

FRATRICIDE IN OTTOMAN LAW

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Introduction

This paper focuses on fratricide in the Ottoman Empire from the Islamic/Ottoman Law viewpoint. Ottoman Law is the term which refers to the applied version of Islamic Law under the Ottoman Empire. The references used in *Sharia* law are the infrastructure of Ottoman law. The issues in which there is no precedent under Islamic law are handled by the rulers and the jurists, thereby legislating these issues¹.

It is necessary to know Islamic law and politics in order to properly evaluate the application of the fratricide in the Ottoman Empire. The matter depends on fundamental historical, political and legal considerations.

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¹ Modern Ottoman historians and legal historians, however, disagree on the dispute around whether or not Ottoman law is an application of Islamic law in Ottoman lands. One group including Barkan, Köprülü, İnalçık and Üçok, says that Islamic Law was principally in effect in the Ottoman Empire; yet because of political necessity, new rules were sometimes laid down deviating from Islamic legal principles; there were even two collateral legal systems called Sharia/Islamic law and Orfi Hukuk/Customary law. (Ömer Lütfü Barkan, *XV ve XVI nci asırlarda Osmanlı İmparatorluğu'nda Zırai Ekonominin Hukuki ve Mali Esasları* [Legal and Financial Principles of the Agricultural Economy in the Ottoman Empire in the 15th and 16th Centuries], vol. 1, p. X, İstanbul Üniversitesi Yayını, İstanbul 1943; M. Fuad Köprülü, *Fıkıh [Fiqh], İslam Ansiklopedisi*, Milli Eğitim Basımevi, 5th ed, İstanbul 1978, vol. 4, p. 617; Halil İnalçık, Sultanizm üzerine yorumlar: Max Weber'in Osmanlı siyasi sistemi tiplemesi, *Dünya Bugünüyle Toplum ve Ekonomi*, no. 7, October 1994, p. 17; Coşkun Üçok, Osmanlı Kanunnamelerinde İslam Ceza Hukukuna Aykırı Hükümler [Provisions of the Ottoman Laws against the Islamic Criminal Law], *Ankara Üniversitesi Hukuk Fakültesi Dergisi*, vol. 03, no. 01, Ankara 1946, p. 125). Furthermore, Ocak regards Orfi Hukuk as an appearance of the state-guided Islam or Ottoman Islam (Ahmet Yaşar Ocak, XV-XVI yüzyıllarda Osmanlı resmi ideolojisi ve buna muhalefet problemi [Ottoman official ideology in the 15-16th century and the problem of opposition], *İslâmî Araştırmalar*, vol. IV, no. 3, July 1990, p. 191). Another group including Aydın and Akgündüz accuses those in the first group of approaching the issue superficially. (M. Akif Aydın, Osmanlı'da Hukuk [The Law in the Ottoman Empire], *Osmanlı Devleti ve Medeniyeti Tarihi*, ed. Ekmeleddin İhsanoğlu, IRCICA, İstanbul 1994, vol. I, p. 375; Ahmed Akgündüz, *Osmanlı Kanunnameleri [Ottoman Legal Codes]*, Osmanlı Araştırmaları Vakfı, İstanbul 1990, vol. 1, p. 41). They argue that the claim made by the first group is not correct; in case of a need, weak legal opinions were applied, but the boundary defined by Sharia was observed.

Fatricides have occurred for three different reasons during the course of Ottoman history. The first case is as a result of a rebellion against the Sultan. This is seen as being totally justifiable based on Islamic law. In the second case, there is no clear revolt as yet, but there are signs of a potential revolt. There is some disagreement among ‘ulemās’ as to whether those in this category should have been executed. In the third case, there is neither actual revolt nor a preparation for revolt; however, members of the dynasty were executed due to the potential to incite a rebellion they carried. The dispute occurs mostly on the legality to punish those that fall into this category. Hence, this paper mainly examines whether there is a legal basis for the third case in the available contemporaneous Islamic/Ottoman law literature.²

The main contribution of this paper is to deal with the issue from the point of view of Islamic law, utilizing traditional Arabic legal texts on Islamic law. The previous works on this topic focus typically on the execution of shāhzādahs from a historical perspective. These works do not adequately address the underlying Islamic legal principles behind the fratricide application and what legal evidence the ‘ulemā (Ottoman scholars) based their judgment on. This paper aims to fill this gap.

The prevailing opinion so far is that the execution of shāhzādahs is an application based on *Orfi Hukuk*, which is in conflict with Sharia Law. It is known that among ‘ulemā there are those not in agreement with this opinion. Beginning with the idea that those considering this execution legal should have relied on some legal evidence (sources of Sharia), the aim in the paper is to investigate these evidence and reveal the legal boundary/frame of the historical circumstances without making any value judgments.³

The application of fratricide, which continued for one and half centuries, came to an end after the establishment of another constitutional convention.

² Since the paper is not written for narrating the historical background of fratricide, each fratricide case is not considered. For that reason, examples of fratricide cases are mentioned when necessary. For the narration of the fratricide cases please refer to: Mehmet Akman, *Osmanlı Devletinde Kardeş Katli [Fratricide in Ottoman Empire]*, Eren, Istanbul 1997, pp. 43-109; Ali Aktan, “Osmanlı Hanedanı İçinde Saltanat Mücadelesi ve Kardeş Katli [Struggle for the Throne and Fratricide in the Ottoman Dynasty]”, *Türk Dünyası Tarih Dergisi*, vol. 10, 1987, pp. 7-18; vol. 11, 1987, pp. 45-56.

³ Since the focus of the paper is not on the validity of fratricide in terms of Islamic Law, the fratricide, dating back centuries, will not be evaluated in a subjective way regarding whether it is in agreement with modern religious/legal references. For a study dealing with the existence of such a consistency is not of importance in legal history, but matters to *fiqh* (Islamic jurisprudence).

Since the renunciation of this application (fratricide) is an event important to the legal history and Ottoman constitutional law, the transition from fratricide to the seniorat procedure is also considered.

“Wolves devour the divided”⁴

Turks, having founded several states of various sizes within their Central Asian homeland, in Iran and the Middle East, ultimately settled in Anatolia. Having stated that “they established many states”, suggests that many Turkish states have perished. An old Turkish political tradition considerably contributed to their collapse. This tradition was that the state was the common patrimony of the dynasty. In other words, political sovereignty is a sacred duty bestowed by God upon all the members of the dynasty⁵. Each male member of the dynasty, whether young or old, considered himself as having an equal right to become the ruler. Throughout history, this tradition, called *üleş* (*ulash-share*), used to stimulate frequent dynastic battles resulting in the death of all princes but one. Or some rulers used to opt for the division of the state among two or more princes in order to prevent infighting. However, these divided states were easy prey for their enemies, as clearly expressed in the common saying that “Wolves devour the divided”⁶.

The Turkish states established by the Huns, Gokturks, Uigurs, Karahans, Ghaznevids, Timurids, Baburids and Seljuks, all collapsed for this very reason. Though the Seljuks did appoint a crown prince and attempted to govern on a centralized basis, they were not able to succeed for long. The division of some of the states geographically as North-South or East-West and of the Seljukid states into small principalities known as *begliks* or *atabegliks* (e.g. Zangis, Ayyubids, Qaramanids and Isfendiyarids) was a major contributing factor their dismemberment⁷.

⁴ Turkish proverb.

⁵ Mohamed Taqī Emami Khoei, “Qanunnāme-i Birāder-kushi Sultan Muhammad Fātih ve Nahvihi Ijrā-i F’dām-i A’zā-i Hānedān [The Law of Fratricide of Sultan Muhammad the Conqueror and the Way of Execution of the Family Members],” *Journal of the Faculty of Letters and Humanities*, Tehran, vol. 59, no. 185, 2008, pp. 24.

⁶ Akman, *Osmanlı Devletinde Kardeş Kattı*, p. 113.

⁷ The infighting among princes is, of course, not the sole reason for the collapse of the Turkic states before the Ottoman Empire. Since this infighting weakens political authority and causes dissolution of social unity, it is of primary importance. When he got older, Anatolian Seljuk Sultan Kilic Arslan II divided the country among his eleven sons in order to avert a possible infighting. However, this precaution could not prevent civil war. They struggled first with their father, and after his death in 1192, with each other. Eventually, Rukn al-Din II defeated his opponents in 1196 and took control of the whole country. After the death of Sultan Ghiyath al-Din Kaykhusraw II in 1246, shortly after his three sons shared the throne

By the time the Ottomans appeared as a new authority in Anatolia, they drew a lesson from the experiences of the old states which had perished⁸. They realized that the death of some members of the dynasty through fratricide causing *fitnah* (rebellion, social disturbance) and *fasād* (malice and sedition) was far more preferable than the risk of division and at last dissolution of the state. This practice was not peculiar to the Ottomans; it was frequently encountered among the Sassanids, Romans, Byzantines and even Muslims in Andalusia and Morocco⁹. In Europe, thousands had been killed and countries were destroyed in protracted succession disputes. As a result of measures taken by the Ottomans like fratricide, the empire was not divided, as many of the old Turkish states were, nor did wars of succession take place as was the case in Europe. This largely explains why the Ottoman Empire lasted for more than 600 years.

Unlike European dynasties, the exercising of fratricide by the Ottomans prevented the formation of an aristocracy which would have naturally evolved from the numerous branches of the dynasty¹⁰.

The Code (Qānun-nāmah) of Mehmed the Conqueror

The first Ottoman fratricide occurred in 1298 when Dundar Bey was executed for his collaboration with the *tekfurs* (semi-independent Byzantine governors) and his rebellion against the Sultan, his nephew Osman Ghāzī (d. 1324). After this event, members of the dynasty constituted a threat for the state for several centuries. Many shāhzādahs laid claim to the throne and rose in rebellion against the sultan sometimes with the support of the Anatolian states and Byzantium.

When Sultan Murad I, the eldest son of Sultan Orhan Ghāzī, ascended the throne his brothers who were both *sanjakkbeys* (provincial governors) rebelled against him. Murad defeated both of them. This was the first instance in history of a pow-

equally, the agreement on sharing the throne was violated. In both instances tens of thousands died in the ensuing civil wars. Consequently, the country tumbled into a civil war and was defeated by the Mongols, resulting in loss of independence. Distributing the country among the princes can be seen as a humane behavior. On the other hand, it could not make any contribution to the county in terms of peace.

⁸ Osman Turan, *Selçuklular Zamanında Türkiye [Turkey in the Time of Seljuks]*, Turan Neşriyat Yurdu, Istanbul 1971, p. 294.

