Osmanlı Mirası Araştırmaları Dergisi / Journal of Ottoman Legacy Studies
ISSN 2148-5704
www.osmanlimirasi.net
osmanlimirasi@gmail.com
Cilt 7, Sayı 19, Kasım 2020 / Volume 7, Issue 19, November 2020

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Osmanlı Yönetim Sisteminde Rasyonellik Arayışı: Çerçeve Olarak "Yasama Süreci"

Makale Türü/Article Types : Araştırma Makalesi/Research Article
Geliş Tarihi/Received Date : 20.09.2020
Kabul Tarihi/Accepted Date : 03.10.2020
Sayfa/Pages : 601-614
DOI Numarası/DOI Number : http://dx.doi.org/10.17822/omad.2020.172

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Atıf/Citation

Çamlı, Ahmet Yavuz, "The Search for Rationality in the Ottoman Management System: 'Legislative Process' as a Framework", *Osmanlı Mirası Araştırmaları Dergisi*, 7/19, 2020, s. 601-614.

Osmanlı Mirası Araştırmaları Dergisi (OMAD), Cilt 7, Sayı 19, Kasım 2020.

Journal of Ottoman Legacy Studies (JOLS), Volume 7, Issue 19, November 2020.

ISSN: *2148-5704*

THE SEARCH FOR RATIONALITY IN THE OTTOMAN MANAGEMENT SYSTEM: "LEGISLATIVE PROCESS" AS A FRAMEWORK[*]

Osmanlı Yönetim Sisteminde Rasyonellik Arayışı: Çerçeve Olarak "Yasama Süreci"

Ahmet Yavuz ÇAMLI

Abstract: Today, the number of people who advocate that Ottoman-Turkish modernization produces neopatrimonialism is considerably high. The patrimonial management style of the Ottoman is shown as a reference to the proposed opinion. On the other hand, some thinkers say that rationality is dominant in Ottoman management. This study aims to reveal the character of the Ottoman management system with an objective approach. For this, the concepts and categories in Weber's sociology followed. Explanations made within the framework of 'rational legislative activities' are among the essential rational management indicators. According to the findings, it is possible to argue that the Ottoman management system was not patrimonial.

Keywords: Ottoman management, legislative activities, practical-rationality, patrimonialism, Weber

Öz: Günümüzde Osmanlı-Türk modernleşmesinin neopatrimonyalizmi ürettiğini savunanların sayısı azımsanmayacak kadar çoktur. Bu görüşe referans olarak Osmanlı'nın patrimonyal yönetim tarzı gösterilir. Bu düşünceden hareketle, Osmanlı yönetimi, birçok yerli ve yabancı araştırmacı tarafından özellikle Max Weber'in görüşlerine dayanarak çeşitli kavram ve ifadelerle eleştirilir. Bazı düşünürler ise Osmanlı yönetiminde akılcılığın egemen olduğunu söyler. Bu doğrultuda çalışma Osmanlı yönetim sisteminin karakterini objektif bir yaklaşımla ortaya çıkarmayı amaçlar. Bunun için Weber'in sosyolojisindeki kavram ve kategorilerden hareket edilmiştir. Rasyonel yönetimin en önemli göstergelerinden biri olan 'rasyonel yasama faaliyetleri' çerçevesinde değerlendirmeler yapılmıştır. Bulgulara göre Osmanlı yönetim sisteminin patrimonyal olduğu söylenemez. Yönetim sisteminin dizaynında akılcılığın ve değerlerin bir potada eritilmesini ifade eden pratik-rasyonellik anlayışının hâkim olduğu belirtilebilir.

Anahtar Kelimeler: Osmanlı yönetimi, yasama faaliyetleri, pratik-rasyonellik, patrimonyalizm, Weber

Introduction

Max Weber builds his sociology on the analysis of modern capitalism. In that time, positivism and materialism were dominant in social and natural sciences. Indeed, his thought about capitalism has a broad and profound impact on the West and all societies. Weber defines the development of modern capitalism as a process of rationalization. He argues that rationality is unique to Protestant communities. While trying to identify the dynamics behind the rationalization, Weber explores why non-Western societies fail to achieve these achievements. He uses both the conceptualization and the ideal type of methodology. In this way, he tries to show the degree of proximity and distance of Western and Eastern societies comparatively.

In this context, Weber characterizes Protestant Western societies as rational, non-Western cultures in general patrimonial, irrational. Webers call this regime as sultanizm. In this respect, patrimonialism is the opposite pool of rationalization.

[*] Bu çalışma Manisa Celal Bayar Üniversitesi'nde tamamlanan "Klasik Dönem Osmanlı Toplumu'nun Sosyo-Ekonomik Yapısı (Max Weber'in Patrimonyalizm Teorisi Çerçevesinde Araştırılması)" adlı doktora tezinden üretilmiştir.

Regarding Weber's thought, many researchers criticize Ottoman management with various concepts and expressions. Some scholars carry the dimension of these criticisms to the present day. Generally argued that the patrimonial mentality had disrupted the modernization process of Ottoman-Turkish society. Patrimonyalizm reflects itself generally in management. According to Weber, Ottoman management was based on arbitrary transactions.

In this regard, I would like to examine Weber's rationalization ideas shortly to create a ground for the subject. And then I will explore the political patrimonialism. Based on this ground, I will explain the Ottoman legislative activities.

