THE SULTAN'S ENTREPRENEURS, THE ENTREPRENEURS' SULTAN: *BERATLI AVRUPA TÜCCARI* AND INSTITUTIONAL CHANGE IN THE NINETEENTH CENTURY OTTOMAN EMPIRE (1835-1868)

SAİD SALİH KAYMAKCI

BOĞAZİÇİ UNIVERSTIY

2013

THE SULTAN'S ENTREPRENEURS, THE ENTREPRENEURS' SULTAN: *BERATLI AVRUPA TÜCCARI* AND INSTITUTIONAL CHANGE IN THE NINETEENTH CENTURY OTTOMAN EMPIRE (1835-1868)

Thesis submitted to the

Atatürk Institute for Modern Turkish History

in partial fulfillment of the requirements for the degree of

Master of Arts

by

Said Salih Kaymakcı

Boğaziçi University

2013

‘‘The Sultan’s Entrepreneurs, the Entrepreneurs’ Sultan: *Beratlı Avrupa Tüccarı* and Institutional Change in the Nineteenth Century Ottoman Empire (1835-1868),’’ a thesis prepared by Said Salih Kaymakcı in partial fulfillment of the requirements for the Master of Arts in History degree from the Atatürk Institute for Modern Turkish History at Boğaziçi University. This thesis has been approved on 31 July 2013 by:

Prof. Şevket Pamuk

(Thesis Advisor)

Prof. Nadir Özbek

Assoc. Prof. Cengiz Kırlı

An abstract of the thesis of Said Salih Kaymakcı for the degree of Master of Arts from the Atatürk Institute for Modern Turkish History to be taken in July 2013

Title: The Sultan's Entrepreneurs, the Entrepreneurs' Sultan: *Beratlı Avrupa Tüccarı* and Institutional Change in the Nineteenth Century Ottoman Empire (1835-1868)

This thesis examines the *Beratlı Avrupa Tüccarı*, non-Muslim Ottoman merchants who engaged in trade with the special licenses issued in the name of the sultan in the nineteenth century. The research was primarily based on documents from the Prime Minister's Office of the Ottoman Archives. The conclusions reached were when the state identified the prosperity of the country with the increase in trade and attributed itself the regulatory role for this and the merchants demanded the backing of the state in their trade and the necessary changes in the system, the institutional transformation of the Ottoman Empire was inevitable. This interaction was accompanied by the already increasing economic activity, which gave momentum to the merchant's demands and the state's willingness to change. Hence, the nineteenth century reforms in the commercial and legal fields had the imprint of the merchant practices, the state's active policy-making and the environment of growing trade and economic growth.

Boğaziçi Üniversitesi Atatürk İlkeleri ve İnkilap Tarihi Enstitüsü'nde Yüksek Lisans Derecesi için Said Salih Kaymakcı tarafından Temmuz 2013'de teslim edilen tezin özeti

Başlık: Sultan'ın Girişimcileri, Girişimcilerin Sultanı: Beratlı Avrupa Tüccarı ve Ondokuzuncu Yüzyıl Osmanlı İmparatorluğu'nda Kurumsal Değişim (1835-1868)

Bu tez 19. yy'da sultanın adına verilen özel beratlarla ticaret yapan ve Beratlı Avrupa Tüccarı olarak adlandırılan gayri-Müslim Osmanlı tüccarlarını incelemektedir. Tezin araştırması esas olarak Başbakanlık Osmanlı Devlet Arşivleri'nde mevcut belge ve defterlere dayanmaktadır. Tezin ulaştığı sonuçlara göre devletin ticaretdeki artışı ülkenin zenginliğiyle özdeşleştirdiği ve bunu mümkün kılmak için gerekli düzenlemeleri yapma görevini kendisinde gördüğü ve tüccarların güçlü bir şekilde devlet desteğini ve sistemik değişim talep ettikleri bir ortamda Osmanlı imparatorluğunun kurumsal dönüşüm yaşaması kaçınılmazdı. Hali hazırda artmakta olan iktisadi aktivite ve ticaretse devlet ve tüccar arasındaki bu etkileşime ivme kazandırmıştır. Sonuç olarak, 19. yy hukuki ve ticari reformları tüccarların uygulamaları, devletin aktif siyaset yapımı ve artan ticaret ve iktisadi büyüme koşullarının izlerini taşımaktadır.

ACKNOWLEDGMENTS

First of all, I would like to express my deepest gratitude to my advisor, Prof. Şevket Pamuk, for his constant support, valuable criticisms and comments. Without his continuance guidance and encouragement, I probably would not have been able to finish this thesis on time. I have always felt the honor as well as the responsibility of working with a leading scholar in economic history. I am also thankful to Assoc. Prof. Cengiz Kırlı and Prof. Nadir Özbek for their valuable suggestions as jury members. I owe special thanks to Prof. Özbek for his efforts to teach me to approach the dominant paradigms in history writing critically.

I am indebted to Mehmet Genç and Prof. Erol Özvar for being my first teachers in Ottoman economic history and being available and patient whenever I needed answers to my seemingly-endless questions. Their help in deciphering difficult texts in Ottoman Turkish was also indispensable. More importantly, they have been role models for me as being exceptional economic historians, which does not detract from their humbleness in any way.

I would like to express my gratitude to Prof. Suraiya Faroqhi, who has always been the right person in the right place as a source of new ideas and insights for me in Ottoman history. Sitting in her classes and attending her field trips gave me the chance to benefit from her never-ending knowledge. As a timeless Ottoman historian, she has always been a great source of inspiration. Not only did I get the lead for the subject of my masters thesis from her but also was directed to the right person on this subject, namely İsmail Hakkı Kadı, with whom I did the first archival search for my thesis and who generously shared his knowledge and books from his library about the subject with me. Therefore, I thank Asst. Prof. Kadı wholeheartedly.

I am grateful to Assoc. Prof. Ahmet Faruk Aysan for opening my eyes to heterodox and Islamic economics. The meetings of our reading group, *iktisadiyat*, have been indispensable for giving me a sense of belonging as a place where I sought refuge from the mainstream economics and exchanged ideas with many valuable friends. Moreover, his close interest in my academic and personal life as well as his confidence in me enabled me to continue working while I had difficult times in the past.

I thank Prof. Murteza Bedir, Prof. Recep Şentürk, Asst. Prof. Cüneyt Köksal, and Asst. Prof. Necmettin Kızılkaya, who have been my teachers in classical Islamic Sciences in the last three years, for their continuous interest in my academic and personal development. I am indebted to my *abi*s and friends, M. Talha Çiçek, Kazım Baycar, Abdullah Saçmalı, Haşim Koç, Ercüment Asil, Faruk Yaslıçimen, Alaaddin Tok, Hasan Umut, Enes Tüzgen, Ömer Faruk Petek, Serdar Serdaroğlu, Sedat Albayrak, M. Akif Berber, M. Habib Saçmalı, A. Vahdi Kanatsız, Gökhan Övenç, Ömer Koçyiğit for their valuable friendship and mentorship, as well as for the enjoyment of the lengthy academic discussions I had with them at various places, including the gardens of the old building of the Ottoman archives. Their interest and contagious love for all things in Ottoman have always been a great source of encouragement and inspiration for my studies.

My special thanks goes to Kathryn Kranzler, who edited my thesis and answered my endless questions patiently. Her magical touches to my thesis made it look much better than it really is. I also thank Tracy Lord Şen, who unfortunately was not able to see my thesis come out while I sat in her classes because of my prolonged research. Finally, I would like to emphasize that while I benefited greatly from the comments and criticisms these people while developing my ideas and writing this thesis, all the errors in this thesis are mine and I am solely responsible for them. Before ending, I would like to dedicate this thesis to Mehmet Genç, *hocam*…

CONTENTS

CHAPTER I:
INTRODUCTION……1

CHAPTER II: BERATLI MERCHANTS IN THE EIGHTEENTH CENTURY AND THE ESTABLISHMENT OF THE AVRUPA TÜCCARI SYSTEM……..16
Capitulations in the Ottoman Empire……17
Consular Protection for Ottoman Subjects……19
Ottoman Policies Countering the Commercialization of Berats……25
The Porte's Own System of Protection: The Emergence of Beratlı Avrupa Tüccarı……27
The Porte's Attempts to Establish the New System and the Spread of Avrupa Tüccarı……32
The Sultan's Promise: The Text of Avrupa Tüccarı Berats before 1838…….. 36

CHAPTER III: THE LAST YEARS OF THE "CLASSICAL AGE": 1835-1839/1250-1255……57
The Ottoman Legal System in the Classical Period…… 60
"The Last Years of the Classical Age": A Note on the Periodization……... 63
Avrupa Tüccarı in the Classical Age…… 65
Commercial Litigation of Avrupa Tüccarı: Debt Collection Cases……...65
A Note on the Relative Absence of Mixed and Intra-Avrupa Tüccarı Litigation in the Primary Sources……..91
Intervention in Avrupa Tüccarı Estates upon their Deaths ……95
Avrupa Tüccarı Complaints about Intervention in their Properties……98
Avrupa Tüccarı Complaints about Over-charges and Over-taxation……...100
Conclusion……105

CHAPTER IV: AVRUPA TÜCCARI IN THE AGE OF REFORM…….....110
The Footsteps of the Reform Period……113
The Establishment of the Ministry of Trade……119
The End of the Classical Age: The Gülhane Rescript and the Age of Tanzimat Reforms……121
The Evolution of the Ministry of Trade and Commercial Court (1838-1860)…….127
The Local Commercial Councils……...……...138
The Avrupa Tüccarı's Use of the New Institutions…….……148
A Question of Jurisdiction: The Interplay between the Avrupa Tüccarı and the Porte……..164
The Realities of a New World…..……....175
Yet Another Question of Overlapping Jurisdictions: Avrupa Tüccarı in Tax Farming…….....182
The Addendum to the Commercial Code and the Waning of Avrupa Tüccarı Privileges (1860-1868)……189
Conclusion……195

CHAPTER V: CONCLUSION……201

APPENDICES……..212

CHAPTER I

INTRODUCTION

In a series of articles he published in 2000s and his book *The Long Divergence: How Islamic Law Held Back the Middle East*, Timur Kuran explains the economic backwardness of the Middle East with its economic institutions that grounded in the dominant law of the region, namely Islamic law. He claims that the contracting provisions, marriage regulations and egalitarian inheritance rules in Islamic law caused organizational stagnation in the Middle East's economic institutions as the new forms of organizations developed in the West.

Kuran points out that according to Islamic law, trade partnerships ended with a partner's death or withdrawal and as legal personhood was not recognized, corporations were absent as a contractual form. The ban on interest was another restriction for the contracts drawn up, and the prevalence of oral contracting put contractual credibility at risk. Coupled with Islam's allowance of polygamy and egalitarian inheritance laws, the prospects of capital accumulation through long-term partnerships were limited, which hindered prospects of economic development.[1]

While all the Muslims were subject to the precepts of the Islamic law, the Islamic legal pluralism and capitulary privileges accorded to the Western countries allowed the non-Muslim minorities to have a larger jurisdictional choice set. A

[1] Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2011).

Middle Eastern Christian or Jew could become a protégé of a Western embassy, entitling him to consular protection and giving him access to the laws of that country. Therefore, in Kuran's view non-Muslim Middle Easterners were able to overcome the hurdles of Islamic law and benefit from the more efficient organizational forms, financial techniques and litigation practices of the West.[2] Consequently, during the process of the West's economic progress non-Muslim minorities rose to commercial prominence in the Middle East which, he calls an ''unintended consequence of Islamic legal pluralism''.[3]

According to Timur Kuran, the capitulations accorded to the European countries by the Ottoman sultans enabled the foreigners to do business under their own legal systems and provided an opportunity for non-Muslim minorities to utilize these systems. For the Ottomans, this was a way of benefitting from the external productivity gains without having to reform the legal system, and it served as a substitute to the reinterpreting or updating Islamic law. However, in the long run, it had the unintended consequences of the marginalization of Muslims in commerce and the 'de-Islamization of commercial life through legal reforms' of the nineteenth and twentieth centuries.[4]

In this context, Kuran discusses the *Avrupa Tüccarı* (Europe merchants) and *Hayriye Tüccarı* (auspicious merchants) schemes, which, modeling the concessions of the capitulations gave the Ottoman merchants the privileges of tax breaks and litigation before a special tribunal in İstanbul, as the Ottoman attempts to increase the Ottoman participation in the trade with the West. He claims that in the absence of a legal system favorable to capital accumulation within large and long-term

[2] Timur Kuran, "The Economic Ascent of the Middle East's Religious Minorities: The Role of Islamic Legal Pluralism," *The Journal of Legal Studies* 33, no.2 (June 2004), p. 503.
[3] Kuran, *Long Divergence*, p. 206.
[4] Ibid., p.251-253.

enterprises, Hayriye Tüccarı had little impact on the Muslim share of the trade while the Avrupa Tüccarı owed their moderate success to their relatives, who were able to conduct business under a western system.[5]

However, Kuran is not the first person to notice the jurisdictional shift of the Ottoman merchants and establish a relationship between the ''legal ills'' of the Ottoman Empire and the merchants' attempts to look after themselves. Sabit Efendi, who was a doctorate student at the Ottoman School of Law voiced the same argument but identified different root causes 130 years before Kuran published his book. [6] For him the problem was not with the precepts of sharia, but with the ignorant and corrupt jurists who could not understand and apply it properly. Sabit Efendi explains this with the application of tax farming in the judiciary according to which those appointed as judges did not go to their place of duty but instead sold their posts to the highest bidders, who became their "*naib*s" (substitutes) regardless of their knowledge of sharia.[7] This tax farmer "naib" turned to the poor subjects of the sultan to collect fees by means of oppression in order to compensate the real appointee as well as make a living for himself.

Sabit Efendi further elaborates his position by criticizing the ignorant judges, who were unaware of the legal maxims of sharia, which recognized merchants' customs and written evidence[8] and other matters of sharia related to the validity of

[5] Ibid., p. 252. It is difficult to understand how Kuran attributes the moderate success of the Avrupa Tüccarı to their connections with their relatives who had access to a Western system. None of Kuran's sources indicates this and I was not able to document this in my research about the Avrupa Tüccarı in the Ottoman archives.

[6] Sabit Efendi, *Usulü Muhakeme-i Hukukiye* (İstanbul, 1302), pp. 156-160.

[7] For a modern scholarly account of the "naib" problem, corruption and lack of sufficient knowledge among the naib's and the reforms of the Tanzimat period, see Jun Akiba, "From *Kadı* to Naib: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies*, edited by Colin Imber and Keiko Kiyotaki (London: I.B. Tauris, 2005), pp.43-60.

[8] Sabit Efendi (1302), p.157. Here Sabit Efendi refers to the following legal maxims from the Ottoman civil code Mecelle: "Article 2. A matter is determined according to intention",

written evidence.[9] Accordingly, these judges did not consider the entitled and stereotyped bills of exchange drawn between the merchants as documents that could be acted upon.[10] In contrast, when a poor man sued a rich man to demand thousands of pieces of gold and brought two witnesses, the judges regarded it as conclusively substantiated evidence. Sabit Efendi thus concluded that because the judges disregarded the customs of the merchants *sarraf*s (moneylenders) had to take their lawsuits to the Imperial Mint or their guild, tradesman dealing with bills of exchange had to solve their legal disputes among themselves, and cases related to the tax farming had to be taken to the office of the Treasurer. Even the Ministry of *İhtisab* (office of the superintendent of guilds and markets), which was established in 1826 (1242), had to act like a court and try the cases of some men. Therefore, Sabit Efendi

---

"Article 17. Difficulty begets facility", "Article 36: Custom is arbitrator", "Article 37: Public usage is conclusive evidence and action must be taken in accordance therewith", "Article 39. It is an accepted fact that the terms of law vary with the change in times", "Article 43. A matter recognized by custom is regarded as though it were a contractual obligation", "Article 44. A matter recognized by merchants is regarded as being a contractual obligation between them.", "Article 69. Correspondence takes the place of an exchange of conversation", "Article.82 If the validity of a condition is established, the validity of anything dependent thereon must also be established", "Article 83. A condition must be observed as far as possible." I borrowed these and the following translations of Mecelle from C.A. Hooper, "The Mejelle. Articles 1-100," *Arab Law Quarterly* 1, no. 4 (Aug., 1986), pp.373-379.

[9] Sabit Efendi explains these matters, but did not give his source. Apparently, he borrowed them from Mecelle. See "Article 1606. " An admission in writing is the same as an oral admission", "Article 1608: The entries made by a merchant in his books which are properly kept are in the nature of written admissions" C.A. Hooper, "The Mejelle: Book XIII: Admissions," *Arab Law Quarterly* 5, no.1 (Feb., 1990), p. 94 and "Article 1736.…If such writing or seal is free from any taint or fraud or forgery however, it becomes a valid ground for action, that is to say, judgment may be given thereon. No proof is required in any other way". Moreover, the articles 1737, 1738 and 1739. See C. A. Hooper, "The Mejelle: Book XV: Evidence and Administration of Oath" *Arab Law Quarterly* 5, no. 3 (August., 1990), p. 231.

[10] ''*cühela-i hükkam beyn-et-tüccar muanven ve mersum olarak keşide ve kabul ve bedeli tediye olunan poliçe tahvilini mamul bih add itmediklerinden''*. Baber Johansen uses the French word "stéréotypé" for the word "mersum". See Baber Johansen, "Formes de langage et fonctions publiques: stéréopypes, témoins et offices dans la preuve par l'écrit en droit musulman", *Arabica* ("Voix et calame en Islam médiéval"), tome XLIV, fasc. 3 (1997), p.361. Following Ghislaine Lydon I called these kind of documents "stereotyped". See Ghislane Lydon, "A Paper Economy of Faith Without a Faith in Paper: A Reflection on Islamic Institutional History," *Journal of Economic Behavior&Organization* 71 (2009), p.693.

held the opinion that the unsatisfactory condition of the ignorant judges obliged the merchants to avoid sharia and look after themselves.[11]

As the upholders of the sharia law, Sultan Selim III and Mahmud II felt discontent about the prevalent corruption and ignorance in the judicial system and called for consultative assemblies. Attendees of these assemblies assented to the idea that the injuries that the state and Muslim had nation suffered for some time was as a result of upholding the commands of sharia. Sabit Efendi described such a consultative assembly during the reign of Sultan Mahmud II in which it was decided to appoint qualified and expert judges and put an end to the tax farming system in order to make the judges actually serve in their place of duty. But he believed that it should be either because these decisions were never put into practice, or not respected enough to have the desired effect, a class of berat (patent, license) holders with special privileges and immunities -Hayriye Tüccarı for the Muslims and Avrupa Tüccarı for non-Muslims- had to be instituted with the aim of enabling the Ottoman merchants at least to have a share in the domestic trade, which has increasingly being monopolized by the foreign merchants.

Gradually, these merchants began to solve their lawsuits among themselves under the supervision of their *muhtar*s and vekils. [12] However, according to Sabit Efendi, leaving the hearing of lawsuits to the jurisprudence of guild elders or merchant representatives was not acceptable to the state, so the state had to begin thinking of measures to reform the existing system fundamentally and enact laws to be followed in commercial and other rather insignificant matters.[13] This is the

[11] '*Cühela-i hükkamın ahvali namerziyesi ekser tüccarı şer'iyeden kaçmağa ve kendü başlarının çaresini beynlerinde bulmaya mecbur itmiş….*' Sabit Efendi, p.159.
[12] Sabit Efendi, pp.158-159. *Muhtar* was the name given to the elected head man of the Hayriye Tüccarı while vekil was the name given to the elected representative of the Avrupa Tüccarı.
[13] Ibid., pp.159-160.

picture, which Sabit Efendi explained in order to justify and explain the reforms of the Tanzimat period such as the establishment of ministries, councils and courts, and enactment of new laws in detail.[14]

Therefore, two different pictures emerges, one in which Kuran sees the "problem"[15] in the stagnation of institutions due to the Islamic legal framework, and in the other Sabit Efendi identified the problem as the judges and the judicial/administrative practices which deviated from the principles of sharia. However different their viewpoints on this issue, while writing in centuries apart, they are united in their conclusion, namely, the jurisdictional shift of the Ottoman merchants.[16]

Timur Kuran focuses on the Middle East's religious minorities because he believes that with their access to what he describes as "more efficient western commercial institutions than those of Islam" it offers a natural experiment to test his argument that the Middle East found itself engulfed in commercial crisis as West

[14] In fact, some of these institutions, such as the Ministry of Trade, were established shortly before the decree of Tanzimat, but this reform period came to be known as the Tanzimat period.

[15] While using the word "problem" I do not aim to adopt a "What Went Wrong" approach. However, Kuran looks into the different developmental trajectories of Europe and the Middle East and identifies the Islamic law as the factor that held the region back. For Sabit Efendi, the problem was somewhat different, but still related to Kuran's approach. He saw the relative decline in the power of the Ottoman state that caused harm to the state and its Muslim population, which he describes as "*devleti aliye ve milleti İslamiyenin bir müddetden berü düçar olduğu mazarratların*" (the injuries suffered by the Ottoman Empire and Muslim nation for some time).

[16] For Kuran this shift was possible only for the non-Muslim minority due to their access to the European legal systems. Sabit Efendi, on the other hand described a more general phenomenon without restricting his focus to the non-Muslims. The guilds, government offices and ministries later became legal fields in which merchant's discontent with the judges of the sharia courts sought refuge. Sabit Efendi did not mention the possibility of a jurisdictional shift through the consulates of the European countries. Moreover, it seems that for Sabit Efendi it was a problem of late eighteenth and early nineteenth centuries while Kuran starts it with the eighteenth century.

developed these "more efficient" institutions.[17] As mentioned above he does not attribute much success to the Porte's Avrupa Tüccarı and Hayriye Tüccarı schemes as an alternative to consular protection because of the absence of a legal system favorable to capital accumulation within large and long-term enterprises. According to Sabit Efendi, on the other hand, these schemes were initiated because of the previous failed attempts of reform within the Ottoman judicial system.[18]

In the empirical scholarly studies however, there are two views explaining the emergence of the Avrupa Tüccarı. The most widely held view is the one purported by Ali İhsan Bağış, which sees it as the Porte's response to the abuses of the protégé

[17] Timur Kuran. "The Islamic Commercial Crisis: Institutional Roots of Economic Underdevelopment in the Middle East," *The Journal of Economic History* 63, no. 2 (Jun., 2003), p.439.

[18] Sabit Efendi made a mistake about the timing of the establishment of the Avrupa Tüccarı. He stated that both Avrupa and Hayriye Tüccarı systems were initiated during the reign of Mahmud II. Although this is true for the Hayriye Tüccarı, the Avrupa Tüccarı was instituted in 1802 by Selim III. See Ali İhsan Bağış, *Osmanlı Ticaretinde Gayri Müslimler: Kapitülasyonlar* Berat*lı Tüccarlar Avrupa ve Hayriye Tüccarları (1750-1839)* (Ankara: Turhan Kitabevi, 1983). However, this mistake does not enable us to dismiss his account of the process of legal reform in the Ottoman Empire. Born to a naib father, Sabit Efendi spent his childhood travelling with his father Mahmud Said Efendi to the places he served across the empire. Sabit Efendi was among the first graduates of the modern School of Law in 1885 at the age of 32. During his years at the School of Law, he sat in the classes of prominent statesmen of the period such as Ahmet Cevdet Paşa and Münif Paşa. Ahmet Cevdet Paşa played a major role in the legal reforms of the period and is particularly known for preparing the *Mecelle* (volume) as an Ottoman Civil Code to complement the Civil Code of 1850 with a special commission. Sabit Efendi was a prolific writer during his years at the School of Law. He published *Mekteb-i Hukuk* (School of Law) magazine. He published Munif Paşa's lecture notes in the volumes of this magazine. Moreover, he wrote commentaries on the Ottoman Criminal and Commercial Codes, Civil Procedure Law, Criminal Procedure Law as well as Mecelle's book of Sales. See Ali Adem Yörük, "Mektebi Hukukun Kuruluşu ve Faliyetleri (1878-1900)" (MA thesis, Marmara University, 2008). Therefore, Sabit Efendi was not an ordinary observer of the Ottoman legal system and the reforms, but also with his background, a participant. While he was not alive during the earlier periods he described in his book, the social memory about it should have been alive and his father and teachers were likely to have given him a sense of the past events. Moreover, on one occasion he mentioned the merchant elders as a source for the period before 1839, which gives us a clue about his personal sources and increases the value of his study. See Sabit Efendi, p. 164. Of course, one might question his impartiality in condemning the old regime as a member of the new regime elite during the age of reform. But this does not diminish the value of his analysis as a participant observant in helping us to see how the legal reforms was viewed by someone with the profile of Sabit Efendi. His analysis is also akin to the views of his teacher Cevdet Paşa. For an study of Cevdet Paşa's views in this context, see Christoph K. Neuman, *Araç Tarih Amaç Tanzimat Tarih-i Cevdet'in Siyasi Anlamı* (İstanbul: Tarih Vakfı Yurt Yayınları, 1999).

system of the eighteenth century.[19] Similarly, Bruce Masters sees it as the one of the last responses arising from Ottoman traditional statecraft to prevent the defection of Ottoman subjects while the Ottoman sovereignty was eroding rapidly. Masters claims that the degree to which the system represented broader economic aims, such as creating a healthy class of entrepreneurs, is unclear. [20] However, a recent study by İsmail Hakkı Kadı on the Ottoman minority merchant's trade with Dutch Republic in 18th century sees the emergence of the Avrupa Tüccarı system as the culmination of the process of the growth of the mercantile activities of Ottoman merchants that affected the Ottoman states policymaking.[21]

Nevertheless, these studies do not go beyond listing the Avrupa Tüccarıs privileges without elaborating how these privileges were practiced in the Ottoman setting. Moreover, none of these studies focuses on the role and impact of the Avrupa Tüccarı in the institutional reorganization and legal transformation of the Ottoman Empire in the nineteenth century. This thesis departs from the earlier works by taking a close look at the Avrupa Tüccarıs experiences before the reforms of the Tanzimat period. Moreover, it focuses on the role they played in the process of legal reform and sees them as one of the vital legs of the merchant's tripod at which the legal reforms in the commercial field were aimed.[22] Although the legal and commercial changes in the empire might have made them redundant, as pointed out by Masters,[23] the role they played in these changes deserves our attention. It must have been this

[19] Bağış, *Osmanlı Ticaretinde Gayri Muslimler*.
[20] Bruce Masters, "The Sultan's Entrepreneurs: The Avrupa Tüccarıs and the Hayriye Tüccarıs in Syria," *International Journal of Middle East Studies* 24, no. 4 (Nov., 1992), pp.579-580.
[21] İsmail Hakkı Kadı, "Natives and Interlopers: Competition between Ottoman and Dutch merchants in the 18th century" (Ph.D diss., Universiteid Leiden, 2008).
[22] The others were foreign merchants operating under the protection of capitulations and Porte's other class of protected merchants, namely Muslim Hayriye Tüccarı.
[23] Masters, *Sultan's Entrepreneurs*, p.580 and p.594.

role that convinced Sabit Efendi to see the origins of the Avrupa Tüccarı in the failure of the reforms in the judicial field.

The creation of the Avrupa Tüccarı system was an institutional innovation as well as the harbinger of the institutional transformations that were to take place during the nineteenth century. Beginning from the issuance of the first Avrupa Tüccarı berats the Porte's policies showed an understanding of the institutional foundations of economic development and the state's role in providing these foundations. The rights given to the Avrupa Tüccarı were not something new within the Ottoman context as they had been enjoyed by other groups in one way or another before. However, the link established between the expected results of the program and the rights promised made it novel. The introductory remarks of the berat texts stressed the need to give an order and regulation to these merchants for the prosperity of country and merchants and it was expected to increase their trade. The rights promised to the merchants accordingly, such as judicial guarantees, security for their properties and inheritances, and tax breaks, shows that the Porte was aware of the institutional incentives that would help to increase the trade.

This thesis shows that the privileges promised to the Avrupa Tüccarı was respected, although with certain limitations. The clause stipulating a special tribunal in İstanbul in the audience hall of the palace in the presence of Grand Vizier (*Arz Odası*) served as a protective measure for the Avrupa Tüccarı in their legal battles. Their access to the mixed commercial councils provided them an active venue for disputes that involved both Ottomans and foreigners. Although the continuation of the intervention in merchant's estates could not be prevented by enrolling in the Avrupa Tüccarı system, being an Avrupa Tüccarı meant having the sultan's backing to stop the intervention. Moreover, the promise of universal protection enabled the

Avrupa Tüccarı to turn to the sultan to seek protection from the excessive taxation even for the matters that was not included in their berats.

The rhetoric of growing trade[24] and the need to regulate it dominated the nineteenth century legal reforms and the Avrupa Tüccarı left their imprint on the process of Ottoman judicial change. They were the actors in the first mixed commercial commission in İstanbul, the members of the first mixed commercial court, and when the commercial councils began to be spread across the empire again, it was the Avrupa Tüccarı on the board as judges and inspectors. When the French Commercial Code was to be adopted into the Ottoman conditions it was again the Avrupa Tüccarı on the board voicing the merchant's demands and there was even a hidden reference to them in the Ottoman version of the French Commercial Code.

This thesis's evaluation of Avrupa Tüccarı's experiences challenges the notion of top to down or state generated reforms of "modernization" in the legal field, mostly under the impact of the West or to appease the Western powers.[25] While not denying the "Western impact" or the pressure felt by the Ottomans by the increasing existence of the foreign merchants on its lands and the blurring lines between the "foreign" and "domestic" within the pretext of capitulations, I argue that the Ottomans themselves also made their impact felt by the State by their actions. Thousands of Avrupa Tüccarı petitions submitted individually to open lawsuits and the Porte's responses are preserved in the Prime Minister's Office of the Ottoman Archives in İstanbul today. There are also a number of extant collective petitions of

[24] It was Kadı who pointed out this rhetoric in the Porte's interest in supporting its merchants in Europe and offering them protection back at home by instituting the Avrupa Tüccarı system. However, he does not delve into the legal aspects of this innovation and his study ends with the emergence of Avrupa Tüccarı. See Kadı, pp. 280-281.

[25] Recently Avi Rubin criticized the "prisms" of ''Secularization'', ''Westernization,'' and top down ''reform'' in the scholarship of nineteenth century Ottoman history. See Avi Rubin, "Ottoman Judicial Change in the Age of Modernity: A Reappraisal," *History Compass* 6 (2008), pp. 1-22.

Avrupa Tüccarı voicing their demands about their judicial treatment and the decrees issued by the Porte in response. While reading them one cannot overlook the role they played in providing input to the reforms of the period. Hence, this thesis will endeavor to give a voice to these merchants' demands and the Porte's responses.

For now, it suffices to look at an institution founded for providing a venue for the judicial interactions of Ottoman and European merchants, but began to be used for intra-Ottoman conflicts. Namely, the Commercial Court established under the Ministry of Trade, which the Avrupa Tüccarı used for their litigation with other Ottomans. Moreover, the Avrupa Tüccarı's usage of this court for the litigation in one of the most classical Ottoman institutions, namely tax farming, which were theoretically closed to foreigners makes the case of this thesis even more interesting by showing how the internal dynamics continued to shape the Ottoman world. This was not a development initially planned or later desired by the state and led to the protests of other privileged groups such as sarrafs but at the end of the day, the state adopted this practice as a norm for all.

Even if we accept the claim that nineteenth century Ottoman reformers wanted to create what Keyder calls "a single legal space" to establish a modern state that faced its citizens directly,[26] they had to rely on actors such as the Avrupa Tüccarı and ironically allowed them first to create their own spaces and then incorporated them to the ''single space'', they wanted to create. Therefore, looking at the practices of the Avrupa Tüccarı in the Ottoman legal setting in the age of reform will show inconsistencies, jurisdictional conflicts, and forum shopping within the

[26] Keyder articulated this idea for the nineteenth century Ottoman reformers. See: Çağlar Keyder, "Law and Legitimation in Empire," in *Lessons of Empire: Imperial Histories and American Power* edited by Craig Calhoun, Frederick Cooper, and Kevin W. Moore (New York: The New Press, 2006), p.117.

legal space/spaces.[27] Moreover, assuming a powerful reified state with consistent actions becomes also problematic when one observes contradicting orders and recurrent decrees with no apparent results.

Probing into the legal and economic practices of the Avrupa Tüccarı, one also comprehends what the authors of Ottoman Civil Code Mecelle repeatedly appealed to as the "needs of the time" and "customs of the merchants", and sees the imprint of the Avrupa Tüccarı along with those of other merchants on it. For example, while their berats contained a clause[28] that might be considered as a sign of the theoretical suspicion about acting with the written evidence alone, the Avrupa Tüccarı always relied on documentation such as promissory notes and debentures in their contracts that usually included interest without any mention of the legal tricks of the Islamic law to hide it. Moreover, they wanted their losses to be compensated when their properties were occupied illegally but returned to them later even if this was not permissible according to the Hanefite version of Islamic law. The role of the written documents as evidence that could be acted upon for merchants, sarrafs and brokers without the support of oral testimony were secured with the Mecelle[29] as well as a compensation for the occupation of the properties that were customarily being rented were introduced.

---

[27] Avi Rubin observes this for a later period and he offers the "sociolegal" approach as an alternative to the state centric scholarship. He stresses that even the "modern legal systems in general are far cry from their neat, orderly image." Rubin, *Judicial Change*, pp.7-14.

[28] *"Ashabı beravattan birinin her kimde olur ise olsun mumza ve memhur ve mamul bih bir temessük mucibince ve vekilleri ve esnafının tevatüren şehadetleriyle müsbit matlubu oldukda yedinde olan temessükü hakime ibraz ve ledes sübut matlubu olan meblağ tahsil olunub yüzde ikiden ziyade resm matalibe olunmaya*." I will come to this point later when I discuss the content of Avrupa Tüccarı berats.

[29] For the note of Mecelle commissions for the Book of Evidence recognizing commercial papers as an evidence in itself which could be acted upon without a testimony see: Osman Kaşıkçı, *İslam ve Osmanlı Hukukunda Mecelle* (İstanbul: OSAV, 1997),p.155 . Interestingly it refers to tax farming and tax farmers who have the custom of using these type of documents among themselves. It is another example of the role of "Ottoman realities" shaping the Ottoman reforms.

Then why was a Civil Code needed, if we are to believe Sabit Efendi's remarks that the role of custom was recognized in the rules of sharia as a source of law but simply ignorant judges did not know it? Wouldn't it be enough and easier to simply "educate" the judges better well rather than undertaking a total transformation of the judicial system? In addition, is it legitimate to judge the judges of the pre-reform period by using Mecelle, a product of the reform period as a source? We have some answers to this question in Wael Hallaq's study,[30] which shows how Islamic law at certain times and places, could and did undergo change. The early nineteenth century was such a period and it was Ibn Abidin, who raised the custom into a formal source of law, which the authors of Mecelle relied upon later. [31]

Therefore, we should be cautious about Sabit Efendi's remarks about the role of custom as a source of law in Islamic law before the reforms, although the importance of custom was recognized. Moreover, the clause in the Avrupa Tüccarı berats and the empirical evidence provided in this thesis imply that the acceptance of written evidence nor supported by testimony was not as straightforward as Sabit

[30] Wael B. Hallaq, "A Prelude to Ottoman Reform: Ibn Abidin on Custom and Legal Change," in *Histories of the Modern Middle East: New Directions,* edited by I. Gershoni et al. (London: Lynne Rienner, 2002), pp.37-61.

[31] According to Hallaq, although custom was present in various areas of Islamic law, it did failed to gain a place among the formal sources. Ibid., p.41. Hallaq notes that nearly all features of Ibn Abidin's theory discussed in his article on the role of the custom appears in Mecelle. He summarizes them in six articles all of which Sabit Efendi referred to in his book as the rulings of sharia that the judges did not know. See my footnote 8, above. Although it does not appear in Hallaq's work, it is important to note that Ibn Abidin's son Alaeddin Efendi was also a member of the commission drafting Mecelle during the preparation of first five books, which also includes the legal maxims about the customs. See Ebul'ula Mardin, *Medeni Hukuk Cephesinden Ahmet Cevdet Paşa* (Ankara: TDV, 2009), p.163. Gideon Libson points to the tension between theory and practice, which he sees as a de facto recognition of custom in the legal literature especially in the discussions of commercial law. Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law: Al-ruju'u ila al-urfi ahadu al-qawaidi al-khamsi allati yatabanna alayha al-fiqhu," *Islamic Law and Society,* 4, no.2 (1997), p.138. He sees the Mejelle as the last stage in the process of recognition of custom as a formal source but does not mention the influence of Ibn Abidin on Mejelle. Ibid., p.141.

Efendi believed, at least in the Ottoman understanding of Islamic law. [32] The Ottoman Empire went through a wave of fundamental legal and judicial change in nineteenth century. The Avrupa Tüccarı was part of the picture in which growing trade and intensification of market relations that contributed to the legal transformation of the empire. This experience shows that rather than establishing the causality as legal rigidity causing institutional stagnation and economic stagnation as Timur Kuran does, when there was enough demand, the legal system and institutional framework of the Middle East could change.[33] The rhetoric of growing trade and the need to accommodate it is manifest in the Ottoman bureaucrats and scholar's texts explaining their actions. Moreover, the Ottomans did not simply want to accommodate the growing trade, but also aimed to establish the mechanisms that would contribute to this growth.

When the commercial customs proved feasible, even the Porte wanted to benefit from the efficiency gains for the fiscal functions of the state and the scholars recognized the customs as a source of law and merchant practices as the needs of times and even gave a new form to the Islamic law. Hence, the interaction between the Avrupa Tüccarı and the Porte makes it evident that when the demand was strong enough, the Ottomans were willing to accommodate it.

In the next chapter, I will first look at the eighteenth century consular protection under the pretext of capitulations as the background of the Porte's own

[32] However, Baber Johansen shows that between the tenth and twelfth centuries, a doctrine emerged in Central Asia according the privilege of accepting the stereotyped documents as legal evidence without testimony to the merchants, sarrafs and brokers. Therefore, there was already a well established Hanefite tradition of accepting such documents when Ibn Abidin was writing in their favor in the nineteenth century. However, we do not know if this doctrine was accepted or applied by the scholars and judges of the Ottoman Empire. Johansen, pp.357-376. If not one should also consider the relative power of these privileged groups in Central Asia and Ottoman empire.

[33] See Ahmed Fekry Ibrahim, "Review of Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East," New Middle Eastern Studies*, 1 (2011) for the flaws in Timur Kuran's logic by questioning the viability of his causality.

protection system, the Avrupa Tüccarı. Then I will examine the details of the Avrupa Tüccarı's rights and privileges as documented in their berats. In chapter 3, I will look at the years 1835-1839 as the final period of the "Ottoman classical age" with its classical institutional framework, and analyze where the Avrupa Tüccarı were in this picture. Chapter 4 focuses on the Avrupa Tüccarı in the age of the Tanzimat reforms and shows their feedback and contributions to the reform process. The period ends with the abolition of the Avrupa Tüccarı privileges in 1867, a year before the first book of Ottoman Civil Law was published. Chapter 5 summarizes and gives an analysis of the main findings of this thesis.

CHAPTER II

BERATLI MERCHANTS IN THE EIGHTEENTH CENTURY AND THE ESTABLISHMENT OF AVRUPA TÜCCARI SYSTEM

The *Beratlı* Avrupa Tüccarı conducted their business with special privileges under the investiture issued by the central Ottoman chancery to Ottoman subjects in the name of the Sultan. Before the Porte's institution of its own system of allocating berats and offering protection to a group of non-Muslim Ottomans at the beginning of the nineteenth century, a similar system was in place in the eighteenth century.[34] This was, however, not a berat system established deliberately to protect a group of merchants. It was an extension of the privileges accorded to the European consular personnel with berats (special deed of appointments), which enabled some Ottomans to enjoy the consular protection. Privileges accorded to consular personnel through capitulations and imperial edicts made these positions attractive to the Ottomans, mostly non-Muslims, and paved the way to the commercial sale of these positions to those who did not have the skills or intention to serve the consulates. A limited number of non-Muslim Ottoman merchants obtained imperial berats as if they were consular dragomans (interpreters), but used their privileges instead in their businesses. This was the channel that Timur Kuran sees as having been a way of accessing the "more efficient" European laws and a precursor of the Porte's own system of protection. Therefore, before moving on to the Avrupa Tüccarı as *beratlı* (berat holder) merchants it is necessary to examine the capitulatory system in the

[34] Maurits H. van den Boogert, "Beratli", *Encyclopedia of Islam*, 3rd edition.

Ottoman Empire, which made the emergence of the berat system for merchants possible, and the berat holders in the eighteenth century to understand the consular protection to shed light on the late Avrupa Tüccarı system. After this historical background, I will examine the content of Avrupa Tüccarı berats in detail in the last section of this chapter.

Capitulations in the Ottoman Empire

Following the example of their precursors in the Levant, the Ottomans granted capitulations to the European countries from the fifteenth century onwards.[35] The capitulations gave the Europeans a safe conduct to visit the Ottoman lands and engage in trade while protecting their foreign nationality and being exempt from a number of taxes Ottoman subjects had to pay.[36] *Müstemen* (foreigners with safe

[35] For the historical development of the capitulations, see Alexander H. De Groot, "The Historical Development of the Capitulatory Regime in the Ottoman Middle East From the Fifteenth to the Nineteenth Centuries," *Oriento Moderno* 23 no.3 (2003), 575-604. However, in evaluating the consent given to the non-Muslims from the "Abode of War" for a prolonged stay in the lands of Islam, the author sees an "inherent conflict" between the Islamic law and the Ottoman interpretation/practice of it. According to De Groot, the documents of the capitulations, which initially had a bilateral and reciprocal character eventually were transformed into a unilateral style because Ottoman statesmen with a traditional frame of mind had to hide the political truth of the existence of lasting peaceful relations with foreign countries. Similarly, M. H. Van den Boogert sees a doctrinal weakness in the practice of safe-conduct granted to foreigners. Maurits H. Van den Boogert, *The Capitulations and the Ottoman Legal System: Kadıs, Consuls and Beratlıs in the 18th Century* (Leiden: Brill, 2005), p.31. However, this approach implies a static Islamic law developed in the earlier centuries versus the Ottoman practice that did not conform to it much later. Ruth Miller recently questioned the assumption of "historically pure Islamic law that Ottoman state failed to implement properly" in the historiography of Ottoman legal studies. Ruth Miller, "The Legal History of the Ottoman Empire," *History* Compass 6 no:1 (2008), p.289. Although she does not mention the scholarly understanding of capitulations or the the Ottoman granting of safe conduct to foreigners in her study, it is apparent that this attitude is also common among the scholars writing on capitulations.

[36] Capitulatory rights were granted to the European countries individually and the content of capitulations changed over time and varied between countries until a single corpus of texts whose content could be a manipulated by all foreign countries emerged in 1740. Ibid., p.599. Here I am summarizing the privileges of capitulations in general as it was in the eighteenth century without references to its specific details. Moreover, I will use the word "*müstemen*"

conduct) had the freedom to consume the food and beverages he liked, and dress in the way he saw fit. The sanctity of his house was protected and Ottoman officials could not enter or search without the information of the consulate and a representative of the consulate being present. In the event of a müstemen's death, the division of his estate and its transfer to the heirs was the responsibility of his consulate. The Islamic courts were the venue to adjudicate the cases involving Ottoman subjects and müstemen but they could not be tried without the official dragoman of the consulate being present. Moreover, they were advised to get title deeds from the Islamic courts and they could not be tried in these courts based on oral testimony alone. Lawsuits exceeding the value of 4000 *akçe* (silver coin and a unit of Ottoman monetary system) had to be brought into the imperial council in İstanbul. Ships from countries with capitulations were allowed to travel freely on the Ottoman seas and they were protected against the piracy of Ottoman vassals from North Africa.

The ambassadors and consuls of countries enjoying capitulations were also protected in their conduct and any accusation against them had to be brought into the imperial council in İstanbul. Moreover, they could adjudicate civil and criminal cases among their subjects according to the practices of their countries. The consuls were allowed to collect dues from the shipments of their nationals and fees for their judicial and notary services. It was this existence of European consulates with civil jurisdiction over the European nationals that leads Timur Kuran to believe that the institutional framework of the European countries were available in the Middle East, giving Westerners a competitive edge over the locals who couldn't access this

---

to denote the status of a foreigner from a country that had been granted capitulation. For the rights of the müstemen in the capitulations, see Mübahat Kütükoğlu "Ahidname-Türk Tarihi," *TDV İslam Ansiklopedisi*.

institutional framework.[37] Therefore, if we are to believe to Kuran that with the extraterritoriality enjoyed by the Europeans, the "Western laws" conferred international competitiveness to those who can conduct their business under its framework because they made room for the new complex and superior business organizations.[38]

Consular Protection for Ottoman Subjects

The capitulatory privileges also extended to a limited number of consular personnel from the Ottoman subjects to some extent. The official interpreters of the consulates, namely the dragomans, their sons and two servants were chief among them.[39] The ambassadors were free to choose the people they wanted as their dragomans with the approval of the Porte in the form of an imperial berat, making them also known as beratlı (berat holders). At least from the seventeenth century onwards we can find reference to the dragomans enjoying the same privileges as their employers.[40] That is they were exempt from the poll tax, the butcher tax and other customary levies. They also enjoyed eating, drinking, attire and travelling privileges. In the event of the death of a dragoman, his estate were not subject to the custom tax and was to be divided among his creditors and heirs. Although the jurisdiction about the dead dragoman's estates is not clear from the capitulations alone, the consuls were able to take it into their jurisdiction with supplementary

[37] Kuran, Middle East's Religious Minorities, p.497-498. Kuran uses the French consulates and Frenchmen with access to French institutions as an example.
[38] Ibid., p.497.
[39] The others were warehouseman, brokers, moneychangers and janissaries of the consulates. See Boogert, *The Capitulations*, pp.64-72.
[40] For a clause in the French capitulations of 1604 see Ibid., p.65 This reference in the capitulations became the base for the claims of consuls to extend the privileges of their dragomans with supplementary imperial orders.

fermans (imperial orders).[41] Dragoman berats included the stipulation that their legal disputes with anyone had to be sent to the Sultan's court and should not be heard anywhere else. [42] Moreover, the beratlıs could also use their affiliated consulate for judicial and notary purposes. This implied that with the *forum rei* principle (bringing the case before the defendants court) as the respected custom among the European communities in the Levant, when accused a dragoman could use the consulate with which he was affiliated with as a venue for his case to be adjudicated.[43] However, at the end of the day, a beratlı remained a subject of the Sultan and always had the right to take his case to the Islamic courts. Therefore, the consular jurisdiction for their lawsuits could not be obligatory if the beratlı was not willing to accept it.[44]

A dragoman as the official interpreter of the embassy was a perquisite for the functioning of the embassy and fulfilling of its duties towards the members of its nation. However, the privileges enjoyed by the dragomans made this position attractive not only to those who were willing to offer their interpretation services, but also to those who were more interested in the privileges entailed. Thus, during the course of the eighteenth century, the position of dragoman became commercialized and positions were sold by the ambassadors and a market for the

[41] Ibid. 175-176. However, if the dragoman did not have any heirs his estate had to be transferred to Ottoman Treasury.

[42] Bağış, p. 109. "*mezbur ile her kimin davası olur ise Asitane-i Saadetime havale olunub gayrı yerde istima olunmaya"* This clause is similar to the 4000 akçe stipulation for the müstemen. With the impracticality involved due to the distance and costs involved, it was a protective measure for them. Otherwise, it would be impossible to explain the other clauses of the capitulations and supplementary imperial orders addressed to the local judges. See Boogert, p. 248, for the Porte's rejection to hear just a case.

[43] However, this was more meaningful if the other side of the conflict is müstemen because European communities in the Levant had a custom of avoiding the Ottoman justice as much as possible. If the Ottoman subjects were involved they could always take the matter to the Ottoman justice system.

[44] See Boogert, *The Capitulations*, p. 249 for the escape of a British dragoman from the prison of the British consul and turning himself in to the *kadı* (Ottoman judge). If both sides were beratlı but one side is unwilling to accept a consular hearing he could still choose to appeal to the Ottoman justice system.

dragoman berats emerged. [45] However, the Porte, which made the sale of berats possible by allocating a limited number of berats to the European ambassadors according to their political importance. Each dragoman berat was tied into two servant fermans entitling the original berat holders, his adult sons and the two servants to consular protection. The ambassadors sold the dragoman berats and servant fermans separately. This became a profitable business and an additional income for the European ambassadors in the Levant. It seems that when the berat or ferman holders lived outside İstanbul, thereby falling under the jurisdiction of the consul, the profits were shared between the ambassador and consul.[46]

What led the Ottoman subjects to seek dragoman berats even if they came at a price? In his pioneering study of the beratlı merchants, Ali İhsan Bağış argues tax breaks made the berats attractive to the non-Muslim Ottomans.[47] Nevertheless, Cihan Artunç has recently challenged this view by calculating the present discounted value of the future tax exemptions and showing that it was much lower than the prices paid for the berats. [48] Moreover, he demonstrates that the access to trade networks possibly gained through obtaining foreign powers protection was also not a viable answer because beratlıs formed most of their partnerships with other beratlıs or other Ottomans who later acquired berats.[49] He then tests the "jurisdictional shift hypothesis" of Timur Kuran by attempting to assess the impact of "better law" on the

[45] Ibid., pp.76-112; and Cihan Artunç, March 2013, The Protégé System and *Beratlı* Merchants in the Ottoman Empire: The Price of Legal Institutions, pp.1-35, Available (Online) at <http://aalims.org/uploads/Cihan%20Artunç%20Berat.pdf>. Like the capitulations the privileges of the dragomans listed above was not static. It developed over the course of the time through capitulations and supplemental imperial orders obtained by the ambassadors. The commercialization of dragoman berats also meant that ambassadors had to seek further rights and guarantee the existing ones for the beratlıs under their protection. Boogert, *The Capitulations*, pp.76-85.
[46] Boogert, *The Capitulations*, pp. 79-85.
[47] Bağış, p. 28.
[48] Artunç, pp.12-15.
[49] Ibid., pp.15-18.

prices. Artunç considers a number of factors such as the protector countries relationships with the Porte and the ambassador's influence over the Porte, which might have affected the prices of the berats. He claims that Britain and France had comparable power, equal influence over the Porte and has historically been friendly with the Ottoman Empire that renders a comparison between them possible. Comparing the berat prices of two countries shows French berats had a higher price than the British. According to Artunç this displays the agents' preference of French law over British law. [50]

Unfortunately, the author's comparison between French and British berats is untenable because French the French ambassador's political influence over the Porte were greater than those of the British ambassador.[51] Nonetheless, Artunç's evaluation of the three possible aspects of law that beratlıs might have found profitable to switch jurisdictions is worth consideration. Contrary to Timur Kuran, Artunç states "there was no general incorporation laws in Europe" and observes that most of the partnerships formed by the beratlıs were general partnerships, not joint-stock companies or corporations, which had corresponding forms in Islamic law. In addition, he entertains the possibility of the Ottoman court's difficulty of dealing with the merchant houses, which would mean lower transaction costs through access

[50] Ibid., p.20.

[51] Boogert points out that the political importance of the French ambassador was reflected in the number of berats he was awarded by the Porte, which always exceeded the British. Boogert, *The Capitulations,* p.78. For the number of berats for France, Britain and Dutch Rep. in 18th century see Ibid., p.88. In 1673 French friendship was recognized as having always being superior than other Christian monarchs and the French ambassadors and consuls were given precedence over other western representatives. The importance of French increased even more with their intermediation in the Peace of Belgrade in 1739, which enabled the Ottomans to take Belgrade back. This was followed by the French Capitulations of 1740 recognized the French as a most favored nation and "represented the most extensive set of privileges formally given to a power." Groot, *Historical Development*, pp.598-599.

to European laws. Lastly, Artunç considers more flexible inheritance laws and securer property rights as other options and finds evidence implying these.[52]

After examining the tax related and jurisdictional factors that could be behind the beratlıs motives for buying protection Artunç considers a third possibility, namely forum shopping. For this option, he finds concrete evidence of beratlıs attempts to forum shop between different courts in order to get a more favorable verdict. The author discovers that beratlıs moved between different consulates, buying dragoman berats from different countries, sons buying the berats of different countries although they already enjoyed the protection through their fathers and even an individual person holding berats from different countries. In addition, they could always deny their berats and turn to the Islamic courts as the Ottoman subjects. Artunç interprets this tendency as the agents desire to have a credible threat of defection in case of dispute in contract with other parties. He concludes "the looming threat of rent extraction could have discouraged agents without berats from participating in such a market". [53]

Both Kuran and Artunç attribute the motive for obtaining access to the Western laws to Ottoman merchant's berat purchases from the embassies. According to Kuran, western protection means an entry into the "new economic sectors supported by advanced legal codes".[54] Artunç, on the other hand interprets the difference between French and British berat prices as the agent's preference for French law over those of British.[55] However, Boogert recently criticized the underlying assumption of Timur Kuran's jurisprudential shift hypothesis, that is, the

[52] Artunç, pp.18-24.
[53] Ibid., pp. 24-28.
[54] Kuran, *Long Divergence*, p.200.
[55] See my note 51, above, for a fundamental flaw in his assumption, which makes him to reach this conclusion.

"efficiency of consular justice in the Levant in the eighteenth century".[56] He states that in the case of the Dutch Republic for example there was not a uniform inheritance law to be applied in the Levant for beratlıs. Even when a Dutch consul divided the estates of a dragoman between the heirs, the received shares in fact could be suitable to Islamic law.

Boogert also criticizes Kuran for overestimating the efficiency and sophistication of Western consular courts in the Levant in eighteenth century, when one cannot talk about proper courts in reality but only about the sessions held at the consular house possibly in the presence of the litigant's representatives who were not lawyers in the proper sense. Examining a dispute between two European protégés about a theft in a partnership Boogert observes that the "consul adjudicated the case on the basis of an ill-defined corpus of rules best described as local commercial customs" certainly not the "Dutch commercial law".[57] Moreover, after studying the bankruptcy cases of Europeans and their protégés from the primary sources Boogert concludes "one seldom finds references in the eighteenth century sources to the application of national laws, even when all the creditors belonged to the same community as the bankrupt." Instead, most of the arrangements in a bankruptcy case were made following the standard "Levantine" procedures.[58]

Lastly, even for someone who studied the documents produced by the Western consuls on commercial litigation extensively, Boogert acknowledges that he is aware of very few concrete cases that involved complex business organizations such as joint stock companies for which consular courts might have better suited than

[56] Maurits H. van den Boogert, "Legal Reflections on the "Jurisprudential Shift Hypothesis"," *Turcica* 41 (2009), pp.373-382. Unlike Timur Kuran's studies, Boogert's works rely on first hand empirical evidence about the consular justice in the eighteenth century Ottoman Empire.
[57] Ibid., pp.378-379.
[58] Boogert, *The Capitulations*, p.259.

the Islamic courts.[59] As Timur Kuran does not provide any case studies and his grand narrative does not rely on primary sources it is hard to ascertain how he came to the conclusion that the consular courts superiority in dealing with these complex business organizations contributed to the jurisdictional shift of the non-Muslim Ottomans.[60]

Ottoman Policies Countering the Commercialization of Berats

As the dragoman numbers swelled with the high demand, the Porte became wary of the berat system getting out of hand. It was not only the excessive number of dragomans to which the Porte objected, but also the fact that some of the dragomans and their servants did not live in the cities in which their licenses were registered. In addition, the fact that the consuls attempted to extend their protection to those who were not entitled to by using tricks such as issuing travel permits did not escape its attention.[61] Hence, the Porte repeatedly took a number of steps to keep the system in check. In 1722, Sultan Ahmed III warned his officials against non-Muslims becoming servants of the dragomans and refusing to pay taxes.[62] In 1758, a survey was conducted and the high number of dragomans concentrated in certain cities found unacceptable. Officials at the Ottoman chancery were warned to check the registers whenever an embassy applied for a dragoman berat and not to re-issue

[59] Boogert, *Legal Reflections,* p.380. As I mentioned above, Artunç also finds that most of the beratlı businesses were general partnerships rather than complex organizations.
[60] Interestingly, Kuran seems to completely ignore the important work of Boogert in his chapter titled "The Middle East's Religious Minorities" in his book which was published in 2011. Boogert's book was published in 2005 and his review article about the Kuran's 2003 article was published in 2009. Kuran includes the former in his reference list at the end of his book with no direct references in his chapter in which he developed his ideas about the jurisdictional shift of the Middle East's religious minorities. The later article of Boogert cannot find a place for itself anywhere in Kuran's book.
[61] Bağış, pp. 29-31.
[62] Ibid., pp. 32-33.

berats that had become vacant until the number of beratlıs had been decreased to acceptable levels.[63] In another investigation in 1766, a decree was issued forbidding the protection offered those without berats.[64]

At the end of 1781, foreign embassies were warned that dragomans were allowed to only two servants and travel permits would be controlled more carefully. [65] The Porte's attempts to control the system continued with a memorandum dispatched to the embassies in 1786. The memorandum stressed that the berats should not be given to sarrafs, goldsmiths, artisans and shopkeepers and others engaged in trade, but should be limited to real interpreters. The Porte declared that if this warning was not heeded it would take more serious measures.[66] The attempts to end the abuses continued during the reign of Selim III, who sent orders dealing with the problem to the provinces in 1791 and 1792. Moreover, a survey of beratlıs were conducted in 1793-1794 which gave their number as 247. [67] By examining the number of beratlıs and Porte's increasing monitoring on the gradual growth of the system Boogert concludes that the by the end of the eighteenth century the system did not go out of hand.[68]

[63] Boogert, *The Capitulations*, pp.106-107. Boogert notes that this order was respected and it affected 41 berats out of 218 in circulation. Also see Bağış, p.34.
[64] Boogert, *The Capitulations*, pp.106-107 and Bağış, p.35.
[65] Boogert, *The Capitulations*, p.107. Bağış sees the issuance of travel permits a major source of abuse of the berat system, which allowed the ones without berats to enjoy its benefits. See Bağış, p.31.
[66] Boogert, *The Capitulations*, pp.107-108. In their response, the ambassadors showed understanding for the Porte's attempts of preventing abuses but they insisted that they did not exceed the limited number of dragoman berats they were entitled. Bağış, pp.36-37.
[67] Ibid., p. 40- 46 and Boogert, *The Capitulations*, p.90.
[68] Ibid. p.112.

