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AUTHOR'S NOTE

This paper is part of a larger project which aims to trace continuities and changes in governmental and punitive techniques of the Ottoman power over moral order from the mid-eighteenth century to the early decades of the *Tanzimat* era. The larger project aims to analyze the legal culture of the Tanzimat through both norms (imperial decrees, criminal codes, etc.) and practices (litigations in the courts and higher councils). As a beginning to this larger project, the current paper makes only a discursive analysis of the *Tanzimat* Edict and the Criminal Codes of the period.

Introduction

1 There is no doubt that human dignity occupies a fundamental place in international human rights as well as in constitutional democracies of the world. The Preamble of the American Declaration of the Rights and Duties of the 1948 starts as, "all men are born free and equal, in dignity and in rights." The very first article of the German constitution declares human dignity as inviolable and entrusts all the state authorities with protecting it.[1] Most of the constitutional courts protect basic rights such as right to life, property, privacy, freedom of speech and reproduction in various ways through rationalizing this normative concept of human dignity despite the fact that interpretations vary.[2]

2 Although the modern Turkish Constitution of 1982 which is the current constitution in the Turkish Republic does not use the term human dignity, this normative term is

replaced by another one: "honor" (i.e., *onur*).[3] The preamble of the Turkish Constitution clearly states:

> "Every Turkish citizen has an innate right and power to lead an honorable life and to improve his/her material and spiritual well-being under the aegis of national culture, civilization, and the rule of law through the exercise of fundamental rights and freedoms set forth in this constitution in conformity with the requirements of equality and social justice."[4]

Living an honorable[5] life and improving material and spiritual well-being through exercising fundamental rights and freedoms is what human dignity means in the Turkish constitution. Why are dignity and honor always pronounced together with justice in constitutional agreements between the state and its citizens?

3 The association of honor with justice was in fact codified well over a hundred years earlier by the *Tanzimat* Edict of 1839 in the Ottoman Empire. This proto-constitution guaranteed protection of "life, honor and property" to the Ottoman subjects. Yet, such a proto-constitutional relationship between the subjects and the state actually started much earlier, at least in legal correspondence between the Ottoman subjects and the central government in the eighteenth century. This paper aims to historicize the notion of honor in Ottoman legal discourse and practice from the early-modern period to the so-called "reform era," the era most scholars maintain began with the *Tanzimat* Edict of 1839. Such a historical approach uses justice as a key to understand honor not as a value system but as a rhetoric. By doing this, it also challenges the conceptualization of honor as a value system or a structure upon which a monolithic Mediterranean culture has been constructed. Thus, it problematizes an a-historical conception of honor which takes for granted that honor codes in modern societies are largely the legacy of "traditional" norms of pre-modern periods.

4 This study argues that the recurring presence of honor in the correspondence especially between the central government and the Ottoman subjects in the eighteenth century reflects the development of new parameters between the state and its subjects in moral terms. Although the idea of the "circle of justice" (*daire-yi adliyye*) already conceptualized a reciprocal relationship between the government and subjects on the basis of legitimacy and justice, a persistent emphasis on honor—with regard to sexual violence but not necessarily restricted to it—in the legal terminology of both the eighteenth and the nineteenth centuries points to a new moral discourse that emerges during this period. The Ottoman central government's claim to protect the honor of its subjects in the eighteenth century reflects a dialogic process in which subjects started to use new types of legal terminology and concepts to elicit the intervention of state in local matters that threatened their well-being. On the one hand, the motto of "life, honor and property" featured in the *Tanzimat* Edict represents a continuation of the discourse of honor as a legitimizing mechanism. Yet, on the other hand, the legal codification of honor in the Criminal Codes of the nineteenth century reflects a novel constitutional construction of gendered citizenship around reproduction in the conjugal family through the partnership of the patriarchal state and male subjects.

5 To discuss the historical development of this relatively novel relationship, the paper first explores the theories of the "circle of justice" in conjunction with the politico-administrative jurisdiction of the sovereign in Islamic and Ottoman political thought and practice. Secondly, it traces the utilization of the term "violation of honor" (*hetk-i ʻırz*) in eighteenth-century Ottoman legal practice and discourse and explores the pivotal role of sexuality in the perception of honor and violence. Furthermore, it

analyzes the discourse of the "protection of honor" as a legitimizing motive behind the interventions of the political power in the sexual sphere. Finally, it contemplates the motto of "life, honor and property" of the *Tanzimat* Edict as well as the codification of the concept of "violation of honor" in the Criminal Law of the nineteenth century to investigate the continuities with as well as ruptures from earlier notions of honor. One should note here that the analysis of the *Tanzimat* legal reforms of the nineteenth century are confined only to the discursive analysis of texts, whereas, the eighteenth-century legal culture has been analyzed through both legal discourse and practices. This paper aims to show that the novelty of the discourse of honor in the nineteenth century was its disposition towards the family as the locus of "protecting life" through reproduction.

"Circle of Justice" in Early-Modern Ottoman Legal Theory

6 The political prerogative of the Ottoman state over the "social" space of its subjects and the close moral association of justice and honor have their roots in the pre-Ottoman past. In the patrimonial structure of the Ottoman political system, the idea of the "circle of justice"[6] conceptualized justice as being directly disseminated by the sovereign as the trustee of the prosperity of its subjects. Furthermore, the principle of *siyasa shar'iyya* in Islamic law, especially in the Hanafi doctrine of law that the Ottomans officially adopted, provided grounds for the political prerogative of the sovereign, and the government on his behalf, to preside over public order.

7 The close relationship between the idea of the wise and moral ruler and the well-being and honor of his subjects upon which the Ottoman idea of justice was constructed has its roots in a universal perennial repertoire. Inspired by Greek political wisdom literature and themes from the writings of apparently Sasanian origin, Arabic political writing in the Umayyad and Abbasid periods was established upon some aggregative common topics of power among which are the axial position of power (*sultan*) in the organization of social order and "the direct impact of his virtues and vices upon the moral tenor of his subjects" (Al-Azmeh 2001: 83-95). The "mirror for princes" or "advice for kings" genres written by the courtiers such as Nizam al-Mülk (1018-1092) and by prominent *ulama* luminaries like al-Ghazali (1058-1111) and al-Mawardi (972-1058) used a political repertoire of hierarchy emphasizing the primacy of king over society denoting self-mastery as prerequisite for the proper exercise of power and ethical preconditions of just rulership deriving from Aristotelian ethics and material of Greek origin (*ibid.*: 94-8).

