Stanley (ed), *Theories of Punishment*,(London, Indiana University Press, 197), pp. 5-6

punishment is very rare and never became the favored policy of Ottomans. Instead of that, the Ottoman tried to suggest to them long- term imprisonment.

Deterrence

This model, developed by the classical school of criminology during the eighteenth and early nineteenth centuries, saw the overriding objective of punishment as the achievement of the greatest happiness for the greatest numbers. The objective here is to deal with the criminal in such a way as to serve notice on potential offenders. The main focus of this argument is to clarify that assignment of appropriate penalty will function as an important deterrence factor for potential offenders.

It is clear that the classical deterrent model emerged in response to the extreme individualization and capriciousness of punishment that had developed by the late seventeenth century that was to provide maximum protection for individual, and to achieving the greatest happiness for the greatest number. The early defenders of deterrence proposed to deal with the convicted offender in definite exact manner of penalties, specific penalties for a specific crime.³⁰

The difficulties of testing the validity of the theory stemmed from its results. While we have seen that much of it is part of state sanctions, it could not satisfy on the deterrent sides. It is clear that all persons are not deterred. Its objectives which in fact helps to support our entire structure of law enforcement, is still desirable. To look with our tradition and historical development, if we reject or accept the deterrent theory, we takes some risk. The assumption on view of man as value-oriented can not deny that man makes choices. If it is true, it seems very reasonable

³⁰ Ibid., p.7

to assume the consequences of our behavior. The dilemma here refers to the difficulties of conducting theoretical bases on that assumption.

The main punishment policy of Ottoman and European until the end of the eighteenth century worked under these principles in which they used all corporal punishment techniques to deter its subjects from committing crime. The main goal was to frighten the community with pain. Therefore the punishment practices of that time were acted out in front of the eyes of public. It was aimed to be visible and to deter community from doing the same crimes. In this sense, it was to over emphasize the pain. Whenever you improve your techniques of increasing the pain felt by criminals, you became more successful in deterring individuals from committing crime. So until the end of the seventeenth century, the rulers were developed techniques of torture on criminals. It is not surprising to see how torture was hold over some criminals in seventeenth century France in the beginning Foucault work *Discipline and Punish*. It is also not surprising to see hanging up policy of Ottoman performed in public areas as a part of deterring the masses from engaging in the same criminal behavior.

Rehabilitation

During the course of the twentieth century arose rehabilitative theory of punishment. The main attitude towards this tendency refers to individualization of punishment which aims to put criminals in normalization process to the norms of society. Since most offenders do return to society, and some never technically leave it, it makes good sense to work with the offender in such a way that he will not again be a criminal liability. Most defenders of the theory are also against the idea of “crime punishment” and the object is considered not to be punishment itself but

reordering objects with the adjustable connotation of society. Unlike this approach, punishment as a term involves the non-assimilation of the offender into the community.³¹

This theory underlines the rehabilitative sides of many legal institutions of the modern state. The state approaches to criminal cases the within framework of that theory in which it aims to take the criminal in a certain position and then train him for a certain period of time under certain conditions and finally release him into society as a person who should conform to the norms of community.

The emergence of prison as a place for criminals takes its tradition from the rehabilitative theoretical framework. From the mid-nineteenth century onwards, we have confronted with new approaching tendency about the concept of crime rose among European states. Ottoman Empire was one of which involved in this process by reconsidering its punishment politics of before. Of course, in previous time, it had some practices of punishment resembles to imprisonment, but it could not be considered to define it as imprisonment as we understood in modern state, but what was new here is to see some new demands among elite to evaluate criminal cases within context of imprisonment as unavoidable practices dominated the whole politics of nineteenth century of the Ottoman.

The foundation of prison in the Ottoman context relied on rehabilitative theory in which it could transform criminal groups to accept the norms of social relation. The imprisonment policy was not only functioned to keep dangerous groups in defined places, it also carried some important responsibility of educating criminals groups on the principles of starting a new ways of living like all other members of society. This tendency was clearly seen in the archival source of Ottoman administration in which especially after 1876, Ottoman prisons went into reformation

³¹ Ibid., p.8

and prisoners were educated in reading and writing, and given special jobs in order to learn some skills of profession and performed on that after they released. For that purpose, one of regulations of a law including thirteen articles was prepared. This regulation was issued and mainly deals with administrative parts of prison. One of which is about guards in prisons on the issue of how they should behave and what they have to do for confined.³² I will give some details of such tendency in the last chapter of the thesis.

For now, there will be given some important historical backgrounds on some European and other states about the issue of how they got involved in the process of forming their own prison system and reforms and furthering it with some questions of why they needed such institutions and what makes it as necessary reformations in the minds of ruling elite in these states. The purpose here is to evaluate Ottoman prison reform within world context. By doing that I will look at how it could adapt the new forms of administration for its governing regime. While I do that, I will also give a place for its foreign counterparts in which how this process was internalized in there at the same time together with Ottoman.

From Corporal Practices to the Form of Prisons and Cares of the Confined (England, Russia, Egypt)

This part examines the specific process of how some states dismissed the policy of torture in their judicial policy and favored the constructing a prison. In addition to that how they were experienced the whole transformation for its punishment practices in this era will be also discussed here. Secondly why all such policy conducted in this process did conceive as crucial for the nineteenth century?

³²Ali Karaca, "XIX Yüzyılda Osmanlı Devletinde FahıŖe Hatunlara Uygulanan Cezalar:Hapis ve Sürgün", Emine Gürsoy Naskali, Hilal Oytun Altun, (eds), in *Hapishane Kitabı*, (İstanbul, Kitabevi Yay. 2005), pp. 156

In this point of view, England, Russia and Egypt will be examined comparing them with the Ottoman case together with how they attempt to transform their pre-modern habits of punishment into modern version of prisons. These three will be able to give us a sense of world the shift in mental and political trends towards prison and prisoners. This will enlighten the issue by a question of how prisons were perceived to be as the place of “rehabilitation” and why the confined was received by power holders to merit medical care. In other words, these attempts will be made to define the Ottoman reformatory acts in its institutions specifically prison within a general world perspective by defining what enables it as possible for the Ottoman history. The purpose here is to show parallel and different points of each case in the world context. In the end, I will focus on the Ottoman by looking at archival material and secondary sources written on the issue on the basis of how all new attempts about improving life standards in prison were appropriated by the local authorities. What kinds of politics were implemented for prisoners and what could be fulfilled for the demands of such groups and what not?

England

There were two basic methods of pre-modern trial in Anglo- Saxon England: compurgation and ordeal. In trial by compurgation, the jury (those sworn) was summoned to swear to the truth of the submission of the defendant or complainant. If such a system was not possible, it was replaced with ordeal. This was conducted by a priest in a church before witnesses. God not man was determining the guilt or innocence of the accused. This juridical system was in place until the beginning of the seventh century in England.³³

³³ John Briggs, Christopher Harrison, Angus Mc Innes and Davis Vincent, *Crime and Punishment in England*, (London, University College London Press, 1996), p.5

The Anglo-Saxon system of criminal justice was mainly concerned with resolving feuds by financial compensation, either for the victim or his family. Financial compensation was preferred to corporal punishment. Even some forms of murder could be paid for with money. Prison was a place where one was held before trial rather than a place one was sent for punishment on conviction. If a thief was caught he would die or his life would be redeemed by payment of his wergeld. It was amount of money you need to pay in cases of murder. The most striking of Anglo-Saxon criminal system was the preference for financial compensation for victims; however punishment practices were very cruel.³⁴ Here I would like to summarize the short historical overview of England penal reform in order to understand how punishment practices were being subject of change.

The Norman conquest of England in 1066 had a deep effect on the criminal law of such countries. The increase of power of the Crown over property was assigned. Second Henry I (1100-35) tried to use the law to control his magnates. His major innovation was to take royal justice into the shires to make it more accessible. The second most important figure in English history of Law, Henry's son Richard, made with new appointment of new officers called Coroners, who with a sworn jury were required to inquire into all sudden and unnatural deaths and report these to Crowns. In 1215 the church withdrew its participation in trial by order because, it was argued, churchmen should not be involved in the taking lives of fellow Christians. Another important part of the judicial system was about Approvers in which they were convicted felons who turned king's evidence to escape the death penalty. They had to prove ten cases before they could escape hanging. Keepers of the peace emerged in the fourteenth century. They were country gentlemen entrusted

³⁴ Ibid., p. 6

with the enforcement of the king's peace in their countries.³⁵ Finally, what it can be said about the process of law in England in pre-modern times is that the law became a means of a control over royal and seigniorial power. Secular authority was no longer absolute.

There was a significant change in both attitudes about and the perception of crime in England between 1400 and 1660. This was explained by the massive outbursts of popular protest present as a serious threat. Disorders among the crimes by common people were seen as threats to society. Therefore it was not only monarch who felt threatened but also the aristocrats, gentry and merchants. The legislation process of England followed such fear and aimed to satisfy such demands over property. Therefore the criminal law became increasingly an instrument of social control. When we look at the question of why this fear existed, we see that increase in the population could be one of reason of such fear. Second the people had become poorer. The prices of basic food had risen sharply and wages had gone down during the sixteenth century and early seventeenth centuries.³⁶

Capital punishment was only one of a whole range of punishments meted out by the courts of early modern England. But it occupied a central place in the penal system. Its use was decreased with the change of public opinion in considering it as too much brutal under the effect of Enlightenment thoughts³⁷. Second general punishment techniques were conducted on the principles of corporal punishment until middle of eighteenth century. The leading act of such punishment was whipping. Trace of the modern sense of imprisonment could be mentioned for

³⁵ Ibid., pp. 8-12

³⁶ Ibid., p.17

³⁷ This view was criticized by many scholars in which I was pointed out in the beginning of this chapter. For this discussion see Talal Asad , "On torture, or cruel, inhuman, and degrading treatment", in Arthur Kellinman, Veena das and Margaret Lock, ed., *Social Suffering*, Delhi, Oxford University Press, 1998

England in the beginning at eighteenth century in the reign of Elizabeth. Imprisonment had become standard punishment in England in 1800.³⁸

When we look at the question of how the imprisonment policy of England was being conducted, we see that health problems within prisons became one of important issues in which the state was engaged. Medical care for the confined was deeply rooted in transformation that took place in criminal justice system at the end of eighteenth century. The attitudes towards prisoners mainly were favored by the social reformers who concerned not only with changing the nature of the prison regime but also with enlarging the theoretical discussion on punishment itself.

Health care for prisoners was one of the reforms was accepted by the British Parliament in 1774. The Act gave the authorities the might to intervene in the administration of the prisons for the control of law maintenance whether health care was applied or not. This duty was given to the Justice of Peace who fully was authorized to make all change in terms of hygienic conditions that they wanted the appointment of doctors for the prison was under this authority. Some reports written by the authority of time for the prisons prove Ignatief idea of prison as a place not formed on the principles of benevolence but beyond this aim.³⁹ These reports imply that it was aimed to discipline the prisoners. John Howard was one important figure who involved in the issue of reform. From his writings, it is shown that the health care should be equally provided every parts of society even beyond prisons, since he regards society as a whole, including jails as well. The most important part of the process considered health care gave the doctors enormous power within walls of prison. They were powerful figures in the understanding of treatment for the

³⁸ Briggs, p.82

³⁹ Joe Sim, *Medical Power in Prisons: The Prison Medical Service in England 1774-1989*, (Philadelphia, Open University Press, 1990), pp. 4-12

confined.⁴⁰ The doctors were the only intermediaries between the authorities of the prison and the prisoner. They had the power to engage in the process of negotiation between the two parts and even equipped to report prisoners as ill and should be released. In some cases, they could be released until they got their health.

Before 1791, we can not talk seriously about modern a prison for England. All new reforms required the consideration of the notion of hygienic conditions within the inside of new prisons opened. Much research was conducted on the prisons health in order to find their illness. Many of the sick were reported as madness.⁴¹ The authorities of prisons were responsible for providing them with minimum food requirements. Reforms attempts in 1814-21-34 provided the confined better conditions. New Poor Law in 1834 hierarchically categorized them after poor and free laborers to access medical treatment.⁴² Hunger and ill-health were the main problems of prisoners until the middle of the eighteenth century. Reforms in England prison took place several times until 1865, which marked the emergence of the Prisons Act,⁴³ which regulated the prison system. Many acts had considered the living standards of prisoners until that time. However they had been intense over these reports in the times of crises or when uprising occurred in the prisons. From then onwards many attempts were made to improve conditions for prisoners. The role of medicine within prisons played a part in consolidating power and became as major tools of discipline and punishment.

Russia

Russian punishment policy for many centuries was based on corporal punishment. The great reforms of 1863 proposed that the old idea that corporal

⁴⁰ Ibid., p.179

⁴¹ Ibid., p.15

⁴² Ibid., p23

⁴³ Ibid., p.47

punishment is incompatible with dignity of free men was resurrected in the European Enlightenment and made its way quickly to Russia. It would be an exaggeration to over emphasize that claim, since millions of people have been punished in that way without questioning the meaning of such severe punishment.⁴⁴

Why did Russia delay dismissing corporal punishment? One reason is the absence of a receptive intelligentsia that could interpret and appreciate all of the notions attributed to severe punishment. A second was about Enlightenment definitions about past and future. That stressed human reason on the progressive side on which modern people could be violent only in a violent society. The most logical effective formulation of this kind was drawn under the effect of an important scholar name Cesare Baccaria. He pointed out that the countries and times most notorious for the severity of penalties were those in which the bloodiest and most inhumane deeds were committed.⁴⁵

The intelligentsia of Russian state favored themselves on the thoughts of Enlightenment about the needs of prison. The first principle for them was to be able to look humankind as rational, capable of being governed by reason rather than by passion. Therefore, for them it would be a contradiction in their view to act within the borders of passion. They could not find themselves in the position of favoring the existences of corporal punishment, since its use mainly worked with passion. Unlike imprisonment, it did not give the offender time to consider his sin or guilt.⁴⁶

⁴⁴ Bruce F. Adams., *The Politics of Punishment Prison Reform in Russia 1863-1917*, (De Kalb Illinois, Northern Illinois University Press, 1996), p.15

⁴⁵ Cesare Baccaria, *On Crimes and Punishment*, trans. Henry Paolucci, (Indianapolis, Bob-Merril, 1963), pp.43-4

It is stated by B. Adams that Baccaria book published in 1764 became gospel produced in believers a general condemnation of all excessively harsh punishment as uncivilized and even counter productive. According to him unlike his intention, Baccaria did not advocate the abolition of corporal punishment. On the contrary he stated that it was still needed.

⁴⁶ Adams, p. 15

Western scholars tend to over emphasize the reputation for the Russian Empire. There is some truth to this claim when we look at the punishment politics of Russia before to Great Reform. The first attempt of discussing the penal system by the administrators was in 1845 and it reached its threshold in 1863. The Great Reform and its relevant part for prison hold in 1879, it continued after revolution until 1930s. It is not easy to claim that the living conditions of the prisons in Europe were better than those in Russia however; at this time here the search is to define the reasons and requirements for them to define the need for reform in the prisons. The single famous book written by George Kannon's *Siberia and the Exile System* became the only sources about prisons in Russia. He traveled in 1885-86 throughout Siberia. He was expected to write on the reforms attempt conducted by the state, instead he spent his time with people in Siberia. He returned with negative impressions governments on the exile policy and its prisons. Radicals within Russia also did not much care about prisons. They mainly criticized the government's policy and political prisoners more than others. The most valuable work was held by the M. N. Garnet's in *History of Tsarist Prisons*, contains variable information on criminal law and on prisons, is however it limited in usefulness and reliability.⁴⁷

The date of 1863 was the breaking point for Russia for its abolishing corporal punishment within the boundaries of the state. This does not mean that it was suddenly disappeared, but rather the numbers of cases diminished from the imperial judicial records. How and why it was abolished is not so clear, as F.B. Adams points out. He credits these attempts to the emerging sense of the intelligentsia affected by the Enlightenment thought on corporal punishment being considered cruel and not apt to behavior of human kind. Since he claims that many peasants expressed their preference for corporal punishment after it was abolished, he says that it was not

⁴⁷ Ibid, p.7

applied to elites before its abolition.⁴⁸ As he further stresses the enlightened idea of emphasizes on human dignity that Europe experienced could not be valid for the Russian. The absence of a receptive Intelligentsia in Russia is seen by him as the major cause of this delay of reforms.⁴⁹ Other reason proposed by Adams the clear division of society into strict classes. The ruling classes and landowners were unhappy to give up their privileges; which they believed corporal punishment of lower classes to be beneficial to society.⁵⁰

The first trace of dissatisfaction about use of “uncivilized methods” in the punishment system emerged during the reigns of Alexander I and Nicholas I. Torture was brought to an end as a “shame and reproach to mankind.” During the reign of Alexander II the discussion over the abolition of corporal punishment reached its highest point. Many articles were written about the issue, but it was not legally forbidden until 1863.

The living conditions in the prisons came under scrutiny with the advent of a new organization called The Russian Prison and Aid Society. It was an innovation inspired from Western Europe. It much affected by similar foundation in America. It was first established in St. Petersburg under the name of *Poat* in 1819. The Moscow branch was founded in 1824. It aimed to do charitable work and visit prisons to care for sick inmates. Gradually it increased its power to all parts of the Empire. By 1844, the committee was responsible for prisoners to control funds and those purposes for them.⁵¹ It was confronted with much criticism in the abolition of corporal punishment by the reformers in which it was claimed to be not entangling with the

⁴⁸ Ibid., p.13

⁴⁹ Ibid., p.15

⁵⁰ Ibid., p.18

⁵¹ Ibid., pp. 40-44

condition of prisoners. Its functions were given to work under unnamed former minister of internal affairs called MVD.

After the abolition of corporal punishment within domains of empire, there was seen increase in the number of criminals in prisons which it caused to hygiene problems. The need to build new prisons was reported to the center, but it was not responded in fine manner. The cost of the administration and construction and non-available places became reasons for the delay of these demands. The effort by the MVD to seize control of prison affairs by creating a central administration in the Department of Executive Police (DPI) met with immediate and continuous resistance. Some agencies did not want to expand their energy for them.

The work of prisons in outside of the prison was also part of the Russian system in which some were put to work in mines. Some were put in penal servitude in hospitals and some were deemed unfit to work, but it was difficult to find suitable and enough job for all. So government tried to form state factories for them. But this was not accepted in 1860. Finally it was suggested they work in the coal mines which was in the lines of traditional way, not in new prisons.⁵²

The form of Main Prison Administration in Russia called as GTU took the control of all prisons. It had to know how many prisons there were in Russia. It categorized an index of prisons and confined through many details of statistics in 1877,⁵³ but it was disrupted before the revolution of 1917. But it continuously aimed to improve the physical conditions of the prison facilities.

⁵² Ibid., p.100

⁵³ Ibid., pp. 120-24

Egypt

In Egypt the abolition of corporal punishment shows trends parallel those in Russia. This is explained by Peterson by factors other than the Foucauldian sense of interpretation. The most important cause was social and economic changes in the rural areas that decreased the need for official violence. The rise of a new elite and their interpretation of traditional punishment policy as being a sign of “backwardness” as well as the improvements in the techniques of investigation of crime lead to us to evaluate the prison reform as more beyond of our general know of Foucault’s analysis for Egypt.⁵⁴ He also stresses that it was never totally abandoned, as seen in the Russian case.

Rudolph Peters points out that between 1829 and the 1870s, the administration of criminal justice in Egypt was rationalized and bureaucratized. The introduction and enforcement of a penal code with well-defined ways of how to judge and penalties enabled state to think on a single way of punishment, which was imprisonment and it lead to the abolition of corporal punishment.⁵⁵ So favoring prison reform on that penal code made it possible to see Egypt prison’s conditions improved.

