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Transformations in Turkey's Legal System during the "Longest Century of the Empire"

Abstract
The article explores the profound legal and administrative changes that occurred within the Ottoman Empire during its prolonged period of reform and decline in the 19th century. "The longest century of the empire" reflects the empire's sustained efforts to struggle with internal and external challenges through modernization and legal reorganization. The study examines pivotal reforms like the Tanzimat and Islahat Edicts, the introduction of the Kanun-ı Esasi (constitutional law), and the codification of Islamic and civil laws, including the Majalla. These reforms symbolized a shift toward centralization, equality, and adaptation to European legal norms while grappling with the interplay of traditional Islamic law and contemporary necessities. The article contextualizes these changes against the broader socio-political upheavals in Europe, offering a comparative perspective on the transformative century.
Keywords: Turkey, Ottoman Empire, Islamic law, fundamental rights, Tanzimat Edict, Constitutional Law

Firstly, I'd like to clarify the title of my paper. The term "Longest Century of the Empire" is attributed to the renowned Turkish historian, Prof. Dr. Ilber Ortayli. He coined this term in order to describe the protracted

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period of the Ottoman Empire's vulnerability. Throughout the 19th century, Ottoman sultans endeavoured to ameliorate the Empire's precarious situation.[763]

1. Development of Russia

Since the latter half of the 16th century, the Russian Tsardom expanded significantly, annexing Siberia to the East and gaining substantial territories and populations. Nonetheless, for a long while, harsh climatic challenges, suffering agriculture and limited access to open sea ports rendered Russia less developed.

This began to shift under Peter the Great. His military triumphs over Sweden allowed Russia to enhance its international trade via the Baltic Sea, fostering greater European interactions. Beyond military reforms, Peter the Great introduced significant advancements in education, economy, culture, and arts. Notably, during his reign, among many modern institutions he founded the Russian Academy of Sciences.

Russian engagement in European politics intensified during the Napoleonic wars in the early 19th century. Despite the reforms of Peter the Great and Catherine II, Russia maintained a somewhat traditional and outdated domestic appearance. After the Crimean War defeat, Tsar Alexander II initiated numerous development reforms. Railways expanded across the nation, local councils were formed focusing on education, health, and public utilities, and a more structured, modern judiciary emerged.

Alexander II's most ground-breaking reform was the abolition of a land-tied form of slavery, the serf system in 1861. This emancipated tens of millions of serfs, ending a practice spanning over three centuries. By the end of the 19th century, though militarily potent, Russia remained somewhat underdeveloped and less industrialized than Europe, leading to increasing demands for reforms from various groups.

763 This text is a revised version of the paper presented at an international conference titled "Fundamental Legal Transformations in 1848 and as a Consequence of the "Springtime of Nations". The conference was organized by The Ferenc Mádl Institute of Comparative Law in Budapest on 5 April 2023.

2. The German Union

Historically, Germans did not unify under a singular state, either due to geographical discontinuities,[764] or to varied political and religious factors. Although the Holy Roman Empire encompassed most Germanic territories, it essentially remained a loose federation of states.

The 1815 Vienna-set European order aimed to thwart nationalist movements and to safeguard existing state integrities. This setup favoured Austria, a prominent German state and a multinational Empire with territories spanning through Austria, Hungary, and the Balkans. This fortified the existing Prussian-Austrian rivalry.

Prussian Chancellor Otto von Bismarck dominated this era. Believing in strengthening Prussia through warfare, he followed a "blood and iron" doctrine. Skilful manoeuvres led to the defeats of Denmark, Austria, and France. Consequently, in 1871, Prussian King Wilhelm I was crowned the German Emperor in the then-conquered Palace of Versailles.

The formation of the German Empire, led by Prussia, disrupted the post-Napoleonic Metternich equilibrium. It is widely accepted that the upheaval of this long-standing order eventually precipitated World War I.

3. Establishment of the Italian Union

Since the Middle Ages, the Italian peninsula remained fragmented. By 1815, it was a patchwork of states like the Kingdom of Sardinia, various duchies, the Papal State, Naples, and large Austrian-occupied parts in Northern Italy.

The Kingdom of Sardinia spearheaded Italian unification. Notably, the Prime Minister of Piedmont, Count Camillo di Cavour, played a pivotal role. Garnering support from the French Emperor Napoleon III against Austria, Piedmont achieved military supremacy and seized parts of Northern Italy. Following these successes, other Italian regions willingly aligned with Piedmont.

Guiseppe Garibaldi's "Expedition of a Thousand" significantly contributed to the integration of Southern Italy and Sicily. After the 1866

764 Coşkun Üçok, "Alman Hukukunun Tarihi Gelişmesine Bir Bakış", Ankara Üniversitesi Hukuk Fakültesi Dergisi, No. 7 (1950), pp. 292-321.

Prussian-Austrian war and the 1870 Prussian-French war, the Kingdom of Italy finally unified in 1870, incorporating Northern Italy and Rome.

Italian unification is attributed both to international dynamics and national strengths. This duality elucidates why Italy's unification didn't disrupt foreign policies or power equilibriums as profoundly as the unification of Germany did.

4. Ottoman Reforms in the 19th Century

The 19th century marked a period of significant reforms for the Ottoman Empire, a transformative journey that began as early as the late 18th century. Sultan Selim III (7 April 1789 – 29 May 1807) initiated these changes, only to be dethroned and tragically killed. His successor, Mahmud II (28 July 1808 – 1 July 1839), ascended the throne during one of the Empire's most tumultuous eras. Mehmet Ali Pasha, appointed by Mahmud as the governor of Egypt from 3 July 1805 to September 1848, began operating semi-independently, repeatedly besting the Sultan's forces. Concurrently, the influence and the pressure of Russian tsarism upon the Ottoman realm grew incessantly.