8 Yet, what the works of advice for kings written by the Arabic *ulama* did was rename and recast "the perennial political wisdom attributed to Persians, Greeks or others" as "prophetic or Koranic" and insert "in a distinctive genealogy that is specifically Muslim" (*ibid.*: 99). This is how, according to Aziz ʿAẓmah, the Muslim character of public institutions was brought about. The development of the genre of shar'ist politics (*siyasa shar'iyya*) which set the discursive rules of the legal arrangements of government was also based on the amalgamation of the paradigm of political writings with absolutist claims and of Muslim jurisprudence with prescriptive exemplary models (*ibid.*: 100). Hence, the idea that the ruler represents an exemplary moral model

for his subjects and therefore determines the moral order of the society he rules is a very ancient one upon which early Ottoman political thought was established.

9 First, the Ottomans appropriated and transformed many of these ideas into a local model according to changing political and social needs throughout the long history of the Empire. In early Ottoman political writings such as the Ahmedî's (c 1334/1335-1412) *Iskendernâme* and Tursun Beğ's (after 1426-after 1488) *Târîh-i Ebü'l-Feth* (History of the Conqueror), the ethical discourse on the kingly virtues emphasized in earlier literature was adopted, for example, in explaining the close connection between the ruler's moral virtues like his honor or honesty (*'iffet*) and justice (*'adâlet*) (Sariyannis 2011: 122-26). In *Kanûn-i şehinşâhî* (Imperial Laws), Bitlisî (*ca.* 1450-1520) defines four cardinal virtues (honesty/chastity, courage, wisdom and justice) among which justice represents the combination of the other three. Furthermore, affection and fairness towards his subjects ["the same way he expects his subjects to fulfill their own obligations"] are intrinsic to his definition of justice.[7] One should note that the relationship between the king and his subjects is defined here in a mutual terms.

10 These exemplary models turned into a more abstract model of governance with the idea of the "circle of justice" from the late sixteenth century onwards, especially in the seventeenth and the eighteenth centuries. The idea was conceptualized in Ottoman political writings such as Kınalızade Ali Çelebi's (d. 1572) *Ahlak-i 'Ala'i* (1565), Hasan Kâfî Akhisarî's *Usulü'l-Hikem fi Nizamı'l-Alem* (1596), Koçi Bey's *Risale* (1631) and Katib Çelebi's *Düsturü'l-'amel* (1652-53).[8] Kınalızade's version which repeats an aphorism attributed to Aristotle's letter of advice to Alexander the Great is the following:

> "Justice leads to the rightness of the world; the world is a garden, its walls are the state; the state is ordered by the *shari'a*; the *shari'a* is not guarded except by the king; the king cannot rule except through an army; the army is summoned only by wealth; wealth is accumulated by the subjects; the subjects are made servants of the ruler by justice."[9]

11 To put it in more concrete terms, rather than highlighting the specific virtues of the ruler, the "circle of justice" most often defined a model of good administration and governance, albeit mostly in relation to the ruler, but through more abstract notions of state, justice and the prosperity of the subjects. This does not mean that the idea of "circle of justice" was a contribution of the Ottomans to Islamic politics. On the contrary, the idea of the circle was also a very ancient Mediterranean and Near Eastern philosophical tradition which had an impact on political thinking. The Near Eastern conception of the state puts the ruler, with divine appointment, at the center of the polity in which he had a reciprocal relationship with his subjects through production, taxation and justice, above all the other classes in the society (Darling 2008). There were of course variations in the Ottoman model, too: While Kınalızade situated the sultan apart from different classes in society, Hasan Kafi counted him as one of the members of the military class (Hagen 2005: 63-4). Yet, there was almost no disagreement among Ottoman political thinkers that Ottoman society was organized in social classes (i.e. the men of the sword, the men of the pen, the men of agriculture and the men of commerce and trade), and, that the sultan was responsible of creating a balance among them by keeping "everybody in due place."[10]

12 What made the "circle of justice" apparently more appealing to the Ottomans in later centuries was the circle's intrinsic emphasis on institutionalized governmental structures more than the personal virtues of the sultan. To establish a reciprocal system of governance and organize the social relationships between different classes

and groups in an anticipated balance, the circle implies that there must be specialized institutions such as the finances to manage the agricultural infrastructure provided by the state, laws and revenue surveys, and the courts of petitions. Thus, the idea of circle served the interests of the Ottomans who were in a process of state formation and bureaucratization through different institutions after the sixteenth century.

13 The Ottomans used this aggregative repertoire in their praxis of politico-administrative jurisdiction. The necessity of maintaining public order through administrative and penal regulations gave rise to Ottoman legal institutions, as had also happened in other Muslim societies before the Ottomans. Parallel to the *shari'a* courts which were the principle legal institutions throughout the Empire, the Imperial Council (*Divan-ı Hümayun*) as a legislative and executive court administered public order through imperial statutes and decrees. It was in fact established upon the medieval Islamic notion of *mazalim* jurisdiction. *Mazalim*, literally "injustice and wrongful deeds," was again directly related to the idea that, a Muslim sovereign, as the trustee of public order, was responsible for removing injustices. *Mazalim* courts which allowed subjects to petition directly the caliph in the case of injustices perpetrated by official and semi-official powers were established in medieval Islamic Arab and Iranian states before the emergence of the Ottoman Empire.[11] One can again notice that the Near Eastern conception of the ruler as the one who protects subjects from the power elite resonates in this understanding of *mazalim* jurisdiction.

14 The Imperial Council was in fact the embodiment of the idea of "circle of justice" in which the moral virtues associated with the ruler were institutionalized. It functioned as a parallel but superior judiciary organ that heard petitions, judged some important cases of petitioners in its own court (*divan*) or sent imperial orders to provincial governors and judges in order to resolve issues there. The judicial and administrative roles of the sultan in the *Divan* started to diminish first by Mehmed II (r. 1451-1481) and were gradually transferred to the grand-vizier and his government through the physical as well as functional move of the *Divan-ı Hümayun* to the "Council of the Pasha's Gate" (*Paşakapısı Divanı*) beginning from the sixteenth century towards the eighteenth century.[12] However, it still symbolized the abstract notion of "good governance" and "justice" that is perceived as the responsibility of the sultan towards his subjects in the circular, reciprocal relationship between the state and the subjects.[13] Put another way, injustices in society ought to be prevented by this governmental institution that embodied the sultan who was responsible of restoring social balance.