For him, punishment through publicly administered suffering was functional when the state was weak and had no ways to get the offenders. So in this situation, the state made an effort to implement different methods of punishment in order to protect the order of its reign. In this sense, the public ordered corporal punishment practices functioned in order to deter subjects from committing the same crime. He proposes that in the situation of form of institution like police organizations improved the state skills to catch criminals and discipline offenders instead of

⁵⁴ Rudolph Peters. “Controlling Sufferings: Mortality and Living Conditions in 19th-Century Egyptian Prisons, *International Journal of Middle East*, 36 (2004), p. 389

detering the public.⁵⁶ Although he presents us with such a claim, he does not give any sign of conscious policy of disciplining or rehabilitating prison inmates. He considers that the most important reason for the diminished attitudes of state over corporal punishment was that social and economic changes in the countryside had reduced the need for official violence, especially in the domains of product extraction and collecting men for the military, whereas there was a growing awareness, as among the Russian to consider the corporal punishment as a sign of backwardness contributed to abolition of such a system within the domains of Egypt.⁵⁷

According to him, the Egyptian prison system was made up of three parts. These were retribution, deterrence and rehabilitation. The last two were about self-evidence and only the notion of retribution had an effect on the prison system. The system of Egypt punishment based on was varied according to the specificity of crime in which it decided whether it could be used in rehabilitation bases or some other. What was ultimately seen in 1863 in Egypt, the system involved to form prison as a place of rehabilitation by establishing work mechanism for criminal groups.

Egyptian prisons existed on three parts; labor camps in Sudan for those who were sentenced to hard labor with transportation, a national labor prison in Egypt and local labor prisons and factories at the provincial level and finally goals for simple detention. Theoretically the distance and difficulty in transportation was considered to be a part of the punishment. At the national level, the prisoners were organized to work in a spinning factory. These practices of Egypt were seen in the Ottoman case

⁵⁵ Ibid., p.388

⁵⁶ Ibid., p.388

⁵⁷ Ibid., p. 389

as well. The punishment as work on construction sites and factories was not a new policy in 1860; rather its traces reached back 1820 in Egypt.⁵⁸

In the beginning of the 1850 we have seen a new awareness about health condition in prison conducted by the state. The State Health Inspection had the right to examine the living standards in prison. In 1850, one of the inspectors of this department reported the devastating conditions of the prison to the government and gave some advice about how they could overcome this problem.

The prison inmates were put together in wards, not in separate cells. The idea of solitary confinement was not introduced at that time. It was reported that there were a great differences between rich and poor inmates in terms of their living conditions. The *Majlis al Ahkam* gave an order to local authorities to search environmental standards of such places and especially take more care of health as the primary requirement in 1849. The food requirement of the confined was supplied by the state as called *Beyt al Mal*. In previous tradition in 1830 those who worked in outside of the prison were tied with a certain amount of money that could compensate the basic nutrition of prisoners. It was abolished later, but it is not clear why.⁵⁹ In 1860 it was clarified by the Khedival order on the issue of how much food one should take.

The medical care for the prisoners might be seen from humanitarian perspectives but mainly it was not. Instead, this concern was regarded on practical bases in which the unhealthy conditions of the prisons were grasped as the source of epidemics and as risks for public health. Prisoners were allowed to see doctors but first they were required to prove their illness to the civil administration.⁶⁰

⁵⁸ Ibid., p.390

⁵⁹ Ibid., p.395

The Contextual Work and Definition of Ottoman Prison in the Academic World

Academic work on Ottoman prisons has not been favored among historians until recently. This subject together with its conceptual complexities could not be defined in terms of social theory in the work of many scholars. It was not about its difficulty of getting source of information; instead it is result of the gap between the work of academic work and its social theory of interpretation, as we know what was written mainly was about descriptive writing of state history. However, it is also very interesting to not see many examples of such writings on the issue of crime and punishment. The reason for that tendency will not be discussed in detail. What is underlying here is to give the contextual place of how such work could be conducted. Therefore, we were excited to see one of that works included many details about the position of Ottoman criminal policy and punishment practices on the bases of prisons. Gültekin Yıldız wrote master thesis on the issue with mainly deals on the question of how prison entered into the agenda of the Ottoman Empire and how they became involved in the reformation process of the state.⁶¹ Here I will briefly summarize the main points of work Yıldız discussed, and then I will give the similarities and differences between his point of view and my argument.

After his theoretical introduction about the formation of prisons in Europe, Yıldız mainly focuses on the concept of confining in which how it was appropriated in the mental order of Ottoman power. In the introduction part Yıldız mainly deals with the question of what enabled to declare some new forms of demand about change of punishment politics within work of social relations. In other words, he tries to define the grounds of what makes the concepts of crimes as engaging in more sensitive manner, as he relays his argument on the bases of social and economic

⁶⁰ Ibid., p.397

reasons for that transformation. Furthermore, he asks some questions beyond this discussion in which he searches the reasons why crime and punishment are the only means of explaining the nature of regime without pursuing the meanings beyond that aims. The works that has been conducted by some scholars just only considers the change of politics in punishment from how they were issued without questioning the evolution of its process in the historical change.

In the second part Yıldız complains about the difficulty to make huge generalizations about the issue on which there not much work enables the enlargement of perspectives of new scholars. And beyond that, many archival sources about the cases have not been opened yet so he substituted them with other sources.

In the first chapter, he tries to define two concepts used for confinement in Ottoman context. One about imprisonment *Mahbes*, the other was about jail *Zindan*. In this part, he emphasizes that the term prison in the modern sense can be used for the Ottoman case until the middle of the nineteenth century. The old practices of the Ottoman Empire were used for the people who a committed crime was *Zindan*, in which no specific time for imprisonment was given. Those criminals who were incarcerated were not assigned to any regulation. The second term *Mahbes*, was used for those people who were under temporal imprisonment in which they were waiting there to be judged. In this chapter, Yıldız has also aim of defining the nature of crime, and how it could function in the social regulation of society as rather different from the modern meanings. He gives some details of the old Ottoman politics of law and punishment by referring to some important sources written on the issue of law. He also attempts to define the non-rehabilitative side of old Ottoman punishment

⁶¹ Gültekin Yıldız, *Osmanlı Devletinde Hapishane Islahatı (1839-1908)*, (unpublished M.A thesis submitted to Marmara University, Istanbul, 2002)

politics as it was turned to be changed with the formation of prison. More generally speaking, he draws line of historical evolution of how crime and attitudes towards evolved through time and how old practices differentiated from the modern understanding of punishment in chronological order.

In the second part he tries to cross from short term to long term imprisonment together with the constitution of public prisons. Then Yıldız gives a short history of an important institution which is police organization in which it triggered the implementation of law as more than before. He dedicates most part of his work to the British consul's report in Istanbul and how he mentions the necessity of the reformation act for the institutions of the Empire especially for jail. Yıldız also informs us with enormous historical and statistical data, both in terms of historical evidence and specific criminals of time. He falls into a position of orientalist perception in which he sometimes uses very huge essentialist generalizations about the conditions of prison for non-western societies.⁶²

The title which is *The Prison and Civilization* assigned in the middle of thesis by Yıldız, implies that the role of the Tanzimat and after in the reformation of prison was so high. The emphasis on the notion of legality and equality was considered to restrict the state on some principles like lead it to behave according to the principles of civilized world. After that period, the Ottoman elite thought about the reformation attempts in the prisons. What should be done was assigned by special officials to report the cases of which prison needed and what was required. The acceptance of the modern penal code completed this process. He mentions the some budgeted deficiency in financing such reforms.

The third chapter of his work in some cases repeats the issues in which from its point of how certain reformation acts were conducted. In that part, Yıldız points

out the clear crossing of state policy towards building a new modern prison. He claims that many attempts of the time reflect the needs of such places by looking at the orders prepared for these institutions. He mainly mentions the most important one issued in 1880, the prison regulation law. This law was scrutinized by him in detail. Many parts of this regulation order are interpreted in this chapter. In the next part of his paper, he gives some place to the aims of the center about their politics of deciding some places for public prisons. He points out that in that time now many new officials were appointed for the administration of these places. He defines the opinions of some people about their views on such institutions.

This part mainly deals with the theoretical question of how corporal punishment was banned in the world context. Some important scholars point of view has been discussed in order to get the some sense of the transition from pre-modern practices of punishment to the modern one. In all these discussion, the argument stressed that the abolition of torture and form of prison could not just explained with the humanitarian senses, instead it would be addressed with a more complex relation of modernity and capitalistic order. The critics brought to the such claim emphasized that the imprisonment was outcome of rational thought of quantification demands of modern society. It was stated that the imprisonment in time and space replaced the corporal punishment since it was more based on rational bases whereas the publicly punishment politics of pre-modern state considered the pain in the quantification. In addition to that interpretation here, there has been the stress of the increasing power of modern state to be able to control society. Ottoman case was scrutinized here within this discussion. The abolition of torture in the ottoman domains were explained under such critics in this part.

⁶² Ibid., p.102

Chapter II

The Reception of Criminal Code and Punishment Practices in the Ottoman Domains in the 19th Century

The Formation of Order Based on Law in the Ottoman Empire

The direct translation of the penal code from the English to the Ottoman context will be very difficult without looking at the evolution and changes of it in the historical process. For a better understanding of how this it was conceived, we need to look at the pre-modern practices of the Ottoman Empire. That is to say, there should be known how juridical system functioned, and what the bases of the Ottoman main judgement system were.

The early Ottoman Empire based its criminal law practices on Islamic law. According to traditional Islamic law, crimes can be classified in two categories. The first one is about punishments which are determined by the written sources of Islamic law and the second are left to the discretion of the sovereign.⁶³ The first category of crimes consists of acts against the will of god. For example, drinking alcohol or theft is considered in that part of interpretation. The second one includes all crimes not confused with the first kind. In the first session in such case of crime, the punishment policy is conducted by the sovereign or high officials. The only requirement they need to consider was to adopt their decision on the Islamic law. The sultan was given the authority of issuing the law under the restraint of Islamic control.⁶⁴ It was done in the shape of *Sultanic will, order, law or Ferman*.

A brief summary of the Ottoman juridical system will be given in order to get a sense of what radically changed in the punishment policy of the state. The Ottoman

⁶³ Nevzat Güreli, *The American Series of Foreign Penal Codes*, Fred B. Rothman & Co., (New York University Press, 1965), p.1

⁶⁴ Uğur Mumcu, B. Üçok, a.g.e, s. 213 vd. Halil Cin, “Tanzimat Döneminde Osmanlı Hukuku ve Yargılama Usulleri”, *150. Yılında Tanzimat*, (Haz. H.D. Yıldız, Ankara, 1992), p.12

juridical system evaluates cases according to three principles. These are Islamic, traditional and Sultanic law. These three elements defined the regulation of the juridical process of the Ottoman Empire until the end of the eighteenth century. However, from the beginning of nineteenth century onwards there was seen a huge attempt of central authority to issue sultanic order. In this process, this tendency reflect a new kinds of governing habits which it aimed to increase the power of law issued by the sultan and central authority and diminish the effect of the others. In fact all acts were assisted the centralization of the Empire. The central power was trying to hold the powers of the secular tendency over other factors which determine the result of judgement. The state in this century had confronted with many new demands that forced it to abandon the old practices pursued in the judgement. Capitalistic order brought ottoman society with new questions that had to be deal with. So old practices of state now aimed to substitute its legal mechanism with new one. This was implemented by the sultanic order. In this session, these new practices of the Ottoman Empire will briefly be outlined below.

The criminal law, or the Shari'a, never had much practical importance in the hands of Islam. Its substantial law is rather deficient: fixed penalties are prescribed for a limited number of crimes; many are not deal with at all. Moreover, its rules of evidence are so strict that the number of offences can not be punished adequately.⁶⁵ Therefore, criminal justice remained largely outside the jurisdiction of the Qadis. Many different crimes were punished? by the head of the police, called *Sahip al shurta*. The control mechanism of how justice and repress were constituted was far away from the Qadis control. So the caliph formed courts of complaints for the misuse of authority of such cases, which it named the *Divan-ı Mezalim*. This court was radically different from the Qadi's court, since its head was one of the high

officers of sultan and did not give any place to religious authority here. It was the first secular court in the Islamic world.⁶⁶ They were guided by customary law and public interest. The Ottomans maintained these jurisdictions side by side with the Qadis' law courts, *Mahkeme-i şer'i ye*.

The sultans made a great effort to eliminate the duality in its juridical system. For this purpose they tried to increase the power of their law, called *Kanunname*. But the certain thing for all these *Kanuns* is that they should not be against the Quranic Law. In the case of contradiction of two, Islamic law had precedence.⁶⁷

Until the end of the eighteenth century, the Ottoman criminal code was defined in terms of pre-modern concepts. The arrest policy of the Empire mainly worked on the system of accusation considering the community as the responsible for the result of committing crime. In this system, when the actors of criminal cases were not founded, the responsibility of such cases was addressed to society in where the crime had occurred. Such as in cases of murder, robbery, theft or assault the people living in the vicinity of the place where crime had been committed were obliged to find the offender.⁶⁸ Public responsibility gave us the sense of non-modern practices of state, since the state was unable to control and checks all forms of society. What was easy for the officials was to transfer some parts of its power to society. By doing that, it could transfer some of its juridical duty to the affairs of the subjects without paying any kind of expenses for the potential result of crime.

In fact, the practical solution of pre-modern policy towards criminal cases was very pragmatic and it worked in a situation where there could not be talk of a powerful state. These conditions could be changed only with the increasing power of

⁶⁵ Heyd Urieyld, *Studies in Old Ottoman Criminal Laws*, (Oxford, Clarendon Press, 1973), p.2

⁶⁶ Ibid. p.3

⁶⁷ Ibid., pp.180-83

⁶⁸ Ibid., pp.237-38

the modernized and institutionalized state in which it had the power of infusing its impact throughout all parts of state institutions with the establishment of the new mental order.

When we look at the mental representation of crime in the nineteenth century, what is striking is that crime was questioned as social phenomena that threatened the solidarity of the community as well as the Empire's ordinary administration. Therefore, the new mental order was an attempt to overcome the "question" the Empire dealt with in that century. Of course, the already existing view against the concept was stricter in this era, when we consider the social peace of the community. But what is interesting here is that the rise of urbanization and growth of population lead the central authority to provide a more useful way of dealing with the concept of crime. So the "peace" of the community now received more emphasis since being aliens in a city and to think in an individual way rather than according to the norms of the community enables us to look at some definitions in that era as a new mental order of governing regime. By saying a tendency towards "individual act", I more emphasize some rights assigned in the Tanzimat era, especially rights over property, lead us to think of society in the ways of individualistic behavior. Second, I mean "peace" in the sense that now there were seen potential threats against the power of the sultanic regime. So the centralization of the Ottoman Empire should also be considered as a way for control of society with the aim of eliminating the potential rival to the center. Here we talk about some demands of the public in regards to the share of power between ruled and the central bureaucracy.

When we look at the total policy of legal reformation brought by the sultan, it was aimed to increase the power of the center against all other forces that could

challenge the central authority of its regime.⁶⁹ Such an attempt of the local elite to demand a share of the power with the center, the *Senedi İttifak* a treaty signed between Sultan and local elite signified such competition among the social groups of the Empire. The local elite *Ayans* were able to obtain certain privileges from Mahmud II through this kind of negotiation.

In the Ottoman Empire, it was only after the mid-nineteenth century that a new developmental sense among ruling elite about revising the punishment policy of the state emerged on the agenda of the regime. Indeed, those elite were aware; it would be difficult to change the old system. The question of how they would achieve reformative acts within the institutions could be only answered with certain developments, one of which was about the emergence of some institutional forms in the traditional administration of the Empire. Especially having a westernizing minded elite, and the establishment of a police organization enabled the start of a reformative act in the juridical system. The first glorious attempt of the center was to issue the Tanzimat Edict in 1839. This was the first and most important stage that defined many reformative stages in such labels until the beginning of the twentieth century.

After the declaration of Tanzimat in 1839, the Ottoman state became more bureaucratized and centrally administered. The regulation of new laws and guarantees of certain rights in juridical term and in other parts of the state attitudes show some important clues concerning the beginning of new governing politics pursued for the era. The development in the punishment system of the Empire from corporal to imprisonment signifies the beginning of new trends in which new ways of administrative practices were appropriated in the Ottoman domains.

⁶⁹ Veldet Hıfzı, “Kanunlaştırma Hareketleri ve Tanzimat”, *Tanzimat*, (İstanbul Maarif Matbaası, 1940), p. 167

During the nineteenth century, several codes were published in order to determine the subjects from the acts which were defined as crimes by the sultanic order. Until 1858 these codes were incomplete about defining some specific crimes. So it would be more appropriate to refer them as statutes rather than codes.⁷⁰ The first penal code of the Empire dates to 3 May 1838, and was appended in 1840.⁷¹ It was all designed to reorder the punishment policy for high and lower officials in the text. It was prepared after the declaration of the Tanzimat; it strengthened the position of how the Tanzimat had played an important role in the history of ottoman. The definitions of how to behave for officials and restrictions in their abuse of their power were aimed to be prevented by that penal code.⁷² The basic features of these codes were about their definitions of the borders of the administrative class. They were told to refrain from acting against the law of Sultan. They would not be allowed to violate the rules brought by the center; those who did not internalize the new governing mentality were informed to be punished according to such laws. The Penal code in 1840 reflected the soul of the Tanzimat.⁷³ The main aim of the penal code in 1840 was to restrict the authority of state officials. The second and most

⁷⁰ Ibid., p.111

⁷¹ In these two codes, we have seen specially misuse of judge in the affairs of decisions. So here one of text implies that these officials need to consider their position in which they have to behave in just manner for all people. Penal codes 1254 date stated that

“*Ve bahusus umuru diniyenin mercii aslisi ve kaffeî mesalihi saltanatı seniyeinin membaî hakikisi şeriatı mutahhereye imtisalden olduğuna ve elhaletü hazihi hizmeti şeriatte bulunan zevatın nüshai zatlari ve şirazei mecmua sıfatlarıziveri iffet ve salah ile arasta ve cevherü hünerü maarifü zühdi takava ile piraste ve her vechile nareva harekatten vareste iseler dahi hasbel-beşeriye içlerinde bazı cünha vukuu muhtemelve bahusus nüvvab takımının ekserisi meçhülül ahval kimseler olarak uygunsuz harekatı derkar bulunduğuna binaen o makule harekatı namarziye cesaret edenler hakkında ve gayrılara terbiye ve tenbih olmak üzere olbapta şeref efzayi sudur buyrulan emrî fermanı keramet unvanı hazreti mülükane mucibince bil müzakere kaleme alınan ceza kanunamesidir ki...*” from Veldet Hıfzı, (1940), pp.171-2

⁷² Kaynar Reşat, *Mustafa Reşit Paşa ve Tanzimat*, (Ankara, Türk Tarih Kurumu 1985), p. 295

⁷³ The continuity between Tanzimat and other legal reforms were represented in the beginning of this code. It was stated that all legal act will be conducted on the soul of Tanzimat, it would not be allowed to see confusing of new orders with each other.

“*Manzuru humayunum olmuştur. İş bu ceza kanunamesi doğrusu pek güzel ve etraflı kaleme alınmış olduğundan tarafı şahanemizden dahi kabul ve tasdik olunmuştur. Bunun ahkâmı mündericesinin ve muhafaza ve icrası tarafı humayunumuzdan ve cümle tarafından olunan ahdu misak iktizasınca*

important characteristic of these codes could be summarized as the aim of central authority to bring certain limitations on the role interpretation by judges in the juridical system. However, for the Ottoman Empire by coming of 1840 penal code we can not claim that this aim totally was reflected in this process. In other words, it would be deficient to claim that with the advent of the new penal code, the role of interpretations disappeared.⁷⁴ The Empire was in effort of eliminating the role of judge within the work of the juridical process. This reflected the new trend of governing technique that mental transformation of the Empire in the mid-nineteenth century in the decision-making process that focused more on the written text and conducted its punishment practices considering only the laws issued by the center.

The second attempt was the absolute reception of the penal code accepted in 1858 from the French Code acted in 1810 called *The Ceza Kanunname-i Humayunu* (Imperial Penal Code). Although its content was changed several times, it remained until 1926. The Imperial code of 1858 was, in the western sense, the first systematic code that contained a general theory of crimes and punishments and brought various modern concepts into Ottoman criminal law.

The declaration of the Tanzimat had an important impact on the whole transformation of the Ottoman Empire in the nineteenth century. All renovation acts were labeled under the name of such title in this era. It was result of very westernized mind of bureaucratic class. The main power behind this law was one of high officials of Mahmud II named Mustafa Reşid. He was thinking that Ottoman should be

herkese farizayı zimmet olmakla ona göre bu hususta gayet müdekkikane ve müşikafane hareket olunmak lazımdır.”, Veldet Hıfzı, 1940, p.176

⁷⁴ Veldet Hıfzı, (1940), p.172, It is stated that with advent of new penal code, the role of interpretation and Islamic order would no totally disappear. He proposed that in some cases of bribery, judge was given authority to use his interpretation in his determining the quantity of punishment.