1. Rationalization Analysis of Max Weber

Rationality is one of the basic assumptions formed by the principles that regulate modern society and its relations in a broad sense. In this study, a projection task is assigned to the phenomenon of rationality, which is accepted as one of the essential dynamics of today's political science and other disciplines such as the economy. Because rational and patrimonial understanding forms the opposite poles in Weberian sociology.

According to Weber, rationalization is a product of the rational philosophy of the enlightenment period. In this process, metaphysical powers and ideas about magic, the supernatural, and religion lose importance in the social and individual sphere. The dominance of ideas based on science and empirical calculus is substituted. Individuals begin to act rationally and economically to achieve their goals, maximize their benefits and profits, and solve their problems. The solution to the issues that arise is started to apply to economists, physicists, political scientists, psychologists, social counselors, and doctors, not to clergymen or sorcerers as in the traditional period. Thus, people organize all their actions according to a rational cause-effect relationship.

1.1. Types of Rationality in Weber's Thought

Weber refers to various types of rationality in his works. He uses some kinds of rationality in the same sense and purpose. He mostly focuses attention on two types of rationality. These are purposive-rationality and practical-rationality. He uses other rational appearances when constructing purposeful-rationality and practical-rationality.

For example, formal-rationality is the type of rationality in which the individual focuses only on his interest. It is entirely in the individual’s interests to set goals and determine the methods to achieve goals.[1] According to Weber, the best example of this is the capitalist economic activities. For this reason, providing the highest benefit with scarce resources or making a maximum profit with minimum cost constitutes the formal-rational action.[2] Weber uses value-rationality in the same sense as essential-rationality and moral-rationality. According to him value-rationality is mentioned if the individual shapes his action patterns according to religious and moral principles or values.[3] According to Weber, purposeful-rationality is one of the essential keys to Western societies’ rationalization. In this concept, it is acted only by considering, interest or benefit.[4] First, measurable and calculable goals must be determined to

[1] Stephen Kalberg, “Max Weber's Types of Rationality: Cornerstones for the Analysis of Rationalization Processes in History”. *The American Journal of Sociology*, 85/5, 1980, p. 1155.

[2] Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (Third Impression), Trans. Talcott Parsons, New York: Charles Scripner’s Son, 1950, p. 21.

[3] Talcott Parsons, *The Structure of Social Action: A Study of Social Theory with Special Reference to a Group of Recent European Writers*, New York: McGraw Hill Book Company, 1937, p. 645; Bünyamin Duran, *Din ve Kapitalizm*, Saarbrücken, Germany: Lambert Academic Publishing, 2017, p. 17.

[4] Max Weber, *Economy and Society*, ed. Guenther Roth and Claus Wittich, California: University of California Press, 1978, p. 64.

maximize welfare. Whichever of the tools, methods and practices to achieve this purpose or objectives is less costly or more effective, it is decided.[5]

Weber talks about Western societies moving along the purpose-rational line. He even affirms this development as a feature in the West and portrays it only as a West's success.[6] Whereas practical-rationality is to melt purpose and values. In this respect, Weber expresses the existence of purpose-rationality and value-rationality conditions in an action or decision as practical-rationality.[7]

1.2. Legislative Activities in Legal-Rational Management Model

Weber draws a rigid set between the modern-rational society (Western societies) and the Eastern patrimonial societies. Two separate and extreme models have their management, law, economics, and social systems. Of course, legislative activities, which form the focus of this study, also differ. Weber states that in the legal-rational management model, laws are produced by experts in the field. People who have the authority to produce laws study law at autonomous universities. Lawyers are interested in law as a professional activity. They specialize in the legislature in depth. When producing the law, they act according to predetermined principles. There are no emotions, subjective thoughts, arbitrary decisions, uncertain situations. Rational management's lawmaking process can calculate. It includes equal sanctions on equal events. It is free from the guiding of religious principles and values by developing in a secular line.

So far, Weber's rationalization theory has been tried to be explained. The information obtained is important for a better understanding and comparison of patrimonialism.

2. Patrimonialism Analysis

2.1. Neo-Patrimonialism

Shmuel Noah Eisenstadt, one of the most influential sociologists and modernity theorists of the twentieth century, modernizes Weber's patrimonialism concept. In his book, *Traditional Patrimonialism and Modern Neopatrimonialism*, published in 1973, Eisenstadt uses the term neo-patrimonialism to refer to African countries' irrational management system.[8] New generation patrimonialism expresses the irrational management code of the modern state.[9] Neo-patrimonialism is when societies that cannot internalize and produce modernity effectively feel the presence of the old and deformed mind and structural motifs in management. Except for minor differences, patrimonialism and neo-patrimonialism have the same meaning. In this respect, the analysis of patrimonialism will facilitate the progress of the subject.

2.2. Patrimonialism Theory in Weberian Sociology

Weber deals with the Eastern and Islamic societies in general and the Ottoman society with the ideal type method in his comparative analysis. In his morphological examination, he centralizes the phenomenon of authority. He presents legitimate authority types in three different categories in the historical process. These are the traditional authority,[10] mostly seen in

[5] Jürgen Habermas, *The Theory of Communicative Action Volume 1: Reason and the Rationalization of Society*, Boston: Beacon Press, 1984, p. 253-254.

[6] Weber, *The Protestant Ethic*, p. 30; Austin Harrington, "Value-Spheres or 'Validity-Spheres'?: Weber, Habermas and Modernity", *Max Weber Studies*, 1/1, 2000, p. 87.