The Porte's Own System of Protection: The Emergence of Beratlı Avrupa Tüccarı

Ali İhsan Bağış views the Porte's institution of its own protection system for non-Muslim Ottomans under the name of Avrupa Tüccarı in 1802 as similar to the privileges enjoyed by foreigners with safe-conduct[69] in this context of a growing demand for the berats and its spread into non-Muslims from different occupations and the Ottoman authorities' attempts to control it.[70] Similarly, Bruce Masters sees it as the one of the last responses arising from Ottoman traditional statecraft to prevent the defection of Ottoman subjects while the Ottoman sovereignty was eroding rapidly. He sees the "defection" as a symbolic problem because it nullified the sultan's authority by granting an extraterritorial political status to Ottoman subjects and a real one because the defectors were no longer paying taxes. According to Masters, Sultan Selim III initiated the Avrupa Tüccarı scheme after failing to "win satisfactory assurances from the European powers that they would voluntarily limit the number of patent of protection granted to Ottoman subjects". Masters argues that the degree to which the system represented broader economic aims such as creating a healthy class of entrepreneurs is unclear.[71]

However, a recent study by İsmail Hakkı Kadı shows that the Avrupa Tüccarı initiative cannot be explained only by the Porte's protectionist reaction to the abuses of the system at home. He emphasizes a growing rivalry between the Greek and

[69] When the program was first initiated, it was stated that they enjoyed all the conduct executed for the müstemen without any exemption. "*taife-i mesfuranın ticaretleri Avrupa diyarlarına münhasır olub müstemin tüccarı misillu Avrupa ticaretinde olan muamele bunların haklarında bila istisna icra kılınması rüsumu raiyet perveriden olduğu ecilden…*" See BOA, K.K. 7538, p. 14. However, three years later this expression was changed to the privileges enjoyed by the dragomans of müstemen. For the new expression, see the berat text published by Bağış. Bağış, p.121.

[70] Ibid.

[71] Masters, *The Sultan's Entrepreneurs*, pp.579-580.

Armenian Ottoman merchants and European merchants over the empire's trade with Europe during the eighteenth century. Some of these merchants established themselves in the Dutch Republic to initiate direct contact with the Dutch producers and relied on their network at home to override the Dutch merchants. Their commercial success was followed by their efforts to avoid paying consular dues for their shipments and refusal to pay taxes in the Dutch Republic, claiming reciprocal extraterritoriality for themselves as "genuine subjects of the Sultan" in 1797. The Porte supported their claims and in 1802 conveyed its intention to appoint a consul with the same privileges the Dutch consuls enjoyed in the Ottoman Empire. According to Kadı, it was a novel situation that emerged without the intention or intervention of the Porte but when demanded the Porte was more than ready to support its subjects in Europe.

Yet, Ottoman attempts to support the growing trade of its subjects in Europe were not limited to the Dutch Republic. Consuls were appointed to Napoli and Trieste in 1802, to Marseille in 1803, to Venice and Genoa in 1804, to Messina, Malta and Livorno in 1805, to London in 1806 and to Lisbon an Alicante in 1807. These consuls were chosen from among the Ottoman subjects who have been already living in Europe and had been granted the powers to oversee the affairs of Ottoman merchants.[72] In other words, in view of the Ottomans interest in establishing representation in the major European commercial cities, the emergence of the Avrupa Tüccarı system could also be interpreted as the Porte's turn for policy making to support the growing trade of its subjects in Europe. [73]

[72] Bağış, pp.57-59.

[73] Kadı points out the similarity of the Porte's recurrent rhetoric of recently grown trade of Ottoman subjects with Europe recurrent in the documents about the Avrupa Tüccarı and the Ottoman merchants settled in Europe. İsmail Hakkı Kadı, "Natives and Interlopers: Competition between Ottoman and Dutch merchants in the 18th century" (Ph.D diss., Universiteid Leiden, 2008), pp. 280-281. Kadı sees it as a "product of policy which

My examination of the memorandum setting the conditions for the establishment of the Avrupa Tüccarı system[74] shows that the Porte's aims were two-fold. First, it aimed to create an institutional framework that would help to increase the trade of the Ottoman subjects and the prosperity of the country, which demonstrated the Porte's recognition of the institutional foundations of economic development. Moreover, the program was created as an alternative to the foreign protection to prevent the "defection" of Ottoman subjects, showing the Porte's awareness of the reasons why the Ottoman merchants sought it in the first place.[75]

The opening remarks of the document[76] declares the state's role in observing and supervising the prosperity of the country and the expansion of trade, the regularity of the condition of the merchants and their subjecthood. It then touches

---

emanated from a process of cooperation between the Porte and the Ottoman merchants, rather than the Porte's response to the process of alienation of its subjects which started with the abuse of berats.''

[74] K.K. 7538.

[75] Even though the first regulation and berat texts focused on the merchants, they also included the captains and ship owners as other groups who took part in the trade of Europe and offered protection to them as well. This shows that perhaps the Porte was aware that supporting the merchants alone was not enough to increase the trade and Ottomans participation in it. Granting protection and special privileges to the ship owners and captains demonstrates that the Porte also aimed to contribute to the formation of an Ottoman commercial fleet that would be instrumental in carrying out the international trade. From İsmail Hakkı Kadı's study, we also know that around this time, Ottoman merchants refused to pay consular dues for their shipments thereby causing a conflict with the consuls. This might have convinced the Porte to support the new system with protection of the naval activities of Ottoman subjects. However, the reference to ship owners and captains vanished from the berats three years later. Unfortunately, with our current state of knowledge, I do not know the cause of this later development. In a personal communication, Prof. İdris Bostan, a leading scholar in Ottoman naval history, suggested that this shift might be due to the Porte's fear of its Christian subjects helping to the Russians with their ships during the Russian-Ottoman wars. I thank Prof. Bostan for this point.

[76] BOA, K.K. 7538. My translation: "With the help of the Creator who makes one prosperous, observing (and supervising) the prosperity of countries and extending trade; and -without a fail- the matters of regularity of the condition of the merchants and the subjecthood

And with this respect procuring the sources and means necessarily dependent on it

And, because it is admitted by the all that the laws and customs of the states, and the practices and manners of the communities by agreement are in common use and dependent on it…" I provide the transliteration of the original document in the Appendix A.

upon the need to procure the sources and means necessary to facilitate these outcomes. Subsequently, it indicates that the harmony between the laws and customs of the states, and the practices and manners of communities depend upon the state's role in observing and supervising the above mentioned matters and procuring the necessary sources and means to this end. After this introduction explaining the regulatory role of the state, the document elucidates the intention of the Porte. That is, bringing the commerce of the non-Muslim Ottoman merchants who are engaged in the trade of Europe or who have a desire to be engaged in this trade under an order and regulation, which would in turn benefit the merchants as well as the revenue of the customs. [77] This introduction remained as astandard preamble for the Avrupa Tüccarı berats until the last berats were granted.

The document continues with setting the conditions for the regulation of the new class of merchants. These included personal freedoms, judicial guarantees, protection against the provincial power holders, and a privileged taxation at the customs, which became the standard elements of the Avrupa Tüccarı berats.[78] However, a remark made before the guarantees for merchant's inheritances gives us an important clue about the Porte's interpretation of why its subjects sought foreign protection and its efforts to include all the elements that led the Ottoman merchants to seek foreign protection in the new system. It is also a clear indication that the Porte aimed to create a system of protection which would be a viable alternative to the foreign protection. [79]

[77] Ibid., "And if the trade of the merchants –from the non-Muslim subjects of the Empire- who are engaged in the trade of Europe on land and seas now, and the ones who desire it and show an interest in it, is inserted into an orderly arrangement and regulation, their trades will become abundant, benefitting them as well as the revenue of the customs."

[78] See the last section of this chapter for the details of Avrupa Tüccarı berats.

[79] Ibid., "*Kaldı ki reayayı devlet-i aliyenin düveli saire himayesine mecburiyetleri serbestiyeti kamile ve emniyet-i tamme ile ticaret eylemeleri arzusuna mebni ise dahi ba'del*

According to the statement, for the non-Muslim subjects of the Ottoman Empire foreign protection was an obligation because of their desire to engage in trade with complete freedom and security. Nevertheless, it is known from experience and admitted by all that the implicit desire of the merchants to protect their estates from the interference and seizure of the state upon their deaths played a role in their search for foreign protection. Moreover, it is found apparent that all the states protect their own subjects more than the subjects of other states thereby setting an example for the Ottomans to follow. Therefore, it is decided that shops and other properties of the deceased from the beratlı and fermanlı merchants was to be sealed by the Islamic court and their ministers separately. In addition, the intervention and confiscation of their possessions, properties, rented real estate; and all other belongings, monies and ships, either individual or numerous, from the side of the state was forbidden.

How can we interpret these remarks? First, by stating that it was obligatory for the merchants to obtain foreign protection for complete safety and freedom in their trade and security for their inheritances, it bears an implicit recognition that Ottoman system and institutions could not provide these things. Of course, the foreign protection also had to rely on the collaboration of the Porte and Ottoman officials, but these remarks indicate how the ordinary Ottoman merchants were left alone to face the intrusion of the state or its officials. While the statement that all the states protect their subjects more than the subjects of the others refers to a universal

---

vefat emvali metrukalarına canibi miriden taarruz ve zabt olunmamak irade-i hafiyesine binaen idiği müsellem ve bit-tecrübe malum olan keyfiyetden olduğu bedidar ve her devlet kendü reayasını sair düvel tebasından ziyade himaye idegeldikleri zahir ve aşikar olmağla bu makule devleti aliye reayasından Beratlu ve fermanlu olan tacirlerden mürd olanların dükkan ve sair emlakleri canibi şeriden başka ve nazır muma ileyh tarafından başka temhir olunub emvali metruka ve emlak ve akar ve sair cüzi ve külli eşya ve nukud ve sefinelerine canibi miriden taarruz ve temhir ve zabt olunmamak...."

protection, it is ironic that the new scheme was designed to protect a select group of merchants in this special framework. This might indicate an awareness of the limits of the central state's capacity and because of the impracticability of a complete reform of the system opting for creating a protective umbrella within the limitations of the current system.

It was also very much in accordance with the mood of the other "New Order" reforms of the Selim III such as rather than abolishing the Janissaries altogether, creating an alternative army that would exist at the same time. The Porte recognized the merchant's need for safety and freedom, and by relying on the earlier experience created an institutional framework that would provide what they needed and demanded. The institutional design of the new system and the expected result, namely the increase in trade and prosperity of the country, shows how the Porte became aware of the institutional foundations conducive to economic development. Therefore, the new system was meant to be a lifeline for the merchants while it was not possible to shake up the whole system. It was also an early sign of the more fundamental reforms that came later in the nineteenth century.

Porte's Attempts to Establish the New System and the Spread of Avrupa Tüccarı

In addition to appointing consuls into European trade centers, the Porte continued its policy of curtailing the abuses of the consular protection system. In 1806, the Porte sent two memorandums to the European embassies ordering the extension of consular protection to the Ottomans from artisan and administrative backgrounds to be terminated. Moreover, the beratlıs who were living in the cities other than those for which they were registered, were ordered to either return to their

original places or give up their berats. Dozens of beratlı entries were crossed out from the registers. [80] Some of the beratlıs gave in to the pressure of the Porte and relinquished their berats.[81]

It seems that the Porte's policy of establishing a consular network in Europe and struggling with the abuses of consular protection as well as offering its own protection with the privileges entailed contributed to the lure of the Avrupa Tüccarı system. In 1815, there were 153 merchants with 255 servants, adding up to 408 who enjoyed imperial protection. [82] By 1836, the number of merchants had increased to 522 while the number of servants had become 865.[83] While most of the merchants in the 1815 register lived in İstanbul, the 1836 poll tax register shows that the Avrupa Tüccarı was well established around the Ottoman Empire, especially in its major cities, with 136 merchants and 161 servants living in İstanbul, Galata, and Üskudar; 25 merchants and 32 servants in İzmir; 28 merchants and 55 servants in Bursa; 28 merchants and 75 servants in Filibe (Plovdiv); 32 merchants and 62 servants in Cyprus; 34 merchants and 59 servants in Edirne; 9 merchants and 29 servants in Salonica; and 21 merchants and 46 servants in Tekfurdağı. [84] From a berat roster that starts in 1834, we learn that 46 merchants registered in 1834 and 68 merchants in 1835, apparently showing a 28% increase in the number of merchants in two years.[85]

---

[80] Boogert, *The Capitulations,* pp.109-111. Bağış, pp.71-86.
[81] Bağış, pp.84-86.
[82] K.K.3838. Bağış incorrectly gives the number of merchants as 157. Bağış, p. 93. Masters relies on the list provided by Bağış in the Appendix 6 of his book and concludes that there were 151 merchants. However, a close examination of the KK. 3838 register shows that there were 153 merchants paying a total of 3060 kuruş poll tax and 255 servants paying a total of 2550 kuruş poll tax. A merchant paid 20 kuruş poll tax while a servant paid 10 kuruş.
[83] A.DVN.d 880, 26 Muharrem 1252/13 May 1836. Merchants paid 68 kuruş poll tax per person while servants paid 34 kuruş per person. The total amount of poll tax paid by merchants was 35496 kuruş and for servants 29410 kuruş. It added up to 64906 kuruş revenue for the Treasury. There were 1122 kuruş poll tax due from the last year and it was added into 64906 kuruş giving 66028 kuruş in total.
[84] A.DVN.d 880.
[85] A.DVN.DVE.d 916/B.

The accounts of Europeans who lived or visited the Ottoman lands witnessed the interest of Ottoman merchants in the Avrupa Tüccarı system. David Urquhart travelled into the lands of the Ottoman Empire first to fight with the Greek independence movement, and then to help the Ottomans after becoming convinced that a reforming Ottoman Empire could serve to the interests of Britain better against the threat posed by Russia.[86] He published his famous book, *Turkey and Its Resources*, in 1833 to rally support for Turkey in the Britain in which he included his observations about the Avrupa Tüccarı system. He saw the Porte's granting of berats to its subjects as a success that contributed to the fall of the Levant Company and led to the abandonment of the practice of the sale of consular protection. It liberated the Ottoman Greek merchants, who rather than humbly attending the receptions of the consuls as before, gained the control of the commercial traffic with their enterprise, local knowledge, and parsimonious habits.[87] The report of Mr. Conrad Blunt in 1835 on the trade of Salonica also acknowledged, "the Rayyah importers purchase

[86] For his life and ideas, see Oxford Dictionary of National Biography, "David Urquhart (1805-1877), diplomist and writer" by Miles Taylor.

[87] "The first symptoms of the reformation which Turkey will yet owe to Greece, appeared in the granting of berats and protections by the Turkish government to its commercial subjects, putting the holders on the same footing as the foreign merchant; they were accompanied by a permission to wear articles of costume forbidden to the rayas, and with a small firman containing similar privileges, which the holder of the berat could send to his correspondent. The sale of protections became less lucrative-it was abandoned; the liberated native merchant trafficked with the free port of Malta; the monopoly of the Levant company became less profitable; its bye-laws retained their oppressiveness, and had lost their exclusiveness; the charter was resigned; the reduction of charges, enterprise, activity, local knowledge, and parsimonious habits, gave the native merchants an immense superiority; commerce circulated more rapidly and through new channels, and the class of men who before humbly attended a consul's levee, have now possessed themselves of the traffic which the formerly privileged class have lost. The feeling of the Frank merchants and population, and consequently of the consuls, towards the Greeks, may be easily imagined." David Urquhart, *Turkey and Its Resources: Its Municipal Organization and Free Trade; The State and Prospects of English Commerce in the East, The New Administration of Greece Its Revenue and National Possessions*, (London: Saunders and Otley, Conduit Street, 1833), pp. 206-207.

Firmans, which give them the same privileges as Franks in point of Duties, Customs and Commercial disputes".[88]

In 1837, French ambassador Eyragues wrote to the French foreign minister that monopolies and prohibitions diverted almost all the whole export trade into the hands of a small number of favored Barataries. According to the ambassador, the French merchants could not buy the goods at the place of production, but had to acquire them through local intermediaries, which had resulted in the decline of the most European firms in Levant, and Rayah merchants increasingly had taken over their businesses. [89] Lastly, on April 1838, in a memorandum on tariffs, British the consul general in Constantinople drew attention to the protected class of Ottoman traders whom did not pay *ihtisab* (market) duties for the Ottoman produce when they were the sellers.[90]

All these European accounts indicate the success of the Porte's Avrupa Tüccarı system prior to the 1838 Baltalimanı Treaty. But to what was this success owed? Should we believe to Kuran's unfounded claim that the Avrupa Tüccarı's success was due to their relatives who were able to do business in a Western system?[91] I have not come across anything to support this claim in the secondary sources on which he relied or among the primary sources I used in my archival studies. Therefore, I will seek the origins of the Avrupa Tüccarı's success not in the Western systems, but within the institutional framework created by the Porte first by examining the text of their berats in the next section and then putting this text into

[88] Charles Issawi, *The Economic History of Turkey, 1800-1914* (Chicago: University of Chicago Press, 1980), p.106.
[89] Charles Issawi, p.91. Issawi interpreted "Barataries" as Ottomans holding berats from European consulates but as noted by Bruce Masters the context of the report and the following documents from Issawi's book makes it clear that this is in fact Ottomans holding imperial berats. Masters, *Sultan's Entrepreneurs*, p.581. Moreover, the account of Urquhart I cited above indicates this.
[90] Issawi, p.94.
[91] Kuran, *The Long Divergence*, p.253.

the context by studying the imperial orders issued upon their requests between 1835 and 1838 in Chapter 3.

Sultan's Promise: The Text of Avrupa Tüccarı Berats Before 1838

As mentioned above, the Avrupa Tüccarı berats started by explaining the aims of the system and continued with the articles specifying their rights and privileges, and the main characteristics of the program in detail. In this section, I will examine a berat from July 1834[92] that included stipulations very similar to the ones found in the text of the Avrupa Tüccarı regulation from August 1805 published by Ali İhsan Bağış at the end of his book.[93] Occasionally, I will complement it with supplementary imperial orders to make its content more clear. In this way, I aim to reveal the institutional framework in which the Avrupa Tüccarı operated.

The Avrupa Tüccarı berats part about the regulations of this system started with the article specifying the condition for the election of two vekils, namely merchant representatives.[94] These representatives were to be selected each year with the concurrence and election of all merchants. However, because the trade of Europe was considered among ''the matters that necessitated the proper cause to be followed, the selection of the merchant representatives should not be left only to the

[92] A.DVN.DVE.d 916/B, pp. 4-6.
[93] Bağış, pp.120-124. This regulation is slightly different from the first regulation of Avrupa Tüccarı from 1802. I will identify these differences with footnotes in this section.
[94] According to the initial plan in 1802, several merchant representatives were to be elected for two years and one of them called *baş bazirgan*, head merchants and the others, "*nazır*". K.K. 7538. However, in 1805 the term nazır gave way to vekil. Bağış, p.120. Henceforth, the term nazır were used for the *beylikci*, the head of the government chancery office, who was responsible for the affairs of Avrupa Tüccarı until the establishment of the Ministry of Trade in 1838. A.DVN.DVE.d 916/B, pp. 4-6. However, this change is not recognized by some scholars and they assume it remained in effect afterwards. See Kütükoğlu, "Avrupa Tüccarı", *TDV İslam Ansiklopedisi*, p.159 and Masters, Sultan's Entrepreneurs. p. 585. Masters claims that merchants chose two *nazır*s for each city. In fact, merchant representatives were was called vekil not nazır.

merchant's choice'',[95] but should be elected under the supervision of the head of the government chancery office from among the respectful and needed merchants. At the end of their term, the vekils were to be dismissed and replaced with the new ones. After the election procedures vekils were authorized with an imperial order written given verbally by the sultan.[96]

The vekils were expected to be influential in the intra group matters related to examining and balancing the accounts of the Avrupa Tüccarı, and mercantile customs as well as unspecified other issues. Moreover, they were to facilitate the punishment of those who dared to violate the mercantile customs among the merchants with the consent of their minister *beylikci* (head of the government's chancery office). The merchants in turn, were to obey the decisions of the vekils. The sultan declared that he does not give consent to intervention and aggression to the affairs of merchant representatives.[97] Therefore, as long as the disputes remained within the group, the vekils were given the role of arbitration and adjudication according to the mercantile customs. This is also, in conformity with what Sabit Efendi described as the Avrupa Tüccarı's evasion of Islamic law and intra-group dispute resolution under the supervision of their vekils. Each vekil had a jurisdiction over the Avrupa Tüccarı in their place of duty, which reminds us the consuls with jurisdiction over the merchants from his nation and the protégés of the consulate.[98]

---

[95] ''*bu ticaret maslahatı itina olunacak mevaddan olmak hasebiyle vekalet-i merkuma yalnız tüccarın intihab ve ihtiyarına bırakılmayarak…*''

[96] A.DVNSDVE.d 106/1, p.9, doc.3 "*yalnız tüccarın intihab ve ihtiyarına bırakılmayarak içlerinden muteber ve gerekenler her kimler ise divan-ı hümayunum Beylikçisi bulunanların intihab ve nezaretiyle anlar vekil nasb ve beher sene şubatından itibaren azl ve tebdil kılınmak.*" Writing the texts as if sultan was talking directly to his officials was the case in all imperial orders including the berats.

[97] Ibid.

[98] Carter V. Findley highlighted the similarity between the powers of Avrupa Tüccarı and Hayriye Tuccarı representatives and the European consuls over their communities. However, he mistakenly calls the Avrupa Tüccarı representatives as *şehbender*, a term used for the Ottoman consuls in Europe and the representatives of the Hayriye Tüccarı. Carter V.

The Porte's design of the Avrupa Tüccarı as a mercantile community, a merchants guilds and a "company" also gives us insights about the possible inspirations derived from the models already known among the Ottomans.[99] I will show in my subsequent chapters that this role of the vekils became more formal with the establishment of commercial commissions to deal with the commercial litigation as Avrupa Tüccarı representatives were considered the natural members.

After setting the conditions for the election of vekils, the berat text proclaims that as this class of merchants is accustomed to the trade of Europe, Iran and India, they are promised the same privileges, security, permissions and protection enjoyed by the dragomans of the müstemen and their servants. Modeling the new system following the earlier berat system of consular dragomans and their servants, it is then stated that the Avrupa Tüccarı, their servants and merchant representatives will be authorized with the berats (deed of appointment) and *emir*s (imperial orders). However, an important difference between the dragoman and Avrupa Tüccarı berats was the inclusion of the stipulation of trade into the berats of the latter.[100] This was

---

Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922* (New Jersey: Princeton University Press, 1980), p.128

[99] When they were referred to as a group, Avrupa Tüccarı were called "esnaf" which means a class and traditionally denoted the guildsmen in the Ottoman Empire. Since the guilds also had an elected headsman, who was responsible for arbitrating between the guildsmen and representing them towards the state, the Avrupa Tüccarı's organization as an esnaf group with elected leaders and group autonomy was not an innovation. However, their guild was open to the entry of new members as long as they paid the required fee. Moreover, the Avrupa Tüccarı differed from traditional guilds with its far-reaching privileges and universality as an empire wide class. Another privileged group within the Ottoman system, namely the sarrafs, was also organized within a guilds framework and had a considerable autonomy. See Araks Sahiner, "The Sarrafs of İstanbul: Financiers of the Empire" (MA Thesis, Bogazici University, 1995), pp.68-86. Moreover, as a class of merchants, the Avrupa Tüccarı was called a "company", similar to the fermanlu merchants of Wallachia and Moldavia. "Ve bunlarin Eflak ve Boğdan fermanlu tüccarı gibi kumpanya tabir olunur yani bir takım olub…" K.K. 7538. Unfortunately, I am not aware of any studies about the company merchants of Wallachia and Moldavia. Nevertheless, the term *kumpanya*, which derived from "company" brings to mind the European mercantile communities in the Ottoman Empire organized under in company such as the Levant Company of the British.

[100] See Bağış, pp. 109-110 for an exemplary dragoman berat. Although protection for their belongings and properties and tax advantages including the customs tax were included in

evidently in accordance with the aim of the program to offer security and favors to Ottoman merchants trading with Europe.

The berat then continues with naming a new candidate for Avrupa Tüccarı, Eci Anesti son of Aleksi from Konya, who was introduced as a respectable merchant accustomed to the trade of Iran, India and Europe,[101] and proposed for membership with a sealed petition of Avrupa Tüccarı vekils. The nazır (beylikci) informs the sultan about this request and the fact that he has paid the required 1500 *kuruş* (piaster, Ottoman monetary unit) fee to join the program.[102] Subsequently, the sultan declares that he has given his royal monogram, and lists his orders, which consist of the rights and privileges of Avrupa Tüccarı that made up the institutional framework of the new system. Articles about the same subject are usually grouped together in the berats and I will examine them within the order they appear in the berat texts only with giving them relevant titles.

Personal Freedoms

Whenever an Avrupa Tüccarı or his servants and ordinary agents wanted to travel to a place for the purpose of trade and the permission was asked on their behalf by their vekils through a sealed petition, they were to be given the necessary travel

---

their berats, it was designated as a protection granted to an interpreter rather than to a merchant for the purposes of trade.

[101] If he was really engaged in international trade is questionable. I found later references to him as the "*sandik sarrafı*" (money lender/financier for the governors cash department) of Konya. He lost his berat because of corruption charges but later obtained it again. İ.DH 164/8571.

[102] Although it was not mentioned in the berat text, the Avrupa Tüccarı also paid a fee of 500 kuruş to the Customs office to enter into the program. It was offered by the Superintendant of the customs in 1805 as a compensation for the fee of "*bitirme.*" Bağış, p.69. This fee was still paid during the years of 1857, 1858 and 1859. C.H. 19/925. According to this document, the 21000 kuruş was paid for 42 berats in 1857, 8000 kuruş for 16 berats in 1858 and 14000 kuruş for 28 berats in 1859.

permits in just the same way as the dragomans of foreigners with safe conduct and their agents.[103] Moreover, just as the food and drinks and attire of the dragomans were not interfered with, the food and drinks and attire[104] of the Avrupa Tüccarı, their children and households would not be interfered with as well. This privilege was also extended to their two servants as long as they carry their deeds of appointment with themselves. Furthermore, if needed, one of the two servants of the Avrupa Tüccarı should be allowed to reside in İzmir.

While easing the movement of the merchants between different cities was a commercial act that would increase their trade, removing the restrictions on their food, beverages and costumes was a social and political one that would boost their social/political standing. According to Donald Quataert, clothing laws served as a means of reinforcing gender, religious and social distinctions. As the commercialization and decentralization enriched the merchants and provincial power holders in eighteenth century, the central state struggled to maintain its legitimacy and privileged position with clothing laws, which was a way of disciplining and controlling the subjects.[105] While Quataert focuses on clothing restrictions as a social marker, restrictions on food and beverages were apparently of the same nature. Therefore, with these freedoms, the Avrupa Tüccarı obtained a possible channel to

[103] For the travel permits given to the foreigners in the eighteenth and nineteenth centuries as well as an exemplary travel permit texts, see Hamiyet Sezer "Osmanlı İmparatorluğu'nda Seyahat İzinleri (18-19.yy)," *A.Ü.D.T.C.F. Tarih Araştırmaları Dergisi 21,* no. 33 (2003), pp.105-124. See Musa Çadırcı "Tanzimat'ın İlanı Sırasında Andolu'da İç Güvenlik," *DTCF Tarih Araştırmaları Dergisi 23*, no. 24 (1980), pp.45-58 for the attempts to control domestic travel in the Ottoman Empire and the issuance of travel permits for security reasons in the aftermath of the abolition of the janissaries. For the regulations of travel permits and passports during the Tanzimat period, see Musa Çadırcı, "Tanzimat Döneminde Çıkarılan Men-i Mürur ve Pasaport Nizamnameleri" *TTK Belgeler 25*, no. 19 (1993), pp.169-182

[104] See Donald Quataert "Clothing Laws, State and Society in the Ottoman Empire, 1720-1829" *International Journal of Middle East Studies* 29, no. 3 (Aug. 1997), pp.403-425 for the cloth distinctions in the Ottoman society and Mahmud II's attempts to eliminate it as a remnant of the ancient regime in his bid for elite formation, state centralization and state building.

[105] Ibid., pp. 407-412.

differentiate themselves from the rest of society, mark their social and political standing and escape discrimination.[106]

Legal Rights and Privileges

The first article about the legal rights of the Avrupa Tüccarı focuses on the collection of debts. [107] It states that if credit based on a signed, sealed and "*mamulun bih*"[108] title deed supported by the common testimony of their vekils and guildsmen is due to a berat holder, then after the title deed is presented to the judge and being proved, it should be collected and the fee demanded for this service must not be more than two percent. This article demands close examination as debt collection was the most common matter that the Avrupa Tüccarı turned to the Porte for help and the status of written documents as a source of evidence within the Islamic law/Ottoman context is a debated subject.

[106] Quataert points out how the merchants quickly adopted Mahmud II's reforms of uniformity in clothing by his introduction of fez in 1829 because they saw it as a means of escaping discrimination. Mahmud II's policy also represented an effort to create a new base for his regime by offering Muslims and non-Muslims a common subjecthood/citizenry. Ibid., pp. 413-414. The personal freedoms granted to the Avrupa Tüccarı preceeded Mahmud II's policies but it can also be seen in the same vein as raising the status of a privileged group of merchants and strengthening their bonds of subjecthood/citizenry. The emphasis on "*raiyyet*" (subjecthood) in the Avrupa Tüccarı berats supports my claim. In fact, the creation of the Avrupa Tüccarı was both a economic act, aiming to increase the trade, and a political one aspiring to regain the loyalty of its subjects by preventing their "defection". Perhaps granting these personal freedoms to the Avrupa Tüccarı represented both aims.

[107] "*Ashabı beravattan birinin her kimde olur ise olsun mumza ve memhur ve mamul bih bir temessük mucibince ve* vekil*iieri ve esnafının tevatüren şehadetleriyle müsbit matlubu oldukda yedinde olan temessükü hakime ibraz ve ledes sübut matlubu olan meblağ tahsil olunub yüzde ikiden ziyade resm matalibe olunmaya*" BOA, A.DVN.DVE.d 916/B, p.5. This article was not included in the first regulation and berats of Avrupa Tüccarı from 1802 BOA, K.K. 7538. But it was inserted three years later. Bağış, p.121.

[108] "*mamul bih*" means rule, agreement according to which action takes place, observed and practiced. *The Redhouse Dictionary*.

According to the writers of this article, apparently written evidence alone, even if it was signed and sealed, was not considered satisfactory evidence for the claimed debt to be proven. The supplementary support was sought from the common testimony of vekils and guildsmen of the Avrupa Tüccarı, which is more interesting because they were from the "*reaya*", non-Muslim subjects of the Ottoman Empire. Considering the rule that a non-Muslim's testimony against Muslims was not accepted in Islamic law[109] and this article does not mention the religion of the debtor, the door is open for its application to everyone.[110] The word "*tevatüren*," meaning by common report or known to all, might be seen as strengthening the claim of a non-Muslim Avrupa Tüccarı over Muslims but even the testimony of non-Muslims by common report against Muslims was not legally valid.

Another interesting point emerges when one examines the cases in which Avrupa Tüccarı requested that their debts be collected with the intervention of the sultan. When the sultan asks the office of imperial chancery presided over by beylikci about how to act regarding Avrupa Tüccarı petitions about debt collection, usually the clause about the common testimony was ignored and the advisory note as reported in the imperial orders included only the title dead.[111] This is perhaps related to the need to be practical and not cause additional difficulty in the debt collection, but it does not explain why that clause was included in the berat texts in the first

[109] In his *Tezakir* Cevdet Paşa noted that the testimony of a zimmi (Christian and Jewish Ottoman subjects) could not be accepted against that of a Muslim, and the testimony of a müstemen could not be accepted over that of a zimmi. He states that this made the müstemen resist appearing before the Islamic courts. Cevdet Paşa, *Tezakir 1-12* (Ankara: Türk Tarih Kurumu,1991), pp. 62-63. The sharia based Ottoman civil code Mecelle prepared under his supervision remains silent about the religious affiliation of witnesses, apparently aiming to create equality for all in this respect.

[110] This article was addressed to the kadı's. Interpreted with the following articles regulating the relations with Avrupa Tüccarı and müstemen, the application of this clause seems to be limited to the Avrupa Tüccarı's claims from the Ottomans. I have not come across to any cases, which it was demanded to be applied to the müstemen.

[111] I will be showing this in the next chapter in my examination of imperial orders for Avrupa Tuccar's debt collection.

place. It leaves one to wonder about the theoretical inclinations of the Ottoman jurists who might have found the written documentation alone insufficient as evidence. Moreover, in the berat texts, there is no reference to "*mersum*" (stereotyped) documents of the merchants, sarrafs and brokers, which could theoretically be accepted without the support of oral testimony according to the doctrine that was well developed in the Central Asia by the twelfth century.[112] While acceptance of mercantile customs as a source of law for the intra-group dispute resolution, and the lawsuits between Avrupa Tüccarı and foreigners leaves an open door for the usage of such documents, the berat texts does not contain any suggestion of its enforcement in the Islamic courts. Therefore, examining the treatment of written evidence in berat texts casts doubt on the Sabit Efendi's claims that it was only the ignorance of the kadıs that led them not to accept the written evidence of the merchants, sarrafs, and brokers.

In fact, it was not only Sabit Efendi, who pointed out the refusal to accept written documentation alone as evidence in the Islamic courts. Mehdi Fraşerli, the governor of Canik province and a proponent of the abolition of capitulations, published a book about the application of capitulations in the Ottoman Empire in 1910, in his book, in which he said that because the Islamic courts did not accept lawsuits regarding the interest claims without Islamic legal tricks and did not consider writing and seals as title deeds valid as evidence, and because the new methods of trade required these to be valid and accepted, these lawsuits were referred to some councils.[113]

[112] See Johansen, pp.361-362 for the definition of "*mersum*" documents. Johansen shows how this doctrine of accepting written documents of these three privileged groups without testimony developed in Central Asia. Ibid., pp.357-372.

[113] "*Fakat mahakim-i şeriyye bila devr-i şeri faiz davalarını kabul itmediği gibi hatt ve hatemi dahi ihticaca salih senedatdan itibar idilmediğinden ve halbuki usul-i ticariyye-i cedide icabınca bu cihetlerin de kabul ve meriyyeti lazımeden bulunmak hasebiyle bu kabil*

Similarly, Hrand Asador and Halil Cemaleddin, members of the maritime court, stated that because interest without Islamic legal tricks could not be ruled, and writing and sealing alone were not considered evidence satisfactory for judicial decision in the Islamic courts, the müstemen refused to appear before the Islamic courts not only for commercial cases, but also for civil cases involving these items.[114] It may have been this tendency of treating the written evidence as suspect, and not accepting it as a valid ground for action that led the authors of the Ottoman Civil Code Mecelle to adopt writing and sealing free from any taint of fraud or forgery as evidence without the need for further proof.[115] However, even after its acceptance in the codification of Islamic law and abolition of sharia in the secular Turkish Republic, written evidence alone remains suspect for some scholars, indicating the prevailing tensions within the theory.[116]

---

davaların halli hususu bir takım meclislere havale olundu. Muahharan mahakim-i ticariyye tesis olındığı zaman deavi-i mezkura oraya nakl olunmuştur." Mehdi Fraşerli, *Osmanlı Devleti'nde Kapitülasyonların Uygulanışı (İmtiyazat-ı Ecnebiyyenin Tatbikat-ı Hazırası),* ed. Fahrettin Tızlak (Isparta: Fakülte Kitabevi, 2008), p.148.

[114] "Mahakim-i şeriyye'de bila devr-i şeri faiz hükm edilemediği ve mücerred hatt ve hatem dahi hükme kafi bir delil add olunamadığı cihetle…" Halil Cemaleddin and Hrand Asador, *Ecanibin Memalik-i Osmaniye'de Haiz Oldukları İmtiyazat-ı Adliyye* (Dersaadet: Hukuk Matbası, 1331)

[115] "Article 1736. No action may be taken on writing or a seal alone. If such writing or seal is free from any taint of fraud or forgery, however, it becomes a valid ground for action, that is to say, judgment may be given thereon. No proof is required in any other way." C. A. Hooper, "The Mejelle: Book XV: Evidence and Administration of Oath," *Arab Law Quarterly* 5, No. 3 (Aug., 1990), p.231 See also my introduction for Mecelle's adoption of written evidence.

[116] See Ömer Nasuhi Bilmen. *Hukuki İslamiyye ve Istılahı Fıkhiyye Kamusu* vol.8, (İstanbul: Enes Sarmaşık Yayınları), p.175. He accepts the Sultan's rescript , entries in the land registers, and the court registers that were written and preserved in such a way that is free from any deception and irregular practice as evidence that can be acted upon. Otherwise, he rejects the writing, sealing or their combination. Bilmen claims that handwriting could be similar and the seals could be forged or be taken over by someone else. However, he adds with a belittling tone that some persons consented that it can be acted upon with the books of sarrafs, merchants and brokers and they were sure from deceit in these books. He gives the books Hamevi, Tenkih and Reddimuhtar as example. It is worth remembering that Reddimuhtar was the work of Ibn Abidin, whose influence on the Ottoman reforms was evident. I discussed this in my introduction.

The second article regarding the legal rights of the Avrupa Tüccarı states that if a berat holder has a lawsuit with a Muslim or non-Muslim exceeding the value of 4000 akçe, it should not be heard in the ordinary courts, but it should be adjudicated at the audience hall in the palace (Arz Odası) in the presence of the grand vizier. While this article gives the impression that all the lawsuits of the Avrupa Tüccarı had to be brought into the court held at the imperial audience hall of the palace, the following article implicitly recognizes its impracticality by offering protection to the Avrupa Tüccarı if they were to be brought into court.[117] It asserts that if someone from the Muslims or non-Muslim community intended to bring an Avrupa Tüccarı before a court or the Sublime Porte,[118] the Avrupa Tüccarı should be escorted only by an official (*mübaşir*) appointed by the minister of Avrupa Tüccarı. This was explained as necessary so as not to cause reprimands or damage the reputation of the Avrupa Tüccarı in the hands of the ordinary officers. Moreover, if the imprisonment of Avrupa Tüccarı was needed, it was be carried out through their minister.

The last two articles about the legal aspects of the system regulate the relations between the Avrupa Tüccarı and the müstemens. It is asserted that since the most of the trade of these merchants is with Europe it is evident that they will have disputes with müstemens. Therefore, the beylikci, the head of the government chancery office who had traditionally been responsible for the affairs of müstemen,

[117] From next chapter onwards, I will be showing that the privilege of bringing their lawsuits into İstanbul was an asset for the Avrupa Tüccarı to threaten the defendants in the provinces and refusing to appear before the local courts. The Avrupa Tüccarı received imperial orders supported by an official appointed from the Porte to intervene in the dispute resolution in the province. Although the imperial order demanded the dispute to be resolved in the respective province first, it included the threat that the defendant must be brought into İstanbul if it could not be solved locally.

[118] The 4000 akçe clause could become a double-edged sword if a plaintiff had the means to obtain an imperial order to bring a defendent Avrupa Tüccarı to İstanbul claiming that all the lawsuits of the Avrupa Tüccarı had to be brought into the capital. However, examining the Avrupa Tüccarı Ahkam Defteri this seems to have been rare. It was rather the Avrupa Tüccarı who demanded the defendant to be tried in İstanbul. I will examine this in the next chapter.

was appointed as their minister to pay attention to their matters and affairs, their accounts and books. Moreover, he was expected to examine their imports and exports. When the Avrupa Tüccarı had a legal dispute with a müstemen, examiner merchants from the both sides were to be elected by means of the interpreters of the Imperial Chancery of the State and the hearing of the suit should first be executed according to the customs of the merchants. Then the beylikci should report it to the Office of Foreign Affairs. If there was a need for recourse to the sharia, it should not be heard at any place except the audience hall of the palace where the court of grand vizier was held.

Although overlooked until now, the setting up a committee of merchants composed of Avrupa Tüccarı and müstemen suggests the establishment of mixed commissions dealing with the commercial litigation according to the mercantile customs in the Ottoman Empire.[119] We learn from Asador and Cemaleddin that such commissions were first established in 1800 (1215).[120] Moreover, as noted above, Fraşerli sees the establishment of such commissions as the evidence of the Islamic courts inability to meet the needs of the time. According to Fraşerli, and Asador and Cemaleddin, these commissions gathered at the customs under the supervision of the director of the customs. Furthermore, Fraşerli notes that these commissions did not have a clear regulation or laws, but acted according to the customs observed by the merchants.[121] Unfortunately, Asador and Cemaleddin do not provide a source for

[119] This clause first appeared in the founding text of the Avrupa Tüccarı and remained afterwards.

[120] "*...hükümeti Osmaniye daha on dokuzuncu asr miladi mebadından yani 1215 tarihinden itibaren Osmanlılar ile ecnebiler beyninde tekevvün iden deavi i ticariyenin Osmanlı ve ecnebi tacirlerden mürekkeb muhtelit komisyonlarda sureti istisnaiyede rüyetine müsağ göstermiş idi*." Cemaleddin and Asador, p. 75.

[121] Fraşerli, p.148 "*Ma'ma-fih komisyon-ı mezkur mu'ayyen bir usul ve kanunda tabi olmayarak ticaretce mer'i olan te'amül ve adata göre rüyet-i maslahat eylerdi.''* Moreover, Fraşerli indicates that these commisions were like merchant guilds, which reminds us of the organization of Avrupa Tüccarı as a merchants guild.

their statements and I have not been able to find out any document to corroborate this date in the archives. Fraşerli, on the other hand, also does not give a date. Therefore, the reference to such a commission in the founding document of Avrupa Tüccarı from 1802 (1217) is the earliest reference from the primary sources we have for now and might have been the real date its establishment.[122]

Whether it was established in 1800 or 1802, the inclusion of a mixed commission as an institution dealing with the commercial litigation of the Avrupa Tüccarı and müstemen merchants in the berat texts represents an important dimension in the Porte's policymaking towards creating its own system of protection. I pointed out the Porte's careful observation of the berat system and motives of the Ottomans in obtaining berats. It seems that the judicial motives of Ottoman merchants did not escape the Porte's attention. My discussion of the berat system in the previous section made it clear that having access to consular jurisdiction was an important element in obtaining foreign protection even if the judicial procedures mostly followed the Levantine ways rather than application of European codes. As part of the consular jurisdiction system in the Levant, the principle of *actor sequitur forum rei* principle, meaning suing before the forum of the defendant, was generally accepted by the European communities. Boogert points out that when a lawsuit was brought before the consulate of the defendant, the consuls often choose to order tha a council of arbitrators be established. The members of this council were appointed by

[122] Similar to the commissions at customs in İstanbul, Napoleon established mixed commercial courts during his invasion of Egypt. These courts also lacked a law and ruled according to the mercantile customs. See Jan Goldberg, "On the Origins of Majalis al-Tujjar in Mid-Nineteenth Century Egypt," *Islamic Law and Society* 6, no.2 (1999), pp. 200-202. Although Napoleon's courts were discontinued after the end of the occupation, examples of mixed commercial commissions existed in one way or another. Rather than seeing them as a byproduct of capitulations and Western pressure, Goldberg interprets the mixed commercial commissions as an Egyptian policy to restrict the consular jurisdiction.

the both sides of the dispute and the consuls "merely ordered the implementation of the arrangements proposed by the arbitration committee".[123]

The similarity between the proposal of mixed commissions in the Avrupa Tüccarı berats and the arbitration councils of the consular system is striking. Both cases involved an election of merchant arbitrators from the both parties and followed the mercantile customs for dispute resolution. Therefore, even if the Porte did not pronounce explicitly, it has apparently created a forum to which the European plaintiffs could bring their claims against the Avrupa Tüccarı defendants. Since it is known that avoiding the Ottoman judicial system was a generally accepted principle among the Europeans in the Levant, the new forum appears to have aimed to dispel the fears of Europeans and encourage them to appear before an Ottoman institution yet represent merchant interests. The fact that there was no direct mention of mixed tribunals in the capitulations, meaning that the Porte was not obliged to establish one, also supports my claim that the Porte's aim was to give a forum to the Avrupa Tüccarı similar to the ones the Europeans and their protégés had at the consulates.[124] Although we do not have much evidence of the effectiveness of these mixed commissions, the evidence we have shows the Porte's insistence upon enforcing its decisions.[125] It must have been the positive experience with the mixed commissions that gave the Porte the impetus to give them a more institutionalized form later with the establishment of mixed commercial courts. Unsurprisingly, the Avrupa Tüccarı played a similar role as the merchant judges in the commercial courts of the post-1838 period.

[123] Boogert, *The Capitulations*, p. 41.
[124]Following Jan Goldberg's logic, this would also mean restricting the consular jurisdiction by creating an alternative forum.
[125] I will examine exemplary cases of commercial litigation at the mixed commissions in the next chapter. To my knowledge, they will be the first documents to be examined in the literature about the working of these commissions. I also did not come across any references to the documents related to these commissions in the literature.

Lastly, the berat text states that because the lawsuits of müstemens exceeding the value of 4000 akçe in the provinces had to be referred to İstanbul according to the capitulations, the Avrupa Tüccarı's disputes involving sums over this amount had to be transferred to İstanbul. Furthermore, the conditions of the capitulations ratified between the Ottoman Empire and the country of the merchant in dispute with the Avrupa Tüccarı must be implemented and a practice contrary to this was not to be permitted. This clause seems to have aimed at preventing the confusion over which sources to appeal when a conflict between a müstemen and Avrupa Tüccarı appeared and to dispel the complaints of European consuls, although it also narrowed the playing field of Avrupa Tüccarı.

Customs Charges

The introductory comment on the clause of customs chargers emphasizes that the purpose for this class of merchants to be inserted into an orderly arrangement was only a result of the decision to create a means of easiness for their trades.[126] Therefore, it is averred that the goods send by these merchants should be taxed according to the tax list of the country these goods originated. If it was the goods of Iran and India, then it had to be three percent in comparison to the price lists mentioned above.

Products of the Ottoman Empire, whether goods, provisions, or anything else, had to be taxed according to the tax lists of the country to which they were exported on the condition that these produce was subject to export prohibitions. The customs

[126] "*ve taife-i mesumenin taht-ı rabıtaya idhal olunmalarından maksud ancak ticaretlerine vesile-i yessir ve suhulet olmak kazıyesi olmağla…"* A.DVN.DVE.d 916/B, p.5.

charges for the Ottoman products to be exported into the Iran and India also had to be calculated on a three percent basis in comparison to the above mentioned tax lists.

After the merchants paid the mentioned customs charges and received its receipt, they were not to be demanded repeated or extra customs charges, or taxes under the names "*gümrük izinnamesi*" (customs permits), "*harc-ı gumruk*" (customs fees), "*masdariyye*" (exports duty) and ''*reft-i gümrük*" (departure from the customs). If they were forced to pay extra or repeated customs, it should be refused immediately.

Universal Protection of Avrupa Tüccarı

The clause about the universal protection of Avrupa Tüccarı starts with the Sultan's warning that he does not give his consent to the unlawful[127] inculpation of the Avrupa Tüccarı by governors, judges and *voyvoda*s[128]. He declares that he considers it important that they should be in a condition of tranquility thanks to his royal favors and he promises protection to them in all conditions. Then he orders that the monies of the Avrupa Tüccarı taken by oppression must be collected from the people who took it. This promise of protection for the Avrupa Tüccarı in all conditions became the main reference point for the imperial order whenever there was not a specific clause that fitted to the case of the petitioning merchant.

[127] Here the reference is to the Islamic law, "*hilaf-ı şer-i şerif*", not the sultanic law kanun.
[128] Voyvoda designated the "agents in charge of revenues from domains which enjoyed full immunity, i.e. the imperial demesne as well as *khass* fiefs granted to viziers, provincial governors and other dignitaries." They wielded economic and political power in the provinces and there were frequent complaints about the *voyvoda*s. Fikret Adanır, "Woywoda," *Encylopedia of Islam*, 2nd edition.

Prohibition of Assuming Administrative Roles

The berat holders and their servants were ordered not to intervene in the affairs of the provincial governance and the administration of Christian populations. Avrupa Tüccarı and their servants were not allowed to be appointed as "*kocabaşı*" (official local notable for a Christian community).[129] If there was not a person who deserved the position other than a berat holder than he could assume this role only with the request of the population of the province and consent of their *muhtar* (head man). This was considered important to protect the population from oppression. The Avrupa Tüccarı kocabaşı's were warned against oppressing the population by means of their privileged status. The prohibition of administrative positions for berat holders represents the Porte's negative experiences with its non-Muslim subjects who had obtained consular protection and continued their administrative roles. Privileged kocabaşıs and *mütesellim*s (local collector of taxes and tithes) were accused of turning the order of society upside down and the extension of consular protection to these groups was considered as an abuse to be prevented. [130]

[129] *Kocabaşı*s were the Christian equivalents of Muslim *ayan*, local notables. They had administrative roles for the Christian communities. They were part of the tax negotiations with the state and distribution of the tax burden among the Christian community under their administration. See İnalcık, *Djizya* and Özcan Mert, "XVIII ve XIX. Yüzyıllarda Osmanlı İmparatorluğu'nda Kocabaşı Deyimi, Seçimleri ve Kocabaşılık İddaları" *Prof. Dr. Hakkı Dursun Yıldız Armağanı*, edited by Mustafa Çetin Varlık (Ankara: Marmara Üniversitesi Yayınları, 1995), pp. 401-407.
[130] Bağış, p.37.

Inheritances and the Avrupa Tüccarı

As mentioned in the previous section, the Porte added regulations securing the inheritances of the Avrupa Tüccarı because it was aware that the attacks and seizure of the merchant estates by the state was an important reason for Ottoman merchants to seek foreign protection.[131] Accordingly, when an Avrupa Tüccarı died, his shops, offices, and other properties had to be sealed by the Islamic courts and their minister separately. Furthermore, the intervention and confiscation of their possessions, properties, rented real estate, and all other belongings, monies and ships, either individual or numerous, by the state was forbidden.

However, if they had young sons or daughters, the survey of Islamic courts was needed. In this case, it was ordered that they should not be pressured with a demand of extra fees and the estate should be divided among the heirs under the supervision of their minister according to Islamic law. The final article about the inheritances of the Avrupa Tüccarı includes the sultanic order that if the property of Avrupa Tüccarı was not to be inherited by young sons or daughters or absentee heirs, and if the heirs did not want a division, it was not be surveyed forcefully.[132]

---

[131]Traditionally, the inheritances of the ruling class and the subjects who were indebted to the Treasury, especially because of their tax-farming activities, were confiscated. However, with the growing fiscal and economic difficulties towards the end of the eighteenth century, the previous rules of confiscation were increasingly disrespected and the estates of wealthy subjects were confiscated as well. Suraiya Faroqhi, "Reaya-In the Ottoman Empire," *Encyclopedia of Islam*, 2nd edition. However, it is important to note that the Porte used the term "*zabt*" (seizure) not "*müsadere*" (confiscation) as the reason that led the wealthy merchants seek foreign protection. This might reflect a careful selection of the words and indicate a difference between the "lawful" confiscation and unlawful seizure of estates by the state officials. The Porte might have wanted not to close the door to confiscations especially for the tax-farmers/money-lenders who were indebted to the state. I observed that while the first Avrupa Tüccarı berats from 1802 also included a clause about how to settle the accounts of a deceased Avrupa Tüccarı if he had deals with the state, it disappeared from later berats. This might also be deemed necessary to strengthen the position of the state.

[132] This was applicable to all Ottoman subjects. Suraiya Faroqhi, "Sidjill," *Encyclopedia of Islam*, 2nd edition. Therefore, its repetition here would be an indication that it was not heeded by the kadı's. I will present supporting evidence for this in the next chapter. Halil İnalcık

The Collection of Poll Tax

The last articles of the Avrupa Tüccarı berats is concerned the poll tax (*cizye*) and subjecthood. It states that the merchants who were granted privileges with the imperial berats should not be oppressed and interfered with offer of poll tax papers by the poll tax collectors. Instead, the merchants and their two servants were to pay their poll tax to the poll tax collector of İstanbul. Another article specifies the process of the cizye collection as having being collected by the Avrupa Tüccarı vekils first and then delivered to the beylikci, who would in turn submit it to the cizye collector of İstanbul.

The article states that when the highest cizye was 12 kuruş for the Ottoman subjects the Avrupa Tüccarı was paying 20 kuruş with an 8 kuruş addition.[133] It then states that the merchants had to pay the cizye with the increases that occurred in the years 1232 (1816-1817), 1240 (1824-1825), 1243 (1827-1828) and 1250 (1834-1835). As for the servants it asserts that they were paying the middle (*evsat*) amount of cizye Ottoman subjects had to pay with a 4 kuruş increase and maintains that they had to pay that amount with the increases occurred in the years 1232 (1816-1817), 1240 (1824-1825), 1243 (1827-1828) and 1250 (1834-1835). However, the total amount of cizye that had to be paid by the merchants and their servants by 1834 (1250), when the berat text I am examining here was written, was not specified.

---

also notes that the *kadı*s forced people to come unnecessarily to the court for inheritance division to collect more fees. Halil İnalcık, "Mahkama," *Encylopedia of Islam*, 2nd edition. Macit Kenanoğlu claims that the Islamic courts have the sole authority over the inheritances/estates of non-Muslim subjects of the empire. Nevertheless, he also confirms that if there was not young children and absentees among the heirs and the heirs did not want a division by the court, the estate should not be intervened. Macit Kenanoğlu, *Osmanlı Millet Sistemi: Mit ve Gerçek* (Klasik: İstanbul, 2004), pp.251-266.

[133] According to İnalcık in 1218/1804 the highest cizye was 12 *kurus*. See Halil İnalcık, "Djizya-Ottoman," *Encyclopedia of Islam*, 2nd Edition.