15 The association of justice and the legitimacy of the government symbolized in the Imperial Council took more pragmatic political shape in Ottoman reform literature by the late seventeenth century. On the one hand, informing this shift from the "personal" moral virtues of the ruler towards the "political" appeared as critiques of particular policies of the government might be considered "the dissolution of the moral discourse over legitimacy" (Hagen 2005: 80) or "gradual abandonment of ethical approach" (Sariyannis 2011: 136). On the other hand, defining legitimacy through justice and the other way around can also be read as part of the process of the bureaucratization and institutionalization which enabled authors to envisage a reform agenda through practical administrative measures. For example, some authors compiled private law books (*kanunname*) based on both old (*kadim*) and contemporary statutes from imperial registers to be implemented. *Risale-i Kavanîn-i âl-i Osman der hulasa-i mezamin defter-i divan* by Ayn' Ali Efendi, secretary of the Register of Imperial Revenues (*Defter-i Hakani*

Emini) in 1610 (1018)[14] and *Telhisü'l-beyan fî kavanîn-i âl-i Osman* by the historian Hezarfen Hüseyin Efendi in 1675-76 (1086)[15] can be counted within this genre.[16]

16 Yet, such a move from the persona of the sultan to a more abstract and institutionalized notion of governance and politics does not necessarily eliminate the conception of justice and legitimacy through a moral glance. As Ferguson reminds us in analyzing Ottoman treatises, legitimacy always "rests on moral principles" (Ferguson 2010: 106). It is true that the circular understanding that legitimacy derives from the justice of the government towards the subjects (*re'aya*) was no longer the primary criterion of good governance for Ottoman treatise writers in the seventeenth and eighteenth centuries. Ottoman treatise writers came from the same elite circles who were threatened by the *re'aya*'s intrusion into their class privileges and understood this as something that undermined the social balance that the sultan was supposed to preserve (Hagen 2005: 80; Ferguson 2010: 106-7). Yet, on the other hand, the political theory espoused by the Ottoman elite does not necessarily reflect the perspective of *re'aya* on justice and legitimacy of the government. As Hagen rightfully notes about legitimizing discourse in advice literature, the taxpaying subjects who are "allegedly active participants in the discourse on legitimacy, are conceived in this discourse as mute objects of justice or injustice" acting as "God's tools in punishing the unjust ruler" (Hagen 2005: 82). He also warns researchers to acknowledge the essential difference between "construing the subjects as God's tools or as social agents disputing legitimacy" to be able to see the nuances between historical ideas and the "'objective' mechanisms" (*ibid.*: 83).

17 What I want to do in the rest of this paper is primarily to take into account the mechanisms in which the Ottoman subjects have found legal means to act as agents disputing legitimacy. I look at the interaction between the government and its subjects through petitioning the Imperial Council and analyze the legal discourse mutually deployed in this interaction in order to demonstrate a continuation of a reciprocal relationship between the state and the subjects through legitimacy and justice. I also argue that the notion of honor played a central role in claims over legitimacy and justice in such a mutually constructed relationship in the eighteenth century. Thus, moral discourse over legitimacy continued but on different terms due to changing social and political dynamics in the following centuries.

Legitimacy, Honor and Sexual Violence

18 The exercise of power and the maintenance of peace and order for its subjects in itself was always one of the principle sources of legitimacy for the Ottoman political authority.[17] Yet, one of the legitimizing strategies of early-modern Ottoman state in the eighteenth century was its claim to protect the honor of its subjects.[18] The protection of honor was closely connected with the maintenance of law and order in society, especially in the provinces where local power brokers were threatening the "honor" of the state, too. The reconfiguration of power structure as a result of economic and social restructuring in the late seventeenth and early eighteenth centuries in favor of monetary economy and introduction of a more decentralized system of tax-farming affected and increased the legal surveillance by the Ottoman state. The fragmented power structure and increasing autonomy of the provincial powers triggered a vigilant scrutiny of public and social order by the Ottoman state in this period. In this changing

relationship between the Ottoman central government and its subjects, the petitioning process must have played an important role in the intermingling of different genres and in transmission of moral values and legal categories reflecting these values. Just like the mutual rhetorical usage of "banditry" by the Ottoman state and its subjects,[19] so too the notion of honor and the legal term *hetk-i 'ırz* (violation of honor) had been established in this dialogic process.[20]

19 Why was this "politics of honor," most of the time associated with sexual honor, a legitimizing strategy for the Ottoman state? Scott Taylor explains this in relation to the notion of justice:

> "Honor creates the polite fiction of autonomy for those who are, in truth, subordinate, and allows both the dominant and subordinate to accept that this state of affairs is just. In this way, honor and sexual could be touchstones for the legitimacy of power. If everyone feels honored, then the hierarchical distribution of power can seem fair; but if the subjects of empire feel humiliated, the power that acts on them becomes illegitimate. The subjects then have justification for rebellion or any other violent act that can reclaim their autonomy and honor" (Taylor 2011: 306-7).

20 This is in fact exactly what rests behind the idea of "circle of justice:" There must be a "consent" given by a subordinate to the hegemonic power, and the latter should in return provide a sense of justice by honoring the subjects through protection. In such a formulation, protecting the honor of its subjects through establishing a moral order also means protecting the political power's own legitimacy and honor on the eyes of its subjects.

21 In this sense, the politics of honor in the early-modern Ottoman polity was a dialogic process, as the notion of honor was a rhetorical rather than structural code that mediated social relations. It was not "structure, provoking a predictable response to any given predicament," but rather "a resource that both states and their subjects could invoke in crisis, and something that both groups needed to safeguard in order to sanction their own behavior and status" (*ibid.*: 309). As we will see in more detail in the following pages, the legal terms associating sexuality with honor were generally used in petitions in which the early-modern central government and subjects were in dialogue with each other, albeit in an indirect manner. Petitioners were well aware of the power of rhetoric. They knew that their petitions must attract the attention of the Imperial Council personnel to be considered worthy of a hearing in the Imperial Council. The crafting of a plausible narrative—albeit within the limits of the official language—was at the center of the petitioning activity. However, as Natalie Zemon Davis brilliantly shows in her study of letters of remission in sixteenth-century France, looking at the "fictional" aspects of these documents is not inevitably a "quest for fraud" or "forgery" (Davis 1987: 3-4). Rather, looking at how the narratives were formulated through this collaborative endeavor and seeing what kind of rhetorical strategies were employed gives us important clues about the moral and social sensibilities of Ottoman subjects.

22 Let us see a petition submitted to the Imperial Council in Istanbul by a man who was an inhabitant of Ankara, a provincial city in Central Anatolia, in 1744. In this petition, Hasan Beşe, the husband of Fatime, seeks justice against those who committed sexual assault against his wife:

> May you, most excellent and merciful master, be well and strong!