“Mürteşi hakkında icra olunacak muamelatın bitemamiha ledet tahkik raşi hakkında dahi icrası lazım gelüp ve eğer raşinin rütebi saltanatı seniyyeden bahresi yoğise haline göre tazisiyle tekdir kalına ve fakat bir kimesne kendi nefsinden ehli cebrin mazarratımı defî kastiyle mecburen bir şeyi rüşvet

involved in transformation movement, since they should stress its belongings to Europe civilization. The first impressing speech in the declaration stated that sultan did not consider any difference between his subjects without looking to their ethnic or religious origin.⁷⁵ This might reflected some facts about mental change of state over the reformation needs of empire in all parts of state institutions.

The text signified one of the important facts about general tendency of Ottoman in how written texts would be considered as the outweighed in the juridical system. In fact, Islamic law mainly works under the principle of authoritative interpretation. The ways to define certain type of judgement according to special cases can vary. The increasing role of interpretation in the decision making process enables to see views of two different decisions very different from each other on the same issue.⁷⁶By increasingly issue of penal codes, the role of interpretation aimed to be limited into minimized level. The state aimed to establish a monopoly of the bureaucracy over punishment policy. The definitions of specific crimes and their penalty were brought under certain regulations in such codes as well.

Penal codes in 1840 and 1850, although they included many deficiency in their contents, they were very important in terms of seeing the idea of how each individual was responsible for knowing his own legal boundaries. The codes stressed that the old arbitrary behavior of officials in was bounded on certain principles. The rights given to the bureaucratic class to punish any subjects of the Empire was taken by the sultan. These reflected new trends of the Sultanic regime to monopolize rights of punishment into hands of the central authority decided on a fixed basis but not on

süretiyle vermiş olduğu tahakkuk ederse ol zaman mecburiyeti cihetiyle vermiş olduğu her ne ise mürteşiden istirdat ve sahibine ret ile mürteşi ceza olunarak raşi affoluna”

⁷⁵ Gülnihal Bozkurt , *Batı Hukunun Türkiye’de Benimsenmesi; Osmanlı Devleti’nden Türkiye Cumhuriyetine Resepsiyon Süreci (1839-1939)*, (Ankara, Türk Tarih Kurumu, 1996), p.45

⁷⁶ Haim Gerber, “Sharia, Kanun, and Custom in the Ottoman Law, The Court-Records of the 17th Century, Bursa”, *International Journal of Turkish Studies*, Bd. 2, 1981, pp-131-47

arbitrary grounds that Mahmud II had attempted to form some fixed law could be grasped by his intention to diminish the effect of the bureaucratic elite in the administration of state. His aim also needs to be reflected in the soul of the penal codes prepared after him. When we look at the intention of law issued for the *Ulema*, those from educated groups and officials in 1838, what we see is that none could be accused from a crime that was not written in the text. It was also mentioned the numbers of capital punishment regarded to be diminished.⁷⁷ It considered to use capital punishment only in a specific cases, and mainly it functioned in a cases where crime was committed against the state or for politics. The aim behind the issue of penal code regularly was to eliminate the role of judge in the process of decision. But we can not even exaggerate that these reformation acts eliminate all effects of Qadi's interpretation in the decision making process, in some cases it was given to him use his interpretation in more. But here the stress was to signify that it was aimed to diminish the effect of individual interpretation in the cases.

Tanzimat in fact, was a general name of whole transformations took place in nineteenth century of Ottoman Empire. It did not just define the one legal act issued in 1839 rather it was the name of all the transformations of state administration started from 1839 to the 1900s. The beginning of new era in Empire started with declaration of Tanzimat Edict in 1839, but it continued to be effective over the politics of the Empire afterwards. It emphasized the importance of the rules of sultanic power on the claim that state was an affair of drawing certain lines and continuity in the administrative policy of jurisdiction. The legal reformation that came with the Tanzimat underlined the modern sense of how the Empire should follow a new path of behaving in judicial cases. The stress over the superiority of sultanic law in the Tanzimat signified that the Empire needed to compensate its old

⁷⁷ Bozkurt, p. 46

practices of juridical system with a new one concerning the impact of modernity and westernization over its institutions.

What was new with the Tanzimat was the regulation of the secular tendency in the administrative policy of the Empire. First of all, it brought the main idea of equality of each individual in front of the law. There was stress on the rights of each subject without concerning their religious identity. As it is known in Ottoman law, concern of its subject was varied according to their religious community especially on taxation in which Muslims paid less money compared to non-Muslim subjects. Before the Tanzimat, non-Muslim subjects were not allowed to be soldiers. The Tanzimat abolished these old practices of regime.⁷⁸

The secular tendency of the Ottoman elite in the affairs of the juridical system was represented in the establishment of special courts after the Tanzimat called as *Nizamiye Mahkemeleri* in the 1840s. It functioned in which cases of social issue that is not defined in the Islamic law yet. In the old system, the Qadı was not required to base his decision on any specific text, but rather his interpretation of Islamic jurisprudence *fıkıh* became only source of his decision. In contrast, *Nizami* courts were conducted around bureaucratic councils made up of members appointed by the center and some elected from local notables. The *Nizamiye* court was expected to adhere to the provisions of the state-produced normative legal document. The performative attitudes of both parties varied from each other. While the Qadı could rely only on testimony of offenders, the *nizami* based its decision more on the

⁷⁸ Tanzimat pointed out some important principles about how new juridical system had to be. It could be summarized in which;

a) The guarantee of living security, b) the Security of honor, c) reordering taxation. d) revising of military obligation. At the basic grounds, it stated that people would not be killed without judgement, there would be guarantee of owning private property which it should be respected, confiscation would be abolished all guarantee would be provided under authority of Sultan, the members of High court would be increased and the rights of speech would be free in the process of judgement, Sultan and his officials gave promise to rely on that law, those who act against such law will be strictly punished.

collection of evidence. Another important aspect of these courts was its ability to give some special sentencing practices to those who had committed crime. A one such was hard labor, called *kürek*.⁷⁹ This kind of punishment policy was rather different from old practices. The obligation of offenders to work in hard labor also reflected the new capitalist mentality that over emphasized the source of labor. This policy was absolutely the result of the need for labor in the transformative era of the nineteenth century.

The work of Milen Petrov, *Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868*, summarizes the dual work of the juridical system taken its reference from one of article of the penal code in 1858. According to him with the advent of that designation, the Empire had a new duty of promoting public order. As he points out in one of example of how a murder case was regarded differently by *Sharia* and *Nizamiya* Court. He stresses that the old habits of Ottomans towards cases of murder were considered to be interpreted by individual law and by the *Sharia*. In such cases the murderer would be forced to pay a certain amount of money for the family of victims or not. The relatives of the victim had the rights to demand both blood money and the death of the murder. When blood money paid by murder relatives according to Islamic law, murder could have rights of releasing, however in new system with advent of the *nizamiya* court, the situation changes was judged in different manner, if the relatives of victims demanded blood money and were paid them, the offender could not get ride of sentencing. He would be given certain period of imprisonment by *nizamiye* court at the end of judgement it was about five to fifteen years of imprisonment. This policy of punishment by the state under the pretext of public order was assigned to itself in

⁷⁹ Milen Petrov, "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868", *Comparative Studies in Society and History* (2004), 46: 730-759

which state involved in a process of judgement on the behalf of protecting the public order.⁸⁰This is very important, since the public order in Turkish (*kamu davası*) was assigned to one of the state function. The state involvement in that process underlines how a new mental perception of governing practices was appropriated in the domains of Ottoman Empire.

The Tanzimat declaration very importantly stresses over the implementation of juridical system for all subjects of the Empire. It stated that none would be allowed to kill another without being judged. The all decisions come from the High Court; the *Meclisi Ahkam-ı Adliye* would not be applied without the consent of Sultan. The declaration of Islahat Edict in 1856 completed the principles of equality of all subjects in terms of the law. It was dedicated to restricting the attitudes of the juridical laws to be applied on an equal basis for each subject without considering their religious identity.⁸¹The Ottoman Empire made an attempt to sustain such equality in the system, on one of which was appointment of some new members to *Meclisi Ahkam-ı Adliye*. Many orders were presented to the local officials about the implementation of the Tanzimat. Efforts were made to form many local assemblies as stipulated in the declaration.⁸²

Here one of the orders sent by the center to the local authorities must be mentioned here since it explains how they should behave towards criminals in a case.

⁸⁰ Ibid., p.738

⁸¹ Islahat Fermanı stressed that the law come with Tanzimat will be applied to all subjects of empire without considering their religious identity, the rights were granted to non-Muslim will be continued to exist, the assembly in the patriarch were responsible to inform government about the problems of their community, the election procedure of patriarch will be conducted on certain principles, the priest of those community will not enforce people to collect money, instead they will be provided with certain amount of salary, the demands of such community will be held as soon as possible, one could have rights of interfering in the work of these community, they will be recruited for army and they had been given rights of appointing in the administration of state, the equal taxation will be brought, the judgement of two people, one from Muslim community, other from non-Muslim, they need to be judged in a court mixed and in front of community, in the affairs of internal issue non-Muslim people were allowed to look their case in the juridical system of patriarch, foreign people were allowed to get property in the domains of ottoman.

⁸² Bozkurt, (1996), p.48

First of all, it emphasizes the concept of documentation in which central government asked from local authorities to categorize each prisoner according to their crimes they committed and then collect statistical data, such as measuring their size and preparing specific files for each of them. Second it focuses on difficulties of the long-term judgement. Each case was to be charged as soon as possible. They were warned to inform the center about cases once of every three months to write the date of the cases and give a number to each file. The most important part of this order was about its defining absolute ways of how people should be kept in the prison. It was stated that many people complained about being kept so long in prison without any charge. It was ordered to consider that those who had not been sentenced yet had to be released until they were found guilty.⁸³ This point of view totally represents the

⁸³ BOA. , A. MKT. UM., 459/ 62, Ş. 22, 1277

Makâm-ı mu'allâ-yı hazret-i sadâret-uzmâya

Taşralardan katl ve kat'-ı tarîk gibi cinâyât ile mukaddepleri der-sa'âdete gönderilmiş olan kesândan bir takımının hukûk-u şahsiye da'vâsı için ru'yet olunan murâfa'a-i şer'iyelerine dâir i'lâmât gelmiş ise de usûlüne muvâfık olmadığı cihetle cânib-i fetvâhâneden kabul olunmadığından tashîh-i murâfa'aları için mahallerine i'âde kılınmış ve kiminin muhâkemât-ı nizâmîyesi nâkıs olduğundan be-tekrar isti'lâm ve istîzâh idilmiş olduğu halde cevabları alınmamış ve ba'zı katl maddelerinden dolayı kezâlik hukûk-u şahsiye da'vâsı için verese-i maktûl veya vekîl-i şer'ileri istenilmiş ise de zuhûr itmemiş idüğü bu kere icrâ itdirilen tahkîkâtda tebeyyün eylemiş olduğundan ba'de-zîn katl ve kat'-ı tarîk gibi cinâyât-ı cesîme haklarında her dürlü dikkat ve sür'atin icrâsıyla muhâkeme-i nizâmîye ve murâfa'a-i şer'iyelerinin umûmen yazılan diğer tahrîrât-ı resmiyede beyân olunan kâ'ideye tatbîkan ru'yet ve tesviye itdirilmesi ve bir madde için der-sa'âdete gönderilen evrâkdan şâyed cevâbları lüzûmundan ziyâde uzayanlar olduğu halde mücerred bir kere inhâ olunmuş denilerek iğmâz olmayub ne makûle keyfiyet olduğunun ve ne tarihinde inhâ kılındığının oralıkta ihtâr ve istîzân olunması ve bununla beraber yine herbâr muhtır olmak için her memleket habshanesinde cünha ve kabahat eshabından ne mikdar adam var ise isim ve târih-i habsleri ve keyfiyetlerinin bu tarafa ne tarihte yazıldığı ve keyfiyet-i cünhaları üç mahda bir kere der-saadete takdîm kılınacak jurnallerin zenbe münhasıran işâret olunması velhasıl mahbusda hükümsüz adam kalmamasına imkânı mertebe i'tinâ ve dikkat kılınması meclis-i vâlâ müzâkerâtı icâbından olduğu beyân-ı 'alîsiyle ol vecihle iktizâlarının sür'at-i icrâsı ve bir de kânûn-ı cezânın yine mahsûsunda muharrer olduğu vecihle hüküm-ü kânun hukûk-u şahsiyeyi iskât idemeyeceğinden maktûlün verese-i var ise anların i'âdesi üzerine keyfiyet murâka'a-i şer'iyeye havâle olunmak lazım gelüb ba'zı maktûlün verese-i da'vâ itmedikleri halde anın için te'hiri iktizâ itmeyeceğinden maslahatın bu cihetinde dahî iktizâ-yı kânuna tevfiikan harekete mübâderet olunması 13 Receb 1277 tarihiyle müverrehan fark-ı ta'zîm ve tekrîm olan bir kıt'a emrnâme-i sâmi-i hazret-i vekâlet-penâhîlerinde emr ü ferman buyurulmuş ve tıpk-ı emr ü fermân-ı hazret-i sadâret-penâhîleri vecihle ba'demâ vukû' bulacak katl ve kat'-ı tarîk gibi cinâyât-ı cesîme haklarında her dürlü dikkat ve sür'at-i i'tinânın icrâsıyla muhâkeme-i nizâmîye ve murâfa'a-i şer'iyelerinin şeref-vârid olan diger emirnâme-i vekâlet-penâhîlerinde emr ü fermân buyurulan kâ'ideye tatbîkan ru'yet ve tesviyesinde ve bir madde için der-sa'âdete takdîm kılınan evrâkın cevâbları lüzûmundan ziyâde uzadığı halde ne makûle keyfiyet olduğunun ve ne tarihte takdîm kılındığının inhâ ve istîzân olunması ve Amasya habshanesinde cünha ve kabahat eshabından mevcûd olanların isim ve târih-i habsleri ve keyfiyetin der-sa'âdete ne tarihte arz ve beyan olunduğu ve keyfiyet-i cünhaları üç mâhda bir kere takdîm kılınacak jurnallerin zende münhasırca işâret

modern sense of new governing mentality was being considered by the central authority in which it emphasizes on the idea of “all suspects are innocent, until they are found guilty” in modern judgment.

Ottoman Punishment Policy in the Nineteenth Century

The Ottoman reformation process gained great speed in late period of the nineteenth century. The Empire was searching for the ways to deal with new problems that was emerging new sense of governing politics considering its subject demands as one of determinant factors in the form of administration practices of the regime. How this fact had an impact on the politics of Ottoman Empire would not be answered in a detail in this part, rather here it is more questioned to see transition of Ottoman politics from absolute governing to the modern sense of it by looking to its punishment policy of the time. These changes will be questioned under the modernization paradigm also it will be defined how modern state practices enforced the empire to reconsider its policy towards their ruled people. The emergence of a new relations between ruler and ruled in this process was formed not on the basis of subject-object relations, but in this century the society and its members should be taken into consideration by the ruling elite as two parts that had to play an important role when certain kinds of policy were provided for them.⁸⁴

The demands of the ruled people became as an important subject for the ruling elite in the ninetieth century. Those people under rule of the Empire were served by a new policy. In this sense there was great tendency of the Sultanic power

olunmasında ve hükümsüz mahbusda adam kalmaması hususlarına ikdâm ve gayretde ve maktûlün veresesi da'vâ itmediği halde iktizâ-yı kanûn-ı âliye tevfiikan hareketde tecvîz-i kusur olunmayacağı'nın 'arz ve ifâdesi ma'razında işbu mazbata-i 'âcizânemiz takdîmine ibtidâr olunmuşdur ol bâbda emr ü fermân hazret-i veliyyü'l-emrindir. 11 Şaban 1277

for this time to implement new listening practices against its subjects by forming a different institutional mechanism. Specifically, the form of secret organization, aimed to collect important political information and talk among society about how the social and political issues were discussed, has great importance here. It was about the emergence of new ways of demanding public opinion in the implementation of the politics of the center.

New habits like that show us ways to analyze how the pre-modern ways of governing were revived by a new one that first emphasized the importance of public opinion for the forming of new governing strategies.⁸⁵ What was new here is that now public opinion and its involving process became an important part of politics of time.

Many important practices of the central power in this transformative era were changed under the impact of the certain modernization paradigm. In fact this process specifically in the nineteenth century became the derivative result of centralization practices of power. More specifically speaking, this was an attempt of the power to infuse in all forms of society. So many of these attempts in the administration of Ottoman were a part of a need to define the position of who ruled and who was considered to be the subject of the ruling practices. In other words, it was struggle of actors to combine the power and governing practices in a defined way in this century.

The second important view which sees all of reformative actions of the central power in the administrations policies and daily practices of society considers the huge innovations of the time within the Empire as something enforced by outsider actors, not as something society demanded. In other words, it sees that the

⁸⁴ Nadir Özbek, "II. Meşrutiyet İstanbul'unda Dilenciler ve Serseriler", *Toplumsal Tarih*, 64 (Nisan 1999), pp-34-43

⁸⁵ Cengiz Kırılı, "Kahvehaneler ve Hafiyeler: 19. Yüzyıl Ortalarında Osmanlı'da Sosyal Hayat", *Toplum ve Bilim*, 83 (Kış 1999/2000), pp.58-77

modernization attempts of the Empire as mainly its need to be like its European counterparts. It stresses that what determined the agenda of politics within the boundaries of the Empire was not the regime itself, but just European demands and most of which were not familiar with the context of ottoman policy at that time. So they claim that there was very clear gap between the ruling elite and the ruled. While the power holders of the time drew the route of the Empire towards Westernization, the ruled mass was not able to be involved directly in this process. They became only the subjects of the new transformation without their consent being considered. This tendency mainly looks beyond the question of how the subaltern could obtain its subjective position within historical field. In that approach provided by post-colonial scholars, as mostly E. Said and his companion search for the position “other” groups on the idea of how they can be subject of their own. As like he pointed out that how one community could be Orientalised in a manner of its different context and how it could be misrepresented through certain mechanism of power.⁸⁶

Certainly, the Ottoman became involved in a huge attempt of reformation act for all aspects of its institutions. Mainly what has been done here is to consider just one part of it which is the reception of modern canons and the mental change of the Ottomans about the concept of punishment. So looking to Ottoman history of nineteenth century not from its own dynamics but from the perspectives of outsider actors leads us to think it from Orientalist perception. The owners of such a claim bind themselves to the idea that all these attempts of renovation provided by the center were some fantastic part of imperial westernization addiction. My argument here is to give of more a sense of complex relation of power politics invested on

⁸⁶ In this sense, post-colonial theory mainly deals with question of “Can Subaltern speak?” as Spivak pointed out. The main emphasize of this question was to inquire the position of “other” groups who could not have chance of getting any forms of power, and were not equipped to rise their own demands on the agenda of politics.

human body. I mean that, many attempts implemented in this era were the result of a clash between the demands of subaltern groups and the governing elite. Therefore to put more emphasizes on the question of who was the main factor of change would not be such an empirical work. It is more important to look at the cases from their results not their causes. Here the transformation of the penal code will lead us to think of the nineteenth century as the era of mental transformation in the governing habits of empire. However, many works that has been conducted on this issue mainly interpret the coming of the penal code in the Ottoman sphere from the point of reason by questioning who determinant factor in this coming. The most important lack in this interpretation which stresses the western impact on the minds of the elite neglect to considers a huge transformation of empire in world context.

Beyond that this tradition orientalisised the conception of modernization as something fixed concept dedicated to specific culture.⁸⁷ This interpretation ignores the internal dynamics of Ottoman society and puts more stress on external factors as the main triggers of change. However, unlike this point of view, we have seen that the ruling elite of the time are the subject of their own and search for the ways of how to compete with new problems. So the Ottoman elite sought to find easy solutions to their problems of a modernization, centralization and the social problems of the time. Besides that, they were aware of the fact that the Empire was a part of the world system and they had close relations with external world.⁸⁸ Their need to involve in reformative acts both in legally and politically. This was result of new kinds of governing mentality lead the Empire to reorder its practices.

⁸⁷ Here by “this tradition” I more refer to old tradition of Ottoman Historian approaches wrote nineteenth century of Ottoman reformation from western impact point of view, see Bernard Lewis *The Emergence of Modern Turkey*, London: Oxford University Press, 1961, S. Shaw *History of the Ottoman Empire and Modern Turkey*, (Cambridge: Cambridge University Press, 1977)

⁸⁸ Şevket Pamuk, *Osmanlı Ekonomisinde Bağımlılık ve Büyüme*, (Tarih Vakfı Yurt Yayınları, İstanbul 1974), pp.10-20

In this sense we can not reject the role of the western-minded elite in the reformation acts. Rather what we claim is the exaggeration of its impact conceiving it as the main factor of such transformation. Here we would describe the role of such group together with other in detail.