Thus, a further examination of archival documents is needed to determine the poll tax they paid.

According to cizye register from the year 1815 (1231) the Avrupa Tüccarı paid 20 kuruş while their servants paid 10 kuruş.[134] This is consistent with the İnalcık's yearly cizye list, which shows that the highest cizye was 12 kuruş and the middle cizye was 6 kuruş until 1816. So, with an addition of 8 kuruş addition for the merchants and 4 kuruş for the servants, it equaled the total amount of cizye as indicated by the berat text.

I also came across to the poll tax register of 1251 (1835-1836) prepared in 1252 (1836), which shows that Avrupa Tüccarı paid 68 kuruş and their servants 34 kuruş per person.[135] Comparing this with the increases in the cizye amounts for the Ottoman subjects provided in İnalcık's list reveals that Avrupa Tüccarı continued to pay their cizye with 8 kuruş addition, while their servants paid with 4 kuruş addition over the highest and middle cizye amounts, respectively.[136] Therefore, although the difference between the cizye paid by the ordinary Ottoman subjects and Avrupa Tüccarı became less important over the years, the amount paid by the Avrupa Tüccarı was not extremely low as claimed by Bruce Masters.[137]

---

[134] K.K. 3838.
[135] A.DVN.d 880.
[136] According to İnalcık's list by 1834, the highest amount of cizye was 60 *kurus* and the middle rate was 30 *kurus*. As for the previous years, 48 and 24 for 1829, 36 and 18 for 1827, 24 and 12 for 1824, 16 and 8 for 1816, 12 and 6 in 1804. See İnalcık, *Djizya*.
[137] With my analysis of cizye payments of Avrupa Tüccarı it is evident that Bruce Masters is mistaken about this subject. He claims that "the amount stipulated for the cizye was extremely low (first 12 akce, then 20, and finally 24)". Masters, *Sultan's Entrepreneurs,* p.582. First of all the cizye was not calculated on akçe basis. It was collected in terms of kuruş, which was equal to 120 akçe. Masters failed to notice that the berat text contained only the initial amount cizye payment of Avrupa Tüccarı by giving the addition over the amount paid by the ordinary Ottoman subjects. He wrongly interpreted the 8 kuruş addition for the merchants and 4 kuruş addition for their servants as the increases in the Avrupa Tüccarı's cizye payments over the years. He could not even notice that these amounts were separate additions for the merchants and their servants, not the addition over the amount paid by merchants. Moreover, the document he refers for this claim is unrelated to the topic of cizye. In fact, it is about elections of Avrupa Tüccarı vekils in Bergama.

The last article about the cizye payments makes it clear that this privileged method of cizye payment was reserved for the Avrupa Tüccarı and his two servants. Hence, it is asserted that his children and relatives and servants who did not have deed of appointment must take their cizye papers as before.

The berat text ends with caution the berat and *emir* (imperial order) holders should be aware of their subjecthood and present their respect. They should refrain from actions against the rules of subjecthood and obedience. Moreover, they should be thankful for the grace granted to them and occupy themselves with the prayers for the continuance of the state and rightness of the imperial pomp and circumstances. Given the relationship between the subjecthood and paying taxes, it is not surprising that the cizye articles are followed by highlighting the subjecthood of the Avrupa Tüccarı. [138]

In conclusion, the berat of the Avrupa Tüccarı starts with an emphasis on the state's role in overseeing the prosperity of the country, the increase in trade, the orderly state of the merchants and their subjecthood indicating that from the perspective of the Porte, all of which were related. The Porte recognized its merchants' desire to engage in trade with complete security and freedom and their wish to be able to transfer their wealth to their offspring and developed a system that would facilitate these wishes. This reflected the Porte's earlier experiences with the choices of its merchants and understanding of the institutional foundations that would increase trade and hence the prosperity of the country. The new system provided personal securities, judicial freedoms under the pretext of mercantile

[138] Suraiya Faroqhi notes that the term "*reaya*" denoted the taxpaying subjects of the Ottoman Empire. (and especially the Christians from eighteenth century onwards). The Avrupa Tüccarı was also called "*reaya*". Both the beginning and end of the berat texts carry an emphasis on their "*raiyyet*", namely subjecthood. However, this changed in 1856 when they began to be called Christian subjects (*Hristiyan tebası*). MAD.d 21192, pp. 86-87 Evahir-i Şaban 1272 (May 1856). Moreover, the poll-tax clause was removed from the berat texts.

customs and judicial protection with accorded privileges. A lower taxation for international trade, protection against the abuses of state officials, security for their inheritances and maintenance of subjecthood through the cizye payments were introduced. The expected results were the increase in trade, prosperity of the country and a stronger bond of subjecthood because of the appreciation of the merchants for the given favors.

Having examined the berat texts in detail in this chapter, now I can turn to the context by examining how the institutional framework put forward in the berats met the reality. This will be the focus of the next chapter.

CHAPTER III

THE LAST YEARS OF THE "CLASSICAL AGE": 1835-1839 (1250-1255)

In this chapter, I first will review the development and main characteristics of the Ottoman legal system. I will argue that this system continued to operate in the period covered by this chapter with the institutions developed in the classical age. However, these were the last years of the ''classical age'' as the Ottoman Empire had gone through a major reorganization in the succeeding period which had transformed the classical institutions.

After taking a look at the institutions of the period, I will examine how the Avrupa Tüccarı accessed and used these institutions as a privileged class. Accordingly, I will examine the working of the local Islamic courts and the imperial court at the palace (Arz Odası) and the interaction between the two in the matters of the Avrupa Tüccarı. The relationship between the sultan and the local Islamic courts will also be a part of this analysis. Moreover, I will investigate dispute resolution at the customs according to the mercantile customs and its interactions with the Islamic legal system and the Porte. I will show that these institutions operated within the larger framework of the Islamic law (*şer-i şerif*) which was what Ottomans perceived as ''the law''.

In this framework, the Arz Odası represented the highest court. Its decisions were final, although some disputants unhappy about its judgment attempted to take their cases to other courts for further examination. The Customs Office relied on the mercantile customs for adjudication, but its judgments would be transcribed suitable

to Islamic law at least in form. Both the Arz Odası and Customs Office had to rely on the extensive network of Islamic courts for the execution of their decisions. Therefore, rather than a separation between the spheres of these institutions there was a fusion. Lastly, intra-Avrupa Tüccarı disputes seems to have been resolved within the group perhaps under the supervision of the vekils, or did not need the involvement of the sultan, as these disputes often do not appear in the records I used.

Subsequently, I will examine the complaints of the Avrupa Tüccarı about intervention in their estates and properties, and over-taxation. It appears that even thirty years after the Ottomans had identified intervention in merchant's estates as the hidden reason for their search for foreign protection and the inclusion of the promise of protection to the Avrupa Tüccarı berats, the intervention continued. Although the berats did not include a direct clause regarding the protection Avrupa Tüccarı properties from the intervention of non-state actors, Avrupa Tüccarı appealed to the sultan for the safeguarding of their properties. Moreover, when state officials were accused of taxing the properties of Avrupa Tüccarı more than they could can bear, the sultan backed the Avrupa Tüccarı. Likewise, when the Avrupa Tüccarı complained about over charges at the customs, they were able to obtain imperial orders in their favor.

For this examination, I will utilize the imperial orders recorded in a book kept concerning the matters of Avrupa Tüccarı.[139] It covers the years between 1835 and 1866 (1250-1282), and includes the imperial orders issued upon the petitions of Avrupa Tüccarı and notes of communication sent by government officials regarding them. This book was called an *ahkam defteri*[140] and was similar to the *ecnebi defter*s (books for foreigners) kept in the government's chancery office. for matters

[139] It is reference code in the Prime Minister's Office of Archives is A.DVNSDVE.d 106/1.
[140] "Book kept by each government office, in which pertinent regulations, decrees, etc. were written." The Redhouse Dictionary: Turkish/Ottoman-English.

regarding foreigners with safe conduct There are 130 orders recorded in the book during the years covered in this chapter.

Imperial orders for the debt collection of Avrupa Tüccarı takes the lead with 54 entries while 26 entries for the authorization comes second. Intervention in Avrupa Tüccarı estates comes third, with 8 entries. The rest includes complaints about over taxation, intervention in their properties, and people's complaints about the Avrupa Tüccarı who assumed official duties such as *kocabaşı* and *sandık emini* (trustee of the cash box) as well as the cases in which the Avrupa Tüccarı estates were divided according to Islamic law. My selection among these orders was thematic, as I wanted to depict the operation of the main institutions of the era and seek answers to the questions about Ottoman judicial practice such as the value of written documentation and the status of interest.

These orders were written as if the sultan was directly involved in the process as the receiver of the initial petition or communication and then asking advise for the proper course of action to follow from the government's chancery office (*divan-ı hümayun kalemi*) and consulting with other relevant government offices. Afterwards, sultan makes a decision, which he sent to the relevant officials as an imperial order.

The orders first include a summary of the petitions or the notes of communication sent by the judges and other officials. This summary tells the course of events before the matter came to the imperial council, of course from the perspective of the petitioner or the sender of the communication. Unfortunately, I was unable to find any alternative sources to question the possible biases of these summaries, so I will be telling the events as if the reality conformed to the story of the extant records. Nevertheless, sometimes it is still possible to question these accounts by focusing on the status and the possible interests of the person, be it an

Avrupa Tüccarı, a judge, or the superintendent of the customs, who submitted it to the sultan. In the absence of other sources, they offer us a lively picture of the Avrupa Tüccarı's experiences at least from one angle. The initial summary of the events are followed by the advisory note of the government's chancery office, which the sultan follows without further questioning and issues his order accordingly.

A salient feature of this process was the receptiveness of the Porte to the demands of the petitioners and government officials. The imperial orders were usually granted in favor of the original demands. Since this book includes the demands that had the effect of generating an imperial order this is reasonable. Unfortunately, we do not have a way of knowing the fate of declined requests from this book alone.

The Ottoman Legal System in the Classical Period

The Ottomans adhered to the Hanafite school of Islamic law, with their jurists receiving training mostly in this school. The judges were instructed to adjudicate according to the strongest opinion available within this school unless an imperial decree gave choice of another opinion. Moreover, the norms of the Hanafite School were definitive in fundamental procedural matters.[141] Imperial statutes and decrees addressing taxation, land, and criminal laws incorporated the various local practices into an imperial framework within the limits of Hanafite School while also maintaining the local diversity. Although custom had a weak position as a source of law within the Hanafite school, the Ottomans accepted the customs of various

[141] Engin Deniz Akarlı, "Ottoman Empire: Islamic Law in Asia Minor (Turkey) and the Ottoman Empire,'' *The Oxford International Encyclopedia of Legal History*. Akarlı's article offers a brief but valuable review of the Ottoman legal history. Most of the following information about the Ottoman legal system comes from this article.

communities as a valid source of dispute resolution within each community. However, if a matter came to the Islamic court the Hanafite school, the appropriate supplementary imperial decrees would apply.[142]

Building on the precepts of the Hanafite school of Islamic law for its normative framework but also incorporating the local elements, a uniquely Ottoman legal system emerged after a formative period, which reached a stable state in the 1570s, realizing a degree of uniformity in dispensing justice, and maintained its stability until the legal reforms of the nineteenth century. [143]

The Ottoman legal system was highly bureaucratized in comparison to the legal systems of the earlier Islamic empires.[144] All administrative districts had an Islamic court headed by a judge (*kadı*), who often appointed deputy judges (naibs) to sub-districts. Although the kadıs were appointed from the center, most of the naibs came from the local population. By the eighteenth century even in the district centers naibs assumed the powers of the kadı while the original holders of the post remained in the capital city.[145] The court fees constituted a major source of income for the kadıs and often caused complaints against them. It was this court fees that the naibs relied on to pay the absentee kadı and make a living for themselves.

In addition to the judges, centrally appointed *mufti*s (juristconsults) operated in the districts giving legal opinion (*fetva*) to people as the case was explained to them. Although their opinion was not binding for the judges, the conflicting parties presented them in the courts to strenghten their cases. The juristconsult of İstanbul, the *şeyhülislam*, was the highest-ranking juristconsult in the empire and gave legal opinion for civil cases as well as the administrative rulings of the sultans. Both the

[142] Ibid.
[143] Ibid.
[144] Ibid.
[145] İnalcık, "Mahkama," *Encylopedia of Islam*, 2nd Edition.

muftis and şeyhülislams often had previous experience as judges and taught in the seminaries where the next generation of jurists was educated. Akarlı states that these official jurists contributed to the maintenance of "the overall integrity of legal practices in congruence with the laws and injunctions of the Hanafite doctrine of law adopted by the Ottomans."[146]

The chief judge (*kazasker*) of Rumeli provinces held the first position within the Ottoman judicial hierarchy while the kazasker of the Anatolian provinces followed him. They were also members of the imperial council, divan-ı hümayun, which sat at the top of the network of district and sub-district courts.[147] Appeals against the malpractices of the judges and local officials, complaints of unfair trials, requests for retrials and petitions to initiate hearings came to the imperial council to be examined under the presidency of the grand vizier on behalf of the sultan. Most of the cases needed local knowledge so they were usually referred to the local courts for review. Ronald Jennings points out that the Porte sent orders upon the petitions it received for certain cases to be heard if they had not been heard already, or to re-order or re-study a specific decision according to Islamic law, but that it did not interfere in the judicial process, leaving the legal procedure largely in the hands of the kadı. [148] However, the imperial council also assumed the role of a court and heard some of the cases itself. Accordingly, Ahmet Mumcu recaps the judicial functions of the imperial council as the place of first trial and absolute decision, and a place for appeals and correction of earlier decisions.[149]

---

[146] Akarlı, *Ottoman Empire*.

[147] For the judicial functions of the imperial council in civil matters, see Ahmet Mumcu, *Divan-ı Hümayun* (Ankara: Phoenix Yayınevi, 2007), pp. 67-89.

[148] Ronald C. Jennings, "Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri," *Studia Islamica,* no.50 (1979), pp.151-153.

[149] Mumcu sees a contradiction between Islamic law and the imperial council's function as a court of appeal. He claims that Islamic law offered a single layered judicial system in which the decision of a judge was final and could not be brought to an upper level court for retrial. I

With the capitulations granted to the European countries, all the cases exceeding the value of 4000 akçe between the foreigners with safe conduct and Ottoman subject should only be heard at the imperial council. Moreover, all of the claims against the consuls and their dragomans had to be brought to the council. [150]

As I have shown in my discussion of Avrupa Tüccarı's legal privileges, the 4000 akçe stipulation was also included in their berats, thereby making the imperial council the main venue for the all Avrupa Tüccarı litigation including a financial claim, at least in theory. [151]

Lastly, it is worth mentioning that the place of the Customs Office in the Ottoman legal system, or whether it had a formal place was not a studied subject. However, my study sheds some light on its roles for dispute resolution among merchants, as will be evident below.

"The Last Years of the Classical Age": A Note on the Periodization

Periodizing Ottoman history has long been an interest of Ottoman historians. Ottoman history has been divided into periods and sub-periods by different historians from the standpoints of military, economic and political history. Initially, Ottoman history was divided into three periods which purported to represent the rise, stagnation, and decline of the empire in which the military, economic, and political developments paralleled each other. This approach was questioned by later

---

believe that his position is also part of the tradition of envisioning an idealized Islamic law that was formed long before the Ottomans and the Ottoman practice, which bore contradictions to the theory. See Miller, *Legal History* for a critique of this perspective on Ottoman legal studies.

[150] Boogert, *Capitulations*, pp. 47-52. This clause first appeared in the capitulations given to English in 1601.

[151] 4000 akçe equaled to 33.33 kurus, which was a very low sum for the nineteenth century thereby making all the Avrupa Tüccarı litigation with a financial claim eligible to be heard at the imperial council.

scholarship and new attempts of periodization were made.[152] Lately, the abolition of Janissaries in 1826 has been seen as the turning point that paved the way for the reforms of the Tanzimat period starting from 1839.[153] While the importance of eliminating the Janissary corps, which had strong links with different social groups and represented a number of interests, cannot be denied in paving the way for further reforms, until the Tanzimat period the institutional framework of the Ottoman Empire preserved its classical forms it had obtained in "the time unknown".[154]

It is true that institutional change was a salient feature of the Ottoman Empire as it had adopted itself to the changing times in the seventeenth, eighteenth and early nineteenth centuries. However, until the reforms of the Tanzimat period, the Islamic and ancient Near-Eastern traditions continued to shape the Ottoman worldview and the Ottoman institutions. For example, the highly bureaucratized Ottoman court network did not exist in the earlier Islamic empires but the role of the kadı dispensing justice according to the Islamic law on behalf of the ruler were similar in the former and latter. Until the Tanzimat period, the sultans communicated with the kadıs (or the naibs, substitute judges) for the judicial matters, and the prominence of Islamic law in the judicial process and the relative autonomy of kadıs in dispensing justice continued. The imperial orders were also sent to administrative/military officials such as governors, voyvodas and official notables to ensure the enforcement of the

[152] For the old approach as well as the new attempts of periodization and challenging the ''decline paradigm,'' see the contributions of Bernard Lewis, Halil İnalcık, Cemal Kafadar, Linda T. Darling, Jane Hathaway, Johnathan Grant, Kemal H. Karpat, Douglas A. Howard, Rhoads Murphey and Donald Quataert in the collective volume of *Osmanlı Tarihini Yeniden Yazmak: Gerileme Paradigması'nın Sonu*, edited by Mustafa Armağan (İstanbul: Timaş, 2011). These articles are translated versions of the contributors earlier works. Although the selected articles are highly academic and represent the pioneering works on periodizing Ottoman history, the editor's contributions stand as an exception. His chapters are far from being academic as he relied on the selected articles of the book to justify his highly romantic and conservative reading of Ottoman history.

[153] This view can be found in the works of Donald Quataert and Baki Tezcan.

[154] Here I am referring to the Ottomans view of the "*kadim*," namely the traditions that have been the common practice since the time unknown.

kadıs decisions, but kadıs were supposed to be independent in their decision-making in conformity with the Islamic law and imperial orders. This feature as well as the changes that occurred following the Tanzimat period are also evident in the ahkam defteri discussed in this chapter. Therefore, I am calling the 1835-1839 period the "last years of the classical age."

Although the developments of the late eighteenth and early nineteenth century put strains on the workings of the classical system and cracks appeared within the Ottoman judicial body,[155] the classical judicial institutions continued to operate as an all-encompassing court system and a venue for various transactions.

Avrupa Tüccarı in the Classical Age

Commercial Litigation of Avrupa Tüccarı: Debt Collection Cases

Almost all the cases of commercial litigation of the Avrupa Tüccarı were related to the collection of debts. These could be claims by the Avrupa Tüccarı from a single debtor who was brought into a local court or the Arz Odası, or the claims of a large group of merchants from a bankrupt Avrupa Tüccarı, which had been examined at the customs. The Avrupa Tüccarı's contracts were usually based on written sources such as *tahvil*s (bonds or commercial bills), *sened*s (promissory

[155] See Engin Deniz Akarlı, "Maslaha From "Common-Good" to "Raison D'etat" in the Experience of İstanbul Artisans, 1730-1840," in *Hoca, Allame, Puits de Science: Essays in Honor of Kemal Karpat,* edited by K. Durukan et al. (İstanbul: Isis Press, 2010), pp.77-79. Akarlı claims that from 1770s onwards, the interactive judicial process was marginalized due to the "growing economic and financial problems which led to the intensification of struggles over the distribution of increasingly scarce resources, straining the capacity of the courts and judges to accommodate the differences effectively and enduringly," and "the rise of new notions of government and law". Instead, the administrative decisions came to define the public interest. He gives the blanket-sheet decrees of Mahmud II, which originated directly from the palace rather than being initiated by the courts, as an example of this change.

notes), *defter*s (merchant books), and *temessük*s (deeds obtained from the courts). Therefore, when an Avrupa Tüccarı made a claim against a debtor he first explained what his claim is based on. Interest (named *güzeşte* in the Ottoman context) was usually part of these contracts.[156]

In the following sections, I will study standard examples of these debt collection cases examined in different courts, and sometimes the same case in multiple courts. As part of the Avrupa Tüccarı regulation, it was possible to ask for the appointment of a government agent (*mübaşir*) by beylikci to help the examination process of the lawsuits. Hence, in addition to classifying the cases with the venue of adjudication I will also consider if a mübaşir was appointed or not.

Imperial Order to Carry Out an Earlier Court Decision Supported by the Appointment of a Mübaşir

The following case is an example of how an Avrupa Tüccarı used the local Islamic court effectively for debt collection, but later asked for the intervention of Porte for the enforcement of the earlier court decision.

Case 1: Avrupa Tüccarı Bahor Balti, a resident of İstanbul, had a claim of 91000 kuruş based on a commercial bill (tahvil) from the Jews sarraf Avram Ardini and his partner Yako Kaponkaz, who were residents of Siroz.[157] A hearing took place in the Islamic court of Selanik in 1247 (1831/1832) and it was decided that the debtors were to pay 66000 kuruş in advance and pay the remaining 25000 kuruş in three years. Avram and Yako became guarantors to each other for the parts of the debt they owed to Balti. The court issued a written copy of the judgment (*ilam*). The imperial order registered three years after this date upon the petition of Balti addresses the 25000 kuruş that had not been paid after the expiration of the deadline and another unpaid debt of 2500 kuruş of the same parties. Balti petitioned the Sultan claiming that the debtors had not paid the 25000 kuruş, as well as refusing

[156] However, in the bankruptcy cases there was no mention of interest as collecting even the principal capital was not possible under such circumstances.
[157] A.DVNSDVE.d 106/1, p.9, doc. 2, Evaili Zilkade 1250/ March 1835

to pay a further 2500 kuruş that was due to him with a written judgment of the Islamic court (*ilam-ı şeri*) and having the intention to render it void. [158] He presented the written judgment of the court for the latter and requested an imperial order to be issued for his debt to be recovered completely with the means of Islamic law and an agent (mübaşir) appointed from the Porte. The sultan asked the needed action from the office of imperial chancery presided over by beylikci Efendi. (divan-ı hümayun kalemi). The chancery office reminded that if an Avrupa Tüccarı was owed a debt from anyone, based on a signed, and "*mamulun bih*"[159] title deed, then after the title deed was presented to the judge and being proved, it had to be collected and the fee demanded for this service must not be more than two percent.[160] Moreover, if they had a lawsuit exceeding 4000 akçe, it should not be heard in the ordinary courts, but it should be adjudicated at audience hall in the palace in the presence of grand vizier. In case of a need for an agent *(*mübaşir) to be appointed, it should be appointed from their minister beylikci.

The chancery office stated that if the matter was as it had been communicated, then an imperial order needed to be issued, stating that the 25000 kuruş undertaken to be paid had to be collected, and if established lawfully (*ledes sübut-uş-şeri*), the 2500 kuruş that was due to him with the written judgment of the court had to be taken. The sultan declares that "let it be done" in the manner described and by means of the appointed agent. [161] He then notified the governor (*mutasarrıf*) and substitute judge (naib) of Siroz that this matter had be examined by the way of justice with their concurrence and means, and the means of the mübaşir. If the 25000 kuruş was promised to be paid, then it must be taken with the means of the Islamic law (*marifet-i şer*), and after it was proved legally, the 2500 kuruş debt with the written judgment of the court must be collected completely. They should be careful about the establishment of justice and refrain from the actions against the law and the regulations of Avrupa Tüccarı, which would cause injustice and prevent the conditions.

When compared with the daily wages of skilled and unskilled workers in İstanbul during the time, it becomes evident that the claim of Balti from the debtors was a very large sum.[162] The fact that Balti sought the collection of this sum at the Islamic court of Salonika first rather than appealing to the Porte shows that the Islamic courts maintained their attractiveness, and a merchant initially would seek a

[158] "*…tediyede muhalefet ve ibtali hak daiyesinde beyanıyle...*"
[159] "*mamul bih*" means rule, agreement according to which action takes place, observed and practiced. The Redhouse Dictionary.
[160] It is important to note that the advisory note did not mention the conditions of "sealed" and "supported by the common testimony of their vekils and guildsmen." As I mentioned in my discussion of berat texts in Chapter 2, the latter rarely appears in the imperial orders.
[161] "*mübaşir marifetiyle vechi meşruh üzere amel olunmak fermanım olmağın.*"
[162] An unskilled worker had to work 17938 days to earn this sum while for a skilled worker it took 10360 days. My calculation is based on the wage list provided by Süleyman Özmucur and Şevket Pamuk, ''Real Wages and Standards of Living in the Ottoman Empire, 1489-1914,'' *The Journal of Economic History* 62, no.2 (2002), p.301.

local solution if he believed that he could prove his case. While we do not know the local court procedures of proving his case, it is clear that the written records of the transaction were important both for the transacting parties and the courts since Balti based his claim on a tahvil. It seems that the debtors also accepted the court's decision and complied with the advanced payment and the problem aroused three years later. The sum claimed by Balti also sheds light on another important phenomenon, namely the interest for deferred payment. His further claim of 2500 kuruş was 10 percent of the 25000 kuruş of the deferred payment. He based this claim on a written court decision (ilam), which suggests that this was part of the original decision.

This looks like an arrangement done for a deferral of the debt with interest according to the Islamic law by using the legal tricks (*devr-i şeri*) to disguise the interest and avoid the ban on interest.[163] We do not have evidence of whether this ten percent addition was the interest for three years or each year during the period since in the Ottoman practice it was possible for the transacting parties to defer the debt each year with calculating the interest as a percentage of the principle debt.[164] Unfortunately, we do not know how this affair ended after the issuance of the imperial order and appointment of the government agent. However, since a relatively

[163] For the methods of deferring the payment of a debt with interest while conforming to Islamic law, see Süleyman Kaya, "XIII. Yüzyıl Osmanlı Toplumunda Nazari ve Tatbiki Olarak Karz İşlemleri" (Ph.D. diss., Marmara University, 2007), pp. 24-26. The first method is the creditor buys a good from the debtor and sells it back to the debtor with a one year term, adding the amount equal to the desired interest.The second method is the debtor buys a good from the creditor paying more than the value of his debt and sells it to a 3rd party at a value equal to his debt and assigns his original debt to the 3rd party. The 3rd party then sells the good to the original creditor with at the value he paid for the good. According to the third method, the creditor sells a good to the debtor at a price equal to the interest. The debtor gives it as a gift to the 3rd party and the 3rd party gives it as a gift to the creditor. In this way, the creditor has the good back in addition to the interest he received.

[164] Ibid., pp.45-46. Kaya claims that the transaction for debt deferral was made by calculating the interest as a percentage of the principal capital and the compound interest was not possible. However, he also found evidence of the tricks employed for the compound interest.

large sum was involved and there is no further record of the case in the ahkam defteri, perhaps there was some sort of settlement at the local level.[165]

Order to Summon to the Local Court, Appointment of a mübaşir and Order to Summon to İstanbul if the Justice Could Not be Established Locally

This case study offers us an example of an Avrupa Tüccarı turning to the Porte for collection of a debt from a distant debtor.

Case 2: Mirhan, son of Boğos Eci oğlu, fermanlı servant of Avrupa Tüccarı and İstanbul resident Eci Artinoğlu, petitioned the Sultan claiming that Kürkçü İstepan from Edirne had a 6000 kuruş debt due to him with a commercial bill,[166] but the debtor had refused to pay it and asked for more time.[167] He asked for the collection of this amount from the debtor by means of Islamic law (*marifet-i şer ile*) and handed over to the merchant representative Karabet, who resided at the Rüstem Paşa khan of Edirne. Moreover, he demanded the debtor be brought to İstanbul for trial if he avoided payment. To these ends, he supplicated and requested an imperial order from the Sultan. As always, Sultan asked the needed action from the office of imperial chancery, which in turn reminded him the debt collection clause (without mentioning the testimony), lawsuits exceeding 4000 akçe and appointment of mübaşir clauses of the Avrupa Tüccarı regulation. The office shared its opinion that if the matter was as it had been communicated, the issuance of an imperial order for a hearing in the Islamic law, administering justice after the claim was proven, and if this was not possible, summoning the defendant to İstanbul was needed. A mübaşir was appointed and an imperial order addressed to the judge of Edirne instructing the hearing and administration of justice by the means of Islamic law and a mübaşir was issued. The Sultan warned the judge against an act of preventing the summoning the defendant to İstanbul through mübaşir if the summoning was needed.

The information provided in the imperial order register for this case gives the impression that Mirhan directly appealed to the Porte to initiate the legal process for his claim. The fact that he first wanted a local hearing and payment of his debt to his

[165] There are examples of which the imperial order did not have an effect and the petitioner turned to the Porte one more time to request a reiterating imperial order.
[166] "*Kürkçü İstepan nam zimmi zimmetinde ba tahvil altı bin kuruş alacağı olub*."
[167] A.DVNSDVE.d 106/1, p.11, doc. 8, Evaili Zilkade 1250/ March 1835.

representative at the locality might be due to the relatively low value of his claim. However, the appointment of an agent from the center and the order of summoning to İstanbul if needed should have been meant to pressure his debtor using his Avrupa Tüccarı privileges. Since there are no further records about this case, we might assume that the matter was solved. Of course, it is also possible that Mirhan did not attempt to incur the costs of obtaining an additional imperial order.

A Double-Edged Sword: The Privileges of Avrupa Tüccarı Used Against Them

The following case is an example of how the privilege of bringing lawsuits above 4000 akçe to Arz Odası could turn into a liability faced with a disputant of a higher political standing who had the means to obtain an imperial order in his favor.

Case 3: A petition was submitted to the sultan on behalf of Es-seyyid Ömer Cemal, who was the former manager of royal properties in Edirne. [168] It claimed that the merchants, named Bahçıvanoğlu Sarraf Karabet and his son Ovannes, owed Ömer Cemal 10000 kuruş, and he had claims for other rights as well. When he demanded his money back, the accused sought a pretext to avoid payment and insisted on extra time. Therefore, the petitioner asked for an imperial order to bring the accused into İstanbul for a hearing. The Sultan asked the needed action from the imperial chancery office, which stated the 4000 akçe and the appointment of mübaşir clauses from the Avrupa Tüccarı regulation. However, its advice was not a direct summoning of the defendant to the İstanbul as demanded by the plaintiff.

Instead, it maintained that a local hearing according to Islamic law was needed and if the claim was proven then justice should be administered. If establishing justice locally was not possible then the defendants should be brought to İstanbul. The Sultan ordered accordingly to the chief judge of Edirne (*Edirne mollasına*). The sultan instructed that the matter should be examined in a rightfully manner by means of the chief judge and the mübaşir appointed by beylikci for another matter and who was in Edirne at the time. If the claimed sum was found to be true with a hearing according to Islamic law, then it should be collected completely. If the administration of justice locally was not possible, the defendant

[168] A.DVNSDVE.d 106/1, p.34, doc.71. Evasit Cemaziyel evvel 1253/ August 1837 "*Mahrusa-i Edirne'de emlak-ı hümayun müdiri sabıkı Es-seyyid Ömer Cemal adına sedde-i saadetime arzuhal takdimiyle...*"

must be brought to İstanbul. A note written in the margin next to this imperial order informs that the disputing parties reached an amicable settlement in a session in the Islamic court, which was assembled following the arrival of imperial order, for a payment of 6000 kuruş.

This example shows the double meaning of the 4000 akçe clause, namely, it applied when the Avrupa Tüccarı was the plaintiff as well as the defendant. However, the sociopolitical class of the plaintiff is also striking. He was a descendant of the prophet, a class of people who enjoyed a privileged status in the Empire, and he was a former manager of the royal properties in Edirne, which makes one wonder about his connections at the palace. The fact that the Porte did not accept his request of referring the case directly to İstanbul is in conformity with the Porte's general tendency of seeking a local solution first and appointing an agent from the center for examination of the case and the threat of brining the defendant to İstanbul to encourage such a solution. It seems that this method paid off as the disputing parties reached a settlement for a payment of 6000 kuruş.

Order to Summon to the Local Court but No Mübaşir

The following case study shows that the Avrupa Tüccarı did not always ask for the appointment of a government agent for the matter and to apply for the 4000 akçe clause, but were satisfied with an imperial order for initiating a local hearing even for a claim of a relatively large sum.

Case 4: Yanaki Astako, an Avrupa Tüccarı from the town of Siroz petitioned the sultan stating that he had a claim of 30000 kuruş with interest (*ba güzeşte*) from the Jews Menahim Alyos and Yose İbravanes due to an earlier business between them, but the debtors had resisted balancing their accounts and had

insisted on extra time.[169] Hence, he requested an imperial order to balance their accounts by the means of Islamic law in a just manner and the complete payment of the claimed sum. The needed action was asked from the government's chancery office, which cited the debt collection clause of the Avrupa Tüccarı regulation without mentioning the stipulation of testimony by common report. It advised that if the matter was as explained in the communication, then it should be referred to the local Islamic court with an imperial order for an examination according to Islamic law and to be collected after the claim was proven thereby Islamic law would be executed and the justice would be established. The imperial order addressed to the substitute judge of Siroz, was issued with the instruction for the following the aforementioned manners and refraining from acts against Islamic law and the articles of the (Avrupa Tüccarı) regulation.

I did not come across to a reiterating imperial order for this case, which might indicate that local solutions with local means were possible, too. Indeed, the petitioning of merchants and issuance of imperial orders were not the normal state of the things, but possible methods to be utilized if a solution could not be found with other means. Those who engaged in leegal battles with th Avrupa Tüccarı must have been aware of the Avrupa Tüccarı's legal privileges and act accordingly. The Avrupa Tüccarı's ability to obtain imperial orders and invoke their privileges might have convinced the ordinary disputants to reach to settlements with them without appealing to the Porte.

Oder to Summon to the Local Court, a Mübaşir but No Order to Summon one to İstanbul

This case study is an example of an Avrupa Tüccarı requesting an imperial order for the collection of his debt without asking for the appointment of a mübaşir. However, the Porte appointed a mübaşir to examine the case and to help bringing the accused to the court for a hearing.

[169]A.DVNSDVE.d 106/1, p. 28 Doc. 56, Evail Cemaziyel ahir 1252/ September 1836.

Case 5: An Avrupa Tüccarı named Genco Papasi oğlu from the town of Zağra-i Atik petitioned the Sultan stating that Hobin Desdo, son of Yuvan, owed him 8300 kuruş because of a loan with a bond (*tahvil*) and Dimitri owed him 4220 kuruş, but they had resisted making payments although he demanded repeatedly. [170] So he requested the issuance of an imperial order for the collection of this debt. The necessary action was asked from the government's chancery office, which in turn cited the clauses of debt collection and appointment of an agent (mübaşir) from Avrupa Tüccarı regulation and advised the issuance of an imperial order for referring the case to the local Islamic court if the matter was as explained in the communication.[171] A mübaşir named Memiş was appointed and an imperial order addressing the substitute judge and voyvoda of Zağra-i Atik was issued. The order instructed the judge and woywoda to bring the accused into court by their means as well as the means of the mübaşir Memiş and, after the hearing if the claimed sum was proven to be a true obligation of the accused then it had to be collected completely. The Islamic law must be practised and a great care had to be taken for the establishment of justice. They were to refrain from acts against Islamic law and the articles of the (Avrupa Tüccarı) regulation since this would mean oppression.

The relative insignificance of the claims involved and the division of the case into two would be the reason why Genco did not ask for the appointment of a mübaşir. By appointing a mübaşir, the Porte in its turn might have been willing to show its support for the merchants under its protection, which would be a stark reminder for future cases and help to convince the debtors not to engage in a legal battle with an Avrupa Tüccarı.

Hearings at the Imperial Audience Hall

The following two case studies shows that the 4000 akçe clause was not only nominal stipulation but at times it was realized and served to the Avrupa Tüccarı interests.

[170] A.DVNSDVE.d 106/1, p.31 doc. 63, Evasit-i Rebiulahir 1252/ July 1836.

[171] "*mahalinde şeri şerife havale ile emri şerifim itası iktiza eylediği tahrir olunmağla*."

A Hearing in the Imperial Audience Hall and an Imperial Decree Preventing a Further Hearing in Other Courts.

Case 6: The Avrupa Tüccarı vekils in Edirne, Karabe,t son of Kirkor; and Yanako, son of Yorgi; and ordinary Avrupa Tüccarı's from the city; Karabet, son of Agob; Ohannes, son of Karabet, Babik, son of Hacador; Asador, son of Oseb; Asador, son of Enyağon; Hacador, son of Bağos; and Bağos, son of Tosi came to the Islamic court of Edirne.[172] They claimed that a certain Avrupa Tüccarı named Malkon son of Oseb and a resident of Edirne had had business dealings from the year 1248 (1832-1833) to the year of 1249 (1833) with the late Hace oğlu el hac Osman from the town of Dimetoka as well as Gabdurlu El hac Mehmed and Hace Virani el hac Osman from the same town. Accordingly, on 11th of Safer in 1249 (30 June 1833), the accounts arising from these dealings were examined, free from any mistakes and corruption (*sehv ve galattan ari*) in the presence of the group of afromentioned Avrupa Tüccarı and Mustafa son of the late Osman, el hac Mehmed and Virani Osman. After the examination, no claims emerged except the 2285 kuruş Virani Osman owed to Malkon. Osman accepted that this sum is his true debt, and all other parties declared each other free from obligations. ("*ibrayı zimmet olduklarını nutk*").

In 11 Cemaziyel evvel 1251 (4 June 1835), the kadı of Edirne referred the matter with a written communication of Islamic court (*ilam-ı şeri*) to the large hall of the palace where Grand vizier held his court. A hearing took place on Thursday in the presence of the grand vizier. Es-seyyid Hasan bin Mehmed represented the late Osman Bey's inheritors (including his wife and daughters) and other Osman from Dimetoka and Mehmed since he was appointed as representative by the clients in the presence of two witnesses according to Islamic law.

By this time, Malkon was a resident of İstanbul and he also attended to the session. Es-seyyid Hasan claimed 51000 kuruş on behalf of the inheritors of Osman Bey and presented a written copy of judgment from the Islamic court (*ilam*). Moreover, he presented two witnesses to strenghten his case. The accounts arising from the business transactions were examined from the account books by the means of Islamic law, merchants from Avrupa Tüccarı and sarrafs. The witnesses presented by seyyid Hasan were considered suspicious and dismissed (*su-i töhmet olduklarından tard*) and his claim could not be proven. However, because Malkon were afraid that seyyid Hasan had the intention of bringing the matter to the local courts in a deceitful manner, he demanded an imperial order forbidding a further hearing of this case outside the Arz Odası. The needed action was asked from the government's chancery office, which cited the 4000 akce clause of Avrupa Tüccarı regulation and adviced the issuance of an imperial order in favor of Malkon. Consequently, the imperial order addressing the chief judge of Edirne was issued and he was instructed not to allow a hearing of this case in the localities under his juristiction and if needed, to refer it to the Arz Odası for a hearing according to Islamic law.

[172] A.DVNSDVE.d 106/1, p. 20, doc. 36, Evasit i Zilhicce 1251/ April 1836.

This case study illuminates the everyday life of Ottoman merchants and possible ways of dispute resolution. It is clear that initially both the Muslim merchants and non-Muslim Avrupa Tüccarı wanted to resolve the case among themselves at a merchants gathering, without appealing to the courts. As the parties involved in the transactions and experts in trade, they examined the accounts of earlier transactions and reached to a settlement. However, it seems that the heirs of the late Osman probably did not accept Mustafa's (Osman's son) role in the settlement challenged this settlement later. From the *ilam* presented by their representative Seyyid Hasan later in the Arz Odası, we can infer that they appealed to the Islamic court and registered their claim. At this point two Avrupa Tüccarı vekils in Edirne and seven ordinary Avrupa Tüccarı challenged the claim of Osman's heirs by appearing in the court and revealing the earlier settlement. This shows how the Avrupa Tüccarı in Edirne acted as a cohesive group both in the initial settlement reached with the Muslim merchants, and later supporting their fellow Avrupa Tüccarı by taking the matter to the court when the settlement was challenged. We do not know if they also demanded the case to be referred to Arz Odası but it seems that the judge decided to submit the case to İstanbul.

The procedures followed in the Arz Odası and the attitude of this court shows why Avrupa Tüccarı might have found a trial there advantageous and how the 4000 akçe clause served as a protective measure for the Avrupa Tüccarı. The priority was given to the account books and the expert's knowledge in the examination of these books. Even the testimonies of the witnesses presented by the Muslim plaintiff were not accepted because they were considered suspicious. Therefore, even if the written evidence alone may not have been considered as satisfactory evidence in the

Ottoman legal practice, witness testimony alone would not necessarily disprove what was established by written evidence.

Importance was given to the character witnesses and the plaintiff's motives for bringing them to the court. However, Malkon's request for an imperial order forbidding further hearing of the case in local courts indicates that although the Arz Odası offered protection to the Avrupa Tüccarı, the local courts might not always have been as favorable. The social, economic and political relationships at a particular locality might possibly have influenced the adjudication process. Moreover, Malkon would not like to be bothered further by the case and the imperial order he obtained could serve as a protective barrier for further claims against him as the plaintiffs could predict a further hearing in the Arz Odası would not change the result unless fundamentally knew evidence was presented.

Debts related to snuff monopoly, Hearings at the Customs and Arz Odası

Case 7: Avrupa Tüccarı Yerevan, son of İsak who was a resident of Astarcilar khan in İstanbul and his servant Yorevan were tax farmers of the İzmir snuff tax-farm in account of 1247 (1831-1832).[173] They subcontracted the snuff sellers (*enfiyeci*) tax farm of Tire and Ödemiş and their dependent villages to Yorevan, son of Kayseriyeli Atakilaki, and his partner, Eci Bedros. They claimed a 57981 kuruş for the value of tax farms and some snuff from the subcontractors based on four promissory notes (*sened*). A hearing took place in the presence of experts (*erbab-ı vukuf*) and the disputing parties by means of El hac Mustafa, the head of the tobacco customs office. The aforementioned sum appeared to be the true debt of the accused and they were imputed for the payment.

The defendants were not satisfied with the examination of their accounts and the matter was brought before the audience hall in the palace for a hearing. The defendants denied that they had the snuff seller's tax farm during the abovementioned year and the plaintiffs could not prove their case. The matter was investigated by the means of El-hac Mustafa in the locality of the tax farms. The people of the towns testified that the defendants were indeed the tax farmers during

[173] A.DVNSDVE.d, p.23, doc. 41, Evasit-i Safer 1252/ June 1836 We learn that Isak was a resident of Astarcilar khan from the imperial order number 38 recorded on page 22 of the same registry. Registers 38, 39, 40 and 41 are related to the matters debt collection of Isak and his servant.

that year and two copies of the written record confirming their declaration at the Islamic court were presented. El hac Mustafa requested an imperial order to be issued for the sum to be collected in full without leaving a penny behind from Eci Bedros and Yorevan because they owed money to the snuff cash box (*enfiye sandığı*). He stressed the need to save the public money from ruin and protecting the plaintiffs Yerevan son of Isak and his servant Yorevan from unjust treatment and loss.

An imperial order was issued for the collection of the debts by the means of mübaşir Seyyid Mustafa, who was appointed by the deputy beylikci İbrahim because the plaintiffs were Avrupa Tüccarı. Then the sultan addressed the governor of Aydin and deputy governor of Saruhan provinces and the substitute judge of Ödemiş that with their means as well as the means of the appointed mübaşir the defendants must be brought into the Islamic court, and the aforementioned sum to be collected completely and delivered to İstanbul.[174]

This case study is interesting for a number of reasons. It is related to a dispute between a tax-farmer and subcontractors of a snuff tax-farm (*enfiye mukataası*), which gave the snuff monopoly to the contractor under the Ottoman monopoly system. The dispute was first brought into the tobacco customs of office rather than an Islamic court, which supports the Sabit Efendi's depiction of the dispute resolution at different government offices to avoid the Islamic law.[175] No mention of Islamic law was made for the hearing at the customs and all we know is that the case was examined by the experts under the supervision of the head of the tobacco customs office. The claimed sum was established as the true debt of the defendants in this hearing but the defendants rejected the decision. We do not know whether the defendants took the matter to the Arz Odası or the plaintiffs demanded a hearing there.[176]

[174]" *mersumanı meclisi şeri şerife ihzar ile meblağı mezburun tamamen ve kamilen tahsili ve bu tarafa teslimi hususuna mübaderet…*"

[175] See my introduction for the Sabit Efendi's description of this phenomenon.

[176] To make inferences about this we need to know the authority of the customs office in judicial matters for the tax-farm related disputes, which unfortunately we do not know with our current knowledge. If its authority was accepted as final, then the plaintiffs would rather seek an imperial order for the enforcement of its decision than bringing the case to the Arz Odası for a further hearing. If not, then they might possibly demand a further hearing there in hoping a similar decision and its enforcement by the means the Porte and provincial authorities.

The hearing at the Arz Odası shows that written evidence alone, namely the four promissory notes presented by the plaintiffs, were not considered satisfactory evidence to establish the debt when the defendants rejected the claims of the plaintiffs. However, this did not mean that the central court simply dismissed the case due to insufficient evidence. Instead, the necessary evidence, namely the testimony of the witnesses, were obtained from the locality through the means of the head of the customs and local Islamic court. This attitude of the Arz Odası may not be related only to the Porte's interest in protecting the Avrupa Tüccarı since the public money was involved in this case. Nevertheless, this example shows that if the Porte wanted to protect the Avrupa Tüccarı, then it could utilize a number of ways to this end, such as finding the necessary testimony even when it faced the Islamic law's "disdain" for written evidence. Moreover, from the previous case study we know that at times the Porte protected the rights of Avrupa Tüccarı even when no public money was involved. Finally, it also shows that the decision of the Arz Odası was final, as the imperial order simply wanted the collection of the debt through a mübaşir without mentioning a local hearing before the collection.

A Debt of a Former Ayan and a Hearing at the Customs

Case 8: Mığırdiç veled-i Kopan, an Avrupa Tüccarı and a resident of İzmir, petitioned the Sultan claiming that the former chief notable of İzmir (*baş ayan*) the late Mensuri Emin had owed him 80000 kuruş with a title deed (*temessük*) and when he had been alive, Emin assigned the 90000 kuruş he was owed by the people of the towns of Bozdoğan and Derince to Mığırdiç as recompense for his debt. [177] In his petition, Mığırdiç requested the issuance of an imperial order for the complete collection of the money owed by the townsmen. The Sultan asked about this matter to Mehmed Tahir Bey, the superintendent of the İstanbul customs,

[177] A.DVNSDVE.d 106/1, p. 15, doc. 20, Evasit-i Safer 1251/ June 1835.

because the aforementioned transfer of debt had occurred in his charge in İzmir and it was expected that he had registers and knowledge about it. [178]

Tahir Bey said that the matter was related to the tax farming value (*bedel-i iltizam*) of the tax farm (*mukataa*) of the central establishment for the marketing and taxation of fish (*balıkhane*) in İzmir and some other tax farms for the year 1246 (1830-1831) as well as some earlier buying and selling between the parties. He explained that the accounts of Mığırdiç and Emin had been examined and the 80000 kuruş debt of Emin had become established. Then this debt was annulled by assigning the 90000 kuruş owed by the townsmen to Mığırdiç. However, Mığırdiç was unable to collect this debt from the people of the two towns.

Then the debt collection clause of Avrupa Tüccarı berats were cited but as usual avoiding the mention of the testimony by common report. The Sultan issued an order that if the aforementioned amount was proven to be the true debt of the people of the two towns, then it must be collected accordingly. The order addressed the governor of Aydın, and the substitute judges (naibs) of Bozdoğan and Derince, and instructed them about the appropriate collection of debts upon proof.

A year later, Mığırdiç petitioned again, claiming that he had not been able to collect even a single penny (akçe) and requested a reiterating imperial order. The imperial order was issued after the communication with the government's chancery office.[179] It seems that this imperial order also did not have a tangible effect as Mığırdiç filed another petition within the same year, this time requesting the appointment of an agent (mübaşir) and collection of his debt by means of this agent.[180] The government's chancery office cited the debt collection clause of the Avrupa Tüccarı berats avoiding mention of the testimony with common report as usual and mentioning the appointment of a mübaşir. The imperial order addressed to the governor of Aydın Yakub Paşa and the substitute judges of Bozdoğan and Derince was issued upon this advice and a mübaşir named Şemsi was appointed by the beylikci İftihar İbrahim. The sultan instructed the addressees to collect the debt if it was a true debt, by their means and consent as well as the means of the mübaşir. They were commanded to be careful about the execution of the Islamic law (*icrayı şeri*) and establishment of justice and refrain from any acts rendering the justice null and acts against the Islamic law.

This case also shows a tax farming related dispute resolution between a debtor and creditor outside the Islamic courts. We cannot determine the venue of this initial operation of examining accounts and the reaching of a settlement between Mensuri Emin and Mığırdiç, but we know that it happened under the charge of Mehmed Tahir Bey in İzmir, who was the superintendent of the İstanbul customs in 1835 (1251) when this registry was made. However, it is evident that the operation of

[178] "*hususu mezkur İzmir'de kendü zimmetinde vuku bularak kuyud ve malumatı olacağı cihetle.*"
[179] A.DVNSDVE.d 106/1, p.26, doc. 47, Evail-i Rebiul evvel 1252/ June 1836.
[180] A.DVNSDVE.d 106/1, p.33, doc. 68, Evasit-i Zilhicce 1252/ March 1837.

transferring debts took place outside the Islamic courts and perhaps at the customs similar to Case 7 above. The initial agreement of transferring a claim of 90000 kuruş for a debt of 80000 kuruş certainly violated the precepts of Islamic law, as the former amount was greater than the latter with no justification for this addition, giving us a clue why the litigants did not go to an Islamic court in the first place. When Mığırdiç could not collect the amount he is due after the operation, he turned to the Sultan for help but the Porte did not simply accept his claim from the people of the two towns. Instead, the imperial order stated the need to prove the claimed amount as the true debt of the people implying the initiation of a local judicial process for this. Therefore, even the initial operation of transferring the debt occurred outside the Islamic courts, there was a need for the involvement of the Islamic courts to establish the claim of Mensuri Emin from that of the townsmen, indicating that a total avoidance of the Islamic law was not possible in such a case.

The judicial course followed by Mığırdiç also gives us a hint about the Avrupa Tüccarı's process of seeking justice. He first demanded an imperial order, which was followed by a reiterating order. Asking the appointment of a mübaşir came last after the initial methods did not work, which might have been due to Mığırdiç's initial unwillingness to pay a fee to the mübaşir as a percentage of the collected debt.

Limits of the Privileges of Avrupa Tüccarı: Avrupa Tüccarı appears before the Islamic Court but Loses the Lawsuit Against an *Ulema* Coalition

The following case shows the limits of Avrupa Tüccarı when faced with disputants of higher social standing. It also offers us an example of how the interest-based contracts were viewed by the Islamic courts.

Case 9: Kirkor, an Avrupa Tüccarı and a sarraf of Filibe, and his brother Istefan, son of Mesrob came to the Islamic court in Filibe, and sued Es-seyyid Mehmed, who was the lieutenant chief of the descendants of the Prophet in Filibe, a noble *medrese* professor and mufti, while El hac Mehmed, Mehmed Resid, a former noble professor, and Es-seyyid Abdullah, a *dersiam* (senior teacher of religious sciences), were present at the assembly.[181] The brothers claimed that in accordance with two existing, sealed and "*mamul bih*" parts of one piece bond loan dated December 1832 (Şaban 1248), Es-seyyid Mehmed owed them 28277 kuruş for the principal capital and 11000 kuruş interest (*güzeşte*) for the two years thad had passed passed since the time of the title dead. [182] They stated that although they had demanded the sum of 39277 kuruş repeatedly, the debtor had resisted paying. Hence, they demanded the execution of what was required according to Islamic law.

During the questioning and at the time of interrogation, Seyyid Mehmed defied their claim with a counter claim. He argued that the mentioned interest of 11000 kuruş and 28277 kuruş demanded by the brothers in accordance with the aforementioned bond was previously given to them totally as a profit/interest (*rıbh*) without Islamic legal tricks to hide the interest for a deferral of a debt because of the buying and selling occurred between him and the brothers.[183] However, although they had engaged in buying and selling owing to contract and pact with several kinds of stipulations, the brothers went back on their pact and they annulled his inherited state farms in which he has been engaged in agriculture.[184] Seyyid Mehmed claimed that this practice was a violation of the regulation of sarrafs and calling 28277 as entirely interest denied it totally, while he accepted an unspecified amount of debt he

---

[181] A.DVNSDVE.d 106/1, p.19, doc. 33. Evasit-i Rebiulevvel 1252/ June 1836. The imperial order which I base my description of events relies on the account of the kadı of Filibe in telling the local judicial processes.

[182] "*1248 senesi Şaban-ı şerifi tarihiyle iki mevcud memhur ve mamul bih bir kıta deyni tavil mucibince muma ileyh zimmetinde 2877 kuruş aslı mal ve tarihi temessükten iş bu tarihe gelince iki senelik icab iden 11000 kuruş güzeşte ceman 39277 kuruş matlubumuz olub."*

[183] "*...muma ileyh cevabında meblağı mezbur 11000 kuruş güzeşte ile mar-uz zikr tahvil mucibince mersumların matlubu olan 28277 kuruş mukaddeman bila devri şeri beynemamızda olan ahz ve itamızdan dolayı bütün bütün rıbh olarak iş bu tahvil verilmiş isede..."*

[184] *"...bir kaç nevi şurut ile mukavele ve muahedeye mebni bir takrib ahz ve ita olunmuş ve mersuman dahi muahedelerinde durmayıb masalihine göre iras ve zeri ziraatimde olan mirilu çiflikatımu ibtal etmiş olub..."*

owed.[185] Moreover, he claimed that he delivered 62892 kuruş with assignments, in cash, as rice and other means to them from 1243 (1827) until the date of the abovementioned bond. Although Seyyid Mehmed demanded this sum repeatedly, the brothers resisted payment. Seyyid Mehmed also obtained a fatwa from the office of şeyhülislam (the chief jurist consult) to support his claim. When they were asked about this claim, the brothers willingly submitted and confessed the claimed sum as their debt with free consent in the presence of the witnesses. In accordance with this confession and the fatwa, the 62892-kuruş claim of Seyyid Mehmed was proven and established with respect to the Islamic law. Yet, at this point, the defendants countered by referring to their Avrupa Tüccarı status, stating that thereby their lawsuits had to be heard in İstanbul. The kadı of Edirne submitted a note (*ilam*) to the Sultan asking the collection of the debt from the two brothers because they had demanded hearing in the Islamic court and came themselves in the first place and the claimed sum was proven in this manner.

The required action was asked from the government's chancery office, which reminded the clauses of trial in İstanbul for disputes exceeding 4000 akçe, and the appointment of mübaşir by beylikci. Nevertheless, in this case with regard to the note of the judge an imperial order for the collection of the debt from the Avrupa Tüccarı with the means of Islamic law was advised. The imperial order addressing the chief judge of Filibe was issued and mübaşir Hüseyin, who was in the region for another matter was employed for the collection of debt. The chief judge of Filibe was instructed to be careful about the collection of debt with his means and with the means of the mübaşir. He was warned to refrain from acts that would violate Islamic law and the articles of the Avrupa Tüccarı berats thereby causing injustice for to the disputing parties.

In this case study, the course of events in Filibe relied on the account of the judge of the city, which was reiterated in the imperial order register. This is problematic because the party involved in the dispute with the Avrupa Tüccarı was a member of the *ulema* (religious scholars) class, like the judge and the two witnesses at the hearing. Moreover, the judge ruled in favor of the Seyyid Mehmed and requested an imperial order for the enforcement of his decision without a further hearing at the Arz Odası. However, the story of the judge still offers us valuable insights into the operation of Ottoman legal system at the local and central levels. First, if we are to believe to the account of the judge, Kirkor and Istefan came to the Islamic court on their own will and accepted its jurisdiction rather than taking the

[185] *"…bu hareketleri usulü sarrafana mugayir olmağla matlubları olan 28277 kuruşun küllisi güzeşte olub sahihi eda mersumana denyim bu kadar deyü külliyen inkarıyla..."*

matter directly to İstanbul. Their demands were based on a bond and two-tiered: principal capital plus interest.