> I, your humble slave, am an inhabitant of the village of Yıldırım el-viran of the district of Şorba in Ankara. While my wife Fatime was taking care of her land with no harm or offense to anyone, Hacıoğlu Kadri, an inhabitant of the same village, being one among the harmful bandits, "broke into my house" at night and committed an "indecent act" (*fi'l-i şeni'*) with my wife and "violated (her/our) honor" (*hetk-i 'ırz*) and committed "mischief" (*fesad*). Since the aforementioned Kadri has run away, I kindly request an imperial order of yours addressing the judges of Ankara and Şorba and the governor of Ankara for resolving the case when he is captured and establishing justice according to the *fetva* of the chief *mufti* that I present here.
> Your humble servant, Karabaşoğlu Hasan Beşe[21]

23 Although the couple's experience of the event and their sorrow were of course singular, the description of case in the petition was not unique at all. There is a host of legal documents, including petitions, imperial decrees and court records describing other events in mid-eighteenth-century Anatolia in almost exactly the same way the above petition describes the sexual assault on Fatime. Certain legal terms like "indecent act" (*fi'l-i şeni'*) "violation of honor" (*hetk-i 'ırz*) or expressions like "breaking into the house" were repeated to describe situations of sexual assault. Furthermore, those who committed sexual assault were generally identified as bandits or brigands with the use of a certain terminology such as "*mütegallibeden*" (being considered / from among the usurpers), "*şaki*" (robber), and "*eşkıya taifesinden*" (being a member of the gang of bandits).

24 My research on sexual offense cases in eighteenth-century Ottoman Imperial Council registers of Anatolia (*Anadolu Ahkam Defterleri*)[22] and petitions revealed two interesting phenomena: First, there were many more petitions and imperial decrees concerning sexual offenses than I had expected to find since I was basically assuming that the central government would not bother itself with the ordinary sexual involvements of Ottoman subjects. Second, there was an abundance of complaints by Ottoman subjects against the violence of certain "bandits" in their local towns in Anatolia. These petitions and the imperial decrees mention not only generic types of violence associated with banditry, such as plundering crops, attacking houses and killing innocent people, but also, and with almost no exception, incidents concerning their sexual violence. The juxtaposition of these two issues, that is, the central government's surprising interest in sexual crime and petitions specifically mentioning the sexual violence of bandits alongside the other crimes, is crucial for also understanding the symbolic meaning of other contemporary forms of violence that accompanied sexual violence.

25 The case brilliantly reveals the central role of sexual violence as one of the most important indicators of the accused being habituated to "violence," namely being bandit. At this point, it is important to consider why sexual violence was one of the important symbols of excessive "violence," tantamount to transgressing the gender order as well as the order and rules of the state. Here, the notion of "honor" and the question of whose honor was sullied with sexual assault becomes paramount.

26 Islamic literature favors expressions related to privacy, whereas, the definition of the public sphere in pre-modern Islam starts with the inverse of this private. The terms such as *haram/mahzur* (forbidden), *sir/maktum* (secret), *sitr* (veiling), *hurma* (inviolability), *'awra* (anything that man conceals by reason of shame or prudency) occupy a larger space than antonymic concepts such as *'alaniyya* (open, manifest), or

tashhir (making well-known, notorious) (Lange, Fierro 2009: 4). So, the public sphere in pre-modern Islam is defined as the negative of the private, that is, the sphere of life which is not protected from unwanted intrusions of power. Definitions of privacy in the Islamic context imply not only territorial and spatial privacy but also two other inviolabilities: the privacy and dignity of the human body and the inviolability of the reputation and honor of a person. Violence in this context is the act of unveiling others and "tearing apart the veil of integrity" (*hetk-i 'ırz*).[23] Sexuality is in the intersection, and the very inner core of three components of the definitions of privacy, that is, the inviolability of space, body and honor, and thus an attack to the sexual sphere represents violation of the space, body and honor, all together, in Islamic and early-modern Ottoman world.

27 In fact, one of the most frequently encountered terms in eighteenth-century legal documents in which the central government and the petitioners used in their correspondences is *hetk-i 'ırz*. The term was often coupled with "bandits" and used to describe certain people's cruelty and assaults on others' honor, i.e., assaulting their family, wives and children, slandering them, and in certain cases physically attacking them, as we have seen in our example. The offenses of breaking into others' houses and assaulting women and girls, and specifically committing sexual assault (*fi'l-i şeni'*) against a certain woman, girl or boy were generally described by the term *hetk-i 'ırz* in these documents.

28 In our exemplary case, the violation of all three dimensions of privacy is apparent: the accused violates territorial immunity by "breaking into house," then violates the right of the inviolability of human body by sexually assaulting Fatime, and as a result, violates the honor of the couple. But most importantly, the honor of Hasan Beşe, the one responsible for protecting his wife's body and reputation in a patriarchal society, is also sullied. All of these acts were defined by the term *hetk-i 'ırz* in the petition. Yet, the violation of the privacy of an Ottoman woman or man was not only a private act of violence, but also a public one that also violated the honor of the Ottoman state, too. In other words, the violation of the private was also a violation of the state's claim to its monopoly over legitimate violence as the sole authority to interfere and destroy the privacy of its subjects' bodies.

29 I argue that this intensive association of honor and sexuality through the usage of the term *hetk-i 'ırz* highlighted in petitions Ottoman subjects sent to the Imperial Council points to a discursive shift in how morality was negotiated to mediate relations among Ottoman subjects, local and imperial officials, as well as the imperial center in the eighteenth century. While, by the nineteenth century such a regulation of morals was accentuated more in governmental thinking and the technologies of the modern state, as will be discussed in the following section, its roots were based in the relationship of the Ottoman imperial government and its subjects in the eighteenth century. By claiming that it "protected (the) honor" of its subjects against those who threatened them, the imperial power attempted to usurp both the existing customary powers such as that of community and newly emerging provincial powers that the central state vaguely labeled as "bandits" or "outlaws" in order to gain control over moral order in society.

Tanzimat Reforms – "Life, Honor and Property," and the Gendered Citizen in the Criminal Code

30 The increasing emphasis both Ottoman subjects and the imperial government placed on honor by manipulating it as a legal discourse in eighteenth-century petitioning enabled the imperial power to categorize and punish sexual offenses more effectively on the principle of *ta'zir* (discretionary punishment) through the politico-administrative jurisdiction of the government. By creating its own terminology such as "violation of honor" (*hetk-i 'ırz*) and "indecent act" (*fi'l-i şeni'*), politico-legal praxis created a way to avoid the stringent *shari'a* rules on *zina* (fornication and adultery) and regulate the public order on moral terms on its own discretion.[24] This was not in fact alien to the idea of the "circle of justice" that legitimized the relationship between the government and its subjects in the classical Ottoman politico-legal theory: the sovereign was responsible for the well-being of his subjects by preventing oppression and injustice in return of the latter's consent and support (in the form of taxation) for the government. The "circle" has been preserved by the political and material support of the subjects to the government who provided honor and prosperity to them in return. In this circular notion of justice, honor was the touchstone for the legitimacy of power.