After 1840 the subject of prisons began to be mentioned as a matter of internal affairs in which it is defined as a build of special place for the confined and the need for founding such buildings is emphasized. One of reasons for this need stemmed from the Ottoman elite's western mind. According to their view, the Ottoman should follow up all of the developments of western societies and apply them at all level of its community. Due to having the sense of western opinion, the Ottoman elite hired Major Gordon as chief adviser to inspect all aspects of the prison system in the Empire. The second reason for this need stemmed from the mobilization of the population, war depression and increase in the amount of crime together with urbanization. Of course, there could not be talk of huge amounts, but that era could be compared with the eighteenth century in terms of urbanization, as a result of it, the increasing capacity of state to catch up the criminals. If state had enough power to incarcerate the guilty, it also needed to find the ways to behave against criminal groups. So undoubtedly, the prison here became one of solutions to forming a control mechanism over such groups and shapes them according to its will of.

In the discussion above mainly we deal with the question of why the Ottoman Empire needed to bring new reformation acts in its punishment politics. The argument considered the definition of the question on the internal and external factors together. From now, the developmental version of how such a policy was categorized and how it was involved in the affairs of the transition from torture act,

the abolition of capital punishment to incarceration will be discussed. Here the transition will be defined with the concept of The Foucauldian sense of how the object of punishment shifted from the body to the soul as a result of the emergence of centralized, powerful state with an effective police force for catching criminals and enforcing the law.⁸⁹

Abolition of Torture and Efforts to Decrease the Rate of Death Penalty in the Ottoman Empire

The nineteenth century was the century of the penitentiary. Public and physical punishments, from whipping to the death penalty, were gradually replaced by the less visible, less corporal sanctions of imprisonment. For example in England, by the start of the Victorian era, imprisonment was the predominant penalty in the system of judicial punishments. For every 1000 offenders sentenced in the higher and summary courts in 1836 for serious offenses, 685 were punished by imprisonment in local prisons.⁹⁰ However, in the Ottoman Empire this tendency appeared only after the mid-nineteenth century. When the governing groups to diminish the effect of physical punishment in the domains of empire, it happened by certain developments especially reveal of some institutional forms within the state, especially form of police institutions in urban places, the declaration of certain penal codes taken from abroad, and change in the relation of social matters of the state. In fact, these renovations in the state governing mentality started with declaration of the Tanzimat in 1839 and continued after.

The main policy in pre-modern times was conducted on a form corporal punishment. The main reason behind such act was to deter people from committing

⁸⁹ Foucault, (1977), pp.40-5

⁹⁰ Victor Bailey, "English Prisons, Penal Culture, and the Abatement of Imprisonment", 1895-1922, *The Journal of British Studies*, Vol.36, No.3 (Jul., 1997), p.285

the same crime. This kind of policy was pursued in a state where there could not be any talk of central authority to get involve in cases. As R. Peters points out that as in Egypt.⁹¹The Ottoman policy of punishment was based thoroughly on such system. They could abolish it only after forming a central authority throughout the Empire. In the situation of more bureaucratic regime, as the Ottomans were attempting to establish an order like that throughout of nineteenth century, the climate favoring corporal punishment was became uncivilized act in the administration practices of state. Many legal acts both in the Tanzimat and mainly in the Islahat declared that those kinds of practices as illegal. Of course the abolition of such a tendency in a legal text does not lead us to think that they totally disappear in daily practices in the Ottoman Empire, but the representative version of such abolition enables us to regard the mental transformation of the Ottoman mind on the issue of severe punishment.

The Ottoman abolition of torture can be explained in many ways. One of important cause of the abolition could show same dynamics as the Russian experiences in which many scholars consider that the legal prohibition of torture in Russian was the result of the spread of Enlightenment ideas throughout the intelligentsia. In the Ottoman Empire, the same influence could be expressed here. But its effect should not be exaggerated in the determining process of politics.

One of considerable policies provided as new in the concept of criminal cases by the central authority was about the mental change in the concept of punishment which eliminated the old tradition of behaving towards criminal groups and replaced it with one which was more humanitarian and conveyed its meanings to the concept. In such situation, punishment becomes a way to rehabilitate those people who tend to commit crime. So most of the modern state approaches to criminals provided in the

⁹¹ Rudolph Peters, "Controlling Sufferings: Mortality and Living Conditions in 19th-Century Egyptian Prisons", *International Journal of Middle East*, 36 (2004), p.388

nineteenth century saw such groups as social entity who could only participate in social relations through rehabilitation mechanism which was possible through the work of prisoners. These kinds of policies provided by modern state in this era could be accepted as the beginning of a new governing regime that put more emphasis on its regime to get ride of severe and cruel punishment policies in order to take a position among civilized countries. In that sense, the Ottoman Empire was also trying to redefine its position about the punishment policy of its regime and tried to re-interpret the different meanings around the concept of punishment like its European counterparts were trying to do. It was about the abolition of corporal punishment and defining the specific cases of torture in how its amount could be minimized in the statistical data and how instead more attention on the formation of a specific place for confined could be given. In this part, it is argued that why and how this process was considered to be radically different from old practices towards the concept of crime and punishment and how it marked as the beginning of the penetration and reordering of a new society in the context of the modernization and centralization of the Ottoman Empire during the nineteenth century.

One of orders issued by center in 1860 emphasizes the abolition of torture in the domains of the Empire. The order noted that those local authorities living in the province of Bayazid and Diyadin Kazası had to search the people who were involved in the murder of a priest of three churches in the district. They had to find those responsibilities for committing the crime, and they had to obey the rules of the central authority specifically about the act of torture. It was claimed by the suspects that they were tortured when they were in the process of questioning. The local officials were responsible for inquiring such claims and had to find those people who had tortured the suspects and when these people were found, they had to be severely

punished.⁹² Another duty of local authority was to inform Patriarch about the process of inquisition. This order may do not truly reflect ultimate fact and of course none could claim that torture was totally abolished in the Ottoman domains through looking from this order point of view. But what is important here is to be able to see the new governing mentality surrounded the mental thought of the empire towards concept of punishment. The stressing point of this order underlines that it is a necessary process of constituting new approaches over the torture, it states that how local authority were seen to be responsible in the situation of violating sultanic law in the torture cases. It was defined that those who acted against the law issued for abolishing the torture should know that they would be severely punished due to not following the principles brought by the law (it was issued by Islahat Fermanı).

Another case about torture involved an order that stated that a people whose name was Lefter. While he was guest of Ohannes Setencioğlu in district of Merzifon, he had run away, having cheated some people and he was denounced by his wife having killed by four people but in fact he was not, and those people who were seen as suspect were acted with torture during their questioning, one of them Ohannes was beaten with three hundred stick on his head. After they were being released, Ohannes tried to find Lefter. He went to Safranbolu and found him then he brought him to authorities and left him in jail. After that Ohannes complained about how they were

⁹² BOA., MKT. UM., 411/19, Za, 1276

“Erzurum Valisine,

Bayazid Sancağı Diyadin Kazasında kain üç kilisenin rahibi olup katl olunan Simon Vartanın Surti katline manastarlarına dair mukarrer mahalinde gelen mazbatı istintakname ve şhadetnameleriyle ol babda Erzurum Meclisi kebirinden tanzim olunan mazbatı irsal kılıldığı ve bu maddeden dolayı ahzu girfet olunan kesana cebr ve ezar olduğu beyan kılıldığından hem hakikati maddenin hemde şu işkence keyfiyetinin tahkik ve zahire ihracı zannında merkulmarın Erzuruma irsalı livayı mezkur kaymakamına işar olduğu beyanıyla vurudlarında icra olunacak istintak eziyeti tebiye edecek halin işar kılınacağı tavariüd eden tahriratı sebeblerinde irsal olduğunda naşi keyfiyet meclisi valaya ledül havale maktul merkumun katillerinin zabtı icrasıyla Patrik hazretlerine mücazat olunması lazimeden olduğu misüllü iş bu işkence maddesinin tahkiki ile tabiye ittiği halde buna cesaret edenlerin tedibi dahi muktezası maslahatten bulunmasına nazaren siyaki işar muvafik maslahat göründüğünden merkulmarın vurudundan asıl katillerin ve işkence maddesinin tahkikati

being injured from the attitudes of some authorities during their questioning period. They were offered with four thousand kuruş money of compensating their loses by the state, when they were under suspicion. But together with Ohannes other victims of torture did not accept this amount of money and they stated that even thirty thousands kuruş could not compensate their damages. So the state decided to constitute a commission in order to measure the exact quantity of these damages mentioned by those people. In addition that it was stated that in every parts of empire the torture had to be abolished, this case and many other examples should be disappeared, even in any talk of social memory. Therefore those who acted in torture had to be found and they had to be punished according to the law.⁹³

*mükemmele icrsıyla zahire çıkarılarak tebiyye edecek ahvalın izahen bu mazbata esaslı hususları sevab desturiyelerine tekid tezekkür kılınmağa olunması iktizası icra idasına himmet buyrulmak siyakından”*⁹³ BOA., MKT. UM., 464/23, M., 1277

“Amasya mutasarrıfına,

Amasya dahilinde merzifon kazasında mütemakkin Nişancioğlu Ohannesin münezit-i tesalinde bulunan hanende müsafere sakin olan rum miletten çiğerci oğlu lefter nam kimesnenin kazaen mezkura ticareten haylice emtia mubayadan ederek firar ettikdikten sonra rukumun zevcesiye oğlu kasabayı Tavaros Deryali oğlu Kostantiniye bölük başı oğlu Dimitri ve Amasyalı Aleksiyon oğlu Cerlemyo nam kimesnenin tevkif ederek firarı merkumu katl ve i'dam ettiiniz diyerek merkum Ohannes ile hamal oğlu Yufus ve ejder oğlu Simon çoban oğlu Makar nam kimesnelerin hısn terkif ettirildiğine binaen merkum Ohannes ayağının arkasına üçyüz değnek vurulup diğerlerin darb olduktan başka haklarında itva iza ve işkence icra ve hanelerin teftiş ve her türlü tahribat icra olunmuş olduğu halde hiç birinin sevişte olunmadığından ve merkumlar dahi hastalığından firari merkumu bulup caib hükümete teslim etmek şartıyla sebepleri tahliye kılınmış ve merkumlardan Ohannesin kesbi sıhhat edikten sonra merkum baltacı Kastamonu sancağı dahilinde kain Safranbolu kazasında bulup mübaşere terfika Amasya bil ihtizar canibi hükümete teslim eylemiş üzerine çektikleri eza ve cefaya ve masraflarına mükabil rukumlara Oşe tarafından dört bin ğuruş itası teklif olunmuş ise de merkumların gördükleri işkence için iza otuz bin ğuruş verilmek lazımlı gelse yine ecra ve mükafat olamayacağı derkar iken böyle cüzi şey ile iskatlarına nisbet olunmuş devletü seniyyenin muğayiri bulunmuş idiği tefsilatıyla bu madde için bir komisyon muhallat teşkil olunarak merkumların vuku bulunan masraflarının mahbus oldukları müddet kar ve kesiblerinden vera olduklarından dolayı vaki olan zarar ve ziyanların mahalinde işar beyan olunacağı beyanıyla icabı tazmin ettirilmiş Ermeni patrikhanesi tarafından manastır istida olunmaktan naşi keyfiyet meclisi valaya ledül havale beyana hasit olduğu üzere işkence eziyyet ve darb maddeleri külliyyen men olunarak böyle afali memnuniyyenin hiçbir yerde vuku değil vuku olmuş zikrinde şuyuna bile meydan verilmemesi ol ve ahir her tarafta neşir ilan ve ara sıra tekid keyfiyetiyle ve sayayı lazımlı işar ve isyan olunduktan olduğu halde şu memnuniyeti müekkele hatıra getirilmeyup rükümlar haklarında öyle darb ve işkence ile muamele olunmuş salih ile doğrusu teessüf olunur halattan olarak bit tahfif mütemayişleri hakkında kanuniyye ifası ve makdur merkumun dahi tazmin zarar ve tatbiye hatları lazımeden olduğuna binaen bu babda tahkikatı seriyyenin bil icra iş işkence ve darb kimler tarafından vuku bulunduğunu zahiye ile ihraç olunur. Cümlesi meclisi valaya celb olunarak bil muvacehe murafa ve istintak icra ile keyfiyet doğrudan tutulacak istintaknamelerin rızayı kendisine tahrir ve bil imza ettirilerek doğrucu mazbata işar olunmuş ve bade zin bu makbule halat mükerreren vukua getirilmemiş emr ehemmiyet itina kılınması hususlarının hasbu şerefelerine bildirilmesi tezekkür kılınmış olmağa iktizasında şer'en icra olunması himmet eylemekte siyakında”

What is striking in this order was about the thought of central authority on complaints of torture. In this case, it was represented that state functions its administration practices on a modern bases in which it defined the act of officials in torture as illegal and in any case of such, they will be condemned. Especially if the suspect could be found as innocent, the responsible of such behavior will be punished. In addition to that, state guaranteed the ways of compensating the damages of victims during the period of inquisition and torture. The amount of money for compensation was determined not on the bases of arbitrary rules but rather as we have seen in this case, but on certain criteria which it was quantified by the commission which could be assumed as autonomous its member consists both state officials and non officials.

Another order in the same period 1860 was related to torture that during the questioning process of the suspects the murder of an official named Hakkı Çavuş in Gelibolu. In that process, the two suspects were women named Şerife Hanım and Ümmü Gülsüm. After a while, they went to local assembly and complained about the behaving tendency of officials against them during the inquisition. They claimed that the confession was signed by them in they forced to accept that they acted crime. Therefore they claimed that they could not have any ties with the kill of Hakkı Çavuş case, and they complained that some officials use some methods of torture on their body, while they were under investigation. They also proposed that they could remember the faces of those who involved in a torture against them if they were let to come face to face. In the order it is seen that the center got sense of these women as innocent and took their complaints into consideration. It was reported to local authorities that it had understood that these two women were acted with torture. Then it continuos that those who involved in the questioning process as it was know, they

were Ethem Ağa a member of local assembly and Secretary of Customs in the town Şükrü Efendi and some other were responsible of such cases. Therefore, these persons and other who were supposed to be related to the issue were called for questioning by the center.⁹⁴

The interesting part of order is stressing how state could be convinced by certain mechanism about whether the cases mentioned reflected truth or not. And it is very important to see that state enables to protect the rights of its subject against the misuse of authority of local powers. Here we have seen very fine examples of how subjects of empire had known the certain complaining mechanism in order to raise their voices. This is other important aspects of this order. As we know that new trends of historical work pay much attention to see some voices from below but not above. It is also very crucial to be able to see some demands of subaltern in the archival documents of governing being responded.

We have seen this sensitive policy of the state against torture in cases of foreign people in which one of order clarified that those were caught from British nation had to be protected from torture during their imprisonment and those whose

⁹⁴ BOA., MKT. UM., 376/77, R., 1276

“*Biga Mutasarrıfına,*

Gelibolu Fener memuru olup maktul vefat eden Haki Çavuşun tedkik ve katli haklarında mukaddema vuku bulan işar üzerine gönderilmiş olan Ümmü Gülsüm Ve Şerifenin icra olunan tedkikat istintakiyelerinde iş bu katl maddesinde kitta-i malumatan olduğunu mahallinde vaki olan ikrarları kendilerine olmağa işkence ve darbden dolayı kerhen olarak bu hususu Biga meclisi kebirinde beyan ve ifade eylediklerinden iş bu ifadelerin mazbatada mütederiç olduğu ve beraberce getirilmiş lan civelek Hacir simon ve bekçi Arif, Mustafa bu işte müdahaleleri olduğuna dair vuku bulan özürleri dahi kerhen idüği beyan eylemiş olmalarıyla kimlerin kendilerine darb ve işkence etmiş oldukları sual bulundukda Gelibolu azasından Edhem Ağa ile orada olan tahrirat baş katibi Şükrü efendi oğlu çavuş ve azasından Tayyar efendi ve zabita katibi Halil efendi olup muvacehelerinde dahi bu sureti tekrar eyleyecekleri ifade etmiş olduklarından iş bu esamı muharrer onların celb ve icrası istintaklarıyla maslahat ki naşi keyfiyet meclisi valaya ledül havale menzül merkurumun tathir aliyül hal i zahire ihracı lazıme olduğundan ve bu icab edenlerin celbi istihsazlarının icrasıyla hasıl olacağından acil istintak bu tarafa irsalı hukukun taraflı şefilerine bildirilip tezekkür olunmuş olduğu iktizasından üceratı hususi himmet eylemek siyakında”

guilt was not clear and those who were not found guilty should be released from prison.⁹⁵

The second development of this declining tendency in severe penalties and the increasing trend towards a humanitarian sense was reflected in the case of capital punishment. Here it will be discussed the death penalty politics of the Ottoman Empire in order to improve the argument here. It is assumed that all transformation held was result of the capitalist order that shaped the all forms of society according to its demand. And then the form of prison in the domains of Ottoman will be emphasized by stressing that it was all the result of some investment politics of power that considered criminals as non-consumed groups but as one that has been rehabilitated in such institution and then used for the benefit of society. For that purpose the death penalty was seen only in cases in which criminals acted against Sultanic authority. The regime attempted to diminish the amount of capital punishment even in cases of revolt in which the Sultan was given the rights to offer his mercy for those involved in these acts. Instead of capital punishment, long term sentencing was introduced for them. The juridical process for the cases of those who were accused of revolt against the Sultanic authority and were probably given with death penalty were assigned only to the High Court decision the *Meclisi Vala* was given the authority to sentence those accused people with capital punishment.⁹⁶ That signifies how the Ottoman governors paid attention to the diminishing statistical data of death capital in the nineteenth century. Therefore in the next part of the following chapters I will argue how these investments were conducted in certain mechanism. But now I would like to give a short contextual position of the Ottoman prison and how it evolved in nineteenth century.

⁹⁵ BOA., MKT. UM., 500/41, Ra 1278

The emergence of the prison in the Ottoman context of course was not new. Previously there was a punishment policy confining people in a place before the birth of modern buildings designed for criminals. But what were was in nineteenth century for the Ottoman system was punishment practices of the regime in the form of prison that became the dominant type of policy and it was pursued by many states in the world. The reason for this development should be clarified from how society gave up the old politics of punishment and why they introduced new approaches to the concept of crime and founded prisons. By the form of this institution in the Ottoman context, there could be the possible explanation of orientalist perception to be eliminated. Then to inquiry the definition of the prison in modernization process in which how urbanization led to the increase the rate of crime occurred and how it made possible the emergence of specific criminal groups and their acts with the advent of new problems, in addition, how it enabled the construction a new special prison buildings as the inevitable politics of controlling and rehabilitating mechanism as necessary tools of disciplinary machine used against those criminal groups.

The Birth of the Prison in the Ottoman Empire

The punishment policy of the state in the nineteenth century was analyzed here for having to know how it was evolved in a certain process and how it was turned into the form of prison. The prisons in the modern sense what we understood it today never seen in the world context until middle of nineteenth century. In this part how imprisonment was defined in the Ottoman context and how it came to be considered as a necessary institution in certain discourses will be discussed.

⁹⁶ Gültekin Yıldız, "Osmanlı Devletinde Hapishane Islahatı (1839-1908)", (unpublished M.A thesis submitted to Marmara University, Istanbul, 2002), pp.77-8

After 1840 the name of prison turned to be mentioned in the order of internal affairs sources in which it defined a special place for the confined and emphasized the need of founding such buildings. The Ottoman Empire in this period aimed to revise the punishment policy on the basis of imprisonment. All other alternatives to the incarceration were not favored. The politics of center was to design modern places for criminal groups and to rehabilitate in there. There was growing concerns of ruling elite to concerns such groups not to consume but as more invested groups. The use of prisoner power and their rehabilitation for the benefit of society enabled to be regarded within that definition of “invested paradigm”. It will argue how it took as shape in the last two chapters. In the following parts the general situation of prison reforms will be discussed.