⁹ Ibid., p. 20-23. A story, which can be seen as an example of the fratricide, is narrated in the Old Testament: When Jehoram, the eldest son of the Kind of Israel Jehoshaphat, was risen up to kingdom of his father, he strengthened himself, and slew all his brethren with the sword, and divers also of the princes of Israel. *Old Testament*, II Chronicles, 21:4.

¹⁰ A. D. Alderson, *The Structure of The Ottoman Dynasty*, Oxford University Press, London 1956, p. 26.

er struggle for the Ottoman throne¹¹. For eleven years after the Battle of Ankara (1402), which ended with the defeat of the Ottomans, the empire suffered an age of *fatrah*¹². Following the death of Sultan Bayezid I (1403), four of his well-trained and talented sons fought for the throne for eleven years, involving thousands of others. At the end of this long civil war the youngest shāhzādah, Mehmed Çelebi, prevailed and assumed sole control of the state as Sultan Mehmed I (d. 1421).

When he was accused that he had violated Mongol traditions, Sultan I. Mehmed wrote a letter to Shahruh, son of Tamerlane, to whom he was formally dependent upon, defended himself as follows: “My ancestors used to solve some problems by calling upon their experience; they were well-aware of the fact that two sultans cannot rule in the same country at the same time”¹³.

In the early years of the *fatrah*, the state, which was about to be divided, was on the verge of collapse, due to the infighting of the members of the dynasty. Most of the shāhzādahs who survived the revolt were supported by enemy countries such as Byzantium and Venice, and some shāhzādahs were held as hostages. It can be considered that earlier revolts and infighting amongst the shāhzādahs had a strong influence on Mehmed the Conqueror (d. 1481). The tragic memories of this period resulted in the issue of the following famous article of the Code of Mehmed the Conqueror (*Kānunnāme-i Āl-i Osman*)¹⁴: **“Fratricide, for *nizām-i ‘ālem* (the common benefit of the people), is acceptable for any of my descendants who ascends the throne by God’s decree. The majority of the ‘ulemā (Muslim scholars) permits the fratricide”**¹⁵.

The permission of fratricide in this aspect was interpreted not only to mean brothers of the sultan but also all male descendants of brothers (nephews, grand-

¹¹ Ismail Hakkı Uzunçarşılı, “Sancağa Çıkarılan Osmanlı Şehzadeleri [Ottoman Princes Who Presided over Sanjaks],” *Bellekten*, vol. 156, 1975, p. 660.

¹² *Fatrah*: Lack of authority between two leaders’ sovereignty (predecessor and successor), interregnum.

¹³ Feridūn Bey, *Macmū‘a-yı Munsha‘āt-ı Salātīn [Collection of Writings of Sultans]*, Istanbul 1274/1857, vol. 1, p. 150.

¹⁴ Various manuscript copies of this code from the 17th century are available in Vienna, St. Petersburg, and Paris. The copy in Vienna, with its footnotes, has been published in *Tārīh-i Osmānī Encümeni Mecmū‘asi [Periodical of The Ottoman History Council]* by Mehmed ‘Ārif Bey (İstanbul 1330, pp.2-32). A facsimile production of the copy in the Petersburg Asiatic Museum has been printed in Moscow in 1961. Abdülkadir Özcan and Ahmed Akgündüz have published this in transliteration form. There is not any reference to prince executions in the Paris copy.

¹⁵ Akgündüz, *Osmanlı Kanunnameleri* vol. 1, p. 341.

sons of brothers, etc.). While the fratricide was applied to princes' sons, the sultan's female relatives and their descendants were exempt from this rule and lived under the control of the state in accordance with an article of the code **“My daughters' sons must be given a *sanjak* (district) with high revenue but not a *beylerbeyliği* (province)”**¹⁶.

Though some modern scholars, such as Ali Himmet Berki (d. 1976) and Konrad Dilger, have claimed that this code was concocted¹⁷, there is no longer doubt about the authenticity of this code¹⁸.

“Let Rumeli be yours and Anatolia mine!”

The expression “any of my descendants who ascends the throne by God's decree” indicates the Ottoman view that fate determines the succession to the throne. Some of the earliest sultans such as Mehmed I and Murad II made their eldest sons their heir to the throne before their death. However this kind of appointment of crown prince was not used in a systemic way. Accordingly, only those Ottoman princes who were fortunate enough to ascend the throne were crowned. In the early days, the Ottomans did not impose a strict succession system¹⁹.

There were two reasons for this: Firstly, each male member of the dynasty had an equal right to the throne. As a result of the common patrimony rule in the Turkish political traditions, each shāh-zādah considered himself worthy of the

¹⁶ Akgündüz, *Osmanlı Kanunnameleri*, vol. 1, p. 342.

¹⁷ Ali Himmet Berki, *Fatih Sultan Mehmed ve Adalet Hayatı [Sultan Mehmed II, the Conqueror and Justice]* (Istanbul: 1953), 142-148; Konrad Dilger, *Untersuchungen zur Geschichte des Osmanischen Hofzeremoniells im 15. Und 16. Jahrhundert*, München 1967, pp. 34-36.

¹⁸ Abdülkadir Özcan, “Fâtiḥ'in Teşkilat Kanunnâmesi ve Nizâm-ı Âlem İçin Kardeş Katli [Code of Mehmed the Conqueror and the Fratricide for Common Benefit],” *Istanbul Üniversitesi Edebiyat Fakültesi Tarih Dergisi [Istanbul University, Faculty of Literature, Journal of History]*, vol. 33, March 1980/1981, pp. 7-11; Abdülkadir Özcan, *Kanunâme-i Âl-i Osman (Tahlil ve Karşılaştırmalı Metin)*, [Code of the Ottoman Dynasty-Analysis and Comparative Text] (Istanbul: 2003), pp. XI-XIX; Akgündüz, *Osmanlı Kanunnameleri*, vol. 1, pp. 311-313.

¹⁹ In the period between the foundation of the Ottoman State and 1617 when the *seniorat* procedure was established, 10 out of 14 sultans were the oldest son of the previous sultans. Osman Ghazi, though he was the youngest son of his father, was ascended to the throne by *begs* due to the fact that he held a superiority over his brothers in power, bravery, far-sightedness. Even though he was the youngest son of his father, Orhan Ghazi, by reason of his warrior personality, became a sultan after his elder brother waived his rights to the throne. Only two Sultans, Çelebi Sultan Mehmed and Yavuz Sultan Selim, although they had elder brothers, obtained the throne as a result of an armed struggle. For details on this issue, please refer to Haldun Eroğlu, *Osmanlı Devletinde Şehzâdelik Kurumu [The Institution of the Imperial Princes in the Ottoman Empire]*, Ankara 2004, pp.52-73.

throne because he was a son of the sultan²⁰. As the saying goes, “A young wolf cub eventually becomes a wolf”²¹. Secondly, if the Ottomans had imposed conditions as to who might ascend the throne, the opportunities of more talented and more worthy shāhzādahs would have been blocked. This would be contrary to Islamic public law²². Partly due to this reason, Sultan Mehmed II avoided establishing a new type of succession and referred the selection of the next sultan to the competition among the shāhzādahs. Furthermore, he systematized that the winner kills the loser in order to prevent the losers asserting a right to the throne²³.

Each shāhzādah was appointed as governor of a sanjak (district) equidistant from the centre, where he received his training. All shāhzādahs were given the necessary education, discipline and experience during their time at their respective sanjaks. These sanjaks, which were smaller replicas of the Imperial Palace, were set-up for the shāhzādah to rule over. His court and usually his mother accompanied him to his sanjak. Should he be the next sovereign, his court joined him and they presided over the governance of the palace²⁴. Upon the death of their father, the first shāhzādah to come forward and wrench control of the throne became the ruler. This practice also has a number of drawbacks. Each shāhzādah may have considerable military power due to his executive power in his sanjak. In this case a set of cliques consisting of palace people, soldiers, members of the ‘ulemā, viziers, and other members of the inner circle influence the shāhzādah with whom they have a vested interest should he one day lay claim to the throne.

²⁰ Halil İncalcık, “Osmanlılarda Saltanat Veraseti Usulü ve Türk Hakimiyet Telakkisiyle İlgisi [The Procedure of the Throne Succession in Ottomans and its Relation with Turkish Ascendancy],” *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi [Ankara University, Journal of Faculty of Political Science]*, vol. 14, no. 1, 1959, pp. 77-78.

²¹ Turkish proverb.

²² Islamic public law stipulates that the ruler should be well qualified, and capable of governing the state in a just and efficient manner. Ibn ‘Abidin, *Radd al-Muhtār*, Matba‘a al-Maymaniyya, Bulāq 1299/1882, vol. 1, p. 384. These requirements for a ruler are not unknown to the Turkish law before Islam. This is one of the reasons for the emergence of the *ulash* system. The general assembly formed by the *beghs* (the provincial nobles) recognizes as *hakan* (ruler) the member of the dynasty as the most talented and equipped. Coşkun Üçök/Ahmet Mumcu, *Türk Hukuk Tarihi [Turkish Legal History]*, Ankara 1976, p.23; M. Akif Aydın, *Türk Hukuk Tarihi [Turkish Legal History]*, 7. Edition, Beta, İstanbul 2009, pp.11-12; Akman, *Osmanlı Devletinde Kardeş Katli*, pp. 31-32, 113-114.

²³ The principle of divisibility of sovereignty in the old Turkish political tradition originates mainly from *ulash* system. Even though the Code of Mehmed did not establish a new succession system, it provided a legal basis with the fratricide, thereby making an important step towards the principle of indivisibility of sovereignty. This indivisibility principle complies with Islamic law in which two rulers are not allowed to govern a state at the same time.

²⁴ Uzunçarşılı, “Sancağa Çıkarılan Osmanlı Şehzadeleri”, p. 668.

Beginning from the period of Sultan Selim II, the eldest shāhzādah was sent to a sanjak while other shāhzādahs stayed in the palace. This custom, which continued for only two reigns, implied the appointment of a *de facto* crown prince. At that time, the reason that only one shāhzādah was sent to a Sanjak was because of the large difference in age between the eldest shāhzādah and his younger brothers²⁵. During the reign of Sultan Mehmed III (the end of the 16th century), shāhzādahs were not sent to a sanjak because of the young age of all shāhzādahs, however this became a precedent for all future sultans and all crown princes were housed in a compartment called the *Shimshirlik* or *Qafes* in the imperial palace²⁶.

The incorporation of the fratricide by Sultan Mehmed II in his code and the abolition of the custom regarding sending the princes to sanjaks by the end of the 16th century were turning points in the establishment of an absolute central administration. The old Turkish tradition of sovereignty belonging jointly to all the members of the ruling family shifted to the old oriental idea of indivisible and sacred sovereignty depending on the sultan in the Ottoman palace²⁷.