31 It was the *Tanzimat* Edict of 1839 that actually codified this new relationship between the government and the subjects on the basis of the protection of "life, honor and property." Moreover, we frequently come across the terms "violation of honor" (*hetk-i 'ırz*) and "indecent act" (*fi'l-i şeni'*) utilized as regular and mainstream terminology in the nineteenth century. Although the Criminal Code of 1851 (*Kanun-ı Cedid*) contained few criminal offenses and used the term *hetk-i namus* only once (Akgündüz 1986: 825), *fi'l-i şeni'* and *hetk-i 'ırz* became the usual and most-frequently used terms, replacing *zina* and diversifying sexual crimes in the Criminal Code of 1858. The usage of these two terms in this Code gives us more clues about their meanings in the previous centuries as well; *hetk-i 'ırz* was used as an umbrella heading under which different types of *fi'l-i şeni'* offenses such as adultery, defloration, rape, sodomy and molestation were put together (*ibid.*: 864-66). The emphasis on honor in conceptualizing sexual offenses and sexuality becomes more apparent when such clustering was codified. However, the usage of the term in the eighteenth century was no different; it referred to the violation of one's honor through various assaults on a person among which sexual assault was the most disgraceful.

32 Interestingly enough, the French Penal Code of 1810, from which the Ottoman Criminal Code of 1858 was adopted, used the French version of *hetk-i 'ırz* in the heading: " Attentats aux mœurs" (Attacks upon morals).[25] Moreover, the same terminology seems to have been used in the Egyptian legal code as early as 1830.[26] Yet, it appears that the idea of "violation of honor" and "attacks upon morality" in Ottoman legal language precedes the era of legal reform both in the Ottoman Empire and in France.[27] Therefore, just as the old *kanunname*s were codifications of an amalgam of customary law and *shari'a*,[28] the criminal codes of the nineteenth century can be read as a codification and institutionalization of Ottoman legal custom and terminology which was already in use during the eighteenth century and even before—albeit influenced in the nineteenth century by foreign practices, too. Furthermore, the use of a language which was not directly borrowed from Islamic jurisprudence and the appearance of this terminology

in nineteenth century codes can also be read as a continuation of a *kanun* tradition that created its own language and legal culture, though not necessarily contradictory to that of the *shari'a*. Concentrating on a well-preserved notion of justice revolved around the idea of the "circle of justice" instead of creating a binary between the *shari'a* and *kanun*, or *shari'a* and *Tanzimat* reforms, enable us to understand the prevalence of honor as one of the most important legitimizing parameters of justice.[29]

33 The *Tanzimat* Edict of 1839 which initiated the bureaucratic and institutional reforms of the following decades was actually established upon the traditional concept of a "just ruler," at least in the discursive level (Darling 2008: 23). It legitimized the changes and reforms through the idea of "circle of justice," by connecting justice, popular prosperity and the strength of the state:

> "Indeed there is nothing more precious in this world than life and honor. What man, however much his character may be against violence, can prevent himself from having recourse to it, and thereby injure the government and the country, if his life and honor are endangered? If, on the contrary, he enjoys perfect security, it is clear that he will not depart from ways of loyalty, and all his actions will contribute to the welfare of the government and of the people.
> If there is an absence of security for property, everyone remains indifferent to his state and his community; no one interests himself in the prosperity of the country, absorbed as he is in his own troubles and worries. If, on the contrary, the individual feels complete security about his possessions then he will become preoccupied with his own affairs, which he will seek to expand, and his devotion and love for his state and his community will steadily grow and will undoubtedly spur him into becoming a useful member of society" (Hurewitz 1975: 269-71).

34 The political idiom and rhetoric used in the routine bureaucratic correspondence during the *Tanzimat* period was also established upon "a state ideology of order *cum* prosperity" (Reinkowski 2005: 200). Two images of cyclical order, which are the circle of justice and the incessant alternation between order and disorder, emerge repeatedly in the vast material of *Tanzimat* bureaucratic correspondence cited in Maurus Reinkowski's research (*ibid.*: 200-3). Yet, the new *Tanzimat* reforms were to be justified by shifting the ideological stress away from the preservation of the social order toward the prosperity that would result from good administration (Darling 2008: 25). The *Tanzimat* Edict stated that the new period would be only the beginning of "further beneficial and advantageous measures to make certain the execution of orders insuring the well-being of the people, rich and poor, whose happy state is a necessary precondition for the reinvigoration of religion and state and the prosperity of country and nation" (İnalcık 1965: 4; rpt in İnalcık, 1978).

35 Since the idea of "circle of justice" has promoted the politico-administrative jurisdiction of the government (*siyasa*) as the judicial enforcer, *Tanzimat* reforms were in conformity with this idea not only in the discursive field but also in practice as well. The intensification and proliferation of state control over finances with an attempt to abolish tax farming, "exerting control directly over its subjects as individuals rather than dealing with groups through intermediaries" and the "reconsolidation of lawmaking and administration in official hands" (Darling 2008: 27) by the *Tanzimat* reforms can be read as a continuation of the efforts of the central government to exert control over public order in the eighteenth century.[30] The strengthening of bureaucracy over the *ulama* or the "triumph of the 'men of pen' over magistrates" as Şerif Mardin (2009: 260) formulated as well as the establishment of new councils and courts for legislative and executive purposes constitute the crystallization of the

appellate system that had already derogated the independent power of the *kadı* with the rise of the authority of the governors' and the imperial councils in the eighteenth century. Even the transformation of the private and public law "into two increasingly distinct spheres" (Mardin 2009: 262) was a gradual process that started well before the *Tanzimat* and continued well beyond establishment of the Turkish Republic.[31]

36 Yet, the predisposition of the Ottoman political power towards scrutinizing social order in the eighteenth century was not then comparable with the endeavors and means of the Ottoman state during the nineteenth century. The eighteenth-century early modern power was not only deprived of the "disciplines and technologies of power" over a "deployment of sexuality" but also of the desire to create "docile bodies" through a panoptical surveillance of the subjects (Foucault 1978 and 1995). For example, in this period punishments were not yet standardized, uniformed or quantified but rather left to the "discretion" of law-enforcers. A correlation of the length of imprisonment with the severity of the crime, or the universalization of penalties in relation to the crimes, was established only by legal reforms of the nineteenth century. Whereas for example regulations concerning judicial and administrative authorities issued in 1838 still determined the punishment for "bribery" according to status (of the administrator), just like principle of discretionary punishment in the eighteenth century, the penal codes of 1840 and 1858 were constructed more in accordance with a discourse on "equality" and attempted to establish a universal principle of punishment based on the crime committed.[32] Furthermore, various councils, both at the imperial center and in the provinces, that were established throughout the nineteenth century worked within a more hierarchized and institutionalized appellate structure, compared to the loosely hierarchized appellate triangle of the *kadı* court, governor's council and the Imperial Council in the eighteenth century.[33] Within this highly hierarchized judicial system, the scope of the legal jurisdiction of the local judges and their courts became narrower in the nineteenth century than in the eighteenth century (Agmon 2006: 68-73 and 235-38).