[7] Habermas, *The Theory of Communicative Action*, p. 250.

[8] Shmuel Noah Eisenstadt, *Traditional Patrimonialism and Modern Neopatrimonialism*, London, United Kingdom: Sage Publications, 1973, p. 5; Pitcher, Anne and others, "Rethinking Patrimonialism and Neopatrimonialism in Africa", *African Studies Review*, 52/1, 2009, p. 130; Gero Erdmann and Engel Ulf, "Neopatrimonialism Reconsidered: Critical Review and Elaboration of an Elusive Concept", *Commonwealth & Comparative Politics*, 45/1, 2007, p. 97.

[9] Eisenstadt, *Modern Neopatrimonialism*, p. 9; Daniel C. Bach, "Patrimonialism and Neopatrimonialism: Comparative Trajectories and Readings", *Commonwealth & Comparative Politics*, 49/3, 2011, p. 279.

[10] Max Weber, *The Protestant Ethic*, p. 341-343.

Eastern societies in the pre-modern era; legal-rational authority, which was manifested only in Western societies[11]; and charismatic authority represented by personalities such as prophets, famous statesmen, commanders and barons.[12] The categorization process plays an important role in Weber's East-West polarization. It is the traditional authority that is essential to this research. The most potent part of this ideal type is the patrimonial structures. Patrimonialism is divided into sub-branches such as political, economic, legal and financial. Political patrimonialism will be mentioned below, not to be distracted and to keep the subject apart and its primary focus.

2.3. Ottoman (Political) Patrimonialism: Sultanism

Weber defined the period when Islamic societies peaked as *sultanism* and the Ottoman as the sharpest defender of patrimonialism.[13] According to Weber, excessive arbitrary, beneficial, unprincipled and irrational understanding is dominant in the sultanist structure. There are no rules, principles, and values that despotic management is subject to.[14] Sultans make, amend and abolish laws in line with their interests and without any principles. The sources of income in the country are spent to cover the Sultan's arbitrary spending and the expenses of his great army.[15] Capital accumulation cannot be mentioned in such a society. Since land ownership is entirely under the Sultan's monopoly, the people survive with a low income.[16] Injustices in economic life are at the top of the line. There is no judicial system that protects producers and entrepreneurs due to the tradition of arbitrary judgment (judicial justice) and the dysfunction of the sacred or holy (Islam) law.[17] In other words, Weber argues that the political structure, the economic system, the legal order, the judicial procedure, the financial functioning, the military organization are irrational in the Ottoman. He also states that the Ottoman thought and social structure was patrimonial. Therefore, the Ottoman takes place in Weber's theory far from rationality.[18]

3. Legislative Process in Ottoman

The source of all the institutions and the functioning of the Ottoman system is Islamic law. Lawmaking activities take place to the extent permitted by Islamic law. For this reason, it will be useful to briefly examine Islamic sensitive legislative action briefly.

3.1. Legislation in Islamic Law

The primary sources of the Islamic law that provide the legitimacy of lawmaking activities in the Ottoman State are the Qur'an, Sunnah, Ijma (consensus) and Qiyas (analogy). There are verses in the Qur'an regarding general legal rules and certain subjects directly related to the topic. Provisions regarding specific issues are sought in Sunnah and other sources.[19] The collection of management law, which is important in terms of our subject, is generally constructed by the 'maslahat' and 'istihsan' method, which the Hanafis refer to as 'hidden qiyas'. While maslahat means social benefit, istihsan or juristic preference means socialwell-being vision.[20] Especially the famous Turkish mujtahid and faqih Sarakhsi emphasizes the istihsan

[11] Weber, *Economy and Society*, p. 1029.
[12] Max Weber, *Sosyoloji Yazıları* (3. Baskı), çev. Taha Parla, İstanbul: Hürriyet Vakfı Yay., 1993, s. 219, 253.
[13] Weber, *Economy and Society*, p. 279.
[14] Weber, *Economy and Society*, p. 882-883; Halil İnalcık, "Comments on 'Sultanism': Max Weber's Typification of the Ottoman Polity", *Princeton Papers in Near Eastern Studies*, 1, 1992, p. 50.
[15] Weber, *Economy and Society*, p. 1081.
[16] Micheal Curtis, *Orientalism and Islam, European Thinkers on Oriental Despotism in the Middle East and India*, Cambridge: Cambridge University Press, 2009, p. 271-272.
[17] Weber, *Economy and Society*, p. 348.
[18] Weber, *Economy and Society*, p. 816-817; Bryan S. Turner, *Max Weber ve İslam* (2. Baskı), çev. Yasin Aktay, Ankara: Vadi Yay., 1997, s. 39.
[19] Hayrettin Karaman, *Fıkıh Usulü: İslam Hukukunun Kaynakları, Metodu ve Felsefesi* (11. Baskı), İstanbul: Ensar Neşriyat, 2013, p. 96-97.
[20] Ömer Nasuhi Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye, Kamusu*, C. 1, İstanbul: Bilmen Yay., t.y., p. 17.

method intensely. According to him, istihsan designs for the purpose of facilitating human life.[21] Sarakhsi, the verse of "Allah intends every facility for you; He does not want to put to difficulties. (He wants you) to complete the prescribed period, and to glorify Him in that He has guided you" (The Cow/185) and what is good in religion is not to make it difficult, make it easier suggests the subject as dynamics.[22] Based on this principle, many laws are produced in Islamic societies. Imam Malik states that maslahat and istihsan constitute ninety percent of the Islamic law.[23]