In 1481, Jem Sultan (d. 1495) offered to share the empire with his elder brother and the current sultan, Bayezid II (d. 1512) saying “Let Rumeli be yours and Anatolia mine!”. But Sultan Bayezid II found this offer dangerous for the state and he fought against his brother. Although Jem Sultan was not inferior to his elder brother in any respect, he lost the crown to his brother “by God’s decree”. Shāhzādah Jem, perhaps fearful for his life, revolted against his brother.

Ottoman people were sincerely attached to the dynasty, originating from old Turkish customs, so much so that they considered the members of the dynasty to be the sole heirs to the throne. Occasionally the military threatened to replace the Sultan with another shāhzādah, as they did in the case of Sultan Murad IV (d. 1640). The unfortunate shāhzādahs constituted a potential threat to the continuity of the state, by their very existence, even if they had no role in the plots

²⁵ Uzunçarşılı, “Sancağa Çıkarılan Osmanlı Şehzadeleri”, p. 666.

²⁶ The terms “Shimshirlik” (Boxwood Area) and “Qafas” (Cage) were the names respectively given to the living area of the princes because of the boxwoods surrounding this area and the cage-like motifs which adorned the living quarters. The reference to a cage is ironic in that this described the type of life the princes would have lived in. During this period, it was widely accepted that princes were forbidden from having children of their own. Although this rule is not explicitly spelled out in Ottoman sources, a form of birth control may have been a voluntary practice accepted by princes who were deemed to be too immature for fatherhood.

²⁷ Halil İnalcık, *Essays in the Ottoman History*, Eren, Istanbul 1998, pp. 24-25.

and rebellions. Busbecq, the Austrian ambassador to the Ottoman Empire at the time of Sultan Suleiman the Magnificent (d. 1566) says²⁸, while mentioning Shāhzādah Mustafa (d. 1553), son of Sultan Suleiman the Magnificent, that it was unfortunate to be the son of a sultan, as only one of them would ascend the throne, whilst others would be executed. The *janissaries* (soldiers in the elite guard) would ceaselessly use the princes in order to obtain from the sultan worldly advantages. If what they demanded was not accepted, they used to cry out “Long live the prince!”. They did this to demonstrate that they were willing to allow the shāhzādah to ascend the throne²⁹.

It is a fact that some princes, such as Shāhzādah Mustafa, son of Suleiman the Magnificent and Shāhzādah Mahmud (d. 1603), son of Mehmed III (d. 1603), used to speak against the sultan saying that “If I were the sultan, I would do so and so”³⁰. This was an important reason for their execution to prevent chaos in the future. Shāhzādah Selim (d. 1574), the youngest son of Sultan Suleiman the Magnificent, and Shāhzādah Ibrahim (d. 1648), brother of Sultan Murad IV, succeeded in ascending the throne due to their patience, because they were not even considered to be in line, as there were several shāhzādahs ahead of them. In some executions, the role of the mischief-makers was considered to be as critical as the careless and daring actions of the shāhzādahs³¹.

²⁸ Ogier Ghislain de Busbecq, *The Four Epistles of A.G. Busbequius Concerning His Embassy into Turkey*, trans. from the Latin, London 1694, p. 47.

²⁹ Sir Henry Blount, a traveler and English legist, stayed in the Ottoman State between 1634 and 1636 and has commented on this issue. Blount comments in his book, *A Voyage into the Levant*, that the struggles faced by Sultan Murad IV were caused by the inaction of his father Sultan Ahmed I. Sultan Ahmed I did not kill his brother when he ascended to the throne nor did he send him to a sanjak. The presence of a readily available replacement to Sultan Mustafa paved the way for Osman II to be his replacement and later when the janissaries were not pleased with Osman II, they murdered him and ‘reappointed’ Mustafa, the previous Sultan to reign again under their control. Blount comments that Ahmed’s perceived benevolent pardoning of Mustafa lead not only to the subsequent death of his own son, Osman II, but paved the way for a continued blood-lust within the ranks of the janissaries. Blount says that “this gave them occasion to taste the Bloud Royall, whose reverence can never be restored” which means he attributes the remaining problems the empire had with the janissaries to Sultan Ahmed’s one action. Henry Blount, *A Voyage into the Levant*, 2. Edition, London 1636, pp. 125-126.

³⁰ Yılmaz Öztuna, *Türkiye Tarihi [History of Turkey]*, Hayat, Istanbul 1965, vol. 8, p. 105.

³¹ Note that since a little boy can ascend the throne, he constitutes a threat to it. As in the West, the age of a monarch is not considered a condition to become a monarch in the East. In Islamic law, it is legitimate for a little boy to ascend the throne in conformity with monarchial tradition. A regent governs the state on behalf of the sultan until he reaches puberty. The Islamic scholars approve the validity of this application because of the principle of *maslahah*. Sultan Mehmed the Conqueror and Sultan Murad IV ascended the throne at the age of 12 and 7 respectively. Sultan Mehmed IV’s mother asked Kazasker Hanefi Efendi

The types of fratricide

The execution of the princes was carried out in accordance with the Code of Mehmed. These executions were in accordance with that law which was current at the time. There, then, arises a problem of whether or not this code is compatible with the principles of Islamic law which dominated in the Ottoman legal system.

The Code of Mehmed the Conqueror was a text, which was based on the sovereign right of the sultan (Orfi Hukuk)³². As in the previous Muslim Turkish states, the number of codes legislated by sultans in the Ottoman State based on this authority started to increase in the course of time. At this point the codes started to be referred to not as *Sharia* (Islamic law). Orfi Hukuk derives its legality from Islamic Law. Islamic Law had given the sultan the right to define punishments for new kinds of crimes. These kinds of punishments are called *ta'zeer*³³. It is a part of Orfi Hukuk. *Siyāseten qatl (ta'zeer bi al-qatl)* is one of the *ta'zeer* punishments. It is the punishment that results in political execution of a person by the sultan whose life is considered harmful to the common benefit. In Islamic Law, the sultan maintained control over the administration of justice. In other words, the sultan is the supreme judge. In that case it is possible for him to judge the cases and to punish the guilty if necessary. This punishment is generally applied for state

about whether his son was qualified to be a sultan. Kazasker issued a fatwa regarding its permissibility. Islamic scholar Ibn 'Abidin cites a fatwa from Bazzaziyya that "If caliph or sultan dies and his little child is pledged allegiance, the reign is considered valid because of necessity. The ruling has to be given to the vizier, who considers himself obedient to the sultan because of his honor. The child is the sultan in appearance, but in reality the vizier rules. When the child reaches puberty, the ruling of the vizier terminates". Ibn 'Abidin, *Radd al-Muhtār*, vol.1, p. 385.

³² Ibn Kayyim, *Flām al-Muwaqqi'īn*, Cairo 1388/1968, vol. 4, pp. 372-379; Akgündüz, *Osmanlı Kanunnameleri*, vol. 1, p. 51. Orfi Hukuk is useful when filling in the gaps in which Sharia law is deliberately silent and unconstitutional, by the political authority. While these basis were being set up, it was above that the historians were disputing whether or not the Sharia borders were respected. Üçok/Mumcu, *Türk Hukuk Tarihi*, 213 ff.; Halil Cin/Ahmet Akgündüz, *Türk Hukuk Tarihi [Turkish legal History]*, 3rd Edition, İstanbul 1996, vol. I, p.197; Aydın, *Türk Hukuk Tarihi*, 73 ff.; Ahmet Mumcu, *Osmanlı Devletinde Siyaseten Katl [Ta'zeer bil-Qatl in Ottoman Empire]*, Ajans-Turk, Ankara 1963, 30 ff.

³³ Crimes in Islamic law can be broken into three categories: i) *Hadd* crimes (apostasy from Islam, theft, adultery or fornication, false accusation of adultery or fornication, highway robbery, and drinking of alcohol). *Baghy* is considered a *hadd* crime. ii) Crimes of the *jināyāt* type (murder and battery). The punishments for these two groups are prescribed clearly in the Qur'an and the Sunna. iii) Crimes of the *ta'zeer*. These are determined by the sultan in accordance with *maslaha*. Since the sultan and the judges have wide judicial discretion on these types of crimes, there are notable personal influences upon Islamic criminal law. However, Islamic scholars do not have a consensus on whether *baghy* is a *hadd* crime. Those not considering *baghy* a *hadd* crime include *baghy* in the law of war because the punishment for *baghy* is determined by the ruler/sultan, not by the law. *Baghy* is not always punishable by death.

officials/authorities who intentionally or unintentionally caused considerable damages to the state. The state officials may not undergo a fair trial because of their power and status. As is seen in *mazalim* courts in the Islamic history, the sultan can accuse a state official of his abuse of power or fault; and punish him if evidence is available to the sultan. This type of punishment is also applied for those engaging in the following harmful activities: forming the habit of thieving, usurping and murdering; racketing; pederasty; sorcery; disseminating heresy against Islam and revolting against the sultan³⁴. *Siyāseten qatl* can also be ordered by the grand vizier or any qadi. In practice, however, all death penalties are carried out with the authorization of the Sultan. If fratricide applied as a precaution is considered *siyāseten qatl*, the scope of *siyāseten qatl* becomes larger than that of *ta'zeer bi al-qatl*³⁵.

The first type of fratricide was applied in cases of those revolting members of the dynasty who were eligible to ascend the throne. This is a crime called *baghy* (*khurūj alā al-sultan* = rebellion against the sultan) according to the Islamic Law prevailing in the Ottoman Empire. The punishment for those who revolt against legal governments has been generally execution in every century worldwide. As a matter of fact, the Qur'an, the primary source of Islamic Law, orders the people to obey the legal government³⁶ and also commands the government to fight those who revolt against it and to urge them to obey³⁷. The Prophet Muhammad said that if another person tries to usurp the authority of the legal ruler, he has no right to live³⁸. In Ottoman history some famous examples of *baghy* are: the revolt of Savci Bey (d. 1385) against his father Sultan Murad I (d. 1389), and

³⁴ Akgündüz, *Osmanlı Kanunnameleri*, vol. 1, pp. 102-103. There are various monographs about the legal bases of *ta'zeer bil-qatl* (*siyāseten qatl*). For instance *Risālah al-Nasiha fī al-Siyāsa al-Shar'iyyah wa al-'Urffiyah* (*Siyāsa-nāma*) by an Ottoman scholar Dede Jongī Effendī (d. 1566) and *al-Siyāsa al-Shar'iyyah* by Ibn Taymiyya (d. 1328).