After the French Revolution, waves of nationalism impacted the Empire's non-Muslim population, leading to Greece, Bulgaria, and Serbia gaining independence. The Armenian national consciousness was also on the rise. Moreover, the Austrian Empire annexed Bosnia and Herzegovina. With tensions escalating in the Balkans, the Ottomans, allied with European powers, faced Russia in the Crimean War in 1854. The aftermath of the war strained the Empire's finances, resulting in significant debt to European creditors. Consequently, these European creditors seized revenue from six primary Ottoman industries: salt, stamps, silk, tobacco, alcohol, and fisheries, making the 19th century an extended financial challenge for the Empire.

In 1808, at the onset of the century, regional feudal lords sought to curtail the sultan's power. They cemented their intentions by signing the *Sened-i İttifāk* (Charter of Alliance of 1808). Historian Ali Akyildiz released the first comprehensive Turkish version of this Charter, which some historians

compare to the Magna Charta, viewing it as a stride towards constitutional governance.[765]

This Charter encompassed several provisions. Primarily, it emphasized mutual protection and commitment to the sultanate's fortification. It advocated for the diligent recruitment and retention of soldiers to uphold religion and the state, curbed any harm towards the military, and promoted the establishment of contractors for safeguarding state revenues. All decrees came directly from the grand minister, representing the sultan. Everyone vowed non-interference in others' affairs and pledged mutual accountability.

In 1826, the Empire disbanded the Janissaries, who were perceived as the most significant barrier to reforms. Historical parallels can be drawn to elimination of the archer unit in Russia. The Ottoman elites termed this dissolution as *Vak'a-yi Hayriye* or a "good event." This decision, however, weakened the Empire, rendering it susceptible to defeats, particularly from the Egyptian governor's army.

In 1839, a landmark *firman* (a royal decree) declared equality for all Ottoman citizens, regardless of religious beliefs. It promised security in life, property and honour, and safeguarded individual rights. To gain European support, this decree was shared with foreign ambassadors in Istanbul.

The Ottoman tax system also underwent changes. While Muslims paid the *Zakāt*, non-Muslims (or *dhimmi*s), were exempt. However, both groups contributed to "land and customs taxes". *Dhimmi*s also had a *jizya* tax, proportional to their assets, in exchange for military service exemption. With time, the *jizya* tax collection method evolved, and under European pressure, it underwent further reforms culminating in its abolition after the Second Constitutional Monarchy in 1909.

In reality, the act of execution for political reasons had been eradicated by legislation prior to the so-called Tanzimat reforms. The Tanzimat edict of 1839 further underscored this prohibition. Henceforth, political capital punishment could only be sanctioned in specific circumstances and exclusively through a judicial ruling.

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765 See Ali Akyıldız, "Sened-i İttifak'ın İlk Tam Metni" (The First Complete Text of the "Sened-i İttifak"), İslam Araştırmaları Dergisi, Sayı 2, İSAM, Istanbul 1998, pp. 209-222. English translation of the text does not exist but, one can find someone contents of the seven clauses in the Sened-i Ittifak of 1808, see Stanford Shaw and Ezel K. Shaw, History of the Ottoman Empire, Cambridge, 1977, Vol. III, p. 2. See more https://www.anayasa.gen.tr/1808si.htm.

Let's delve a bit into the concept of confiscation, given its historical and legal significance. Confiscation – though there are varied interpretations – refers to the act of the state in seizing part or all of an individual's assets. In the Ottoman Empire, this was primarily directed at state officials. Seen either as a punitive measure or a means for the treasury to seize the assets of deceased high-ranking officials, confiscation served as a fundamental institution in the Empire, empowering central authority and shaping the economic landscape. Throughout the classical era of Ottoman law, the practice of confiscation, driven by economic necessities or political motivations, sometimes overstepped its boundaries.[766] Even during its application, it faced significant criticism. Notably, several sultans decreed that those assets of the officials which were unrelated to the treasury, shouldn't be interfered with. As part of the modernization efforts within the state's administrative and legal systems, confiscation was scrutinized more stringently. The Penal Code of 1838, promulgated under Mahmud II's reign, highlighted that any arbitrary confiscation contrary to Sharia and statutory law was forbidden. The Tanzimat Edict further reinforced property rights by declaring general confiscations – which adversely impacted heirs – as wrongful and thus abolished them. This perspective, aligning with the evolving legal ideology, was incorporated into the 1876 Constitution,[767] prohibiting confiscation and forced labour, except in wartime scenarios.

Another fundamental institution from the classical era Ottoman law, under scrutiny during modernization, was the practice of political murder. In essence, this entailed the ruler's imposition of the death penalty.[768]

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766 For a criticism made by Defterdar Moralı Osman Efendi in this direction and response of Selim III's for this critisim, see. Mahmud Esad Kalıpçı,"Müsadere Kurumunda Islaha Dair Bir Teklif: III. Selim Dönemine Ait Bir Vesika", M.Ü.H.F. Hukuk Araştırmaları Dergisi – Porf. Dr. Mehmet Âkif Aydın'a Armağan, vol. XXI, no. 2 (2015), pp. 211-242.

767 The above information about the institution of confiscation is summarized from the following source: Mahmud Esad Kalıpçı, "Klasik Dönem Osmanlı Hukukunda Müsadere" (Confiscation in Classical Period Ottoman Law), Unpublished Master's Thesis, İÜ SBE, 2013.

768 Politically, murder is related to the disciplinary authority granted to the ruler in Islamic criminal law. It is controversial among jurists whether the death penalty can be given in *ta'zīran*, but for Abu Hanife's opinion that the death penalty can be given in this way, see: M. Akif Aydin, Türk Hukuk Tarihi, 16th ed., Istanbul, Beta, 2019, p. 198.
For the broad meaning of the concept of politics in the field of *ta'zīr* and an evaluation of political murder in the context of *ta'zīr*, see: Asım Cüneyd Köksal, Fıkıh ve Siyaset: Osmanlılarda Siyaset-i Şer'iyye„ 1st ed., Istanbul, Klasik, 2016, p. 205-222. For different uses of the concept of politics in connection with Ottoman customary law, see: M. Akif Aydın, Osmanlı Hukuku-Devlet-i Aliyye'nin Temeli, 1st ed., Istanbul, ISAM, pp. 48-52.