37 However, one can still recognize a path in governmental mentality which proceeds from the eighteenth towards the nineteenth century even though it is neither a trouble-free nor a linear path. One observes continuity especially in the development of new parameters between the government and its subjects on moral terms through a mutual claim on honor. Ruth A. Miller accurately defines the *Tanzimat* period as an "explicit intent of constructing a modern—understood in the early nineteenth century as liberal—imperial state." The 1839 Edict promised "a legally homogeneous Ottoman citizenry the right to life, honor, and property" (Miller 2005: 355-6). In this sense, the *Tanzimat* Edict was a proto-constitution defining the relationship between the state and its subjects on the basis of "rights and duties" deriving from abstract legal norms such as honor. In this political schema in which citizenship has been established upon the abstraction of "equality" and "rights," Miller argues, rights were granted or acquired mostly through defining reproduction as one of the most basic attributes of citizenship and political duty of the citizens. In other words, the modern state puts sexuality and reproduction at the center of citizenship thanks to its bio-political concerns of "protecting life" from a Foucauldian point of view.[34] In this sense, the coupling of "life, honor and property"—property as a prerequisite for being a liberal citizen—in the *Tanzimat* Edict and emphasis put on the notion of "honor" as an umbrella unifying sexual violence and adultery under one heading in the *Tanzimat* legal codifications in

the following decades are not surprising according to this new bio-political model of rights and citizenship.

38 One observes concrete outcomes of the abstraction of "honor" of the *Tanzimat* Edict in the Criminal Code of 1858. In the criminal code, "honor" acquires a gendered character as opposed to its universal liberal abstraction in the *Tanzimat* Edict.[35] First of all, it is sexualized by its association with all sorts of sexual crimes ranging from sexual molestation to adultery in ten articles under a separate heading of *hetk-i 'ırz* (violation of honor). Secondly, it is gendered through: crime and punishment of sexual assault and rape were differentiated according to the victim's gender and age, i.e., they were all different if the crime was against adult men and women, "virgin girls" and boys. Similarly, the penalties for the procurement of "young" men and women varied. Finally, the adultery of husbands and wives was also treated differently.[36]

39 In this construction, women were mostly defined as victims, that is to say, "passive" subjects whose rights to "honor" should be protected by the state.[37] Yet, they were also envisioned as active subjects, albeit only under one circumstance: as adulterous wives. The new criminal code—different from its antecedents such as the old criminal code, the *kanunname* of Süleyman in the sixteenth century—confined fornication within the boundaries of the "family" by giving the right of litigation (against the adulterous wife and her lover) only to the male guardian (e.g., either the husband or the father of the woman in the absence of a husband). In this sense, women became active subject-citizens through their sexuality only when they were defined as reproductive members of the family, albeit from a negative angle: as the ones whose sexuality should be controlled by the collaboration of the two patriarchs—the state and the patriarch of the family. In other words, the honor of both the state and the family was to be protected through the regulation and control of women's sexuality. In this constitutional agreement, the man negotiated his rights with and promised loyalty to the political sovereign in return for the guarantee of the sovereign's protecting his honor in controlling the wife's sexuality. The woman also obtained her "rights" of being protected from sexual assault, though at the same time, consenting the duplication of the control over her sexuality through the state's hands. As part of the negotiation between patriarchs, the man also promised the father state not to commit adultery under the sacred roof of the house where he lives with his wife. He was going to be judged only when his wife lodged a complaint. Nevertheless, the penalty for the adulterous husband was much lesser than that of the adulterous wife: only the payment of a fine compares starkly to the adulterous wife's punishment by imprisonment from three months to two years.[38]

40 Hence, the boundaries of the "honor" of the individuals were set by the conjugal family. If the wife commits adultery no matter how and where, the male guardian was the only one who was authorized to "protect" his or her honor. If the husband committed adultery, then the state gave authority to the wife but only in case when her husband's adultery takes place within the boundaries of the "sacred" house. Otherwise, the other articles of the 1858 Criminal Code concerning the "violation of honor" are all related to non-consensual sexual acts: either rape (*cebren fi'l-i şeni'*), molestation, or female and male trafficking/prostitution. The code apparently lacks any statutes on consensual illicit sex outside the family bond. This actually signifies an important shift in the legal surveillance of sexuality; the state replaces the community with the family in its partnership of regulating sexuality. Whereas the community was responsible for

monitoring and reporting all sorts of illicit sexuality and "violation of honor" to the courts, now the "gendered citizen" in the family is responsible for protecting the honor of him, the family and the state.

In Lieu of Conclusion

41 Thinking about honor as a tool that legitimizes inequality through the rhetoric of justice has enabled us to find cohesion in the governmental mentality of the Ottoman imperial power in its emphasis on the protection of honor as the new parameter determining the relationship between the state and its subjects from the eighteenth century onwards. While the idea of justice disseminating from the sovereign to its subjects as a guarantee of prosperity and government was on the one hand present in the theory of "circle of justice" and *siyasa shar'iyya* as well as their application in the Ottoman legal practice in the early-modern period, on the other hand one should note/acknowledge that technologies of the modern state and its disposition towards the population and family for protecting life and honor starting from the nineteenth century onwards were novel.

42 This helps us better understand why the Ottomans adopted the French Penal Code of 1810 for a more "modern" criminal legislation of 1858 while there was already an available theoretical and legislative framework for legitimizing state's intervention on sexuality on the basis of honor. Rather than blindly adopting foreign concepts wholesale, it shows us how the Ottomans inscribed indigenous concepts of law and sovereignty into a foreign vocabulary of governance that had all of the trappings of modernity and progress. Although the historical role of the notion of honor in the construction of subjection/subjectivity in French history has not been explored in this paper, the French code locating the family—with implicit reference to the nuclear family—instead of the community at the center of the definition of the illicit sex was novel for the Ottomans. It apparently fitted well into the liberal attempts of the Ottoman imperial power which aimed to create "Ottoman subjects" on the basis of a universal-yet-gendered definition of citizenship around the idea of protection of life, honor and property through the institution of the family. While it remained outside the scope of this paper, the fundamental question of how such an increasing emphasis on family and reproduction in the discourse of honor that legitimized more scrutiny and control over sexuality through codified legislation and disciplinary institutions actually affected people's daily experience of sexuality and gender dynamics in the society should be investigated further.

