MEJELLET AL-AHKAM AL-ADLIYYA FROM A HISTORICAL PERSPECTIVE

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ABSTRACT
The nineteenth century is recognized as an era of modernization in the Ottoman Empire. At the forefront of this process was the Tanzimat Edict. Based on the principles of the French Civil Code, the Tanzimat Edict necessitated other legal reforms. Alongside commercial legislation, the second half of the 19th century also witnessed the beginning of legal regulations concerning civil rights. The Mecelle-i Ahkâm-ı Adliyye was the first comprehensive legal codex prepared within the framework of either commercial or civil law, based on the Hanafi school of Islamic jurisprudence. Rather than adopting Western legal traditions, its content was formulated through the systematic organization of Islamic law. The Mecelle remained in force in various countries across the former Ottoman territories well into later periods.
Keywords: Ottoman legal reforms, Mecelle-i Ahkâm-ı Adliyye, Ottoman civil law, Ottoman modernization, French Civil Code and Ottoman law, Islamic law in the 19th century.

INTRODUCTION

The classical legal structure of the Ottoman Empire was divided into two main branches: shar'i (Islamic) law and örfi (customary) law. The primary reason for this division was the establishment of the Ottoman Empire as an Islamic state. Consequently, all legal regulations were designed in accordance with Islamic jurisprudence, and unlike Western states, a pluralistic legal and court system was not developed. However, the Westernization movement that began under Selim III and his successor Mahmud II continued with the promulgation of the Tanzimat Edict in 1839 and culminated in the adoption of the Mecelle-i Ahkâm-ı Adliyye. The Mecelle marks the foundational beginning of modern Turkish civil law.

The main purpose of this two-part study is to examine the legal developments that occurred in the Ottoman Empire following the Tanzimat Edict and to evaluate them from both legal and historical perspectives. The first part begins by defining shar'i and örfi law within the chronological progression of events and clarifies the differences between them. The second subsection of the first part addresses the developments in commercial law beginning in the 1840s. The second part of the study focuses on the factors that led to the emergence of the Mecelle, as well as the legal reforms concerning non-Muslim communities from the 1850s onward. The content of the Mecelle and the key motivations for its compilation are also examined.

Another aim of this study is to present a comparative analysis of the Mecelle and Western civil codes—especially the French Civil Code—highlighting both similarities and differences. Additionally, it aims to incorporate the evaluations of both historians and legal scholars in understanding the legal reforms of the 19th century. For this reason, the study draws upon both historical and legal sources pertaining to the Tanzimat era.

1. The Ottoman Legal System Prior to the Nineteenth Century

In order to understand the codification movements in the Ottoman Empire, it is essential to examine the Empire's legal structure. The Ottoman legal system was divided into two branches: shar'i (Islamic) law and örfi (customary) law. Shar'i law was formed independently of state intervention, based on the sources of Islamic jurisprudence and developed through the legal reasoning (ijtihad) of jurists within the framework of the principles of Islamic law.

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In contrast, örfi law consisted of legal regulations enacted under the legislative authority granted to the ruler (ulü'l-emr) by shar'i law.

In the formation of örfi law, the Divan-ı Hümayun—the imperial council composed of experienced statesmen in the legal, political, administrative, and military spheres—played a key role. Particularly influential were the nişancıs, who acted as the ministers responsible for customary law. The legal principles shaped through the efforts of the nişancıs and the deliberations held in the imperial council were formalized into laws upon approval by the sultan and thus entered into force.

It is important to emphasize that those involved in the drafting of legal codes—including the sultan, nişancı, and other members of the council—were educated in a society dominated by Islamic culture and were well-versed in Islamic law (Ellek, pp. 121–122).

Unlike shar'i law, örfi law evolved over time in response to specific needs. Particularly in the areas of land and taxation, instead of implementing a single law across the entire empire, regional laws were drafted to reflect local conditions. These laws were recorded at the beginning of the relevant region's tahrir (land survey) registers.

From a general perspective, shar'i and örfi laws coexisted within the Ottoman legal framework. Matters such as personal status, family, inheritance, property, obligations, and commercial law, which were central to Islamic law, were regulated according to shar'i principles. However, there were also instances of customary legal regulations, such as the performance of marriages by imams under judicial supervision or court permission in the domain of family law, and the administration and transfer of waqf (endowment) properties under örfi rules.

Similarly, inheritance law included customary adjustments, such as the regulation of succession rights for holders of miri lands (state-owned lands) that differed from traditional Islamic inheritance laws. Likewise, regulations on the use and transfer of miri lands demonstrate the application of örfi law in the fields of property and land law (Ellek, p. 122).