When we look at the archival sources, we have seen so many orders issued by the center about the need to repair the previous prisons systems. Most of the demands are about the necessity to enlarge the boundaries of the prisons that could not satisfy the numbers of confined. One of report prepared by the internal minister signified such a case by claiming that the wall and roof of a prison were not well enough and the density of prisoners was very high, so confined could not even sleep or sit due to this fact. If the government did not take any measures to that density, their image in terms of the western world even among its subjects would be very low. It proposed that the government could not overcome with this problem, if it tried to move up some confined to other prisons and not constructing new one. Since the capacity of all other prison were full. If they continued to mobilize the confined to other places, they would not get any solution. Instead of this policy, government should seek ways of renting new places for new comers.⁹⁷

⁹⁷ Ebubekir Sofuoğlu, “Osmanlı Hapishanesinde Islah ve Firar Teşebbüsleri”, Emine Gürsoy Naskali, Hilal Oytun Altun, (ed), in *Hapishane Kitabı*, (İstanbul, Kitabevi Yay. 2005), p.165

Another important aspect of this report was about its advice to government on how to overcome the lack of space for the prisoner. It stated that the government should not pay attention much to repair such prisons. By doing so, they would not save any time and money. Instead, they should pursue other alternatives. It claimed that if state was unable to sustain some expenses for repairing, they should sell the real estate of such prisons and buildings belong to it then they should construct a new one on the outside of the city with money coming from the sale of that estate.⁹⁸ Another report issued in 1913 stressed the density of the prisons in which it was explained not through lack of such institutions in the empire, but through increasing rate of crime.

When we look at the historical background of how prisons became one of the necessary parts of the judicial result of punishment, what we see is that before the Ottomans constructed a modern sense of prison, they needed a form of assistance organizational apparatus to ease the work of judgement. For the Ottomans, Inquiry to get sense of who actually committed crimes was not assigned to any institution until the middle of nineteenth century. What it certain is that this only happened through the establishment of police organizations in urban places in 1845. With the advent of this mechanism, the Ottoman were able to reconsider the old habits of juridical judgement, since the police became one of the important tools in a facilitating the actual reasons of crime. They were given power to collect important data in the judgement process and it enabled the judge to decide in a short period of time who was guilty and what happened to the case. This formation of the state led to bringing many different approaches to the new governing regime, on of which was about the necessity of founding a prison in the Ottoman context.

⁹⁸ Ibid., p.166

In the Ottoman agenda, we can not talk about any institutional forms of prison until mid-nineteenth century, since juridical cases were taken care of through Islamic law. The system Islam perceived for juridical issue did not give any place to long-term imprisonment. In this sense, I mean to differentiate imprisonment from all other meanings. What is stressed here is to define imprisonment on the bases of limitation and restriction over the freedom of people. The cases were charged under the representation of Sultan by the hands of some local authorities. Those who were given responsibility to charge people determined the amount of punishment and certainly they fined some cases with imprisonment but it should not be considered as we know from the modern meanings of it. It was not so long and it was done on the basis of pragmatic solutions.

Before discussing the form of prisons in the Ottoman domain we need to look at some of the old policy of the Ottoman Empire, about how they behave towards criminals in cases when there would not be severe punishment. In order to get a good sense of that, we need to define the term *Haps* used in the Ottoman context different than modern understanding of imprisonment. For that purpose, we also need to look the Islamic interpretation of punishment conducted by the Ottomans for pre-modern times.

I need to focus here on the idea of what were differences between *Haps* and *Hapishane*. This definition is very important since until the mid-nineteenth century, we could not see any institutional form of the prison in the Ottoman Empire.⁹⁹ Its foundation became possible after the establishment of police institution in 1845, since the investigation of the state about deciding who was guilty and the ways collecting evidence of who committed the crime in judicial process could not be possible without help of any institution in this era, so the Ottomans tried to form one

state mechanism to work under that purpose. After the founding of the police institution, they were able to rationalize their juridical system on the bases of western principles. Thanks to the form of police institutions, now the state was able to trace clues about evidence and rationalize its punishment system.

When we look at the old practices of the Ottoman system, we see that the main politics of judicial system were based on eye witness accounts and confessions in more relying on Islamic jurisprudence. The Islamic interpretation of law was conveyed the court in which penal codes mainly functioned on the *Kıyas* criterion. This means that the Islamic juridical system was not functioned on the principles of rehabilitation, but more on the idea of compensation. The term *Haps* was used for a places in which criminal cases were in the emergency situation. Those criminals like murderers or thief had to be kept in a room designed under a floor part of police station, mainly in the center of the city. There was no need of constructing huge places for those who committed crime in which they need to be kept for certain period of time. In those places, unlike that modern prison system considers to keeping people for long periods as normal. It has been underlined that, in the modern prison the punishment was performed on the bases of limitation over the individual freedom.¹⁰⁰ However, in *Haps* cases, those who committed crime were put in there until the end of judgement. Then at the final day what was consider for the confined was performed there. If he was found innocent, he was set to free. So the *Haps* should not be confused with *hapishane* as we know in modern sense restriction on freedom of individual which was only blessed by enlightenment.

The prison was conceived as tower of fortress in the mind of people until nineteenth century. Due to having wet and bad conditions, it took its name from

⁹⁹ Gültekin Yıldız. (Istanbul, 2002), pp.40- 48

¹⁰⁰ Ibid., pp. 50-60

Persian language in which it was called *Zindan*. Yedikule, Baba Cafer in Eminönü and Shipyard in Kasımpaşa were the most famous one that could be easily memorized among people. These *Zindans* and others in Istanbul were closed down in 1831. A new general prison as officially formed in Sultanahmet instead of these *Zindans*. Towers of fortress were continued to be used by local authorities as *Zindans*. The break points in the rise of prison started with after declare of Tanzimat in which it was accepted in penal code that the only punishment policy should be conducted on the principles of limitation on freedom not on any other things.¹⁰¹

In Ottoman Empire we had seen the first form of prison in some important regional cities. These are in Nevşehir 1849, Sürüç 1852, Vezirköprü 1870, Kastamonu 1889, Erzurum 1900, Manavgat 1852, Şırnak 1886, Alaçam1890, Kınık 1907, Manyas 1910, Cide 1900s, İpsala1900s, Çiçekdağ 1918s, Diyarbakır 1280, Sinop1880s, Kırklareli 1304, Kütahya 1306, Bafra 1311, Ordu 1315.

Their sizes were multiplied the closer they were built to the twentieth century. The oldest materials found during this study were between 1850s. According to the Ottoman calendar, this was 1271. It was ordered in periphery by the center to give details of how they increased the hygienic conditions and to clarify the numbers of the confined on the basis of how they were being sentenced.¹⁰²

In this part I aimed to analyze the Ottoman legal transformation took place in the nineteenth century. The translation and issue of penal codes in this era was stressed in this part, since the Ottoman Empire was in attempt of centralizing its authority over the society. The center tried to eliminate all other factors that functioned in the decision making process of judgement. It aimed to diminish the role of interpretation in process of juridical system.

¹⁰¹ Timur Demirbaş, “Hürriyeti Bağlayıcı Cezaların ve Cezaevlerinin Evrimi”, Emine Gürsoy Naskali, Hilal Oytun Altun (eds), in *Hapishane Kitabı*, (İstanbul, Kitabevi Yay. 2005), pp. 29-30

In the second part, we tried to demonstrate that with the increasing capacity of state, Ottoman were able to involve in the legal and punishment practices of society thanks to modernization process nineteenth century. By the increasing power of center, state got the apparatus to define and control the punishment mechanism. In this process it also revised its old punishment practices with modern one. The abolition of torture and birth of prison in the middle of century was the results of its increasing capacity to be able to infuse and control all mechanism within society. The archival sources here aimed to demonstrate how such transformation took place in the state governing mentality.

¹⁰²BOA, *AMD*, 65, 23 , (1271)

Chapter III

Public Health and the Implementation of Medical Care in Prisons

In this section, I will search for the definitions of social memory of Ottoman about meanings of how hygiene was defined and how it turned to be emerged in the public sphere of the Empire. I will give a very short history of the medical approach of state over its subjects underlining the public sense of hygiene on the question of how it became one of the important subjects of the central authority.

The aim here is to deduct the historical grounds of how the modern sense of hygienic life became the primary social and political concern in the domains of Ottoman from nineteenth century onwards. Then, the representations of the concept in the medical sense especially looking from the perspective of how it was applied in the prisons and what kind of policies were provided for the confined will be examined here. Finally, it will be questioned the reflections of such policies in the sphere of what the central authority implied by implementing its medical policy within inside of the prisons. The argument here is to combine hygienic problems with the conditions of prisons which lead us to consider the issue on the grounds of the capitalist order which was able to penetrate all forms of society.

Hygiene as a Modern Phenomena

It has been stated that, how the term “cleaning” in the Ottoman context became a social concept used within the sphere of medical boundaries in modern sense has not been clarified yet.¹⁰³ So what is proposed here is to define the concept of hygiene as “great concern on cleaning” in a sense that was radically different from

¹⁰³ For further reading see, Akalın Besim Ömer, ed. “Hıfzısıhhat Nedir?”, *Nevsal-i Afîyet* III, İstanbul, Ahmet İhsan Şürekası, 1320/1904

its modern sense of memory. The claim here is that, from the nineteenth century onwards the Ottomans were loaded different meanings on to the concept of “cleaning” and it was very different from our understanding of today. As we know, the modern approach to the concept considers the biologic and scientific perception of treatment mainly based on medicine. But here, it is aimed to offer the meanings of such concept as something beyond these definitions. Instead of monolithic description, I will argue multiple meanings of the term in this part specifically looking to its Islamic definitions in which how it radically concern the term from different point of view. The purpose of this part is to clarify the different meanings of the term in a social domain on the bases of how it was used radically different from what modernity lead us to consider such idea within the realm of “absolute cleaning,” as the reflection of the ultimate purity of nature in scientific sense. Instead of such evaluation, I will emphasize the Islamic interpretation of how it was conceived in different manner. By doing that, I will try to show the impact of modernity in the shape of every kind of relation among in Ottoman society. It will be stressed that the use of medical treatment in both public affairs and in prisons places will lead us to think of these changes as not only the result of humanitarian victory of enlightenment; but rather as a new way of disciplining individuals according to the demands of capitalistic order. Therefore, the old and new definitions of the hygienic problem need to be explained here in order to get a good sense of this misrepresentation.

The Islamic view of what one could be defined as clean, relied on the concept of “satisfaction,” which was called *kulleteyn*. It defined the boundaries of cleanliness according to the quantification. For instance, the Islamic interpretation of determining how much water should be enough in order to take ablutions was not

conducted on scientific bases whether it is really biologically clean or not, but it was more conceptualized on the Islamic theological interpretations. Islam gave attention to quantity for determining whether it is enough or not. If the water mentioned exceeded a certain quantity, it could be accepted as clean enough for performing the ablutions according to Orthodox Islam.¹⁰⁴ There was no consideration about whether it could satisfy basic requirements in terms of hygienic meanings or not. It did not rely on a scientific and biological approach; what was important was to be able to know whether these were apt norms of clean *mutahhar* within the lines of *kulleteyn*. So, the stress on the term “health” as a concept in the Ottoman context can not be mentioned in the sense of the modern connotation until it comes to the end of eighteenth century. The meanings attributed to such definitions varied according to its social and political context and it never fixed on certain definition in a modern sense. So Islamic view of health called *Sihhat*, was considered with notions of “satisfaction quantification.” Until that time, it only defined on what Islamic interpretation encoded the social meanings of it. Therefore, I want to emphasize that aspect of health policy of the Ottoman Empire which is one of the different versions of governing habits pursued by the center for this era. We can express that the term by its definitions varying from time to time might lead it to be a tool of the governing mentalities that surrounded all aspects of the Ottoman context in the end of eighteenth century. Therefore the change of meanings about hygiene at the turn of nineteenth century leads us to interpret this transformation under certain investment policies persuaded by the power holders for the nineteenth century.

The nineteenth century was very important in terms of the governing mentalities of the Ottoman Empire. In this period, the modern definitions of hygienic

¹⁰⁴ Bilmen Ömer Nasuti, *Büyük İslam İlmihali*, (İstanbul, Bilmen Yayınları, 1994), pp. 40-8

problems could be seen not only in social and political issues, beyond that becoming the means for controlling and for the consolidation of authority over the subjects of the Empire.

Many medical policies towards the people relied on the bases of protecting the lives of the population. Needing a young human labor force under modernization efforts lead the power holders to develop some critical policies on the issue of the common health of the masses. It is not surprising to see the over emphasis of the administrative orders in the archives issued about such cases. One of which was about the first real population census carried out at the beginning of the nineteenth century. The importance of this totalizing people is that it signifies the role of population as something that should be kept alive and not to be consumed. In other words, it stresses that now Empire was aware of the importance of its population, so the state needs to know the exact numbers of its subject. In this sense, healthy human power in terms of army and labor had significant factors in the modernization of Ottoman Empire in the turn this century.

In the second part, the role of the new term 'hygiene' will be discussed as the means of consolidating certain types of power politics in the late Ottoman realm. In other words how the new trends in policy enabled the use of the concept with its project for future will be examined. In that section there will be stress on a new type of policies in late Ottoman period by examining certain kinds of practices, such as how the Ottomans considered hygienic problems as a means of consolidating of power or the penetration of central power into society through micro politics as M. Foucault argues.

The recent interest of people in health is limited to modern times. There is no doubt that from very early times onwards people have sought ways of preventing

diseases. Furthermore, the rest of the world had continuously been spending so much time and effort on the prevention of some important diseases. People have feared widespread plagues throughout the history. Certain diseases have become the main fear of some societies concerning their future. In some cases, plague has led to the death of millions of people in some parts of the world and to sharp decrease in the population and other social phenomena. When health problems have emerged in of such societies, the production power of the state economy in military and social terms, have been confronted with serious problem. Still, the concern here is not defining the effect of such diseases on social and political life of societies. Rather it will be proposed to analyze the health problem of societies not just in terms of social and demographical points of view, but rather as the matter of power, control and investment mechanisms in which they have been used by certain powers mechanisms for consolidation and control apparatus over the ruled people.¹⁰⁵ To clarification of how such forms of these consolidations took place will be evaluated from the Foucauldian perspective in which he saw the medicalization of western society as advancement in the level of controlling the poor masses in cities where they were considered to be a danger for the already existing authority.¹⁰⁶

In the mid-eighteenth century onwards the “medical control of the population” was of the important way of the elite or state approach to “dangerous groups” on the basis of the welfare of the state. So the aim of the developing medical mechanism of society can not be considered just in the humanistic view, rather it was a plan for developing productive capacity by bringing them into a less threatening condition for their authority. The huge mobilization of the population and the rise of

¹⁰⁵ Nadir Özbek, *Osmanlı İmparatorluğu'nda Sosyal Devlet: Siyaset, İktidar, Meşruiyet*, (Istanbul, İletişim Yay., 2002), pp.19-20

¹⁰⁶ İbrahim H. Kalkan, *Health Policy of late Ottoman State (1876-1908)*, (unpublished M.A thesis submitted to Boğaziçi University, Istanbul, 2004), p.26

the capitalistic order of production lead the modern state to improve certain control mechanism over the population. In that era, population was considered to be a potential which is to be invested on for the reformation demands of power. So the improvements in terms of medical treatment in the public sphere and its implementation in prisons should be evaluated within the framework of the new demands on human labor that has not to be consumed but to be invested. We have seen such tendency both in Egypt and in the Ottoman Empire in the nineteenth century, where much of health policies were provided by the rulers of the time. The governor of Egypt, M. Ali emphasized the potential power of human beings; which he considers to be invested for the transformation of the state.¹⁰⁷ He was the one who purged thousands of people from their land and used their human power for the work of the infrastructure work of the state. He introduced the obligatory policy for the recruitment of people in the form of the army. A new taxation system was also reconsidered.¹⁰⁸In the Ottoman Empire, similar acts were also implemented.

Medical reform both in Egypt and the Ottoman Empire was connected directly with state interest.¹⁰⁹ They were well aware of the insatiable need for manpower to fulfill their dynastic aspirations. In other words, they sought ways to improve the health conditions on behalf of enhancing the productive capacity of their subjects and the fighting capabilities of his formidable army.¹¹⁰ Here, examples of such control mechanism are going to be explained by giving more reference to Ottoman prisons. Having clarified that point of view, I would like to present some

¹⁰⁷ Khaled Fehmy, "Medicine and Power: Towards a Social History of Medicine in Nineteenth-Century Egypt", *Cairo Papers in Social Science* 23, 2000, p.1

¹⁰⁸ Khaled Fehmy, *All the Pasha's Men: Mehmed Ali, His Army and The Making of Modern Egypt*, (Cambridge, Cambridge University Press, 1997), pp.20.40

¹⁰⁹ LaVerne Kuhnke, *Lives at Risk, Public Health in Nineteenth-Century Egypt*, (Cairo, American University in Cairo Press, 1992), p.35

¹¹⁰Fehmy, (2000), p.2

historical facts of how hygiene comes to be mentioned in the context of the Ottomans and how it was applied in prisons.

On the Ottoman agenda, hygiene rose as a concept under the name of “*hıfz-ı sıhha*,” which was used mainly with public health in the late nineteenth century. The Ottoman Empire constituted an institutional organization by which it controlled all services and complaints about the regulation of norms under the duty of term. In the archival documents emphasizes on the concept begins to be given to the term *hıfz-ı sıhha* more or less from the 1800’s onwards. Especially the recurring emphasis over the concept is given its greatest value from 1890’s after. The social memory of the era narrated some important diseases from which most the most part of Istanbul was affected. One such disease is cholera epidemic which was mentioned in most of the literary sources and archives of the time.¹¹¹ Besides that disease, malaria was the second important disease. After this brief summary defining the hygiene concept, here I would like to point out to an important historical overview of how the Ottoman health policy was formed. For that, I will draw attention to the work of Kathryn Kranzler as a basis of my interpretation here.

In the instutional sense, we have seen that *Meclis-i Tahaffuz*, the Quarantine Council, founded in 1838, was the first public health organization established in the Ottoman Empire. This date indicates the year of cholera epidemic at the same time. It was formed to control the ships coming from Black Sea, and Marmara. It was a precaution against the effects of diseases that might arrive from sea but it excluded most part of population.¹¹²

¹¹¹ For this purpose see *İkdam* Newspaper of the time, specifically December 1894, it implies that state needs some reports about contagious diseases and demanding to take some precautions against it.

¹¹² Kathryn Kranzler, *Health Service in the Late Ottoman Empire (1827-1914)*, (unpublished M. A. Thesis, Submitted to Boğaziçi University 1991), chapter III p.1

Kranzler thinks that it can be the first public health organization within the boundaries of the Empire. Nevertheless, it can be accepted as a starting point of it. For her, the public health service for the first time was implemented in Galata district of Istanbul. Her consideration of why it was first seen in that place is important, since most part of population living here were non- Muslim. Due to having strict lines with European and occupation of some British and French troops for Crimean war led the Ottomans to consider health policy as one the major subject for the city. This explanation may include some reality for the establishment of some institution but it is not enough to get enough sense of the origins of the question. That is, this approach just registers the effect of foreign influence as the major cause of transformation over the issue. Here it has been stated that social care and health policy are the tools of infusing and governing politics of new regime under the impact of modernity. Therefore, the Ottoman needs to offer medical service to its subjects could not be explained just by the western effect. Instead of that reductionist perception, we should need to look from a more critical point of view and we need also to propose a new understanding on the issue. Hence, what is obvious is that we should approach to the issue of medical policy of the Ottoman Empire from the Foucauldian sense in which it turns into a policy that could have an effect over shaping many aspects of society by the implementation of certain types of social services. It was an attempt of the power to know how it infuse into the social relations of society by specialization the micro power practices over the subjects. So, Kranzler's study from this point of view gives more an account to the western actors. She regards the western thought of modern hygienic means to be a concept penetrating the realm of the Ottoman context as the imitative act by the Ottoman's springing from idea of being like western societies. Certainly, this interpretation

includes many facts, but it is not enough to explain this complex relation of how it was introduced into the Ottoman context without questioning the meanings attributed to such a policy. It also here needs to be found out how the state was able to provide a developmental sense of politics considering the demands of its subjects as a basis for the consolidation of its regime. So medical awareness among the ruling elite can not just be explained by the aspiration of resembling the west; but as it was the result of a more complex relation of a new order that modernity brings about.

Returning to Kranzler's account for historical background of medical policy of Ottoman 1855 is given as the date of the important institutional form of the health organization by the state. A special ministry for municipal improvements called the *Şehremaneti* was founded. Its duty was mainly to check and control the goods and commerce in the guilds and bazaars.