³⁵ Mumcu says that the fratricide was accepted because of necessity and he characterizes the support of the 'ulemā in Kanunname as a legal cooperation between Orfi Hukuk and Sharia. Ahmet Mumcu, *Osmanlı Devletinde Siyaseten Katl*, p.194. However, he states on another page that the fratricide is a type of *siyāseten qatl* punishment, but has no relation with Islamic criminal law. Mumcu, 204. What Mumcu means by this statement is that the fratricide is either against Islamic law or does not match with the definition of *ta'zeer bi al-qatl*.

³⁶ *Holy Qur'an*, 4:59.

³⁷ *Holy Qur'an*, 49:9.

³⁸ Muslim, 'Imāra 46, (1844), 59, (1852); Abū Dā'ūd, Fitan 1, (4248), Sunna 30, (4762); Nasā'ī, Tahrim 6, (7, 93), Bey'a 25, (7, 153); Ibn Mājah, Fiten 9, (3956). As a matter of fact there are the proverbs, "Two lions may not rule in one forest" and "One country is not large enough for two rulers".

Jem Sultan against his elder brother Sultan Bayezid II, and Shāhzādah Bayezid (d. 1562) against his father Sultan Suleiman the Magnificent. On Sultan Murad I's accession to the throne, the execution of his brothers, Halil and Ibrahim due to their revolt against the Sultan was the first instance of this type of fratricide. The Hanafi school stipulates that it is a criminal offence to complete the preparation of the revolt³⁹.

In the second type of fratricide, there is no clear revolt, but signs of a revolt. Disobeying the sultan by a word or by deed and provoking people to the revolt are crimes; hence these crimes could result in *siyāseten qatl*⁴⁰. Ottoman scholars defined it as *sai bil' fasād* (attempt to create disorder) and classified it as *ta'zeer* punishments. The execution of Dündar Bey, (Osman Ghāzi's uncle), who was accused of collaborating with the *tefkurs*, is the first execution of a shāhzādah in Ottoman history, as well as the first instance for the second type of fratricide. Non-revolting shāhzādahs such as Korkut, brother of Sultan Yavuz Selim, and Mustafa, son of Sultan Suleiman, were executed -despite the fact that little evidence existed- due to this reason. Modern law does not have a tendency to punish those who are in the planning stage of a crime unless they also take specific steps in preparation of a revolt. However, the difference between planning and taking specific steps depends on the point of view of the jurist. Also in modern times, while the gathering of three people to discuss murder of a person is not technically considered a criminal attempt, to hold a gathering of three people to discuss a coup is considered a criminal attempt. According to Mumcu, the surviving shāhzādahs can be considered as *sai bil' fasād* since they are most likely to damage the public order⁴¹.

In the third type of fratricide, there is neither an actual revolt nor a preparation to revolt. There arises the problem of legality. It is seen in history that members of the dynasty were executed to prevent the possibility of tumult and rebellion. Most of the jurists considered it proper to execute princes due to the fact that they may revolt in the future. Most probably the phrase in the Code of Mehmed the Conqueror, "the majority of scholars permitted it", refers to this fact⁴². Sultan Mehmed implied this kind of fratricide in the Code, if the claim that

³⁹ Ibn 'Ābidīn, *Radd al-Muhtār*, vol.3, p. 320.

⁴⁰ Ibn 'Ābidīn, *Radd al-Muhtār*, vol. 3, pp. 184-185.

⁴¹ Mumcu, *Osmanlı Devletinde Siyaseten Katl [Ta'zeer bil-Qatl in Ottoman Empire]*, p. 194.

⁴² Akgündüz, *Osmanlı Kanunnameleri*, vol. 2, pp. 13-14.

he had his infant brother (who was still nursing) Ahmed, strangled when ascending the throne is true. Baghy and sai bil' fasād are already declared a crime in the books of fiqh⁴³. The historian Pechevi said that at the time of Sultan Murad III, five little shāhzādahs were executed in compliance with the “unfortunate Ottoman code”⁴⁴. This statement supports the opinion on the Code.

The first instance of the third kind of fratricide is the execution of Yakub Çelebi by his brother Sultan Bayezid I. Bayezid I had ascended the throne by the Beys (the tribal, civil and military chiefs) who went on to influence him into urgently having his brother executed after the death of their father, Sultan Murad I, at the Battle of Kosovo in 1389. This execution agitated the soldiers.⁴⁵ From then on even the non-revolting children of the revolting shāhzādahs were also executed. As the first Sultan to legitimize fratricide, Sultan Mehmed II had had his younger brother executed. These types of executions reached their peak during the 16th century. Sultan Murad III and Sultan Mehmed III executed 5 and 19 brothers, respectively, although none of them revolted.

Akgündüz claims that the above-mentioned article of the Code is relating to the crime of sai bil' fasād (attempt to create disorder) and considers the execution of the non-revolting shāhzādahs misuse of the Code⁴⁶. Heyd says that the article can be regarded as confirmation of the traditional political order and as a kind of political punishment to eliminate those who are likely to revolt against the Sultan⁴⁷.

The third type of fratricide is based on nizām-i 'ālem⁴⁸ as mentioned in the

⁴³ In addition to being born the son of the daughter of Isfendiyar Bey, sultan of one of the Anatolian begliks, Ahmed was a potential political threat. According to historical sources, due to the expected potential public outrage, the Sultan pretended not to have noticed this execution and moreover he punished the murderer.

⁴⁴ “*kânûn-i vâriîn-i Osmanî*”. Ibrahim Pachawî, *Tarih-i Pachawî*, Matba'a-i 'Âmira, Istanbul 1281-1283, p. 439. Āshiqpashazādah, an Ottoman historian strictly opposing the fratricide, says in his cronicle that “Kıyar eşi ve kardeşi kardeşine/Demez hakdan ne ola buna yazılı [He kills his rival and brother / He does not pay attention to what God orders for this]”, implying the fratricide is against the Sharia. *Tarih-i Âl-i Osmân*, Matba'a-i 'Âmira, İstanbul 1332, p. 103.

⁴⁵ İsmail Hami Danişmend, *İzahlı Osmanlı Tarihi Kronolojisi [Annotated Chronology of Ottoman History]*, Türkiye Yayınevi, İstanbul 1947, vol. 1, pp. 83-84.

⁴⁶ Akgündüz, *Osmanlı Kanunnameleri*, vol. 2, p. 13.

⁴⁷ Uriel Heyd, *Studies In Old Ottoman Criminal Law*, Oxford 1973, p. 194.

⁴⁸ Heyd defines the phrase “nizām-i 'ālem” as “order of the world”. However this phrase equates to maslaha, which means for the common public benefit. *Ibid.*, p. 194.

Code of Mehmed the Conqueror. According to Ottoman chronicles and records, *nizām-i ‘ālem* means that the common benefit is assured by eliminating the fitnah in advance. This is known as *al-maslaha al-mursala* in Islamic law. Sultan Selim III mentions the institution of *siyāseten qatl* in an imperial decree (Hatt-i Humayun) by saying that “in the past during my predecessor’s reign *nizām-i ‘ālem* was maintained with *siyāsal*”, and thus he implies that there is a direct connection between *siyāseten qatl* and *nizām-i ‘ālem*⁴⁹.

Some contemporary legal historians believe that fratricide is based only on the Orfi Hukuk but contrary to the Sharia (Islamic law) principles⁵⁰. They regard the evidences given to show the validity of the fratricide as groundless. Punishing a person who is suspected of planning to commit a crime in the future is unlawful and the general principle of “Fitnah is worse than killing” cannot always be applied due to the principle of “everyone is presumed innocent until proven guilty”. Furthermore, they argue that it is not correct to base the fratricide on the principles of *zarurat* (necessity), *maslaha* (common benefit), and *istihsan* (juristic preference), because the lack of a potential harm is at best imagined⁵¹. Mumcu points out that fratricide in this instance can be viewed as political execution and thus has a precedent as it exists in law. A cooperation of Islamic law and Orfi Hukuk occurs here⁵².

Others claim that the practice of fratricide is undefendable from a humane and Islamic justice viewpoint. They go on to point out that the state of affairs during this period made this practice unavoidable and that the dynasty was forced to “take this prescription” so that both the government and the union would not be divided⁵³. Alderson argues that the application of fratricide for the sake of

⁴⁹ Enver Ziya Karal, *Selim III’ün Hatt-ı Hümayunları [Selim III’s Imperial Decrees]*, 2. Edition, Ankara 1988, p. 67.

⁵⁰ M.Akif Aydın, *Türk Hukuk Tarihi [Turkish Legal History]*, p. 133; Akman, *Osmanlı Devletinde Kardeş Kattı*, p. 159, Hasan Tahsin Fendoğlu, *Türk Hukuk Tarihi [Turkish Legal History]*, Filiz, İstanbul 2000, p. 329.

⁵¹ Aydın, *Türk Hukuk Tarihi*, pp. 132-133; Akman, *Osmanlı Devletinde Kardeş Kattı*, pp. 150-156.

⁵² Mumcu, *Osmanlı Devletinde Siyaseten Kattı*, p. 194.

⁵³ Aydın, *Türk Hukuk Tarihi*, 134-135; Akman, *Osmanlı Devletinde Kardeş Kattı*, pp. 150-151, pp. 159-160. According to Akman, the execution of non-revolting princes is an application of Orfi Hukuk based on the old Turkish political conception, and the application of fratricide goes beyond the boundary of the intersection of Orfi Hukuk and Sharia. He has not evaluated in detail the evidence that the ‘ulemā used to support the legality of these executions. Instead, he presents some premises on behalf of the ‘ulemā supporting the fratricide, and then criticizes these premises. It is implied that this support of the ‘ulemā is the result of the harmony between the political authority and them.

preserving the empire is an extreme method and that it was implemented so that a single powerful ruler could rule without the potential threat of loss of land⁵⁴. İsmail Hami Danişmend argues that this practice when viewed from a modern lens may seem to be a tragic tradition, however, the constant infighting and struggles between the Shāhzādahs for power heavily influenced the application of fratricide which prevented the future uncertainty and gridlock that had often occurred in the past⁵⁵.

Otherwise it would be too late!

Is it legal to kill a person on the assumption that he is potentially going to revolt in the future? Dede Jongi Effendi (d. 1567), an Ottoman jurist, writes in his famous book, *Siyāseh-nāma*, that to wait for them to commit crimes, in order to punish them, usually removes the possibilities of punishment and sometimes causes tragic and unacceptable consequences. As shown in the course of history, to wait for a prince to revolt in order to punish him, would result in his engagement with enemy countries and having to deal with a person that had won the support of thousands of armed soldiers and had become a threat to the security of the state. It could be too late to seek punishment in such a situation, because it would be too late to do something about it⁵⁶. Furthermore, if these princes who were killed were not executed, they would have inevitably executed their rivals.