1.1. The Tanzimat Period

Until the 1800s, the Ottoman Empire did not undertake comprehensive codification initiatives. Although some legal codes were prepared during this period, they mostly addressed areas regulated by örfi (customary) law—filling legal gaps without contradicting the principles of Islamic law—rather than areas governed directly by Islamic jurisprudence. A major turning point in Ottoman legal history came with the Westernization movements of the 19th century, particularly marked by the 1839 Tanzimat Edict (Tanzimat Fermanı).

During the Tanzimat era, the traditional Ottoman judicial system, based on a single-judge model, was transformed into a multi-judge, multi-tiered judicial organization (İnalcık et al., p. 33). In the aftermath of the Industrial Revolution, Europe experienced a rapid expansion of colonial policies driven by broad trade networks. Within this framework, Western powers aimed to turn the Ottoman Empire into a vast market through mutual commercial relations. As a result, trade relations between the Ottoman Empire and Western countries significantly increased, reaching a peak particularly after the Crimean War.

Meanwhile, although slowly, the Ottoman production system began to exhibit changes akin to those in the West. This growing commercial activity, unlike anything seen before, made new legal regulations in the fields of contract and commercial law essential (Aydın, n.d).

Although the Tanzimat Edict was prepared based on the French Civil Code (Code Civil), it was generally considered to have deficiencies compared to Western legal systems. Moreover, the Tanzimat Edict alone proved insufficient to meet the need for broad legal reform and legislation. As a result, in 1840 the Commercial Council (Ticaret Meclisi) was established under the Ministry of Trade, and in 1847–1848, it was expanded and reorganized into the Mixed Commercial Court (Karma Ticaret Mahkemesi).

Further, with the 1860 amendment titled Zeyl to the Imperial Commercial Code (Ticaret Kanunname-i Hümayununa Zeyl), commercial courts were established both in Istanbul and in the provinces to handle all types of commercial disputes. Following the Tanzimat reforms, newly established nizamiye (secular) courts, which handled commercial and legal cases, urgently needed a civil code. Apart from the presiding judges, the members of both the commercial and nizamiye courts were typically bureaucrats without formal legal training, in line with the conditions of the time.

It is worth noting, however, that a Commercial Code (Kanunname-i Ticaret) was drafted in 1850, based largely on the French Commercial Code, to be implemented in commercial courts (İnalcık, pp. 35–36).

1.2. Reasons Behind the Adoption of the Mecelle

Article 4 of the Vienna negotiations, which addressed the principles of the 1856 Treaty of Paris, concerned reforms regarding non-Muslims. After considerable resistance, the Sublime Porte eventually followed France's recommendations and made goodwill gestures toward non-Muslim subjects. It declared its intention to abolish the harac (land tax) and jizya (poll tax), and granted non-Muslims the possibility of attaining the rank of miralay (colonel) in the military and first-class status in civil service.

However, these reforms failed to satisfy either Muslims or non-Muslims. Muslims were displeased by what they perceived as the erosion of their privileged status, while non-Muslims were not enthusiastic about being subjected to military conscription. In the end, the attempts made during the Tanzimat period to build cohesion through a millet-based (confessional community) organization were largely unsuccessful. Far from promoting integration between Muslims and non-Muslims, tensions even arose within the non-Muslim communities themselves (Küçük, pp. 549, 551, 553).

Although the steps leading to the Mecelle might appear to have been reforms primarily aimed at non-Muslims, the core motivations behind its codification were different.

One of the primary reasons for drafting the Mecelle was the inability of judges in the newly established Nizamiye courts to utilize classical Islamic legal texts effectively. The Mecelle, written in Turkish and in a clear and accessible style, aimed to equip these judges with a practical legal tool.

A second reason stemmed from the structural transformation of the Ottoman judiciary during the Tanzimat. The classical Ottoman court system, characterized by single-judge, single-instance courts, was replaced with a multi-judge, multi-tiered system. In this new framework, it became impractical to conduct trials and issue rulings based solely on Arabic jurisprudential texts, hence the need for a unified legal code applicable in Nizamiye and Commercial Courts.

A third reason involved the existence of divergent legal opinions within the Hanafi school of law, the dominant legal school in the empire. Since different rulings existed for the same legal matter, it was deemed necessary to adopt the most authoritative opinion to preserve legal unity and consistency.

Finally, the fourth major reason was the emergence of legal, social, and economic transformations in the 19th century, which made the creation of a civil code indispensable (Cin, pp. 465–467).

The Italian Encyclopedia has noted that one of the main reasons behind the drafting of the Mecelle was to provide assistance to the judges of the newly established Nizamiye Courts, who were largely lacking in legal expertise. Another major reason for the preparation of the Mecelle was the influence and pressure exerted by the West for the codification of a civil law. This influence and pressure were not only evident in the codification efforts but also in the restructuring of the Ottoman judicial system.