After the Crimean War, the Ottoman Empire signed the treaty of Paris in 1856 as member of the Council of Europe. Being part of Europe lead the Empire reorders some of its administrative techniques. So at first state tried to start municipal reforms, mainly made up of Galata inhabitants, under the hands of westernized council. The increasing power of non-Muslims in Council, some authorities from the center united all of the administrative units under the previous organization, the *Şehremini*. It had more power than before over the issue of municipal organization.¹¹³The city was divided into twenty districts in 1880. This organizational behavior seems to be very similar to the definitions of what Khaled Fehmy called for Egypt in his work of *All the Pasha's Men*.

In the 1860's, the Empire made an attempt to implement medical practices for the first time. In order to do that, they published the first bill about medical pharmacists which included forty-nine articles. From then on, we have seen the great

concern of central authority about medicalization of the Empire. For this aim, the state brings the modern medical sciences into its high school. The Imperial Medical Academy became the only authority over the issue of health. All doctors who wanted to work in the domains of the Empire needed to get a certificate from this institution under the control of the Ministry of Medicine.¹¹⁴The impact of this renovation could be read from the newspapers of the time. One warning point in *Ikdam* mentioned the role of how modern medicine could be more effective than traditional method and which should be condemned.¹¹⁵ One of order in 1850s (1276) stated that a captain in the army Mustafa Ağa working in Necaffer Korveti near Selanik had died because of a remedy applied by a Jewish fellow named Baroh. The method he had used was not fitting to modern scientific approaches. Therefore, if he had any consulting room, it had to be closed and he had to be punished according to existing laws and the officials had to pay attention on the issue of diploma in particular. Those who did not have this certificate should not interfere in any case about medical treatment.¹¹⁶

1870 saw the beginning of a new form of ministry. It was the Ministry of Civil Medicine. It supervised all matters of public health for the benefits of the population. The approval process of diplomas of medical schools was in their authority. They were responsible for preventing all contagious diseases.

After 1870's, the local responses to the health issue were reflected in the archival sources which it was reported that the local authorities paid attention to the issue according to the orders sent by the center. Those local officials in periphery were bounded to form a special commission to check and supervise the norms of health on the streets of city. Some other important developments followed how such

¹¹³ Kranzler, p. Chapter III, p.3

¹¹⁴ Ibid., p. 4

¹¹⁵ *Ikdam* Newspaper, 16 June 1896, from *Toplumsal Tarih Dergisi*, June 1996, p.3

¹¹⁶ BOA., MKT. UM., 390/72, C. 1276

issue was taken into consideration. The general public Health Council *Meclis-i Sıhhiye-i Ummumiye*, was founded in 1881. Afterwards, the state issued some important regulations for the doctors and pharmacists. The most prominent committee specifically designed for the epidemics was founded in 1891 to combat the epidemic diseases especially against cholera. They worked generally under the authority of the local municipality. Abdulhamid II was one of the important figures in the development of health policy and also in the internalization of infrastructures that the concept brought with them. He opened hospitals and schools and made health one of the major social issues of government policy.¹¹⁷

In this part I would like to scrutinize some other definitions of the *Hıfzı-sıhha* which generally means public health. Here in, another version of the concept considering it within the sphere of non-hygienic perception will be discussed. In other words, meanings of the concept showing how *hıfz-ı sıhha* was used just for diseases but also for the esthetic dimension of urbanization and buildings will be examining. By doing that, the definitions of the concept will be multiplied in order to get more accurate sense of what changed and what kinds of meanings were introduced into its definition.

The architectural design of many buildings in the mid-nineteenth century was constituted according to principles including beauty as well as health. One of the archival documents from the Ministry of Health of the time clearly explains the issue not just from its hygienic version but also aesthetic forms of it which underlines the rules of how it should be. This document reports that the head of one hospital official's house partially stood in the center of a public street, when the road was enlarged by the Istanbul Municipality up to the vicinity of Topkapı, it was ordered that the plans be drawn and organized according to the principles of *hıfz-ı sıhha*. So

¹¹⁷ Kranzler, p.6

being out of line with the norms of *hifz-ı sıhha* was strictly unacceptable act according to this document.¹¹⁸ The response to this order on what they have to do and how they should act was clearly mentioned in the order under the principles of *hifz-ı sıhha* not only in accordance in its hygienic meaning, but also in terms of its aesthetic aspect in construction.¹¹⁹ By taking reference to this order we could explain also the question of why the Ottomans started to mention reordering of the walls and buildings used as prisons. In the archival documents what was emphasized was the need for reforming the sphere of prisons under the title of *Hifzı sıhha*. It is not also surprising to see that many reports sent to the administration of such places regarding all requirements that the concepts defined for revising and constructing places as prisons.

The Reception of Medical Treatment in the Ottoman Prisons

Throughout the nineteenth century, ottoman witnessed enormous reformative acts within all its institutional realms. The reason for this attempt can be discussed in details; the one part of discussion by looking to health policy provided by the governmental elite towards the confined will be more stressed. Here some orders sent by the center will be examined for defining some questions related to how new governing mentality does work for the Ottoman Empire. For this, some questions to inquiry what kinds of policy were implemented to these prisons and how it was received, considering the hygienic definitions of the *Hifzı sıhha*, will be argued in this session..

¹¹⁸ BOA, MKT , MHM, 596, 48, 1313

¹¹⁹ In the next part of order we have seen that the document narrated the form of specialist group in order to check the quality of work. Therefore the work on the public affairs now had required following certain criteria. Reordering old habits of urbanization with new one and as well as bringing certain norms for architectural design lead us to think on the new mental governing politics of nineteenth century should be considered as radically different from previous experiences of administrative techniques that the empire followed up now.

Living conditions in the Ottoman State should be evaluated with general health politics followed in the nineteenth century. The archival materials indicate a great deal of governmental politics on the issue of hygienic problems in the prisons. One common complain in the reports was the inefficiency of the living conditions in the prisons. One report written by Ahmet Şerif noted that the general condition of many Ottoman prisons was very bad; wet, cramped and unhygienic.¹²⁰ His description of the appearance of the prisons was very serious. According to him many of these places did not reflect any of hygienic order. Sewers flowed under the walls of these places, each room was so narrow and you could not find any fresh air within the walls of the prisons. He furthered that none could accept such conditions; as long as you approach from a humanitarian perspective. All of prisons that he had seen were the same positions, so claimed that the even he repeated the same words which were about his hesitation of whether the last prison was the worst or not.¹²¹

Many of the orders issued by the center about the need to repair existing prison systems are about the necessity to enlarge the prisons in which then they could satisfy the numbers of confined. One report prepared by the minister of interior indicates that in what kinds of situations the prisons were. The report says that the wall and the roof of the prison was not in a good condition and due to the density of the confined they were not able to sit or sleep. If the government had not taken any measurement against the case, their reputation would not be as they would like it to

¹²⁰ Ahmet Ali Gazel, "Tanin Muhabiri Ahmet Şerif Beyin Notlarında Osmanlı Hapishaneleri", Emine Gürsoy Naskali, Hilal Oytun Altun,(eds), in *Hapishane Kitabı*, İstanbul, Kitabevi Yay. 2005, pp. 145

¹²¹ Ibid., p.146

"Tirgoviçte,hele bunun alt tarafında , duvarlarının dibinden lağımlar, pislikler akan, küçük, dar ve karanlık bir oda var ki, hapishane itihaz edilmiştir. Buradakileri görüp de müteessir olmamak iansanlık namına ağlamamak için, kalp ve vicdanın taştan olması lazımdır. Pis kokular havayı ifsat ve bu manzara, insani insanlıktan tenfir eyler, bizim memleketteki hapishaneler hep böyle , son gördüğünüz, daima evvel gördüklerinize rahmet okutuyor.

be for the western. So the government had to search ways of renting new places for new comers.¹²²

Related to the subject of hygiene in the prisons one decree which focused on the map and the outlines of prisons stressed their conditional manner whether they could satisfy basic requirements of hygiene or not. One such order was sent by the center in 1909 to revise all forms of prison on the basis of *hıffzı sıhha*. The response was in order to claim that the living conditions in the prison could satisfy the minimum *hıffzı sıhha* criteria, the center had to constitute a commission to check it. This committee would be able to control the needs and deficiencies of such places.¹²³

Other archival source mentions the quantity of money needed to repair one prison. It was declared that 642798 *kuruş* money set aside for the restoration of prisons which they should be apt to the norms of health enlarged.¹²⁴

¹²² Sofuoğlu, p.165

¹²³ BOA., MKT. UM., 682/22, Ca. 1315

“*Dahiliye Nezaret-i Celilesine*

Vilayet-i sitte habshane ve tevkifhanelerinin kavâ'id-i hıfzı's-sıhhiyeye tevfikân ıslâhı hakkında sebki iden tebliğata cevâben vilayet-i mezkûrenin ba'zılarında vürûd iden keşif defterleriyle haritalarının icrâ-yı icâbına dâir vârid olan 18 Ramazan 1314, 11 Rebi'ül-Evvel 1315 ve 8 Rebi'ül-Ahir 1315 tarihli ve 946, 1978 ve 3210 numarolu üç kıt'a tezkire-i devletleri teftiş komisyonuna lede'l-havâle habshane ve tevkifhanelerin kavâid-i hıfzı's-sıhhiyeye ve zabitanın ihtiyâcâtına muvafık suretde inşâ ve nevâkısının ikmâli lüzûmu umûr-ı bedhiyyeden olub ancak mahallerine irsâl olunan sâlifü'z-zikr defterlerle haritaların bu şerâiti câmi' olub olmadığı komisyonca takdir olamayacağından bu cihetden tedkikiyle mezkûr habshane ve tevkifhanelerin kâ'ide-i hıfzı's-sıhhiyeye ve zabıtaca olan ihtiyâcâta muvafık olub olmadığına ta'yîni için zabtiye ve umûr-u tıbbiye-i mülkiye nezaretleri tarafından erbâb-ı ihtisâdan birer me'mur ile bir mühendisden mürekkeb bir komisyon teşkiliyle keyfiyet-i mezkûr komisyonun nazar-ı mutâla'sından geçirilmesi lazım geleceğinden ana göre icrâ-yı icâbı lüzûmuna dâir virilen 11 Rebi'ül-Evvel 1312 târihli ve otuzüç numarolu mazbata sâlifü'z-zikr tezâkir ve müteferri'âtıyla berâber savb-ı devletlerine irsâl kılınmış olmağla bu babdaki mutâla'nın inhâsi himmet

Bâ-işâret-i aliyye-i cenâb-ı müsteşârî”

¹²⁴ BOA., MKT. MHM., 682/22, Ca 1315

“*Islahat-ı mâliye komisyon-u âlisi birinci a'zâlığı cânib-i vâlâsına*

Vilâyât-ı sittede bulunan habshaneler tahsîsatının derece-i kifâyeye iblâğı için icâb iden altıyüz kırkikibin yediyüzdoksansekiz gurusun üçyüz ondört sene-i mâliyesi muvâzenesine zamîmeten ve sene-i âtiye muvâzenesine de idhâlen takviyesi hususunda dahiliye nezâret-i celkilesinden vuku' bulan iş'âr ve ol bâbda bil-mücâze cevâben vârid olan 19 Cemadiye'l-Evvel 1316 tarihli ve 328 numarolu tezkire-i devletleri üzerine meclis-i mahsus-u vükela kararıyla bil-istizân irâde-i seniyye-i hazret-i hilâfet-penâhî şeref-müteallik buyurularak nezaret-i müşârün-ileyhâ ile mâliye nezaret-i behiyyesine icrâ kılınması ifâ-yı muktezâsına himmet”

It is not surprising to see that the prisons needed a very serious revision. But in one edict proposed by local authorities stated that all forms of prisons, after they had been inspected, it was understood that the prisons in Aydın, Edirne, Kastamonu and Biga satisfied the requirements of *Hıfzı sıhha*. The documents were recorded by the committee and investigation results were filed in the state bureau.¹²⁵

Another important aspect of this report was about its advice to government in the work of how they could overcome with the problem of the shortage of places for prisoners. It stated that the government should not pay too much attention to repairing of such prisons. By doing that they would not save any time and money. Instead of paying money on repairing policy, they should follow up other strategies. It claimed that the state they should sell real estate of such prisons and buildings which were in a center of city then they should construct a new one in outside of city.¹²⁶ Another report issued in 1913 stressed the density of prisons in which it was explained not through lack of such institutions in the empire, but through increase in the rate of crime.

An important problem the confined had in prisons was illness. I get the sense of radical care for these people by searching archival materials. In 1861 the government gave an order to purchase a new hospital just for the prisoners.¹²⁷ Another order stated that if there was no hospital within the borders of the prison, they could be treated in the public hospitals. Furthermore, there was an important

¹²⁵ BOA., TMK. S., 52/53, 1322,

“*Devletlu efendim hazretleri*

vilayeti şahanede kavaid-i hıfzı sıhha muvafık bir hale efrağı mukarar bulunan hapishane ve tevkifhanelere dair olarak Aydın ve Edirne ve Cezayiri Bahri Sefid ve Kastamonu ve Sivas vilayetleri ile Biga Sancağı mutasarrıflığından gönderilip komisyon-ı mahsusca lüzum-ı tedkiki melfik pusulada tarih ve numaraları sekiz kıta tezakiri aliyye i asafelerinde emri buyrulan evrakı keşife ve saire hakkında icra kılınan tedkikata dair mezkur komisyondan tanzim ve tahtim edilmek olan mazbala-i evrak-ı mezkurenin iadesiyle lafzen takdim kılınmış olmağla ol babda emri ferman hazretinin lehül emrindir.

Zafer Nisan (zaptiye nazırı)”

question that from which budget was to compensate the expenses of their treatment and how they were to be treated.¹²⁸ In these decrees, central administration made an attempt to inform the ruling officials of the prisoners about the changes and rules on what they had to do. In other words orders sent from center did not bind anyone else to check the general situation in the prisons after the obligations. Check and control was the late policy provided at the end of nineteenth century. The center used to warn administrators of specific prisons to find out why they could not complete the deficiencies that the inspectors were pointed out. In this sense health was one of the main defects of prisons. There was a huge amount of decrees indicating which prison did not satisfy the standard for basic health. The first rule in these decrees dedicated to *Hıfzı sıhha* problem. Generally some other reports from the periphery have emphasized that the new trend of the governing policy of the state and show how they radically changed towards the prisons and prisoners.

The most complains in orders were about sick prisoners. They were regarded to be free during their illnesses; however when they got better, they were required to complete their sentences. It was not clear that this tendency reflected the humanitarian interpretation of philosophical discussion on the punishment practices to see ill people as non-confinable. I assume that the reason behind this act was to control the spread of diseases among prisoners. They intended to take the sick away from the healthy ones. The edict reported in 1850s (1276) indicated how a sick prisoner was to be set free until he overcame his health problems.¹²⁹ The construction of new types of prisons or old ones had to regard hygienic principles. Some of them were reported to the center to ask for certain amounts of money to reframe the old

¹²⁶ Sofuoğlu , p.166

¹²⁷ BOA; A) MKT. UM, 447 (1277)

¹²⁸ BOA; A) MKT. UM, 451(1277)

¹²⁹ BOA, A) MKT. UM, 391(1276)

places into more clean ones. The construction plan in the first place emphasized the health scheme before building them. Attention to toilets and demand of opening a laundry were some of the attempts to implement such policies inside the prisons.

One of the orders sent to the governor of Erzurum province declared that the prison in Erzurum was very crowded. Most of the prisoners were ill due to not having basic hygienic. Although most of them were treated in the public hospitals, some of them who had been put in the prison for murder were not suitable for staying there. From then on, those who were ill had to be treated by general quarantine councils of Erzurum., In some cases, some ill prisoners had to pass the approval of the governor whom was mostly general of army, they had to be treated in the army hospitals if the specific cases did not emerge like if it is not crowded. If these authorities did not find it suitable to treat criminals in the public and army hospitals which could be against the dangerous for public order, they would be required to find new place for hospital for those criminals. If it was not possible, they should build a new one for those groups.¹³⁰

¹³⁰ BOA, MKT. UM., 447/32, C. 1277

“Erzurum valisine ve bit-tasarruf maliye nezaret-i celilesine

Erzurum mahbesinin darlığı cihetiyle mahbus bulunan eshab-ı cerayimin ekserisi hastalanmakda olarak emr-i tedâvîlerine mahsus bir locgemi¹³⁰ dahi olmadığından zuhur iden hastegân Merkez hastahanesi ma’rifetiyle tedâvi itdirilmekte ise de bunların içinde kâtil adamlar bulunarak bu misillülerin asâkir-i şâhâne hastegânı derûnuna konulması mahzûrdan sâlim olamayacağından ba‘de-zîn zuhur idecek hastegan Erzurum karantinası tabibi tarafından tedavi olunması veyahut kemâ-kâne merkez hastanesi canibinden tedavi olunacak olduğu halde edviye bahasının ne suretle ve ne taraftan tesviyesi lâzım geleceği Anadolu ordu-yu hümayunu müşîri devletlü paşa hazretlerinin tahrîrât-ı vâridesiyle beraber olan mazbatada inha ve istîzan olunmuş olduğu ve vâkı‘a eshâb-ı cerâyimin ziyâdece hastalanması habshanenin darlığından feşâin ideceğine ve bu makûle mücriminin askerî hastahanesine alınarak asâkir-i şâhane ile ihtilâtı mehâzırı müeddî olarak tecvîz olunamayacağına binâen eshâb-ı cerâyim için bir mahall tedârik ve tahsîsiyle bunlar için ayruca tabib tayinine hâcet olmayub askerî ve karantina tabibleri ma’rifetiyle icrâ-yı tedavisi mümkünâtından bulunduğundan ol vecihle icrâ-yı icâbı zımnında müşîr-i müşârun-ileyh hazeetlerine cevabnâme tastîri ve mahbes tedârik ve tahsîsi maddesinin dahî tesviye-i muktezâsı dâr-ı şûrâ-yı askerî karar müzâkeresi icabından olarak mezkur tahrîrât ve mazbata takdîm kılındığı ve müşîr-i müşârun-ileyhe cevabnâme istâr olundığı beyânıyla icrâ-yı icâbı devletlü ser-askerî paşa hazretleri tarafından bâ-tezkire iş‘âr kılınmasıyla keyfiyyet meclis-i vâlâya lede’l-havâle mahbusın-ı merkûmenin kesret üzere hastalanması mahbesin darlığından iktizâ ideceği münker olmadığı misillü bunların hastalarının asakir-i şâhane hasteganiyle bir yerde bulunması dahî münasib olmadığından bu hususa dâir mukaddemce Bâb-ı âliye vürüd itmiş olan tahrîrât-ı behiyeleriyle mahbes-i kebir mazbatası üzerine işbu habshanenin tevsî‘iyle müceddiden bir hastehane inşâsı maddesi maliye nezaret-i celilesiyle der-dest muhabere olunarak

All these reports give some important sense of new governing mentality dominated the whole nineteenth century of the Ottoman Empire. The investing policy over the care of confined here in these reports reflects the new ways of ruling appeared in this era. Since those criminals in the turn of eighteenth century was conceived by the ruling elite of the time as exhausted groups which would be punished in severe manner in order to deter people from acting in same crime. But now in the beginning of the nineteenth century onwards new awakening among power holders about the issue of punishment let to be conducted on soft manner confronted with radical change and many policies were provided for those groups were transformed very radically in this era. One of important parts of this change was about the introduction of medical treatment in the prison and much attention over the health of confined.

karîben kararının iş'âr olunacağı derkâr ise de ol vakte kadar bir muvakkat tedbir olmak üzere mücrimîn hastaları için bir hâne bulub hastahane tahsîsiyle zuhûr iden hastegânın askerî ve karantina tabibleri ma'rifetiyle icrâ-yı tedâvisi ve edviye-i lâzimesinin dahî emsâli gibi tesviyesiyle bahasının sandık tediyelerini mucib olacağından icrâ-yı icâbı hususunda savb-ı valâline bildirilmesi tezkür olunmuş ve sûret-i hâl mâliye nezâret-i celîlesine dahî bildirilmiş olmağla ol-vecihle icrâ-yı icâbı hususuna himmet buyruldu bende-i şukka *Nezaret-i müşârun-ileyhâya tasarruf*

Askerî ve karantina tabibleri marifetiyle icrâ-yı tedâvîleri ve edviye bahasının emsâli gibi sandık tesviyesi münâsib görünmesiyle ol vecihle icrâ-yı icâbı hususunda vâli-i müşârun-ileyh

Chapter IV

The Living Conditions of Prisoners and State Care of the Confined

The Prison; As a Modern School Educating the Confined

During the course of the twentieth century there has been tendency towards the rehabilitative theory of punishment. The main aim of this trend referred to the individualization of punishment in order to put criminals in satisfactory adjustment. The theory was based on some assumptions in which criminal groups were acting on bases in which their interest and their demands were not fulfilled by society. So in the cases of their education process they would be normalized and they could become members of the society. In such thinking, crime was not defined with the concept of punishment since the punishment process eliminated such behavior. Therefore according to this assumption, the place of imprisonment was to be used as a school in which physical torture would not be used and the people who were put there would be educated under the rules of the rehabilitation process.¹³¹ In such conditions, criminals would not be responded to with the punishment practices of administration, rather they would be welcomed with new techniques which it were meant to improve their skills.