As a matter of fact, Ibn ‘Ābidīn (d. 1836), one of the latest prominent scholars of law in the Ottoman Empire, says in the chapter on ta‘zeer of his famous book, *Radd al-Muhtār*, “It has been mentioned in Nasafi’s (d. 1310) *Ahkām al-Siyāseh* that *Shaykh al-Islām Khāherzādah* (d. 1253) was asked about the execution of mischief-makers while they are not active. He replied that their business is to incite tumult, even when they are not active. As they are potential instigators of tumult and anarchy, it is permissible to kill them. We understand this from the Qur’an verse (6:28) which declares, “They (mischief-makers) will certainly stick to the things they are forbidden, even if they were to come back to the world once more”⁵⁷.

There are two verses in the Qur’an conveying the meaning that “Fitnah is

⁵⁴ Alderson, p. 25.

⁵⁵ Danişmend, *İzahlı Osmanlı Tarihi Kronolojisi*, vol. 1, p. 227.

⁵⁶ Dede Jongi Effendi, *Siyāseh-nāma*, trans. M. ‘Ārif, Istanbul 1275/1858, pp. 5-6, pp. 25-28.

⁵⁷ Ibn ‘Ābidīn, *Radd al-Muhtār*, vol. 3, p. 186.

worse than slaughter”⁵⁸. The historian Bosnevi Hussein Effendi (d. 1644) and Shaykh al-Islām Khoja Sa’d al-dīn Effendi (d. 1599), explain clearly that fratricide was applied in accordance with the mentioned verses of the Qur’an⁵⁹. It is narrated in Qur’an (18:80-81) that the friend of Prophet Mūsā (Moses) killed an innocent child. Mūsā had asked him: “Have you killed an innocent person who had killed none?” And he had replied: “The parents of the boy were believers, and we feared lest he should instigate them by rebellion and disbelief. So we intended that their Lord should change him for them for one better in righteousness and closer to mercy”. Similarly, in the Bible, it is stated: “It was expedient that one man should die for the people”⁶⁰.

There exist some arguments regarding taking preemptive steps against a future possible harm in Islamic law. The Prophet Muhammad had a person put in a prison due to the charge of theft and after his innocence was discovered he was freed⁶¹. The second caliph ‘Umar exiled Nasr bin Hajjaj and sent him from Medina to Basra, when he was concerned about the possibility of his causing mischief and tumult, though he had not yet committed any offence. He said to him, “You are not guilty, but if tumult appears because of you in the future, I will be guilty”⁶². If a person unwillingly destroys an item left in his custody, he does not have to repay the damage he has caused. However, Caliphs ‘Umar and Ali

⁵⁸ *Holy Qur’an*, 2:191, 217.

⁵⁹ Khoja Sa’d al-dīn Effendi, *Taj al-Tawārih*, Tābhāne-i ‘Āmira, Istanbul 1279/1862, vol. 1, p. 124. Khoja Sa’d al-dīn Effendi says of the execution of Shāh-zādah Yakub that “Taking into consideration the idea that the corruption [in a society] is more dangerous than execution and taking lessons from Savcı Begy’s revolt [against his father Sultan Murad I], the statemen realized that the existence of many princes is dangerous to the state and the public order. Since the sultan is the shadow of God on earth, there must be a similarity between the shadow and the shader, and there exists only one God, the statemen decided to sentence Shāh-zādah Yakub to death.” I/124. He states that Shāh-zādah Mustafa and Musa Çelebi were executed with the order of the Sultan in order to eliminate the social disturbance (itfā-i nāire-i fitnah) and remove the general harm (daf-i zarar-i āmm), Khoja Sa’d al-dīn Effendi about the execution of Shāh-zādah Yakub said: The statemen think the concept of corruption is more violent than immorality. They also considered the rebellion of Savcı Bey against his father Sultan Murad I. They believed that the existence of sovereign heirs was harmful to the nation and nation order. As the Prophet said, since sovereignty is like the shadow of God; so there must be a similarity between the shader and the shadow. For this reason, they decided to execute the prince Shāh-zādah Yakub. *Taj al-Tawārih*, vol. I, p. 124. Khoja Sa’d al-dīn Effendi says that Prince Mustafa Mustafa was killed by order of the sultan except for “extinguishing the fire of fitnah” (itfā-i nāire-i fitnah). *Taj al-Tawārih*, vol. I, p. 317. He also says, Musa Çelebi has been killed because of preferring special harm (zarar-i hās) to avoid public harm (zarar-i āmm). *Taj al-Tawārih*, vol. I, p. 272.

⁶⁰ *Holy Bible*, John, XVIII: 14.

⁶¹ Abū Dā’ūd, Aqdiya 29, (3630); Tirmizī, Diyāt 21, (1417); Nasā’ī, Sārık 2, (8, 67).

⁶² Ibn ‘Abidīn, *Radd al-Muhtār*, vol. 3, p. 152.

had judged that craftsmen such as tailors and launderers would have to repay the damage due to *maslaha* ⁶³.

The principle of *sadd al-zarai* is one that dictates that the road to harm should be cut off before any harm takes form as a part of *maslaha*. For example, the court appoints a trustee to those that are wasteful with their money and those that have debts, does not allow for the testimony of some witnesses, nor does it allow for muslim women to marry non-muslim men, and its prevention of none relative men and women to fraternize.

Siyasah can be seen as an administrative and political precaution taken to protect the public benefit rather than for punishment⁶⁴. This is understood from the above-mentioned applications of the Prophet Muhammad and the Caliph Omar. Although not having criminal discretions, mentally handicapped people can be precluded from forming relationships with other people because they may do harm to other people. In modern law, civil rights, and liberties can be suspended under suspicion of a crime. All the following infringement of liberties are based on this principle: imprisoning suspects, body searches, phone tapping, cordoning off roads that are potential points of violent assembly, not admitting those who may provoke a fight to a sport stadium, and even taking hooligans into custody during a match, holding on to personal metal belongings in escrow while entering secure areas.

After stating Shāhzādah Yakub was innocently killed, Ahmed Cevdet Pasha, a stateman and historian, says that “due to this execution, most historians condemned Sultan Bayezid I. Some excused him from this execution because he sacrificed his own brother in order to hinder from any possible social disturbance and maintain the public order in the case of any fitnah that Shāhzādah Yakub would have caused. But the truth is that this kind of tragedies is the result of the circumstances of the time. When the level of wealth and civilization in a society increases, the prosperity and felicity do so; on the other hand, demands rise, rivals show up and kinship is neglected during the competition. Savcı Bey’s revolt

⁶³ Ibn Malak, *Sharh Manār al-Anwār*, Istanbul 1965, p. 253; Ibn al-Humām, *al-Tahrīr fī Usūl al-Fiqh*, Mustafa Al-Bābī Al-Halabī, Cairo 1351/1932, p. 361.

⁶⁴ It is explained in detail under the title of “Ta‘zeer punishment in the cases regarding public good” in Abd al-Qādir ‘Udah’s book that a punishment can be imposed due to the acts which are not forbidden by the religion but violate the public good. Abd al-Qādir Uдах, *Al-Tashrī‘ al-Jinā‘i al-Islāmī*, Dār al-Kitāb al-Arabī, Beirut, vol. 1, pp. 149-152.

against his father (Sultan Murad I) is because of the change of the conditions. It is no longer a time when a brother can completely trust his own brother.”⁶⁵

These acts are, of course, not at the same level with the fratricide in question in terms of degree of punishment. However, there is no difference between them with respect to the legal logic. A top-level statesman in the United States spoke about the fight against terrorism: “We have to take precautions before a terror attack. We cannot wait for somebody to commit the crime in order to arrest him. This is because if they succeed in committing their crime, then thousands of people die”⁶⁶. Therefore the execution of non-revolting princes is a measure of precaution rather than a punishment. However, the requirements of an unlawful act are not satisfied in this case. It is obvious that sultans pushed the political limits given by the *Sharia* while considering fratricide and basing it on judicial reference⁶⁷.

Relative justice

It is possible to see the legality of the fratricide among the main principles of Islamic law. Two famous Ottoman historians, Qarāmānī Mehmed Pasha (d. 1481) and Shaykh al-Islām Khoja Sa’d al-dīn Effendi cite some of these principles in an attempt to justify fratricide⁶⁸. Some of these cited principles are as follows: “In order to prevent the common harm, the personal harm is preferred”⁶⁹, “The greater harm is removed by means of the lesser harm”⁷⁰, “When two harms are

⁶⁵ *Kisās-i Enbiyā wa Tawārīh-i Khulafā [Stories of the Prophets and History of Khalifs]*, Kanā’at Matba’asi, Dersaadet 1331, vol. XII, p. 1068.

⁶⁶ FOX News Sunday, Dec. 18, 2005. <http://www.foxnews.com/story/0,2933,179054,00.html>

⁶⁷ Personal inviolability (Masuniyat-i Shahsiyyah) is one of the fundamental principles of law. From a modern legal viewpoint which has begun to be established since the end of the eighteenth century, the right to life has gained priority, which is one of the most important of human rights. Cesare Bonesana di Beccaria, *An Essay on Crimes and Punishments*, Albany: W. C. Little & Co., 1872, Part: 28, pp. 97-98. One can lose his/her right to life under the following conditions: compensation for being illegally deprived of one’s right to life and a threat to the public security. However, the idea that one’s right to life can be deprived under some conditions is not supported much in the modern societies. In the context of fratricide, execution of a person due to the public benefit is an issue which may not be comprehended from a modern legal viewpoint. Furthermore, this issue is at the center of the opinion differences the previous Islamic legal scholars had on the border of tazir punishments.

⁶⁸ Khoja Sa’d al-dīn Effendi, vol. 1, p. 272; Karamani Mehmed Paşa, *Osmanlı Sultanları Tarihi [History of Ottoman Sultans]*, trans. Ibrahim Hakki Konyali, Istanbul 1949, p. 347.

⁶⁹ al-Hādīmī, *Majāmi’ al-Haqāiq*, Matba’a-i ‘Āmira, Istanbul 1308, p. 46.