Seyyid Mehmed's counterclaim however implies that he had given the bond to the brothers as total interest of deferral for previous dealings without any real buying and selling occurring at the time. This is noteworthy because as a mufti and head of the prophet's descendants, he did not hesitate to accept that he entered into contract with outright interest, which was forbidden in Islam. Of course, this would make the transaction invalid and save him from the claims of the Kirkor and Istefan since the payment of interest, and contracts for debt deferral with interest but without resorting to the Islamic legal tricks were not recognized by the Islamic courts. [186]

Although the details of the fatwa he obtained are unknown, it might have been related to the invalidity of direct interest in the contracts, which saved Seyyid Mehmed from the interest claims and somehow even made him the creditor. We also do not know why Kirkor and Istepan confessed the sum claimed by Seyyid Mehmed as their true debt. Although judge's note claims that this happened with their free will in the presence of the witnesses we need to take it with a pinch of salt since there might be a certain alignment of interests between the judge, Seyyid Mehmed and the witnesses as members of ulema class.

The reaction of Kirkor and the kadı's response are also interesting. When Kirkor challenged the authority of the local court by invoking his Avrupa Tüccarı status, the judge felt the need to ask for an imperial order for the enforcement of his decision rather than going ahead with the local means of enforcement. Moreover, the judge's move coincided with another important matter, namely the presence of

[186] For the invalidity of such contracts in the Ottoman practice, see Kaya, pp. 38-40.

mübaşir Hüseyin in the region.[187] In fact, on the same occasion, the kadı sent another note of communication to Porte about another Avrupa Tüccarı, Yako son of Çarmıhlı oğlu (….), who challenged the local court's authority, evoking his privileged status.[188] An imperial order recognizing the judge's authority and instructing the enforcement of his decision through the means of mübaşir was issued. Hence, the presence of a mübaşir in the town would have been interpreted as the right instance for asking an imperial order

It is implausible to think that Kirkor and Yako were the only Avrupa Tüccarı who challenged the authority of the judge when they were faced with unfavorable judgments. Therefore, although this case study points out to the limitations of Avrupa Tüccarı probably because of a strong ulema coalition and the kadı's utilization of the presence of a mübaşir in the region, it also indicates that in more favorable circumstances an Avrupa Tüccarı could challenge the decision of a judge to his benefit. When the disputants were not as strong as Seyyid Mehmed or as lucky as Nesibe hatun, they could have ended up losing their legal battle against an Avrupa Tüccarı, who was unwilling to accept the local courts decision. Hence, in such a case, an Avrupa Tüccarı could save the day when the disputants did not have the means to take the matter to the Porte or found it too costly.

[187] At this point it should be noted that in Case Study 3, in which Es-seyyid Ömer wanted an Avrupa Tüccarı and his son to be summoned to İstanbul but an imperial order was issued for a local examination of the case through the means of a mübaşir in the city and the judge.

[188] A.DVNSDVE.d 106/1, pp.19-20, doc. 34, Evasit-i Rebiulevvel 1252/ June 1836. In this case, the representative of Nesibe daughter of Zekeriya, Halil bin İbrahim Haşim, appeared before the Islamic court in the presence of Yako and claimed that the son of Nesibe hatun, another Zekeriya, took his mother's 10000 kuruş worth of gold ring featuring a diamond and handed it over to Yako for the annulment of his 1450 kuruş debt. When the ring was demanded from Yako, he accepted that he had taken the ring but he denied that it belonged to Nesibe hatun. The plaintiff presented Ahmed ibn Mehmed and Mustafa ibn Ahmed as witnesses to support his claim. The witnesses testified that the ring belonged to Nesibe hatun. The kadı accepted their testimonies and demanded the ring from Yako. Although Yako was offered to take an oath and he took the oath in the name of God that it did not belong to Nesibe Hatun, the kadı decided that the ring belonged to Nesibe hatun. However, Yako challenged the decision invoking his Avrupa Tüccarı status.

Lastly, it is worth mentioning that Avrupa Tüccarı did not always lose their cases against disputants of a high social and political standing. When Avrupa Tüccarı Mığıdiç son of Acador's *fermanlı* servant David from Filibe had a claim from Siyavuş Paşa, İbrahim ve and Hasan bey, high ranking officials from the governments chancery office (*divan-ı hümayun*), Paşa's representative (*kapı kethüdası*) and notable sarrafs gathered for an examination.[189] It became clear that the defendants owed 416329,5 kuruş including interest due to the loans given by David based on bonds on several occasions and the defendants accepted this sum as the true debt.[190] A settlement was reached for the debt to be paid in installments but when Siyavuş Paşa did not pay the installments when they were due, an order was sent to the minister and chief judge of Filibe for the amount to be paid in advance through the sale of his possessions.

However, in this case, the relationship between Siyavuş Paşa and David was not related to only a simple loan given to the former. It appears that David was also serving as a guarantor to the Paşa for his tax farming investments, which points out that their relationship was also that of an association between a tax farmer and sarraf. Although this case shows how an Avrupa Tüccarı could get the backing of the Sultan against a high-ranking official, we need remember that the Ottoman state considered the claims of tax farming related disputes as the public money and gave its support to the claimants.

[189] A.DVNSDVE.d 106/1, p. 10 doc. 5, Evasıt-ı Zilhicce 1250 (April 1835).
[190] ''*hizmetkar-ı mersumun tevarihi muhtelife ile miri muma ileyhimaya ba tahvil vermiş olduğu gayrı ez teslimat maa güzeşte dört yük on altı bin üç yüz yirmi dokuz buçuk kuruş alacağı olduğu tebeyyün etmiş ve işbu meblağ zimmetlerinde düyunu sahihaları olduğu kendileri dahi ifade eylemiş…*''

Litigation at the Customs Commissions: Two Bankruptcy Cases

The following two cases are the only records suggesting the operation of the mixed commission of merchants at the customs for dispute resolution of the Avrupa Tüccarı. They were recorded in my source because the settlement at the customs was not considered satisfactory for one of the parties involved and a request was made for the issuance of an imperial order to modify the settlement in the first case and to enforce the settlement in the second. The very large sums involved in these cases also gives us an idea about the volume of the businesses of of the Avrupa Tüccarı.

A hearing at the Customs but Modification of the Decision with an Imperial Order

Case 10: Avrupa Tüccarı Fethullah Gasban ran up to a debt of 4000 *kise* (2000000 kuruş) due to commercial associations.[191] The matter was referred to the Superintendent of İstanbul Customs, Mehmed Tahir Bey, to arrange payment of his debts with his existing possessions and credits according to mercantile customs.[192] Şehbender and muhtars of Hayriye Tüccarı, and notables of Avrupa Tüccarı and Gasban's creditors from Muslims, non-Muslim Ottomans and others gathered, and Gasban was summoned to the session. His existing account books and documents were studied. As opposed to his 4000 *kise* debt, his existing possessions and debts due to him scattered through his businesses associations but possible to collect were worth 1400 *kise* (700000 kuruş). Since 1400 *kise* was 35 percent of 4000 *kise*, it was decided that his creditors would be paid 35 percent of their credits from Gasban's existing possessions and debts due to him. The creditors relinquished their claims about the remaining 65 percent with the method of present (*hibe tarikiyle*). The payment of 35 percent was to start from the ninth of Cemadal ula 1253 (11 August 1837), and was to be paid in three installments that were to be made every 8 months. This method of payment was considered necessary in accordance with the conditions of trade and similar cases. This decision was written and given to Gasban and Mehmed Tahir Bey dispatched a note of the judgment (*ilam*) requiring the creditors who were not present at the session to be paid in accordance with this decision.

However, Gasban petitioned the Sultan stating that the deadline for the first installment had approached but he could not pay it because he had not been able to collect even a single akçe of the debts due to him, which were concentrated in

[191] A.DVNSDVE.d 106/1, p.41, doc. 90 and doc. 91. Evail-i Muharrem 1254/ March-April 1838.

[192] "*Devlet i aliyem reayasından ve Beratlı Avrupa Tüccarından Fethullah Gasban nam tacir teşekkülat-ı ticaretden dolayı bazı kisana olan dört bin kise mikdarı deyninin kaide-i ticarete tatbikan emval i mevcuda ve zimematıyla tesviyesi hususu ricali devleti aliyemden halen İstanbul Gümrük Emini Mehmed Tahir* Bey *zided ulvehuya ledel havale.*"

Bagdad, Aleppo, Damascus and Egypt other than İstanbul. He claimed to be afflicted with hardship and suffering and requested an imperial order for a three years delay of his payments.[193] The Sultan considered him as unjustly treated and calamity-stricken, and thereby, issued an imperial order for the payment with a delay of three years, but following the methods of the earlier judgment at the customs and granted the order to Gasban. Moreover, an imperial order was sent to the judges of İstanbul, Bagdad, Aleppo, Damascus and Egypt. The judges were ordered not to allow the creditors demanding even a single akçe from Gasban until the new deadline. Moreover, after the expiration of deadline, Gasban wa not to be pressured, annoyed or imprisoned with a demand for more than 35 percent of his debt. The Sultan stated that he did not give his consent for the occurrence of any enmity against Gasban and he wanted them make haste for the carrying out his orders as explained.

Another imperial order was issued to the chief judge (*molla*) and governor (*mütesellim*) of Aleppo[194] as well as the governor of Egypt Mehmed Ali Paşa, the chief judge of Egypt and the deputy judge of İskenderiye (Alexandria)[195] within the same month. They were instructed to bring the debtors of Gasban to the Islamic court and after the claimed debt was proven according to Islamic law, to collect it completely. Therefore, they should pay attention to the establishment of justice and execution of Islamic law.

This case study shows that the customs had been designated for the hearing of mixed cases. Although the term ‘‘foreigners’’ is not used, the group of creditors other than the Muslims and non-Muslim Ottomans were apparently foreigners. [196] Unfortunately, we do not know the details of the discussions took place, but the importance given to the merchant books and documents in the hearing is obvious. However, the assembly of merchants and the writing off a large portion of the debt seems similar to the bankruptcy settlements orchestrated by the European consuls and merchants for the mixed cases in the eighteenth century.[197] However, Gasban was not able to fulfill the conditions of the settlement at the customs and petitioned the Sultan for a three-year deferral, which shows that the verdicts of the mixed

[193] See also HAT 759/35836, 29 Zilhicce 1253. It includes a shorter summary of the events took place following the Gasban’s bankruptcy but does not mention this later request for a further debt deferral.
[194] A.DVNSDVE.d 106/1, p.42, doc. 94, Evahir-i Muharrem 1254/ April 1838.
[195] A.DVNSDVE.d 106/1, p. 42, doc. 95 Evahir-i Muharrem 1254/April 1838.
[196] ‘*ashab-ı matlubatdan ehli İslam ve reaya ve sair malum’ul esami kisan hazır oldukları halde.’*
[197] See Boogert, *The Capitulations*, pp.207-262 for the bankruptcy cases from the eighteenth century.

hearings were not necessarily the final one and the Sultan preserved his right to at least modify them.

Although we do not know the factors behind Gasban's bankruptcy, from the political developments of the time in Egypt and Syria and the fact that Gasban's business relations were mainly with these regions it could be surmised that Mahmud II's wars with the governor of Egypt Mehmed Ali[198] and his son might have contributed to the downfall of Gasban. This would also be the reason why he was called a ''*felaketzede*,'' victim of a disaster. Indeed, soon after he obtained an imperial order for further deferral of his debt, we see Gasban sending news from Aleppo about the conditions of Egypt, which was distributed to the governors of Anatolian provinces of Sivas,[199] Ankara, Konya,[200] and Karaman.[201]

Lastly, similar to Case 8 above, this case study shows one more time that the legal process did not end with the settlement at the Customs office according to the mercantile customs. The collection of the Gasban's claims had to be done through the means of the Islamic court network and the claims of Gasban had to be proven according to the Islamic law in the local courts before any collection could took place.

[198] However, it is interesting to see that imperial orders were registered in the ahkam defteri to Mehmed Ali Paşa, calling him the governor of Egypt and a vizier, as if everything was in order. In fact, examining this ahkam defteri alone which was kept during one of the most troublesome periods in Ottoman history one could think that the empire was still living its golden age. There is not even a single hint of the troubles of the empire. With the emphasis on the law and order and the imperial orders calling the officials to respect them gives the impression that everything was functioning smoothly.
[199] HAT 378/2053, 24 Zilhicce 1254.
[200] HAT 696/33612, 3 Zilhicce 1254.
[201] HAT 699/33713-J, 23 Zilkade 1254.

A Settlement in the Customs and the Resistence of Minority against the Decision of Majority

Case 11: Beratli Avrupa Tüccarı Buçuk oğlu Bağos went bankrupt, with leaving a good many debts to İstanbul merchandise customs, Muslims, non-Muslim Ottomans, and foreigners with safe conduct.[202] Although he was imprisoned, pressured for some time, and the proper cause was left as needed, it became apparent that his bankruptcy was not fraudulent. [203] Consequently, the payment of his debts was seen as dependent on allowing him to remain in business and solvent. Under the supervision of the superintendent of İstanbul customs Mehmed Tahir Efendi and with the means and acceptance of the merchants and his creditors, Bağos were given six years of grace. After the period of grace, he had to pay his debt in installments over four years. This agreement was tied into to a title deed (*sened*) and it was signed and sealed by the debtors. However, among the creditors, Hayriye Tüccarı Raşid, Hancı Ali, Damgacı Ali and sarraf Yuvan refused to seal the title deed. The other debtors filed a petition to the Sultan claiming that the fact that these four debtors refusal to abide by the judgment of the hearing, which had taken place with the means of notable merchants, and to seal the title deed would cause harm to others in collecting their debts.

The Sultan referred the case back to Mehmed Tahir Efendi. The two sides were summoned to an assembly of Hayriye Tüccarı, Avrupa Tüccarı and foreign merchants and were told that they had to seal the title deed, however, the four continued to refuse. Mehmed Tahir Efendi sent a note of communication to the Sultan explaining that the refusal of the agreement by the four who were owed only 70000 kuruş by Bağos would cause great harm to the 2000 kise (1000000 kuruş) claim of the customs and other merchants. He requested an imperial order for the execution of earlier decision with the payment of the debt in installments over four years after the end of the grace period according to Islamic law. Moreover, he demanded the prohibition of a further hearing if anyone demanded his claim in violation of the agreed timetable. Mehmed Tahir Bey explained that such an imperial order would serve to common good.[204] The needed action was asked from the government's chancery office which cited the condition that the debtors whose inability to pay their debts all at once had been established according to Islamic law in the presence of their creditors would pay their debts in installments in line with Islamic law. However, the office advised the issuance of an imperial order with a clarified timetable and the imperial order was issued accordingly.[205]

---

[202] A.DVNSDVE.d 106/1, p. 44, doc.99. Evail-i Rebiul Evvel 1254.

[203] "*mersum bir müddet habs ve tazyik ve maslahat gereği gibi terkin olunmuş isede sureti iflasında bir güna sania anlaşılamamış olduğundan.*"

[204]"*iş bu tarihden bed-i tadad olunmak üzere emr-i şerifim ısdar ve itası icab-ı maslahatdan idüğüni emin muma ileyhim ilam eylemiş.*"

[205] "*divan ı hümayunumdan muktezası sual olundukta bu makule defaten edayı deyne ademi kudreti dayinleri muvacehesinde ber nehci şeri sabit olan medyunun taksit-i şeri ile edayı deyn eylemesi şurutundan olub ancak sene tasrihiyle emr-i şerifim itası menut rüye-i alişanım idüğü tahrir olunmuş olmakdan naşi hususu mezbur aniyye-i felekmertebe-i tacidaraneme ledel arz istizan olunduğu vechile tesviyesi hususuna irade-i seniyye-i*

The imperial order addressed the judge of İstanbul and stated that Bağos would pay his debt in four installments after the end of the six years of grace period. The Sultan declared that he did not give his consent to the unjust treatment of Bağos with the demand of the debt at once or offering imprisonment by either Raşid or others. He instructed the judge to act accordingly and refrain from violating it after the order became known to him.

This case study is informative about the process of declaring an Avrupa Tüccarı bankrupt and solving the matter with the involvement of a number of people and institutions. It shows how the interests of the majority won. Moreover, although there was no mention of Islamic law in the initial settlement, after the persistence of the four creditors in refusing to accept the settlement, the superintendent of the customs explained the matter to the Sultan as an Islamic debt payment in installments as well as appealing to the concept of '*maslaha*', common good.[206]

The advice of the government's chancery office also emphasized the suitability of this case in terms of Islamic law. This would be related to the possibility of the unyielding creditors taking the matter to the Islamic courts and putting the settlement at risk. The imperial order indeed forbade this, but also emphasized the suitability of the verdict to Islamic law, which was perhaps aimed at convincing the judges of the Islamic courts. Therefore, even a settlement reached according to the mercantile customs had to adjust its form in line with Islamic law, which continued to be ''the law'' in the classical period. We do not know if this was always the case, but the evidence provided by the records of my source about the

---

mülükanem müteallık olarak ol babda emri hümayunumdan mahsusan iş bu emr-i şerifim ısdar olunmuşdur."

[206] See Akarlı, *Maslaha,* for the changing concept of Maslaha in the Ottoman judicial practise from ''common good'' to ''raison d'etat'' in the experience of İstanbul artisans. Although Mehmed Tahir Bey sought an imperial order to impose the will of majority over a minority in this case, it cannot be considered as an executive oppression which Akarlı identifies with raison d'etat. Here the initial judicial process took place with an input from below, not as a decree from above. The decree of sultan was sought not to harm the interests of a larger group which was in accordance with the traditional legal practice of the Ottomans.

dispute resolution at the customs both for intra-Ottoman and mixed cases, some of which I examine here, points out a clear cut divide between ‘’religious’’/Islamic law and ‘‘secular’’ mercantile customs were not the case in this period. The Ottoman judicial practice of the period rather had a ‘‘hybrid’’ nature which accommodated the demands of the merchants by giving space to their customs, but also preserved the dominance of Islamic law.[207]

A Note on the Relative Absence of Mixed and Intra-Avrupa Tüccarı Litigation in the Primary Sources

I examined two records of mixed commercial litigation including Avrupa Tüccarı and foreigners. However, they did not represent the normal state of things. Namely, they were recorded only because there was an involvement of the Porte in the matter upon request, which resulted in the issuance of imperial orders. Unfortunately, my source does not allow us to see conditions which did not require the involvement of the Porte thereby the merchants' agreement among themselves were sufficient. Apart from this two mixed commercial litigation brought into customs, there is another record concerning a dispute between a group of *Avrupa Tüccari* and a merchant under French protection. [208]

[207] Even for the late nineteenth century, when the Ottoman legal reforms reached their zenit this hybrid nature of Ottoman judicial practice continued. See Rubin, *Judicial Change*.

[208] A.DVNSDVE.d 106/1, pp.30-31, doc. 60. Evail-i (…) 1252 (1836-1837) In this case a group of Avrupa Tüccarı from Bursa petitioned the Sultan stating that French protege Espero Dimitri bought some goods from three French merchants six months earlier with a commercial bill but could not pay his debt when the bill expired and he fled. The French ambassador obtained a letter from the Grand Vizier for the seizure of his possessions in Konya, Kütahya, and Karahisar-ı Sahib and payment of the debts he owed to French merchants from it. However, Dimitri also owed 210000 kuruş to this group of Avrupa Tüccarı and they were treated unjustly because the arrangements were made only for the payment to French merchants. Therefore, they demanded an imperial order to include them among the creditors to be paid from the possessions of Dimitri. An imperial order was issued which included these merchants in the payment processes and called for the execution of Islamic law and establishment of justice.

As far as the records indicating the business relations and intra-Avrupa Tüccarı commercial litigation is concerned, there are only two entries. Yet, these records did not concern the Avrupa Tüccarı filing a suit against a fellow Avrupa Tüccarı. The first one concerned the public treasury's intention of seizing the inheritance of an Avrupa Tüccarı servant Naum son of Yoseb, who had died in Adapazarı while he was in debt to a group of Avrupa Tüccarı, in violation of the regulations. [209] The group of Avrupa Tüccarı creditors filed a petition requesting the transferring of Naum's property to İstanbul by means of a mübaşir appointed by beylikci. Accordingly, an imperial order addressing the substitute judge of Adana was issued calling for the transfer of the property to İstanbul through mübaşir İbrahim.

The second one was also related to a deceased Avrupa Tüccarı, namely Keşiş oğlu Ağya, who ended his partnership with Avrupa Tüccarı Kazancı oğlu Artin in 1252 (1836/1837).[210] After the death of Keşiş oğlu, some people appeared claiming he owed to them. They harrassed and pressured Artin by demanding this from him. Artin obtained a fatwa from the office of the jurisconsult of İstanbul (şeyhülislam) and by presenting it to the Sultan he requested this act to be prevented because he had ended all his business associations and discharged all his debts and obligations with Keşiş oğlu before his death. An imperial order was issued referring the case to the local Islamic court and if the case was as explained to prevent the intervention to Artin by Keşiş oğlu's creditors.

How can we explain this absence of record one Avrupa Tüccarı suing another Avrupa Tüccarı and almost the non-existence of an Avrupa Tüccarı suing foreign

[209] A.DVNSDVE.d 106/1, pp. 32-33, doc. 66. Evasıt-ı Şevval 1252/January 1837 '*emvali mezkura hilaf-ı şurut canib-i beyt'ül maldan zabt daiyesinde olunduğu beyanıyle'*. Fetehal (sic.) Gasban whose bankruptcy I examined in Case 10 was among the creditors too.
[210] A.DVNSDVE.d 106/1, p. 36, doc. 75. Evail-i (…) 1253.

merchants in the book that was kept for the matters of Avrupa Tüccarı by the government's chancery office? Since it is not plausible to assume that there were no disputes between them, we should look for other explanations.

If we are to accept that the Avrupa Tüccarı had intra-group disputes as well as disagreements with foreign merchants, then there should be some mechanisms that helped them to solve these matters internally. In fact, the two elements that were included in Avrupa Tüccarı berat*s*, namely the yearly election of merchant representatives to arrange the affairs of Avrupa Tüccarı and the mixed commissions at the customs, indicates these mechanisms.[211] In my analysis of Avrupa Tüccarı privileges in Chapter 2, I showed that Avrupa Tüccarı vekils were authorized to examine the accounts of Avrupa Tüccarı and help them to solve their disputes as long as it remained within the group. Moreover, they were given the responsibility of punishment of the Avrupa Tüccarı who violated the commercial rules with the approval of beylikci. Nineteenth century Ottoman legal scholar Sabit Efendi confirms this role and informs us that Avrupa Tüccarı vekils and Hayriye Tüccarı muhtars helped them resolve the disputes within and between these groups.[212] In addition, the records of merchant representative (vekil) elections in the ahkam defteri indicates that in the cities where there was a strong Avrupa Tüccarı presence, merchant representatives were also present, despite the fact that they were not elected each year in all the locations in violation of Avrupa Tüccarı regulation. These cities included İstanbul,[213] Edirne,[214] Bursa,[215] İzmir,[216] Niş,[217] Filibe,[218] Siroz,[219] Tekfur

[211] See Chapther Two for my examination of the roles of merchant representatives (vekils) and the status of mixed comissions.
[212] Sabit Efendi, p.159.
[213] A.DVNSDVE.d 106/1, p.9 doc. 3 (1250), p. 25 doc.45 (1250) , p. 25 doc. 46 (1250), p.35 doc. 73 (1253) , p.51 doc. 118 (1254).
[214] Ibid. p.18 doc.30 (1251) , p.38 doc. 80 (1253) , doc. 113.
[215] Ibid. p.18 doc. 29 (1251).
[216] Ibid. p.18 doc. 28 (1251), pp.48-49 doc.112 (1254).

Dağı,[220] Midilli,[221] Tırnovir,[222] Bergama,[223] and Ayvalık.[224] Although the primary sources do not say much about the activities of vekils and cohesion of Avrupa Tüccarı as a group in these cities, it is worth to remember Case Study 6 above, which revealed the active role of vekils and group cohesion of Avrupa Tüccarı to support a fellow Avrupa Tüccarı in a dispute with a group of Muslim merchants in Edirne. Therefore, these observations support the view that Avrupa Tüccarı solved their matters internally, which meant that these cases do not appear in the state records. Moreover, since the beylikci was the minister of the Avrupa Tüccarı for overseeing their affairs, matters that could not been solved within the group would have been referred to him[225] and solved without asking for the intervention of the Sultan.

As far as the mixed commission at the customs was concerned, they entered into the records of the book I examined only when there was a request for the intervention of the sultan with the issuance of an imperial order. Since beylikci was also responsible for the matters of foreigners and the superintendent of the customs administered the mixed commissions the matters would have been solved with these officials without reaching a higher level. My discussion of the Avrupa Tüccarı's claims from a French protégé also showed that a letter of the grand vizier obtained by the French ambassador had the effect of seizing the possessions of the protégé and paying his debts. This indicates that the grand vizier might have played a role in the

[217] Ibid. p.12 doc. 12 (1250).
[218] Ibid. pp.13-14 doc. 15 (1251), pp. 51-52 doc.120 (1254).
[219] Ibid. p.43 doc. 97 (1254).
[220] Ibid. p.54 doc. 126 (1255).
[221] Ibid. p.55 doc. 128 (1255).
[222] Ibid. p. 10 doc. 6 (1250).
[223] Ibid. p.13 doc.14 (1251).
[224] Ibid. p.14 doc. 16 (1251).
[225] In addition, The minister of İhtisab was appointed as the representative of beylikci for the matters of Avrupa Tüccarı in İzmir. See Ibid. p. 18 doc. 27 (1251), p.46 doc.106/1 (1253), p.47 doc. 108 (1254).

merchant's matters, but this was not recorded in the book I studied because his letters were not the same as the imperial orders written as if the sultan was speaking.[226]

Intervention in Avrupa Tüccarı Estates upon their Deaths

I discussed in the previous chapter that the Porte saw the non-Muslim Ottomans' desire to save their estates from the interference and seizure of the state upon their deaths as a hidden reason behind their search for foreign protection and included the protection of inheritances in its system of protection, namely Avrupa Tüccarı. However, it seems that the attempts to interfere and seize the estates of well-off Ottomans continued even if they obtained Avrupa Tüccarı berats. This often led to the complaints by the heirs and others who had claims on the property. There are eight records of such complaints during the period studied in this chapter.[227]

In 1835 an imperial order addressing the substitute judge of Mihaliç was issued upon the advice of the deputy beylikci to prevent the intervention to the estates of Çakal oğlu Dimitri from that town because he did not leave young children or absentee inheritors behind and his heirs did not wish a division of the estates by the court. [228] Within the same year, Avrupa Tüccarı vekils informed the sultan about the deaths of Avrupa Tüccarı Sotir oğlu Yorgi from Mihaliç and and his fermanlı servant Pirap oğlu and an unnamed servant of Pirap oğlu.[229] The minister of Avrupa

[226] I will be using the records of the Office of Grand Vizier and different ministries in the next two chapters. However, I was not able to locate such sources for the pre-Tanzimat period. Even for that period the primary sources reflect mostly the Avrupa Tüccarı's disputes with non-Avrupa Tüccarı.

[227] One of them was the complaint about the seizure of Naum's inheritance, which I examined in the previous section.

[228] A.DVNSDVE.d 106/1, p. 19 doc. 32. Evail-i Şaban 1251/ November 1835. In this case there is no mention of the complaints of Dimitri's heirs. It looks like the imperial order was issued after the note of communication of deputy beylikci.

[229] A.DVNSDVE.d 106/1, p. 20 doc. 35 Evasıt-ı Şevval 1251/February 1836.

Tüccarı, the deputy beylikci, cited the articles related to inheritances in the Avrupa Tüccarı berats and advised the appointment of a mübaşir to make arrangements for the property of these merchants along with the Islamic court. Accordingly, an imperial order addressing the judge of Mihaliç was issued and a mübaşir was appointed.

Avrupa Tüccarı Karamiz oğlu Ohannes filed a complaint petition against an intervention to the estates of his fermanlı servant Monik upon his death although he did not have any young children or absentee heirs.[230] Ohannes requested the issuance of an imperial order supported by the appointment of a mübaşir for the prevention of this action and delivery of Monik's estates to his heirs. An imperial order with the inclusion of mübaşir was issued after the advisory opinion of the government's chancery office.

In 1837, the heirs of deceased Avrupa Tüccarı Bağçıvanoğlu Karabet from Edirne petitioned the sultan asking the prevention of the interference to the estates of Karabet because he had divided them between his heirs and given them as gift while he had been alive and he did not have any heirs other than them.[231] An imperial order was issued instructing the chief judge of Edirne not to interfere with the inheritance of Karabet with the offers of sealing and survey if the deceased Avrupa Tüccarı did not have any other heirs.

It was also possible for the heirs to reach a settlement about the estate division among themselves but still face intervention by the state officials, which led to their complaints of the heirs and request for imperial orders in line with their privileged status. For example, the heirs of Söz oğlu Karabet from Amasya petitioned the Sultan complaining that they were interfered with the offer of sealing

[230] A.DVNSDVE.d 106/1, p. 31 doc. 62 Evail-i Ramazan 1252/ December 1836.
[231] A.DVNSDVE.d 106/1, p. 38 doc. 82. Evahir-i Şaban 1253/ October 1837.

the estate and a demand for taxes although they did not have any disagreement about the inheritance among themselves.[232] The Sultan asked the necessary action from the government's chancery office, which told him of the clauses about inheritances of Avrupa Tüccarı in the berats and advised the issuance of an imperial order for the prevention of the intervention if the matter was as explained. Hence, an imperial order addressing the substitute judge of Amasya in line with this advice was issued.[233]

These examples show that even some thirty years after the establishment of Avrupa Tüccarı system, the intervention to the Avrupa Tüccarı estates by the state continued. Under these circumstances, apart from the judicial privileges discussed in the previous section, a protection against the looming threat of state intervention and seizure of the estates of rich Ottomans must have played a role in making Avrupa Tüccarı berats attractive. In fact, the ordinary subjects were not the only ones whose estates were endangered by the intervention of the state. Confiscating the estates of the ruling class members had long been an Ottoman tradition, which had began to be applied to the ordinary subjects with the growing fiscal difficulties in the eighteenth century. This practice continued until the Tanzimat period.[234]

---

[232] A.DVNSDVE.d 106/1, pp. 40-41 doc. 89. Evahir-i Zilhicce 1253/ March 1838.

[233] There are two more entries with similar complaints which led to the issuance of imperial orders. For the complaint of the heirs of Lordon son of Luvakiç from Niğde see Ibid. p. 43 doc. 98 Evail-i Safer 1254/ April 1838. Moreover, the late Amasya resident Kemikçi oğlu Karabet's sons Agob and Artin and daughter Efsam (?) made a similar complaint. Ibid. p. 47 doc. 109. Evasıt-ı Cemaziyel evvel 1254/August 1838.

[234] Unfortunately, *müsadere* (confiscations) is not a well-studied topic of Ottoman history. For an overview of the practice of müsadere, see Tuncay Öğün, ''Müsadere'', *TDV İslam Ansiklopedisi*. However, this article does not make any references to the primary sources from the archives. Its scope is limited to the Ottoman chronicles and other secondary sources. Unable to find satisfactory sources to understand the Ottoman practice of seizure and confiscation of estates, I had to ask this question to the veteran Ottoman economic historian Mehmet Genç who spent more than 50 years in the archives, but unfortunaly has written only a very small fraction of what he knows. According to Mr. Genç, beginning from 1775 the Ottomans began to confiscate the estates of the well-off ordinary subjects although the Islamic law did not permit this practise. To this end, after the death of a rich Ottoman, the judge sealed and surveyed his estates and charged a fee between 1.5 and 5% percent for this

Avrupa Tüccarı Complaints about intervention in their properties

Avrupa Tüccarı's properties were not under attack only after their death but also during their lifetimes and this was not from the side of the state but from ordinary people.

Avrupa Tüccarı Eci Nikola son of İstirati from Ayvalık claimed that people with known names from the nomads (*yürükan taifesinden)* of the Kaşıkcı community had seized a certain farmland in Ayazmend unlawfully, which he possessed with a deed, used it for agriculture, and paid its taxes.[235] An imperial order was issued to the voyvoda and naib of Ayazmend instructing them to examine the case and if Eci Nikola had not left the land for fallow for more than three years and possessed it lawfully with the deed according to the Islamic and canonical laws, then the land had to be returned to him. On this occasion, Eci Nikola filed another petition accusing certain nomads from the Kaşıkcı community of burning his granary and hay storehouse and taking his grain and straws in violation of Islamic law and unrightfully.[236] He requested that his case be examined with Islamic law and with the means of a mübaşir and requested to be paid for the value of his burned granary and straw storehouse as well as the seized grain and straws. He requested that the accused nomads be brought into İstanbul if the execution of Islamic law and

---

operation. The items found as part of the estate were seized (*zabt*) by the state and auctioned. Then the state entered into a bargaining with the inheritors. They would be 'offered' to donate a portion of the inheritance for the war expenses of the state. If they did not accept this, the state offered to give them government bonds (*esham*) in return for taking a certain portion of the inheritance. Of course, this practice would not be desirable for the rich merchants and one would expect them to seek methods to evade it. As I have shown in the previous chapter, the Porte's awareness of the merchant's discontent is evident in the founding document of Avrupa Tüccarı. I thank Mr. Mehmet Genç for sharing his knowledge of this subject with me.

[235] A.DVNSDVE.d 106/1, p. 16 doc. 22. Evahir-i Cemaziyel 1251/September 1835.

[236] Ibid, p. 16-17 doc. 23. Evahir-i Cemaziyel evvel 1251 /September 1835.

establishment of justice were not possible locally. The Sultan asked the needed action from the government's chancery office and the office cited the 4000 akçe and appointment of mübaşir clauses. Therefore, an imperial order was issued calling for the establishment of justice locally and if not summoning the accused to İstanbul. Seyyid Abdi was appointed as mübaşir to help the case to be solved.

When Avrupa Tüccarı Nikola Bandozpolo wanted to do some construction work in his shop in Ayalık, the kocabaşı (official local notable for the Christian community) Eci Tınaş prevented him from doing so although he did not have any relation with the shop.[237] Nikola requested the issuance of an imperial order for his case to be examined by the Islamic court so that it would become apparent that his project would not harm anyone and the intervention of Eci Tınaş would be prevented. The matter was referred to the local Islamic court with the issuance of an imperial order addressed to the substitute judge of Ayvalık.

Although the Porte were supportive of the Avrupa Tüccarı's demands to protect their property rights, it seems that buying property which had been owned by Muslims since the times unknown (*kadim*) was the limit of the Avrupa Tüccarı's privileges. The case Avrupa Tüccarı Engli son of Anton's fermanlı servant Dimitraki, who bought a farmhouse in the village of Ferik Ali of the town of Malkara from a Muslim named Ali is an example for such a case.[238] The Muslim population of the village filed a lawsuit at the Islamic court demanding the sale of the farm to a Muslim according to a fatwa they presented to the court and a hearing took place. When questioned about the matter, Dimitraki professed that he would not reside on the property, but would turn it into a farm for agriculture and stockbreeding and pay his taxes. He suggested that the people of the village could buy the farm and

[237] A.DVNSDVE.d 106/1, p. 34, doc. 69. Evasıt-ı Zilkade 1252/February 1837.
[238] A.DVNSDVE.d 106/1, p. 24 doc. 43, Evahir-i Safer 1252/June 1836.

everything inside at its current value if they did not want it to remain in his possession. However, the people of the village replied that they could not buy it, but they did not wish it to remain in his possession.

The substitute judge of Malkara sent a note of communication to the Sultan asking for an imperial order to confirm that the farm would remain in Dimitraki's possession. Remarkably, the request of the judge was not accepted because the government's chancery office found it harmful to allow the transfer the houses, which had been owned by Muslims since the time unknown to the non-Muslims. Therefore, an imperial order calling for the sale of the farmhouse with its current value to a Muslim was issued.

Similarly, when there were Avrupa Tüccarı complaints about the illegal seizure of their lands, the government's chancery office wanted to know whether these lands belonged to Muslims since the time unknown or not in order to determine if the Avrupa Tüccarı was rightful. [239]

Avrupa Tüccarı Complaints about Over-charges and Over-taxation

It became clear from my analysis of Avrupa Tüccarı berats that the only tax breaks granted to them were customs dues for international trade. Moreover, the fees collected by the courts for debt collection from Avrupa Tüccarı was fixed at two percent. As for the poll tax, they paid more than even the highest amount of poll tax for the ordinary Ottomans, but they had a different method of payment. However, according to my source, it seems that Avrupa Tüccarı sought the support of the Sultan not only for these items, but also for those not listed in the berats.

[239] For example, see Ibid. p. 52 doc. 122. Evahir-i Zilkade 1254/February 1839.

As seen in the previous chapter, the Avrupa Tüccarı was granted the privilege of paying three percent customs dues for international trade and protected against repeated taxation similar to the foreign merchants with safe conduct. Unsurprisingly, occasionally the Avrupa Tüccarı complained about unjust treatment at the customs. Avrupa Tüccarı from the towns of Yenişehir-i Fenari, Tırhala, Tırnovir, and Galos filed a petition to the Sultan complaining that the customs officials of Galos annoyed and oppressed them for the goods and provisions they brought from Europe and Trieste to the port of Galos by over calculating the value of their imported goods.[240] Likewise, the Avrupa Tüccarı Artin complained about repetitive taxation for the goods he transferred from İstanbul to Trabzon after paying the necessary dues and obtaining a receipt of payment.[241] In addition, Avrupa Tüccarı Kerevye (?), Soğomon and Bedros petitioned the Sultan to complain about the customs of Diyarbakır, which demanded dues for the precious stones they brought from India and Baghdad although the dues were to be paid at İstanbul, the final destination of their imported goods.[242] After communicating with the government's chancery office and customs office in İstanbul, the Sultan issued imperial orders confirming the privileges of these merchants and instructing the customs officials to act accordingly in all of these cases.

There are two records of the Avrupa Tüccarı's complaints about the overcharge of fees for debt collection at the local courts. The first one was a petition filed by a group of fermanlı servants from Bergama, who complained about the breaking of their honors (*kesr-i itibar*) and being oppressed by the demand of fees more than two percent by the local court when they collected the debts due to them

[240] Ibid. p. 44 doc. 100. Evahir-i Rebi'ül evvel 1254/ June 1838.
[241] Ibid., p. 50 doc. 116 Evasıt-ı Rebi'ül Evvel 1254/ June 1838.
[242] Ibid., p. 54 doc. 126 and 127, Evail-i Safer 1254/ April 1838.

using the means of the local court.[243] Similarly, Avrupa Tüccarı Lağom (?) submitted a petition complaining that the courts of Aydın and Saruhan provinces had oppressed him by demanding a fee more than two percent at the time of collection of debts due to him.[244] Both petitioners demanded imperial orders for the prevention of this act. When the Sultan asked the necessary action for these cases, the government's chancery office cited the clauses related to debt collection in Avrupa Tüccarı berats. Moreover, for the first case, an article that was not part of the berats was included. Namely, the prevention of demanding a fee with name of *def' resmi* (refutation fee) for the claims that could not be proven.

Imperial orders were issued for both cases, to the substitute judge of Bergama for the former, and to the governor of Aydın and the judges of the courts in Aydın and Saruhan provinces for the latter, instructing them to prevent the practice of demanding a fee of more then two percent for debt collection. Remarkably, these petitions did not include any requests for the support of the Porte for the legal procedures of debt collection at the local Islamic courts, but only asked for the prevention of extra fees. This offers us further evidence that the Avrupa Tüccarı used the local Islamic courts without feeling the need to ask for the involvement of the Sultan, which in turn means that these cases were not recorded in the central archives that were used in this study. Therefore, further studies are needed using the local court records of the cities in which the Avrupa Tüccarı had a strong presence to illuminate their use of the courts and the conditions of the Ottoman judicial system during the last years of the classical period.

[243] A.DVNSDVE.d 106/1, p. 14 doc. 17. Evasıt-ı Rebiülevvel 1251/ July 1835.
[244] Ibid., p. 40 doc. 87. Evasıt-ı Zilkade 1253/ February 1838.

As for the collection of the poll tax, I found out only one petition. It was filed by the Avrupa Tüccarı and their servants from the town of Ayvalık.[245] They complained about the poll tax collectors, who offered them poll tax papers although they had a privileged status and were allowed to pay it directly to İstanbul through their vekils. The Sultan backed their privilege and sent imperial orders to the substitute judge and tax collector of Ayvalık for the prevention of this ‘‘oppressive’’ act.

Lastly, the Avrupa Tüccarı sought the protection of the Sultan from the overburden of extraordinary taxes although there was no direct reference to them in the berat texts. Fermanlı servants of Avrupa Tüccarı from the town of Manastır complained that although they had been paying their share of the extraordinary taxes levied by means of imperial orders, without any mistake in amounts as high as their lands and properties could endure its burden,[246] taxes higher than they could endure according to their conditions had been demanded. Moreover, they objected to being forced to entertain in their houses those who come to Manastır as guests, to give them food and their animals fodder. An imperial order for the prevention of this oppression and hurtful acts was issued on December 1833 (Evasıt-ı Şaban 1249). However, the Avrupa Tüccarı servants petitioned one more time to ask for a reiterating imperial order when there had been no change in the previous conditions except that their animals had begun to be taken and given to others to use.[247]

After the examination of the records, it became clear that according to the canonical laws when an extra ordinary was levied on a village or town, it should have been collected from the possessors of the lands and properties of these places

[245] A.DVNSDVE.d 106/1, pp. 14-15 doc. 18. Evasıt-ı Rebi’ül evvel 1251/ July 1835.
[246] ‘*ba evamir-i aliye varide olan tekaliften tasarruflarında bulunan emlak ve arazi hal ve tahammüllerine göre hisselerine isabet ideni edada kusurları yoğiken…*’
[247] A.DVNSDVE.d 106/1, p. 11 doc. 7. Evasıt-ı Zilkade 1250/ March 1835.

according to the condition and endurance of their lands and properties. After they had paid their share of the extraordinary taxes to the officials, they should not have been oppressed by the request for levy of additional taxes without imperial orders. Moreover, it appeared that previously imperial orders had been sent to the provinces of Anadolu and Rumeli requiring the viziers, high-ranking government officials and soldiers to stay in the khans upon their arrival to the towns and only to be given water by the townsmen. They were not to be given any food, fodders, beds or seats and were to meet their needs with their own means and money. The townsmen were not to be hurt or suffer damage in any way. In addition, the articles of universal protection of the Avrupa Tüccarı according to their regulation and conditions became evident after the examination of the government records. A reiterating imperial order was issued and sent to the substitute judge of Manastır, instructing him to act accordingly, and avoid violating Islamic law and the regulations of the Avrupa Tüccarı.[248]

Likewise, Avrupa Tüccarı and their fermanlı servants from Gelibolu filed a petition complaining about the demands for additional extraordinary taxes although they had been paying their shares according to the endurance and condition of their lands and properties.[249] They dissented to being required to house guests, and asked for food and seats. Moreover, they complained about the holding of the goods they brought into the provinces through land and sea routes with the demands of tribute and consul's guard akçe (*bac ve yasakcı* akçe*si*). Furthermore, they objected to being oppressed by the unlawful seizure of their mercantile ships and requested the issuance of an imperial order for the prevention of the aforementioned transgressions. An imperial order calling for the end of the oppressive practices and

[248] For an almost identical complaint of Avrupa Tüccarı from Seluri and an analogous imperial order, see Ibid., p. 40 doc.88 and doc. 88. Evasıt-ı Zilkade 1253/ February 1838.
[249] Ibid., pp. 11-2 doc. 9. Evasıt-ı Zilkade 1250/ March 1835.

return of the merchants' ships that had been seized, with references to the Islamic law, canonical law and the universal protection clause of Avrupa Tüccarı berats was issued.

Therefore, from the above examples it appears that being an Avrupa Tüccarı helped the Ottoman merchants base their claims of over taxation on their vested rights as stated in their berats. Even when they faced demands of taxation, which was not included in their berats directly, the clauses of universal protection of the Avrupa Tüccarı could give them a safe haven to resist the demands of the mighty local officials and appeal for the Porte's intervention. Although the claims about taxation were relatively smaller in comparison to the applications to the Porte for debt collection, the above examples show that these claims would be relevant when faced with the excesses of provincial officials; thereby having them as vested rights was valuable.

Conclusion

In this chapter, I examined the operation of the Avrupa Tüccarı system in the last years of the classical age, when the classical Ottoman institutions, the primary reference of which were Islamic law, such as the Arz Odası and the extensive network of Islamic courts, continued to operate intact side by side with the Customs offices where mercantile customs were the main reference.

From this analysis, two pictures emerge. One is about the privileges of being an Avrupa Tüccarı, and the other is about the limits placed on these privileges within the realities of the Ottoman world. Although the system might have not provided the full security and freedoms for the activities of the Avrupa Tüccarı and a complete

protection of their estates upon their deaths as envisaged in the establishment of the system by the Porte to prevent Ottoman merchants from seeking foreign protection, it certainly provided a number of judicial privileges, advantageous taxation and securer property rights.

The Avrupa Tüccarı used the Islamic courts for commercial litigation with non-Avrupa Tüccarı for large claims. When they faced problems with the enforcement of a court's decision, they could turn to the Sultan for the appointment of a mübaşir from the center and collection of the debts at the local Islamic court. An order for the appointment of a mübaşir could include a clause for bringing the defendant to İstanbul for trial if the case could not be solved locally, thereby putting further pressure on the litigants to reach a settlement with the Avrupa Tüccarı claimants.

The Avrupa Tüccarı also accessed to the customs offices both for disputes involving only the Ottomans and for mixed litigation. However, even for the settlements reached at the customs, the collaboration of the extensive network of the Islamic courts for the collection of debts at various localities were needed. Moreover, some unsatisfied litigants challenged the settlements reached at the customs, therefore the judgments should be adjusted to the Islamic law at least in form and an imperial order prohibiting the further hearings would be needed.

The Arz Odası, which in theory was the only court for Avrupa Tüccarı litigation over 4000 akçe, also examined cases although the 4000 akçe clause was largely a protective measure for the Avrupa Tüccarıs litigation in the provinces. The hearings at the Arz Odası showed that the experts examined merchants' books and bringing witnesses alone was not enough to dismiss the written evidence. Moreover, even when written evidence was not enough for an Avrupa Tüccarı to prove his case,

arrangements about the witnesses could be made in order to establish his claim. Indeed, documentation was an essential part of the Avrupa Tüccarıs contracts as all the claims of Avrupa Tüccarı relied on written evidence such as bonds, books, bills, and deeds.

Interest was often included in the contracts, but for the validity of interest in an Islamic court, the transaction had to utilize the Islamic legal tricks to hide the direct interest. The Avrupa Tüccarıs access to the Arz Odası seems to have created a jurisdictional conflict as an Avrupa Tüccarı would likely resist an unfavorable decision of a local court while those who lost their legal battle against an Avrupa Tüccarı at the Arz Odası might attempt to take the case to local courts for further hearing. When confronted by a strong ulema coalition Avrupa Tüccarıs resistance might be unsuccessful but the need felt by the kadı to receive the support of the sultan to enforce his decision implies limitations of kadıs power against an Avrupa Tüccarı.

The disputes among the Avrupa Tüccarı seems to have been resolved within the group as these cases largely remained outside the records of the central state. The vekils of the Avrupa Tüccarı were authorized to examine such cases and there might be a modus vivendi among the Avrupa Tüccarı not to involve the authorities in these cases. In fact, attracting the state's attention would not always have been desirable as it would mean payment of the fees and give the officials knowledge about the fortunes of the Avrupa Tüccarı, which might be used to make further demands of taxation, and raise the possibility of intervention in their estates. In fact, more than thirty years after the Porte identified the intervention in merchant's estates as one of the reasons behind for their search for foreign protection and promised to protect Avrupa Tüccarı estates, the intervention continued. The authorities' attempts of

excessive taxation and customs overcharges continued although these practices did not find the sympathy of the Porte.

Regrettably, I was not able to compare the protection offered by the consuls and the Porte for the Ottomans within the limits of a master's thesis, but it is worth emphasizing that the consular protection system had to rely on the mechanisms such as the Porte, Islamic courts, customs offices and provincial officials similar to the Avrupa Tüccarı. Therefore, the limits that derived from the realities of Ottoman world[250] should have been placed under the consular protection as well.

In conclusion, the institutional framework of the Avrupa Tüccarı system seems to have worked well, although with certain limits. This would also explain the demand for Avrupa Tüccarı berats and the increases in their number. The empirical evidence I presented above also supports the successes of the Avrupa Tüccarı observed by Urquhart and European ambassadors of the time. We know that that there were Avrupa Tüccarı dealing with millions of kuruş and trading in a large area between India in the East and Trieste in the West. There is no evidence that their success was due to their access to advanced European legal codes, as claimed by Timur Kuran. Moreover, a total avoidance of Islamic law as maintained by Sabit Efendi does not appear to have been possible even if desired by the merchants. Lastly, although the system initially was designed for the merchants dealing with international trade, the above examples shows that the Ottoman realities continued to dominate the Ottoman world as Ottoman entrepreneurs used the Avrupa Tüccarı privileges for their activities in the domestic tax-farming sector, which was one of

[250] By Ottoman realities, I mean the characteristics of the Ottoman Empire since the eighteenth century such as the merchant's vulnerability against a mighty state and its ''predatory'' officials. Moreover, the prevalance of the public finance in the economy overshadowing the other sectors, even the international trade, was part of this picture. Thus, Ottoman realities largely represented the internal dynamics of the empire although they might have emerged as a response to the external challenges such as the wars.

the most classical institutional forms in the Ottoman Empire. With all its successes and failures, the Avrupa Tüccarı system was an institutional innovation originating from the classical Ottoman system of governance, and the experiences of Avrupa Tüccarı was an integral part of the last years of the classical age.

CHAPTER IV

AVRUPA TÜCCARI IN THE AGE OF REFORM

This chapter begins with a review of the road to the reform period in the Ottoman Empire. The project of building a strong central state run by a bureaucratic apparatus and governed by the new laws and regulations entered the agenda of the Ottoman ‘‘reformers’’. The reorganization of the central administrative units was the first step in a total overhaul of the system. The establishment of the Ministry of Trade, was part of the policy of the reorganization at the center. However, it was also the continuation of the policy of the institution building in order to give regulation and order to the trade of merchants, which was expected to lead to an increase in trade and the prosperity of the country that begin with the establishment of the Avrupa Tüccarı system.

The proclamation of Gülhane Decree in 1839 marked the beginning of an overall reorganization of the system rather than particular reforms. The new era was named the Tanzimat, or reorganization. The Gülhane decree aimed to grant security and freedom to the Ottoman subjects, establish a fair system of taxation and conscription so drawing up new legislation was seen as necessary. With the reorganization, the projected outcome was familiar: an increase in trade, prosperity of the country, and catching up with the developed world. Remarkably, the diagnosis of the problems of the Ottoman Empire in the Gülahane Decree and its promises were parallel to the memorandum for the establishment of the Avrupa Tüccarı and the assurances of the system to the merchants.

Soon after the Gülhane, provincial and district level councils were established throughout the empire in an order to administer the direct taxation that replaced the tax farming. While there was a return to tax farming two years later, the local councils remained in place and played an important administrative and judicial role on the local level. They also became one of the bodies to which Avrupa Tüccarıs commercial litigation were referred for examination along with the Islamic law and the mübaşir appointed from the center.

After reviewing the general reform agenda, I will focus on the evolution of the Ministry of Trade and of the Commercial Court. I will examine the attempts to regulate the functioning of the Commercial Court, which culminated in the publication of the Ottoman Commercial Code. The Code represented the continuation of the policy of accommodating the increase in trade by taking it under a strong regulation and contributing to its increase. The Avrupa Tüccarı had permanent representation at the court and participated on the committee that prepared the Commercial Code. With the establishment of commercial councils in the provinces mostly by local demand, the Avrupa Tüccarı assumed another role, namely that of *deputat*s (deputies) on the board of these councils that were similar to the Commercial Court of Istanbul.

Subsequently, I will examine how the Avrupa Tüccarıs used the new institutions. I will show that Tanzimat's councils became active venues for examining the Avrupa Tüccarı lawsuits. The Commercial Court in İstanbul sat at the top of the local councils and if a local solution could not be found, the matter was to be brought into the capital. I will demonstrate what were the merchant's motives of choosing a particular forum and under what conditions a case were referred to the Islamic law (*şer-i şerif*) from the Commercial Court.

Then I will delve into the Porte's perception of the Avrupa Tüccarıs legal acts and its policy towards the privileged merchants. This policy was in interaction with the Avrupa Tüccarı as they expressed their demands with joint petitions or with the petitions of their representatives. While the Porte wanted to limit the Avrupa Tüccarı's usage of the commercial courts and councils to the matters related to trade, the Avrupa Tüccarı strove to guarantee their exclusive access to the commercial court/councils against the attempts to refer them to Islamic law. Hence, the Porte struggled to strike a balance between remaining in control of the legal system, but also accommodating the demands of the Avrupa Tüccarı. Studying the demands of the Avrupa Tüccarı will reveal the impact they had on the process of Ottoman legal reforms.

Following the collective petitions of the Avrupa Tüccarı, which compelled the Porte to reform, I will examine the conditions of a new world. This world was much different from the one just twenty years earlier. The experiences of this changing world influenced later legal developments such as the codification of Islamic law to complement the Commercial Code used in the commercial courts and act as the main reference in the regular courts. This codification also represented the Ottomans' positive perception of growing trade and their attempts to ease the conditions of trade for the merchants.

Later, I will probe into the participation of the Avrupa Tüccarı in tax farming and the ensuing conflict between them and the sarrafs about the jurisdiction for the disputes between them. Although the Porte tried to keep the jurisdictions of the tax-farming related disputes and the commercial disputes arising from the tax-farming investments apart, it seems that the line between the two was often blurred. While the sarrafs managed to obtain the backing of the Porte not to be referred to the

Commercial Court in the short run, they could not resist to the tide of unification in the Ottoman legal system for long.

Lastly, I study the Addendum to the Commercial Code, which envisaged the establishment of an empire-wide network of commercial courts under the scrutiny of the Porte and entailed the bureaucratization of the jurisdiction for commercial litigation. The Addendum promised to facilitate access to the commercial courts for everyone as long as the matter was related to the trade, thereby undermining the privileged status of the Avrupa Tüccarı. Consequently,the Avrupa Tüccarı's privileges were abolished along with the sarrafs who sought to continue their privileges with a new regulation.

The Footsteps of the Reform Period

Current scholarship describes the nineteenth century Ottoman Empire as a scene of rivalry between reformers and reactionary counter reformers, who gradually lost their power.[251] According to this account, faced with the military, economic, and political supremacy of the external powers, the growing discontent and nationalism of the local populations, especially the Christians living in the European provinces of the empire, and the challenge of the Muslim provincial power holders, a reformist cadre at the Ottoman center undertook a reform program starting from the times of Selim III with the support of reform-minded sultans.

The ulema and Janissaries were seen as the main reactionary forces on the way of reforms and therefore needed to be eliminated. Hence, with the abolition of

[251] Even the most recent history of the late Ottoman Empire written by Şükrü Hanioğlu repeats this story. See M. Şükrü Hanioğlu, *A Brief History of the Late Ottoman Empire* (Princeton: Princeton University Press, 2008).

the Janissaries in 1826, and the resulting decline of the power of the ulema, the road to reforms was finally opened.

Unfortunately, challenging this story of the clash between two homogeneous entities is far beyond the scope of this master's thesis. Moreover, given the historical evidence, the notion of reform in nineteenth century Ottoman Empire cannot be denied and my thesis tells the story of reforms in the commercial field. Therefore, while I feel uneasy with these stories of reform, I need to follow their accounts for the nineteenth century reforms and hope to challenge this dominant paradigm with my future research.