However, the "*grand vizier*" (the sultan's prime representative), and a limited number of other officials also possessed this authority. Serious offenses like attempted regicide, rebellions, banditry, misuse of power, or dereliction of duty justified political executions. Yet, similar to confiscations, this authority was sometimes misused, serving more as a political tool than a means of justice.

During the Tanzimat era, the traditional practices of political murder, which had become tools of oppression, came under rigorous examination. In 1838, during Mahmud II's reign, the Penal Code restricted political executions of state officials, allowing them only as *hadd* (fixed) punishments or in retaliation cases. Yet, remnants of old practices persisted. The Tanzimat Edict accentuated the sanctity of life and, as a result, death sentences were strictly confined to legally defined scenarios, starting with the penal codes from 1840 onwards, ensuring an end to arbitrary executions without due process.[769]

In 1856, reiterating the rights conferred to non-Muslim subjects, another edict, known as the Reform Edict (*Islahat Firmanı*), was issued by the Ottoman sultan.

A pertinent question might arise: hadn't the Ottoman state granted these fundamental rights to its citizens yet? Indeed, it had. However, while ordinary citizens enjoyed these rights, state officials (*me'mūr*) did not. As they were seen as the sultan's servants or *kullar,* their property could be seized and their lives could be taken at the sultan's discretion, a reality acknowledged in the Tanzimat Edict. Therefore, from 1839 onwards, with the proclamation of the Tanzimat Edict, these officials were finally endowed with job security and basic rights.

These two edicts marked pivotal milestones in the 19th century, heralding significant changes in the legal status of non-Muslims. While non-Muslims, in terms of fundamental rights, were essentially on par with their Muslim counterparts, they were largely excluded from state bureaucracy. Only a handful held roles, such as interpreters. When the Ottoman Parliament convened in 1876, both Muslim and non-Muslim representatives, reflecting the Empire's demographic composition, took their seats. Notably,

769 The information given above about the institution of political murder has been summarized from the following source: Ahmet Mumcu, Siyaseten Katl, Ankara, A.Ü.H.F. Publications, 1963.

neither Russia nor any other contemporary state had such religious or ethnic diversity within their parliamentary ranks. This serves as an unequivocal evidence against any claims of Ottoman assimilation policies.

Turning our attention to the broader transformation of the Ottoman legal system in the 19th century, we note that the 1870's and the decades after saw the inauguration of European-styled legal schools. Roman law was introduced, and today's Istanbul Law Faculty, where I proudly serve, traces its roots back to these pioneering endeavours.

Throughout the century, the Ottoman Empire underwent significant legal reforms which were heavily influenced by the French judicial system. In 1868, inspired by France, the Empire established courts of appeal for civil and criminal cases, as well as administrative jurisdictions. This coexisted with the traditional *qadi* courts (sharia judges), leading to a duality in the judiciary. Furthermore, religious law and the laws borrowed from France began to exist side by side, emphasizing this duality in the legislation as well.

During the late 19th century, the roles of the prosecutor, attorney, and notary public were integrated into the court system. Historically, the responsibilities of a notary were performed by the Ottoman *qadi*. While representation in court existed, it wasn't a regulated profession. However, reforms transformed lawyering into a recognized profession, culminating in the establishment of the Istanbul Bar Association in 1878.

This era was marked by prolific legislative activity. The term *tanzimat*, emblematic of the second half of that century, signifies legislative enactments. During the Tanzimat period, the Empire adopted laws that both originated from national customs and were influenced by foreign, primarily French, laws. One monumental local legislation was the codification of the Penal Code. This code, enacted shortly after the Tanzimat Edict, emphasized safeguarding life, property, and preventing rape. It insisted on the adherence to sharia regulations and unequivocally stated that certain crimes would be addressed under these regulations.[770]

770 In the Gülhane Edict, it was stated that bribery destroyed the country, and poet Şinasi reflected this in his theatre play called "Poet Marriage" ("Şair Evlenmesi") which was the best of early Turkish theatrical works. See. Süleyman Şevket Tanlı, Tarih Boyunca Güzel yazılar III, İstanbul MEB, [1950(?)], p. 88.

However, after only eleven years, the initial penal code was replaced by the *Kanun-ı Cedīd* in 1851. This revised code, while retaining many elements from its predecessor, incorporated more detailed references to sharia laws and introduced new punishments. Despite its improvements, the *Kanun-ı Cedīd* was replaced by another Penal Code in 1858, which then remained in force for nearly seven decades.

In 1858, the Land Code was established, marking the first comprehensive Ottoman land regulation. Thereafter, there was an unprecedented move to codify Islamic law by the state, resulting in the creation of the Ottoman civil code (*Majalla*) based on religious law, between 1869 and 1876. Led by Ahmet Cevdet Pasha and his team of scholars, *Majalla* was groundbreaking, but it wasn't a complete civil code. While it did cover property law and obligations, general provisions of civil law, family law, and inheritance law were absent. Yet, this codification was revolutionary as it represented the intervention of the state in Islamic law, a domain previously exclusive to the *ulema* (the body of Muslim religious scholars and chief religious authorities). This shift signified the newfound regulatory role of the state in the realm of civil law, though this role still intertwined with religious scholars.

In that century, the Ottoman state began borrowing elements from the European legal system. By 1850, they had adapted the French commercial code. While Islamic law strictly forbade the charging of interests, this new code permitted it, allowing those who delayed their debt payments to be charged interest. Such a move was a clear departure from Islamic law, but was justified on grounds of *zarūret* or necessity, a concept in Islamic law that permits certain prohibitions under extraordinary circumstances.

The memorandum detailed that even though some aspects of the Code contradicted Sharia provisions, it was deemed necessary due to prevailing conditions. The argument was that the Code would be applied to both foreigners and local traders and would largely benefit Ottoman merchants. This "necessity" was universally recognized by all members of the Supreme Assembly, leading to the unanimous acceptance of the Code. The religious foundation of the decision hinged on the combined principles of common interest and necessity.