⁷⁰ *Ibid.*, p. 46. Ottoman historians narrated the following statement from Şarabdar İlyas who was one of Shāh-zādah Mustafā’s men and delivered the Shāh-zādah for his execution to his elder brother Sultan Murad II: “I betrayed in appearance, but did it right in reality. If he was alive, a civil war would take place

encountered, an attempt is made to prevent the greater harm by committing the lesser”⁷¹, “The lesser of the two harms is preferred”⁷², and “The removal of a harm is better than obtaining a benefit”⁷³. These principles also had been reiterated in the articles 26-30 of Ottoman civil code known as “*Majallah al-Ahkām al-Adliyah*” several centuries later⁷⁴.

The execution of princes was based on the principles of *maslaha* (common benefit) in Islamic law. This principle means the determination of a legal ruling by considering the public good for the cases for which there is no *hukm* (ruling) in the main sources of Islamic law: the Qur’an and the Sunna. There are four requirements to determining the validity of a *maslaha*: First, the *maslaha* should be decisive and not probable. The prevailing opinion (*ghalib al-zann*) is used in the same sense as certainty. As a matter of fact, most of the princes who were spared revolted against the Sultan⁷⁵.

Secondly, the *maslaha* should be for the public good, but not for an individual benefit. The execution of princes aims to protect the state and the public instead of the Sultan. Thirdly, the *maslaha* should not cause any misdeed or at least should be preferable over a potential misdeed. For instance, although lying is evil, it is permissible to tell a lie in war or in order to bring about reconciliation

and the county would be ruined. The prince reached the position of the martyrdom without being involved in any wrong-doings. A personal harm is preferred over a common harm. This is an old custom that I have not made up.” *Āshiqpashazādah*, p. 103; Neshri, vol. II, p. 573.

⁷¹ *Ibid.*, p. 44.

⁷² Ibn Nujaym, *al-Ashbāh wa al-Nazāir*, Muassasatu al-Halebī wa Shurakauh li al-Nashr wa al-Tavzī’, Cairo 1387/1968, p. 132.

⁷³ al-Hādimi, *Majāmi’ al-Haqāiq*, p. 45.

⁷⁴ Akman says that the *Majallah* is a civil law, so it should be applied in the cases of civil law; the harm mentioned here is on goods and not on persons (Akman, *Osmanlı Devletinde Kardeş Katli*, pp. 152-153). However, ‘Alī Haidār Effendi (d. 1937), one of the greatest jurists and scholars and one of the heads of the Ottoman Court of Appeal, expresses in his book called *Durar al-Hukkām*, which is one of the best commentaries on *Majallah*, “These principles apply not only to the law of obligation, but also to worship, marriage and criminal cases of Islamic Law” (‘Alī Haidār Effendi, *Durar al-Hukkām*, Matba‘a-i Tevzi‘-i Taba‘a, Istanbul 1330/1912, vol. 1, p. 28. Although ‘Alī Haidār Effendi was a Hanafi scholar who lived in the latter years of the Ottoman Empire, his explanation on these principles is important to show the viewpoint of an Ottoman scholar regarding these principles.

⁷⁵ Solakzādah says of the execution of Shāhazādah Yakub that taking into consideration the idea that the corruption [in a society] is more dangerous than execution and taking lessons from Savcı Begy’s revolt [against his father Sultan Murad I], the statement decided to execute the prince. Because he had a large number of military forces, there may have occurred a *fitnah* that could not be handled easily. *Solakzādah Tārīhi*, Mahmud Bey Matba‘asi, İstanbul 1297, p. 86.

between two persons. Although the execution of princes is a murder, the execution is preferred to the deaths of more people and civil commotion. Fourthly, we should be able to infer from the Qur'an and the Sunna (*dalalat al-nass*) in order to act according to *maslaha*. The above mentioned verses and Sahaba's (the Prophet Muhammad's companions) practicing *maslaha* are taken as evidence for these executions⁷⁶. Thus, "the sultan's ruling over the people should depend on the public good"⁷⁷.

An example related to this subject is mentioned in books of fiqh (Islamic jurisprudence): The enemy captured Muslims and kept some of them as targets on their front line. Under normal circumstances, it is not permissible to kill an innocent person. But if no shooting occurs, in order to avoid killing these captives, the enemy will invade the country and kill the people including those captives. Therefore these innocent captives must be shot. There is a common benefit here⁷⁸.

Busbecq, the Austrian ambassador to the Ottoman Empire at the time of Sultan Suleiman the Magnificent (d. 1566) who executed two of his sons, says that Islam survived owing to the Ottoman dynasty; if the Ottoman dynasty collapsed, the religion would also collapse, and the security of religion and state is more important than the princes⁷⁹.

Mar'ī bin Yusuf of Syrian (d. 1624), a Hanbali scholar, considers fratricide as one of the virtues of the Ottoman dynasty. He states that the dynasty executes their own children lest a revolt which breaks out among Muslims and the State falls into disorder; although this is in opposition to common sense, the execution provides great benefit; the execution is similar to giving a fatwa regarding the execution of three people in order to protect the lives of thirty people. He expresses that when there is no clear evidence for the revolt of the princes, the probability (*zann*) is replaced by certainty (*yaqīn*). He points out that these executions are due to politics (*siyasa*), but not the Sharia. Attributing the saying "the door of *siyasa* is larger than that of Sharia" to Ibn 'Uqayl, he approved it. He supplies proof

⁷⁶ 'Abd el-Wahhāb al-Khallāf, *Ilmu Usūl al-Fikh*, 6. Edition, Cairo 1954, pp. 95-96; Ömer Nasuhi Bilmen, *Hukuk-ı İslāmīye ve Istilahat-ı Fikhiyye Kamusu*, İstanbul 1949, vol. 1, p. 203.

⁷⁷ Ibn Nujaym, *al-Ashbāh*, p. 124; al-Hādīmī, *Majāmi' al-Haqāiq*, p. 45; *Majallah al-Ahkām al-Adliyah*, article no 58.

⁷⁸ Ibn 'Abidīn, *Radd al-Muhtār*, vol. 3, p. 230. Those who argue against fratricide say that the principle of *maslaha* cannot be applied for an imagined harm. Akman, *Osmanlı Devletinde Kardeş Katli*, pp. 150-151.

⁷⁹ Busbecq, p. 53.

from Qarāfi's remarks on *al-walayah al-mazālīm* and Ibn Taymiyya's remarks on *al-siyāsah al-shar'īyyah*. While reconciling the two people in *al-walayah al-mazālīm*, prima-facie evidence and witnesses which are not considered in the Qādi courts are taken into consideration. He points out the principle of preferring the lesser of the two evils. He mentions the execution of Shāhzādah Mustafa by Sultan Suleiman. He narrates the collapse of the Moroccan sultanate due to the lack of fratricide in the sultanate⁸⁰.

The reservations regarding the lawfulness of fratricide arise as a result of the inferred difference between political and Sharia law resulting from modern thought, however, classical thought does not differentiate between the two. Many *al-siyāsah al-shar'īyyah* books have been written to prove this very point, as Islamic sources are not exclusive to the Qur'an and Sunnah. To equate fratricide with homicide would be a superficial understanding of Sharia. In the event of a dispute between general and special law, the application of special law is the convention⁸¹.

There are two kinds of understanding of justice: **Absolute justice**, which infers that the benefit of even one single individual cannot be sacrificed for the sake of common benefit. However, the abovementioned Majallah principles denote **relative justice**. Sometimes the prevailing conditions necessitate the application of relative justice rather than absolute justice. That is why some legal scholars allow the application of fratricide.

Support from 'Ulemā: Fatwa

The government used to obtain a fatwa by asking the scholars to determine whether a matter was legal or not. This procedure, though not obligatory, was taken seriously because it showed the legality of the government procedures towards the public and was applied until the end of the Ottoman Empire. According to the article in the Code of Mehmed the Conqueror regarding fratricide, the majority of scholars of the time expressed their opinions that fratricide was legal according to each particular case. Opposition by few scholars did not mean that fratricide

⁸⁰ Mar'ī bin Yusuf al-Karmī, *Qalā'id al-'Iqyān fī Fadā'il Salā'tin Āl Uthmān*, Mektebe Yayınları, Konya 2008, pp. 54-58.

⁸¹ **Lex specialis derogat legi generali**. Where two laws govern the same factual situation, a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*). *Lex specialis*: a law governing a specific subject matter. *Lex generalis*: a law which only governs general matters. Commercial Code is a *lex generalis* whereas the Law on Intellectual Property Rights constitutes *lex specialis*.

was illegal. The Prophet declared that the disagreement of law-scholars was a blessing to his *ummah* (believers of the prophet)⁸². Therefore, opinions of scholars may differ on a particular case. In that situation, the action of a person following either one of the scholars will be legal. “An *ijtihād* (conclusion drawn by a *mujtahid*) cannot be cancelled by another *ijtihād*” is a general principle of Islamic Law⁸³.

While on the Hotin campaign Sultan Osman II wanted to have his brother executed based on the possibility of his revolting. For this reason, the Sultan wanted to have a fatwa. Shaykh al-Islām Es’ad Effendi did not issue a fatwa but kazasker Tashkopruzādah (d. 1621) did⁸⁴.

Many fatwas differed when addressing the same matter when there was no clear basis to address the same questions. The fatwas regarding fratricide have not survived. It is not clear who “the majority of the ‘ulemā” mentioned in the Code of Sultan Mehmed were and whether he conferred with the ‘ulemās’ concerning the fratricide⁸⁵.

If there is no clear statement for a particular case in the Quran and the Sunna, a mujtahid scholar expresses his opinion on this case. In doing so, he takes into consideration customs, common benefit, and necessity. When there is a disagreement among legal opinions expressed by mujtahid scholars, one of these opinions can be taken. Once a sultan chooses one of them, it becomes legally binding as Majallah said in the foreword. It is understood that Sultan Mehmed the Conqueror acted in this way and made the opinion of the supporting ‘ulemā his basis for the fratricide article in his code.

⁸² al-Suyūṭī, *al-Jāmi‘ al-Saghīr*, Beirut 1401/1981, no: 288. For the detailed commentaries on this tradition (hadīth) please refer to Ibn ‘Ābidīn, *Radd al-Muhtār*, vol. 1, p. 48; Abd al-Ghani al-Nablusi, *al-Hādīqatu al-Nādīyya Sharhu Tārīqati al-Muhammadiyya*, Dersaadet 1290, vol. 1, pp. 244-245.

⁸³ Ibn Nujaym, *al-Ashbāh*, p. 105; *Majallah al-Ahkām al-Adliyah*, article no 16.