Within the nineteenth century scholarship of Ottoman historiography, Mahmud II was seen as the man who achieved what his cousin Selim III could not. He was able to break the power of the provincial power holders and reestablish the central control over the provinces, abolish the Janissaries and diminish the power of the ulema. A new army was established following the destruction of Janissaries. Since the traditional methods of short-term income generation such as debasements and selling government bonds were not sufficient to meet the needs of the new army, a monopolistic system was established for major export items enabling, the government to increase its revenues without directly violating the capitulations. [252]

[252] See Mehmet Genç, ''Yed-i Vahid,'' *TDV İslam Ansiklopedisi*, forthcoming. Although the classical method of offsetting the budget deficits with resorting debasement and selling government bonds were heavily employed during the reign of Mahmud, they were far from being able to ameliorate the ever-increasing budget deficits let alone to finance the new army. Hence, additional measures were needed in order to finance the new army. Taxes were increased for items that had been taxed with specific price lists and censuses were conducted in order to gather more accurate information about the taxpayers' profiles. However, all of these measures remained inadequate. Under these conditions, the increasing profits accrued from the international trade appeared as a natural target. As the customs dues for the international trade were determined by the capitulations and could not be increased without the acceptance of ratifying countries, the Ottomans creatively established a monopoly system for the buying and selling rights of a number of popular export items such as opium and acorns of valonia oak. Under the new system, obtaining government permits was necessary for buying produce from the farmer and transferring it to the designated port cities and the permits were granted exclusively to Ottoman merchants. Moreover, the government agents

Mahmud II reform scheme entailed the building of an ordered and institutionalized state with the beneficent reordering (*Tanzimat-ı Hayriyye*) of state and society.[253] This scheme gave its name to the period after the issuance of Gülhane Decree shortly after Mahmud IIs death, namely the Tanzimat era.

To lay down the details of this reform program and draw up the necessary legislation, Mahmud II established two legislative bodies in 1838.[254] As one of these bodies, the *Meclis-i Vala* (Supreme Council of Judicial) gave its imprint to the Tanzimat period by playing an important legislative and judicial role. Moreover, Mahmud II's project necessitated a strong central state that needed the creation of a modern bureaucracy that would be in service of this state and establish its control over the population. The reform of the central administration was part of the attempts to create an effective bureaucracy. Therefore, during the last years of Mahmud's rule, the classical central administrative units were transformed into new ministries in the European style. In 1836, the office of the lieutenant grand vizier was turned into the

---

taxed the produce upon its arrival to the designated city before it was sold to foreign merchants. The new method enabled the Porte effectively to increase its revenues from the export items from three percent to as much as thirty percent. This monopolistic practice was taken one-step further with the establishment of the *yed-i vahid* (literally means single-hand, meaning monopoly) system for opium in 1830. Under the new practice, merchants with permits bought opium directly from the farmers at the place of production at prices determined by the state, and were required to sell it to the Minister of İhtisab in İzmir with the addition of a profit margin. Thereby the minister became the sole buyer of the opium, which also made him the sole exporter in the name of the state. This led to a 75 percent increase in the price of opium in 1830 alone. Mehmet Genç mentions the Avrupa Tüccarı among the merchans who were given permits, but does not give any reference. I found two documents showing Avrupa Tüccarı activities within the yed-i vahid system. See HAT 529/26074 for the sale of 32000 *çeki* (an Ottoman scale measure) opium for 3200000 kuruş to the two Avrupa Tüccarı with 'known' installments. (29 Zilhicce 1250). Also see HAT 527/25863 (29 Zilhicce 1252) which mentions Avrupa Tüccarı making a demand for 10000 *çeki* opium after the government had bought the opium from the merchants and sold to four foreign merchants a year earlier. The document shows how the army treasurers were looking for possible buyers and informing Avrupa Tüccarı about the opium sales before the harvests.

[253] Stanford J. Shaw, ''The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement before 1876,'' *International Journal of Middle East Studies* 1, no. 1 (Jan., 1970), p.54. Shaw translates ''*müesses*'' as ordered but I believe ''institutionalized'' is a better choice since this word is also related to the ''*müessesat*'' (institutions) and the result of the reform program was the institutional reordering of the Ottoman Empire.

[254] Ibid.

Interior Ministry and the office of *reisul küttab* was transformed into the Foreign Ministry. Likewise, the Treasury became the Ministry of Finance in 1838.

This age was also characterized by turmoil. The Greek Rebellion was supported by the Franco-British-Russian destruction of the Ottoman fleet at Navarino in 1827, and the Russian advance in the Balkans that threatened İstanbul and ended with the Treaty of Adrianople in 1829, granting autonomy to Greece. With the British involvement, Greece was born as an independent state. France occupied Algiers in 1830. Moreover, unable to hold out against the Greek Rebellion, Mahmud II had to seek the help of the governor of Egypt, Mehmed Ali Paşa. Although Mehmed Ali's help could not save Greece for the Ottomans, he demanded the hereditary governorship of Egypt and Syria as a compensation for his aid. When his demands were not met, Egyptian forces occupied Egypt and Syria and defeated Ottoman forces at Konya, in the heart of Anatolia. Hopeless Mahmud sought the help of his archenemy, Russia, the navy of which sailed to the Bosporus and forces landed in İstanbul in 1833. The Ottomans concluded a defensive treaty with Russians in 1833, thereby ringing alarm bells in London about the Russian advance in the East.

This led to a pro-Turkey turn in the British policy towards the Near East and paved the way for Ottoman-British rapprochement against the Russian advance.[255] Hoping to obtain British support against Mehmed Ali, Ottoman foreign minister Mustafa Reşid Paşa negotiated a commercial treaty with Britain, which was signed at his palace at Baltalimanı on the shores of Bosporus on 16 August 1838.[256] The treaty confirmed all the previous privileges granted to the Britain. Moreover, the

[255] For this background see Roderic H. Davison, ''Britain, The International Spectrum, and the Eastern Question, 1827-1841,'' *New Perspectives on Turkey*, No. 7 (Spring 1992), pp. 15-35.
[256] Mübahat Kütükoğlu, ''Baltalimanı Muahedesi'', *TDV İslam Ansiklopedisi*. For the English version of the Treaty see J. C. Hurewitz, *The Middle East and North Africa in World Politics: A Documentary Record* (New Haven: Yale University Press, 1975), pp. 265-266.

monopolies and permits were abolished and the British merchants and their agents were allowed to make purchases at all places and of all kinds of Ottoman produce without any exception. The British merchants were also given the right to sell the Ottoman produce internally for Ottoman consumption by paying the dues the most favored class of Ottoman merchants paid. For exported goods, an internal duty of 9 percent had to be paid when the goods were moved from the interior and a further 3 percent at the boarding port. Imported goods became subject to a 3 percent duty upon the entry and additional 2 percent if moved into interior. This meant that a number of internal duties with different names were replaced by a single duty.

Coupled with the abolition of the monopolies, it indicated the unification of the internal markets of the Ottoman Empire and opening them up to the British merchants. The conditions of the Treaty were to be applied in all Ottoman dominions including Egypt and to all Ottoman subjects. Moreover, the treaty also left the door open for its extension to other foreign powers by stipulating that ‘‘the Turkish Government also agrees not to object to other foreign Powers settling their trade upon the basis of this present Convention.’’[257] Indeed, similar treaties were accorded with France, Hansen League, Holland, Denmark and Belgium.[258] Accordingly, the article of berats about the duties Avrupa Tüccarı paid for international trade were adjusted following the rates of the Baltalimanı Treaty in July 1840.[259] However, this

[257] Hurewitz, p.266.
[258] Kütükoğlu, *Baltalimanı*.
[259] See MAD.d 21192, pp.-9-10, Evail-i Cemaziyel Evvel 1256. ‘‘*…tüccarı merkumun diyarı ecnebiyeden memaliki mahrusama getirdikleri emtia ve eşyadan İngiltere ve Fransa devletleri ve sair bazı düvel-i mütehabe ile muahharan akd olunan ticaret muahedesi ve tanzim kılınan tarifesi vechile hıyn-i vürudunda amediye olarak yüzde üç ve gayri ez damga reftiye ve rüsumat-ı saire yerine munazzam olan yüzde iki resmi gümrük ve memalik-i mahrusa-i şahanem mahsülünden nakl idecekleri emtia ve erzakdan mahalinde bayi tarafından virilecek öşriyle icab iden resm-i damgadan başka ber muceb-i tarife-i mezkura iskelelere hıyn-i tenzilinde yüzde dokuz ve dışarı götürdüklerinde yüzde üç reftiye resmi alına…*’’

change also included a warning that the Avrupa Tüccarı were not immune from the required duties in the internal trade.[260]

Although the Baltalimanı Treaty was an economic document in appearance, it was also a political document aimed at weakening Mehmed Ali and securing British support against him.[261] Similar to the Ottoman monopolies, Mehmed Ali also had agricultural monopolies, which were the main source of revenue for his armies that Mahmud II's forces could not withstand even in the Anatolian heartland. Therefore, by abolishing the monopolies, Mahmud II hoped to deprive him of a major source of revenue and weaken his military might. For this, he was ready to relinquish his own lucrative monopolies. [262]

In this regard, the Baltalimanı Treaty paid off. Although the Ottoman troops were defeated one more time by the Egyptian army in 1839, Mehmed Ali was forced to accept leaving Syria and Adana in return for a hereditary rule of Egypt with the signing of the Convention for the Pacification of the Levant in 1840. Moreover, with the Straits Convention of 1840, the straits were closed to warships when the Ottomans was at peace and Russians gave up the privileges they obtained in 1833. Hence, the Baltalimanı Treaty as an economic document was followed by political documents that contributed to the prolonged continuance of Ottoman rule in parts of its oldest territories.[263]

---

[260] Ibid. ''*...ve memalik-i mahrusa-i şahanem derununda bey ve füruht olunan kafe-i emtia ve eşya ve erzakın dahi rüsumatı mukteziyesi usulü mukarrara vechile bila cevr ve eza tediye ve ifa kılına...*'' Although this warning was not part of the previous berats, the Avrupa Tüccarı's privileges about customs duties were limited to international trade and they had to pay the required duties for the internal trade.

[261] Davison, pp. 27-34

[262] Genç, ''Yed-i Vahid'' makes this point. The monopolies were established for political purposes, namely to support the new army, which would make protect the state, and abolished for political purposes when other ways of protecting the state looked more attractive.

[263]This approach of interpretating the Baltalimanı as an economic-cum-political document followed by political documents belongs to Roderich H. Davison. See Davison, pp.27-34 for

Establishment of the Ministry of Trade

Almost a year after the ratification of the Baltalimanı Treaty and in line with the foundation of ministries as part of the administrative reorganization of the empire, the Ministry of Trade was established on 24 May 1839.[264] The memorandum explaining the reasons behind the establishment of the new ministry gives important clues about what was aimed at with the new institution.[265] It declares that other states had a special and independent minister to oversee the affairs of the merchants and guildsmen and their trades and production according to the regulations. These ministers gave a serious attention to the increase of the production and trade, and the prosperity of their countries. Moreover, they were authorized to administer the lawsuits of the foreigners who lived in or were visiting their countries for trade according to the rules and laws of the trade. Although the merchants and guildsmen were also present and tied to the regulations in the Ottoman Empire, the markets had been unable to acquire enough demand and assemble because their affairs had not been overseen by a single administration.

For the same reason, Ottoman subjects had been unable to enjoy the taste of trade satisfactorily, trade and production had been unable to progress, and everything had come to a halt. Therefore, the Ministry of Trade had been established to put the articles of trade and crafts into order and give special care to procure the national and public rules that would lead to the expansion of trade.

---

the details. According to Davison, the Hatt-ı Şerif of Tanzimat issued on 3 November 1839 was another political document following the Baltalimanı. I will examine this seperately below due to its importance. For the texts of these documents, see Hurewitz, pp. 265-278.

[264] Ali Akyıldız, Tanzimat *Dönemi Osmanlı Merkez Teşkilatında Reform* (İstanbul: Eren, 1993), p. 129.

[265] HAT 1440/59175, 29 Z 1255.

Mehmed Said Paşa was appointed the minister of trade. The government purchases of grain and provisions at special prices had been seen as detrimental to the agricultural production thus abolished previously. Administering the production of grain and provisions were seen related to the affairs of the trade and so were moved to the new ministry with the expectation of an increase in production. Moreover, the supervision of the affairs of the Ottoman merchants who engaged in the trade of Europe with berats (both Avrupa and Hayriye Tüccarı) was taken from the beylikci and moved to the new ministry. From then on, berats given to these merchants and imperial orders given to their merchants were to be granted with the proposal of the Minister of Trade. The fees paid to the Treasury and Customs for these licenses were to be disbursed to the treasury of the new ministry. Moreover, the adjudication of the disputes between the Ottoman merchants and foreigners with safe conduct were transferred from the customs to the new ministry.[266] For this purpose, a council of lawsuits adopting the role of a commercial court[267] was established. Lastly, the customs and office of the guilds and markets had to apply to the Ministry of Trade for matters related to the state.

Comparing this memorandum with the memo for the establishment of the Avrupa Tüccarı system written thirty-seven years earlier indicates similar rhetoric of the growing trade and economic development as its byproduct. For this aim to be realized, the state attributed itself the regulatory role and offered an institutional framework to the merchants in both documents. In line with this goal, the new ministry included the Avrupa Tüccarı and, by establishing a commercial council to act as a commercial court, it represented a further step in the institutionalization of

[266] These changes were also reflected in the Avrupa Tüccarı berats. I will show it later in this chapter.
[267] ‘‘*bir meclis-i deavi vaz'ıyle mahkeme-i ticaret ittihaz olunmak…*’’

the commercial matters of the Avrupa Tüccarı.[268] Moreover, the emphasis on the single administration for matters of trade appears to have been related to the efforts of strengthening the central state institutions as well as the earlier experience with the Avrupa Tüccarı system, which embraced the local Islamic courts, customs, and Arz Odası. The establishment of a permanent commission for the commercial lawsuits represented the formalization of the former commissions assembled at the customs upon need by granting it an official status.

The End of the Classical Age: The Gülhane Rescript and the Age of the Tanzimat Reforms

An imperial decree was read by Reşid Paşa in the Gülhane garden on 3 November 1839 in the aftermath of the defeat of the Ottoman forces at the hands of the Egyptian army on 24 June, Sultan Mahmud IIs death on 1 July and the succession of his 16 year old son Abdülmecid I to the throne.[269] While the style of the decree was clearly classical, with Islamic rhetoric and in the form of an imperial order, it suggested changing the old methods totally[270] and, by paving the way for an overall reorganization of the empire, marked the opening of a new chapter in the Ottoman history.[271] However, before moving to discuss these changes, it is necessary to

[268] In my examination of the evolution of the Ministry of Trade, I will show that Avrupa Tüccarı had a permanent representation at this council.
[269] For the text of the imperial order, see Takvim-i Vekayi, No. 187, 15 Ramazan 1255 (22 November 1839).
[270] ‘‘*keyfiyet-i meşruha usul-ı atikayı bütün bütün tağyir ve tecdid demek olacağından…*’’
[271] Halil İnalcık claims that the decree was the product of Reşid Paşa and represented his intention to create a strong central state run by a reformist bureaucratic elite. He sees the decree as the real beginning of the modernization and secularization in Turkey and interprets its classical apperance as a trick of Reşid Paşa to convince the conservative public and ulema. Halil İnalcık, ‘‘Sened-i İttifak ve Gülhane Hatt-i Hümayunu,’’ in *Osmanlı İmparatorluğu Toplum ve Ekonomi*, Halil İnalcık (İstanbul: Eren, 1993), pp. 343-359. On the other hand, Butrus Abu-Manneh challenges this view by describing ‘‘the Making of the

examine the Gülhane Rescript since it is possible to draw parallels between its content and the contents of the memorandum for the establishment of Avrupa Tüccarı and the Avrupa Tüccarı berats.

The Gülhane rescript identified the problems of the empire as the failure of adhering to Islamic law and other beneficent regulations in the last 150 years, which had led to the change of the empire's condition from strength and prosperity into weakness and poverty. It suggested that if the appropriate means were followed the empire would be prosperous again in ten to fifteen years, given its geographical position, fertility of its soil, and intelligence of its inhabitants. For this outcome, the introduction of new legislation was seen as necessary in three principle areas, namely, the security of life, honor and property; the assessment of taxes; and a regular system of conscription and length of military service. Then the rescript explained why these three were singled out as the principle areas of the reform program.

Life and honor were seen as the most precious things in the world. Lack of security of life and honor would lead a person to resort behaviors that might be injurious for the government and country. If he felt completely secure he would serve the government and his people. Moreover, if a person felt insecure about his property, he would be occupied with his own troubles and worries, and would not show an interest in the prosperity of his country. In contrast, if he felt complete security, he would be preoccupied with expanding his own business, and his

---

Gulhane Rescript'' and the profiles of its makers. He highlights the existence of a petition prepared by a group of dignitaries, half of which from ulema, and presented to the sultan preceeding the rescript which was almost identical to the Gulhane rescript. He also focuses on the profiles of the Ottoman sultan, statesman, and ulema and finds a strong adherence to conservative Nakshibendi sufi order. He also shows how the ideas put forward in the Gülhane decree was well founded in the Islamic thought. See Butrus Abu-Manneh, ''The Islamic Roots of the Gülhane Rescript,'' *Die Welt des Islams* New Series 34, no. 2 (Nov. 1994), pp. 173-203.

devotion for his government and people, and love for his fatherland would increase as well.

Taxation was also seen important because it was needed for maintaining an army for the protection of the country. The monopolies (*yed-i vahid*), which once were thought to be a source of revenue had been abandoned but the harmful practice of tax-farming, of which no benefits had been seen and which had been among the instruments of destruction, continued. Therefore, it was decided that the tax farming would be abandoned as well and everyone should be taxed according to his properties and capacity.

Lastly, conscription and length of service were deemed to be important because recruitments without considering the population and its locality had disastrous effects on agriculture and trade and led to the depopulation of the country. Therefore, the new legislation would address the issue of conscription.

To ensure the security of life and honor, every defendant would be entitled to a public hearing according to Islamic law upon the examination of the case and would not be put to death without the pronouncement of the decision. Moreover, everyone was declared to own and possess his properties of all kind with perfect freedom without the intervention of anyone and even the innocent heirs of an absentee criminal would not have their inheritance confiscated.

For the realization the objectives of the rescript, the task of preparing the new legislation was given to the Supreme Council of Judicial Ordinances and it was instructed to prepare a penal code and prevent of bribery with a strong law. The matters of conscription was referred to the Council at the Ministry of War.

The objectives of the Gülhane Rescript and its recognition of the problems of the Ottoman Empire bear similarities to the memorandum for the establishment of

the Avrupa Tüccarı system, the suggestions of which were integrated into the Avrupa Tüccarı regulation. Both aimed the prosperity of the country (*imar-ı memleket*) and attributed a role to the state to facilitate economic development by making the necessary regulations. Moreover, both of them recognized the importance of the security of life and honor, property rights, and the people's desire to have a complete freedom and security over their possessions. [272] Both documents saw a link between the loyalty of the subjects to the state and the provision of these conditions. Although both documents attributed the role of the provision of protection of the subjects to the state, ironically the Avrupa Tüccarı system advanced protection to only a small number of select merchants while the Gülhane Rescript aimed at offering universal protection to all subjects. Lastly, Avrupa Tüccarı memorandum was more detailed about the proposed plan and offered a clear institutional framework whereas the Gülhane Rescript authorized the Supreme Council of Judicial Ordinances to prepare the necessary legislations and the suggested institutional framework was not as evident. However, the institutional developments that took place following the Rescript was far-reaching and also affected the Avrupa Tüccarı system.

In chapter 2, I claimed that the Porte was aware of the institutional foundations of economic development and established the Avrupa Tüccarı system with this awareness. However, in Chapter 3, I showed the continuation of the intervention in Avrupa Tüccarı estates and exactions in the name of taxation contrary

[272] Even the words used to express this idea was the same, only the order changed. The memo used ''*serbestiyet-i kamile''* (perfect freedom) and ''*emniyet-i tamme*'' (complete security). The merchants search of these conditions as well as to protect their estates from confiscation upon their death were seen as the reasons behind their interest in obtaining consular protection. Therefore, Avrupa Tüccarı regulation included securer property rights. Gülhane rescript reiterated the same terminology: For example, ''*emniyet-i mal kaziyesi*'' (the premise of the security of property), ''*emval ve emlakinden emniyyet-i kamilesi olduğu halde''* (if he had a perfect security over his properties of all kind), '*herkes emval ve emlakine kemal-i serbestiyetle malik ve mutsarrıf olarak*'' (everyone owning and possessing their properties of all kind with a perfect freedom).

to the Avrupa Tüccarı regulations. Therefore, the Avrupa Tüccarı experience during the previous period showed that providing a safe haven for a select group within the old system was not always reliable. Given the similarities of the language and objectives between the memo about Avrupa Tüccarı and the Gülhane Rescript we might view the latter as the culmination of the guarantees offered by the former but with one difference, namely, the aim of the total reorganization of the system with the reform program and universal application to all.

Following the promulgation of the Gülhane rescript, it was sent to the provinces to be read to the public and explained carefully. To organize the implementation of the reform program government officials with wide range of powers were appointed to the 50 centers of 11 provinces representing the traditional core of the empire, undermining the authority of the once mighty governors. These officials were called *muhassıl*s and were set to establish the institutions that would help to eliminate the tax farming and enable direct taxation. This included the formation of councils at the provincial, county, and town levels.[273] The councils established in the major centers where a muhassıl was appointed consisted of thirteen members, which included the muhassıl, his two scribes, the judge, mufti, security chief and elected local notables, including non-Muslims if they inhabited the region. The smaller councils of the towns were composed of the deputy muhassıl, the judge, mufti and elected local notables. Muhassıls were assigned with conducting population and property censuses with the help of the local councils for a just assessment of taxes.

[273] Jun Akiba, ‘‘The Local Councils as the Origin of the Parliamentary System in the Ottoman Empire,’’ in *Development of Parliamentarism in the Modern Islamic World*, edited by Sato Tsugitaka (Tokyo: The Toyo Bunko, 2009), pp. 176-204. Halil İnalcık, ‘‘Application of the Tanzimat and Its Social Effects,’’ *Archivum Ottomanicum* 5 (1973), pp. 97-128.

The taxes were to be collected by agents appointed by the muhassıls and the councils. The judges and deputy judges were to turn in the court fees to the council and take their salary from the cash box of the councils. However, after two years of experimenting with taxation without tax farming, the government revenues fell sharply, to almost half of the previous levels largely due to the resistance of the sarrafs, former tax farmers and local notables who enjoyed the benefits of the old system. Therefore, the muhassıl system was abolished in 1842 and the tax farming system was reinstated. Nevertheless, councils remained functioning as an administrative organ and extended to the provinces where the Tanzimat reforms began to be implemented later. Moreover, assigning the local tax farms after the bidding was the duty of these councils. [274]

The authority of the councils was not limited to administrative issues related to tax farming. As the Sultan had promised to protect the security of life and honor of all his subjects and a public hearing for everyone with the Gülhane Rescript, the new councils also were assigned judicial roles. As envisaged in the Rescript, a Penal Code was enacted in 1840 and its implementation was given to the provincial councils (*muhassıllık meclisi*s and, after 1841 *memleket meclisi*s). Moreover, the examination and adjudication of important matters and topics significant for the state were to be carried out only in these councils.[275] Accordingly, the crimes of homicide and treason to the Sultan were to be examined with respect to Islamic law and canonical laws in the provincial councils. Before the punishment could be applied, the decision

[274] Akiba, pp. 178-179.
[275] Sedat Bingöl, Tanzimat *Devrinde Osmanlı'da Yargı Reformu: Nizamiye Mahkemeleri'nin Kuruluşu ve İşleyişi 1840-1876)* (Eskişehir: T.C. Anadolu Üniversitesi Yayınları, 2004), pp.57-60.

had to be sent to İstanbul for the approval of the Sultan with a copy of the Islamic judgment and official report of the council separately.[276]

The regulations of 1849 laid down an even more extensive judicial authority for the provincial councils. In addition to the important criminal cases, the councils were given jurisdiction over cases that had been under the authority of Islamic courts, such as debt collection and estate division if these matters could not be solved in the local courts. [277] Therefore, Sedat Bingöl rightly sees the origins of the *Nizamiye* (regular) courts that gradually took over the jurisdiction of Islamic courts in civil cases except the family and foundation (*vakıf*) laws despite the *Nizamiye* courts were formally established in 1864.

As for the Avrupa Tüccarı were concerned, these councils were given the responsibility of examining all Avrupa Tüccarı lawsuits except commercial ones, which were left to the commercial councils. However, they were also the venue for the commercial lawsuits of the Avrupa Tüccarı if there were no commercial council nearby.[278] I will examine this role of the provincial councils later in this chapter.

The Evolution of the Ministry of Trade and Commercial Court (1838-1860)

As mentioned above, the memorandum explaining the foundation of the Ministry of Trade affirms that the new ministry was responsible for the matters of the Avrupa Tüccarı. Although, it also states the establishment of a commission of lawsuits adopting the role of a commercial court for the mixed litigation, it does not

[276] Ibid., p.60.
[277] Ibid., p.70 and Akiba, Local Councils, pp. 181-182. After this revolution provincial councils began to be named as ‘‘*eyalet meclisi*’’. Akiba states that the 68 articles of the regulation clarified the authority of these councils in the matters of ‘‘public security, local police, financial administration, public works, education, sanitary, civil suits, criminal suits, administration of sancaks and kazas, and others.’’ Ibid., p.182.
[278] İ.MVL 200/6279, 8 Rebiülahir 1267 (10 February 1851).

clarify where the jurisdiction of intra-Avrupa Tüccarı cases fell. This is also apparent in the first berat, registered on September 1839 after Abdülmecid's accession to the throne.[279] Regarding the judicial privileges of the Avrupa Tüccarı there have been two important changes. First, was the change of the site of Avrupa Tüccarı's lawsuits exceeding the value of 4000 akçe from the court of the Grand vizier to the şeyhülislam.[280] Second, the newly established commercial court became the venue of Avrupa Tüccarıs disputes with foreigners with safe conduct. These disputes should be examined and the dispute ended according to the rules of the trade with the consent of the Ministry and means of the vekils and auditor merchants chosen by the disputing parties. If the case was related to the Islamic law, it was to be examined and the dispute ended in the presence of the şeyhülislam according to Islamic law.[281] This was also a change from the past regulations, which stipulated such cases be brought to Arz Odası to be heard in the presence of the Grand Vizier.

However, a general clause authorizing the Ministry of Trade to deal with all of the affairs of Avrupa Tüccarı left the door open for assuming the adjudication for commercial disputes. This clause came right after the article about Avrupa Tüccarı litigation with foreigners and stipulated that from then on, Avrupa Tüccarı's matters

[279] MAD.d 21197 ''*Avrupa Tüccarı'nın Tecdid-i Berat Defteri''* (The Book for the Renewal of Avrupa Tüccarı Berats). According to the Ottoman traditions, an imperial berat was valid as long as the sultan who issued it was alive and in power. After another sultan succeeded to the throne all the previous berats holders needed to apply for a renewal of their berats. This book was kept for the berat renewals after Mahmud II's death and Abdülmecid's succession. For the first berat registry see pp.1-2, Evail-i Receb 1255 (September 1839). The renewals lasted until Evasıt-ı Rebiül Evvel 1274 (November 1857) and a total number of 504 berats issued during the reign of Mahmud II was renewed. (Actually there are 505 entries in the registry book but one of them was crossed because of a repeated entry).

[280] Ibid., ''*Gerek Müslim ve gerek milel-i saireden her kangısıyla ashab-ı berevatın davaları zuhurunda dört bin akçeden ziyadeye reşide olan davaları kenar mahkemelerde görülmeyüb huzuru şeyh'ül islamiye'de rüyet ve fasl oluna…''*

[281] Ibid. ''*…müstemenan ile zuhuru meczum olan nizaları Nezaret müşar ileyhanın inzimam-ı reyi ve tüccar vekilleriyle tarafeynden bil intihab memur olacak mümeyyiz bezirganlar marifetiyle kaide-i ticaret üzere mahkeme-i Ticaret'de rüyet ve kat-ı niza'a mübaderet olunub eğer şer-i şerife müracaatları lazım gelir ise balada beyan olunduğu üzere ahar mahallerde rüyet olunmayub huzur-u şeyh'ül islamiye'de şerile görülüb fasl ve hasm-ı müddea oluna…*''

of importance and particularity, accounts and books related to the articles of trade, especially their imports and exports became a branch of the duty of the new ministry. Therefore, the ministry was to oversee all the conditions of these merchants and the means by which the ministry should examine the occurrence of their affairs. [282]

The role of the commercial council as a court for both intra-Avrupa Tüccarı and mixed cases is apparent by an imperil order issued on 1 January 1840.[283] According to the imperial order, a council with the name of commercial court was established in the Ministry of Trade to examine and settle the disputes and lawsuits of the Hayriye and Avrupa Tüccarı arising from buying and selling.[284] It assembled in the presence of muhtar and şehbender of Hayriye Tüccarı and vekil of the Avrupa Tüccarı and notable merchants from these groups once a week. However, the procedure of examining the lawsuits was not been laid down in a regulation and the imperial order was issued address this matter. The hearings would take place between 6 and 10 o'clock and no one would be let in while they were in session. When a case was decided according to the commercial law[285] in the presence of the

[282] Ibid. ''*...ve bundan böyle sair güna umur ve hususları ve mevad-ı ticarete dair hesab ve kitabları ve lasiyema idhal ve ihracları kefiyatı dahi Nezaret müşar ileyhanın müteferriatı memuriyetinden olmak mülasebesiyle ber vechi muharrer tüccar mersumanın kafe-i ahvaline Nezaret müşar ileyha canibinden ber vechi dikkat nezaret ve ol vechile masalih-i vakıaları nezaret müşar ileyha marifetiyle rüyet kılına…*''

[283] For the transliteration of this imperial order, see M. Macit Kenanoğlu, *Ticaret Kanunnamesi ve Mecelle Işığında Osmanlı Ticaret Hukuku* (Ankara: Lotus Yayınevi, 2005), pp. 25-27. The authors source is Serkis Karakoç's compilation of imperial orders, preserved in the Turkish Historical Society's Ankara library. Serkis Karakoç, Külliyat-ı Kavanin, c.5, no: 4235, 25 Şevval 1255 (1 January 1840). Almost an identical version of this imperial order was sent to the consulates by the Foreign Ministry and pubished in the official Ottoman newspaper *Takvim-i Vekayi*'s 198th issue dated Gurre-i Rebiülevvel 1256 (May 1840). I will summarize the important points of this imperial order by relying on the earlier version published by Kenanoğlu but complementing it with the second version whenever needed. Bingöl and Akyıldız also use the same sources and summarize this regulatory imperial order. See Bingöl, Tanzimat *Devrinde,* pp.120-122 and Akyıldız, p. 130.

[284] However, the version published in *Takvim-i Vekayi* adds merchants from the friendly countries (*düvel-i mütehabbe tüccarıyle*) to this.

[285] Both the version published by Kenanoğlu and Takvimi Vekayi use ''*kanun-u ticaret''*, namely commercial law, despite the fact that there was no codified commercial law when this imperial order. As the stipulated in the Avrupa Tüccarı berats the lawsuits were

merchants, those who were not happy about the judgment were not be allowed to bother the office of the grand vizier and Sultan with the aim of taking the case to the Islamic courts, Imperial Mint or Zecriye (?). Those who dared this would be reprimanded.

In addition, it was reported that because of their animosity, some mischief-makers had been petitioning by attributing untrue things to Avrupa Tüccarı from the provinces in order to summon them to İstanbul, to make them lose money and work, and time spent with their families, and make them incur the costs of mübaşir and travel despite the fact that most of these cases had already been examined in the Islamic courts or the commercial court. To prevent such behaviour, it was decided that when someone wanted to summon an Avrupa Tüccarı or Hayriye Tüccarı to İstanbul, the petition of the plaintiff should be referred first to the Ministry of Trade. If there was a need for a summoning, it should be done on the condition that the plaintiff promised to pay the costs of the summoned defendant if any mischief became apparent after the hearing and to present a strong guarantor for this payment. Moreover, if it turned out that the plaintiff intended to make mischief, he was to be chastened and punished. While this condition seems to have been included for mischief-makers intending to harm Avrupa Tüccarı, it also applied to Avrupa Tüccarı even when they were plaintiffs.

Although the cases were related to the methods of trade, sometimes applying to Islamic law was expected to be necessary. Therefore, the mufti of the Council on Public Works (*Meclis-i Umur-u Nafia müftüsü*) was required to be present in the council.

---

examined according to the rules of the trade (*kaide-i ticaret*), in other words, commercial customs.

In 1841, one of the vekils of the Avrupa Tüccarı, Yosef Haccar, was named *şehbender vekili* (deputy şehbender) of Avrupa Tüccarı, similar to the title given to the highest-ranking Hayriye Tüccarı representative.[286] Moreover, as members of the commercial council (council of lawsuits), şehbender and muhtar of Hayriye Tüccarı, Mahmud Efendi and Ebubekir Ağa respectively, and şehbender of Avrupa Tüccarı were put on a salary of 1500 kuruş.[287] However, in December 1841, the Ministry of Trade was closed down and moved to the Office of İstanbul Customs. The commercial court also was moved to the Customs and sessions were to take place two days of the week in the presence of the şehbender and muhtars of Hayriye and Avrupa Tüccarı. Moreover, the office of beylikci became responsible for the other affairs of Avrupa Tüccarı as before the establishment of the Ministry of Trade.[288]

In 1845, the Ministry of Trade was reestablished. During the time of its reestablishment, the Ministry of Trade was merely a court responsible for the lawsuits of the Avrupa and Hayriye Tüccarı with a commercial council consisting of the şehbenders of these groups and, two secretaries, and a registrar.[289] However, its duties were extended to include administering the trade and industrial affairs, public works, and agricultural matters soon afterwards.[290]

---

[286] A.DVNSDVE.d 106/1, p.63 doc. 151, Evail-i Rebiülahir 1257 (May 1841). This was explained as necessary because of the increase in his honor due to his appointment as a member of the Council on Public Works (*Meclis-i Umuru Nafia azalığına memuriyeti cihetle*).

[287] Bingöl, p. 123. These three were also expected to attend to the sessions of the Council on Public Works during the days when the Commercial Council did not have a session.

[288] Aziz Tekdemir, ‘‘Ticaret Nezareti’nin Kuruluşu ve İdari Birimleri’’ in *Osmanlı’dan Cumhuriyet’e Esnaf ve Ticaret,* edited by Fatmagül Demirel (İstanbul: Tarih Vakfı Yurt Yayınları, 2012), pp. 59-60. Akyıldız, pp. 134-135. Bingöl, p.123.

[289] Akyıldız, p. 136. Tekdemir, pp. 61-65. These authors make the same claim but do not mention if it was also responsible examining the mixed commercial litigation between the Ottomans and foreigners with safe conduct. Because the Prime Ministrys Office of Ottoman Arcihives stopped giving archival documents in March 2013, I was not able to check this from the references of these authors.

[290] Akyıldız, pp.136-137. Tekdemir, pp. 63-65.

Because there was no law of procedure to regulate the functioning of the commercial court and the regulation of 1840 were very not comprehensive, further measures were taken to clarify the procedural aspects of the court. A ferman issued on 30 April 1847[291] reiterated that some disputants aspired to refer cases that had been examined and resolved in the commercial court to other places and bring merchants of their selection[292] to the court, thereby giving rise to the situations against the regulations of trade. The court were to assemble on Mondays for the cases between the Ottoman merchants and subjects and Thursdays for the foreign merchants and subjects. From the foreign merchants, eight to ten notable merchants were to be present during the hearings as temporary members. In addition, if some of them were not present and there was a hearing involving a merchant from their nation, the hearing should still take place. The hearings were to take place in order and merchants and interpreters were to wait their turn in a special room.[293]

Moreover, in addition to the natural members of the commercial council,[294] a handful of Avrupa and Hayriye Tüccarı were summoned to the court, although their regular attendance could not be ensured.[295] Therefore, it was decided that three merchants from Avrupa Tüccarı and three from Hayriye Tüccarı who were knowledgeable about the methods of trade were to be appointed to attend the sessions on the abovementioned days.[296]

---

[291] For the transliteration of this ferman see Kenanoğlu, *Ticaret Hukuku*, pp. 30-31
[292] This expression could be understood with the earlier regulations stipulation of bringing notable merchants into the sessions. In the light of this stipulation, it looks like that some of the merchants brought into to the court to act as members during the session were considered unacceptable or were not notables.
[293] This condition was also part of the 1840 regulation.
[294] Namely, şehbenders of Avrupa and Hayriye Tüccarı.
[295] This was a common problem of the period both for the Ottoman and foreign merchants because they were occupied with their own businesses.
[296] Ibid.

There were two more regulations dealing with the procedural aspects of the court and ensuring an orderly attendance of the members, smooth functioning of the hearings in sequence, and not causing delay for the cases of urgency such as bills of exchange and promissory notes. The first one was issued on 12 December 1847 [297] and the second one on 19 January 1848.[298] The second decree summarized the points of the earlier imperial orders and laid down in numbered articles following more of the form of procedural regulation. According to the regulation, the Minister of Trade was the president of the court and his deputy represented him if he was not personally present during the hearings. The court was to have fourteen members in total, seven members from Ottoman merchants and seven members from the foreign merchants whose names were to be registered in the book of the ministry.[299] Hearings would take place in order, giving priority to the cases of bills of exchange and disputes over ships. The petitions would be presented on Tuesdays and the Thursdays would be confined to the hearings. The decisions would be made with a simple majority and in the case of equality; the minister's vote would determine the outcome. The hours of the sessions would be adjusted seasonally. Interpreters and notable merchants will wait their turn in a special room and no one other than the members, interpreters, and disputants would be let in to the council. Lastly, the decisions would be written and delivered in no more than fifteen days. A note at the end of the regulation stated that this regulation would be valid until the completion of

[297] See Ibid., pp. 31-33 for the Kenanoğlu's transliteration of this imperial order from *Külliyat-ı Kavanin*.
[298] See Ibid. pp. 33-34 for the Kenanoğlu's transliteration of the memorandum sent to the foreign embassies including the regulation. It appears that this regulation addressed the mixed cases rather than the disputes between the Ottoman subjects.
[299] Article 2 also specifies what course action to follow if any of these merchants were absent and conditions for bringing merchants whose names were not recorded in the Ministry registers.

the Commercial Code, which was still under preparation, and if necessary, it would be changed after discussions.

While procedural regulations were enacted, preparations were underway to draw up a Commercial Code to be used in the Code. The French Commercial Code of 1807 have been translated into Ottoman Turkish and a commission was set up at the Council of Agriculture[300] in 1846 to discuss the articles of the Code and amend them according to the Ottoman needs. In addition to the regular members of the council şehbenders of Hayriye and Avrupa Tüccarı were appointed as members of the commission.[301] These preparations culminated in the publication of the Commercial Code in 1850.[302] The code were to be effective in one year in İstanbul and one and a half year in the provinces. The minister of İhtisab, company sarrafs, notables of Avrupa and Hayriye Tüccarı and chiefs of some guilds were called into the Ministry of Trade for a special assembly in order to study the new code because the lawsuits would be examined according to it and the merchant's books, promissory notes and trades should be in accordance with it.[303]

The preface to the Commercial Code gives us a good idea about the conditions that led to its preparation. Like the memorandum for establishment of the Ministry of Trade and Gülhane Rescript, this preface bears a striking similarity to the memorandum about the foundation of the Avrupa Tüccarı system that had been reiterated in the beginning of all Avrupa Tüccarı berats.[304] It began with stating that the thoughts of the Sultan were confined to rendering his dominions and nation

[300] This council was moved to the Ministry of Trade in 1845. Akyıldız, pp. 284-285.
[301] Tekdemir, pp. 64-65. Tekdemir states that many articles were modified, but I was not able to examine amended articles and the role of the şehbender of Avrupa Tüccarı in this process due to the closure of the Ottoman Archives.
[302] For the transliteration, see Fikri Gürzumar et al., *Kanunname-i Ticaret ve Zeyilleri* (Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü, 1962), pp. 43-107.
[303] See Kenanaoğlu p. 76 for the transliteration of the imperial order about putting the Commercial Code in force. His source is Sarkis Karakoç's *Külliyat-ı Kavanin*.
[304] For the preface see Gürzumar et al., pp. 43-44.

prosperous, and to make the conditions of the people and subjecthood better.[305] Moreover, it was known by the all that the subject of trade was the great part, even the soul, of the public security and welfare of the subjects and development of the country, thereby making its increase the most important of the important subjects. However, the increase of trade was dependent upon the transactions of the trade being under strong and preferred regulations.[306] Although commercial lawsuits were examined according to the rules of the trade (commercial customs) this method was not neat and orderly enough for the current needs of the trade and for a perfect protection of the interests of the subjects. Therefore, an imperial order had been issued previously to draw up a commercial code about the needed stipulations upon which the methods of trade depended. This was deemed necessary for making Ottoman subjects' transactions of buying and selling easier and the rendering the promissory notes and merchants books and other papers of trade that were circulating in their hands, suitable to the methods of trade and making them valid as evidence whenever needed. Moreover, using documents suitable for the methods of trade was thought to make the commerce securer. Hence, the first and third parts of the French Commercial Code was borrowed. The first part of the Code was about the commercial transactions, partnerships, and methods of bills of exchange. The third part dealt with matters of bankruptcy. The second part was about maritime trade, but was left out for the time being because the other two were considered more important. The fourth part was about the regulating the commercial courts, but it was

[305] ''*hemişe efkar-ı mekarimşıar-ı şehinşahileri imar-ı mülk ve millet ve terfih-i ahval-i ahali ve raiyyet kaziyye-i marziyesine masruf ve matuf olup…''*

[306] Here it is worth remembering that the memorandum for the foundation of Avrupa Tüccarı also emphasized the importance of the increase in trade and its relation to the prosperity of the country. Similar to this preface, it highlighted the need for strong regulations to facilitate the increase of trade.

excluded because it was not in congruence with the current conditions of the Ottoman Empire.

So far, I have examined the establishment of a commercial court along with the Ministry of Trade, its evolution, and the enacting of the Ottoman Commercial Code and the Avrupa Tüccarıs participation in these processes as a historical narrative. However, it is also important to place this process into the reorganization of the Ottoman Empire and the attempts to build a modern central state extending its control over more areas than ever before. I have cited Sabit Efendi in the introduction of my thesis who found it unacceptable for the state accept the merchants behavior of solving their lawsuits with their own means among themselves in order to avoid the incompetent judges of the Islamic courts. Hence, he saw the nineteenth century legal reforms in the commercial field as the state's attempt to reassert its authority over the merchants by bringing them under its regulatory framework.

Ahmed Reşid, a legal scholar who graduated from the School of Law and served as deputy to the governor of Adana previously, largely follows the account of Sabit Efendi in depicting the origins of Ottoman legal reform and cites the establishment of Avrupa and Hayriye Tüccarı as a part of this process. He also recognizes the role of şehbenders and vekils and guild elders in the dispute resolution within and among their groups. However, he claims that leaving the important matters of jurisdiction and dispensing justice to the jurisprudence of merchant representatives and guild masters was seen as improper, and remedies began to be sought to bring these groups under the law. [307] Therefore, Ahmed Reşid cites the establishment of the Ministry of Trade as a part of this search.[308]

[307] '*... tüccar ve esnafın beynlerinde tehaddüs iden deaviyi intihab eyledikleri muhtar ve* vekil*lere gördürmekde olduklarından hakkı kaza ve tevzi-i adalet emri mühimminin lonca ustalarının ve tüccar muhtarlarının rey ve ictihadına bırakılması gayrı caiz görülerek ahvali vakıanın kanun tahtına vazı çareleri tefekkür olunmaya başlanmış...*'' Ahmed Reşid, *Hukuk-*

Çağlar Keyder sees the legal pluralism as an essential element of an empire. The Ottoman state was also an empire and allowed legal autonomy to various communities from the faith based such as nations to market oriented guilds. However, the bid of the nineteenth century reformers to build a modern central state included weakening these autonomies and creating a ‘‘single legal space’’ in which citizens would be subject to the same laws and regulations regardless of their ties with a social group.[309] Consequently, modern legality sought its legitimation in what Keyder terms ‘‘a formal and rational law with universal jurisdiction’’ rather than ‘‘a layered form’’ of imperial legitimacy.[310]

The historical evidence I presented above also confirms this at least as a project, but the degree to which it was reached will be the topic of a later section. In the reforms since the establishment of the Avrupa Tüccarı system in 1802, the central state (or its bureaucrats) attributed itself the regulatory role and emphasized the need to bring the merchants under a strong and well-defined regulatory framework. However, this policy did not include a direct attack on the autonomy of the merchant's community. Although the state wanted to bring merchants under its regulatory system, it initially allowed them a certain state sanctioned legal autonomy governed by the merchant representatives according to the mercantile customs.

The reforms of the Tanzimat period might have aimed at bringing the Avrupa Tüccarı under a more direct state control with the creation of institutions such as the commercial court to work directly under the state apparatus, but it also allowed them to run these institutions by giving a permanent representation to the Avrupa Tüccarı representative. The state might have sought to create a legal-rational order with the

---

i Ticaret Dördüncü Kitab (İstanbul: Asadoryan Şirketi Mürettibiye Matbaası, 1316), pp. 10-11.

[308] Ibid.

[309] Keyder, pp. 116-117.

[310] Ibid., 119.

clearly defined rules of the legal codes in which everyone would know their rights and base their expectations accordingly,[311] but as we have seen above it sought the collaboration of the merchants including the Avrupa Tüccarı, to draw and implement this new legal order.

In the next section, I will show that not only the state did aim to incorporate the local actors into its regulatory framework by giving a place to the merchants in the new institutions, but also the local actors showed interest in bringing this framework into their locality. In this process, the Avrupa Tüccarı system became a tool of ensuring the state endorsement of the local actors.

The Local Commercial Councils

Another important process followed the enactment of the Commercial Code. Namely, the establishment of commercial councils in the provinces similar to the İstanbul commercial council. This process of the spread of commercial councils in the provinces also challenges the Tanzimat scholarship of top to down reforms with

[311] This aim becomes apparent in a communication between the sultan, the Supreme Council of Judicial Ordinances, and the Minster of Trade. The sultan informed his officials about the complaints he has been hearing from the Ottoman merchants who claimed that they had not been helped in their affairs, causing them to endure losses, and they had not been protected. (*Tüccar-ı devlet-i aliyyenin umur ve hususat-ı vakıalarına muavenet olunmayarak kendüleri bazı güna hasardide oldukları ve haklarında himayet ve sıyanet olunmadığı mesmu-i ali-i hazreti şehinşahi buyrulmuş olub*) So he demanded enough care to be given to the affairs of the merchants.When the Minister of Trade was asked about the matter he denied the claims and maintained that enough care had shown according to the methods and regulations in force. He claimed that even if there were some complaints it resulted from merchant's advocation of corrupt affairs. He expected these complaints to end when the Commercial Code is printed because everyone would know his right and act accordingly.(*eğerçi bazıları hiç hakkı olmadığı halde maslahat-ı müzevveresini tervic içün sızlanmakta isede saye-i muadeletvaye—i hazreti padişahide derdesti tab ve teşmil olan ticaret kanunnamesinin bundan böyle Dersaadet ve Memalik-i Mahrusa-i şahane'ye neşri takdirinde herkes hakkını bilüb ana göre hareket ideceğinden bi-gayri hak bu misillu vuku bulan sızıldıların dahi bit'tab önü kestirilmiş olacağı*). İ.MVL 146/4098, 24 Ş 1848 (15 July 1849).

the center designing the reforms and forcibly applying it in the provinces.[312] While there were provinces, where the councils were established upon the demand of the central state, most of the times, the local actors demanded the authorization of the center for its establishment in their province. Although local demands for establishing a commercial council seems to be accepted generally, the Porte insisted on one condition: The presence of the representatives of Beratlı Avrupa and Hayriye Tüccarı as permanent members of these councils. In fact, this was in line with the Commercial Code of 1850, which included references to the merchant representatives as officers helping the execution of the stipulations of the code such as recording the protests for unpaid bills of exchange and the bankruptcies of merchants who could not fulfill their obligations.[313]

The first demand for the establishment of a commercial council I was able to access came from the provincial council of the province of Sayda (Sidon).[314] It included the seals of the 12 members present at the session including the naib Es-seyyid Mehmed (deputy judge of the Islamic court).[315] The council declared that the commercial disputes between the people had been referred to them for examination and resolution. Accordingly, the cases were usually examined and resolved by them,

[312] For a work challenging this paradigm, see Yonca Köksal, ''Imperial Center and Local Groups: Tanzimat Reforms in the Provinces of Edirne and Ankara,'' *New Perspectives on Turkey* 27 (Fall 2002), pp. 107-138. The author shows how the regional outcomes of the reform process varied and how it depended on the local conditions and groups. While the local actors of Edirne encouraged the process and made significant contributions to it, the actors of Ankara were largely obstructive. The role of the local councils in the process also depended on the motives of the local actors of the province.
[313] See articles 133 and 148 in the Commercial Code. Gürzumar et al. pp. 65-68.
[314] İ.MVL 158/4564, 21 Safer 1266 (6 January 1850). This document suggests that such councils existed in Selanik and Şam before.
[315] Judges were permanent members of the provincial councils and their seals appeared on the petitions of the provincial councils asking permission to establish a commercial council. It is interesting to see the judges of Islamic courts approving a mechanism that involved dispute resolution outside the Islamic courts. For another example, see the petition of the provincial council of Yanya asking for the establishment of a commercial council in 1850, which included the seal of the judge (*naib-i şer'i*) Mehmed Nuri at the beginning. İ.MVL 178/5336.

occasionally by the means of Islamic law and sometimes by the four merchants, each side of the dispute appointing two, with the councils consent. However, this method caused difficulty and resulted in different decisions on similar cases because it did not depend on a law or regulation.

To overcome the difficulties especially in disputes between Ottoman subjects and foreigners, the provincial council saw the solution in establishing a separate commercial council in Beirut that would adjudicate such cases according to the Commercial Code. The new council were envisaged to have four Muslim and four non-Muslim members from the Ottoman subjects and four members elected by the consulates. This council were to work under the authority of the provincial council and all the cases should be referred to the provincial council first, which would then refer the commercial cases to the commercial council, and the notification of the decisions should be executed with the consent of the provincial council. In addition to asking for approval of the establishment of a commercial council, the provincial council demanded two copies of the Commercial Code in Turkish, Arabic, and French.[316]

A similar demand was made by the governor of Aydın province for the establishment of a commercial council in İzmir.[317] He called the city of İzmir as a center for merchants and subjects of the Empire and foreign countries, and that most of the disputes that appeared before the provincial council (*meclis-i memleket*) were related to trade. However, he claimed that solving these cases by referring to Islamic law was not acceptable in most of the cases, thereby necessitating an examination and resolution according to the Commercial Code and local customs. These cases

[316] The councils petition dated 17 Zilkaede 1265 (4 October 1849). The date of the above reference is the date for asking the Grand Viziers approval. Because the archivist dated the document with it so did I.
[317] İ.MVL 184/5527, 27 Zilkade 1266 (4 Octover 1850).

were referred to the Customs of İzmir for examination and resolution in the presence of merchants. However, without a strong regulation, such cases could not be prevented from having relationships with other matters and causing difficulty especially in cases involving the foreigners.

He pointed out the increasing amount of trade in İzmir and its surrounding areas, which had given rise to an increasing number of cases between the Ottoman subjects and foreigners related to buying and selling. The governor reported that he had discussed the matter unofficially with the consulates and obtained their approval. He also had written a seventeen-article regulation for the procedures to be followed in the council[318] and presented it with his memorandum to the Porte. Consequently, he asked for an authorization of the establishment of a commercial council similar to the ones that had been founded in Beirut and Salonika.

His application and the procedural regulation were reviewed in the Supreme Council of Judicial Ordinances (*Meclis-i Vala*), which decided to request more information about the composition of the council.[319] The governor's regulation included a stipulation that in addition to the officials appointed for the council by the governor, it would include two *deputat*s (deputies)[320] to be changed every year from the Ottoman subjects, and four members from Ottoman subjects and four members appointed by the consuls to be changed in every three months. The council wanted to know whether these deputats had imperial berats and warned the governor that otherwise it would mean that they were ordinary merchants and could not be called deputats. The other items of the governor's plan were accepted, however, and it was

[318]For the original version, see Ibid. For a summary of this regulation in Modern Turkish see Bingöl, pp. 134-135. The regulation bears similarities to the procedural regulations enacted for the commercial court at İstanbul.
[319] Bingöl does not address this important aspect about the membership of this council.
[320] Apparently, this expression was borrowed from Italian. In Italian ''*deputato*'' means deputy. I thank Prof. Şevket Pamuk for giving me the lead for this.

decided that copies of the Commercial Code would be sent to İzmir and there was no need to send other regulations.[321] The governor's response to this request sheds more light on this subject.[322]

He stated that Papasi son of Hoca Anastaş, and another person were in charge of the position of deputat for the Avrupa Tüccarı in İzmir.[323] However, the other unnamed deputat later obtained Russian protection[324] and Hoca Anastaş was left alone as the deputat of the Avrupa Tüccarı. As for the Hayriye Tüccarı, Evliyazade

[321] Bingöl uses the same document but does not address this point. He claims that five members were to be chosen from the Ottoman subjects.
[322] İ.MVL 194/5900.
[323] The term *deputat* was used interchangebly with vekil to denote the two elected representatives of Avrupa Tüccarı. For example, see İ.HR 220/12769. İstivraki and Ovanes called themselves as deputat of Avrupa Tüccarı but the governments response refers to them as vekils.
[324] I came across occasional information about some Avrupa Tüccarı who obtained foreign protection as well as merchants who were under foreign protection but renounced and demanded an Avrupa Tüccarı berat. Yakob Beryor was an Ottoman subject from Trablusşam who obtained French protection in 1849. According to a document from 1856 he was a merchant engaged in trade in Mersin. He wished to renounce the French protection and return to his original subjecthood. (*terki himayet iderek yine tabiyet-i asliyesine girmek arzusunda bulunduğu*) He demanded to be included among the Avrupa Tüccarı's similar to the Nikola Medorin and asked for an imperial medal (nişan). His request to be included in the Avrupa Tüccarı system was accepted, but the medal was not given for the time being. HR.MKT 167/1. Similarly, Petro Papa Yorgi of Manastır, who previously had entered to Austrian protection, relinquished it and became an Avrupa Tüccarı by returning to his original subjecthood in 1850. HR.MKT 30/66. Likewise, Karabet, a stockbroker of Silistre (Silistre mubayaacısı) had entered under Austrian protection earlier, but asked to return to Ottoman subjecthood in 1847. His request was accepted and he was given an Avrupa Tüccarı berat. Interestingly, he was also called a sarraf. İ.DH 154/8005, A.MKT 97/66. In 1860, the governor of Konya sent a memorandum asking about what to do about a group of Avrupa Tüccarı in Burdur who had entered under the protection of foreign countries and refused to comply with the invitation of appearing before the local government when there were complaints about them related to public security and civil cases. According to a letter sent by the head of the district of Burdur to the governor, these merchants countered this invitation by saying that they had consuls in İzmir and other places and an application should first be made to these consuls about their matters. As a result, a letter was sent from the Porte to the governor asking the names of these merchants and which country's subjecthood they claimed. HR.MKT 336/49. Diyaboğlu Yorgaki was originally an Ottoman subject and Avrupa Tüccarı from Kıbrıs (Cyprus). However, he went to Marsilya (Marseille) and entered into French subjecthood. An order was sent from the Foreign Ministry to the council of Cyprus in 3 October 1850 for him to be expelled from the island and his properties sold. The local government explained this to the French counsulate, but the consulate tolerated him and Yorgaki contiuned to reside in Cyrpus. HR.MKT 53/34.

Hacı Mustafa Ağa previously had held the position of deputy şehbender, but later had been dismissed and his berat taken away for some reason. The governor claimed that other than these two there were no one else among the Ottoman subjects who was qualified to be deputats. Therefore, he requested the berat of Evliyazade to be renewed and that he be allowed to be present in the commercial council until this process ended. The Meclis-i Vala accepted the governor's request and sent it to the Grand Vizier for approval.