During the General Assembly in 1848, it was acknowledged that the Commercial Code that contained elements which were not in line with Sharia, was nevertheless essential due to the state's unique conditions and the

potential benefits for its subjects. The *Shaykh al-Islam*, the person representing the Islamic juristic opinion, rationalized that the new commercial law did not conflict with Sharia as it was an independent system. His stance was influenced by the economic challenges prevailing the state and the disadvantaged position of Muslim traders. The active support and compliance of the religious scholars, representing clear deviations from traditional Sharia, illustrated the scholars' acute awareness of the changing times and their preference for progress over obstruction.[771]

The Ottoman legal system underwent further European influences: the criminal code was adopted in 1858, commercial procedure law in 1861, maritime trade law in 1863, criminal procedure law in 1879, and the civil procedure law in the same year, all inspired by French laws.

Slavery also underwent significant reforms. The Istanbul slave market was closed by Sultan Abdulmecid's decree in 1847, while orders were dispatched to provincial governors emphasizing the strict prohibition of slave trade, with violators facing punishment. By 1890, the Ottoman Empire endorsed the Brussels Convention, outlawing the trade of black slaves. In 1909, the sale of Circassian and other slaves was banned. Despite these prohibitions, traces of the slave trade persisted. Yet, by 1910, with the establishment of the Ottoman Constitution (*Kanun-i Esāsī*), there was a renewed emphasis on individual freedom. For instance, during a trial in May 1910, a slave, while making a claim, emphasized that according to the Constitution, all were free.

To sum it up, the legal transformation in the 19th century Ottoman state was profound, reflecting the state's efforts to modernize and adapt to changing global standards.

While there had been some initial developments beforehand, during the reign of Mahmud II, the Ministry of Sultan Foundations was formally established in 1826.[772] Its primary objective was to centralize the management of foundations belonging to the sultans and their relatives. Several reasons fuelled this move: the need to eliminate administrative complexities surrounding foundations, to combat corruption, to centralize

771 The information given here about interest was taken from this study. See: İlknur Yaşar Bilicioğlu, "Osmanlı Ticaret Kanunu'nun Meşruiyet Paradigması: Ulema ve Faiz", https://dergipark.org.tr/tr/download/article-file/2832204 (date of access 04.10.2023).

772 Bahaeddin Yediyıldız, "Vakıf-Tarih", DİA, vol. XLII, p. 485.

state governance, to diminish the influence of religious groups, and to gain the favour of the West.[773] Another notable intention was to redirect the wealth of these foundations in order to fund the establishment of a modern army.[774] A discernible trend emerged wherein the state aimed to channel foundation revenues directly into the central treasury.[775] As the Ministry solidified its role, it progressively assumed control over the administration of foundations linked to various institutions. By the end of Abdulmecid's reign, the Ministry controlled all foundations within the Ottoman Empire, with the exception of eight "exceptional foundations".[776] Furthermore, following the closure of Bektashi lodges during Mahmud II's reign, their revenues and real estate assets were seized. These foundation assets were subsequently sold, with proceeds funnelled into the state treasury.[777] It's imperative to highlight that Mahmud II's establishment of this Ministry came after he fortified central governance and neutralized opposing power centres. However, interfering with foundations was a delicate matter, particularly as an influential group of religious scholars stood behind him.[778] These scholars included notable figures like Sahaflarşeyhizade Esad Efendi, Şeyhulislam Yasincizade Abdulvehhab Efendi, and Şeyhulislam Kadızade Mehmet Tahir Efendi, who played a pivotal role in easing public and religious apprehensions through their fatwas and writings.[779] Though the centralization of foundation administration appeared justified, redirecting foundation revenues away from their original purposes led to the decay and weakening of many foundations. In this regard it is poignant to recall Mustafa Nuri Pasha's words on the Ministry

773 Nazif Öztürk, "Evkâf-ı Hümâyûn Nezareti", DİA, vol. XI, p. 522.

774 Kemal Beydilli, "Mahmud II",*DİA*, vol. XXVII, p. 354.

775 In this context, the merger of the Ministry of Foundations and the Ministry of Mint; For emphasis on steps such as creating new *gedikler*, see. İpşirli, Mehmet, "II. Mahmud Döneminde Ulema ve Vakıflar", *II. Mahmud: Yeniden Yapılanma Sürecinde İstanbul*, Ed. Coşkun Yılmaz, İstanbul, 2010, pp. 274-276.

776 Öztürk, "Evkâf-ı Hümâyûn Nezareti", p. 523.

777 Since the public refrains from purchasing foundation-origin immovable properties, they can be sold at low prices, see. İpşirli, "II. Mahmud Döneminde Ulema ve Vakıflar", p. 275.

778 Because they have an established religious and legal status, the descendant foundations concern the interests of many people, and the Haremeyn foundations are related to the holy cities and their people, see. İpşirli, "II. Mahmud Döneminde Ulema ve Vakıflar", p. 272.

779 İpşirli, "II. Mahmud Döneminde Ulema ve Vakıflar", pp. 272, 279.

of Foundations: "Instead of being their guardian, it became the destroyer of foundations."[780]

The Islamic law *zimmet* contract ensured protection for the lives, beliefs, and rituals of non-Muslim subjects of an Islamic state. The Ottoman Empire positioning itself as an executor of the Islamic law integrated the *dhimmah* contract (i.e. contracts with non-Muslims) into its legal system. Moreover, the Ottoman Empire exhibited remarkable tolerance towards non-Muslims, which was evident in numerous practices. For instance, while modern historical interpretations given by the Balkan states often portray the Ottoman era as a dark period, the political turmoil, the economic strife, and the religious oppression that characterized the Balkans before the Ottomans were replaced with stability and order under the Ottomans' rule.[781] Another testament to the Empire's tolerance was the appointment of Gennadius Scholarius as the patriarch after the conquest of Istanbul, effectively shielding the Orthodox faith from Catholic threats. In return for this tolerance, the Patriarchate, whose influence had severely dwindled during the Byzantium's waning days, found its religious authority and stature revitalized under the Ottoman aegis.[782]