⁸⁴ The Ottoman historians criticize this execution because the decision was made upon the inculcation of Kızlarağası (*Tārīh-i Pachawī*, II/375; *Solakzādah Tārīhi*, 700; *Naīma Tārīhi*, vol. II, p. 187). It is even claimed that Tashkopruzādah issued such a fatwa just because he had a desire to become a shaykh al-Islām (Danişmend, II/278-279). But Abdülkadir Özcan regards it as a baseless claim by pointing out Tashkopruzādah’s powerful scholarship (Fatih’te Nizam-ı Alem Düşüncesi [The Idea of Common Benefit in Mehmed the Conqueror], *Türkiyat Mecmuası*, S.3, Mayıs 1994, s.19).

⁸⁵ In the earlier Islamic states, and also in the Ottoman Empire, the administration’s desire to ask fatwa in order to base its actions/applications on the support of ulamas is due to the concern of whether these actions are legitimate. By doing so, they declare to the public that an action/application based on Orfi law does not violate any Sharia principles. The statement “ekser-i ulemā tecviz etmişir” was added to the Code of Mehmed because of a similar concern. Until the end of the Ottoman Empire, for a given case, no action was taken place until an Islamic legal reference was found and a fatwa was issued for the case. Some divergences from this rule occurred in the application domain, which does not annihilate the rule.

Was the statement “the majority of the ‘ulemā permits fratricide” in the Kānunnāme intended to relate the fratricide with baghy in order to demonstrate the fratricide’s conformity with Islamic law? There cannot be a relation between this statement and baghy. Because the conditions and punishment for a baghy crime are clearly stated in Islamic law, there is no need to ask the ‘ulemā for their opinions. The problem is whether a non-revolting shāhzādah can be punished or not. This is, as mentioned above, not a punishment, but a precaution in principle.

We have only the fatwas issued by the ‘ulemā given to punish the revolt of Shāhzādah Bayezid against his father Sultan Suleiman. Busbecq mentioned a fatwa which was issued by Shaykh al-Islām Ebussuud Effendi regarding Shāhzādah Mustafa. Apart from this, we only have the ‘ulemās’ comments on this subject in the chronicles. It is not possible to access clear and objective information on the fratricide cases. Hence, it is not easy to analyze the cases from a legal point of view.

Furthermore, even if a *fatwa* was not sought on an action, the absence of any objection by the ‘ulemās of the time, toward that action, meant that they approved it implicitly. At least some of the ‘ulemās supported this application as a point of law, which reminds us that they may have behaved under pressure from the Palace. In fact, it is possible to say that with respect to their employee status the ‘ulemās adhered strictly to the Ottoman State. Although there was no clergy in the hierarchical sense in Islamic society, ‘ulemās had a traditional power due to their class consciousness and solidarity.

This structure would try to sustain its power by means of the control mechanism over its members. Hence, based on this mechanism, they knew how to stand against the administrators. Moreover, determining the legitimacy of an action does not rely on the opinion of the ‘ulemās. The availability of even slight evidence to the contrary allows for subjectivity which gives the fatwa strength.

The historians who were also great scholars in law, such as Shaykh al-Islām Ibn Kemāl (d. 1534) declared that fratricide was politically right and legal⁸⁶. Similarly, as a jurist, *kazasker* (supreme qādi) Bostanzādah Yahyá Effendi (d. 1639), author of the book *Tārih-i Sāf*, approves and even praises Sultan Mehmed III

⁸⁶ Ibn Kamāl, *Tawārih-i Āl-i Osman [History of Ottoman Sultans]*, ed. Şerafeddin Turan, Ankara 1957, vol. 7, p. 9. Ibn Kemal says of Shāhzādah Ahmed who was defeated and killed by his brother Sultan Selim that “A lion cub eventually becomes a lion. A prince grows up and becomes a sultan. This saying is correct. An undesirable plant should be removed before it becomes bigger. The spark of a fitnah fire should be extinguished before it sets everything on fire.”

for killing his brothers for the common benefit (nizām-i ‘ālem)⁸⁷. Solakzādah (d. 1658), an Ottoman historian, says so⁸⁸. Nishāncizādah (d. 1622), Ottoman jurist (qādi) and historian, says that Shāhzādah Yakub (d. 1389) was executed because the availability of multiple princes enables the public to think about who should become the next sultan⁸⁹.

When Sultan Murad II came to the throne he did not kill his brothers in following his father’s will. He took the two of them, Yusuf and Mahmud, into custody. The other named Mustafa was governor of Hamidili (now Antalya and Isparta). However, when Shāhzādah Mustafa attempted to revolt, he had to be executed⁹⁰.

As mentioned earlier, when Sultan Selim I ascended the throne, he had not executed his brother Korkut and had in fact given him the governorship of Manisa and Mytilēnē. Meanwhile, some viziers and soldiers of the previous sultan Bayezid II wrote to Korkut, indicating to him that they wanted him to be sultan and that the conditions for that were ripe. Shāhzādah Korkut gave a positive response to them, in which he even promised that he would raise their salaries when he became sultan. This letter eventually reached Sultan Selim I. Shāhzādah Korkut, who was also famous for his legal knowledge, was certainly not able to deny it and was consequently executed (1513)⁹¹. As it is shown in this example, it could not be said that sultans were always eager to exercise fratricide⁹².

The events such as fratricide cannot be evaluated separately, without taking into consideration the place, time, and conditions in which they occur; otherwise, errors of judgment are inevitable. As Ahmet Mumcu points out, the subject must be evaluated from a more rational objective point of view, unlike some historians who considered fratricide to be motivated by bloodthirsty greed for power. He

⁸⁷ Bostanzādah Yahyā Effendi, *Tārīh-i Sāf*, Taraqqi Matba‘asi, Istanbul 1287, vol. 1, p. 86.

⁸⁸ *Solakzādah Tarihi*, p. 353.

⁸⁹ Nishāncizādah Mehmed Effendi, *Mir‘at-i Kānāi*, Istanbul 1873, vol. 2, p. 311.

⁹⁰ Eroğlu, p.202.

⁹¹ *Ibid.*, vol. 2, pp. 464-465.

⁹² Interestingly, all of the Ottoman chronicles unanimously state that the executed princes are martyrs for the sake of religion, nation and homeland. Nishāncizādah narrates the following statement from Sultan Selim while he was going to suppress his brother Shāhzādah Ahmed’s revolt that “My father made a request to me that do not make any harm to your brothers unless they revolt or have any disobedience against you; otherwise, negligence and respite are the cause of disturbance”. He added a Persian poem related to this request: “Two lions do not live together in one cage, two suns do not shine over one place, two swords do not fit one scabbard, two shahs (sultan, king) do not rule in one state”. *Nishāncizādah*, vol. II, p. 463.

goes on to state that Ottoman practice of fratricide was born out of necessity and with the passing away of this said necessity they did away with this practice⁹³.

New succession procedure in the Ottoman dynasty

There is no unanimous agreement on the number and nature of fratricide cases in Ottoman history. According to the majority of available knowledge, fratricide was applied to 60 princes. Five princes in the fourteenth century, five princes in the fifteenth century, 44 princes in the sixteenth century, five princes in the seventeenth century, and one prince in the eighteenth century had been executed. Sixteen princes due to baghy (actual revolt), seven princes due to sai bil' fasād (attempt to create disorder), and the rest due to nizām-i 'ālem (precautionary measure) had been executed. Most of them are during the 150 years following the Code of Sultan Mehmed the Conqueror, in sixteenth century. Execution of an ex-sultan by the new sultan (in the beginning of the 19th century) can be added to the listed fratricides. Princes were executed by strangulation in accordance with the old Turkish tradition which forbade the shedding of royal blood of members of the dynasty⁹⁴.

Following the end of Sultan Mehmed III's reign, Sultan Ahmed I, having ascended the throne in 1603, considered it unnecessary to execute his brother. Upon his death in 1617, although he had sons, his brother Sultan Mustafa I ascended the throne. Thus, for the first time, the brother of the previous sultan ascended the throne instead of his son. A new precedent had thus been set and this practice continued in the Ottoman Empire. Henceforth, the oldest shāhzādah at the time of the death of the Sultan automatically became the new Sultan. This means that the Ottoman succession concept had actually changed. The primogeniture procedure, in which the eldest son of the sultan ascended the throne, which was common in Europe, was abandoned and the seniority procedure, in which the eldest member of the dynasty ascended the throne, was applied. It was thought that this new system brought stability to the process of ascension and that the shāhzādahs would be able to get a better education in the palace including experience in witnessing the running of an empire first-hand, from their elder brother, the Sultan⁹⁵.

⁹³ Mumcu, *Osmanlı Devletinde Siyaseten Katl*, p. 189.

⁹⁴ Fuad Köprülü, "Türk ve Moğol Sülâlelerinde Hanedan Azasının İdamında Kan Dökme Memnûiyeti [Restraint of the Shedding of Blood in Execution of the Dynasty Members in Turkish and Mongolian Dynasties]," in *İslâm ve Türk Hukuk Tarihi Araştırmaları ve Vakıf Müessesesi [Islamic and Turkish Legal History Studies and Waqf Institution]*, Istanbul 1983, p. 77.

⁹⁵ In European monarchies, the eldest son of the ruler always ascends to the throne. If the ruler does

It can be assumed that Sultan Ahmed I who anyway had a tolerant character⁹⁶, acted mercifully due to the influence of public opinion. The execution by his father Mehmed III of his 19 brothers had awakened a deep sense of indignation amongst the population. If what was said about the mental health of Shāhzādah Mustafa is considered to be correct, Sultan Ahmed I may not have seen him as a threat⁹⁷.

Moreover, Sultan Ahmed I did not have any son to continue his bloodline when he ascended the throne. Shortly after ascending the throne, however, Sultan Ahmed did have sons yet he was probably apprehensive that they would not live to adulthood and did not want to take the risk of ending the dynasty should these sons not live to adulthood⁹⁸. An interesting account in Alderson describes Ahmed I attempting to execute his brother who said to have been a dervish, on several occasions, however, at each attempt, the Sultan is stricken with illness which he interprets as a sign from God not to go through with it and ultimately he decides against the execution, thus leaving his brother to carry on living⁹⁹.

not have any sons, the question of succession becomes a problem. In a feudalist society the sovereignty bestowed upon the king is invariably as a result of an action taken by him. In the event that a successor has not been identified, in order for the position of suzerain to continue without interruption, an heir should be researched and chosen after his death. Generally in accordance with inheritance traditions, the closest heir would inherit the throne. This practice can be thought of as the birth of dynasties. If the heir is too young, a relative is chosen as consort. If no relatives exist, then the process of choosing a successor (*oligere*) becomes critical. This vacancy generally results in a conflict among the elite while positioning themselves to be the next leader. In the tradition of the Franks importance is placed on keeping the estate within the family, specifically the male members. The principle of prohibiting women from inheriting an estate (*Lex Salica*), is derived from the aforementioned tradition. The traditions and laws that govern royal succession in Europe were adopted many centuries later. Charles Seignobos, *Avrupa Milletlerinin Mukayeseli Tarihi [A Comparative History of European Peoples]*, Translated from French into Turkish by Samih Tiryakioğlu, Varlık, Istanbul 1960, pp. 138-139.