It is well established that the Tanzimat reforms themselves were launched under the influence of Western pressure and through consultations with Western statesmen. From the

very reading of the Tanzimat Edict and throughout the ensuing period of reform, the Western impact on legal changes, particularly in the field of law, remained persistent and visible.

As codification efforts progressed across various fields of law, it became impossible to neglect the sphere of civil law. Consequently, Ottoman statesmen continuously debated either preparing a national civil code or adopting a European one. The attempt to draft a Metn-i Metin prior to the Mecelle, and various initiatives to adapt the French Civil Code (Code Napoléon) to Ottoman law, clearly indicate that this issue remained on the agenda for an extended period (İnalcık, p. 39).

2. The Legal Structure and Evaluation of the Mecelle

On 26 September 1854, two councils were established under the names Meclis-i Âlî-i Tanzimat (The Supreme Council of Reforms) and Meclis-i Vâlâ-yı Ahkâm-ı Adliyye (The High Council of Judicial Ordinances). In 1861, these two bodies were merged into a single institution, the Meclis-i Vâlâ. Later, in 1868, it was separated once again into two entities: the Şûrâ-yı Devlet (Council of State) and the Divân-ı Ahkâm-ı Adliyye (Court of Judicial Ordinances) (Engelhardt, p. 254; Seyitdanlıoğlu, p. 380).

One of the key ideological clashes of the Tanzimat era emerged between Ali Pasha, a leading reformist, and Ahmet Cevdet Pasha, a staunch advocate of Islamic law. At the core of this dispute lay the issue of adopting a legal code derived from French sources. Cevdet Pasha and his supporters argued that borrowing a civil code from a Christian nation would pose significant concerns for a Muslim state. In particular, the idea of subjecting the Muslim population to a Christian-based code was viewed as problematic. Therefore, they believed that systematizing Islamic civil law would be a more suitable and purposeful approach (Üçok, p. 353).

After extensive debates, Cevdet Pasha's viewpoint was ultimately accepted, and he was appointed to lead the Mecelle Commission. Between 1868 and 1876, under the guidance of this commission, the Mecelle-i Ahkâm-ı Adliyye (commonly referred to as the Mecelle) was compiled. It became the first codified body of civil and contract law in the Islamic world, based on Hanafi jurisprudence. The Mecelle consisted of a preface with one article, a section of 99 general legal maxims (Kavâid-i Külliye), and 16 books. Each book was submitted to the sultan upon completion and quickly ratified with his approval (Üçok, p. 353).

The members of the commission that drafted the Mecelle included:
Ahmet Cevdet Pasha (chairman), Ahmet Hilmi Efendi (contributed to all volumes), Seyfeddin İsmail Efendi (signed the first two books as inspector of Imperial Foundations, and books five to seven as deputy of the Shaykh al-Islam), Şirvanizâde Ahmet Hulusi Efendi (participated in all books except the sixth and eighth), Kara Halil Efendi (signed books seven, eleven, thirteen, and sixteen as fetva emini, and book twelve without a title), Ahmed Halit Efendi (signed nine of the books), Alaaddin Efendi and Muhammed Emin Efendi (members of the Mecelle commission), Ömer Hilmi Efendi (contributed to the final four books), and others such as Yunus Vehbi Efendi, Abdüssettar Efendi, Abdüllatif Şükrü Efendi, and İsa Ruhi Efendi (Ekinci, pp. 338–340).

In terms of content, the Mecelle is a codified compilation of Islamic legal rules. However, it does not include the domain of ahwāl-i şahsiyye (personal status law), which comprises family, personal, and inheritance laws typically handled by the shar‘i (Islamic) courts. Instead, it primarily addresses matters governed by nizamiye courts, such as civil law, obligations law, commercial law, and procedural law.

Furthermore, the Mecelle also applied to non-Muslim subjects (dhimmīs) living within the Ottoman Empire—excluding matters of personal status. It contains sections related to land law, tax law, and criminal law, though these were codified separately with their own respective legal codes.

The Mecelle represents a legal system grounded in principles, but in its codification process, a concrete (casuistic) method was employed instead of an abstract, principle-based approach. In other words, rather than developing generalized legal types or categories, the drafters opted to create specific rules for each individual issue or relationship. This feature of the Mecelle has been subject to criticism by many modern jurists for its lack of abstraction and generalization (Karakoç, n.d. p. 342).