The archival documents regarding the establishment of commercial councils in the provinces reveal that the condition of two permanent members of the council being from the representatives of the Avrupa and Hayriye Tüccarı was the norm. The documents I was able to examine about the commercial council of Beirut also enable us to infer that the Porte demanded the same condition from the provincial council of Sidon. According to the registry book listing the merchants joining to the Avrupa Tüccarı system, on 18 January 1852 Nikola Mador from Beirut was granted an imperial berat upon the request of the governor of Sidon.[325] Moreover, he was appointed as the vekil of the Avrupa Tüccarı in Beirut.[326] Another document shows that he was also a member of the Commercial Council in Beirut.[327]

When the Porte wanted to establish a commercial council in Hersek (Herzegovina) upon the demand of the Austrian embassy, it met with the reality of the nonexistence of both Hayriye and Avrupa Tüccarı in this province.[328] For the Porte, the appointment of an ordinary merchant as the merchant representative was not acceptable and it stipulated that in the places where a commercial council was intended to be founded, the presence of *Avrupa* and Hayriye Tüccarı was

[325] MAD.d 21192, p. 57. Evail-i Rebiül Evvel 1268 (The registry at the top right).
[326] A.DVNSDVE.d, p. 107 doc. 245. Evahir-i Rebiül evvel 1268 (June 1852).
[327] A.AMD 63/69, HR.MKT 112/6 19 Şevval 1271 (5 July 1855).
[328] HR.MKT 147/19, 27 Ramazan 1272 (1 June 1856).

necessary.[329] It was thought that the merchants of Hersek did not set about to acquiring the imperial berats because they did not know the content of the berats and the entailed privileges. Therefore, a sample of the berats was sent to Hersek to be read to the merchants and the benefits of being part of the berat system were to be explained. If the merchants could not be convinced to enroll en masse, then one merchant should be appointed as şehbender and two merchants as deputats and granted Hayriye and Avrupa Tüccarı berats respectively.[330]

The processes of establishing a commercial council in Filibe also shows that the establishment of commercial councils in the provinces was driven mostly by local demand rather than the imposition of the central state. In 1857, the council of Filibe (Plovdiv) requested the establishment of a commercial council but they received no answer from the Porte. When the governor of Edirne was visiting the region, they saw this as an opportunity to transmit their demand to the Porte through the governor.[331] According to the report of the governor, the disputes of the merchants were referred by the local government to an assembly consisting of şehbender of the Hayriye Tüccarı, deputats of the Avrupa Tüccarı and other notable merchants who gathered in a chamber in the Kurşunlu Han in Filibe. The assembly examined the cases according the methods and regulations of trade and declared its decisions. However, because some of the members were occupied with their personal affairs, it was not possible to assemble all of them at the same time and naturally, enough care could not be given to the lawsuits and some of the continuing cases were

[329] ''*Mostar tüccarından Daracı Hacı İbrahim ağanın tüccar vekaletine memuriyeti tarafı çakirden arz ve işar kılınmış isede bu makule Ticaret Meclisi teşkili murad olunan mahalde Hayriye ve Avrupa Tüccarı bulunması lazımadan ve müstakim'ül-etvar bulunan tüccarın kaffesinin intihabiyle Hayriye Tüccarından bir şehbender vekili ve Avrupa Tüccarından dahi bi'l intihab tüccarın kesreti ve kılletine göre iki veyahut bir deputat tayini…*''

[330] Similarly, an order to the governor of Ankara in 1859 demanded the appointment of a şehbender of Hayriye Tüccarı and two deputats of Avrupa Tüccarı in order to establish a commercial council in Kengiri. See A.MKT.MHM 158/31, 9 Za 1275 (1 June 1859).

[331] İ.MVL 373/16384, 12 Za 1273 (4 July 1857).

delayed, leading to complaints of the disputants. This was seen as the consequence of the merchant's lack of information about their duties, which resulted from not putting the official duties of these merchants under a regulation. Therefore, authorization for the establishment of a commercial council, which would gather at the local government office on fixed days, was demanded.

According to the plan, the Abdullah ağa from the head of the palace door keepers (*rikab-ı hümayun kapıcıbaşılarından*) would act as the president, while Şehbender Hacı Süleyman, Hacı Arif, Hacı Sadi and Ahmed Efendi's from the Hayriye Tüccarı, and deputats Dimitraki and Yorgaki , Kendi oğlu Hristo, Paskal Papadati from Avrupa Tüccarı, Mesroboğlu Kirkor from the privileged *millet* (*millet-i imtiyaziyeden*), Petro from the Catholic millet and Arslan oğlu Hoca Ellesi from the Jews were to be members of the council. The opinion of the Ministry of Trade was asked. The Ministr accepted the proposal except for the choice of the president because the presidency of commercial councils was confined to the governors and head officials of the districts. It advised that the position should be given to the governor or the head official, but they would be represented by the şehbender if they could not attend the sessions. Following the advice of the Ministry of Trade, the Meclis-i Vala accepted the proposal.

The case of the establishment of a commercial council in Varna is another example of local variation in the process of Ottoman legal reform and the role given to Avrupa Tüccarı in this process. In 1857, the customs official of Varna petitioned the Porte requesting the establishment of a commercial council in Varna.[332] He stated that the disputes related to commerce had been referred to the customs, and examined by the arbitrarily selected Ottoman and foreign merchants. This occupied

[332] İ.MVL 382/16745, 9 Rebiülahir 1274 (27 November 1857).

the customs officials unnecessarily and they were unable to perform their real duties. Moreover, the disputants talked at great length and said whatever they wanted, which prolonged the hearings. He had informed the local government about this matter repeatedly and had demanded the establishment of a commercial council similar to other places in vain. Lastly, he had gone to the session of the local council and informed them that he would no longer accept the referral of commercial disputes to the customs office. However, it seems that he had not see this satisfactory, and had turned to the Porte for an order to the commander of Varna (*Varna muhafızına*) instructing the establishment of a commercial council similar to other places.

When consulted about the matter, the Ministry of Trade replied that while commercial councils had been set up and were operating in the government house in the centers of every province and subdivision of provinces, this had not been done in Varna. It advised the establishment of a commercial council under the presidency of governor or head official of the district. The members should consist of a trustworthy şehbender from Hayriye Tüccarı, who would also act as the president in the absence of the governor, and two deputats from Avrupa Tüccarı[333] and additionally four merchants with berats from among the Muslims and non-Muslims. Their names should be presented by the merchants to the local government and these names should be recorded by the government and sent to İstanbul. The right course of action should be followed after it had been informed by the Porte. Therefore, an order regarding these needed to be sent to the commander of Varna. Consequently, the Meclis-i Vala accepted the ministry's advices.

The establishment of commercial councils in the provinces shows that rather than a central state planning the establishment of such councils and imposing its plan

[333] This case also reaffirms that deputat means the vekil of Avrupa Tüccarı. *''iki nefer tacirin deputatlığa yani Avrupa Tüccarı vekili sıfatında bulunmasına…''*

on the provinces, it was the local actors who demanded it. Some sort of commercial dispute resolution mostly outside the Islamic courts existed in all the cases. This led to complaints about disorder and the demand to give it order by bringing it under the umbrella of the state.[334] If the Porte aimed to establish a new legal order based on the premise of rationality and codification, the local groups were more than ready to accept it. They demanded authorization for the establishment of these councils and they asked for copies of the new commercial code, which they hoped would give order to the local affairs.

Moreover, the source of the demand also varied according to the region. Sometimes it was a proactive local governor examining the local conditions, discussing the issue with the consuls and even writing a procedural regulation such as in the case of İzmir. Usually, it was the local councils in the Tanzimat period, which included local notables as well as the members of the ulema, who demanded authorization for such an action. The presence of Islamic judges in these petitions might be seen as challenging the claims of religious opposition to the Ottoman legal reforms. However, it might also have been due to the prevalence of dispute resolution outside the Islamic courts since judges might have hoped to have a say in these cases by bringing it into a council that would work under the provincial council in which the judge and mufti were permanent members. The state might have asked it to accommodate the demands of foreign powers, but even in such a situation, it had to rely on the contributions of local actors such as the governor, the council, and the local merchants.

[334] These councils were the extensions of the local councils and meeting at the palace of the local government.

Therefore, local forces might well demand the extension of the government institutions, thereby taking a leading role in the modern state building process.[335] The Porte's response to these demands was positive, but it wanted to take measures to give these new institutions an imperial flavor and be at least in nominal control. Consequently, it used the berat system as a tool to have more knowledge about the local conditions[336] and to establish its control. Since both the İstanbul Commercial Court and Avrupa and Hayriye Tüccarı operated under the Ministry of Trade, by demanding the new councils to give a permanent representation to these groups and operate under the ministry, the Porte contributed to the establishment of a network of commercial councils under the sight of the center. To sum up, the process of legal reform in the provinces was more complicated than the scholarship of top to down reforms assumed and the Avrupa Tüccarı were an important part of this process.

The Avrupa Tüccarı's Use of the New Institutions

The establishment of the Commercial Court and the local councils of the Tanzimat period led to a change in the venue of Avrupa Tüccarı disputes. While the commercial court became the ultimate site of their commercial litigation in the capital, in the provinces, the provincial and district level councils of the Tanzimat assumed the duties of the Islamic courts. The orders of the sultan were no longer sent to the judge or the government officials alone as the mufti and notables of the region, who were members of the local councils, also became natural recipients of such

[335] But the example of Varna indicates that not all the local councils were equally willing the establishment of these councils. However, even in this example it was again a local actor demanding this. Namely, the customs official who wanted to save himself from the burden of overseeing the commercial litigations.

[336] The Porte demanded the names of the members of the Commercial Council to be sent to İstanbul. Moreover, registering the şehbender and deputats as beratlı merchants was another way of gathering knowledge.

orders. The orders from the office of the Grand Vizier, on the other hand, addressed the local officials such as governor and head of the districts rather than the judge. However, this did not imply an outright secularization by the shift of the jurisdiction from the Islamic court into the local council.[337] In fact, the orders of the center specified the council as the site of the dispute resolution but the reference was still made to Islamic law for some time. Moreover, orders from the center often included the appointment of a mübaşir who constituted the third leg of the tripod[338] with whose means the dispute was expected to be examined. Nevertheless, if the matter could not be solved locally, the defendant could be brought into İstanbul for a trial by the mübaşir upon the request of the Avrupa Tüccarı. This novelty of the Tanzimat preceded the establishment of the commercial councils examined above.

After the early years of the Tanzimat the judicial disputes became the scene of a contest over where the jurisdiction of a particular case lied. While the Porte was concerned with Avrupa Tüccarı who attempted to override the authority of Islamic law, the Avrupa Tüccarı complained about being referred to Islamic law primarily. The local judges and officials insisted on imposing their authority on the Avrupa Tüccarı, for whom Islamic law would be just a tool of doing this. Avrupa Tüccarı, on the other hand, wanted to take their cases to the commercial councils and merchant assemblies. The orders sent from the center were also confusing as they sometimes included Islamic law as a reference while other times there was no mention of it.

[337] Avi Rubin challenges the view of seeing the Ottoman legal reforms as an outright Westernization or secularization. He states that there was not a reifed west the laws and institutions of which Ottomans could and would adopt. As for the ‘‘secularization,’’ the Ottomans never called the new laws and institutions as ‘secular’. Instead, their emphasis remained on the ‘‘regulations’’ or the ‘‘regular’’. Even the new court system was called ‘*Nizami*’ (regular). Rather than following a dualist approach such as religious versus secular, Rubin focuses on the continuities and finds a syncretic legal vision in the Ottoman legal reform process. See Rubin, *Ottoman Judicial Change*. This syncretic vision is also apparent in the legal reforms of the early and middle Tanzimat periods and the Avrupa Tüccarı’s place within these reforms.

[338] Islamic law and the local councils were the other legs of this tripod.

This would be seen as a characteristic of the reform period in which different institutions intermingled, such as the court of the kadı being incorporated into the local councils, and the all-encompassing Islamic law was in place alongside with the commercial customs. However, seeing these practices as dualism would be problematic, as the state did not see two conflicting sides fighting to get the upper hand. It rather pretended to view it as a single system with various facets. Even when there was no reference to the Islamic law, the decision was often justified with a concept borrowed from Islamic law, namely ‘‘*maslahat*’’. *Maslahat* denoted the common good and making the things easier for the public. Therefore, even when the merchants were petitioning to complain about being primarily referred to the Islamic law, they did not target the Islamic law. They rather appealed to the need to make their trades easier by ensuring access to the institutions run by the merchants.[339]

The practice of including Islamic law as a main reference gradually disappeared from the orders for Avrupa Tüccarı litigation towards 1855-1856, but calling this event secularization, is problematic. These later orders did not include any reference to the religious or non-religious. When there was a reference to the Islamic law (*şer-i şerif*) it was the Ottomans insistence on the only law that was in force encompassing even the canonical law. With the later change, the reference became the methods of trade (*usul-ü ticaret*) and regularity (*nizam*) and the councils, which were expected to execute the orders, continued to include the judge (kadı or naib) and the mufti as their members.[340]

[339] ‘‘*Teshil*,’’ making it easier, was the most common word used by the merchants in their petitions, by the state in its orders, and by the authors of the Commercial Code in its preface. Making the conditions of trade easier and expecting public benefit from it was indeed in conformity with the concept of ‘‘*Maslahat*’’.

[340] Even when the civil cases were transfered from the councils to the *Nizamiye* (regular) courts later the judge’s importance continued. Naibs acted as the judges of the both Islamic court and the Nizamiye courts. Rubin, Ottoman Judicial Change, p. 10. Rubin uses this example to highlight the problematical nature of the secularization paradigm. Moreover,

As shown in the previous section, the commercial councils operated under the local government and were considered a lower branch of the provincial and district level councils. Moreover, they did not exist in every province. Therefore, the Porte addressed the governors and heads of the districts and expected them to carry out the orders with the means of these councils. Together with the makeup of these councils and the Ottoman understanding of the ‘‘regular’’, considering this change a sign of secularization turns out to be problematic.

While Sedat Bingöl recognizes the judicial roles of these councils and sees them as the origins of Nizamiye (regular) courts, his analysis mostly remains a depiction of the institutional changes with rare references to the workings of the new institutions. Moreover, the Avrupa Tüccarı had only a marginal place in his work. In what follows, I will attempt to present the everyday experiences of individual Avrupa Tüccarı within these institutions.[341] Moreover, I will examine the Porte's policy towards the Avrupa Tüccarı within the new system as well as their collective petitions of complaining about their position within a changing world.

For the early years of the Tanzimat period, the Ahkam Defteri of the Avrupa Tüccarı continues to be my main source because the records of the newly founded ministries concerning the Avrupa Tüccarı matters began to appear around 1845. Even for this period, the records of all the ministries are either not classified or non-existent. Unfortunately, I was not able to find the original records of the Ministry of Trade, which was the seat of the Commercial Court/Council. Therefore, I had to rely on the records of the Ministry found among the documents of other ministries and

---

although the orders from the Office of Grand Vizier did not address the *kadı* directly, the imperial orders of the sultan still included a direct reference to him.

[341] Of course I will be able to examine only a few of thousands of the cases that involved Avrupa Tüccarı and that have extant records in the Ottoman archives. After examining hundreds of these cases, I will try to keep my focus on the cases that have a standard form for all Avrupa Tüccarı therby enable me to make generalizations.

offices due to the communication between these institutions.[342] While the reports of the Commercial Council at the Ministry of Trade sent to the other institutions include information about whether it accepted a case and earlier judgments if there were any, these were not the exact records of the minutes of the meetings and trials. Therefore, although these reports refer to the guidelines for the procedural and legal aspects of the meetings and trials, the power relationships at the court/council room and its effects on the verdicts cannot be observed from these reports alone.

Moreover, since the records of the provincial councils have not surfaced yet,[343] my study was limited to the documents of the central state, which included communication with these councils. The reports of the provincial councils are no different regarding the power relationships and its effects on the council's decisions. The fluidity of what were ''the laws'' and regulations to be executed and how the council members understood and interpreted these ''laws'' and regulations only adds to the difficulty of using these records to examine the Avrupa Tüccarı during the period of Ottoman legal reforms.[344] In the absence of more detailed records for the time being, the best I could do was to utilize the records at hand with all the limitations this method entailed. Hence, the limitations arising from the current

[342] The records of the Foreign Ministry, Supreme Council of Judicial Ordinances and Office of the Grand Vizier contains the letters of communication between these institutions and Ministry of Trade. Avrupa Tüccarı often applied to the Foreign Ministry to file a lawsuit, which submitted this application to the Ministry of Trade (often called '*Ticarethane*', '*Ticaret Meclisi*' and '*Mahkeme-i Ticaret*') or other offices. The Ministry of Trade sent its advise explaining it accepted the case and how the matter should be examined. Then an order was sent from the Office of the Grand Vizier to the provinces following the advice of the Ministry of Trade. The minutes of these communications are mostly found in the HR.MKT (*Hariciye Nezareti Mektubi Kalemi*-Foreign Ministry Clerical Office of the Chief Secretary) classification in the Ottoman archives.

[343] For an exception see Elizabeth Thompson, ''Ottoman Political Reform in the Provinces: The Damascus Advisory Council in 1844-1845,'' *International Journal of Middle East Studies* 25, no. 3 (Aug. 1993), pp. 457-475. The author used the 506 cases recorded in the only know register of Damascus council in 1844-1845.

[344] Apparently, the Damascus council seemed to strugle to find the proper procedure to follow in commercial litigation as it often applied to the ''justice'' or the ''principles of Tanzimat'' in its examination of the cases. See Ibid. pp. 464-465

condition of the primary sources should be kept in mind in evaluating the information provided and arguments made in this thesis.

The first reference to a dispute resolution at the newly established commercial court in İstanbul in the Ahkam Defteri of the Avrupa Tüccarı is from September 1839.[345] It involves a dispute between sarraf Aleksanoğlu Agob and Avrupa Tüccarı İsekenderoğlu Kiğork and Karabet from Tokat. Agob had a claim of 71000 kuruş based on a bond (*bir kıta tahvil mucibince*) that had not been paid on time. Agob claimed that the merchants had deposited a house and pasture they possessed as security for their debt and delivered their title deeds to him. However, they had intended to cause harm to him by asking for extra time. Therefore, Agob demanded an imperial order for the sale of the house and farm by means of a mübaşir and to be paid their value. The minister of Trade, Mehmed Said Paşa, informed the Sultan about the details of the case with a written judgment. Accordingly, the claimed amount was settled by the means of the merchants to be paid in two installments. For this agreement, Kiğork and Karabet gave a corrected bond sealed by the chancery,[346] which included the house and pasture as security and their sale in case of a default.

The first installment of 9000 kuruş were paid, but it appeared from the condition of the merchants that the remaining 71000 kuruş could not be paid. The case was taken to the Commercial Court where it was decided that the home or the pasture should be sold depending on which one could cover the debt of the merchants, as this method of payment was found suitable to the law of trade. (*ol*

[345] A.DVNSDVE.d 106/1, p.56 doc. 131, Evail-i Rebiülevvel 1255

[346] ‘‘*Mutasarrıf oldukları bir bab hane ve bir kıta çayırlıklarının fürühtuyla eda itdirilmek üzere* sarraf *mersum yedine virmiş oldukları musahhah ve kançılarya tarafından memhur bir kıta tahvilin...*’’ ‘‘*Kançılarya*’’ denoted the chancery of Avrupa Tüccarı where their records were kept. Although it does not appear in the berats it always appears in the lawsuits during the Tanzimat period.

vechile tesviyesi kanun-u ticarete muvafık bulunmuş olduğu)[347]. When the needed action was asked from the government's chancery office, it advised an imperial order for the sale of the relevant security and appointment of a mübaşir in order to facilitate the payment. The imperial order addressed the deputy judge of Tokad and a minister in Tokad instructing them to enable the sale with their means and the means of the mübaşir. However, it warned them to refrain from any action against the Islamic law and conditions of the regulation that would cause harm.[348]

This imperial order belongs to the interlude between the establishment of the commercial court and the declaration of the Gülhane Rescript. The local councils of the Tanzimat did not exist and the local judge continued to be the main addressee. However, his duty was merely executing the decision of the Commercial Court rather than reexamining the case. There commercial court's decision was justified with its suitability to the law of the trade (*kanun-u ticaret*) and there was no reference to Islamic law. This reference shows the Ottoman understanding of what law was. Since this period preceded the Commercial Code, the law of trade could be no more than the customs of the merchants that had been raised to the status of law. However, the judge of the Islamic court was instructed to execute this law while refraining from any harmful acts that would violate the Islamic law and regulations revealing the syncretic legal vision of the Ottomans, implying a synthesis of the customary law of trade, regulations and un-codified Islamic law. The authors of the imperial order sounded as if these three belonged to a single legal space, not necessarily being in conflict with each other.

[347]It is interesting to see that the reference was made to the law of trade, although there was no codified commercial law during the time.

[348] ''*hilaf-ı şer-i şerif ve mugayir-i şurutu nizam gadri mucib vaz ve halat vukuundan mübaadet eylemeniz babında.*''

In the Ahkam Defteri of the Avrupa Tüccarı, the first order mentioning the members of the Tanzimat councils, the high-ranking officials appointed to the provinces (muhassıl) and mufti in addition to the classical addressees is from November 1840.[349] It is about a lawsuit between Avrupa Tüccarı Dimitraki and Hacı Sokila, and the heirs of Hacı Kostantin, who had passed away earlier, about an olive grove in the district of Ayazmend. The case was referred to the Commercial Court for examination in line with the ‘‘regulation’’[350] and the summoning of the involved parties to İstanbul was made known to the local officials. However, this did not happen and the Minister of Trade asked for an imperial order summoning the disputants. An imperial order was issued accordingly. We do not know the details of this case, such as whether this was a dispute about ownership or rental of the garden, but it is interesting to see that the Commercial Court adjudicating a dispute, which was seemingly a civil case rather than a commercial one. Let me introduce another dispute related to olive gardens before making further comments on this subject.

Avrupa Tüccarı Azoğlu filed a petition claiming that Harirdanlı (?) Mustafa had leased olive trees with a known name to him for a period of four years on a yearly lease of 1300 pitchers of olive oil beginning from February 1843 (late Muharrem 1259).[351] They based their contract on a deed (*sened*) and Azoğlu spent 25000 kuruş on the improvement of the trees. Although the term of the lease had not ended, Mustafa had begun to intervene with the intention of terminating the contract. Therefore, Azoğlu demanded an imperial order for the examination of the case

[349] A.DVNSDVE.d 106/1, p. 60 doc 142. Evasıt-ı Ramazan 1256. ‘‘*Asakir-i redife-i şahanem kaimakamlarından Karasi sancağı umur-ı zabtiyesi memuru… hevacegan-ı divan-ı hümayunumdan Ayazmend ve tevabi kazalar muhassılı…. Naib ve müfti… ve azayı meclis-i memleket…*’’

[350] ‘‘*davaları ber mucebi nizam Dersaadet’imde Mahkeme-i Ticaret’de rüyet olunmak üzere havale olunmuş*.’’

[351] A.DVNSDVE.d 106/1, p. 74 doc. 173, Evasıt-ı Ca 1259.

according to Islamic law in the locality and if this was not possible summoning Mustafa to İstanbul for a hearing at the Commercial Court as this was a condition of his berat. Because the disputes of the Avrupa Tüccarı over 4000 akçe was to be examined in İstanbul, the case was referred to the Ministry of Trade.[352]

The ministry stated that if the deed of the contract was found valid as evidence (*sened-i mezkur ihticaca salih olduğu…*) and the request of the plaintiff was found rightful upon the examination by the merchants in the locality, the intervention and quarrel of the lessor would not be acceptable. Therefore, the Ministry recommended the issuance of an imperial order for the case to be taken care of by the means of the local council and merchants; and if the disputants could not be convinced in the locality, they should be brought to İstanbul for a trial since this was seen as necessary with respect to public benefit (*icab-ı maslahatdan idüğü*). An imperial order was issued addressing the deputy judge, mufti and the notables of Kemer-i Edremid instructing them to bring Mustafa to the local court while unbiased and informed merchants were present and examine the case by the council. If the case was as explained and the validity of the deed as evidence become apparent according to Islamic law, the unlawful intervention of Mustafa should be prevented and if there was not a resolution in the locality the disputants should be brought into İstanbul for a trial.

While we did not know the details of the first case, the second is clearly a lease dispute. Ottoman legal scholars Mehdi Fraşerli, and Cemaleddin and Asador inform us that foreigners took even their civil cases to the Commercial Courts because writing and fixing seals were not accepted as valid evidence and interest

[352] Interestingly 4000 akçe clause in the Avrupa Tüccarı berats of the time does not indicate a trial at the Commercial Court. It stipulates such cases to be brought to İstanbul for a hearing in the presence of şeyhülislam.

could not be decided without resorting to Islamic legal tricks.[353] Cemaleddin and Asador cite lease disputes as such civil cases.[354] The Ministry of Trade's advice for the course of action to be followed in the locality through the examination of the deed of contract by the merchants to see if it was valid as evidence indicate that it was concerned that such an examination according to Islamic law might have a negative result for the plaintiff.[355] However, the Ministry justified its advice with a concept borrowed from Islamic law, namely ''*maslahat*'' or public benefit that was seen as a way out for overcoming the difficulties faced by the Islamic law throughout history as making the things easier for society and serving the public benefit was accepted as important. The Sultan, on the other hand, added the Islamic law as a reference for the validity of the deed although the examination was to be made at the council in the presence of learned merchants but also left the door open for a retrial in the Commercial Court.

Another area of lease related lawsuits that merchants demanded solutions for among themselves was seeking redress for the damages arising from the illegal occupation of property. On 23 December 1855, Avrupa Tüccarı Lazoğlu Ligor filed a petition stating that he had been leasing rooms inside a house and the adjacent cobbler shop he owned in Kemer-i Edremid and collecting their rent.[356] However, when he had come to İstanbul for a business six years earlier, Avrupa Tüccarı Anastaş had seized his properties and leased them and collected their rents. Ligor claimed this was unrightful since he was neither in debt to Anastaş nor owed anything due to a guarantee for someone else. He had recently been able to retake his properties, but some objects inside his shop had been damaged. Ligor demanded to

[353] Fraşerli, pp. 148-149. Cemaleddin&Asador, pp.90-91.
[354] Cemaleddin and Asador, p. 90.
[355] The expression of the Ministry is the same as the expression used by Mehdi Fraşerli for the validity of written evidence. Both of them used '*ihticaca salih''*, valid as evidence.
[356] HR.MKT 131/21.

be paid both for the damages to the shop and for his loss of the rents that had accrued for six years. However, Anastaş refused to pay and had the motive of harming him by refusal. Therefore, Ligor requested the issuance of an order to the governor of Balıkesir for a trial and establishment of justice at the Balıkesir council among the merchants for which he appointed Hacı Mihalaki as his representative. Ligor's request was accepted and an order was sent to the governor of the Karasi region on 1 January 1856.

Why did Ligor ask for a trial at the council of Balıkesir among the merchants rather than with the means of Islamic law? Apparently, he had been seeking redress for the loss of rent due to an illegal seizure of his property. However, according to the Hanafi school of Islamic law, if a property was illegally seized but later returned to the owner in its former condition, there would be no need to pay compensation to the owner for the usage.[357] Therefore, if Ligor had a trial according to Islamic law he could only ask for the repair of his shop or payment for the damage in the shop and had to give up the six years rent.[358]

These cases indicate that it was not only the foreign merchants who wanted to bring their civil cases related to lease to the Commercial Court. Indeed, as privileged Ottoman subjects, Avrupa Tüccarı did the same, which reveals in the period of legal reforms, internal dynamics were at work, too.

Another case study related to a dispute about the matters of olive oil illuminates under what circumstances the jurisdiction of the Islamic law was found acceptable by the Ministry of Trade. Mani Nikola, Küçük Yani, Anatoş, and his partner Pinac, and Kostanti, and his partner Yorgi, Avrupa Tüccarıs from the island

[357] Kaşıkcı, p. 248.
[358] This was modified with the Ottoman Civil Code Mecelle which stipulated the payment if the property have usually been leased before the seizure. See Ibid. pp. 269-270. However, even in this case if the property was seized with a claim on ownership over it there would be no need to pay for the losses.

of Midilli had individual claims based on merchant's book (*ba defter*) from İsmail Bey, who was the former minister of Midilli, and his father Mustafa about the matters of olive oil and other subjects.[359] They filed a petition demanding the collection of their claims. The matter was referred to the Ministry of Trade for examination and settlement. The plaintiffs and the defendant's representative, Hacı Mehmed in İstanbul, were summoned to the Commercial Court and Council of Public Works (*Meclis-i Umur-ı Nafia*) and interrogated.

However, because the names in the book presented by the plaintiffs were marked with writing in red ink the matter was found to be related to Islamic law.[360] Moreover, Hacı Mehmed had no information about most of the matters. In addition, İsmail Bey sent a letter claiming that this dispute was not from about matters that would be dismissed according to Islamic law. Although it was possible to examine the case in İstanbul according to Islamic law after gathering more information from the locality, it was thought that there would be difficulty in bringing witnesses and the case could not be settled in İstanbul. Therefore, the Council of Public Improvements advised the examination of the case according to Islamic law in the locality and hastening the establishment of justice. Therefore, an imperial order was sent to Salih be who was among the head of the palace gates keepers and the deputy judge of Midilli for the examination of the case with their means according to Islamic law.

Although we do not know the details of this case, it reveals the concerns of the Commercial Court in its earlier days for accepting a case for examination under its jurisdiction and referring it to the Islamic law. It seems that the books of the merchants were found unsuitable to the standards of the book keeping of the day, so

[359] A.DVNSDVE.d 106/1, p. 58, doc. 134. Evasıt-ı Za 1255 (January 1840).
[360] ''*mersumların iş bu davaları terkim kılınan bir kıta defterde isimleri balalarına sürh ile işaret olduğu üzere hukuku şeriyyeye dair olarak.*''

the council refrained from making a decision based on the books alone and concluded that the case should be the jurisdiction of the Islamic law in which there was a need for calling the witnesses. Moreover, the defendant's remark that the case would not be dismissed by Islamic law seems to have alleviated the concerns of the council. Therefore, the priorities of the council were having written evidence suitable to the customs of the merchants of the time and not allowing the case to be dismissed by Islamic law. Lastly, the date of the imperial order was January 1840, indicating that the dispute either preceded the Tanzimat or in its immediate aftermath when the councils of the Tanzimat were not in place and its principle of public hearing was not in effect yet. Hence, the addresses of the imperial order were the same as in the classical age.

The cases I have used until now have included petitioning directly to the sultan and initiating a judicial process with his intervention. Another way of seeking redress for Avrupa Tüccarı, which seems to have been the dominant form around 1845,[361] was requesting an order from the office of Grand Vizier. Avrupa Tüccarı Varnalı Mihalaki petitioned the Foreign Ministry making a claim of 28900 kuruş based on a bond (*tahvil*) from Hüseyin Efendi, a resident of Tulça on the shores of the Danube who had opposed to pay and had the intention of rendering his right null.[362] Therefore, Mihalaki demanded the issuance of an order from the Grand Vizier's office including the appointment of a guard mübaşir from the Foreign

[361] My observation may also be due to the relative stability reached by the new ministries that was concerned by Avrupa Tüccarı affairs after this time. This might contributed to the existence of more documents after this period. However, the real rise in the documentation happened around 1850.
[362] HR.MKT 6/56, 2 Ramazan 1260 (15 September 1844).

Ministry[363] who would facilitate the summoning of the defendant to İstanbul if he maintained his opposition to the payment.

In its note, the Ministry of Trade summarized the petition of Mihalaki and his intention to summon the defendant into İstanbul for trial at the Commercial Court (*Ticarethane*). According to the established regulation, Mihalaki appointed the Avrupa Tüccarı Nikolaki as his guarantor and a deed of guaranty was taken and preserved at the Ministry.[364] Therefore, the Ministry requested the issuance of an order from the Grand Viziers office addressing the necessary officials with the appointment of a mübaşir. An order was sent to the field marshal of Silistre explaining the case and instructing him that the claim of Mihalaki should be collected by the means of the mübaşir according to the conditions of the berat of Mihalaki, and if this was not possible, the defendant should be summoned to İstanbul for trial in the company of the mübaşir.

Varnalı Mihalaki[365] filed another petition during the same month making a claim of 15000 kuruş and the needed interest from Bergoslu Mardiros for whom he stood as guarantor and they based their agreement on a deed of promise.[366] He demanded the sum from him repeatedly according to the contract, but Mardiros

---

[363] According to an undated note in the opening page of the registry book of Avrupa Tüccarı berats when the Avrupa Tüccarı were the plaintiff they were to apply to the Foreign Ministry and a mübaşir should be appointed from this ministry. However, when an Avrupa Tüccarı was the defendants and someone wanted to summon him to the court, the mübaşir should be appointed by the Ministry of Trade. See MAD.d 21192, p.2.

[364] Although it was not explained openly in this document showing a guarantor and giving a deed of gurantay was needed to summon someone into İstanbul. If the the plaintiff lost his lawsuit against the defendant, he had to pay the expenses of the mübaşir and the defendent. The gurantor had to pay it in case the plaintiff failed to pay. This was called the regulation for defaulters (*mütemerrid nizamı*).

[365] Varnalı Mihalaki was among the three Avrupa Tüccarı I followed closely examining all the documents I was able to find about them. (The other two were Beyleroğlu Agob and Bahçıvanoğlu Dimitraki). I came across around 200 documents depicting his business activities between 1844 and 1864. He was a prominent tax farmer who had the oil olive tithe of Edremid and tithe of İslimiye for several years during this period. However, I did not limit my examination of Avrupe Tüccarı to these three merchants.

[366] HR.MKT 6/57, 11 Ramazan 1260 (24 September 1844).

engaged in acts of injustice aiming to cause harm to him. Therefore, he demanded the required action be asked from the Commercial Council and issuance of an order from the Office of Grand Vizier for his claim be delivered to his agent there with the necessary assessment and summoning of Mardiros to İstanbul if he refused to pay. The Ministry of Trade summarized the case and reported that Mihalaki had appointed Avrupa Tüccarı Eliko as his guarantor and a deed of guaranty had been taken from him and preserved according to the established regulation about the defaulters. The Ministry requested the issuance of an order for the collection of the claim and delivery to Mihalaki's agent and if this were not possible summoning Mardiros to İstanbul for trial through means of a mübaşir. An order from the office of Grand Vizier was sent to head of the district of Varna explaining the case and demanding the collection of Mihalaki's claim from the debtor through the means of Islamic law, the local council, and mübaşir,[367] and the summoning of the defendant to İstanbul if he resisted payment.[368]

It is evident that in both cases, Mihalaki used the Commercial Court at the Ministry of Trade as the main venue for his claims. However, in the first case neither the local council nor the Islamic law was referred. In contrast, it seems that the defendant was to face the mübaşir directly. This would be due to not to involve others in the jurisdiction of the Commercial Court. Therefore, the mübaşir was to act like an agent of Mihalaki, stating his claim one more time and if the debtor refused, bringing him to İstanbul for a trial. In the second case however, the collaboration of the Islamic law (*şer-i şerif*) and the local council was sought. Although the second

[367] ''*Meblağ mezkurun şer-i şerif ve meclis ve* mübaşir *marifetiyle medyun mersumdan tahsili ve tesviyesiyle.*''

[368] This was the standard form of a request of a İstanbul resident Avrupa Tüccarı for the collection of a claim during the period. For an identical process four years later for the same merchant's clam from Yusuf Murad from Ahyolu, see A.MKT 163/8

method was more common, I also used the first case as an example about the options of dispute resolution for Avrupa Tüccarı.

For an Avrupa Tüccarı to have a claim against a large group of debtors, all of them summoning to İstanbul was not a practical option. The following is an example of a standard practice of dispute resolution at the level of local council through the means of the local council and Islamic law, but in accordance with the principles of Islamic law.

Avrupa Tüccarı Eci Yorgi filed a petition for his claim of 400 kise akçe (200000 kuruş) from 40-50 individuals, both Muslim and Christian based on a bond and records in a merchants book.[369] Although he demanded his money from each of them, they engaged in ‘‘acts of injustice’’, delayed payment, and asked for more time causing annulling his right and causing great harm to him. Therefore, he demanded an order from the office of the Grand Vizier addressing the head of Balikesir district and council for the establishment of justice at the locality, according to Islamic law, and after his rights had been proven according to Islamic law execution of his rights in line with the regulations valid for Avrupa Tüccarı.

The Ministry of Trade found the request suitable to the methods of trade (*muvafik-ı usulü ticaret*), and cited the regulation of Avrupa Tüccarı for the debt collection and demanded the issuance of an order from the office of Grand Vizier. The order was issued, addressed the head of the Balıkesir district notifying him about the communication with the Commercial Court, which reminded Avrupa Tüccarı regulation that included the collection of their proven claims and a two percent upper limit for the fee to be collected for this service. Therefore, he was called on to set about the examination of the claim through the means of Islamic law and council,

[369] HR.MKT 3/78, 20 R 1260 (9 May 1844).

and after proven the collection of the debt from parties involved and to not annoy the merchant by demanding a fee of more than two percent.

This case was from the early years of the Tanzimat, when there were no commercial councils in the provinces and the Ottoman Commercial Code was not in force. Merchants were still appealing to Islamic law (şer-i şerif) although it was now under the supervision of the local councils. However, as I will show below, when they were equipped with commercial councils and a commercial code as well as local councils acting like a commercial courts by bringing expert merchants when needed, they demanded trials among the merchants according to Commercial Code and mercantile customs instead of according to Islamic law.

A Question of Jurisdiction: The Interplay between Avrupa Tüccarı and the Porte

So far, I have discussed individual Avrupa Tüccarı lawsuits. The Ottoman archives also offer evidence about the Porte's scrutiny of the Avrupa Tüccarıs judicial acts in general and how it devised its policy vis-à-vis the Avrupa Tüccarı. Moreover, I located collective petitions of Avrupa Tüccarı explaining the judicial conduct of Ottoman officials, of course from their point of view, and asking for a change, which interestingly received positive responses from the Porte, indicating yet another role played by the Avrupa Tüccarı in the process of Ottoman legal reforms.

One such case involves reports that reached to the Porte about Avrupa Tüccarı resisting to appear before the Islamic law (*şer-i şerif*) when their summoning was needed.[370] The topic was discussed in the Supreme Council of Judicial

[370] İ.MVL 200/6279, 8 Rebi'ül-ahir 1267 (10 February 1851).

Ordinances after the regulations of Avrupa Tüccarı was asked from the Ministry of Trade and the government's chancery office. According to the council's statement, it had been reported that when it was necessary to bring Avrupa and Hayriye Tüccarı, who had been accused of bribery, committing crimes, and other things, to the Islamic law for trials, they resisted this call by stating that they would go to the Commercial Court, thereby leading to the abandonment of the principle of establishing justice.[371] Refusing to go to the Islamic law and answering along this line was seen as rendering justice null.[372] After the communications with the Ministry of Trade and the government's chancery office, it was found natural that only the commercial disputes of these merchants among themselves and with others should be examined in the Commercial Court; and when it was about the Islamic law and established laws, the trial should take place at the Islamic courts and in the high councils.[373] Similarly, in the provinces their lawsuits related to trade should be examined in the commercial council if they happened in a places where such councils existed. If not, the notable merchants of the region were to be brought to the local council and there should be a haste in the examining of the case and ending the dispute.[374]

If it were about the matters of Islamic law or regularity, then it would be necessary to examine and settle the case in at the council through means of Islamic

---

[371] ''*Beratlu Hayriye ve Avrupa Tüccarından ahzı rüşvet ve cerime ve saire ile müttehim olanların li-ecli-terafu canib-i şer-i şerife ihzarı iktiza itdikde Ticarethane tarafına gideriz diyerek muhalefetleri vukuuyla ihkakı hak maddesi yüzü üstüne kalmakta olduğu ihbar olunmuş…''*

[372] ''*Bu misillulerin ticarete müteallık olmayan hususatda şer-i şerife gitmeyüb bu vechile cevap virmeleri ibtal-i hakkı mucib görünmüş olduğundan…*''

[373]. ''*tüccar-ı merkumenin birbirleri beyninde ve yahud ahar bir kimse ile yalnız ticarete dair nizaları olur ise mahkeme-i ticaretde görülüp şer-i şerife ve kavanin-i müessese dair olduğu halde mehakim-i şeriye ve meclis-i aliye'de murafaa ve muhakeme buyrulması umur-ı tabiiden bulunmuş olduğu*''. It is apparent that this clause was for the merchants living in İstanbul.

[374] ''*taşralarda dahi ticarete dair davaları meclisleri bulunduğu mahalde ise orada ve meclis-i mezkur bulunmayan yeerlerde vukuu bulur ise ol mahalde bulunan muteberan-ı tüccar meclis-i memlekete celb olunarak rüyet ve faslı münazaaya mübaderet olunub*''

law by the council.[375] Therefore, the merchant's refusal to go to the Islamic law was found to be against the established regulation. It was decided that this should be explained and made clear to these merchants. Moreover, the inspector Pashas should also be informed about these conditions.[376]

The decision of the Supreme Council of Judicial Ordinances was sent to the Office of the Grand Vizier for approval. It finally took the form of an imperial order of the sultan. Then it was dispatched to the provinces. [377] Although this order did not lead to a change in the content of Avrupa Tüccarı berats, it was recorded as the second entry at the beginning page of the berat registry book[378] and afterwards referred to as the newly established regulation of the Avrupa Tüccarı.[379] Moreover, the conditions explaining the venue and method of examining Avrupa Tüccarı litigation became an integral part of the imperial orders authorizing the election of Avrupa Tüccarı vekils.[380]

---

[375] ''*eğer umur-ı şeriyye ve nizamiyeden olduğu halde meclisi mezkurda marifeti şerile ve meclisce tesviye ve tetki olunması iktiza ideceği*''

[376] Although it was not told who reported the Avrupa Tüccarıs practise of avoiding Islamic law in the provinces, this statement implies that it was reported by the inspector generals.

[377] For examples of this order sent into the provinces and the reports of the councils and governors about receiving and executing this order, see A.MKT.UM 53/55, A.MKT.UM 55/93, A.MKT.UM 55/90, A.MKT.UM 54/29, A.MKT.UM 52/88, A.MKT.UM 54/16, A.MKT.NZD 28/75

[378] MAD.d 21192, p.2, 12 Rebiülahir 1267 (14 February 1851). This registry also includes the governors in addition to the official inspectors as the addressees of this order.

[379] However, these later references simply defined the venue of Avrupa Tüccarı litigation without mentioning their reported avoidance of Islamic law.

[380] A.DVNSDVE.d 106/1, p. 103, doc. 229. Evail-i Cemaziyelahir 1267 (April 1851) ''*ve bade izin tüccarı merkumanın taşralarda ticarete dair davaları ticaret meclisleri bulunduğu mahalde ise orada ve meclis-i mezbur bulunmayan yerlerde vuku bulur ise ol mahalde bulunan muteberan tüccar meclis-i memlekete celb olunarak rüyet ve fasl-ı münazaaya mübaderet olunub eğer umur-ı şeriye ve nizamiyeden olduğu halde meclis-i mezkurda marifeti şerile ve meclisce tesviye ve terfik olunması bu defa irade-i seniyye-i şahanemle virilen nizam iktizasından olduğu*'' This clause was repeated in all the later orders sent to the provinces for the authorization of the elected vekils.

Less than a year after this imperial order, a collective petition of Avrupa Tüccarı was filed[381] complaining about their treatment in the provinces giving an indication of how this order was interpreted by the local authorities and the Avrupa Tüccarı. [382] The petition starts by highlighting that the increase of the trades of the Avrupa Tüccarı and their servants depends on them being protected in all conditions, the execution of the necessary backing and help in their particular and general affairs as well as pairing their buying and selling, perfecting the means and causes needed for them to acquire wealth and become prosperous. Moreover, it is contingent on the protection of all aspects of their honor and prestige and facilitating easiness in their buying and selling always and continuously.[383] Furthermore, they maintained that this security (*emniyet*) is part of the conditions of the berats they hold in their hands.

They appealed to the clause about the lawsuits of these merchants stating that their disputes with anyone should be examined in the Ministry of Trade/Commercial Court (*Ticarethane*) according to the rules of the merchants (*kaide-i tüccar üzere*) by means of the notable merchants elected by the merchants and vekils with the consent of the ministry. If there was a need to refer to the Islamic law, it should be examined only in the presence of the şeyhülislam. Moreover, it included a reference to the previous imperial order averring that the commercial lawsuits of the Avrupa Tüccarı

[381] Although I saw collective petitions of an Avrupa Tüccarı from a particular city before, the collective petitions of all Avrupa Tüccarı is a novelty as far as I can tell after my extensive research in the Ottoman archives.

[382] İ.MVL 240/8571, 17 N 1268 (5 July 1852). This is the date of the Grand Vizier's note to the sultan. Avrupa Tüccarıs petition should have been submitted before 13 Rebiülevvel 1268 (6 January 1852) because the note with this date started the process of evaluating the petition.

[383] ''*…Beratlı Hayriye ve Avrupa Tüccarı ve fermanlu hizmetkarlarının tevsi-i daire-i ticaretleri kendülerinin her halde himayet ve siyanetleri ve vukubafte olan umur-ı hususatlarında muavenet-i müzaharet-i mukteziyenin icrası ve saye-i muadeletvaye-i cenab-ı cihandaride dad ve sitedlerinin tezviciyle kendülerinin iktisabı servet ve mamuriyetlerini mucib olur esbab ve vesailin istikmaliyle ezher cihet vikaye-i namus ve itibariyle ahz ve italarında teshilat-ı mümkinenin daiman ve müstemirran haklarında şayan buyurulmasına menut ve mütevakkıf olarak...*''

in the provinces should be examined in the commercial councils and if there was not one, in the local council in the presence of notable merchants with the means of the merchants. Lastly, the petitioners reiterated the promise of protection of their honor and that they would be shielded from injury.

After making these references to the berats, the petitioning Avrupa Tüccarı request the execution of all their rights and privileges and state that they aim to acquire wealth and benefit in this way. Lastly, they inform that Avrupa Tüccarı in the provinces have been subject to an inappropriate treatment through imprisonment and oppression thereby causing them harm. Therefore, they also appeal for this treatment to end.

The petition was discussed at the Supreme Council of Judicial Ordinances after the government's chancery office and Trade Ministry sent notes of communication reiterating the conditions of Avrupa Tüccarı regulations. The report of the council's decision summarized the demands of Avrupa Tüccarı and accepted them as part of their regulation. However, it added that if the lawsuits of the Avrupa Tüccarı in the provinces were about matters of Islamic law and regularity (*nizamiye*), they should be examined through the means of the Islamic law, but by the local council, something missing in the petition of the Avrupa Tüccarı. Therefore, the council submitted its decision of meeting the demands of the Avrupa Tüccarı with an order to be applied everywhere to the Grand Vizier for approval. Consequently, an imperial order was issued and sent to the provincial authorities.[384]

[384] For the examples of the order sent to the provinces and the governors and councils response see A.MKT.UM 105/99, A.MKT.UM 107/36, HR.MKT 45/94, A.MKT.UM 107/73, A.MKT.UM 105/79, A.MKT.UM 108/23.

Around the same time, the vekil of the Avrupa Tüccarı Dimitraki[385] filed a petition complaining about the intervention in the lawsuits of Avrupa Tüccarı by the judges and officers.[386] He referred to an earlier order from the office of the Grand Vizier instructing the governor of Balıkesir to refer Avrupa Tüccarı lawsuits to the vekils for examination in the towns of Edremid and Kemer-i Edremid and the prevention of the intervention of the judges and officials on such cases according to the established regulations of the Avrupa Tüccarı. However, recently there had been a dispute of two Avrupa Tüccarı in Edremid and while the matter was to be examined in the Chamber of Commerce (*Ticaret Odası*) through the means of the vekils and merchants, the priority had been given to the Islamic law, thereby violating the regulations. This event was conveyed to Dimitraki by the vekils and other Avrupa Tüccarı. Therefore, he demanded a reiterating order from the office of the Grand Vizier for the referral of Avrupa Tüccarı disputes to the Chamber of Commerce without any intervention of the officials.

Unfortunately, I was unable to find the Porte's response to Dimitraki's petition. However, below his petition an old imperial order, which was issued on 25 March 1852 upon the request of Dimitraki, was inserted. It states that although the disputes of Avrupa Tüccarı and their fermanlı servants arising from their trades should be examined and settled in the council of the vekils according to the Commercial Code in line with the regulations, this condition had not been observed and the lawsuits of Avrupa Tüccarı had been referred to other places. The order cites

[385] (Bahçıvanoğlu) Dimitraki was elected the vekil of Avrupa Tüccarı in İstanbul in 1267. See A.DVNSDVE.d 106/1, p. 104 doc. 231. However, Avrupa Tüccarı vekils in İstanbul were also considered the vekils of all Avrupa Tüccarı in the empire.

[386] A.DVN 76/34, 3 C 1268 (25 March 1852). The exact date of Dimitraki's petition could not be determined from the document but it looks that it was reviewed around 1852 because the copy of an imperial order below the petition had this date and that imperial order was an imperial order obtained by Dimitraki recently.

the case of Hacı Karabet, who was the vekil of Avrupa Tüccarı in Edirne as an example.

Accordingly, Hacı Karabet had a dispute related to the tithe with three people and their accounts were examined in the merchant's council. However, a man named Ömer from this group of three sued Artin, the agent of Karabet, and led the case to be referred to another place. Although the Avrupa Tüccarı demanded it to be examined in the merchant's council, this was not allowed. Therefore, as the vekil of Avrupa Tüccarı, Dimitraki requested the examination and settlement of their accounts according to the methods and regulations and protection of the Avrupa Tüccarı from harm. Moreover, he demanded it to be made known that the disputes of other Avrupa Tüccarı should be examined rightfully and Avrupa Tüccarı should be protected in all aspects. The order stated that the Avrupa Tüccarı's disputes with anyone but foreigners, or Muslim and non-Muslim Ottomans, should be examined in the Commercial Court (*Ticarethane*) and if there was a need for referral to Islamic law it should be examined in the presence of the şeyhülislam. It also reiterated the conditions of the imperial order issued in 1851 about the venue of Avrupa Tüccarı lawsuits in the provinces. Moreover, it was stressed that claiming to examine their disputes arising from buying and selling in any other way in violation of the methods would mean the destruction of the established regulations/order and injury of the merchants. With respect to their capital and acquired credit, the class of merchants was considered vital for encouraging and easing the commerce of the countries and people, so protecting the system of their privileges and examining their cases in a just manner was seen as necessary. Therefore, an order was sent to the necessary places for the examination and settling the disputes of the Avrupa Tüccarı in accordance with their conditions and regulations in a perfectly just and right way as well as their

protection and not treating them in violation of the regulation thereby damaging their honor or reputation.

In 1854, another collective petition from Avrupa Tüccarı was reviewed at the Supreme Council of Judicial Ordinances.[387] The petition started with a reminder about the privileged status of Avrupa Tüccarı as Ottoman subjects. The petitioners stated that they necessarily had lawsuits related to matters of their trade. They claimed that as part of the strong conditions of their berats, these cases were to be examined and settled in the Commercial Court between the merchants in accordance with the Commercial Code considering their authentic title-deeds, and well-arranged books; and if it was about matters that necessitated an examination according to the Islamic law, then it should be referred to the Islamic law.[388]

The petitioners maintained that although it was self-evident that the principle purpose of their privileged status was to ease and increase their trade, people who had any kind of trade with them requested the matter to be taken immediately to the Islamic law, and they were referred in this way. As a result, they were summoned to the Islamic law with various kinds of insults and offense to their honor and status and judgment was made as required by the Islamic law.[389] Whereas this requested matter was from the articles necessitated an examination according to the title-deeds, contracts, books ordered suitable to the methods, and other documents valid among

[387] A.MKT.MVL 69/9, 21 S 1271 (13 November 1854).
[388] '*umur-ı ticaretimizde bil icab vaki olan muhakememiz kanunname-i ticarete tevfikan senedat-ı mevsuka ve defatir-i muntazamaya nazaran beynet-tüccar rüyet ve tesviye olunmak ve şer'an rüyeti icab idecek şey olduğu halde şer-i şerife havale buyrulmak mezkur beratlarımızın ahkamı mündericesinin mayel kavami olan şerayıt-ı kaviyyesinnden…*''
[389] ''*ve işbu imtiyazdan garaz-ı asil teshil ve tevsi-i ticaret olduğu bedi*hi isede beratlu *kullarıyla bir nev-i ahz ve itası olan bir kimesne keyfiyetinin heman şer-i şerife havalesini ledel istida ol vechile havale buyrularak dürlü hakaret ve kesr-i namus ve itibarımızı mucib halat ile şer-i şerife ihzar ve icab-ı şerisi vechile ilam olunmakda…*''

the merchants, when it was not taken into the Commercial Court and decided according to Islamic law, it caused various harms to the beratlı merchants.[390]

In particular, when a matter was decided according to the Islamic law, it became very difficult to take this matter to the Commercial Court for a reexamination.[391] Therefore, they requested an order stipulating that whenever there was a claim about the beratlı merchants, the matter should first be taken to the Commercial Court for examination between the merchants according to the Commercial Code and then if needed referred to the Islamic law from the Commercial Court. The petitioners claimed that such an order would help to save them from injury, increase their trade in accordance with the exalted desire, and mean that their rightful privileges would be executed completely, and the conditions of their berats fulfilled. They demanded this to be valid also in the provinces. Therefore, they demanded their request be explained to the Office of the Grand Vizier.

The request was reviewed by the Supreme Council of Judicial Ordinances and it was decided that an order should be sent to the field marshal of the gendarme, the Ministry of the Council of Lawsuits for the cases of the beratlı merchants to be sent to the Ministry of Trade first. Moreover, the council advised the issuance of orders to the necessary officials in the provinces for the cases of the beratlı merchants first to be brought into the Commercial Councils.

---

[390] '*halbuki hususu müsteda sened ve kontrato ve usulünde munazzam defter ve sair tüccarca muteber evraka nazaran rüyet olunması icab eyleyecek mevaddan olduğu ve ticarethaneye götürülmeyüb şer'an hüküm olunduğu cihetle beratlı kullarına enva-ı hasar vukuaa gelmekde…*'

[391] ''*Hususen şer-i şerife gidilip ilama rabt olunan mevadın tekrar Ticarethane'de rüyetinde gayet suubet çekilmekde bulunduğundan…*''

Indeed, the order were sent from the office of Grand Vizier as a special note to all districts of the empire,[392] to the field marshal of the gendarme, the Ministry of the Council of Lawsuits,[393] and note of explanation to the Ministry of Trade about the action taken.[394] The local officials were told that although the cases of the beratlı merchants should first be examined and settled at the Commercial Councils and sent to the Islamic law if needed, these merchants had been harmed because this condition had not been observed. Therefore, they were told to execute this regulation completely in their province. The field marshal of the gendarme and the Ministry of the Council of Lawsuits were informed about the same past practice and instructed that the cases of beratlı merchants should first be referred to the Ministry of Trade and if needed, it would be sent to the Islamic law from the Ministry.