The foundation of prison in the Ottoman context relied on rehabilitative theory in which it could transform criminal groups into the norms of social life. The imprisonment policy not only functioned to keep dangerous groups in defined places, it carried some other important responsibilities like educating criminals groups on the principles of opening a new way of living in the community like all other members

hazretlerine ve s^ret-i halin dahî savb-ı vâlâline bildirilmesi tezekkür olunarak keyfiyyet vâlî-i müşârun-ileyh hazretlerine

¹³¹ Grupp E. Stanley, (ed), *Theories of Punishment*, (Indiana University Press, London, 1971), p.7

of society. This tendency is clearly seen in the archival sources of Ottoman administration in which, especially after 1876, the Ottoman prisons went into reformation and confined were taught to read and write, they were given special work in order to learn some skills for employment after they released. For that purpose, one regulation law including thirteen articles was prepared and in 1880 seven articles were added to that law. All these were for prison guards in order to learn about how they should behave and what they could do for the confined.¹³²

The most important aspect of the 1880 law reflected the intensive version of the bureaucratization and disciplinization of the prisons. According to such law, communication in prison had to be checked by the administrator of prisons. All letters whether written to be sent or received had to be checked by the authority of the prisons head guardians. In addition, those who wanted to visit their companions in the prison were required to bring legal permission given by the local authority. Those who violated the rules of the prison would be punished with temporary loss of fresh air privileged. The visiting day would be announced by the administration of the prison at certain times, on other days, the relatives of the confined would not be allowed to see them. Many other important details of how the confined should act were fixed on certain rules in this code.¹³³ One interesting item was the medical care of the confined and how they should be treated which cases needed to be checked in terms of health conditions. The law insisted that every prison had to have one doctor on staff and in addition one part of the prison needed to be reserved for hospital purposes.

¹³² Ali Karaca, “ XIX Yüzyılda Osmanlı Devletinde Fahiş Hatunlara Uygulanan Cezalar:Hapis v Sürğün”, Emine Gürsoy Naskali, Hilal Oytun Altun (ed), in *Hapishane Kitabı*, (İstanbul, Kitabevi Yay. 2005), p. 156

¹³³ Yıldız, p.196

The religious obligations of the confined were also not forgotten in this law. One of the rooms had to be prepared for the religious practices of the confined without looking at their religion, both for Muslims and non-Muslims.¹³⁴ The purpose here was to rehabilitate such groups along the lines of religious order. It was believed that criminal groups could give up old habits by strengthening the ties between them and religion.

1880 Legal Act about Prison

In the 1880 legal act what we have seen generally was about how officials should act towards the confined. It completed all reformation attempts about improving the standards of prisons. It standardized all of the legal grounds of both the ruling authority and the confined in terms of the law. The Legal act in 1880 presented all of steps about how the local regions should form their own prison. It was stated that each district and city was responsible for founding its *Tevkifhane* and *Mahpushane*. It mentioned that all local authorities should form a prison beyond their locality as a general prison for all criminals belonging to their district who were sentenced to over five years of imprisonment. The confined were compelled to work, those who were not judged should be left from those who judged and given a punishment certain period of time imprisonment and, the room assigned to each criminal groups should be separated from other one. In addition, there should be some certain limits to the dimensions of each room. It was about 73 m. For each of them, the officials required to keep a file of how the confined behaved within the boundaries of the prison and whether they met the rules of the authority or not.¹³⁵

One of interesting parts of the 1880 act was about the specificity of the position of women. The prisons were ordered to evaluate the situation of pregnant

¹³⁴ Ibid., p.199

women. They were to be sent to hospital at the time of birth if the doctor approve of the case in his report. But they were to complete the missing parts of their sentences after they gave birth.¹³⁶

In 1879 another arrangement about the issue of prisons was published in which it was ordered to improve the previous living conditions within such institutions. It ordered the Ministry of Justice to take precautions against violations in these prisons. The many texts were reported to the sultan about prisons at this time in which it mentioned that the worst conditions of the prison and they were expressed the necessary policy of constituting and categorizing a special prison according to issues which confined were sentenced by. This new type of prison was supposed to be arranged into four sections. In the first place we have seen *Tevkifhaneler*, second a *Kabahat*, third a *Cünha* and finally, a place for convicted murderers. It was divided into four sections for each case. Each of them included three rooms within its interior. The first room was a place for children, the second room was for murderers, and the third room was for women mainly convicted for prostitution cases.

The Ottoman officials were following the politics of foreign states about what had to be done with prisons. It felt anxious on the issue of knowing what was going on around the world with prison systems. So in general the Ottoman Empire in 1890 delegated to attend one of big conferences in St. Petersburg which gathered to discuss how states should deal with criminals. Many problems were discussed by the participants. Some they were about how they could form some bases of exchange of criminals between states; others about how to deal with some crimes that occurred in drunken states; or about introducing law schools with new lessons about how to deal

¹³⁵ Taner, Tahir, *Ceza Hukuku, Umumi Kısım*, 3. Baskı, (İstanbul Üniversitesi Yayınları, İstanbul,1953), p. 618

¹³⁶ Bozkurt Gülnihal, *Batı Hukunun Türkiye'de Benimsenmesi; Osmanlı Devleti'nden Türkiye Cumhuriyetine Resepsiyon Süreci (1839-1939)*, (Ankara, Türk Tarih Kurumu, 1996), p.112

with imprisonment. They also discussed the possibility of the postponement of punishment, and criminal acts by children and how they should be perceived within the new system of the penal code. Deal with those who helped the criminals in acting crime during a crime, and how to release children on conditional terms and provide them with rules of how they should be treated by guardians were also discussed. Still other topics were how those who had completed their sentencing could finance themselves after they were be released, and how to categorize the confined according to their crimes, how to behave towards those who were sentenced to long-term imprisonment in the process of moving them to other prisons, and how these states could form statistical bases for those criminal groups.

The conference finished 24 on July and it was decided that the next one would be meet in the Paris. The Ottoman state was involved in a process of applying the decisions accepted of the conference under the committee assigned to Internal Ministry of the Interior. This international conference leads the Ottoman to think more on the issue of how to deal with prisoners in a modern manner.¹³⁷ Under such effects they turned to revise many malfunctioned aspects of their prisons and the living habits of their prisoners. So it is not surprising to see the categorization of each criminal group within the prisons. The confined were separated into the rooms of the prisons according to crimes they had committed. In some cases those who had been sentenced the same year were be put into same room.

Living Conditions of Prisoners

In this part, the position of prison in the context of how their reception was turned to be from a consumed group to a more invested one will be defined. Second

¹³⁷ Demirel Fatmagül, "1890 Petesburg Hapishaneler Kongresi, *Toplumsal Tarih*, (May, 2001) pp.11-4

what made it possible for the governing elite to give up the old habits of imprisonment and to look at criminals from the humanitarian perspective will be discussed. Here I will suggest that the first reason of behaving in a good manner towards the confined was affected by the elite perception of being one of part of a civilized country and having good representation in terms of western societies. As these ruling elite pointed out many new attempts about the new order of society that had occurred in the Europe needed to be applied in the domains of the Ottomans. The legal regulation of who acted and in which manner has needed to be founded on fixed rules. Therefore the Ottoman regulation law in 1880 for prisons emerged on the basis of such demands. In the first article of this law, it was stressed that those people who were sentenced should be left from those who their judgement process was not ended yet. It also stated that in every prison, there should be one part separated for women prisoners. What was important in this law was that for the first time the issue of prisons was dealt with by the central authority in a serious manner in which every detail of the administration within the sphere of such institution was fixed with certain regulations. The arbitrary acts of officials and then confined together were assigned on paper in which every individual in the prison whether they were criminals or not were given responsibilities and rights on this paper. Of course it is very difficult to deduce very general results from that law, and we know that on the question of how much these were applied such places were not so much clear.

The living conditions of the Ottoman Empire in many cases were stressed that the prison in most parts of Ottoman Empire was in bad conditions. The main problem with cleaning could not be solved. Most of prisons were reported to center in defining a solution for such places. One report written by inspectors in 1850s (1277) explained that most prisons were so cramped and not functional. None could pay

attention to the hygienic aspects of such institutions and most of the confined were affected from these bad conditions. The orders sent by the center implied to fulfill what was needed for revising the lack of prison. The order was received and the constitution of committee for the definition of the main questions of prisons and prisoners began. This group of officials accelerated their work and revised the prisons mentioned in the order. Finally, through their industrious work, the most part of the deficiencies mentioned were rectified in good manner and the living conditions of prisoner were improved.¹³⁸

One of the oldest demands in 1861 recorded in the Ottoman archives mentions the need for the reform in the situation of the prisons. It is a report to the Minister of Finance demanding supplies for the prisoners. It was clarified that in the first place bread, coal, olives, and the communication costs of telegraph messages were needed. Another document stressed this point of view for the Haseki prison. It was stated that the administration of this prison should spend the money left from other expenses on clothes for the confined. Although these reports reflect the bad conditions of the prisons, some rulers of the time ignored such claims. Sultan

¹³⁸ BOA., MKT. UM., 462/13, N. 1277

“Makam-ı Ulya-i Sadaret-Uzmaya

Ma‘rûz-ı Çâker-i Kemîneleridir ki

Memâlik-i mahrûse-i hazret-i şâhânedede bulunan habshânelerin ekseri dar ve uygunsuz olduğundan ve bazı mahallerde dahi tanzif ve tathirlerine hiç bakılmamakda bulunduğundan mahbûsînin sefâlet çekmekte oldukları cihetle sâye-i ‘inâyet-vâye-i cenâb-ı pâdişâhîde zikrolunan habshânelerin sûret-i tevsî‘ ve tanzîfiyle bir hey’et-i muntazamada bulundurulmak üzere ıslâhât-ı külliye-i matlûbesi der-dest tasavvur bulunduğu beyân-ı ‘âlisiyle bunun husûlüne değin buralarda bulunan habshânelerin hâl-i hâzırlarınca ıslâh ve tanzîfiyle mahbûsînin bir gûne sefâlet çekdirilmeyerek esbâb-ı huzûr ve râhatlarının istihsâline ve zikrolunan habshânelerin ne halde bulunduğının ve mahbûsînin kesreti hâlinde matlûb vecihle muhafazaya tahammülü olup olmadığının dahî serî‘an arz ve inhâsına müsâra‘at kılınması babında 15 Şaban 1277 tarihli müverraha bir kıt‘a emirnâme-i sâmi-i cenâb-ı vekâlet-penâhîleri fark-ı irâe-i iftihâm olmuş ve buralarda bulunan habshâneler mahbûsînin kesreti hâlinde muhafazaya mütehammil olduğu misillü herbâr tanzîf ve tathîrlerine dikkat ve sâye-i merâhim-vâye-i hazret-i şâhânedede mahbûsînin sefâlet ve zucretten vikâyeleriyle huzûr veistirâhatleri esbâbının istikmâline dâimen sarf-ı takviye-i makderet kılınmakda olduğunun arz ve inhâsı ma‘rûzunda ‘arîza takdîmine cür‘et kılınmıştır ol babda ve her halde emr ü ferman hazret-i veliyyü’l-emrindir. 6 Ramazan 1277

Kâim-makâm-ı Livâ-i Kürdistan
Mehmed (Muhammed?)”

Abdülaziz was one who claimed that none of his prison was in bad conditions, he even invited his subjects to come with him and see how nice they were.¹³⁹

One of the petitions sent to the center from Midyat prison, district in the south part of Turkey, declared how the inefficient conditions of the prison was reflecting to the outside. It was reported to the center that this prison was so small and it could only include two rooms within its walls. There were no rules of hygienic care considered for this place. Those who were ill had chance of being treated in the medical sense. The absence of water sources led the prisoners to live in a bad situation. In some cases, the confined could not even find a little water for their toilette. In the second part, complaint was made about the misuse of authority. The local governors put some people into prison without judgement. Some officials who were working in the prison did not know how to behave according to the law because they were illiterate. Then it was added that by taking the legal bases from 1801 which aimed to introduce some reforms within the jails, those were in there would not be deprived of food and water. It was understood that such complaints had been reported previously to the center and in response to the report this letter was written by the governor of Diyarbakır province to clarify the issue of whether such claims reflected some truth or not. The report continued that the complaints of the confined from such places had been examined and they had gone to check on the situation of such prison. It was understood that some officials were not fulfilling their responsibility in the implementation of legal reforms for those places. It was seen

¹³⁹ Sofuoğlu, p.164

“Mahalli mezkurun tahliyesiyle mebalîği vafire sarf olunarak, biri mücrimine, diğeri nihayet 3 sene kadar haps olunacak mahbuslara olmak üzere, iki daireye bit- taksim müteadid koğuşkar, hastahaneler ve ehli sanat olanlar için mahaller ile hamam, cami, kilise vesaireyi havi olarak, pek mükemmel ve muntazam surette tamir ve tesviye olunup, hapishane-i umumi itihaz kılınmış olan mahalli, sadrıazam ile vükela bil muayene tahsis olunmuş ve bunun seyr-ü temaşası için istek edenlere, oranın birkaç gün için açık bulundurulacağı ilan kılınmıştır. O tarihten bed ile mahbusların oraya nakliyle iskanlarına karar verilmiştir.”

that Midyat prison was again in the worst condition and none of new acts had been introduced to there. The files about this inspection now were waiting and had not come yet.¹⁴⁰

Many reports sent to the center stressed the voices of local authorities demanding money to repair or enlarge prisons. Many of these places were reported

¹⁴⁰ BOA. TMIK. S., 26/21, RA. 1317,

“Diyarbakir Vilâyeti

Mektûbî Kalemi

Aded 45

Dâhiliye nezâret-i celîlesi cânib-i ‘âlisine

Devletlü Efendim Hazretleri

Midyat ve Avniye kazaları habshanelerinin birer ikişer odadan ibaret ve kavaid-i hıfzı’s-sıhhaya gayr-i muvâfık olduğu gibi beledî tabîbî bulunmaması sebebiyle merzâ-yı mahbûsünin tedâvilerine i’tinâ ve muhtâcîne nân-ı ‘azîz de i’tâ idilmemekde bulunduğu ve Avniye habshanesinde kuyu ve akarsu olmadığı cihetle mahbûsünin def’-i ihtiyâc hususunda müşkilâta uğradıkları ve haklarında tevkif müzakeresi virilmeyen birtakım eşhasın Midyat kâim-makâmının emr-i şifâhî ve tahrîrisi ile ve muhtelif müddetlerle mevkûf kaldıkları ve zâbita memurünün okuyub yazmak bilmediği için kuyûd-u resmîyenin intizâmından berî idüğü ve üç odadan ibaret olan Mardin habshanesinin mevcûdu hacm-i istî‘âbîsinden pek fazla olduğu ve mahbûsün hastegânının tedavisi için ayrıca bir mahall olmadığından merzâ-yı mahbûsünin habshanede tedâvî olunageldiği adliye müfettişliğinin iş‘ârına ‘atfen adliye nezâret-i celîlesinden izbâr buyurulduğu beyânıyla icrâ-yı icâbî şeref-vârid olan 27 Mayıs 1215 tarih ve kırk bir numarolu tahrîrât-ı ‘aliyye-i cenâb-ı nezâret-penâhîlerinde emir ve iş‘âr buyuruluyor habshanel ve tevkifhanelerin bir bir hâl-i intizâm ve mükemmeliyete konulması ve mevkûfın ve mahbûsünin me’kûlât ve meşrûbâtına ve sâir ihtiyâcâtına lâyıkyla bakılması bâ-irâde-i seniyye-i hazret-i hilâfet-penâhî Rumili teftîşâtına ‘azîmet-i ‘âcizânemde Bâb-ı ‘Âliye ‘arz olunub ta‘mîm idilmesine hizmet olundığı cihetle velâyet-vürûd-u ‘âcizânemle beraber en evvel nazar-ı dikkat ve ehemmiyete alınan mevâdd-ı mühimmeden birisi de işbu habshane ve tevkifhaneler maddesi olub bunların kuyûd ve mu‘âmelât ve tanzîfât ve sâ’ir husûsâtca bir hâl-i mükemmeliyette bulundurulması ve mevkûfın ve mahbûsünin ekmezsiz ve susuz bırakılmaması lâzım geleceği hakkındaki evâmirin ve ol bâbdaki mevâdd-ı kânûniyenin muhikkât-ı velâyete muvazzahan ifâ-yı teblîgât ve ahîren bid-defe‘ât icrâ-yı te’kîdât idildiği gibi esnâ-yı devir ve teftîşde her mahall habshanesinin biz-zât icrâ-yı mu‘âyenesiyle görülen nevâkıs ve ihtiyâcâtının müsâra‘aten ikmâli zımnında şifâhen dahî vesâyâ-yı lâzime ifâ kılındığı nezâret-i celîle-i dâverânelerine bu yolda vukû‘ bulan ma‘rûzât-ı ‘âcizânemlede bedhî iken iş‘âr buyurulan habshanelerin yine öyle mugâyir-i usûl ve nizâm bir halde bulundurulması sahîh ise vesâit-i eczâiyyenin fikdânından ve münâsebetsiz halleri hakkındaki ma‘rûzâtın is‘âfına müsâ‘ade buyurulmamasından münba‘is olub bu da sû-i te’sîri ve icrâ kılınan teblîgâtın te’hîri gibi mehâziri mü’eddî olmaktadır ez-cümle geçen sene devren Mardin’de bulunulduğu sırada mutasarrıf-ı liva dahî beraberce alınarak habshanesinin mu‘ayenesine gidilmiş ve çâkerleri habshânenin her koğuşunu gezüb her dürlü hallerini tedkîk ve teftîş itmiş iken mutasarrıf-ı müşârun-ileyh müsâfir gibi dışaruda kalub beklemiş ve mu‘âyene-i çâkerânemde görülen ihtiyâcâtın tetmîmi zımnında kendüsine ta‘rîfât ve vesâyâ-yı lâzime ifâ ile berâber çâkerleri orada iken ikmâl-i nevâkısına başlatdırılmış olduğu halde ‘avdet-i ‘âcizânemden sonra yine lâyıkyla bakılmadığı geçende Mardin’e ‘azîmetle ‘avdet iden sıhhiye müfettişinin ifadesinden anlaşılabilir vesâyâ-yı sâbıkâ te’kîd idilmiştir ancak mutasarrıf-ı müşârun-ileyhin emr-i nezâret-penâhîleri mücebince me’mûr-u mahsûs i‘zâmıyla tahkîk olunan mesâvîsinden birisi de bu madde olub ba‘dehû mu‘âmele-i mertebe-i sübûta vâsıl olduğu halde müşârun-ileyh hakkında şimdiye kadar vukû‘ bulan ma‘rûzât-ı ‘âcizânemle is‘âf buyurulmamış ve tekdîm kılınan evrâk-ı tahkikiyyeden dahî bir netîce alınamamış olması her işde müşkilât ve tehhürâtı istilzâm itmektedir ma‘âfih bu def‘aki emr-i nezâret-penâhîleri dahî vesâyâ-yı sâbıkâyı te’kîden ehemmiyetle teblîg kılınmış olduğu ‘arz olunur ol bâbda emr ü fermân hazret-i men-lehü’l-emrindir. 27 Safer 1317 ve 23 Haziran 1315

Diyarbakir Valisi

Mehmed Halid”

as so small they could not be defined as prisons. The ways of getting income to repair these building could be possible by selling certain properties of the prisons estate. This policy, unlike that of the critics mentioned by some authorities, would be possible according to the law in addition to that many other policies that were also advised to be overcome the inefficient conditions and lack of enough prisons for confined.