⁹⁶ Sultan Ahmed I was a strong advocate derwish of the famous mystic of his time Aziz Mahmud Hüdaî. (Danişmend, *İzahlı Osmanlı Tarihi Kronolojisi*, vol. 3, p. 342). Sources emphasize the religiousness of Sultan Ahmed I (Ibid., vol.3, p. 230, 267), however this does not play a role in his decision not to have his brother Shāhzādah Mustafa executed as his father Sultan Mehmed III was as at least as religious. However the latter holds the record for fratricide with 19 of his brothers being executed for the “common good.” (Ibid., vol. 3, p. 228).

⁹⁷ It is noteworthy that the names of his father and elder brother are on the *sikkas* (coins) issued during the reign of Sultan Mustafa I. İbrahim Artuk, Osmanlılarda Veraset-i Saltanat ve Bununla İlgili Sikkeler [Succession in Ottomans and Coins Related to it], *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Dergisi*, 32 (1978): 256.

⁹⁸ Baki Tezcan, *The Second Ottoman Empire, Political and Social Transformation in the Early Modern World*, Cambridge University Press, New York 2010, pp. 61-62; Günhan Börekçi, “İnkırâzın Eşiğinde Bir Hanedan: III. Mehmed, I. Ahmed, I. Mustafa ve 17. Yüzyıl Osmanlı Siyasî Krizi [A Dynasty at the Threshold of Extinction 17th-Century Ottoman Political Crisis],” *Dîvân Disiplinlerarası Çalışmalar Dergisi*, vol. 14, no. 26, 2009/1, pp. 59.

⁹⁹ Alderson, *The Structure of The Ottoman Dynasty*, p. 29.

At the time of his death, Ottoman sources point out that the probable reason why Sultan Ahmed I's sons did not immediately ascend the throne upon their father's death, instead of their uncle Sultan Mustafa, was because of the important role played by Sadrazam Sofu Mehmed Pasha and Shaykh al-Islām Es'ad Effendi¹⁰⁰. They used the reasoning that the shāhzādahs were too young to ascend the throne. This cannot be the possible reason because Sultan Fatih was 12 and Sultan Ahmed I himself who was 13.5 years old when they became Sultan. They were younger than Sultan Ahmed's eldest son, Osman II who was 14.

When ascending the throne, Sultan Osman II dismissed Sofu Mehmed Pasha and diluted the authority of Es'ad Effendi so that he could no longer appoint high-ranking qadis. However, if Es'ad Effendi truly had a role in preventing Osman II from becoming Sultan, Osman II's reaction would have been much greater. Es'ad Effendi kept his title and in fact gave his daughter in marriage to the Sultan. Es'ad Effendi's reluctance to give a fatwa to Sultan Osman II (before going on the Hotin campaign, a few years later after ascending the throne) so that he could execute his younger brother does not imply that he was also the one that prevented the execution of Sultan Mustafa in itself. If Es'ad Effendi did have a hand in preventing Ahmed I's sons from becoming Sultan, he did so with the intention of easily influencing a weak Sultan Mustafa. This is however, not an admirable action; changing the course of history for your own personal gain.

Western sources have two points of view regarding this issue: Firstly, that Sultan Ahmed I bequeathed the throne to his brother and secondly that Sultan Ahmed's wife Mahpeyker Kosem Sultan played a role in this case¹⁰¹. Bequeathing the throne to his mentally ill brother would not have been a logical course of action for Sultan Ahmed I, because he did not initially have his brother executed precisely for that reason. At the time of her husband's death, Mahpeyker Sultan had three sons who were younger than their older half-brother, Osman. Mahpeyker Sultan probably feared for her sons' life, should their older half-brother become Sultan and have them executed. Therefore, it is more likely that she preferred her brother-in-law Mustafa to become sultan as he would not see her sons as a threat

¹⁰⁰ See Tezcan, pp. 47-48 for the differentiation between absolutists and constitutionalists as well as the naming of Shaykh al-Islām Es'ad Effendi as the Kingmaker for his role in the coronation of Sultan Mustafa I. Even if this opinion is correct, the consequence of this matter would cause another absolutism by associating the palace authority with the *‘ulemā* and the bureaucracy.

¹⁰¹ Danişmend, *İzahlı Osmanlı Tarihi Kronolojisi*, vol. 3, p. 270.

to his sultanate. This is the interpretation most favoured by historians. However, Sultan Mustafa's sultanate was short-lived, lasting only three months, and was replaced because of his mental illness.

It is understood from an *Hatt-i Humāyūn* (imperial decree) issued to the army by Sultan Osman II that accession to the throne by the previous sultan's son is regarded as a *qānūn-i qadīm* (the constitutional conventions). It is stated in this imperial decree: "After my father Sultan Ahmed died, while I should have ascended the throne in accordance with the constitutional convention, Sultan Mustafa was crowned in my place only because he is a few years older than me...". As a matter of fact, according to Islamic Law an uncle cannot be a successor and inheritor whilst a son of the deceased exists. In this regard, succession from father to son is more akin to Islamic Law. Nevertheless, since *varasah* (succession) in Islamic Law is not a condition to be sultan, it is not unlawful that the brother of the previous sultan ascends the throne whilst the son of the previous sultan is alive.

Until 1603, there were only two exceptions to the tradition of fratricide. Sultan Süleyman the Magnificent and Sultan Selim II did not have any younger brothers to apply fratricide to. Sultan Ahmed I's period of ascension to the throne is a first in Ottoman history as he did not commit fratricide against his brother Sultan Mustafa I. Lamartine says that instead of the son of Sultan Ahmed I, his brother had ascended to the throne, which indicates that the law of Genghis Khan was still operative amongst the Ottomans. He also states that "This practice extolled Sultan Ahmed I and those sultans who followed him. However this precedent would become a catastrophe for the Empire". Enthroning the eldest *shāhzādah* meant inherently systematizing the tradition which considers the crown a common patrimony of the dynasty¹⁰².

Sultan Ahmed I did not apply the Code of Sultan Mehmed II, but he also did not abolish it. It was in fact applied for the last time by Sultan Osman II and Sultan Murad IV¹⁰³. With the abandonment of the practice of sultan's joining a military campaign, fratricide also was abandoned. The proof of this can be viewed through the actions of Sultan Osman II and Murad IV, both of whom only practiced fratricide when they left the capital for a campaign.

¹⁰² Alphonse de Lamartine, *History of Turkey*, Translated from French, New York 1857, vol. 3, p. 161. Interestingly, this practice was adopted only by the Kingdom of Saudi Arabia.

¹⁰³ Uzunçarşılı, "Sancağa Çıkarılan Osmanlı Şehzadeleri", p. 667.

Having ascended to the throne in 1648, Sultan Mehmed IV did not have his brothers executed throughout his reign. After the dethronement of Sultan Mehmed IV (1687), the eldest member of the dynasty officially ascended the throne despite the fact that he had adult children. By means of *ekberiyet* (seniorat) principle which was both the cause and the result of abolition of the fratricide, the power of the palace lessened in the favor of the bureaucracy. This principle prevented the soldiers from interfering the governmental issues, and hence led to the more civilized administration¹⁰⁴. Hodgson says “Succession by contest is appropriate to a military state, but in the civilian-minded seventeenth century the principle was suppressed, if not in theory then at least in practice. [...] Instead of the strong hand of the monarch, as a commanding general, the strong hand required by the bureaucracy was supplied by the grand vizier”.

Although Sultan Abdulmecid (d. 1861) reportedly tried to change this procedure in order to enable their own sons to ascend the throne and to re-establish the succession procedure from father to son, this procedure was included within the Ottoman constitution of 1876 (*Qānūn-i Esāsī*)¹⁰⁵. The change to the succession rule, called *ekberiyet* (seniorat), was put into practice for practical purposes. Consequently, fratricide was all but eliminated, but other problems arose.

Conclusion

Ottomans did not impose a strict succession system as in old Turkic states in the first two centuries of the state. A competent and fortunate *shāhzādah* used to ascend the throne. In case the previous sultan had more than one child, these *shāhzādahs* mostly revolted because they laid claim to the throne. The idea behind this claim is that the old Turkish political tradition says that the right to rule

¹⁰⁴ Marshall G. S. Hodgson, *The Venture of Islam*, The University of Chicago Press, London 1974, vol. 3, p. 128. 667.

¹⁰⁵ When Sultan Abdulmecid described his idea to Lord Canning the British Ambassador, Canning replied: “then you may not be able to control the *Shāhzādahs* who are awaiting their turn for the throne as they will no longer be as near to inheriting the throne thus not posing a direct threat. However, they will have the freedom of movement and thus lay claim to the sultanate. This should be avoided at all costs as the real strength of this empire is that there are no claimants to the throne”. Cevdet Paşa, *Tezâkir*, 13-20, ed. Cavid Baysun, 2. Edition, Ankara 1986, p. 133. Sultan Abdulhamid II says that “Layard, the British Ambassador, came to me at the time of Safwat Pasha’s viziership (1878); he suggested that the succession system should change over to a succession based on primogeniture. I acknowledged that this system would be beneficial. But I said that I could not do that and I would not like to be embarrassed by my family”, Âtuf Hüseyin Bey, *Sultan II. Abdülhamid’in Sürgün Günleri [Sultan Abdulhamid II’s Days of Exile]*, Timaş, İstanbul 2010, p. 301.

is inherited equally by all sons of the ruler. The resulting civil war determines who becomes the next sultan. To impede such civil wars, sultans, whenever ascending the throne, have to take Shāhzādahs, being thought of as a threat to the throne, out of action. As a result, the Code of Mehmed the Conqueror (Kānunnāme-i Āl-i Osman) legislates an article to regulate the succession process.

Though this article can be regarded as a means of preventing the Ottoman State from falling apart and providing social peace in society, the disputes over the legitimacy of this article have arisen since its application. According to most of the modern authors dealing with the problem, the execution of shāhzādah is based on the regulation belonging to a legal area where Orfi Hukuk is in conflict with Sharia.

Some of the Ottoman ‘ulemās approved its legitimacy by regarding fratricide as a precaution due to the maslaha (common benefit) principle, not as a punishment. They furthermore introduced some Quranic verses, the application of the Prophet Muhammad, and his companions’ application as evidence in order to support their opinion.

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