The last four documents examined indicated the same phenomenon, namely the Avrupa Tüccarıs demand not to be referred to the Islamic law courts for trial. While the Avrupa Tüccarıs first collective claim did not elaborate why going to Islamic law was harmful for them, the second details that their cases were related to

---

[392] ‘‘*Umum: Beratlı Hayriye ve Avrupa Tüccarınn cüzi ve külli vuku bulan hususatının evvel emirde meclis-i ticaret marifetiyle rüyet ve tesviyesiyle icab eylediği takdirde canib-i şer-i şerife havale şerait-i imtiyaziyelerinden bulunduğu ve bu hususu yedlerinde bulunan berevat-ı şerifede münderiç olduğu halde taşralarda bu usule riayet olunmamasından dolayı hasardide oldukları Ticaret Nezaret celilesi cabinbinden ifade olubun bade izin o misillu tüccarın vuku bulan dava ve maslahatlarının evvel emirde ticaret meclisleri marifetiyle rüyet ve tesviye olunması Meclis-i Valada tensib olunarak keyfiyeti icab idenlere bildirilmiş olmağla oracada bu usulün tamamen icrasına himmet buyrulmak siyakında şukka-i mahsus…’’*

[393] *‘‘Beratlu Hayriye ve Avrupa Tüccarının bazı davaları usul ve nizamı üzere tüccarca rüyet olunmaksızın şer-i şerife havale olunarak kanun-u ticarete tatbik olunmadığından dolayı hasardide oldukları Ticaret Nezaret celilesi canibinden ifade olunmuş ve bu misillu tüccarın cüzi ve külli vuku bulan hususatının evvel emmirde Meclis-i Ticaret marifetiyle rüyet ve tesviyesiyle canib-i Şer-i Şerife havalesi icab eylediği takdirde Nezaret müşar ileyha tarafından gönderilmesi yedlerinde bulunan berevatı şerifede münderic şerait-i imtiyaziyelerinden olduğu cihetle ba’de izin o makule Beratlu tüccarın cüzi ve külli vuku bulan dava ve nizalarının Nezaret celile-i müşar ileyhaya havale olunması Meclis-i Vala’da tensib olunarak keyfiyeti icab idenlere bildirilmiş olmağla oraca dahi bu usulün hüsnü icrası hususuna himmet buyrulmak…’’*

[394] A.MKT.MVL 69/32, 1 Ra 1271 (13 December 1854).

the written documentation used by the merchants and their examination according to Islamic law causes harm to them.

As I raised the issue of written documentation not being valid in the Islamic courts several times throughout my thesis, this complaint of Avrupa Tüccarı is hardly surprising and offers yet another example of the perception of the Ottoman judges of the validity of written documentation as evidence alone. The rhetoric used by Avrupa Tüccarı in their petitions and the Porte in its responses is noteworthy. The Avrupa Tüccarı openly expressed their desire to accumulate wealth and increase their trades, which was seen as the exalted desire of the state, and their demand from the state was to make this process easier by creating the necessary environment and conditions. The demand for ease and non-intervention were certainly a demand for more freedom. Moreover, they explicitly asked for security (*emniyet*). As I showed before the Porte diagnosed these elements as the problem which had led Ottoman merchants to seek foreign protection when the Avrupa Tüccarı system was first established. Furthermore, Avrupa Tüccarı emphasized the need for protection of their honor (*namus*) and prestige (*itibar*), which had been promised to them since the establishment of the system and to all Ottomans with Gülhane Rescript. However, the principal aim of this rhetoric was to avoid being subject to Islamic law and gain guaranteed access to the new institutions of the reform era.

The Porte, on the other hand, responded to these requests positively which shows that the rhetoric used by the Avrupa Tüccarı had worked. Indeed, the response to Dimitraki's earlier response made it clear that the Porte considered the accumulation of wealth and acquiring credit by the Avrupa Tüccarı as an important matter both for the country and for its people. Indeed, this was the continuation of the Porte's aspiration of an increase of trade and prosperity of the country, starting from

the establishment of the Avrupa Tüccarı and continuing with the establishment of the Trade Ministry as well as the Gülhane Recript and the Ottoman Commercial Code. The Porte's policy of regulating and creating an institutional framework it saw as necessary for its aims have long been in practice. Therefore, the agreement between the demands of the merchants and Porte's aims certainly contributed to its receptiveness.

The Realities of a New World

I mentioned the gradual disappearance to a direct reference to Islamic Law in the Avrupa Tüccarı's commercial litigation. Here, I will examine a case brought before the Commercial Court of İstanbul as an example of a world much different from the classical period of twenty years earlier. It will appear that the venue, the language, and the references used in the litigation, and the Sultan's response to a similar claim of the defendants from the same city with a twenty years interval were significantly different, which was a sign of the extent of the legal reforms Ottoman Empire underwent during the period.

Avrupa Tüccarı Yağob had a claim of 405000 kuruş from the guildsmen (*esnaf*) of the town of Ahi Çelebi for their delivery of woolen cloth (*şayak*) to the depot of the Regular Army for the years 1263 (1846-1847) and 1264 (1847-1848) with his guarantee.[395] The case was examined by the Ministry of Trade and according to its judgment, an order was sent to the council of Filibe on 18 Ra 1272 (28 March 1855). The council of Filibe replied to the order with a report that included the statement of the guildsmen, who said that they had no involvement with

[395] İ.DH 357/23593, 17 Safer 1273 (17 September 1256).

this sum and that it belonged to Hacı İbrabim, Molla Hüseyin, İmam Hasan Efendi, another Molla Hüseyin, Emin Bey, and Molla Hasan. Therefore, they wanted the sum to be separated and divided as 213000 kuruş to be paid by the above-mentioned six, and 47000 kuruş paid by the committee of the guildsmen. They declared the remaining 145000 kuruş interest (*güzeşte*) and demanded the amount be forgiven. Moreover, the mübaşir, who previously had been appointed had to return in vain. However, according to the deed in the hand of the Yağob, it became apparent that the committee of guildsmen had acted as joint guarantors to each other and payment for the total amount. Later a deed was presented to the council of Fiible with 140 seals and Hacı İbrahim, Molla Hasan and a man named Dimo were sent as the appointed representatives of the guildsmen to settle the accounts of the guildsmen and for the amount that became clear after this to be paid by the guildsmen.

Yağob did not accept the offer of the guildsmen. He demanded the full amount with the required amount of interest since the date of his protest until a payment was made. To achieve this, he requested an imperial order be sent to the governor of Edirne. His petition was referred to the Commercial Council. The council studied the case and referred to records of its previous judgments and reports about the matter. Consequently, it became apparent that the deed presented by Yağob when the representatives of the guildsmen came to İstanbul, and the declarations of the two sides and the deed preserved in the council of Filibe were in accordance with each other. Hence from 437094,5 kuruş, 32000 kuruş were deduced as the cost of the mübaşir and fee for the judgment from the both sides and 405945,5 kuruş remained. It was decided that the claim of Yağob must be collected from the guildsmen in full and if they resisted all the costs arising from this resistance should fall on the guildsmen according to the Commercial Code. A judgment and report was written

on 19 February 1856 (18 C 1272) by Ministry of Trade for the issuance of an order from the office of Grand Vizier addressing the head of the district of Filibe.

After the studying the records, the Commercial Council decided that the request of Yağob was in accordance with the methods of trade (*usul-ü ticaret*) and the guildsmen's claims of writing of 145000 kuruş by calling it interest was in violation of its former judgment. Therefore, it decided to advise the issuance of an imperial order for the payment of 405945.5 kuruş in addition to the interest accrued until the payment was made according to the protest of Yağob and for the burden of the all the costs of the processes to fall on the guildsmen because of their continuing resistance and mübaşir's empty-handed return. Following the advice of the Commercial Council, an imperial order addressing the governor of Edirne, head of the district of Filibe, and judge and council members of Filibe, was issued in November 1856.[396]

This case stands in sharp contrast to my Case Study 9 from the previous chapter. In that case, the venue of the lawsuit was the Islamic court of Filibe where Es-seyyid Mehmed was able to get away with his debt in full by declaring it interest without Islamic legal tricks. The Sultan backed this claim with an imperial order almost twenty earlier. The venue for Yağob's claim, however, were the Commercial Court of İstanbul and the council of Filibe. Moreover, the guildsmen's rejection of interest payment was declined directly and Islamic legal tricks to hide interest were not even a matter of consideration. The interest was justified as suitable to the methods of trade and a requirement of the act of protest in line with the Commercial Code. The order of sultan addressed the governor, the kadı, and the members of the council. However, this time the kadı was not expected to check whether the case was

[396] A.DVNSDVE.d 106/1, p. 121 doc. 281. Evahir-i Ra 1273 (November 1856).

suitable to Islamic law. His role was to collaborate with the decision of the Commercial Court of İstanbul and facilitate the payment locally with the other officials. Hence, in twenty there was a great deal of change in the Ottoman system and the guildsmen who might have recalled the old times when the legitimacy of interest payment could be disputed on the grounds of unsuitability to Islamic law were not listened to now.

Clearly, there was no reference to the Islamic law in this case and the Commercial Code appears to have been the primary reference. During the time of this dispute, the Ottoman Commercial Code of 1850 was in force and a concept of this code, namely the ‘‘protest,’’ was used in the case. Indeed, Article 77 of this code mentions ‘‘protest.’’[397] The article stipulates that the unacceptance of a bill of exchange be proven with a deed called a protest. Moreover, Article 141 stats that for an unpaid bill of exchange, the interest was to be calculated starting from the date of the protest.[398] Furthermore, the second part of the Code was devoted to bankruptcy and how to deal with the debts and claims of a bankrupt. However, there was no reference to standing as guarantor for someone and the debts arising from this. In addition, there was no reference to the rate of interest to be paid for default. However, according to the methods of trade the accepted interest rate at the Commercial Court was once percent per month and twelve percent per year. Therefore, although the court adopted the terminology of the Code, the Code alone was not enough for dispute resolution. The continuing reference to methods of trade (*usul-ü ticaret*) seems to have been an attempt to overcome this absence.

In fact, the Ottoman Commercial Code was adopted from French Commercial Code. However, the French Commercial Code was not meant to be valid on its own,

[397] Gürzumar et al. p. 57.
[398] Ibid., p. 66.

but was an exception to the original civil law, namely the Code of Napoleon. The Ottomans, on the other hand, did not have a codified civil law although the un-codified Islamic law dealt with issues of civil law.[399] While the commercial code was applied in commercial matters, in other matters such as pledge, guarantee, and agency, the recourse needed to be made to the original law. Yet, Ottoman commercial laws could not make reference to original law, namely Islamic law, because Islamic courts could not examine only the particular aspect with which their help was needed. They would examine the case on the basis of original action. Recourse also could not be made to the French Civil Code because it was not in force by the imperial order of the Sultan. [400]

Therefore, the Commercial Code alone was not enough to meet the merchants' demands. In fact, the complaints of the Ottoman merchants[401] about not being protected and being injured in their litigation continued contrary to the prediction of the Trade Minister, who had told the Sultan that once the Commercial Code went into force the merchants would know what was their right and what was not so that their complaints would end. The tension between the jurisdictions of the commercial court and councils on the one hand and Islamic law/courts on the other that became evident in the complaints of the Avrupa Tüccarı and the reports reaching to Porte about the evasion by Avrupa Tüccarı of Islamic law was likely to be due to this discord between two systems. This ''disagreement''[402] was recognized by the commission that drafted Ottoman Civil Code, *Mecelle,* who explained their

[399] See ''Report of the Commission Appointed to Draft the Mejelle,'' *Arab Law Quarterly* 1, no. 4 (Aug. 1986), pp. 367-372. For the original version of the report in Turkish, see Kaşıkcı, pp. 74-79.
[400] Ibid.
[401] I mean Avrupa Tüccarı, but used Ottoman merchants here because in the original communication between the Sultan, Meclis-i Vala, and the Trade Minister there was no specification of which group of merchants had been complaining.
[402] However, I discussed above, the orders sent to the provinces sound as if everything was in harmony and expressed a syncretic legal vision which embraced different elements.

codification as an attempt to overcome the lack of a codified original law to be resorted from the commercial courts.

While the report of the commission recognizes this difficulty, Ahmed Cevder Paşa, the head of the Mecelle commission, explains the Ottoman attempts of codification with European pressure.[403] He states that the presence of the Europeans and their trades had rapidly increased after the Crimean War so the Commercial Court in İstanbul had become insufficient for examining the cases in İstanbul. Moreover, because the testimony of a non-Muslim against a Muslim and a foreigner with safe conduct against a non-Muslim Ottoman were not accepted, the Europeans had begun to resist Christians appearing before the Islamic courts. Furthermore, the *Frank*s (Europeans) were telling that ‘‘whatever your laws, present it so that we will see and inform our subjects.’’ Cevdet Paşa reports that some Ottomans had begun to think of translating French laws and applying them in the regular courts. Therefore, Cevdet Paşa describes the beginning of attempts at codifying Islamic law under the outside pressure that had begun to influence some Ottoman officials. However, the Avrupa Tüccarı’s experience as Ottoman subjects and the feedback they gave to the Porte reveals that the Ottoman legal reforms can not be explained by external pressure alone. In fact, most of the disputes of Avrupa Tüccarı I examined happened among the Ottomans rather than involving Europeans. By making choices about different jurisdictions and presenting their demands collectively to the Porte, the Avrupa Tüccarı as ‘‘genuine’’ Ottomans who had chosen to exist under imperial protection, provided an input to the legal reforms.

Indeed, their demands were met by the Mecelle at least partially. The Mecelle accepted written documentation as sufficient evidence without the need to resort to

[403] Cevdet Paşa, *Tezakir 1-12* Ed. By Cavid Baysun (Ankara: Türk Tarih Kurumu Yayınları, 1991), pp. 62-63.

testimony. Its authors explained that articles of trade such as partnerships and bills of exchange as well as the tax farming and establishing partnerships between the tax farmers were conducted by deeds and other valuable papers. It stated that establishing such transactions based on testimony was not possible. Therefore, according to the maxim ‘‘A matter recognized by merchants is regarded as being a contractual obligation between them’’, the Mecelle’s authors recognized the validity of written documentation as evidence sufficient for judgment. [404]

Indeed, the commission which prepared the Mecelle aimed the document to be as merchant friendly as possible and they wanted to leave the field open to merchants activities rather than limiting them. For example, because most of the buying and selling during the Mecelle’s completion were carried out with certain conditions but the majority of the conditions the Hanefi school of Islamic law stipulates on contracts made it invalid, the commission simply selected the conditions that would not make a sale invalid.[405] This was explained as making the transactions of the age easier.[406] In fact, the Mecelle’s attitude was in accordance with the nineteenth Ottoman policy of facilitating the increase of trade and seeing it as essential for the prosperity of country. Indeed, its mastermind Ahmed Cevdet Paşa also shared this view. He perceived trade as a requirement for wealth and saw facilitating its increase as among the most important duties of the governments.[407]

[404] Kaşıkcı, p. 155.
[405] Ibid. 76-77.
[406] Ibid.77 ‘‘*muamelat-ı asrın tesyiri için*’’. It is notewhorty to recall that Avrupa Tüccarı also demanded their trades to be made easier.
[407] ‘‘*mucib-i servet olan emir-i ticareti tevsi’...dahi kuvve-i icraiyyeye mufavvezdir*’’ Cevdet Paşa, *Tezakir 40-Tetimme*, ed. by Cavid Baysun (Ankara: Türk Tarih Kurumu Yayınları, 1991), p.98.

Yet another Question of Overlapping Jurisdictions: Avrupa Tüccarı in Tax Farming

The jurisdictional conflict about Avrupa Tüccarıs litigation was not limited to a so-called ‘‘rift’’ between the Islamic law and Commercial Councils. Another contested space for dispute resolution was the tax-farming-related litigation. It appears that Avrupa Tüccarı had many tax-farmers among their ranks[408] as the Tanzimat's project of abolishing it failed and it continued to be a lucrative business. Moreover, in an increasingly commercialized agricultural economy, contracting the tithe of a certain area or crop would mean having access to ten percent of the produce during the harvest session, thereby turning the tax-farming contracts of the government into a kind of pre-emptive purchase. When the harvest session came, the tax farmer could sell his share of the produce either to foreign merchants for export or in the domestic market. Furthermore, since contracting tax farming required finding a guarantor and amassing large amount of capital, affluent Avrupa Tüccarı engaged in financing those who wish to be tax-farmer, thus virtually assuming the role of a sarraf. Often, the role of a tax-farmer and sarraf were mixed as the same Avrupa Tüccarı could act as a tax-farmer in one contract while as the financier in another. However, Avrupa Tüccarı was not the only actor in the public finance.

Another privileged class, namely sarrafs, were the major players and their privileges included bringing their cases before a special commissions at the Finance Ministry and the Imperial Mint. Moreover, ordinary Ottomans without having an access to these privileges also could enter into tax farming, either as the principle tax farmers or as the subcontractors and bring their disputes to the Islamic courts further

[408] For example Varnalı Mihalaki, Bahçıvanoğlu Dimitraki, Beyleroğlu Agob.

complicating the situation. From the Porte's point of view, tax farming constituted a lifeline while state building and increasing the state capacity implied ever-increasing costs. Therefore, the Porte aimed to have a control over the sector and made it subject to regulations. These regulations included the interest rate to be paid in the case of a delayed payment, the actions to be taken for the defaulters and procedures of contracting. To this point, my examination of Avrupa Tüccarı disputes showed that they were essentially about debt collection. Naturally, this was also the main characteristic of the disputes in the tax farming whether it was the state, the tax farmer Avrupa Tüccarı or sarrafs who struggled to collect their claims from the debtors.

The conflict of jurisdiction in tax farming related disputes surfaced in a decision of the Supreme Council of Judicial Ordinances presented to the Grand Vizier for approval in 1854.[409] The report of the Council states that tax famers and guarantors do not administer the tax farms under their control wholly, instead divide it into the parts and contract them to others and become partners with others. However, these contractors did not constitute a single class, as there were tax-farmers, sarrafs and merchants among their ranks. When a dispute arouse, each one wanted to take the matter to the venue that he saw beneficial such as sarrafs going to the councils at the Ministry of Finance and Imperial Mint, the merchants to the Commercial Court, and others to the Islamic courts for examination.

The Meclis-i Vala saw this practice as a violation of the valid regulations of tax farming and wanted to prevent it. The council specially citied the Beratlı Avrupa and Hayriye Tüccarı who refused to appear before the Council of Accounting and

[409] See Kenanoğlu, *Ticaret Hukuku*, pp. 29-30, footnote 39 for a transliteration of this decision from *Külliyat-ı Kavanin*. 12 Cumadelahire 1270 (12 March 1854). Unfortunately, I was not able to locate it in the archives and I don't know if it took the form of an imperial order. However, it is important since it include the observation of Ottoman statesman about the state of affairs in tax farming related disputes.

Commission at the Finance Ministry when summoned. These groups of merchants claimed that their cases could only be examined at the Commercial Court. However, the Meclis-i Vala did not see such cases being examined according to the methods of trade suitable to the regulations of tax farming.[410] Therefore, the council decided that if the primary dispute was about trade, it should be examined at the Commercial Court and if the primary dispute was about tax farming the case should be examined by the Council of Public Finance.

The archival documents reveal that Avrupa Tüccarı extensively used their affiliation with the Ministry of Trade and Foreign Ministry for the collection of their claims from the subcontractors and the sums claimed in a single dispute were relatively high. Moreover, this was a practice that had begun before the decision of Meclis-i Vala and continued afterwards.[411]

Varnalı Mihalaki was the primary tax farmer of the tithe (*aşar*) of İslimye for the year 1272 (1855-1856). He petitioned the Foreign Ministry by claiming 26000 kuruş based on a bond (*tahvil*) which was had been left in arrears from the tithe from Keke Halil and Köle Hasan.[412] He had demanded the sum with its required interest (*güzeşte*) repeatedly from the debtors and their guarantors, but was not able to collect. Moreover, the guarantors claimed that they would not pay until the sum had

[410] I will show shortly that this concern was due to the different interest rates valid for trade and tax farming.

[411] For Avrupa Tüccarı Bahçıvanoğlu Dimitraki's tax-farming related claims from year 1270 (1853-1854): HR.MKT 86/83, HR.MKT 86/97, HR.MKT 78/4, HR.MKT 86/68. In this cases, the order from the Office of Grand Vizier included Islamic law in addition to the local council and mübaşir with whose means the claim was expected to be collected. All of them included the clause of summoning to İstanbul if collection was not possible. Famous Ottoman Greek banker Hristaki Zoğorafo (Christakis Zografos) was Dimitraki's gurantor in these cases according to the defaulters regulation implying the relationship between the Avrupa Tüccarı and sarrafs. Moreover, these were the cases in which tax farming was explicitly stated as the source of the claim. However, Avrupa Tüccarı tax farmers had many other claims from people of the regions they contracted tax farms which did not mention tax farming. These claims could also be related to subcontracts or sale of the produce collected as tithe.

[412] HR.MKT 229/55, 30 B 1274 (16 March 1858).

become apparent with a written judgment of the court (*ilam*). Mihalaki argued that the debt of the aforementioned is apparent with their signatures and accused them of intention to cause harm to him. He demanded his claim be collected with the required interest through the means of the council and a mübaşir and if this was not possible, he wanted them be summoned to İstanbul accompanied by the mübaşir in accordance with the defaulter's regulation.

His petition were examined at the Commercial Council at the Ministry of Trade. The councils report summarized Mihalaki's demands. Then it stated that in the case of summoning the defendants to İstanbul, if Mihalaki was proven wrong, after the trial he would pay all the expenses and losses of the defendants as estimated by the council. Mihalaki showed Avrupa Tüccarı Zafir oğlu Dimitraki as his gurantor for this in accordance with the defaulter's regulation and gave a deed of guaranty to be preserved in the Ministry of Trade. Therefore, the council decided that the case should be examined in the local council in the presence of the mübaşir. If it was proven as the true debt of the defendants[413] and if the article of interest was written on the bond and there were guarantors for the debt, it should be collected with a one percent monthly interest in accordance with the methods of trade.[414]

If the article of interest was not written then it should be collected without interest (*bila faiz*). Moreover, the claim should first be collected from the debtors and if this was not possible from their guarantors. If the defendants had anything to say

[413] Although this case does not include an explanation of how the claim could have been proven locally others do. For example, see HR.MKT 296/2, 08 Z 1275 (9 July 1859) for Avrupa Tüccarı Mihalaki Manol's claim for the tithe of Tırnovacık. It explains that the debt could be proven either with a bond or acceptance of the debtors, thereby implying that bonds were alone as evidence. ''*müddei aleyhimanın deynleri olduğu bir güna sened ve yahud ikrar ile tebeyyün eylediği ve tahvillerinde güzeşte maddesi bulunduğu suretde*'' This clause was often included in the decision of the Commercial Council of İstanbul and the orders from the Office of Grand Vizier. This case also includes the seal of prominent Ottoman Grand Vizier Mehmed Emin Ali Paşa.

[414] ''*Usul-ü ticarete tatbikan kisesi beşden bil hesab maa güzeşte…*''

about this practice, they should be summoned to İstanbul in the company of mübaşir. Hence, the council decided that sending an order from the office of the Grand Vizier to the head of the district with the appointment of a mübaşir would be the right course of action.[415]

Consequently, a mübaşir was appointed from the servants of the Foreign Ministry and an order including the conditions of the advisory decision of the Commercial Council was sent to the head of the district of İslimye.

The petitions of the sarrafs and later imperial decrees show that the jurisdictional tension between the merchants affiliated to the Ministry of Trade and other privileged classes continued and the state struggled to keep these jurisdictions apart.

In 1859, sarrafs filed a petition requesting an amendment to their regulation in order to prevent merchants belonging to the Ministry of Trade insisting on referring their tax farming-related disputes with sarrafs to the Commercial Court.[416] Their demands resulted in an amendment to the sarraf regulation, which stated that, the disputes of sarrafs with their customers arising from buying and selling should be examined at the Commercial Court only if it was related to trade. If the dispute was related to tax farming, it should be examined at the Treasury of the Finance Ministry

[415] The decision includes the seals of the seven members of the council. From right to left Seyyid Ali Rıza, Gavril, Avrupa Tüccarı vekils Agob and Eftim Kiryako, Muhtar of Hayriye Tüccarı Mehmed Emin, and a certain Mehmed Said and a certain Mehmed Nuri (?). At the time, Seyyid Ali Rıza and Gavril were the şehbenders of the Hayriye Tüccarı and Avrupa Tüccarı, respectively.

[416] İ.MMS 16/660, 24 Safer 1276 (22 September 1859) ‘‘*Ticarethane-i Amireye mensub bulunan tüccar ve sairenin esnaf-ı acizanemiz ile bedel-i iltizamatdan ve ciheti ahz ve itada olan kesb niza eylediği halde iltizamata müteferri mevaddan ise Maliye Hazine-i Celilesi Meclisi'nde, ve mevad-ı hukuk'dan ise Hazine-i Hassa komisyonunda rüyet ve tesviyesi usulünden isede bunları dahi usul-ü ticarete dair olan muamelat-ı mahsusa misillu Mahkeme-i Ticaret'e havalesine ara sıra ısrar olunmakda olub*’’

and disputes about ordinary buying and selling should be examined at the Sultan's Treasury.[417]

The amendment was not enough to make the sarrafs happy. They petitioned again on 13 August 1860 to complain that they had been summoned to the Commercial Court due to the request of some people who had ordinary buying and selling with the sarrafs.[418] Moreover, having been summoned they were forcibly put on trial. Furthermore, they complained about the insistence on taking the requests of these people about sarrafs to the Commercial Court where it was separated into articles to be sent to the necessary councils. The Sarrafs perceived these practices as a violation of their regulation. In accordance with their regulation, they demanded that their disputes about tax farming should be examined at the Treasury of the Finance Ministry and about ordinary transactions at the Sultan's Treasury. They demanded the case should be examined at the Commercial Court only if it was related to contracts and bills of exchange. For this, they wanted a close examination of the deeds and separation of them according to the subject. Their demands were accepted and a note was added to the Article 30 of the Commercial Code and Article 29 of the Amendment to the Commercial Code.

The jurisdictional conflict about the litigation of tax farmers culminated in an imperial order issued on 5 March 1862 upon the advice of the Meclis-i Vala. [419] The order states that although it had been decided that tax farming-related lawsuits should be examined at the Council of Accounting at the Finance Ministry, some tax farmers

---

[417] ''*Sarrafanın mültezim ve tüccar ve sair sunufu saireden olan müşterileriyle olan ahz ve itadan dolayı vukuu bulan deavi ve münazaalarından fakat ticarete müteallık olanların mahkeme-i ticaret'de ve maadası cari ve meri olan nizamlarına tevfikan iltizamata dair ise mutlakan Hazine-i Celile-i Maliye'de ve sarrafça adi ahz ve itadaya mütedair olduğu halde Hazine-i Hassa-i Şahane'de fasl ve rüyet olunacaktır.*''

[418] İ.MVL 436/19282, 20 Ş 1277 (3 March 1861). This is the date of the imperial order, not the date of sarrafs petition.

[419] A.DVNS.MTAN.d.01, p. 196.

had been subcontracting their tax farms to merchants by tying their value and interest into a deed, thereby causing the disputes between the tax farmers and the partners to be examined both at the Council of Accounting and at the Commercial Court. However, having some parts of the dispute examined at the Commercial Court and other parts at the Council led to disorder. In fact, tax farmers have been subcontracting the tax farm with the same conditions they had contracted it from the Treasury and the subcontractors were subcontracting it to a third party with the same conditions. Nevertheless, these conditions were not in accordance with the Commercial Code, because the interest rate charged by the Treasury to the primary tax farmer for the overdue payments was calculated on a 1000 akçe basis, and according to the methods of tax farming he should demand the same interest from the subcontractors, while the interest rate according to the rules of Commercial Code was twelve percent (*kisesi beşten*). This was causing harm to some people and it was thought that it might also cause harm to the Treasury, therefore it was decided that tax farming-related lawsuits should be examined at the Council of Accounting at the Finance Ministry in İstanbul and in the local councils in the provinces.

Although the Avrupa Tüccarı is not explicitly mentioned in this case and sarrafs petitions, the merchants affiliated with the Minsitry of Trade were clearly Avrupa Tüccarı and Hayriye Tüccarı. In the next section, I will show that the privileges of these classes were abolished altogether.

The Addendum to the Commercial Code and the Waning of Avrupa Tüccarı Privileges (1860-1868)

Previously, I showed that the Avrupa Tüccarı guaranteed their access to the Commercial Court in İstanbul and commercial councils in the provinces as a privileged class of merchants. However, the Addendum to the Commercial Code published on 20 April 1860 signaled the end of their privileges.[420] The Addendum was adopted from the fourth book of the French Commercial Code of 1807, which had been excluded when the Ottoman Commercial Code was first published due to its unsuitability to the Ottoman conditions. This book was about the formation of Commercial Courts in the major centers of the Ottoman Empire and envisaged the bureaucratic organization of the commercial court system under the Ministry of Trade. Unsurprisingly, similar to the earlier reforms, this move was explained with the need to accommodate increasing trade in the Ottoman Empire by taking the commercial courts under an orderly method and regulation.[421]

The first article of the Addendum stated that all the commercial lawsuits would be examined and judged by commercial courts and in the towns without a commercial council by the civil administrative councils, which had already been examining the civil cases, according to the Commercial Code, regardless of the personal class and attribute of the litigants. This clause indicates an attempt to eliminate the legal privileges of different communities and make their members as equal subjects before the state laws.

---

[420] For the text of the Addendum see Gürzumar et al. pp. 111-129.

[421] ‘‘*Memalik-i şahanede muamelatı ticaret tekessür itmekde olduğu misillu deavi-i vakıasının dahi çoğaldığı umur-ı tabiiden bulunmuş olub bunların kanun-u ticarete tatbikan fasl ve rüyetleri mutlaka mehakim-i ticaretin mazbut ve muntazam bi usul ve nizam tahtına rabt ve idhal kılınmasına muvafık olduğuna mebni Ticaret Kanun-u Hümayununa zeyl olmak üzere Ticaret mahkemelerinin teşkiline dair mukaddemce bi't tanzim takdim kılınan nizam-ı mahsus ahkamının icrasına…*’’ İ.MSM 20/898, 4 Ca 1277 (18 November 1860).

According to the articles of the second chapter, a president, two permanent members and four temporary members would form each commercial court. There would be a salaried and centrally appointed first and second president in each of them and temporary members would be elected in an assembly from among the most notable merchants. This clause also signaling the states aim of establishing more direct control over the commercial jurisdiction. While state officials such as the Minister of Trade, governors, and heads of the districts were the official presidents of the commercial councils, they were mostly not present during the hearings and were represented by the şehbenders. Appointing salaried officials whose only duty would be presiding over the courts signaled the bureaucratization of the legal system and increasing state control.

The third chapter focused on the details of the jurisdiction of the commercial courts by defining what kind cases they would examine. This includes all kinds of guaranties and sureties and transactions between the merchants, sarrafs, dealers of bills of exchange and other guildsmen. However, if a case appeared not to belong to the Commercial Courts, it would be referred to the relevant place. Moreover, the courts would examine and judge all the commercial cases belonging to all people. In addition, all the matters of the banks, the bonds exchanged between merchants, guildsmen and sarrafs would be under the jurisdiction of the commercial courts.

This addition to the Ottoman Commercial Council clearly represents an attempt to overcome the confusion of the previous period about different jurisdictions and to create a unified legal space for commercial litigation. The sarrafs increased opposition which I examined in the previous section is also a sign of their reaction to waning of their privileges under a unified legal system. Although they

were able to obtain an exception and ensure an amendment to the Addendum and the Commercial Code, it was a short-lived gain, as will be seen below.

The fourth chapter deals with the procedural aspects of the functioning of the commercial courts while the fifth chapter is concerned about the establishment of a court of appeals in İstanbul for commercial litigation. The sixth chapter includes explanations about the methods of protest as an addition to the articles on this subject in the Ottoman Commercial Code. The seventh and last section sets the conditions of the contractors and the course of action to follow if the conditions of the contract could not be fulfilled including a monthly interest of one percent for the recovery of damages for the contracts about making a payment.

Shortly after the Addendum to the Commercial Code, a Law of Procedure for the Commercial Courts was enacted in 1861.[422] It regulated how a petition was to be filed, where to sue the defendant, and matters related to the functioning of the courts.[423]

Seven months after the Addendum became effective as an imperial order dividing the commercial council in İstanbul was divided into two councils, each consisting of one first president, one-second president, four permanent members and eight temporary members. Şehbender of Hayriye Tüccarı Hacı Halil Efendi and the şehbender of the Avrupa Tüccarı Gavril Efendi continued to hold permanent memberships with raises in their salaries. Moreover, establishment of commercial courts in the seventy-six major centers across the Empire was planned.[424] By

[422] Bingöl p. 141. This law was also used in the Regular Courts until 1872. See Ibid. pp. 215-219
[423] Ibid. pp. 215-219.
[424] İ.MMS 20/898, 4 Ca 1277 (18 November 1860).

1867/1868 (1284) there were 89 commercial courts operating across the empire spanning a large area. The following year, their number increased to 103.[425]

Soon after the enactment of the Amendment, the Foreign Ministry, which had been the first venue for the Avrupa Tüccarı petitions to start a lawsuit, sent a memorandum to the Office of Grand Vizier to ask for the removal of this duty from its responsibilities.[426] The memorandum states that for a long time those who truly engaged in trade with Europe had been called Avrupa Tüccarı and those who had conducted their trade with honor in Europe had entered to this class by the grant of imperial order. However, the ministry claimed that in the last three to five years all kinds of guildsmen, such as greengrocers, vegetable sellers, maker of stoves had been granted imperial orders and those who did not even have a penny had become Avrupa Tüccarı.[427] As a result, those who were truly suited for encouragement had almost disappeared.[428] The Foreign Ministry claimed that because it had been occupied with the lawsuits with shortage of officials it could not fulfill its real duties. Moreover, it had been referring the petitions to the place the petitioner demanded without consideration. Therefore, the Foreign Ministry requested that from then on, it should be occupied only with the petitions of the foreigners, and the people of Moldavia, Wallachia, and Serbia for judicial process. It advised the petitioning about the lawsuits between the subjects of the Ottoman Empire be given to the Ministry of

[425] Kenanoğlu, p.150.
[426] HR.MKT 337/38, 15 Za 1276 (13 June 1860).
[427] ‘‘*Avrupa Tüccarı öteden beri sahihan Avrupa ile ticaret iden kimesnelere itlak olunur … ve ehli ırz olarak Avrupa'da ticaret olur olanlar bu sınıfa idhal ile yedlerine ferman-ı ali virilur iken üç beş senedir bakkal, sebzeci ve sobacı gibi esnafın kafesine dahil olan kimesnelere ferman-ı ali virildiğinden bir akçeye bile malik olmayanlar Avrupa Tüccarından olarak...*’’
[428] Foreing Ministry's complain was not only about Avrupa Tüccarı. It also wanted to relinquish its duty of receiving petitions of the dealers of Bills of Exchange, Latin nation and Protestant nation. Moreover, although Foreign Ministry was probably right that most of the Avrupa Tüccarı no longer engage in international trade, the amounts they claimed through the legal channels indicate that they were not simple guildsmen. Therefore, the Ministry appears to exaggerate the situation to win the sympathy of the Office of the Grand Vizier.

Lawsuits (*Deavi Nezareti*) and it offered to give some of its employees to this Ministry to work as mübaşirs. It also demanded that the Ministry of Trade be authorized to devise a just method for Avrupa Tüccarı.

I found a note sent from the Office of the Grand Vizier to the Ministry of Trade on 5 April 1861 reprimanding the Ministry for not working for a new procedure for the Avrupa Tüccarı and replying to its previous notes.[429] It warned them that it was not acceptable to leave such an important matter hanging in the air and cautioned them to do what was needed rapidly.

Unfortunately, I do not know how the Ministry of Trade responded to this note. However, a marginal note next to the berat registry of Gosbodin son of Asladon from the registry book for Avrupa Tüccarı berats state that the berats that had been given to the Avrupa Tüccarı had been corrected subsequently so that the berat registry and the next six ones were crossed out and registered in a new book. [430] I was not able to find this new registry book, so I cannot tell what the new regulation of Avrupa Tüccarı included. However, only a few berats from the old registry book that included 463 entries, were renewed on July 1864[431] because they were no longer valid after Abdülaziz's succession to the throne in 1861 as part of the old Ottoman practice. Yet, it seems that the Foreign Ministry's request was accepted as Avrupa Tüccarı petitions disappeared from its documents after 1862.

The abolition of the Avrupa Tüccarı's privileged status came in 1868 as a result of a failed attempt to give a new regulation to the sarrafs which ended up with abolishing the privileges of the sarrafs as well as those of the Avrupa and Hayriye Tüccarı's privileged status. According to the memorandum proposing a new

[429] A.MKT.NZD 347/96, 24 N 1277 (5 April 1277).
[430] MAD.d 21192, p. 166, Evail-i Zilkade 1278 (May 1862)
[431] For example see the renewal of Pavlaki son of Hacı Yorgi Kobyi's berat. MAD.d 21192, p.134. Evahir-i Safer 1281 (July 1864).

regulation for the sarrafs, the sarrafs' regulation composed of different articles added at different times and some established practices, which were incomplete and not always related to each other.[432] Since somehow the required reform could not been undertaken, their business declined and a group of foreign sarrafs took over their trade. Therefore, a new regulation was prepared at the Finance Ministry with discussions among the Ottoman bureaucrats and sarrafs. However, this proposal was not accepted by the Office of Grand Vizier because it interpreted the sarrafs' lawsuits being examined in a special commission as a violation of general laws and found it unacceptable.[433] The Office stated that the sarrafs ancient privileges had been granted to them because they had been giving loans without a security, a practice, which they no longer did. Instead, they had begun to give loans at exorbitant rates. Moreover, other merchants had also begun giving loans, so no benefits were seen for the public in the continuation of the sarrafs privileges. Therefore, it was decided that all of the lawsuits of sarrafs would be examined in accordance with the general laws; that is, they should be treated the same way as the disputes between the government and people were examined. [434]At this point, the abolition of Avrupa and Hayriye Tüccarı privileges was also seen as necessary. Therefore, the method of practicing licenses would be seized, the boundaries of the every class would be set and the task of designating a rank to the sarrafs, Avrupa Tüccarı and Hayriye Tüccarı was referred to the Ministry of Trade.

[432] İ.MMS 35/1458.
[433] ''*bunların deavi ve hususat-ı vakıalarının suret-i istisnaiyede olarak başkaca bir komisyonda rüyet ve tesviye ettirilmesi kanun-u umumiden haric bir muamele dimek olduğu cihetle tecviz olunamayacağı…*''
[434] ''*bil cümle deavi ve hususat-ı sairelerini kanun-ı umumiye tatbikan rüyet ve tesviye itdirilmek yani efrad ile hükümet beyninde olan deavi ne vechile görülür ise ol suretde muamele olunmak üzere icrayı icabının…*''

Conclusion

In this chapter, I examined the experiences of the Avrupa Tüccarı in the age of reform. Since Avrupa Tüccarı was an essential part of the institutional changes of the period, my examination entailed a focus on the institutional reorganization of the empire. I showed that the Ottoman's view of a strong relationship between the increase in trade and prosperity of the country and attributing the state a regulatory role to procure the necessary means for this since the establishment of the Avrupa Tüccarı system continued in the reform period. Unsurprisingly, the goals for the establishment of the Ministry of Trade were identical with the formation of Avrupa Tüccarı system, but the former included a further step in the institution building to reach the desired outcome. The guaranties and securities granted to a small group of select Avrupa Tüccarı became universal promises with the Gülhane Rescript. The Rescript also shared the goals of the Avrupa Tüccarı scheme, aiming to bring an increase to the trade and prosperity of the country with a reorganization of the system. The Gülhane Rescript promised to introduce new legislation to facilitate the reorganization, as reorganization (Tanzimat) became the name of the new era. The provincial and district level councils established after Gülhane became a vital link between the center and the periphery for the implementation of the reforms in the periphery although this did not necessarily involve a top to down relationship. While abolishing tax farming and establishing a just system of taxation with the help of these councils was not possible, the councils continued to play ever-increasing administrative and judicial roles. The councils also became places for the examination of Avrupa Tüccarı lawsuits before the establishment of commercial

councils but they were expected to act in line with the Islamic law as well as the mübaşir appointed from the center.

The Commercial Court of İstanbul became the forum for the Avrupa Tüccarıs disputes with other litigants and Avrupa Tüccarı interests were represented at the court by giving permanent membership to their deputy. Although both the Avrupa Tüccarı and the court demanded a local solution first, the right to recourse to a litigation at the court with the summoning of the defendant to İstanbul through the means of a centrally appointed mübaşir was preserved. The court initially lacked a code so it had to adjudicated according to the ‘‘laws of the trade’’ or mercantile customs. However, this led to confusion and those who were unhappy with the decisions of the court challenged it by attempting to take their cases to other courts for further examination. The provisional regulations for the procedural aspects of the court was not satisfactory. In accordance with the legislative wave of the era, a Commercial Code was adopted from the French Code of 1807. It was an effort to establish a legal-rational order in which everyone knew his clearly defined rights and based his expectations accordingly. It was thought this would end the complaints about unjust treatment and inadequate protection. The Avrupa Tüccarı took part in both the adoption of the code and explanation of its content to the merchants.

The enactment of the Commercial Court was followed by the spread of commercial councils throughout the provinces, which happened largely by the local demand. Some sort of dispute resolution among the merchants outside the Islamic law preceded this, but it was not enough to overcome the disorder and confusion for the commercial litigation. Therefore, in line with the motto of the era, there was a demand for giving a ‘‘strong regulation’’ to the local judicial processes for commercial litigation. While the establishment of commercial councils under the

authority of local councils entailed reducing the autonomy of the merchant's community, they were integrated into new councils as permanent members. This gave a new role to the Avrupa Tüccarı as they became the deputies (deputat) of the merchants in the provinces and permanent members of the commercial councils.

The Porte's insistence on having Avrupa Tüccarı deputats represented the aim of remaining at least in nominal control and having an empire-wide, uniform legal system, even if running the councils was left to the merchants for the time being. The local demand for the establishment of the commercial councils shows how the Ottoman road to building a modern central state could not be confined to a project of the central elites imposed on the provinces.

The Avrupa Tüccarı used the new institutions extensively by choosing the forum that they saw most suitable for their interests. The instruments they used in their contracts and the nature of their contracts seems to have influenced their choice and the acceptance of their cases by the courts. The written documentation, such as bonds (*tahvil*), merchant books (*defter*), and deeds (*sened*), used by the Avrupa Tüccarı were valid as evidence at the Commercial Court and commercial councils without the need to call witnesses to support them. However, the validity of these documents depended on their suitability to the book keeping customs of the day therefore a violation of these customs would mean a referral to the Islamic courts. The adoption of the Commercial Code was an attempt to regulate the book keeping methods, which was thought to ease the transactions between the merchants and strengthen the contracts. When a case was referred to the local councils from İstanbul, an emphasis was made for the examination of the case with the means of the council, merchants, and Islamic law and sometimes with instructions for a close examination of the documented evidence. A mübaşir was often appointed from the

center to help the examination of the case and bring the defendant to İstanbul if a local solution could not be found.

After the enactment of the Commercial Code and spread of the commercial councils, the Porte and Avrupa Tüccarı began to interact in a novel way. Initially, the Porte wanted to limit the Avrupa Tüccarı, who refused the jurisdiction of Islamic law in matters unrelated to commerce. Therefore, an imperial order stipulated that the Avrupa Tüccarı's commercial litigation would be examined by the commercial councils and if there is not one, by the local councils with the means of the notable merchants of the locality. All other disputes of the Avrupa Tüccarı were to be examined at the local councils according to Islamic law. However, this attempt backfired as the Avrupa Tüccarı filed a collective petition to complain for insufficient protection and their judicial privileges not being respected. A second collective petition was filed to make their demand clearer and explain why they were harmed by the disrespect of their privileges. According to the merchant's account, they have been referred to the Islamic law directly even for matters of trade that necessitated an examination with regard to the documentation used by the merchants, which caused harm to them.

The rhetoric used in the collective petitions of the Avrupa Tüccarı was also striking. They declared their intention to acquire wealth and asked that their transactions to be made easier and the necessary conditions to be established. This rhetoric was well received by the Porte, which responded to their demands positively. It was in conformity with the rhetoric dominant at the Porte since the establishment of the Avrupa Tüccarı, who emphasized the goal of increasing the trade and making the country prosperous. In order to reach this end, the Porte attributed the role of procuring the necessary means and providing the regulatory

framework to itself. Therefore, the Avrupa Tüccarı provided input to the Ottoman legal reforms as they pushed for the change.

Meanwhile, Islamic law gradually disappeared from the communication between the Porte and local councils regarding the commercial litigation of Avrupa Tüccarı. The realities of the world of the 1850s were different from the world of the early 1830s. Within twenty years, the commercial court and local councils had become the forums of commercial litigation. In this world, resisting interest payment was not accepted and its suitability to Islamic law was not even discussed.

However, the new institutions were far from establishing a legal-rational order as it appeared that the Commercial Code was not adequate to make the people know their rights and prevent them from complaining unnecessarily, contrary to the projection of the Minister of Trade. Therefore, it led to the codification of the Islamic law with the Mecelle to complement the Commercial Code, representing another aspect of the Ottoman's syncretic legal vision.

While Mecelle's first book was published one year after the abolition of the Avrupa Tüccarı system, the traces of the Avrupa Tüccarı's demands are apparent. In fact, the authors of *Mecelle* confessed to preparing a merchant friendly book by easing the transactions of the age and incorporating the customs of the merchants, such as accepting written documentation as evidence alone.

Tax farming constituted another contested arena of litigation. The Sarrafs strove to keep their privileges and complained about merchants who wanted to take tax farming-related disputes to the Commercial Court. While their demands were accepted in the short run, eventually they lost their privileged position along with the Avrupa Tüccarı.

The end of the Avrupa Tüccarı was in accordance with the state's desire to eliminate the legal privileges of the different classes as signaled in the Addendum to the Commercial Code. However, this was not a process simply imposed by the state from above. The local groups initiated the establishment of commercial councils; merchants welcomed such councils and demanded to make them the sole venue of their commercial litigation. The state relied on the merchants for the functioning of these institutions and incorporated them into its institutional framework, but also limited their group autonomy. Moreover, by appealing to the central state more and more for their commercial litigation, merchants also brought themselves under the scrutiny and control of the state.

My analysis showed a proximity with the merchants demands and states aims. The merchants wanted to accumulate wealth and increase their business and demanded the necessary regulations from the state. Indeed, the state was more than ready and even had actively planned this since its establishment of the Avrupa Tüccarı system. The Avrupa Tüccarı system was the product of a transitory period, which was characterized by this collaboration. However, it implied strengthening the state and weakening of the merchants' privileges. After an empire wide network of bureaucratically organized commercial courts was established that was open to access by all, the abolition of the privileges of different financial and mercantile classes was just a matter of time. Therefore, the story of Avrupa Tüccarı shows that there was indeed an Ottoman way to modern state building.

CHAPTER V

CONCLUSION

This thesis examined the Beratlı Avrupa Tüccarı in the classical age prior to the age of the Tanzimat reforms and during the reform period in the Ottoman Empire. While doing so I started with discussing the relationship of the economic institutions and Islamic law as the dominant law of the Middle East. For Timur Kuran, Islamic law was the reason behind the organizational stagnation of the economic institutions of the region. He singles out the minorities of the Middle East as a group who were able to overcome the restrictive contractual provisions of the Islamic law by becoming European protégés and shifting into the jurisdiction of the consulates. Accordingly, this shift provided them access to the business-friendly, advanced legal codes of the West. He attributes only moderate success to the countermove of the Porte, namely the Avrupa Tüccarı system, and ascribes this success not to the Ottoman institutions, but to the Avrupa Tüccarı's access to the Western legal systems through their relatives who were European protégés.

On the other hand, Sabit Efendi noticed the jurisdictional shift of the Ottoman merchants more than 130 years before the Kuran, but with a different root cause. According to him, the ignorant judges did not know the Islamic laws recognition of merchant's customs and rejected the written documentation as conclusively substantiated evidence, which led the merchant's to look after themselves by taking their cases to different government offices. He considered the establishment of the

Avrupa Tüccarı and leaving the resolution of intra-group disputes to the merchant representatives as a provisional measure, a result of the lack of sufficient reforms. For Leaving the hearing of lawsuits to the jurisprudence of merchant representatives was not an acceptable condition to the state, so the substantial reforms had to be undertaken during the Tanzimat period.

Taking its lead from these two approaches, this thesis first examined the emergence of the Avrupa Tüccarı and the institutional framework put forward by Porte with this system. I showed that the aims of the program were two-folded. First, the Porte identified the increase in trade with the economic prosperity of the country. To reach this desired outcome, the Porte attributed itself the responsibility of giving a regulation to the affairs of the merchants and procuring the necessary means for their success. Second, the Porte identified the merchant's desire for complete freedom and security in their trade and the preoccupation with preventing the intervention in their estates by the state upon their death as the reasons behind their search for foreign protection. Therefore, the institutional framework of developed by the Porte represented these concerns.

This framework included guaranties for personal freedoms, legal rights and privileges, advantaged customs charges, a promise of universal protection, a special method of poll tax collection, and securities for Avrupa Tüccarı inheritances. While the customs of the merchants were recognized for the intra-group disputes and their disputes with foreigners, Islamic law was the main reference for the disputes examined in the local Islamic courts and the Arz Odası at the palace.

I interpreted the stipulation of the testimony of merchant representatives and fellow Avrupa Tüccarı in addition to documented evidence in the article for the debt collection at the Islamic courts as the sign of the weak status of the written evidence

in the Ottoman understanding of Islamic law. By revealing the aims of the program and analyzing the elements included in the institutional framework, I argued that the Porte was aware of the institutional foundations of economic development.

In Chapter 3, I examined the operation of the system in the classical age. During the period the Avrupa Tüccarı had access to an extensive network of Islamic courts and the Arz Odası, the primary reference of which were Islamic law as well as the Customs offices where the mercantile customs were the main reference. The 4000 akçe clause, which gave the jurisdiction of the Avrupa Tüccarıs disputes exceeding this sum to the Arz Odası, served as a protective barrier for Avrupa Tüccarı to both pressure debtors for a local solution and challenge the jurisdiction of the local courts when the verdict was not in their favor. The appointment of a mübaşir from the center to help to the local examination of the case and bring the defendant to the capital if a local solution could not be reached perhaps increased the pressure on the defendants. Although this mechanism also would be used against an Avrupa Tüccarı, the empirical evidence shows that it happened only when the plaintiff had a high political or social status.

While a trial at the Arz Odası was not always practical, there were instances when this indeed happened, enabling us to examine the practices of a court which operated in line with the Islamic law. The hearings at the Arz Odası showed that merchant books and their examination by experts were considered important. Moreover, bringing witnesses alone was not enough to dismiss written evidence as the profiles of the witnesses also were taken into consideration. Although written evidence alone was not enough to establish a claim, arrangements could be made to obtain testimony of the witnesses to establish the claim of an Avrupa Tüccarı.

The Customs offices were the sites of the disputes both for Avrupa Tüccarı Ottomans and cases including Avrupa Tüccarı and foreigners. However, the settlements reached at the Customs needed the collaboration of the extensive network of Islamic courts for the debt collection and the judgments would be adjusted to Islamic law at least in form. Moreover, an imperial order prohibiting further hearing of the case would be needed. Intra-Avrupa Tüccarı disputes seems to have been resolved within the group, as these cases largely were not recorded in the sources used in this thesis. Furthermore, the authority given to the vekils for the intra-group matters in the berats and in their deeds of appointment as well as the remarks of scholars such as Sabit Efendi gives us more reason to reach such a conclusion.

The recognition of merchant's customs for within group and mixed litigation appears to have provided the freedoms sought by the merchants in their trades. Moreover, the backing of the Sultan in commercial litigation of Avrupa Tüccarı seems to have make their contractual relations more secure. However, the third element in the Porte's diagnosis of the reasons behind merchants search for foreign protection, namely intervention to the merchant's estates upon their death, continued even thirty years after the establishment of the Avrupa Tüccarı system. Moreover, complaints of excessive taxation and customs overcharges occurred. However, these practices did not find the sympathy of the Porte and the Avrupa Tüccarı obtained the backing of the sultan for their prevention.

Therefore, the conclusions of Chapter 3 agrees with the observation of Sabit Efendi about the Avrupa Tüccarı system having been established as a provisional measure when a complete reform of the system was not possible. Indeed, although the rights accorded to the Avrupa Tüccarı in a conscious institutional framework was a novel project as far as the Ottoman merchants were concerned, the new system

operated largely within the limits of the classical parameters. However, the reforms of the succeeding period changed these parameters. This change not implied a new institutional framework for the Avrupa Tüccarı but also for the Ottoman Empire. I examined this period in Chapter 4.

The establishment of the Ministry of Trade signaled the first step of the major reforms regarding the commercial litigation and organization of the Avrupa Tüccarı system. The Avrupa Tüccarı was incorporated into the new ministry and equipped with a commercial court, which became the venue for their litigation with Ottomans and foreigners alike. The establishment of the ministry shared the same goals of the establishment of the Avrupa Tüccarı system. Namely, the increase in trade and prosperity of the country through giving a strong regulation to the merchant's affairs. The fact that a court was the fundamental part of the ministry and even the ministry were largely identified by its court shows yet another example of the Ottomans' awareness of the institutional foundations of economic development. Accordingly, the commercial court assumed the protective role previously played by the Arz Odası. While the Arz Odası was bound to Islamic law as the supreme court of the empire, the Commercial Court adjudicated according to mercantile customs.

The promulgation of the Gülhane Rescript signaled the beginning of the universal reforms rather than provisional measures and the notion of reorganization (Tanzimat) gave its name to the new period. Remarkably, it also shared the aims of the Avrupa Tüccarı system. Namely, the increase in trade and prosperity of the country by providing freedoms, securities, a fair system of taxation and conscription. In fact, more secure property rights, personal freedoms, a just trial and advantaged taxation had long been part of the Avrupa Tüccarı system, but Gülhane aimed to extend it from a select group to everyone with a total reorganization of the empire

and introduction of new legislation. The provincial and district level councils of the Tanzimat period became a venue for the Avrupa Tüccarı litigation in the provinces. The imperial orders and the letters from the office of the Grand Vizier were sent to the provinces for the enforcement of the Commercial Court's decisions or examination of the case through the means of the council, Islamic law and a centrally appointed mübaşir.

Although the Ministry of Trade and the Commercial Court was established as regulatory measures, they lacked substantial regulations. Adjudication according to mercantile customs were not seen as satisfactory to overcome the confusion and complaints and establish an order for commercial litigation. Therefore, the Ottoman Commercial Code was adopted from the French Commercial Code in accordance with the legislative wave of the period. It was an effort to establish a legal-rational order in which everyone knew his clearly defined rights and based his expectations accordingly, which was thought would end the complaints about unjust treatment and insufficient protection.

The Avrupa Tüccarı took part in both the adoption of the code and explanation of its content to the merchants. The preface of the Commercial Code explained the reasons behind its adoption as making the transactions easier and strengthening the status of the documents used by the merchants, which was expected to increase the trade.

Following the publication of the Commercial Code, commercial councils were established in the major provincial centers of the empire largely by local demand. The aim of the local councils was in line with the beliefs of the time. That is, to put the process of commercial litigation under a regulation and give it an order. The councils were to take over the local councils and the merchant assemblies duties

of commercial litigation. These demands were accepted by the Porte but with the condition of the presence of Avrupa Tüccarı deputies on the boards of the councils.

Meanwhile, the Porte was concerned about reports of Avrupa Tüccarı refusing the jurisdiction of Islamic law even for matters unrelated to trade. Therefore, an imperial order was issued upon the advice of the Meclis-i Vala, which stipulated that only the commercial litigation of Avrupa Tüccarı was to be examined at the commercial courts and councils. Other matters had to be examined according to Islamic law at the local councils. However, two collective petitions of the Avrupa Tüccarı complaining about their judicial treatment followed this order. The Avrupa Tüccarı demanded not to be referred to Islamic law for matters related to trade, which necessitated an examination according to the documentation used by merchants. Their demands were accepted and according to the note from the office of Grand Vizier, Avrupa Tüccarı's lawsuits were first to be examined at the commercial councils and if it was found related to Islamic law, then referred to Islamic law from the councils.

The period following the enactment of the Commercial Code also witnessed the gradual disappearance of the references to Islamic law for commercial litigation. It was a new world in which the Commercial Court and local councils assumed the commercial litigation. While calling a claim as ''interest'' would have been an excuse for its pardoning twenty years earlier, a similar defense strategy was given no credence in the mid-1850s.