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NOTES

1. The modern constitutions of Hungary, South Africa, Switzerland and Iran as well as the Charter of Fundamental Rights of the European Union acknowledge the inviolability of human dignity.

2. For a discussion of three different meanings of dignity, namely the dignity of the individual associated with autonomy and negative freedom; the positive dignity of maintaining a particular type of life; and the dignity of recognition of individual and group differences that have been applied in the U.S. constitutional courts, see Rao 2011.

3. The term "honor" has various forms in Turkish as well as in their Arabic and Persian origins. While *onur* and *şeref* have more neutral meanings of reputation, fame and dignity, *namus*, *'iffet*, *'izzet* and *'ırz* have more gender-specific meanings of women's chastity and virtue, and male control of women's sexuality. In this paper, I try to follow the historical meanings of the terms, especially of *'ırz* in its usage of the legal term *hetk-i 'ırz* (violation of honor).

4. The preamble of the 1982 constitution as amended on July 23, 1995; Act No. 4121.

5. *Onurlu* as being used in the Turkish constitution.

6. A shorter version of the circle, first quoted in the *'Uyūn al-akhbār* ("Fountains information") of Ibn Qutayba (d. 276/885) can be explained as follows: 'There can be no government without men, no men without money, no money without prosperity, and no prosperity without justice and good administration' as being quoted in Darling 2011. The earliest extended version, an aphorism

attributed to a letter of advice written by Aristotle to Alexander the Great on how to govern his conquests, appeared in an anonymous Arabic encyclopedic work probably from the fourth/tenth century, the *Sirr al-asrār*: "The world is a garden, hedged about by sovereignty; sovereignty is lordship, preserved by law; law is policy, governed by the king; the king is a shepherd, supported by the army; the army are soldiers, fed by money; money is revenue, gathered by the people; the people are servants, enfolded by justice; justice is harmony, the well-being of the world." (*ibid.*). This longer version had apparently been appropriated by the Ottoman writers in very similar formulations.

7. Here I borrow M. Sariyannis' translation of Bitlisî and his summary of the four cardinal virtues (*ibid.*: 124-26).

8. For detailed analyses of these works, see respectively Tezcan 1996; Hagen 2005; İpşirli 1979-80; Sariyannis 2011; Ferguson 2010. For analyses of the legitimizing discourses of justice through the circular view of justice in Ottoman political thinking, see Ergene 2001; Hagen 2005. For a more general discussion of the concept of "circle of justice" in early Islamic empires and throughout the Ottoman history, including the reformation period of the nineteenth century, see Darling 2008.

9. As being translated and quoted in Hagen 2005: 65.

10. *Ibid.*; also see Ergene 2001: 56-57.

11. Al-Mawardi, a Shafi'i jurist of the eleventh century who discusses extensively the relationship between *mazalim* and *siyasa* in his *Kitab al-Ahkam as-Sultaniyyah*, held the military governor (*amir*) responsible for the maintenance of public order and security, whereas, he gave the judge (*kadı*) the right to adjudicate to protect the rights of individuals in the litigation of private parties: Al-Mawardi 1996. For biographical information on al-Mawardi, see Brockelmann 2012. For a detailed description of *mazalim* in the early Islamic states and under the Bahri Mamluks, see Nielsen 1985.

12. For an extended analysis of this power shift in the Imperial Council as a symbol of larger transformation in politics and society in the seventeenth and the eighteenth centuries, see Tuğ 2009.

13. Ferguson also pinpoints the dilemma of the sultan still retaining a "highly visible presence in Ottoman reform treatises while being in retreat from the daily administration of imperial affairs as well as from the writers' conception of justice." (Ferguson 2010: 97)

14. In fact, Ayn'Ali Efendi's *Risale* had been ordered by the Grand Vizier Murad Pasha. It was modified by Ayn' Ali Efendi by putting in amendments about the salaries of state officials of the time and resubmitted to the grand-vizier in 1018 (Ayn' Ali Efendi 1863: 83-87).

15. For detailed information about this work, see Babinger 1992; Barkan 1943.

16. For a detailed analysis of these private lawbooks in their relationship with the entire *kanun* practice in the seventeenth and eighteenth centuries, see Tuğ 2009: 66-8 and 91-3. Ferguson 2010 makes an intelligent analysis of how Ottoman authors of this period deployed archival sources of the past to create a reform agenda in a way different from the advice literature of the previous generation. See especially *ibid.*: 109-16.

17. For a detailed and analytical discussion of the legitimizing mechanisms of the Ottoman sultanate, both the normative and factual ones, see Karateke 2005. He considers the establishment of "justice and order" through preventing arbitrary legal processes via courts and institutionalized mechanisms of personal redress as well as the huge corpus of legislation procedures as one of the most important pillars of "factual" legitimacy.

18. The research in this section is primarily based on my Ph.D. dissertation (Tuğ 2009).

19. For detailed historical examples of the rhetorical usage of banditry in the eighteenth-century legal documents, see *ibid.*: 154-68. Similarly, Tolga Esmer's contribution to this issue documents well the repertoire of narrative strategies and tropes of the Ottoman officials as well as of the irregular soldiers/bandits in Rumeli during this same period.

20. By saying this, I do not mean that the notion of honor has been only used or discovered in the legal culture of the eighteenth century. To see how honor and reputation acquired an important moral function in relation to sexual and moral order of the Ottoman society before and after the eighteenth century, see Leslie Peirce contribution to this issue in addition to Peirce 2003; Peirce 1997; Semerdjian 2008; Tucker 1998; Baer 2011. Yet, the term *hetk-i ʻırz* (violation of honor) has rarely been used in legal records before the eighteenth century. As I will explain in this section, the novel utilization of this term in the correspondence between the central government and the Ottoman subjects in the eighteenth century points to a construction of a constitutional relationship based on morals. In this sense, this period represents a shift towards a notion of honor as "constitutional contract" from "social contract" defined in Peirce's contribution to this special edition.