The Ottoman Empire categorized its subjects based on their religious affiliations rather than their ethnic identities. Various ethnic groups, such as Greeks, Serbians, Bulgarians, Vlachs, and Romanians, were collectively identified as "Rum" within the Empire. The Enlightenment and French Revolution spurred nationalist movements in the Balkans. The Greeks were the first to secure their independence. Encouraged by the Russians, they first rebelled in the late 18th century, but the Ottomans suppressed this uprising. The Greeks' disillusionment grew when the Russians failed to keep their promises.[783] In 1821, concurrent with the Ottoman conflict with the notable Tepedelenli Ali Pasha, Greek revolts ignited in two distinct Balkan regions. While the Ottomans quelled the uprising in the Danube region, the

780 İpşirli, "II. Mahmud Döneminde Ulema ve Vakıflar", p. 279.
781 Mark Mazower, Bizans'ın Çöküşünden Günümüze Balkanlar, 2. ed., trans. Ayşe Özil, Istanbul, Alfa Basım Yayın, 2017, p. 61-63.
782 Paschalis M. Kitromilides, Aydınlanma ve Devrim Modern Yunanistan'ın Kuruluşu, trans. Sinem Güldal, Istanbul, Alfa, 2021, p. 46.
783 Paschalis M. Kitromilides, Aydınlanma ve Devrim Modern Yunanistan'ın Kuruluşu, trans. Sinem Güldal, Istanbul, Alfa, 2021, p. 52

Peloponnese revolt succeeded.[784] Subsequently, constitutions aiming to establish a liberal republic were drafted. Yet, by 1832, with the appointment of a Bavarian Prince as the Greek King, monarchy became the governing system.[785]

Before discussing other emerging Balkan states, it is crucial to examine the ramifications of the Greek Revolt for both the Ottoman Empire and the patriarchate. After the establishment of Greece, the creation of a Greek national church became an inspiration for other states desiring independence.[786] Furthermore, the subjects of the Balkan nation-states were unlikely to recognize the Fener Rum Patriarch under Ottoman jurisdiction as their religious leader. This led to the patriarchate's diminishing religious authority.[787] To counter the potential negative effects of Greek independence, the Ottoman Empire introduced reforms during the Tanzimat period.[788] Particularly, the secularization of non-Muslim community governance after the Reform Edict (*Islahat Fermanı*) further weakened the patriarchates.[789]

Next is Serbia. The Serbs, who revolted in 1804, were granted autonomy by 1828-1829 and achieved full independence in 1878.[790] After the autonomy of Serbia, the 1835 constitution (*Sretenjski Ustav*) aimed to curb the absolutist tendencies of the ruling prince. However, due to its liberal undertones and contradictions to Serbia's vassal status, it was rejected by the Ottoman Empire, Russia, and Austria. Hence the constitution remained in force only briefly.[791] The 1838 Regulation on the Internal Affairs of Serbia (*Turski*

784 Mark Mazower, Bizans'ın Çöküşünden Günümüze Balkanlar, 2. ed., trans. Ayşe Özil, Istanbul, Alfa Basım Yayın, 2017, p. 130-132.
785 Paschalis M. Kitromilides, Aydınlanma ve Devrim Modern Yunanistan'ın Kuruluşu, trans. Sinem Güldal, Istanbul, Alfa, 2021, p. 465.
786 İlber Ortaylı, Osmanlı'da Milletler ve Diplomasi, 8. ed., Istanbul, Türkiye İş Bankası Yayınları, 2018, p. 30.
787 Mark Mazower,, Bizans'ın Çöküşünden Günümüze Balkanlar, 2. ed., trans. Ayşe Özil, İstanbul, Alfa Basım Yayın, 2017, p. 121.
788 İlber Ortaylı, Osmanlı'da Milletler ve Diplomasi, 8. ed., Istanbul, Türkiye İş Bankası Yayınları, 2018, p. 115.
789 İlber Ortaylı, Osmanlı'da Milletler ve Diplomasi, 8. ed., Istanbul, Türkiye İş Bankası Yayınları, 2018, p. 26.
790 Mark Mazower, Bizans'ın Çöküşünden Günümüze Balkanlar, 2. Ed.., trans. Ayşe Özil, Istanbul, Alfa Basım Yayın, 2017, p. 121.
791 Ayhan Ceylan, "Sırbistan'ın İdare-i Dâhiliyesine Dair Kanunname: 1838 Türk Anayasası (Turski Ustav)", Türk Hukuk Tarihi Araştırmaları Dergisi, no. 28, 2019 Autumn, pp. 18-19.

Ustav)[792] was announced after extensive negotiations between Ottoman and Russian representatives.

Lastly, Romania (previously Wallachia-Moldova or *Memleketeyn*), which attained independence in 1878 via the Treaty of San Stefano, was under the governance of Phanariot lords until 1821. Following the 1821 Greek revolt, Wallachian-Moldavian leadership transitioned to Romanian Boyars. The exit of the Phanariot lords diminished Greek influence in the region allowing a national consciousness to form.[793] Although Russian influence initially grew in the area, it waned after the 1848 uprisings in Bucharest, and Iasi were suppressed by Ottoman and Russian forces. This shift paved the way for increased French and Latin influences, seen as kin in the region.[794] The 1865 adoption of the Code Civil further exemplified the depth of French impact.[795]

In the latter stages of the Ottoman Empire, Bulgaria was among the final territories to achieve autonomy and later, independence. Autonomy was first granted through the Treaty of San Stefano. However, Western powers found the demarcations in this treaty problematic, leading to a re-evaluation of the borders and of the governance in the 1878 Treaty of Berlin. As per this latter treaty, the Bulgarian Principality was formed, and its constitution was promptly crafted. This constitutional text, shaped by a Russian-led committee, was ratified by the constituent assembly in 1879.[796] Even though the Treaty of Berlin conceptualized the Bulgarian Principality as enjoying autonomy under the umbrella of the Ottoman Empire, this subordination of the Bulgarian monarch to the Ottoman sultan was

792 In this text, declared in the form of a decree, the Serbian Emirate was accepted as a privileged internal administration, and the management of the Emirate was given to the chief prince Miloş Obrenovic and his family. The administration of the Emirate was shared between the prince and the parliament. (Ayhan Ceylan, "Sırbistan'ın İdare-i Dâhiliyesine Dair Kanunname: 1838 Türk Anayasası (Turski Ustav)", Türk Hukuk Tarihi Araştırmaları Dergisi, no. 28, 2019 Autumn, pp. 24-27)

793 llber Ortaylı, Osmanlı'da Milletler ve Diplomasi, 8. ed., Istanbul, Türkiye İş Bankası Yayınları, 2018, p. 117.