The Mecelle was based on the Hanafi school of jurisprudence, the most widely followed Sunni madhhab among the Ottoman population. Notably, no provisions were drawn from other Sunni legal schools, and even within the Hanafi tradition, differing opinions gave rise to scholarly debates among 19th-century Ottoman scholars. The Mecelle's drafting process was marked by challenges in choosing among competing Hanafi opinions, particularly in identifying those deemed most authoritative and applicable. Previous efforts to systematize Hanafi legal thought—such as in the works Tatarhâniyye and Fatāwā al-Jihāngīriyya—were insufficient to fully resolve the fragmentation and intra-school disagreements in Hanafi jurisprudence (Karahasanoğlu, p. 102).

2.1. Comparison of the Mecelle with the French Civil Code and Its Historical Trajectory

In terms of content, the Mecelle is a codified compilation of Islamic legal rules. However, it does not include the domain of ahwāl-i şahsiyye (personal status law), which comprises family, personal, and inheritance laws typically handled by the shar'i (Islamic) courts. Instead, it primarily addresses matters governed by nizamiye courts, such as civil law, obligations law, commercial law, and procedural law.

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This point is particularly important: During the preparation of the Mecelle, there was no direct opposition from the Islamic scholars (ulema) toward the codification effort. This can be attributed to the historical precedent of codifications within the realm of örfî (customary) law in the Ottoman Empire, as well as the sporadic developments toward codified law in the field of sharʿī (Islamic) law, as mentioned above. It should not be forgotten that a similar initiative failed in Egypt during the same period. It is well known that during the reign of Khedive Ismail Pasha, a draft law titled Murshid al-Hayr was prepared by the Minister of Justice, Kadri Pasha, as an attempt to codify Islamic law. However, the project was never implemented due to concerns that such a codification would elevate the

position of the Egyptian governor to that of a legislator and potentially undermine his authority. In light of this example, the Mecelle gains further significance.

The first comparable example following the Mecelle is the 1917 Family Law Decree (Hukūk-ı Aile Kararnamesi), which is regarded as the first legal regulation in the field of family law. However, a key distinction between the Mecelle and the Family Law Decree is that while the former relied exclusively on the Ḥanafī school, the latter also incorporated legal opinions (ijtihādāt) from other Sunni schools of law (madhāhib) (Aydın, 2006, p. 20).

The Mecelle was implemented in several countries that had once been part of the Ottoman Empire—namely, present-day Syria, Jordan, Iraq, Lebanon, Israel, and Palestine—and remained in effect in these regions for some time after the dissolution of the Empire. In Lebanon, the Mecelle remained in force until 1930 for property law and until 1934 for other provisions; similarly, in Syria, it was in effect until 1930 for property law and until 1949 for other provisions. It remained in effect in Iraq until 1951, and in Jordan until 1977. During the British Mandate in Palestine (1917–1948), the Mecelle continued to be enforced in most of its provisions, and it did not immediately cease to apply following the establishment of the State of Israel in 1948. Additionally, parts of the Mecelle remained in effect in Albania until 1928, in Bosnia and Herzegovina until 1945, and in Cyprus until the 1960s (Aydın, n.d)

CONCLUSİON

The legal reforms initiated during the Tanzimat era necessitated a shift in the Ottoman Empire's legal system from the traditional dual framework of sharʿī (Islamic) and örfī (customary) law toward a more diversified legal structure. From the 1840s onward, in light of shortages in both qualified personnel and institutional infrastructure, the French Commercial Code was adopted as the basis for commercial legal regulations. However, this receptionist approach drew considerable criticism. Consequently, on the eve of preparing a comprehensive civil code for the Ottoman Empire, a consensus emerged in favor of drafting a civil and obligations code grounded not in Western models, but in a systematic compilation of Islamic civil law—particularly based on the Ḥanafī school.

Following the Crimean War, as a gesture of goodwill toward non-Muslim subjects, various legislative drafts were introduced. These reforms extended military and civil service positions to non-Muslims. Yet, these initiatives were not born of grassroots demand but rather as a result of external political pressure.

One of the most pressing reasons necessitating the drafting of a civil code in the Ottoman Empire was, again, the continued influence of Western demands that had persisted since the Tanzimat. A legal code was needed that would also apply to the Empire’s dhimmī (non-Muslim) population. Attempts to adapt the French Civil Code to the Ottoman legal context further underscore this concern. As a result, alongside citizenship-related legal reforms that had begun in the 1850s, the Mecelle-i Ahkām-ı ʿAdliyye—or simply the Mecelle—was prepared between 1868 and 1876 under the leadership of Ahmed Cevdet Pasha, taking into account the predominantly Muslim population and based on the principles of the Ḥanafī legal school. As the first codified Civil and Obligations Law in the Islamic world, the Mecelle remained in force in several countries, in some cases until the second quarter of the 20th century, depending on the legal structures of the respective states.

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