The experience and a wealth of knowledge created by applying these principles coincide with Weber's practical-rationality phenomenon.[24] As we see before, practical-rationality is that people act according to rationality and values when making decisions, actions or choices. This is the behavior that Islam recommends. Islam designs the whole life of man in the axis of religious-moral principles and rationality. This bundle of principles and values, designed to facilitate human life, is known as "maqasid al-Shariah". This set of principles establish the legitimacy of any law, economic policy and activity, legal rule, financial method or any similar system, rule and operation. As in other Islamic societies, the administrative and economic institutions, policies and practices are important for maqasid al-Shariah in the Ottoman society. Along with the mentioned principles, many other principles and all jurisprudence (ijtihad) should be put forward in a way that protects and improves people's minds, morals, well-being, welfare and health.[25]

In this context, the production of laws in Islamic societies consists of purely professional and scientific activities, exclusively from the management's intervention. In other words, the laws are created by expert lawyers (faqihs and mujtahids). The ijtihads and comments of non-experts are never respected. Moreover, the ijtihads of a person who is not an expert in fiqh is not considered even if this person is an expert in the procedure. In this respect, very few people can provide the conditions required for 'expertise'.[26]

As mentioned before, it is not possible for the Qur'an and written Sunnah to cover all legal regulations regarding the management and economic field. Legal arrangements that are not directly included in these two main sources may be required. The need to interpret the new manifesting events and situations is met through the ijtihads of the mujtahids. Qiyas, which is one of the central institutions of Islamic law, shows its function at this stage. The comparison represents the state that the mind is fully equipped.[27]

The ijtihad mechanism solves many problems. This method, which is encouraged in the religion of Islam, causes many views to become clear. There may be contradictory opinions. Of course, such situations may cause people to remain in contradiction in a way that does not comply with the spirit of the Qur'an. Moreover, it may also lead to misconduct by managers and judges who tend to provide self-interest.[28] The systematic thought needed is obtained from the great mujahids' views, such as Sarakhsi, so that any abuse and harm that may occur is prevented. In the following periods, depending on the developing conditions of socio-economic

[21] Sarakhsi, *Mebsut*, ed. Mustafa Cevat Akşit, C. 10, İstanbul: Gümüş Ev Yay., 2011, p. 267.
[22] Sarakhsi, p. 267.
[23] Shatibi, *El- Muvafakat* (5. Baskı), çev. Mehmed Erdoğan, İstanbul: İz Yay., 2016, p. 306.
[24] Duran, *Din ve Kapitalizm*, p. 180.
[25] Muhammed Ebu Zehra, *Tarih Boyunca İslam Hukuk Okulları ve Sekiz Büyük İmam I*, çev. İ. E. Dal, İstanbul: İhya Yay., 1986, p. 165.
[26] Karaman, *Fıkıh Usulü*, p. 50-56.
[27] Hayrettin Karaman, *Ana hatlarıyla İslam Hukuku 1: Giriş ve Amme Hukuku*, İstanbul: Ensar Neşriyat, 1984, p. 111.
[28] Mehmet Akif Aydın, "İslam Hukuku'nun Osmanlı Devleti'nde Kanun Hukukuna Doğru Geçirdiği Evrim", *Türk Hukuk Tarihi Araştırmaları,* I, 2006, p. 11-13.

life, the comments that can make human life difficult are revised in accordance with the istihsan, with the consensus of the mujtahids.[29]

3.2. Legislative Process in the Ottoman and Role of Sultans in Activities

As explained above, all institutions, decisions and activities regarding Ottoman management are designed within Islamic law boundaries. In this respect, the official management code of the Ottoman is Islamic law.[30] The works of Kuduri, Merginani, Nesefi and Tacüşşeria form the official code until the Sultan Fatih period.[31] In the time of Fatih, in the most branches of law called *sharia*, Molla Khusrew's "Dürer and Gurer" or the work of Ibrahim Halabi named "Multaqa al-Abhur" with the approval of the Sultan towards the end of the 16th century can be specified as the official bedside books.[32] Also, as stated earlier, the views of Sarakhsi, who is a great Turkish mujtahid and imam, are widely used.[33] Besides the basic sources, Sultans issue kanunnames or adaletnames in line with the mentioned principles of maslahat and istihsan. Likewise, the adoption of common law takes place in light of these principles.[34]

When Ottoman laws are examined, it is seen that Islamic judgments have a big share.[35] The part other than Islamic rules is completed by customary law. Customary law is the collection of the Sultans who are permitted by Islamic law as a result of exercising their limited lawmaking authority or their right to appreciation and regulation. Factors such as the fact that the managers have the authority to make laws in the understanding of the old Turkish state in the formation of the Ottoman customary law, this understanding also prevails in the post-Islamic Turkish states and that the Islamic law allows the discretion and regulation authority for the social benefit.[36] Custom laws are produced and systematized in the Islamic framework. In the literature, most of the customary law known with various names such as *kanunname, nizamname, yasakname* is composed of financial provisions.[37] Important material accumulation is provided to the Ottoman management during the legislative process by both customary law and Islamic judgment. The nuance difference between Islamic and customary law stems from the emergence method.[38]