794 Mark Mazower, Bizans'ın Çöküşünden Günümüze Balkanlar, 2. ed., trans. Ayşe Özil, İstanbul, Alfa Basım Yayın, 2017, p. 137.

795 Marian Nicolae, Mircea-Dan Bob, La Refonte du Code Civil Roumain et Le Code Civil du Quebec, La Revue Du Barreau Canadien, 2020, Vol. 88, No. 2 , p. 454. (445-454).

796 Ayhan Ceylan, Bulgaristan Emâreti (Prensliği) Anayasası: 1879 Tırnova Anayasası, İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi Hukuk Sayısı, vol. 21, no. 44, 2022 Summer, p. 641.

conspicuously absent from the constitution.[797] Furthermore, the Treaty of Berlin mandated the creation of a constitution for the province of Eastern Rumelia. This constitution also was accepted through a mixed committee in 1879.[798] As per the constitution, which took the form of a decree, Eastern Rumelia would have been under the administration of a Christian governor. This governor would have been appointed by the sultan but would have required the endorsement of the signatory states of the Treaty of Berlin. However, the dynamics shifted when Eastern Rumelia chose to unite with the Bulgarian Principality in 1885. By 1886, the governance of Eastern Rumelia was transferred to the Principality, although its distinct legal status was preserved.[799]

4. The Tanzimat Edict and Its Era

The term *tanzimat* is derived from the plural of the word *tanzim*, which literally means "to organize" or "to reform". In scholarly literature, Tanzimat refers to the "reorganization and reform of the administrative machinery" and designates the period during which these reforms took place. The era initiated with the proclamation of the Tanzimat Edict (*Gülhane Hatt-ı Hümayunu*) on November 3, 1839, the foundational actions of which trace back to 1830. While various opinions suggest different end dates for the Tanzimat period, there is a prevailing consensus that it concluded with the closure of the parliament in 1878.[800]

Following the dissolution of the Janissary Corps, Sultan Mahmud II introduced changes in the Ottoman central organization, which could be considered as precursor to the Tanzimat. He restructured the central bureaucracy establishing departments in *Babıali* (the central government) with clearly defined areas of expertise. In 1838, he founded the Supreme

797 Ayhan Ceylan, Bulgaristan Emâreti (Prensliği) Anayasası: 1879 Tırnova Anayasası, İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi Hukuk Sayısı, vol. 21, no. 44, 2022 Summer, p. 643.

798 Ayhan Ceylan, 1879 Bulgaristan Emâreti Anayasası ile 1879 Şarkî Rumeli Vilâyeti Anayasası'nın Mukayesesi, Türk Hukuk Tarihi Araştırmaları Dergisi, no. 35, 2023 Spring, p. 25.

799 Ayhan Ceylan, Bulgaristan Emâreti (Prensliği) Anayasası: 1879 Tırnova Anayasası, İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi Hukuk Sayısı, vol. 21, no. 44, 2022 Summer, p. 643.

800 Ali Akyıldız, "Tanzimat", DİA, vol. 40, 2011, p. 1.

Council of Judicial Ordinances (*Meclis-i Vâlâ-yı Ahkam-ı Adliyye*) to deliberate on and supervise the reforms, referred to as *Tanzimat-ı Hayriyye*. He commissioned the drafting of two separate penal codes for clerics and officials. Mahmud II passed away on July 1, 1839, while these reform efforts were underway.

In the accession edict of the succeeding Sultan Abdülmecid, significant principles mirroring those in the Tanzimat Edict were emphasized. These principles highlighted the importance of governance according to law and order, avoidance of bribery, the provision of safety and security for all subjects regardless of their religion, and the prohibition of officials accepting gifts. Additionally, decisions made by bureaucrats and religious scholars in a consultative assembly prior to the declaration of the Tanzimat were ratified by the Sultan. This suggests that, contrary to the opinion that the Tanzimat Edict was solely the result of Mustafa Reşid Pasha's efforts and external influences, it was supported by contemporary religious scholars and bureaucrats and was primarily driven by domestic dynamics.

On November 3, 1839, Foreign Minister Mustafa Reşid Pasha publicly read out the Tanzimat Edict in the Gülhane Park in front of a diverse audience. The edict began by referencing the adherence of the state to Quranic principles and Sharia from its inception, claiming that deviations over the past 150 years had led to its current weaknesses and impoverishment. It asserted that with adequate measures, considering its geographical position, fertile lands, and industrious people, the state could regain its former strength and prosperity within 5-10 years. Key principles of the forthcoming legislation, such as personal safety, property protection and the prevention of corruption were outlined.

After the proclamation of the Edict, Sultan Abdülmecid went to the Topkapı Palace's *Hırka-i Şerif* Chamber and swore an oath to strictly implement the stipulations of the Edict and to refrain from making any decisions without the proper legal procedures. Ulema and state officials also took an oath to fulfil the requirements of the Edict. Subsequently, anyone acting against Sharia or the Edict's stipulations would be punished according to the law, regardless of his rank or status.[801]

801 Halil İnalcık, "Sened-i İttifak ve Gülhane Hatt-ı Hümâyûnu", Belleten, vol. 28, no. 112, October 1964, p. 614.

The Tanzimat Edict received mixed reactions internationally. While British and French public opinion was positive, the Prime Minister of Austria, Prince Metternich expressed concerns that the edict's emphasis on limiting the powers of the monarch and high-ranking officials might inspire similar demands in his own country. Russia, on the other hand, feared the strengthening of the Ottoman state due to the Tanzimat and the increased influence of England and France over it.