21. Prime Ministry Archive, A.DVN.ŞKT, folder 67, petition 134 (1157/1744).

22. I have specifically researched Anatolian Registers of Imperial Rescripts (*Anadolu Ahkam Defterleri*), i.e., the imperial petitionary registers of Anatolia written by the Imperial Council in response to the petitions and letters coming from the Anatolian province. It is important here to note that the central government started keeping records of imperial rescripts written in response to petitions coming from ordinary Ottoman subjects and low-level administrators throughout the empire only in the second half of the seventeenth century. These records form a special series called Petition Registers (*Şikayet Defterleri*). More importantly, from 1742 onward, separate registers of such rescripts known as Provincial Registers of Imperial Rescripts (*Vilayet Ahkam Defterleri*) were set up for the most important provinces such as Anadolu, Rumeli, Erzurum, Şam, etc. The series of Anatolian Registers of Imperial Rescripts in the Prime Ministry Ottoman Archives in Istanbul contains 186 volumes for the period from 1742 to 1889. I examined two volumes of these registers covering the period between 1742 and 1744; the first one is composed of 284 pages containing 1254 imperial rescripts and the second of 292 pages containing 1248 rescripts.

23. The expression literally means "tearing (one's) honor" and "disgracing someone." See Wehr, Cowan 1980: 1018. Interestingly enough, *hetk* itself acquires a meaning in Arabic which implicitly accommodates "honor," despite the fact that *ʻırz* normally means honor. Moreover, the term *hatīka* which stems from the same root means "dishonor." See Farès 2012.

24. For a discussion of the all-encompassing and ambiguous term *zina* in *sharīʻa* with regard to its blindness to the question of consent (i.e., hardly differentiating rape and fornication in theory) and the stringent rules of conviction of the crime of *zina* in Islamic law, see Imber 1996; Sonbol 1997; Peirce 2008; Ze'evi 2006: 48-76. For a detailed analysis of different terminology used to replace *zina* and the use of "discretionary punishment" to penalize sexual crimes more effectively and "centrally" in the eighteenth-century legal practice, see Tuğ 2009: 173-311.

25. "Attentats aux mœurs" in *livre* III, *titre* II, *section* IV in *Code pénal de 1810 (Texte intégral - État lors de sa promulgation en 1810)*, URL: http://ledroitcriminel.free.fr/la_legislation_criminelle/anciens_textes/code_penal_de_1810.htm (accessed July 1, 2014). For its English version, see *The Penal Code of France* 1819.

26. Illegal defloration (*izalat bakarat bint*) was considered among the offenses against a person's honor (*hatk ʻird*). See Kozma 2001: 2; Peters 1997: 81-82.

27. Despite the fact that it is beyond the limits of this paper, it would be interesting to explore whether there were any interaction between the early-modern legal cultures of the Ottomans and French which would have created such a common terminology as reflected in their codified penal codes of the nineteenth century.

28. For a detailed analysis of *kanun* in the early-modern Ottoman world, see Tuğ 2009: 40-96.

29. For recent approaches challenging the binary between *shariʿa* and *kanun*, see Tuğ 2009; Ferguson 2010; Stilt 2011.

30. For a similar analysis which construes the Ottoman legal system in the eighteenth century as the building stone of the "modern penal system" established through penal reforms of the nineteenth century, see Zarinebaf 2010: 175-81.

31. Fahmy (forthcoming) makes a brilliant analysis of the simultaneous and blurred use of both kanun and *shari‹a* in these reformed courts and councils in Mehmed Ali's Egypt.

32. Cengiz Kırlı's 2006 study on the "invention" of corruption in the penal code of 1840 vividly demonstrates how a new legal discourse on "equality" was constructed on universalizing punishment based on the crime. Yet, crimes against honor and slander were still punished according to the old principle of discretionary punishment in criminal laws of both 1840 and 1851. In other words, the punishments of the state officials and *ulama* were determined differently according to their status by the superior councils (*Meclis-i Ahkam-ı Adliye* for 1840 and *Meclis-i Vala* for 1851). For the full text of the penal codes of 1840 and 1858, see Akgündüz 1986: 808-76. Miller (2005: 52-55) sees a pattern of intensification of a shift from the concept of victim losing "any importance it may once have had" to a situation where the "life" of the state overrides "the 'life' of the inherently deviant individual" from 1840 to 1858. In other words, she highlights the intensification of the emphasis made to the political crimes and crimes against the state over ordinary crimes against people and property. Although I do not agree with her emphasis on the rupture from the previous period, I agree that the state's legal attention was on political crimes and bureaucratic legal centralization. It is my contention that the universalizing punishments based on the crime worked parallel to this bureaucratic centralization and state's anxieties about political crimes.

33. For these various councils established throughout the nineteenth century, see Bingöl 2004; Ekinci 2004; Çadırcı 1985; Rubin 2011.

34. For a recent study that analyzes Ottoman reproduction policies such as the professionalization of midwives, a ban on abortion and greater medical care during pregnancy as part of a plan of population growth in the late nineteenth century, see Balsoy 2013.

35. In fact, the criminal law of 1858 was much more detailed in defining crimes and punishments compared to 1840 and 1851 laws. It was partly because it adopted a much more detailed 1810 Napoleonic criminal code and, most importantly, because it was twenty years later than the first Ottoman criminal code (1838) in the nineteenth century.

36. See Miller 2005: 366-8 for a detailed analysis of the articles concerning adultery in both the Ottoman and French Code.

37. Miller (2005: 363 n.15) defines this citizenship right as "negative" right, that is, the right not to be coerced.

38. Supplement to Article 201. See Akgündüz 1986: 865-66.

ABSTRACTS

This article aims to historicize the notion of honor in the Ottoman legal discourse and practice from the early-modern period to the so-called "reform era", the era most scholars maintain began with the Tanzimat Edict of 1839. Such a historical approach uses justice as a key to understand honor not as a value system, but as a rhetoric. Thus, it problematizes an a-historical conception of honor which assumes that honor codes in modern societies are largely the legacy of "traditional" norms of the pre-modern periods. This study argues that the persistent emphasis

on honor in the correspondence especially between the central government and the Ottoman subjects in the eighteenth century reflects the development of new parameters between the state and its subjects in moral terms. On the one hand, the motto of "life, honor and property" of the *Tanzimat* Edict represents a continuation of such discourse of honor as a legitimizing mechanism. Yet, on the other hand, the legal codification of honor in the Criminal Codes of the nineteenth century reflects a novel constitutional construction of gendered citizenship around reproduction in the conjugal family through the partnership of the patriarchal state and the male subjects.

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Keywords: honor, sexual violence, gender, violation of honor, justice, legitimacy, circle of justice, public order, Ottoman Empire, eighteenth century, Tanzimat, criminal law, criminal code

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