To comment objectively on the opinions of local and foreign researchers, the distinction between Islamic law and customary law in the law-making activities of the Sultans must be correctly determined. In this context, the first option is to enact sharia provisions without any changes. The other option is to partially regulate and legislate the sharia provisions keeping their essence the same. Besides, the appropriate provisions developed through case law can be selected and enacted. The interpretation of *Shaykh al-Islam* (the Master of Islam) or the ijtihad recommended by great Islam scholars can be enacted. In a situation that does not contain sharia and ijtihad, the Sultan can enact the judgment if he has jurisprudence. In a situation that does not contain sharia and jurisprudence, the solution proposals of jurists can be enacted. Sultans

[29] Ömer Nasuhi Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye, Kamusu*, C. 6, İstanbul: Bilmen Yay., t.y., p. 111.
[30] Halil Cin and Ahmet Akgündüz, *Türk Hukuk Tarihi I*, Konya: S.Ü. Basımevi, 1989, p. 159; Ahmet Akgündüz, "Osmanlı Hukuku'nda Şer-î Hukuk-Örfî Hukuk İkilemi ve Yasama Organının Yetkileri", *İslami Araştırmalar Dergisi*, 12/2, 1999, p. 117.
[31] Bünyamin Duran, *Osmanlı Akılcılığı: İslam Tarihinin Konjonktürel Değişimi-3*, İstanbul: Nesil Basım Yay., 1999, p. 78-79.
[32] Mehmet Akif Aydın, *Türk Hukuk Tarihi* (14. Basım), İstanbul: Beta Yay., 2017, p. 97.
[33] Duran, *Din ve Kapitalizm*, p. 183.
[34] Duran, *Osmanlı Akılcılığı,* p. 86.
[35] Ahmet Akgündüz and Türk Dünyası Araştırmaları Vakfı, *Şer'iye Sicilleri I*, İstanbul: Türk Dünyası Araştırmaları Vakfı Yay., 1988, p. 11.
[36] Aydın, *Türk Hukuk Tarihi*, p. 66.
[37] Aydın, *Türk Hukuk Tarihi*, p. 73; Cin and Akgündüz, *Türk Hukuk Tarihi*, p. 157.
[38] Mehmet Akif Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet* (İkinci Basım), İstanbul: Klasik Yay., 2017a, p. 25-26.

can make arrangements in the required legal fields based on the legitimacy of their authorities. All of these can be put forward as the Sultans' legislative prerogative under Ottoman rule. [39]

In this approach, first of all, it is necessary to clarify the lawmaking or legalization process of Sultans regarding sharia provisions. The point to be stressed directly is the Sultan's limited legislative prerogative. As it is known, Islamic law permits the state administrator to make laws on some issues by taking advantage of the sharia provisions and accepting them as a measure and framework.

In fact, the lawmaking process consists of the activities of the codification. It includes the legalization of the provisions of the sharia mentioned in fiqh works as a result of the same or partial amendment and compilation. The activity of the codification can be divided into two. The first is that the Sultan chooses and implements one of the Islamic rules present in the fiqh books. The other is that he chooses and legalization one of the Islamic judgments that are present in fatwa documents or recommended by lawmen such as *Shaykh al-Islam. According to Akgündüz, Kandiye's Law (1670) and Hanya's Law (1704) produced from the fiqh works in this way.*[40] Also, all sharia taxes are collected by the method of arranging the Islamic law rules in the fiqh works according to the needs of the period. Whether by the Ottoman code of civil law (Medjelle) or other regulations, it is seen that many times have been applied to the method of the codification.[41]

The Sultan or his assigned persons are only compilers in this activity.[42] The authority of the Sultan consists of taking the provisions of sharia and acting on the principle of social benefit. The Sultan makes consultations with members of the supreme court (Diwan-i Humayun) and the notables of the state and decides according to the situation in which the society will benefit most or consider the decision taken by the high state officials. The decision preferred by the supreme court is approved by the Sultan and enters into force. Any provision that is not subject to the approval of the Sultan is not binding for citizens (reaya and beraya).[43]

If the Sultan has the authority and knowledge to make jurisprudence (ijtihad), he can legalize it by revealing his ijtihad. However, such an application is not in question in the Ottoman tradition. Under these circumstances, the Sultan's other right to act on Islamic law is to prefer the great mujtahids' ijtihads. He can also legalize the ijtihad of the great scholars and mujtahids, which are preferred by the great scholars such as the *Shaykh al-Islam* or rearranged without touching its self.[44] Many issues related to socio-economic life in the Ottoman, especially the issue of money foundations, are concluded with this method.[45] Besides, practices such as demesne and monopoly of trade rights are regulated by such ijtihads.[46]

It is known that the Sultan made some sectarian decisions in the Islamic law area. While choosing one of the provisions, the Sultan acts according to "Esahh-i akval". Esahh-i akval is a consensus view on the Hanafi sect. Judges make decisions with the same reference. In places where other sect members are more populated such as Egypt, Iraq, Yemen and Hejaz, people are allowed to be tried according to their views.[47] In the middle of the 16th century, it is forbidden to decide and judge according to other sects except for the Hanafi sect. Unless otherwise stated in fatwa and accident activities, only the views of the Hanafi sect are considered valid in all