After the proclamation, the Tanzimat Edict was disseminated to all provinces through regional governors and published in the *Takvim-i Vekayi*, the first fully Turkish language newspaper. Due to concerns about potential public reactions, the edict's reforms were initially implemented in relatively central cities like Edirne, Bursa, Izmir, Ankara, Aydın, Konya, and Sivas. In order to inspect the implementation of the reforms and address grievances, Sultan Abdülmecid visited places like İzmit, Bursa, Çanakkale, and the Islands in 1844.

One of the immediate implementations after the declaration of the Tanzimat Edict was the abolishment of *angarya* (forced labour or levy). Prior to the Edict, a decree sent to the governors of Rumelia in August 1838 had already addressed this oppressive practice. *Angarya*, a major cause of grievance for the *reaya* (tax-paying subjects) was officially prohibited, and those violating this prohibition were to be punished under the penal code.[802]

Following the proclamation of the Tanzimat, the working principles of tax collectors, known as *muhassıllar,* were laid down in a regulation dated January 25, 1840. It was decided to establish a council in district centres to assist these tax collectors, ensuring representation of both Muslim and non-Muslim communities in those councils.[803] All in-kind or monetary taxes collected from the public under various pretexts by provincial officials and governors were abolished.

Following those penal codes that were implemented for clerics and officials before the declaration of the Tanzimat Edict, a new penal code consisting of forty-one articles was prepared on May 3, 1840. This code primarily established *tazir* (discretionary) punishments. Instead of directly adopting

802 Halil İnalcık, "Tanzimat'ın Uygulanması ve Sosyal Tepkiler", Belleten, vol. 28, no. 112, October 1964, p. 640.
803 İnalcık, "Tanzimat'ın Uygulanması ve Sosyal Tepkiler", p. 626.

European laws, the drafting approach mirrored European legislative procedures. In order to address the deficiencies of this law, a new code, known as *Kanun-ı Cedid*, was prepared in 1851 that used a similar methodology to the previous penal system.[804]

One of the most significant articles of the Tanzimat Edict pertained to military service. In the following years, various regulations were made in this regard. These regulations determined that conscripts would be selected by a lottery system, active service would be limited to five years, and reserve duty (*redif*) would be capped at seven years. Decisions were made to establish five armies named as Hassa, Dersaadet, Rumeli, Anadolu, and Arabistan. Additionally, in order to ensure the security of Istanbul, the *Zaptiye Müşirliği* (Police Directorate) was established.

In 1844, a general population census was conducted, revealing an approximate population of 35 million. Recognizing the correlation between successful reforms and education, Sultan Abdülmecid requested the preparation of projects to open primary schools (*sıbyan mektepleri*), secondary schools (*rüşdiyeler*), and a university (*darülfünun*). Consequently, the first *rüşdiye* was inaugurated in 1847. In the same year, an archive named Hazine-i Evrak was established in Babıali, introducing modern methods for document classification and preservation. In 1851, the Encümen-i Dâniş, the Ottoman scholarly society was founded with the objective of preparing and translating books.

5. The Islahat Edict and Its Impact

During the Crimean War, which Russia initiated under the pretext of unmet demands related to Christian holy sites in Jerusalem and its vicinity, European nations heightened pressure on the Ottoman Empire for reforms favourable to Christians. Concerned about potential negative shifts in European public opinion, the Ottoman Empire conceded to making certain reforms. However, there was reluctance to append these reforms to the treaty ending

804 Hıfzı Veldet [Velidedeoğlu], "Kanunlaştırma Hareketleri", Tanzimat I, Maarif Matbaası, İstanbul, 1940, p. 176-180; Tahir Taner, "Tanzimat Devrinde Ceza Hukuku", Tanzimat I, Maarif Matbaası, İstanbul, 1940, p. 226-230. Mehmet Emin Artuk, "Tanzimat Dönemi Osmanlı Ceza Kanunlarından 1840 ve 1851 Tarihli Kanunların İncelenmesi", Türk Hukuk Tarihi Araştırmaları, no. 16, 2013 Güz, p. 7, 10.

the Crimean War. Viewing this as an interference with their sovereignty and internal affairs, the Ottoman administration chose to announce these reforms as a gracious edict of the sultan on February 18, 1856. The main tenets of this edict were decided upon in discussions between Grand Vizier Âli Pasha and the British and French ambassadors, Lord Stratford and Thouvenel, respectively.[805] The edict was read aloud in the presence of state dignitaries, the *Shaykh al-Islam* (the chief Islamic jurist), Christian patriarchs, a representative of the Chief Rabbi, and representatives of foreign powers. Copies of the edict were then dispatched to representatives of the states gathering in Paris to negotiate peace terms.

The Islahat Edict was referenced in the ninth article of the Treaty of Paris, signed on March 30, 1856. The article asserted that foreign powers recognized and endorsed the reforms announced by the sultan for his subjects. Importantly, the edict did not provide those foreign powers any right to interfere with Ottoman internal affairs or sovereignty.

Though the Treaty of Paris, which ended the Crimean War, was warmly received in Istanbul, the Islahat Edict sparked mixed reactions. The edict emphasized the necessity of internal reforms with a view to strengthen the state. While the Tanzimat Edict had already confirmed the equality of all Ottoman subjects, it became clear over time, that the privileges and exemptions granted by past sultans to non-Muslims needed revisiting and adjustment. Consequently, the Islahat Edict introduced reforms such as lifelong appointments of patriarchs, prohibition of collecting religious dues, establishment of mixed councils for non-Muslim community affairs, and the ability for all communities to repair and build new religious structures. Moreover, it stressed equality in front of the law and allowed non-Muslims to serve in government positions, to attend military and civil schools, and to provide witness testimonies in courts. Alongside these rights, the edict also introduced military service obligation for non-Muslims, with the possibility of exemption in return for a fee.[806]

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805 Roderic H. Davison, Osmanlı İmparatorluğu'nda Reform 1856-1876, trans. Osman Akınhay, Agora Kitaplığı, İstanbul, 2005, p. 54; Bülent Tanör, "Anayasal Gelişmelere Toplu Bir Bakış", Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi, vol. 1, İletişim Yayınları, İstanbul, p. 16.