However, the aspired order was not attained simply by the adoption of the Commercial Code as the Commercial court and councils continued to adjudicate cases that were not covered by the Code. Moreover, the procedural aspects were being handled with provisionary regulations rather than a sound law of procedure.

The question of jurisdiction was not only about the question of whether an Avrupa Tüccarı referred to Islamic law or not. The Avrupa Tüccarıs tax farming activities created another contested space for lawsuits as the jurisdictions of the Commercial Court, Islamic courts, Special Council at the Ministry of Finance and the commission at the Sultan's Treasury often overlapped leading to the complaints of the sarrafs and the Porte's attempts to draw a line between these jurisdictions.

The Addendum to Commercial Code enacted in 1860, which defined the jurisdiction of the commercial courts as the commercial litigation of all classes rather regardless of their status and attributes, signaled the end of the Avrupa Tüccarıs privileged status. A Law of Procedure was enacted the following year. With the addendum, bureaucratically organized commercial courts under the authority of Ministry of Trade were established rapidly throughout the empire. The Avrupa Tüccarıs privileges were abolished in 1868 along with those of the Hayriye Tüccarı and sarrafs and all of these groups were referred to the Commercial Court for their litigation as ordinary merchants and financiers. This step indicated the final attempt at creating a unified legal space for commercial litigation by eliminating the authority of communities with their respective jurisdictions.

A year later, the first book of the Ottoman Civil Code was enacted. It was the product of the codification of Islamic law in order to create a civil code that would complement the Commercial Code. Its authors drafted a merchant-friendly code by recognizing the customs of the merchants, the documented evidence of the merchants as satisfactory evidence that can be acted upon and remaining silent on a number of areas such as interest and some of the contract stipulations of the Hanefite school that would make the transactions invalid. This tendency was explained as conforming to the needs of the time, which necessitated making the transactions easier.

To sum up, this thesis showed the institutional changes in the commercial/legal field in the nineteenth century Ottoman Empire. However, identifying the forces and dynamics behind these changes is as important as telling the story of the institutional change. Three forces became apparent from the analysis of this thesis. First, when the Avrupa Tüccarı system was initiated the international trade of the Ottoman Empire already had been in an upward trend since the eighteenth century. Second, Ottoman merchants showed an increasing interest in acquiring a greater share of this trade and engaged in competition with foreigners. As İsmail Hakkı Kadı showed, these merchants turned to the Porte for backing in this competition towards the end of the eighteenth century. Third, the Porte was receptive to their demands and when it established Avrupa Tüccarı system, it identified the prosperity of the country with the increase in trade. The institutional changes of the nineteenth century were the result of a dynamic interplay of these tree forces, namely the increase in trade, the merchants' strong demand for change, and the Porte's willingness to accommodate the increase in trade and the demand of the merchants.

The Porte's response to the increase in trade and merchants demands were consistent throughout the period covered in this thesis as it showed an understanding of the institutional foundations conducive to growth in trade and economy. The texts for the establishment of the Avrupa Tüccarı system, the Ministry of Trade, the Gülhane Rescript and preface to the Ottoman Commercial Code emphasized similar points and shared the same goal of economic development with a growth in trade. The Porte attributed itself the role of setting forth the regulatory framework that would ease the trade of the merchants and provide them security in their dealings. The necessary measures were taken gradually in order to ease the transactions and strengthen the contractual relationships. The merchants' input into this process as the

users of the institutions were indispensable as they showed a greater interest in the new institutions. Moreover, the Porte's willingness to leave the running of the Commercial Court and commercial councils initially in the hands of the merchants perhaps made the merchants incorporation into the system easier.

The Avrupa Tüccarı seemed to be more self-confident as their gains increased with the increasing pace of the reforms. Their collective petitions were an indication of this.

Examining these petitions and the Porte's responses one sees the alignment of interests between the state and the merchants. While the merchants openly expressed their will to accumulate capital through increasing their trade, the state had the view that their capital was crucial for the prosperity of the country and welfare of the population. As far as I know, such an exchange between the Ottoman mercantile classes and the state happened for the first time in the history of the empire.

The upholders of the Islamic law, namely the ulema were not immune to this change. In Chapter 3, I showed the mercantile activities of a member of ulema who did not even hesitate to accept violating the Islamic ban on interest to make a financial gain. In Chapter 4, I showed that when the local councils filed petitions for the establishment of commercials, the seals of the judges came first. Moreover, Ahmed Cevdet Paşa, the mastermind of the Mecelle, perceived an increase in trade as the requirement for acquiring wealth and considered facilitating an increase in trade among the most important duties of the government. Therefore, in this environment of a desire for increase in trade and wealth of the merchants as well as the country and awareness of the institutional foundations of this, institutional changes were inevitable. In fact, the Ottomans kept up with Europe during the age of legal codes in nineteenth century with the dazzling pace of their reforms. The

codification of Islamic law to serve the merchants' interests and incorporation of the merchants' demands in it were just the natural products of this process. Indeed, in preparing their Civil Code, the Ottomans were ahead of even the Prussian Empire. Consequently, rather than establishing the causality as legal rigidity causing institutional and economic stagnation, this thesis showed that when there was strong demand and an alignment of interests between the merchants and the state, the legal system would simply follow the movement of change.

APPENDIX-A

The Memorandum for the Establishment of the Avrupa Tüccarı System

K.K 7538

Bi ismihi subhanehu ve teala

Fi zaman kaim-akam ali makam-ı rikab-ı hümayun Hazreti Seyyid Mustafa Paşa yessirallahu ma yeşa ve eyan reisül küttab Mustafa Reşid Efendi nail ma yetemenna Sene 1217 Ra

İş bu nizam ve şerayit fima bad düsturu'l-amel tutularak muktezası icra ve hilafından tehaşi ve ittika olunmak ve lazım gelen mahallere kayd olunub ale'd-devam icrasına dikkat ve nezaret oluna deyu hatt-ı hümayun inayet makrun ve iş bu layiha balasına keşide kılınmışdır.

Yaver-i tevfik bari ile imar-ı memalik ve tevsi-'i ticaret mutlakan nizam-ı hal-i tüccar ve raiyyet hususlarına riayet ve nezaret birle bu babda iktiza iden esbab ve vesaili istihsale mütevakkıf ve menut

ve kanun ve kavaid-i düvel ve rüsumu ayini milel bi'l-ittifak bu nizam üzere mütedavil ve merbut idüği müsellem olduğuna binaen elhaletü hazihi beren ve bahren Avrupa ticaretiyle meluf olanlar ve bundan böyle dahi izhar-ı hevahiş ve arzu iden devlet-i aliyenin ehli zimmet reayasının ticretleri taht-ı rabıta ve nizama idhal olunduğu suretde ticaretlerine vüsat gelüb hem taife-i mesfuraya ve hem gümrükler iradına menafi'-i kesireyi mucib olacağı umuru vazıhadan olmağla

reayayı devleti aliyeden olub Avrupa ticaretine hevahişkar olan tüccar ve kapudan ve ashab-ı sefayin irade-i keramet ifade-i mülukanem ile şu vechile taht-ı rabıtaya idhal olunur ki

evvelen devlet-i aliyede olanların içlerinden çend nefer adam lede'l-intihab bir neferi baş bazirgan ve diğerleri tüccar nazırları deyu tesmiye olunub sairleri dahi kangı handa ve kangı dükkanda ve kangı devlet ticaretiyle me'lufdur cümlesi defter olduktan sonra bu defterin bir sureti mumza ve mahtum olarak divan-ı hümayun kalemine

ve bir sureti İstanbul Bab Mahkemesi'ne kayd olunub taşra memalikde bulunan ashab-ı sefayin ve tüccarların dahi zikr olunan nazırları marifetiyle isimleri ve mahalleri beyanıyle defterleri celb ve kezalik kayd itdirilmek

ve intihab olunacak baş bazirgan ve nazırları marifetiyle kayd-ı hayat ile tayin olunmayub iki senede bir cümlenin inzimam-ı reyi ve intihabiyle içlerinden tayin olunduktan sonra bunlar dahi derhal tatbiki mühürlerini kalem-i mezkura hıfz itdirmek

ve taife-i mesfuranın ticaretleri Avrupa diyarlarına muhassır olmağla müstemenan tercümanları ve hizmetkarlarının nail oldukları imtiyaz ve müsaade ve raiyyet tamamen bunların haklarında bila istisna icra kılınması rüsum-u raiyyet-perveriden olduğu ecilden intihab olunacak baş bazirgan ve nazırlara ve alel husus bi'l-cümle tacirlere ve hizmetkarlarına derecelerine nazaran zikr-i ati ticaret şeraiti ve şurutu lazıma-i saire derci ve elkabları beyanıyle yedlerine başka başka berevat ve evamir ita olunmak

ve hasbel iktiza tüccardan biri ve yahud hizmetkar ve adamları li ecli't ticare bir mahale gitmek murad ider ise baş bazirgan ve nazırlarının memhur arzuhalleriyle istida olundukda ticaret şeraiti derciyle tıbkı müstemenan tercüman ve adamlarına ita olunduğu misillu yol emirleri virilmek

ve tüccarın defteri mezkura idhal ve ihracları bu zikr olunan nazırlarının memhur arzuhalleriyle istidalarına muhtac olmak

ve idhal olunan tacir her kim ise derhal ismi tasrihiyle berat ve ferman olmak

ve bunların Eflak ve Boğdan fermanlu tüccarı gibi kumpanya tabir olunur yani bir takım olub ticaretleri dahi Frengistana mahsus olduğuna binaen müstemenan ile nizaları zuhur ideceği meczum olmağla bunların umur ve hususlarına ve hesab ve kitaplarına ve fasl ve hasmı müddeaya dikkat ve idhal ve ihraclarına nezaret ve rüyet eylemek üzere hademe-i devlet-i aliyyeden biri nazır tayin ve divan-ı hümayun tercümanı bulunanlar marifetiyle ve tarafeynden bil intihab memur olacak mümeyyiz bazirganlar marifetiyle evvela kaide-i ticaret üzere dava ve nizalarını lede'r-rü'ye nazır muma ileyh ba-takrir makam-ı vala-yı riyasete arz eylemek

ve eğer şer-'i şerife müracaatları lazım gelür ise ahar mahallerde rüyet olunmayub çarşanba günü reisü'l-küttab müşarünileyhin odalarında ve yahud arz odasında şer'ile görülüb fasl olunmak

ve müstemenanın taşrada dört bin akçeden ziyade olan davaları Asitane'ye havale olunmak ahidnameleri şurutundan olduğu misillu bunların dahi müstemenan ile olan nizaları kezalik Deraliye'ye havale kılınmak

vel hasıl reayayı devleti aliyye tüccarının kangı devlet taciriyle nizaları zuhur ider ise devleteyn beyninde münakid olan ahidnamelerler şurutunı ve evamir-i şerife mezamini kamilen bunların haklarında dahi icra olunub bir dürlu hilafı tecviz olunmamak

ve taife-i mesfuranın tahtı rabıtaya idhal olunmalarına irade-i hümayundan maksud ancak ticaretlerine vesile-i yessir ve suhulet olmak içün gümrükleri müstemenan gümrükleri üzere eda itdirilmek kazıyesine binaen olmağla gerek tacirler ve gerek ashab-ı sefayinin getürdükleri emtia kangı devlet metaı ise memalik-i mahrusa mahsulatı istisna ve kema fis sabık ahz olunub alel ıtlak Frengistan mallarıçün yani kangı devlet ve kangı diyar emita ve eşya ve erzakı ve her ne cins ve

nevden olur ise olsun ol devletin tarifesi üzere yüzde üç hesabıyle resm-i gümrük eda eyleyeler

ve memalik i mahrusa mahsulatı olan emtia ve eşya ve erzak her ne ise madamki memalik-i mahrusadan memnuatdan olmayarak sahih Avrupa canibine beren ve bahren nakli murad eyleyeler fimaba'd müstemenan misillu resm-i gümrük eda eyledikten sonra vesail-i saire ve cihatı ahar ve ism-i ahar ve nam-ı diğer ile ziyade bir akçe ve bir habbe talebiyle tazyik ve tecrim olunmamaları bu tüccar haklarında esas-ı kavi ittihaz olunmak

ve tüccar-ı merkuma vülat ve hükkkam ve voyvodagan taraflarından hilafı şer'-i şerif tecrim olunduklarına bir vechile rızayı hümayunum olmayub saye-i şahanede arz ve edebleriyle asude-i hal olmaları mültezim-i şahane olduğuna binaen her halde himayet ve siyanet olunmak

ve zulmen alınan akçeleri derhal icab idenlerden tahsil itdirilmek

ve bunların dahi haric-i arzu ve ubudiyet ve mugayir-i resm-i raiyyet hareketleri ihbar olunur ise iktiza iden te'dibleri icra ve tüccar nazırları mesfurlar dahi muaheze ve itab olmak

ve sahib-i sefine ve sermaye olan kapudanlara dahi müstemenan doklarından tahmil-i hamule idenlere kangı devlet ve cumhur iskelesinden tahmili hamule etmiş ise ol devletin kapudan ve tüccarına ber mucebi ahidname-i hümayun ne muamele olunur ise bunlara dahi ol vechile muamele olunun zararları tecviz olunmamak

ve bu babda iktiza iden kapudanlık ve izn-i sefine evamir-i şerifesi virilub müstemenana olunan müsaade ve imtiyaz bunların haklarında dahi tamamen icra olunub ziyade resm ve virgü talebiyle tazyik olunmamak

ve memalik-i mahrusa mahsulatı tahmil idenler bu muameleden istisna olunub sair ashab-ı sefine ne vechile muamele ve ne mikdar gümrük ahz olunur ise kema fis sabık ahz olunmak

ve hasbe'l iktiza sefineleri canib-i miriden isticar olunur ise vakti müzayakada düveli nasara sefinelerinin isticarlarında ne güne mukavele ve ne makule navlu sefine virilur ise anların farkı olmayarak ve siz devlet-i aliyye reayasısız deyu dahi devlete hizmetden zararlarını mucib mikdarı zerre halet-i tecviz olunmayub heman navlu sefine ve sair müsbet olan matlubatları derhal ita olunmak

vel hasıl bu zikr olunan Avrupa tacirlerinin ve ol mahallerin eşyalarını tahmil ve nakl iden kapudanların bu imtiyazat ve itibara nail ve bu kadar müsaadeye mazhar olmaları ancak tevsi'-i ticaretlerine vesile olmak ve gümrüklere irsal eyledikleri emtia ve eşyalarını doğrudan doğruya ve açıkdan açığa götürmeleri maslahata mebni idiği bi-iştibah iken hilafı nizam hareketleri ihbar olunur ise nazırları muma ileyh ve tüccar nazırları mesfular marifetiyle ahz ve iktiza iden tedibi icra olunmak

ve devleti aliyye reayasından olub ahar kesb ve kar ile meluf olan bazı eşhas beyne'l akran kesb-i nam ü şan itmek arzusuyla ber takrib ben dahi Avrupa taciri oldum ve yahud bundan sonra olacağım şimdiden yedime berat ve ferman virilsun deyu istid'a itmek ve ben fülan zata müteallık bazirganım ve fülanın hizmetinde oldum ve oluyorum ve Avrupa'dan eşya nakl idenler ile şirket eyledim ve Avrupa tacirlerinden benim akrabam vardır ve yahud anların getürdükleri emti'ayı dükkan ve odamda füruht ediyorum diyenlere bir vechile ferman ve berat virilmeyub ancak sahib-i oda ve dükkan ve mahzen olub Avrupa ticaretiyle meşgul olduğu tevatüren sabit olanlar nazırların memhur arzuhalleriyle defteri tüccara idhal olunmak

ve bu makule sonradan idhal olunacak tacirler defaten idhal olunmayub ticarete beden ve oda ve dükkan ve mahzen ve sefine tedarik idüb gereği gibi ticarete

başladığı tevatür derecesine varub ve nihayet altı mah mürur idüb niyet-i ahar ve meram-ı fasidi olmadığı mütahakkık ve sabit oldukdan sonra idhal olunub andan sonra yedine berat ve ferman virilmek

ve yine idhal ve ihracları nazırların memhur arzuhalleri ve hademe-i devleti aliyyeden tayin olunan nazır muma ileyhin takdiriyle olunmak

Ve bu babda hatır ve gönüle riayet olunmak bir vakitde tecviz olunmamak

Kaldı ki reaya-yı devlet-i aliyyenin düvel-i saire himayesine mecburiyetleri serbestiyet-i kamile ve emniyet-i tamme ile ticaret eylemeleri arzusuna mebni ise dahi ba‘de’l vefat emvali metrukalarına canibi miriden taarruz ve zabt olunmamak irade-i hafiyyesine binaen idiği müsellem ve bi’t-tecrübe malum olan keyfiyetden olduğu bedidar ve her devlet kendü reayasını sair düvel teb’asından ziyade himaye idegeldikleri zahir ve aşikar olmağla bu makule devlet-i aliyye reayasından beratlu ve fermanlu olan tacirlerden mürd olanların dükkan ve sair emlakleri canib-i şer‘den başka ve nazır-ı muma ileyh tarafından başka temhir olunub emval-i metruka ve emlak ve akar ve sair cüzi ve külli eşya ve nukud ve sefinelerine canibi miriden taarruz ve temhir ve zabt olunmamak

ve sağir ve kebirleri bulunub şer‘an tahriri lazım gelenlerun dahi ziyade resm talebiyle tazyik itdirilmeyub ber mukteza-yı şer‘-i şerif beyne’l-verese nazır-ı muma ileyh nezaretiyle taksim itdirilmek

ve tahriri murad olunmayanlara dahi bir dürlu cebr ve ibram itdirilmemek ve miri ile ahz ve itası olanları var ise yine mallarına taarruz olunmayarak fakat yine nazır-ı muma ileyh marifetiyle miri hesabı hakkaniyet vechile rüyet olunub gadr ve hayf vuku‘u tecviz olunmayarak faysal virilmek

ve kezalik mesfurlardan biri mürd oldukda kaide-i ticaret üzere nazırları marifetiyle müşterek hesabı ve emanet gelen mal ve füruht olunmuş olanların

semenleri ifraz olunduktan sonra halik mersumun malı zahire ihrac olunub varis-i kebiri olub tahrire talib olmazlar ise tahrir olunmayub eğer varis-i sağir ve sağiresi var ise fakat halik-i mersumun malı marifeti şer'ile tahrir ve ala ma farzullahı alâ mâ farzullah-i te'ala beyne'l-verese taksim olunmak

ve hasb'üd-dikkat vel hal gerek taife-i mesfuraya ve gerek ehli İslamdan ticarete hevahişkar olanların haklarında bazı şeraitin derci lazım gelir ise bi'l mülahaza sonradan derc ve zeyl olunmak

ve yedlerine berevat ve evamir-i şerife virilen tacirler ve kapudanlar devlet-i aliyenin cizyegüzarlığını bilüb her halde arz ve edebleriyle olub muğayir-i rüsum-u raiyyet ve ubudiyet hareketde bulunmayub haklarında bu veçhile zuhur iden sınabet ve ihsanı mülukanenin şükrünü eda ve tezayüd-i ömr-ü devlet ve kıvam-u fer-ü şevketi şahaneye iştiğal ve muvazebet eylemeleri tenbih olunarak işbu nizam ve şerayıtın 'ale'd-devam düsturu'l-amel tutulmasına akdem ve nezaret olunmak babında

der kaydı tarih 17 Rebiül Evvel 1217

APPENDIX-B

An Exemplary Avrupa Tüccarı Berat from 1834

Nişan-ı hümayun oldur ki

Yaver-i Tevfik bari ile imar-ı memalik ve tevsi-i ticaret mutlakan nizamı hali tüccar ve raiyyet hususlarına riayet ve nezaret birle bu babda iktiza iden esbab ve vesaili istihsale mütevakkıf ve menut ve kanun ve kavaidi-i düvel ve rüsum ve ayin-i milel bil ittifak bu nizam üzere mütedavil ve merbut idüği müsellem olduğuna binaen el haletü hazihi berren ve bahren Acem ve Hindistan ve Avrupa ticaretiyle me'luf olan ve bundan böyle izharı hevahiş ve arzu iden devlet-i aliyyem reayasının ticaretleri taht-ı rabıta ve nizama idhal olunduğu suretde ticaretlerine vüs'at gelüb hem taife-i mersumaya ve hem gümrükler iradına menafi-i kesireyi mucib olacağı umur-ı vazıhadan olmağla reaya-yı devleti aliyemden olub Acem ve Hindistan ve Avrupa Ticaretine hevahişkar olan tüccar haklarında ba irade-i seniyye virilen nizamda tüccarı mersuma beyninde cümlenin inzimam-ı reyi ve intihabiyle iki nefer vekil nasb ve tayin kılınub ve beher sene mersun vekiller tebdil olunub cümlenin marifeti ve intihabiyle aharları ba emr-i ali tayin olunmak ve taife-i mersumanın ticaretleri Acem ve Hindistan ve Avrupa diyarına münhasır olmağla müstemin tercümanları ve hizmetkarlarının nail oldukları imtiyaz ve emniyet ve müsaade ve himayet tamamen bunların haklarında bila istisna icra kılınması rüsum-u raiyyet-perveriden olduğu ecilden intihab olunacak vekillere ve ale'l-husus bi'l-cümle tacirlere ve hizmetkarlarına zikr-i ati ticaret şeraiti derc ve beyaniyle başka başka berevat ve evamir ita olunması hususu ba hatt-ı hümayun virilen nizamda münderic olduğuna binaen reayayı devlet-i aliyemden olub Acem ve Hindistan ve Avrupa

ticaretiyle me'luf olan Konya'da mütemekkin rafi-i tevki-i refi-üş-şan-ı hakani Aleksi oğlu Eci Anesti nam tacir tüccar-ı mersumanın muteberlerinden idüği beyanıyla ber muceb-i şurut-ı nizam yedine berat-ı alişanım itasını tüccar vekilleri memhur arzuhalleriyle istida eylediklerin tüccar-ı mersumanın nazırı olan divan-ı hümayunum beylikcisi iftiharü'l emacid ve'l ekarim Mehmed Nuri dame mecdehu ba takrir ifade ve tacir-i mersum hazine-i amireme muayyen olan bin beşyüz kuruş mirisini tamamen eda itmekle mezkur üzere işbu nişan-ı hümayunı virdim ve buyurdum ki

ba'del yevm defterlü tüccardan olub tüccar mersumadan hasbel iktiza biri ve yahud hizmetkar ve adamları li ecli't-ticare bir mahale gitmek murad eyledikde vekilan-ı mersumanın memhur arzulleriyle istid'a olundukda ticaret şurutı derciyle tıbkı müstemenan tercüman ve adamlarına ita olunduğu misillu yol emirleri virile

ve müstemenan tercümanlarının kendüleri ve evlad-u iyallerinin me'külat ve meşrubat ve melbusatına dahl ve taarruz olunmadığı misillu bunların dahi evlad-u iyallerinin me'külat ve meşrubat ve melbusatlarına dahl ve taarruz olunmaya

ve ashab-ı berevat olan tüccarın bulundukları mahalde yanlarında bulunmak şartıyla başka başka evamir-i şerifemler tahsis kılınan ikişer nefer hizmetkarları işbu imtiyazata ayniyle nail olalar

ve işbu zikr olunan iki nefer hizmetkarın biri iktiza ider ise İzmir'de ikamete mezun ola

ve ashab-ı berevatdan birinin her kimde olur ise olsun mumza ve ma'mul-bih temessük mucibince vekilleri ve esnafının tevatüren şehadetleriyle müsbit matlubları oldukda yedinde olan temessükü hakime ibraz ve lede's-subut matlubu olan meblağ tahsil olunub yüzde ikiden ziyade resm matalibe olunmaya

ve gerek müslim ve gerek milel-i saireden her kangısıyla ashab-ı berevatın davaları zuhurunda dört bin akçeden ziyadeye reside olan dava kenar mahkemelerde görülmeyüb arz odasında huzur-u asıfide rüyet ve fasl oluna

ve tüccar mersumadan birini gerek ehl-i islam ve gerek readan biri li ecli't-terafu mahkemeye veyahut bab-ı aliye götürmek murad eyledikde zabitan taraflarından tekdir ile muamele ve kesr-i itibarını mucib olacak vaz' vukua gelmemek içün beratlu tüccar ve hizmetkarları nazırları tarafından mübaşir tayiniyle kaldırılub ahar tarafdan mübaşir tayin olunmaya

ve habsleri iktiza ider ise yine nazırı marifetiyle habs oluna

ve bunların ticaretlerinin ekseri frengistana mahsus olduğuna binaen müstemenan ile nizaları zuhur ideceği meczum olmağla bunların umur ve hususlarına ve hesab ve kitaplarına ve fasl ve hasm-ı müddeaya dikkat ve idhal ve ihraclarına nezaret ve rüyet eylemek üzere divan-ı hümayun beylikcisi olanlar nazır tayin ve divan-ı hümayun tercümanı bulunanlar marifeti ve tarafeynden bi'l-intihab memur olacak mümeyyiz bazerganlar marifetiyle evvelan kaide-i tüccar üzere dava ve nizaları lede'r-rüye nazır-ı müma ileyh ba takrir makam-ı vala-yı riyasete arz ve eğer şer'-i şerife müracaatları lazım gelür ise balada beyan olunduğu üzere ahar mahallerde rüyet olunmayub arz odasında şerile görülüb fasl oluna

ve müstemenanın taşrada dört bin akçeden ziyade olan davları Asitane'ye havale olunmak ahidnameleri şurutundan olduğu misillu bunların dahi müstemenan ile olan nizaları kezalik Deraliyem'e havale kılınmak ve'l hasıl reaya-yı devlet-i aliyem tüccarının kangı devlet tüccarıyla nizaları zuhur ider ise devleteyn beyninde münakid olan ahidname şurutu icra olunub bir vakitde hilafı tecviz olunmaya

ve taife-i mesumenin taht-ı rabıtaya idhal olunmalarından maksud ancak ticaretlerine vesile-i yessir ve suhulet olmak kazıyesi olmağla tüccar-ı mersumanın

gönderdikleri emtia kangı devlet metaı ise memalik mahrusem mahsulatı istisna ve kema fi's-sabık ahz olunub ale'l-ıtlak Frengistan mallarıçün yani kangı devlet ve diyar emtia ve eşya ve erzakı ve her ne cins ve nev'den olur ise olsun ol devletin tarifesi ve Acem ve Hindistan emtiaları dahi zikr olunan tarifelere kıyasen yüzde üç hesabiyle resm-i gümrük eda eyleyeler

ve memalik-i mahrusem mahsulatı olan emti'a ve eşya erzakı her ne ise madamki memalik-i mahrusemden memnuatdan olmayarak sahih Acem ve Hindistan ve Avrupa canibine beren ve bahren nakli murad eyleyeler kezalik nakl idecekleri devletin tarifesi üzere ve Acem ve Hindistan taraflarına nakl olunacak emti'a ve eşyanın dahi resmi gümrüklerine yüzde üç hesabıyle bu tarifelere kıyasen eda idüb yedine mamul-bih eda tezkeresi aldıktan sonra mükerrer ve ziyade gümrük ve gümrük izinnamesi ve harc-ı gümrük ve masdariye ve reft-i gümrük namiyle bir akçe ve bir habbe taleb olunmaya

ve eğer gümrük emaneti tarafından ziyade ve mükerrer gümrük namiyle akçeleri alunur ise derhal red itdirile

ve tüccar mersuma ve vülat ve hükkam ve voyvodagan taraflarından hilaf-ı şer'-i şerif tecrim olunduklarına bir vechile rıza-yı hümayunum olmayub saye-i mülukanemde asude-i hal olmaları mültezim-i şahanem olduğuna binaen her halde himayet ve siyanet olunub ve zulmen alınan akçeleri derhal icab idenlerden tahsil oluna

ve ashab-ı beravat olan tüccar ve hizmetkarları umur-u vilayet ve kocabaşılık misillu hususata vechen mine'l-vücuh müdahale eylemeye bu husus akdem esbab-ı imtiyaz ve nizam olmağla bir vakitde hilafı tecviz olunmaya

şu kadar ki bazı memalikde beratlu olandan maada erbab-ı tayinden kocabaşılığa şayan readan kimesne bulunmayub amme-i reayanın rüyet-i umurları ve

mezalimden masun olmaları içün beravat ashabı olan reayadan birinin kocabaşı olması zaruri icab iderek ol memleketde olan reayanın istid'alarıyle muhtarları olur ise cümlenin reyi ve rızasıyle fakat o makule mahalde kocabaşılığı rüyet eylemesi vaiz ola

lakin kocabaşı olacak şahs dahi işbu imtiyazata neyalene mebni sairinden serbest olması sebebiyle reaya hakkında bir güne teaddi ve etvar-ı naşayesteye ve vechhen mine'l-vücuh teaddi eylemeye ve eyler ise kendiye vahim olacağı bildirile

ve tüccarı mersumadan mürd olanların dükkan ve oda ve sair emlakleri canib-i şer'iden başka ve nazırı tarafından başka temhir olunub emval-i metruke ve emlak ve akar ve sair cüzi ve külli eşya ve nukudlarına canib-i miriden taarruz ve temhir ve zabt olunmayub ve sağir ve sağireleri bulunub şer'an tahriri lazım gelenlerden dahi ziyade resm talebiyle tazyik itdirilmeyüb ber muktezayı şer-i şerif beynel verese nazırı nezaretiyle taksim itdirile

ve sağir ve sağire ve gaib ve gaibesi olmayub beynel verese taksimi murad olunmayan tereke dahi bir dürlü cebr ve ibra ile tahrir itdirilmeye

ve berevatı aliye ile nail-i imtiyaz olan tüccar ve evamir-i aliyemle hizmetkarları olanlara fimaba'd cizyedar ve kolcuları tarafından kağıd i'tası vesilesiyle teaddi ve müdahale olunmayub tüccar-ı mersuma ve hizmetkarlarının kalemi ceridesinden ale'l-inkıraz esamisini mübeyyin defteri ihrac birle ala cizye on iki kuruş iken saiyyen li'l-miri sekiz kuruş zammıyle ashab-ı berevat senevi virecekleri yirmi kuruş cizyeyi iki yüz otuz iki ve kırk ve kırk üç tarihleri zammiyesinden başka elli senesi Muharreminden itibaren umumi vaki olan zammı cedidiyle ma'an ve evamiri aliyemle hizmetkar olanlar şurut ve nizamları muktezasınca dört kuruş zammıyle virdikleri evsat cizyeyi kezalik otuz iki ve kırk ve

kırk üç seneleri zammiyesinden maada yeni olan zam ile beraber beher sene gurre-i Muharrem'de nazır muma ileyh marifetiyle Asitane cizyedarına teslim eylemeleri

ve işbu cizye meblağı ne miktara baliğ olur ise beylikci-i divan-ı hümayunum bulunanlar ber mucebi defter Avrupa Tüccarı vekillerinden topunu ahz idüb defteri mucibince Asitane cizyedarına i'ta eyleyeler

ve bu cihetle yedinde berevat-ı şerife ve hizmetkarlık emri olanlara cizye kağıdı teklif olunmaya

ve bu imtiyaz ancak tüccar-ı mersuma ve hizmetkarlarının kendü haklarına mahsus olub evlad ve müteallakatları ve yedinde emri alişanım olmayan hizmetkarları kema fi's-sabık cizye kağıdı ahz eyleyeler

ve yedlerine berevat ve evamiri şerif virilen tacirler devlet-i aliyyemin raiyyetini bilüb her halde arz ve edebleriyle olub muğayiri resm-i raiyyet ve ubudiyet hareketde bulunmayub haklarında bir vechile zuhur iden inayetin şükrünü eda ve devam-ı devlet ve kıvamu fer-ü şevket-i şahanem da'vatına iştigal ve muvazebet üzere olalar şöyle bileler alamet-i şerife itimad kılalar

tahriran fi evail-i şehri rebi ül evvel sene hamsin ve mieteyn ve elf

(The first ten days of July 1834)

APPENDIX-C

Appointment of Avrupa Tüccarı Representatives

BOA, A.DVNSDVE.d 106, doc.3

İstanbul kadısına

Elhaletü hazihi berren ve bahren Avrupa ticaretiyle me'luf olan ve bundan böyle izhar-ı hevahiş ve arzu iden devlet-i aliyem reayasının ticaretleri taht-ı rabıta ve nizama idhal olunduğu suretde ticaretlerine vüsat gelüb hem taife-i mersum ve hemde gümrükler iradına menafi-i kesireyi mucib olacağı umur-ı vazıhadan olmak hasebiyle reayayı devlet-i aliyyemden olub ticareti mezkuraya mezuniyetini havi yedlerine berevat-ı şerifim virilen tüccar beyninde cümlenin inzimam-ı reyi ve intihabiyle iki nefer vekil nasb ve tayin olunub beylerinde vaki umur-ı muhasebe ve kavaide ve husasat-ı saire-i ticaretde mersuman nafizü'l-kelam olmak ve bakisi anların reylerine mütabaat ile kavaid-i meriyye-i ticarete muhalif harekete mütecasir olanların iktiza iden tediblerinin nazırlarının inzimam-ı reyi ile esnafca icrasına mezuniyet ve memuriyetleri derc ve tasrih olunarak nazırlarının takriri ve istidasıyle ol babda başka başka ferman-ı ali ısdar ve beher sene mersum vekiller tebdil olunub cümlenin marifeti ve intihabiyle aharlarının ba emri ali vekil nasb ve tayini hususu tüccar mersuma hakkında ba hatt-ı hümayun-ı şahanem virilen şurutu nizamda münderic olub bu ticaret maslahatı itina olunacak mevaddan olmak hasebiyle vekalet-i merkuma yalnız tüccarın intihab ve ihtiyarına bırakılmayarak içlerinden muteber ve gerekenler her kimler ise divan-ı hümayunum beylikcisi bulunanların intihab ve nezaretiyle anlar vekil nasb ve beher sene Şubatından itibaren azl ve tebdil kılınmak hususuna muahharan emri aliyem talikıyla bu suret divan-ı hümayunum

kalemine kayd itdirilmiş ve el haletü hazihi tüccar vekili bulunan Dersaadetim'de Valide hanında mütemekkin Dimitri Tıgır oğlu ve Nikola veledi Yani Eci Çeşmeli nam tacirler müddeti vekaletleri münkaziye olmuş olduğundan iş bu sene-i mübarekede umur-ı vekaleti idare ve rüyet itmek üzere tüccar-ı mersumadan Galata'da mütemekkin İplikci Kostantin ve Koca Yeni handa mütemekkin Kelfor veledi Serhan Mirasyedi nam tacirler ber mucebi şurut ve nizam vekalete intihab olunmuş ve mersumanın ol vechile vekil nasb ve tayinleriyle yedlerine başka başka iki kıta emr-i şerifim i'tası hususu tüccar mersuma taraflarından bu defa arzuhal takdimiyle niyaz ve istida olunmuş olduğu tüccar mersumanın nazırları olan divan-ı hümayunum beylikcisi vekili iftihar İbrahim ..... dame mecdehu canibinden ba takrir ifade birle mucibince mersumanın tüccar vekili nasb ve tayiniyle mersum İplikci Kostantin'in vekaleti havi yedine diğer emri şerifim verilmiş olmağın mersum Kelfor nam tacirin vekateti memuriyetiçün dahi iş bu emr-i şerifim ısdar ve yedine ita olunmuşdur imdi ber muceb-i şurut-ı nizam tüccar-ı mersumanın beyninde vaki olan umur-u muhasebe ve husasat-ı saireyi bir sene-i kamile bi'd dahl rüyet ve tüccar mersuma dahi emri ticaretde reyine mutabaat eylemek ve kaide-i ticarete münafi harekete mücaseret edenlerin nazır-ı muma ileyh marifetiyle levazımı te'diblerini icra ettirmek üzere tacir-i mersum Kelafor'un vekaleti umuruna kimesne tarafından mudahale ve taarruz olduğuna rızayı şerifim olmadığı sen ki mevlana muma ileyhsin malumun oldukda ber mucebi meşruh amel ve harekete dikkat olunmak ve hilaf-ı şurut-u nizam vaz ve halata tecviz olunmamak babında

Evail-i Cemaziyel evvel 1250

APPENDIX-D

The Number of Berats Renewed and the New Berats Issued

Years	Number of Berats Renewed	Number of New Berats Issued
1255 (1839-1840)	158	3
1256 (1840-1841)	201	17
1257 (1841-1842)	48	10
1258 (1842-1843)	10	2
1259 (1843-1844)	10	5
1260 (1844-1845)	11	6
1261 (1845)	18	14
1262 (1845-1846)	10	8
1263 (1846-1847)	7	14
1264 (1847-1848)	12	15
1265 (1848-1849)	1	15
1266 (1849-1850)	5	16
1267 (1850-1851)	2	13
1268 (1851-1852)	4	11
1269 (1852-1853)	4	37
1270 (1853-1854)	0	13
1271 (1854-1855)	2	20
1272 (1855-1856)	0	35
1273 (1856-1857)	0	38
1274 (1857-1858)	2	22
1275 (1858-1859)		27
1276 (1859-1860)		33
1277 (1860-1861)		37
1278 (1861-1862)		52
Total	505	463

I compiled the inputs of this table from the book for the new registry of the Avrupa Tüccarı berats (MAD 21192) and the book for the renewal of berats after Abdülmecid I's accession to the throne (MAD 21197). This list includes only the

number of berats renewed and new berats issued per year. Although the number of berats deleted (*terkin*) from the registry are shown in these books, I have not included them for the simplicity sake. However, number of berats deleted were few. Moreover, this table covers only the number of Avrupa Tüccarı berats but excludes the servant licenses attached to these berats. An Avrupa Tüccarı berat could be attached two servant licenses and most of the Avrupa Tüccarı berats in the registry had two servant licenses attached. The registry books also include information about whether the servant licenses were deleted due to death or taken back for an unspecified reason and given to someone else. The years are given in the format of lunar Muslim calendar as Ottomans kept their records according to the lunar calendar. Due to the difference between the number of years in lunar and solar calendars each lunar year corresponds to two years in the solar calendar. For example, the lunar year 1255 covered the period between 17 March 1839 and 4 March 1840. The statistics of this table are corroborated by the report of Avrupa Tüccarı vekils İstivraki and Ovanes Efendis who proclaimed that they were the representative of around 3000 thousand Avrupa Tüccarı in 1866. (İ.HR 220/12769). Apparently, this number includes both the Avrupa Tüccarı and their fermanlı servants.

BIBLIOGRAPHY

Primary Sources

Başbakanlık Osmanlı Devlet Arşivleri (Prime Minister's Office of Ottoman Archives)

A.AMD 63/69

A.AMKT 97/66

A.DVN 76/34

A.DVN.d 880

A.DVN.DVE.d 916/B

A.DVNSDVE.d 106/1

A.DVN 76/34

A.DVNS.MTAN.d.01

A.MKT 163/8

A.MKT.NZD 347/96

A.MKT.UM 53/55

A.MKT.UM 55/93

A.MKT.UM 55/90

A.MKT.UM 54/29

A.MKT.UM 52/88

A.MKT.UM 54/16

A.MKT.NZD 28/75

A.MKT.UM 105/99

A.MKT.UM 107/36
A.MKT.UM 107/73

A.MKT.UM 105/79

A.MKT.UM 108/23

A.MKT.MHM 158/31

A.MKT.MVL 69/9

A.MKT.MVL 69/32

HAT 527/25863

HAT 529/26074

HAT 759/35836

HAT 378/2053

HAT 696/33612

HAT 699/33713-J

HAT 1440/59175

K.K. 3838

K.K. 7538

C.H. 19/925

C.İKTS. 37/1827

HR.MKT 3/78

HR.MKT 6/56

HR.MKT 6/57

HR.MKT 30/56

HR.MKT 45/94

HR.MKT 53/34

HR.MKT 78/4
HR.MKT 86/68

HR.MKT 86/83

HR.MKT 86/97

HR.MKT 112/6

HR.MKT 147/19

HR.MKT 131/21

HR.MKT 167/1

HR.MKT 229/55

HR.MKT 296/2

HR.MKT 339/49

HR.MKT 337/38

İ.DH 154/8005

İ.DH 164/8571

İ.DH 357/23593

İ.HR 220/12769

İ.MMS 16/660

İ.MMS 35/1458

İ.MSM 20/898

İ.MVL 146/4098

İ.MVL 158/4564

İ.MVL 178/5336

İ.MVL 184/5527

İ.MVL 194/5900

İ.MVL 200/6279
İ.MVL 240/8571

İ.MVL 373/16384

İ.MVL 382/16745

İ.MVL 436/19282

MAD.d 21192

MAD.d 21197

Newspapers

Takvim-i Vekayi, 187, 198

Secondary Sources

Abu-Manneh, Butrus, ‘‘The Islamic Roots of the Gülhane Rescript.’’ *Die Welt des Islams* New Series 34, no.2 (Nov. 1994):173-203.

Adanır, Fikret. “Woywoda.” *Encylopedia of Islam*, 2nd edition.

Ahmed Reşid. *Hukuk-i Ticaret Dördüncü Kitab*. İstanbul: Asadoryan Şirketi Mürettibiye Matbaası, 1316.

Akarlı, Engin Deniz. “Maslaha From “Common-Good” to “Raison D’etat” in the Experience of İstanbul Artisans, 1730-1840.” In *Hoca, Allame, Puits de Science: Essays in Honor of Kemal Karpat.* Edited by K. Durukan et al., 63-79. İstanbul: Isis Press, 2010.

Akarlı, Engin Deniz. ‘‘Ottoman Empire: Islamic Law in Asia Minor (Turkey) and the Ottoman Empire.’’ *The Oxford International Encyclopedia of Legal History*.

Akiba, Jun. ‘‘The Local Councils as the Origin of the Parliamentary System in the Ottoman Empire.’’ In *Development of Parliamentarism in the Modern Islamic World,* 176-204 edited by Sato Tsugitaka. Tokyo: The Toyo Bunko, 2009.

Akiba, Jun. ‘‘From *Kadı* to *Naib*: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period.’’ In *Frontiers of Ottoman Studies*. Edited by Colin Imber and Keiko Kiyotaki, 43-60. London: I.B. Tauris, 2005.

Akyıldız, Ali. Tanzimat *Dönemi Osmanlı Merkez Teşkilatında Reform*. İstanbul: Eren, 1993.

Armağan, Mustafa, ed. *Osmanlı Tarihini Yeniden Yazmak: Gerileme Paradigması’nın Sonu*. İstanbul: Timaş, 2011.

Artunç, Cihan. “The Protégé System and Beratlı Merchants in the Ottoman Empire: The Price of Legal Institutions” Working Paper, March 2013. http://aalims.org/uploads/Cihan%20Artunç%20Berat.pdf

Asador, Hrant, and Halil Cemaleddin. *Ecanibin Memalik-i Osmaniye’de Haiz Oldukları İmtiyazat-ı Adliyye*. Dersaadet: Hukuk Matbası, 1331.

Bağış, Ali İhsan. *Osmanlı Ticaretinde Gayrı Müslimler: Kapitülasyonlar-Beratlı Tüccarlar Avrupa ve Hayriye Tüccarları* (1750-1839). Ankara: Turhan Kitabevi, 1983.

Bilmen, Ömer Nasuhi. *Hukuki İslamiyye ve Istılahı Fıkhiyye Kamusu*. İstanbul: Enes Sarmaşık Yayınları, vol. 8.

Bingöl, Sedat. Tanzimat *Devrinde Osmanlı'da Yargı Reformu: Nizamiye Mahkemeleri'nin Kuruluşu ve İşleyişi 1840-1876)*. Eskişehir: T.C. Anadolu Üniversitesi Yayınları, 2004.

Boogert, Mauritis H. Van den. *The Capitulations and the Ottoman Legal System. Kadıs, Consuls and Beratlıs in the 18th Century*. Leiden: Brill, 2005.

Boogert, Mauritis H. Van den. "Ottoman Greeks in the Dutch Levant Trade: Collective Strategy and Individual Practice" *Oriento Moderno* 25, no. 1 (2006): 129-147.

Boogert, Mauritis H. Van den. "Beratlı." *Encylopedia of Islam*, 3rd Edition.

Boogert, Mauritis H. Van den. Maurits H. van den Boogert, "Legal Reflections on the "Jurisprudential Shift Hypothesis"." *Turcica* 41 (2009):373-382.

Cevdet Paşa. *Tezakir 1-12*. Edited by Cavid Baysun. Ankara: Türk Tarih Kurumu Yayınları, 1991.

Cevdet Paşa. *Tezakir 40-Tetimme*. Edited by Cavid Baysun. Ankara: Türk Tarih Kurumu Yayınları, 1991.

Çadırcı, Musa "II. Mahmut Dönemi'nde (1808-1839) Avrupa ve Hayriye Tüccarları." In *Social and Economic History of Turkey (1071-1920)*. Edited by Osman Okyar and Halil İnalcık, 237-241. Ankara: Meteksan Limited Şirketi, 1980.

Çadırcı, Musa. "Tanzimat Döneminde Çıkarılan Men-i Mürur ve Pasaport Nizamnameleri." *TTK Belgeler* 25, no. 19 (1993): 169-182.

Çizakça, Murat and Macit Kenanoğlu. "Ottoman Merchants and the Jurisprudential Shift Hypothesis." In *Merchants in the Ottoman Empire*. Edited by Suraiya Faroqhi and Gilles Veinstein, 195-213. Paris-Louvain-Dudley, MA: Peeters Publishers, 2008.

Davison, Roderic H. ''Britain, The International Spectrum, and the Eastern Question, 1827-1841.'' *New Perspectives on Turkey*, no. 7 (Spring 1992): 15-35.

De Groot, Alexander H. "The Historical Development of the Capitulatory Regime in the Ottoman Middle East from the Fifteenth to the Nineteenth Centuries." *Oriento Moderno* 23, no. 3 (2003): 575-604.

Faroqhi, Suraiya. ''Sidjill.'' *Encylopedia of Islam*, 2nd Edition.

Faroqhi, Suraiya. "Reaya-In the Ottoman Empire." *Encyclopedia of Islam*, 2nd Edition.

Findley, Carter V. "The Foundation of The Ottoman Foreign Ministry: The Beginnings of Bureaucratic Reform Under Selim III And Mahmud II." *International Journal of Middle East Studies* 3 (1972):388-416.

Findley, Carter V. *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789-1922.* New Jersey: Princeton University Press, 1980.

Genç, Mehmet. ''Yed-i Vahid.'' *TDV İslam Ansiklopedisi*.

Goldberg, Jan. "*On the Origins of Majalis al-Tujjar in Mid-Nineteenth Century Egypt*." *Islamic Law and Society* 6, no.2 (1999): 193-223.

Gürzumar, Fikri and Tekin Gürzumar and Ali Himmet Berki. *Kanunname-i Ticaret ve Zeyilleri*. Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü, 1962.

Fraşerli Mehdi. *Osmanlı Devleti'nde Kapitülasyonların Uygulanışı (İmtiyazat-ı Ecnebiyyenin Tatbikat-ı Hazırası)*. Edited by Fahrettin Tızlak. Isparta: Fakülte Kitabevi, 2008.

Hallaq, Wael. B. "A Prelude to Ottoman Reform: Ibn Abidin on Custom and Legal Change." In *Histories of the Modern Middle East: New Directions,* Edited by I. Gershoni et al., 37-61. London: Lynne Rienner, 2002.

Hanioğlu, Şükrü. *A Brief History of the Late Ottoman Empire*. Princeton: Princeton University Press, 2008.

Hooper, C. A. "The Mejelle. Articles 1-100." *Arab Law Quarterly* 1, no. 4 (Aug. 1986): 373-379.

Hooper, C.A. ''Report of the Commission Appointed to Draft the Mejelle.'' *Arab Law Quarterly* 1, no. 4 (Aug. 1986): 367-372.

Hooper, C.A. "The Mejelle: Book XIII: Admissions." *Arab Law Quarterly* 5, no.1 (Feb., 1990): 88-95.

Hooper, C.A. "The Mejelle: Book XV: Evidence and Administration of Oath" *Arab Law Quarterly* 5, no. 3 (August. 1990): 223-238.

Hurewitz, J. C. *The Middle East and North Africa in World Politics: A Documentary Record*. New Haven: Yale University Press, 1975.

Ibrahim, Ahmed Fekry, review of Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton: Princeton University Press, 2010), *New Middle Eastern Studies*, 1 (2011):1-3

Issawi, Charles. *The Economic History of Turkey, 1800-1914*. Chicago: University of Chicago Press, 1980.

İnalcık, Halil. "Imtiyazat". *Encylopedia of Islam,* 2nd edition.

İnalcık, Halil. "Djizya". *Encylopedia of Islam,* 2nd edition.

İnalcık, Halil. "Mahkama" *Encylopedia of Islam,* 2nd edition.

İnalcık, Halil. ''Sened-i İttifak ve Gülhane Hatt-ı Hümayunu.'' In *Osmanlı İmparatorluğu Toplum ve Ekonomi*, 343-359. Halil İnalcık. İstanbul: Eren, 1993.

İnalcık, Halil. 'Application of the Tanzimat and Its Social Effects.'' *Archivum Ottomanicum* 5 (1973): 97-128.

Jennings, Ronald C. "Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri." *Studia Islamica,* no.50 (1979):151-184.

Johansen, Baber. "Formes de langage et fonctions publiques: stéréopypes, témoins et offices dans la preuve par l'écrit en droit musulman," *Arabica* ("Voix et calame en Islam médiéval"), tome XLIV, fasc. 3 (1997), pp. 333-376.

Kadı, İsmail Hakkı. "Natives and Interloopers: Competition between Ottoman and Dutch Merchants in the 18th Century." Ph.D. diss.. Leiden University, 2008.

Kaşıkçı, Osman. *İslam ve Osmanlı Hukukunda Mecelle.* İstanbul: OSAV, 1997.

Kaya, Süleyman. "XIII. Yüzyıl Osmanlı Toplumunda Nazari ve Tatbiki Olarak Karz İşlemleri." Ph.D. diss., Marmara University, 2007.

Köksal,Yonca. ''Imperial Center and Local Groups: Tanzimat Reforms in the Provinces of Edirne and Ankara'' *New Perspectives of Turkey* 27 (Fall 2002): 107-138.

Kenanoğlu, Macit. *Osmanlı Millet Sistemi: Mit ve Gerçek*. İstanbul: Klasik, 2004.

Kenanoğlu, Macit. *Ticaret Kanunnamesi ve Mecelle Işığında Osmanlı Ticaret Hukuku*. Ankara: Lotus Yayınevi 2005.

Keyder, Çağlar. ''Law and Legitimation in Empire,'' In *Lessons of Empire: Imperial Histories and Amercian Power*. Edited by Craig Calhoun, Frederick Cooper and Kevin W. Moore. New York: The New Press, 2006.

Kuran, Timur. *The Long Divergence: How the Islamic Law Held Back the Middle East*. Princeton: Princeton University Press, 2011.

Kuran, Timur. "The Economic Ascent of the Middle East's Religious Minorities: The Role of Islamic Legal Pluralism." *The Journal of Legal Studies* 33, no.2 (June 2004): 475-515.

Kuran, Timur. “The Islamic Commercial Crisis: Institutional Roots of Economic Underdevelopment in the Middle East.” *The Journal of Economic History* 63, no. 2 (Jun. 2003): 414-446.

Kütükoğlu, Mübahat S. “Avrupa Tüccarı.” *TDV İslam Ansiklopedisi*.

Kütükoğlu, Mübahat S. “Ahidname-Türk Tarihi.” *TDV İslam Ansiklopedisi*.

Kütükoğlu, Mübahat S. ‘‘Baltalimanı Muahedesi.’’ *TDV İslam Ansiklopedisi*

Libson, Gideon. Gideon Libson, “On the Development of Custom as a Source of Law in Islamic Law: Al-ruju’u ila al-urfi ahadu al-qawaidi al-khamsi allati yatabanna alayha al-fiqhu.” *Islamic Law and Society* 4, no.2 (1997): 131-155.

Lydon, Ghislaine. “A Paper Economy of Faith Without Faith in Paper: A Reflection on Islamic Institutional History.” *Journal of Economic Behavior&Organization* 71 (2009): 647-659.

Mardin, Ebul’ula. *Medeni Hukuk Cephesinden Ahmet Cevdet Paşa*. Ankara: TDV, 2009.

Masters, Bruce. “The Sultan’s Entrepreneurs: The Avrupa Tüccarıs and the Hayriye tuccaris in Syria.” *International Journal of Midde East Studies* 24, no. 6 (November 1992): 579-597.

Mert, Özcan. “XVIII ve XIX. Yüzyıllarda Osmanlı İmparatorluğu’nda Kocabaşı Deyimi, Seçimleri ve Kocabaşılık İddaları.” In *Prof. Dr. Hakkı Dursun Yıldız Armağanı,* 401-407. Edited by Mustafa Çetin Varlık. Ankara: Marmara Üniversitesi Yayınları, 1995.

Miller, Ruth. “The Legal History of the Ottoman Empire.” *History Compass* 6, no.1 (2008): 286-296.

Mumcu, Ahmet. *Divan-ı Hümayun*. Ankara: Phoenix Yayınevi, 2007.

Neumann, Christoph K. *Araç Tarih Amaç Tanzimat Tarih-i Cevdet’in Siyasi Anlamı*. İstanbul: Tarih Vakfı Yurt Yayınları, 1999.

Öğün, Tuncay. ‘‘Müsadere.’’ *TDV İslam Ansiklopedisi*.

Özmucur, Süleyman and Şevket Pamuk. ‘‘Real Wages and Standards of Living in the Ottoman Empire, 1489-1914.’’ *The Journal of Economic History* 62, no.2 (2002): 293-321.

Quataert, Donald. ‘‘Clothing Laws, State and Society in Ottoman Empire, 1720-1829.’’ *International Journal of Middle East Studies* 29, no. 3 (Aug. 1997): 403-425.

Rubin, Avi. ‘‘Ottoman Judicial Change in the Age of Modernity: A Reappraisal.’’ *History Compass,* 6 (2008):1-22.

Sabit Efendi. *Usulü Muhakeme-i Hukukiye,* Medrese-i Hukuk , İstanbul, 1302.

Sezer, Hamiyet. "Osmanlı İmparatorluğu'nda Seyahat İzinleri (18-19.yy)." *A.Ü.D.T.C.F. Tarih Araştırmaları Dergisi* 21, no. 33 (2003): 105-124.

Shaw, Stanford J. ‘‘The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement before 1876.’’ *International Journal of Middle East Studies* 1, no. 1 (Jan., 1970): 51-84.

Şahiner, Araks. “The Sarrafs of İstanbul: Financiers of Empire.” MA Thesis. Boğaziçi University, 1995.

Şenel, Şennur. “Osmanlılarda Ticaret Anlayışı Ve Ticaret Teşkilatında Yeni Bir Yapılanma: Hayriye Tüccarı.” In *Türkler.* Edited by Hasan Celal Güzel Kemal Çiçek and Salim Koca, 736-743. İstanbul: Yeni Türkiye, 2009.

Taylor, Miles. “David Urquhart (1805-1877), diplomist and writer.” *Oxford Dictionary of National Biography*.

Thompson, Elizabeth. ‘‘Ottoman Political Reform in the Provinces: The Damascus Advisory Council in 1844-45.’’ *International Journal of Middle East Studies* 25, no. 3 (Aug. 1993): 457-475.

Tekdemir, Aziz. ‘‘Ticaret Nezareti’nin Kuruluşu ve İdari Birimleri,’’ In *Osmanlı’dan Cumhuriyet’e Esnaf ve Ticaret*, edited by Fatmagül Demirel. (İstanbul: Tarih Vakfı Yurt Yayınları, 2012).

The Redhouse Dictionary: Turkish/Ottoman-English. (İstanbul: Sev-Yay, 2011)

Urquahart, David. *Turkey and Its Resources: Its Municipal Organization and Free Trade; The State and Prospects of English Commerce in the East, The New Administration of Greece Its Revenue and National Possessions*. London: Saunders and Otley, Conduit Street, 1833.

Yörük, Ali Adem. ‘‘Mekteb-i Hukukun’un Kuruluşu Ve Faaliyetleri (1878-1900).’’ MA thesis, Marmara University, 2008.