[39] Ahmet Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri 1*, İstanbul: Fey Vakfı Yay., 1990, p. 5-87.
[40] Akgündüz, *Osmanlı Kanunnameleri I*, p. 66.
[41] Duran, *Din ve Kapitalizm*, p. 181.
[42] Akgündüz, "Osmanlı Hukuku'nda Yasama Organının Yetkileri", p. 118.
[43] Aydın, "İslam Hukuku'nun Geçirdiği Evrim", p. 15.
[44] Akgündüz, "Osmanlı Hukuku'nda Yasama Organının Yetkileri", p. 119.
[45] Akgündüz, *Osmanlı Kanunnameleri I*, p. 249.
[46] Akgündüz, *Osmanlı Kanunnameleri I*, p. 68.
[47] Akgündüz, "Osmanlı Hukuku'nda Yasama Organının Yetkileri", p. 118-119.

state.[48] The reasons for this are that the majority of the society is subject to the Hanafi sect, to guarantee political and social unity, to prevent the possibility of different opinions and comments to be used to cause mischief, to eliminate the factors that may discriminate between the ulama and to eliminate information confusion.[49]

The Sultan can direct the judges on some issues within the scope of his authority. Such appraisals may not be based on personal opinions, but on social interests, benefits and needs.[50] For example, some prohibitions (such as listening to cases that will take fifteen years past by the court or having the marriage done by a judge directly or after obtaining permission from the court) are such directives.[51]

The explanations so far are for determining the mobility of the Sultan in the sharia or Islamic judgment. It cannot be said that the Sultan acts arbitrarily, unprincipled, oppressive and despotic in the management with an objective approach. On the contrary, it can be argued that he performs practical-rational action. The role of the Sultan in terms of Islamic rules consists of small touches and interventions. The statement "if there are verses and Sunnah, there is no need to ijtihads" in article 14 of Medjelle, which is shown as the constitution book of the Ottoman, also supports this view.

In cases where it does not contain sharia and jurisprudence comments, the Sultan may consult and implement new legal regulations.[52] The basic principle of this procedure is the observance of social benefit (Medjelle/58). The subject is moved to the Supreme Court as a result of a new event. The Court is also the High Council. It consists of statesmen who are experts in the field, educated and most of them are law originated. The council management is assembled and due diligence is made and comments are presented from various perspectives. From time to time, consultancy of the *Shaykh al-Islam* may be needed. Because any decision that he does not consider appropriate is not implemented[53] The Court member Nishandji (sealer or court calligrapher) is responsible for determining and controlling the compliance of the decisions with Islamic law.[54] Besides, he can present new law proposals under existing conditions.[55] That is to say, *Shaykh al-Islam is an authority* in Islamic law judgments and Nishandji is an authority in customary-law provisions.[56] Court decisions are presented to the Sultan for approval by the grand vizier under the name telkhis. As in the current legislative process, the president (Sultan) is the last approval authority in the Ottoman. Decisions approved by the head of state become official.[57]

In addition to these, sanctions are left to the management by Islamic law for crimes called tazir against the state. Administrative, economic, financial or military arrangements required for the fulfillment of public services are also under the responsibility of the management. Most of this kind of legislative activities are financial measures and practices.[58] For example, determining the legal form and conditions of the use of conquered lands and organizing the timar system can be shown.[59]

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[48] Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, p. 9.
[49] Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, p. 262-270.
[50] Aydın, "İslam Hukuku'nun Geçirdiği Evrim", p. 40.
[51] Ahmet Şimşirgil and Pelin Çift, *Adalet Ustaları*, İstanbul: Destek Yay., 2017, p. 127.
[52] Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, p. 78; Cin and Akgündüz, *Türk Hukuk Tarihi*, p. 160.
[53] Ekrem Buğra Ekinci, *Osmanlı Hukuku* (5. Baskı), İstanbul: Arı Sanat Yay., 2017, p. 168.
Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, p. 25-26.
[54] Halil İnalcık, *Osmanlı İdare ve Ekonomi Tarihi*, Ankara: İsam Yay., 2011, p. 25.
[55] İlber Ortaylı, *Türkiye Teşkilat ve İdare Tarihi* (3. Baskı), Ankara: Cedit Neşriyat, 2008, p. 214; Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V. L. Menage, London: Oxford University Press, 1973, p. 171.
[56] Halil İnalcık, *Osmanlı Tarihini Yeniden Yazmak: Kuruluş*, ed. Elif Ayla, İstanbul: Hayy Kitap, 2015, p. 99.
[57] İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin Saray Teşkilatı* (2. Baskı), Ankara: TTK Yay., 1984, p. 50.
[58] Ekinci, *Osmanlı Hukuku*, p. 164-165.
[59] Cin and Akgündüz, *Türk Hukuk Tarihi*, p. 161.

According to the new findings, it is clear that the legislations issued by the Sultan depending on the legislative activities have been enacted first of all to prevent arbitrary and unjust decisions and actions.[60] Almost every kanunname in this regard is full of examples. Ahmed I (Aksaray's governer) and his men collect unfair taxes from the landowners, ordered the judge to resolve this situation immediately. II. Osman sends an edict to remove the persecution and oppression of the persecutors in Aksaray Yapılcak Village.[61] IV. Murad sends a decree to the judge to eliminate unfair taxation around Karapınar.[62] The Sultan and the managerial staff accept justice as a superior principle and they rigorously approach the issues of constantly reminding the laws, being known by all citizens and being understood clearly.[63] For this reason, the legislations issued are sent to the authorized and related units as well as to the public in a central place. In fact, a copy of the legislation is given to those who ask for citizens. These legislations are collectively organized by Fatih Sultan Mehmed and (the Lawgiver) Sultan Suleiman,[64] based on the developments and needs in the following periods, a book of the law is issued with the name "Medjelle-yi Ahkâm-i Adliyye".[65]

The collection of sharia provisions, which are the source of Ottoman legislative activities, in fiqh books and fatwa documents and the arrangement of customary law provisions together with general legislation and publications facilitates the accessibility of Ottoman law resources. Therefore, these applications emphasize that the Ottoman was a state of law and that the superior of law was adopted, aside from increasing the reliability of the law.[66]

In this way, it is aimed for citizens to protect and defend themselves before the law from all kinds of unjust, inhuman and illegal actions such as unfair punishment, persecution and oppression.[67] In other words, in the Ottoman system, citizens are not left to the discretion and mercy of the Sultans or rulers as in the patrimonial regimes. The principle of the rule of law, citizens and even the simplest rights of all living things are protected by law or Islamic law.