806 Ufuk Gülsoy, "Islahat Fermanı", Türkiye Diyanet Vakfı İslam Ansiklopedisi (DİA), vol. 19, 1999, p. 186-188.

The most significant backlash to the Islahat Edict came from non-Muslim communities, particularly regarding the introduction of military service and the regulations affecting the clergy.[807] In regions with mixed populations, tensions emerged, leading to Western interventions, especially in areas like Rumelia, Lebanon, and Crete. Although the Ottoman Empire protested such interventions as breaches of the Treaty of Paris, Western powers justified them as the oversight of the implementation of the provisions of the edict. In the following years, facing mounting pressure from Western powers, the Ottoman administration dispatched inspection committees to Rumelia to oversee the application of the reform program. When ascending to the throne in 1861, Sultan Abdülaziz reaffirmed the stipulations of the Islahat Edict by issuing a new royal decree, seeking to alleviate international pressures.[808]

6. The Contitutional Law (*Kanun-ı Esasi*)

The year 1876, when the *Kanun-ı Esasi* (Constitutional Law) was proclaimed, coincided with a tumultuous period in the Ottoman Empire. That year witnessed significant events such as the dethronement of Sultan Abdülaziz, the ascension and subsequent removal of V. Murat from the throne within a mere three months, leading to the elevation of II. Abdülhamid. During the same year, the Empire grappled with revolts in Bosna-Hersek, escalating unrest in Bulgaria, and declarations of war by Serbia and Montenegro. Amidst the ongoing Naval Yard Conference in Istanbul – attended by the Ottoman Empire and major European powers including Russia, Britain, France, Austria, Germany, and Italy – the Kanun-ı Esasi was declared on December 23, 1876. This was a strategic move by the Ottoman administration to demonstrate its commitment to reforms, thereby hoping to mitigate foreign interventions.[809]

Before the proclamation of *Kanun-ı Esasi*, a special committee of 28 members, including non-Muslim representatives, was formed to draft the constitution. Given the inflexible stance of the Sultan on preserving his

807 Davison, Osmanlı İmparatorluğu'nda Reform 1856-1876, p. 60-61.
808 Gülsoy, "Islahat Fermanı", p. 188-189.
809 Mehmet Âkif Aydın, "Kanûn-ı Esâsî", DİA, vol. 24, 2001, p. 329.

rights, significant concessions were made to the draft by Midhat Pasha and his allies. After its approval by the Council of Ministers, the document was ratified by the Sultan.[810] The *Kanun-ı Esasi* fits the category of a "decree constitution" of the 19th century, marking a transition from absolute monarchy to a constitutional one.[811]

The *Kanun-ı Esasi* established the legislative body, the *Meclis-i Umumî* (General Assembly), which was comprised of both the *Meclis-i Ayan* (the Senate) and the *Meclis-i Mebusan* (the Chamber of Deputies). Following elections in the provinces, the *Meclis-i Mebusan* convened on 19 March 1877. The sultan's opening speech was read in the Assembly by the chief secretary of the palace, Said Paşa.[812] The first session of the *Meclis-i Mebusan* lasted until 28 June 1877. During this period, a temporary seven-article guideline was prepared in the Assembly to facilitate the election of deputies.[813] After the elections, the *Meclis-i Mebusan* reconvened for its second session on 13 December 1877. However, this session ended prematurely on 13 February 1878 when Sultan Abdülhamid II referred to the Ottoman-Russian War as a reason to temporarily adjourn the Assembly.[814]

The Constitution, known as the *Kanun-ı Esasi*, comprises twelve sections with a total of 119 articles. The constitutional framework established by these articles can be summarized as follows: the state is a single entity (Art. 1); the sultanate and the caliphate belong to the eldest male member of the House of Osman (Art. 2); the inviolable rights of the sultan were the appointment and dismissal of ministers, declaration of war and peace, recitation of the ruler's name in sermons, command of the army, convening and adjourning of the General Assembly, and the pardoning and mitigation of punishments (Art. 7); the official religion of the state is Islam (Art. 11); freedom of religion and conscience, as well as sectarian privileges are recognized (Art. 13); everyone has the right to education and instruction (Art. 15); the subjects of the Ottoman Empire have rights to petition, property,

810 M. Şükrü Hanioğlu, "Meşrutiyet, DİA, vol. 29, 2004, p. 391.
811 Bülent Tanör, Osmanlı-Türk Anayasal Gelişmeleri, 28. baskı, İstanbul, Yapı Kredi Yayınları, February 2017, p. 134.
812 Ahmet Mithat Efendi, Üss-i İnkılap, İstanbul, Dergah Yayınları, 2013, p. 406.
813 Robert Devereux, The First Ottoman Constitutional Period: A Study of the Midhat Constitution and Parliament, Baltimore, The Johns Hopkins Press, 1963, p. 124; Bekir Sıtkı Baykal, "93 Meşrutiyeti", Belleten, VI/21-22, Ocak-Nisan 1942, p. 64.
814 Baykal, "93 Meşrutiyeti", p. 78.

and the inviolability of domicile (Art. 14, 21, 22); no one can be tried in a court other than the one designated by the law (Art. 23); confiscation, forced labour, and torture are prohibited (Art. 24, 26); the possibility to enact provisional laws in urgent situations (Art. 36); judges cannot be dismissed (Art. 81); trials are public (Art. 82); fiscal obligations can only be established by law (Art. 96); the government can declare martial law in areas showing signs of revolt, and if proven by law enforcement investigations, those who threaten the government's safety can be exiled by the sultan (Art. 113); the provisions of the Kanun-ı Esasi can be amended with a two-thirds majority in the Chamber of Deputies and Senate, subject to the sultan's approval (Art. 116).[815]

This constitution laid out the framework for governance, balancing both the powers of the Sultan and the rights of the subjects within the Ottoman Empire.

815 Aydın, "Kanûn-ı Esâsî", p. 329-330.

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