One of important complaint was about the density of the prisons in which many prisoners could not find any place even for sleeping. Reports advised the center of how to deal with this question. Mainly pragmatic solutions were offered to them, like sending some of them to other prison or renting houses which could be used for the purpose of imprisonment. In some cases they recommended releasing those who had not been sentenced yet.¹⁴¹ In many inspection practices, it was seen that most of prisons did not include any kind of living conditions for the confined. The local authorities were reordered to substitute all missing parts of these institutions, but we do not know a situation of if local authorities did not do, what would happen to them.

One pragmatic way of dealing with the density of prisons was to issue temporary amnesty for those who had finished two-thirds of their sentences. Although it would not suit the modern sense of legal practice, it mainly took its root from pre-modern forms of ruling tradition. In other words it worked on the basis of subjects and the mercy of the sultan in which rulers sometimes reflected his benevolence to his ruled people.¹⁴²

Although some foreign scholars exaggerated the living conditions in Ottoman Empire as unbearable and very bad, it did not represent them as ultimately true. For

¹⁴¹ Sofuoğlu, pp.164-65

¹⁴² Yıdız, p.174

example Vahan Cardoshian's work, published in 1908, described such institutions in a manner of dirtiness and malfunction. He wrote that they were very wet, very cold and they were only bread but nothing else, so they were in need of their relatives outside. Of course there is some truth to his observation, but what is important here is to be able to see the talk of reform and legal act over such institutions. That makes sense of how "governmentality" does work for each era.

The State's Responsibilities towards the Confined

In the eighteenth century of Ottoman prison context, the state had absolute power over the lives of the confined. This power in the mid-nineteenth century began to fix on the mutual relation in which the state was in attempt to keep up its control over criminals by renouncing its old power. In other words, now the state bound itself to certain rules in behaving towards criminal groups. So unlike in the eighteenth century, the Ottomans were in an attempt to implement the use of law for every aspect of society. The prison was one institution to which the state brought some regulations to which the confined had in terms of rights and what kinds of duties were assigned to them. Here, as we have seen that with the implementation of the 1880 law on prisons, the confined got some rights but together were bound to do certain kinds of work against such developments. Some examples of such duties were given at the beginning of this chapter. Here focus will be given on the responsibilities of the state against the confined as stressed in this law here. In addition to that I will give place to some archival matters on the issue of how their needs were responded to by the state authority.

One of interesting will of Sultanic regime send by the center signifies the role of the state how it saw to take responsibility against the families of the confined

where they could not satisfy their primary needs. It stated that a man named Berner Bekir from Sivas came from Çavuşođlan quarter. He murdered Fatma and was sentenced to five years to row (kürek çekme). Although he could not complete his sentences, his family was not able to provide themselves. He had two sons Mehmet and Osman, and a daughter Fatma. He had no one to look after them. They fell in poverty and trouble. Therefore even though had not completed his time, he begged mercy. However, the time expressed could not lead him to be released. Instead of his release, it was decided that his children should be granted a certain amount of cash by the authorities, which it should be repaid after he had completed his sentence and was released.¹⁴³

In the Ottoman prisons, the confined were granted a certain amount of food in order to survive. Those who were poor and unable to provide for their basic requirements were to be served enough food for their nutrition.¹⁴⁴ In this sense, the state did not consider the social economic background of the confined for their food supplies. Another order for a prison in Lebanon is also focused on the non-questioning of prisoners economic background for their daily consumption of food.¹⁴⁵

In fact the Ottoman policy of reform on prisons was achieved in a general sense in the 1900s. After the foundation of the General Administration Bureau of Prisons *Hapishaneler İdare-i Umumiye Müdürlüğü*, the check and control of prisons could be held in a serious manner as a policy of state. This institution constituted a

¹⁴³ Bozkurt, p.264,

It was reported that “Sivas’ta Çavuşođlan mahallesi sakinlerinden Fatma’nın katili olup beş yıl müddetle küređe konan Berner Bekir’in ceza müddeti dolmamış ise de, çok fakir olup, Sivas’ta bulunan ođulları Osman ve Mehmet ile kızı Fatma’nın bakacak kimseleri yoktur ve sefalete düşmüşler, bu nedenle Bekir’in affedilmesini istemişlerdir. Ancak cezasının bitimine üç yıldan fazla vardır ve çocukların durumu, tahliye sebeplerine uymamaktadır. Babalarının cezasının bitimine ve tahliyesine kadar ve sonradan geri alınmak üzere, bu çocukların infaki için mahallin emvalinden 60 kuruş bağlanmasına dair tezkire.”

¹⁴⁴ BOA, DH. MB. HPS. 51 (1330)

special commission, most of whom were non-Ottoman subjects as the supervisor of providing certain kinds of politics for the central authority on the issue of prisons. The head of the institution was chosen from Germany for five years. His name was Politz and he was a doctor. His first effort was to observe the general situation of all Ottoman prisons in Anatolia. He advised the central authority about what should be done to such places if they were in bad conditions. He prepared a survey in order to get a sense of the general complaints of the confined. The survey consists from five parts. In the first part was written the name of the prison, manager, officials and secretary and the numbers of guards. In the second part, was recorded the exact numbers of inmates. This section specifically inquired about women and men and those who were accepted officially as children as separate from each other. The third place recorded the numbers of those who could be released in six months and who had specific skills, especially farmers and those who had worked previously in the repair of roads. The fourth section mainly noted the situation of the confined, the numbers of those who were working in public affairs and who were employed in the work of the prison itself and those who did not deal with anything else. The fourth parts of survey described the consumption habits of the confined. It was questioned what was given to them per week and how it was cooked and if there was a kitchen within it.¹⁴⁶ By doing that survey, Politz gathered a great deal of statistical data about Ottoman prisons. In one of the forms it was stated that the Jerusalem prison did not include any form of kitchen and it had 555 men, thirteen women and forty two children. For each of the confined, the state gave the confined three hundred Dirhem for food per prisoner per day¹⁴⁷.

¹⁴⁵ BOA, DH. MB. HPS. 76 (1335)

¹⁴⁶ Gönen Saner Y., in *Hapishane Kitabı*, 2005, p.177

¹⁴⁷ *Ibid.*, p.178

When we come to 1910s, the issue was held in serious manner. The center was in attempt to design a new type of prison in which the confined were supposed to live in a good manner. A facility planned for Ödemiş district was to be built on a modern basis. According to this plan, each room for men was to include thirty men, one for women, one room for guards, a place for ablution. All attempts behind such policy were explained by Sofuoğlu as the fear of the authority of the confined in which it was assumed that in a situation where such the requirements were not satisfied, those criminal groups would not be rehabilitated.¹⁴⁸

We have seen some attempts of the foreign powers to check the general living conditions of Ottoman prisons. The Russian embassy demanded to see how these institutions had been modified by the central authority. It was stated in *İkdam* newspaper by the government that much of the information had been written on the Ottoman prisons was far away from reality. It was presented that one of the mobile correspondents from *Növeye Niremyan* newspaper; named Nalçanov could give accurate information about the general state of the prisons. It was added that he had visited the prison with the Russian ambassador, and taken many notes about the general conditions of the prisoners. Their observation falsified all of the arguments proposed by many people about the bad conditions of the prisons and how they were lived crowded together and hungry. They reported that the prisoners were not hungry and their living situations were not so bad. Unlike Russian country prisons, Ottoman prisons were huge and the architectural design of such buildings had been critically taken into consideration. The basic food needs of the confined were received by the

¹⁴⁸ Sofuoğlu, p.167

state expenditures and those who were wealthy could also have food brought in from outside prison.¹⁴⁹

The control mechanism over the prisons gives us some sense of reliability in order to deduct some analysis of the prisons conditions. It was controlled periodically by a group of officials periodically called the *Heyet-i Teftiše*. They were fully authorized to check the officials who were responsible for the administration of the prisons. In the case of 1916 Havran as the district prison was checked out and reported that it had not adopted the hygienic rules within the prisons room. An urgent order was issued to compensate this defiance in a short period of time.¹⁵⁰ The same order was also issued for the Akşehir prison. The inspectors of prisons were not randomly appointed. The posts were bound to certain criteria, as seen in the order reported in 1915 which defined the general criteria for the inspector's groups who could be appointed to control of the prisons and those who did not have such principles should be tired from this post.¹⁵¹

One development provided by the Ottomans towards prisons was introduction of new a room at the center in the last decade of Empire in which it was aimed to constitute a special official room for institution gathering all of prisons administration in one place. It was formed under the Ministry of the Interior called *Hapishane Daire- i Umumi* in the 1910s. The main reason behind this effort was to be able to know what happens in the general work of the prison and to have the opportunity to improve certain policy for each of prisons which functioned in worse manner. It was mainly aimed to know about the deficient part of these prisons and to be able to interfere in problems before they arose.

¹⁴⁹ İkdam Newspaper, November 1896, quoted from *Toplumsal Tarih Dergisi*, "Osmanlı Hapishaneleri" (November 1996), p.3

¹⁵⁰ BOA, DH. MB. HPS. 7, 1332

¹⁵¹ BOA, DH. MB. HPS.7, 1331

Prison Labor

The most rehabilitative policy conducted by the Ottoman state was to educate prisoners and equip them with specific professions in order for them to get jobs after they released. This kind of policy was supposed to discipline criminals deterring them from acting in the criminal issues.

The employment of prisoners in the public works was inherited by the Ottomans from the Habsburg governing mentality. In this dynasty, one of reformist officials, Anton Pergens, was appointed supervisor of control over the all aspects of criminal cases. His most important contribution was to strengthen the control mechanism of the Habsburg Empire over some groups mainly beggars, the unemployed and other criminal groups. His intention was to discipline such groups within the structure of the state. Therefore his main reformatory act was conducted on prisoners whom he saw confined in a situation of an irregular manner. So they needed to be disciplined. First of all, he introduced rules for prisoners which were about how they should be treated. According to these rules, they had to cut their hair they had to wear matching uniforms in prison. After the issue of such laws, prisoners were assigned to work in the cleaning of Vienna streets in 1780. However, these forms of work for such groups did not satisfy the ruler of Habsburg. Since the new meanings assigned to the terms of punishment in western society, like the work of prisoners in the public affairs, had not reach the boundaries of the Habsburg Empire yet. The emperor II Joseph was dissatisfied by Pergens reforms, which he considered that these reforms did not convey a severe enough punishment. According to him, those who were sentenced with a certain period of time had to be used in hard labor. But Pergens was interested in rehabilitative aspects of imprisonment in his reform. So

he proposed two ways of imprisonment, both for those who were sentenced with severe punishment and others. In the first category, it was aimed to put them in a place where they would separate from society. In the second group, those put in prison for a year would be employed in public work¹⁵².

When we come to work in prisons, it is certain that some inmates were used in the state infrastructure. Especially they were hired in the hard work in harbors, railways and mines. In the center, they mainly worked in textile factories *iplikhane* which functioned for the benefit of the state. It is not known whether they were paid or not. However, what I saw in one archival document dated in last years of Empire 1919 was that a certain amount was given to the prisoners who worked in the affairs of health within the prison and for those who worked in repairing the prison.¹⁵³

The work of prisoners in outside became the main policy of the central authority, especially after the second issue of the law about the regulation of the prison. The first law was issued in 1880 and it mainly dealt with the question of how legal basis of the prisons could be performed and it primarily defined the positions of each individual within the boundaries of the prison. It is not clearly known when it was issued exactly, it is known from archival sources that it happened after 1900s. One of the sources proposed by Gönen states that the main reason behind the declaration was that this law was issued to rehabilitate prisoners and then continues to express that it was not aimed to confine people and isolate from society, which was seen as irrational. Instead it aimed to constitute prison as a place where economic relations took place. In other words, it was conceived that prison should be formed on the basis of industrial production and so people who were put there had to be prepared for these aims there. It continued to stress that if the state implemented

¹⁵² Paul Bernard, *From Enlightenment to the Police State, The Public Life of Johann Anton Pergen*, (University of Illinois Press, Urbana and Chicago 1991), pp.129-31

such a policy, it would lighten the burden of such places from its budget. At the end it was suggested that those who did not work could not get any sense of virtue to in their mind¹⁵⁴.

The work of prisoners has important part of the social life in prison. This policy was not new and it was conducted on the principles of rehabilitation. One article written by Basiretçi Ali Efendi in *Basire* newspaper published in 1871, pointed out that the new prison opened in Istanbul in the same year was designed to educate prisoners on the principle of equipping them with special professions. It was conducted on the basis of offering criminal groups all the equipment they needed for their work. It was reported that all of the production designed in such institutions was sold in the market and all profits kept by the officials in a store. The prisoners would be given that money, when they were set free.¹⁵⁵

The over emphasizes of the Ottoman on the work of prisoners reflected their opinions about how they regarded the potential threat of people especially those who are not tended to work. For the officials of the time, those who were unemployed always represented a potential threat within society. So if they could be well equipped in prison they would not be involved in criminal acts after they were set free. This mentality commonly was represented among the ruling elite of time. They showed this tendency at international meetings about prisons in Saint Petesburg in 1890.¹⁵⁶

The main text issued in 1880 about the regulation of prisons in which the idea of how confined the should act within the borders of prison supported the

¹⁵³ BOA, DH. MB. HPS. 99 (1339)

¹⁵⁴ Gönen, in *Hapishane Kitabı*, 2005, p.179.

¹⁵⁵ Basiretçi Ali Efendi, *Istanbul Mektupları*, (İstanbul, Kitabevi Yayınları, 2001), p.38

¹⁵⁶ Yasemin Saner Gönen, “ Osmanlı İmparatorluğunda Hapishaneleri iyileştirme Girişimleri”, Emine Gürsoy Naskali, Hilal Oytun Altun, (ed), in *Hapishane Kitabı*, İstanbul, Kitabevi Yayınları, 2005 p.180

functionalist theory proposed how those people being subject matters of work enforced by the state. Article 17, 18 and 69-72 reordered the daily activities of the confined. According to this law, prisoners were required to work. Nobody in the prison would be allowed any privileges. Everyone had to be employed at a specific job. They all needed to get a job after they were released from prison. Those who ran away from work would be punished. The punishment of those who did not work was started from 24 hours to one week of being deprived from going to the courtyard or to taking a break outside. In repeating such an act, they would be fined with a double period. They would be given a certain amount of money in return for their work, but half of them would be taken under the pretext of their cost of eating, clothing and other costs were done by the state over them. The other half of the money would be saved in the prison store. When it was needed, it would be consumed for the benefits of the confined.¹⁵⁷

From the beginning of nineteenth century onwards, it is obvious that Ottoman elite thought of needs about reform within domains of its prison. It was conceived by many inspections reported that many places as called prison did not satisfy hygienic requirements. Although these reports reflect the ottoman inefficient living conditions in such places, they also represent new kinds of governing habits as well. What is here as important in these reports to be able to see the importance of human labor capacity in the work of state infrastructure. Therefore the reforms attempt in prisons by issue of regulation was derivative of disciplining the society according to will of power. The public aims of transforming prisons as a place like school educating criminal groups according to demands of capitalistic order could be easily reflected within this part of Ottoman history. Improving the prisoner's capacity by enforcing such people to learn any kinds of profession within its confining period lead us to

¹⁵⁷ Gönen, p.179.

think the Ottoman govern-mentality does work in the same time with its European counterparts. Since such groups of people were defined as "dangerous" to the social order of their governing regime. So they were subject to the certain discipline mechanism in where they had to learn how to adapt their life to this new sense of order. They were needed to produce so they had to learn one specific profession during their imprisonment.

Conclusion

This work tried to display the facts about the transformation of the punishment policy of the ottoman focusing on the nineteenth century. My study points out to the birth of the prisons relying on the archives. On the issue there are two different kinds of interpretations on how imprisonment replaced corporal as punishment. One is Enlightenment point of view which examines the human condition as a linear development that follows a process which goes from worse to the better. The second interpretation is that of the Functionalists who claim this emergence of prisons is due to the demand for human labor. The prisons, for the functionalist point of view, are the places to reply this demand. The most radical critics about prison come from Foucault who emphasizes that such institutions are the outcome of power consolidation. It is obvious that as the ottoman has its own conditions may have lead. My main emphasis is benefit from Foucoulidian critics and functionalist theories on Ottoman prisons in this work.

At the first place, this work tried to find a place for the constitution of Ottoman prison within world system. The argument was to eliminate the view of defining all acts of Ottoman by western impact. In the general look of this thesis this argument was tried to be refuted by giving references to its counterparts. State dynamic favored by the Ottoman state was evaluated with western impact at the same time. Then I tired to define the context of how modern prison turns to be seen in the Ottoman agenda. In this session I tried to give more places to Ottoman criminal codes issued in the mid-nineteenth century. By doing that, it has been aimed to demonstrate how state was involved juridical system and aimed to increase its

power. The issue of such legal acts was functioned to increase the power of bureaucracy over the local elite and also Ottoman was tried to rationalize its legal codes in order to decrease the role of interpretation in the decision making process. In this part, argument here tried to claim that whenever Ottoman more bureaucratized, it could more interfere in the legal process. So the abolition of torture and birth of prison was ultimately outcome this development. From nineteenth century onwards Ottoman state were in attempt of forming a strict bureaucracies and increasing its power all over aspects of society. So the corporal punishment practices of Ottoman before to this era were due to not having the capacity of infusing in the case. The increasing capacity of state thanks to modernizing process, state could able to condemn the corporal act within domains of empire and forming more rational bases of imprisonment. Here the argument is not to claim that corporal punishment was totally disappear in the Ottoman context, rather the point is to see the definition of such act was issued as illegal within the mind of state elite.

As I tried to point out, use of medicine in prison and reconsidering health policy for the confined from eighteenth century onwards were important objects of defining power politics emerged between society and governing elites. The emergence of better organized state and centralized powerful bureaucracy triggered a new kind of governmental politics to be held in that century. The confined in the Ottoman prisons were conceived to be rehabilitated; the point here is to the idea as it was outcome of developmental human sense instead here is to criticize this aim as it was not so innocent because this was the way for consolidating central authority over the society.

In this thesis, there is also emphasizing on the Ottoman legal transformation in the nineteenth century. As it is known that Ottoman went through reformations for

legal system in which there had been great tendency to eliminate other factors that had been an effective in the decision making process of judgement. By the advent of imprisonment in the Ottoman context, central power aimed to bring forth its own system as the only one which could be unavoidable in the final decision in a place of severe punishment. In addition to this, power politics of Ottoman needed to invest on its population. This system, made the confined contribute to the industrial production process. As Dario Melossi and Massimo Pavarni stressed it was outcome of capitalist order to arrange labor according to its need. That principle was valuable when we look at the European states, Egypt and Ottoman, the use of Prisoners power. Especially in Egypt reformation process held was totally sacred human power in that period. Since the army reform by M. Ali and integration of their economy into world system required to see productive side of population as the one which prisoners should be regarded not according to traditional act of corporal punishment rather as invested bodies to social politics. Herein, as I pointed out in the third and the fourth chapter's medicalization of the prisons should be conceived from this perspective.

Furthermore, this fact as we have seen in the Russian case that abolition of corporal punishment was acted by the ruling elite based on the idea that it was symbolizing the backwardness, the same as it was perceived in the Ottoman. Even masses did not favor the abolition of corporal punishment. When we come to Ottoman case, we could easily say that the declaration of *Tanzimat* was a breaking point for reformation process in the nineteenth century and the name of that declaration gave its name to the developments of a whole period. What makes it so important for the Ottoman history is that, it abolished the punishment in torture and brought new penal codes which limited the roles of interference in the judicial

process and enabled the judge to base the decisions on a written text. Since in the previous practices, one could only be judged according to oral representation but not look to evidence related to case. With the advent of investigation department state tried to change its legal procedure more towards provable evidences on the cases.

The prison before its birth had its predecessors; one of which is the temporal declarations of the penal codes, and the other is the formation of police department that accelerated the legal existence of prisons and definition of judicial system in modern sense.

And finally, the health care in the Ottoman Empire show same parallel developments with its European counterparts. Ottoman was also in attempt of reformative actions towards nineteenth century. The productive capacity of population like as in all modern states was being considered as one of important tools to pay attention. The investment polices of state in the prison worked on such principles. In the last chapter the work of prisoner and transforming such places like a school reflect a new way of governing-mentality.

All these developments make a sense for the Ottoman history as long as they are evaluated with both external and internal factors. What I intended to do is to approach that certain period of Ottoman history considering these all dimensions contributed to modernization of the Empire.

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