According to the researches, it is seen that Weber's computational feature attributed only to the West in the rational management theme is among the basic features in the Ottoman management. For example, it is determined in advance by legislative activities that citizens will pay how much tax to pay for which crime. Moreover, taxes, crime and punishment and other liabilities to be paid by the citizens are found in the most detailed form in the kanunnames.[68] It can also be mentioned that the judges, who are under the intense control of the Sultans and especially the ulama, give the same punishments for the same crimes in different regions.[69]

Perhaps the most important criticism of the Ottoman Sultans regarding the legislature is the 'politically execution' issue known as the brother massacre. It is stated that the Sultans had killed their brothers, sons and administrators arbitrarily for the sake of their personal interests

[60] Akgündüz, *Osmanlı Kanunnameleri I*, p. 63-65; Fethi Gedikli, *Osmanlı Şirket Kültürü: XVI.-XVII. Yüzyıllarda Mudarebe Uygulaması*, İstanbul: İz Yay., 1998; Mehmet Akif Aydın, "Kanunnâmeler ve Osmanlı Hukuku'nun İşleyişindeki Yeri", Osmanlı Araştırmaları, XXIV, 2004, p. 38.

[61] Orhan Özdil and others, *Aksaray'ın Tek Şer'iyye Sicili*, Aksaray: T.B.B. ve Aksaray Barosu Ortak Yay., 2014, p. 185-186.

[62] Özdil and others, *Aksaray'ın Tek Şer'iyye Sicili*, p. 157.

[63] Ahmet Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri 2*, İstanbul: Fey Vakfı Yay., 1990b, p. 191; *Osmanlı Kanunnameleri ve Hukuki Tahlilleri 3*, İstanbul: Fey Vakfı Yay., 1991, p. 182-183; *Osmanlı Kanunnameleri ve Hukuki Tahlilleri 7*, İstanbul: Fey Vakfı Yay., 1994, p. 427.

[64] Halil İnalcık, "Kanunnâme", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi (DİA)*, 2001, 24, p. 333-337.

[65] Aydın, "İslam Hukuku'nun Geçirdiği Evrim", p. 20; Ali Himmet Berki, *Açıklamalı Mecelle (Mecelle-i Ahkam-ı Adliyye)*, İstanbul: Hikmet Yay., 1978, p. IX; Cihan O. Karahasanoğlu, "Mecelle-i Ahkam-ı Adliyye'nin Yürürlüğe Girişi ve Türk Hukuk Tarihi Bakımından Önemi", *OTAM*, 29, 2011, p. 93-121.

[66] Aydın, *Osmanlı Devleti'nde Hukuk ve Adalet*, p. 9.

[67] Aydın, "Kanunnâmeler ve Osmanlı Hukuku'nun İşleyişindeki Yeri", p. 43.

[68] Mehmet Genç, *Osmanlı İmparatorluğu'nda Devlet ve Ekonomi* (8. Basım), İstanbul: Ötüken Neşriyat, 2012, p. 313; Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri 2*, p. 594.

[69] Aydın, "İslam Hukuku'nun Geçirdiği Evrim", p. 38-40.

and ambitions or their worldly pleasures. It is a known fact that some Sultans executed their brothers or sons in Ottoman history. In fact, according to the Fatih Law issued by Fatih, such executions are legalized.[70]

At first glance, it will be beneficial to approach these practices, which have a sense of the rightness of criticism, with an objective point of view. In the historical process, regardless of who is the person who revolts the state in Western and Eastern societies, it is seen that it is mostly sentenced to death. It is noted that these practices continue even in modern world societies recently.[71] For example, legalized the sentence of death with the decision taken by the parliament in Turkey in 1920, which is repealed precisely in 2004. During this time, the entire society testifies to the execution of many citizens who were rebelled or convicted to the state but ended in 1984.

On the other hand, to explain the legal basis of the political execution, the approach of Islamic law to the subject must first be conveyed. According to Islamic tradition, the punishment of rebellion crime (bağy), which is expressed as revolting against the state and making defeat, is the death penalty.[72] Factors that reveal the "bağy" crime of the crimes of *Hadd* crimes and the punishment of this crime are expressed clearly in verses and hadiths or Sunnah that are the basis of Islamic law.[73] Thereupon, it is not possible for state managers to make contrary decisions. However, situations may occur when the crime of rebellion against the state is not fully committed or incomplete. It is important how to behave in similar crimes. Islamic law gives initiative to the state manager in cases where the elements that constitute the crime are missing. The leader or manager has the right and authority to approve the sentence of death since "bağy" is considered a tazir crime in the Hanafi sect.[74]

Accordingly, determining whether the decisions of the Sultans are arbitrary and personal depends on whether or not to act within the framework of the said principles. It is recorded that 61 deaths took place in Ottoman practice.[75] According to the findings, almost half of the death penalties are given for the revolting crime. In other words, the actual realization of the result is justified. Among these reasons, some of the princes (Sultan's sons) who made defeat cooperate with the Byzantine and other states that were the enemies of the Ottoman to destroy the state, and some of them gathered an army and began a war against the state.[76]

There are two explanations for the death sentences given without regard to *hadd crime*. Firstly, since the crimes are evaluated within the scope of the tazir in the Hanafi school, the manager is given the right to make this decision. In this case, which is called political execution, if the execution was not formed, then the executions were carried out unfairly. Akgündüz says that some executions were unfairly done because the conditions were not fully met. He speaks of the existence of the informers behind the scenes of this injustice. In other words, he states that the Sultans did not make an arbitrary decision for their worldly and personal interests, they made the wrong decision with the misinformation of the people around them and the ambition of the sultanate.[77] According to Akman and Aydın, the execution of the Sultan's sons, who are still children, is unlawful.[78]

[70] Abdülkadir Özcan, "Fatih'in Teşkilat Kanunnamesi ve Nizam-ı Alem için Kardeş Katli Meselesi", *İÜEFTD*, 33, 1982, p. 46.
[71] Ekinci, *Osmanlı Hukuku*, p. 235.
[72] Aydın, *Türk Hukuk Tarihi*, p. 20-21.
[73] Akgündüz, *Osmanlı Kanunnameleri I*, p. 114.
[74] Ekinci, *Osmanlı Hukuku*, p. 352; Mehmet Akman, *Osmanlı Devletinde Kardeş Katli*, İstanbul: Eren Yay., 1997, p. 132.
[75] Akman, *Osmanlı Devletinde Kardeş Katli*, p. 39.
[76] Aydın, *Türk Hukuk Tarihi*, p. 126.
[77] Akgündüz, *Osmanlı Kanunnameleri I*, p. 114-117.
[78] Aydın, *Türk Hukuk Tarihi*, p. 129-130; Akman, *Osmanlı Devletinde Kardeş Katli*, p. 133, 173.

Conclusion

Max Weber identifies the Ottoman style of management with the patrimonialism theory. Weber's analysis of the Ottoman does not stem from his particular interest in this society. His main purpose is to try to determine an opposite end to the Western system. His views of the Ottoman management and Sultans are generally embodiments of orientalist thought. According to the excessive generalization of Weber, irrationality and arbitrariness dominate the administrative and legislative activities in the Ottoman. As a master, who has all the powers, the Sultan takes the laws arbitrarily, as he wishes, at any time and in his interests. Therefore, the Ottoman is categorized with the concept of sultanism, where irrationality is the most intense.

In recent years, it is revealed that the legislative prerogative of the Ottoman Sultans and their roles in these activities did not match Weber's generalizations. It is a known fact that the Ottoman comments that will be made without resorting to Islamic law and not properly understanding this source will remain suspended.

In this context, it is seen that the legislative process was designed in a rational, principled, disciplined and systematic way. In legislation; fundamental, framework, principles and values are created and motivated by Islamic law. Making, interpreting and modifying laws depends on clear criteria. The Supreme Court, which is the guarantee of the management system, is the only institution with legislative powers and authority in all areas. Many rational filters are examined by authorized persons who are authorized in every subject area of lawmaking. In this regard, the Ottoman Court, which is based on the division of labor and specialization, is reminiscent of today's ministerial council. Most members of the Court are experts in Islamic law in the classical period. Besides the class that protects, develops and controls the essence of the system is ulama. Ulama is a superior mind under Ottoman rule. All activities in the management, including the legislature, are carried out with the cooperation and coordination of the Sultan, Supreme Court members, *Shaykh al-Islam* and ulama.

In this context, the Sultan can either legislate one of the Islamic provisions in the legislature or issue a new kanunname within the framework of Islamic measures. In this process, he acts according to predetermined criteria. According to the new findings, the Ottoman Sultan is one of the people who use his will to the least in terms of management and legislative matters. Legitimately all power and authority are gathered in his office. However, he shares his powers and authority hierarchically with subordinate authorities systematically and rationally. He takes decisions in consultation with the bureaucrats who are experts and authorities in their fields, in matters needed. In other words, not every word between the two lips of the Sultan is a law. Rather than being a personal decision unit, the Sultan is a manager who consults with the Court, conducts consultations, takes fatwas from the *Shaykh al-Islam*, organizes meetings in strategic decisions and complies with the law. Many mechanisms that prevent power poisoning and arbitrary movement are fully operational. No one, including the Sultan, has immunity. On the principle of the rule of law, the head of state is not subjected to favor before the law, and is treated equally like all others without discrimination. Because the Ottoman is a state of the law with a legal-rational management system. As it can be understood the Ottoman management is a fair, egalitarian, flexible, practical, pragmatic, public benefit system. Also it is safeguarding the rights of the individual, respecting other living rights, based on the rule of law, reliable, calculable, rational, principled and transparent.

As a result, the Ottoman management develops a unique system that is incompatible with patrimonial features. This system is organized by ulama rationality. The Ottomans succeed in producing their unique rationality. With a Weberian way, it can be said that, based on legislative activities, the Ottoman management had a practical-rational character that internalized rationality and set of values.

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