

Containing Sultanlic Authority: Constitutionalism in the Ottoman Empire before Modernity*

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Sultan Otoritesini Sınırlandırmak: Osmanlı İmparatorluğu'nda Modernite Öncesi Anayasacılık

Öz ■ Bu çalışma Osmanlı İmparatorluğu'nda onaltıncı yüzyıldan onsekizinci yüzyıl sonlarına kadar anayasalcı temaların yükselişini incelemektedir. Modern çalışmalar genellikle Osmanlı anayasacılığının kökenlerini Avrupa kaynaklı model ve düşüncelerin yapısal siyasi değişimler yapmak amacıyla yerleştirildiği ondokuzuncu yüzyılın batılılaşma sürecine atfetmektedirler. Geleneksel Osmanlı tarihçiliğinde ise onaltıncı yüzyıl sonrası dönemi bizzat Osmanlı gözlemcileri tarafından genellikle keyfilğin yükselişi olarak eleştirilmiştir. Her iki görüşten de farklı olarak, bu çalışma onaltıncı yüzyıl klasik sisteminin dönüşümü sürecinde anayasal etkisi olan yeni sosyal dokuların, idari yapıların, hukuki düzenlemelerin, ve siyasi ilkelerin ortaya çıktığını göstermektedir. Sonuç olarak, erken modern dönemde sultanın siyasi gücü giderek azalmış ve karar verme sürecine eklenen yeni aktörlerin gücüyle dengelenmiştir.

Anahtar kelimeler: Ayan, Anayasacılık, Fetva, Sadrazam, Hezarfen, Hücet-i Şer'iyye, Yeniçeri, Kanun, Max Weber, Meşveret, Osmanlı, Selim I., Selim III., Sened-i İttifak, Şariat, Sultan, Ulema

In the early seventeenth century, James I (d. 1625) scolded Lord Chief Justice Coke (d. 1634) for objecting to his view that the king protected law.¹ Coke, who had argued that the common law protected the king, “fell flat on all fower” before the king. Coke's Ottoman contemporary, the codifier of an extensive law book

* An earlier Turkish version of this study, translated by Abdülhamit Kırmızı, is previously published. See, Hüseyin Yılmaz, “Osmanlı Devleti'nde Batılılaşma Öncesi Meşrutiyetçi Gelişmeler,” *Dıvan* 13/24 (2008/1): 1-30.

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1 Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective* (Chicago: The University of Chicago Press, 1963), 79.

on the Janissaries, relates a similar anecdote in which, a century earlier, Selim I (d. 1520) chastised his grand vizier Pîrî Paşa (d. 1532-33) for objecting to the sultan's attempt to rule against the law of the Ottoman state, the *kanun*.² Undaunted by the sultan's humiliation and accustomed to his outbursts, Pîrî Paşa, on another occasion, expressed his view of the superiority of the law and stated that it was the law that protected the state: "Since this law (*kānun ve kā'ide*) was established by your exalted ancestors and [so long as it] is practiced," the grand vizier told the sultan, "it is absolutely impossible for this state (*devlet*)³ to collapse."⁴ These two ordeals illustrate the existence of constitutionalist tendencies against the impulses of arbitrariness in government existed in two different early modern polities with no perceived influence of one over the other.

From Niccolò Machiavelli to Max Weber, the prevailing tenor of writings on Ottoman polity was to compare it to its European counterparts and epitomize it as the Europe's other in constitutional government. The Ottoman case is often characterized as a form of political system that idealized the absolute power of the sultan, lacked intermediary institutions between the ruler and subjects, and disallowed the formation of checks and balances in executing power. In the past century, a substantial body of scholarship on Ottoman institutions, laws and economy brought to light extensive evidence that contradict these well-entrenched portrayals of pre-modern Ottoman polity. Among others, works by Ömer L. Barkan, Halil İnalcık, Uriel Heyd, Şerif Mardin, Haim Gerber, Ariel Salzman, and Karen Barkey demonstrated the existence of a sophisticated body of laws that mediated the use of power as well as a diverse and changing array of social configurations that counterbalanced the ruler's authority. Yet the Weberian paradigm that called the Ottoman rulership sultanism, an extreme form of Oriental despotism, and the Berkesian model that attributed the beginnings of Ottoman constitutionalism to nineteenth century modernization still hold their sway in contemporary scholarship.

2 *Kavânîn-i Yeniçeriyân-ı Dergâh-ı Âli*, in *Osmanlı Kanunnâmeleri ve Hukukî Tablilleri*, 9: I. Ahmed, I. Mustafa ve II. Osman Devirleri Kanunnâmeleri (1012/1603-1031/1622), ed. Ahmet Akgündüz (İstanbul: Osmanlı Araştırmaları Vakfı, 1996): 143.

3 In Ottoman political usage, the concept *devlet*, among its diverse meanings, came to refer to the state, at least by the early sixteenth century if not well before then. For its use in this sense see, for example, Lütfî Paşa, *Âsafnâme*, in *Prof. Dr. Bekir Kütükoğlu'na Armağan*, ed. Mübahat Kütükoğlu (İstanbul: Edebiyat Fakültesi Basımevi, 1991): 49-99.

4 *Kitâb-ı Müstetâb*, in *Osmanlı Devlet Teşkilâtına Dair Kaynaklar*, ed. Yaşar Yücel (Ankara: Türk Tarih Kurumu Basımevi, 1988): 30.

Despite what the above anecdotes imply, my aim in this study is not to provide a comparative analysis of constitutionalist traditions in Europe and the Ottoman Empire. Nor do I intend to prove that early modern Ottoman polity involved constitutional elements similar to its Western European counterparts. On the contrary, the purpose of this study is to identify constitutionalist themes and tendencies in Ottoman polity and thought that are peculiar to the very Ottoman experience in government in alignment with the broader process of early-modern state-building. The Ottoman experience in constitutionalism, contrary to the usual perspective, did not start in the nineteenth century as a result of westernization but was a process that produced genuine political concepts, legal documents, government structures, and political acts of constitutional import throughout Ottoman history. Thanks to the constitutionalist developments of previous centuries, nineteenth-century constitutional reforms in the Ottoman Empire owed as much to the Empire's own experience as to the influence of modern Europe. The reception of European constitutional ideas among the Ottoman intelligentsia, the statesmen and the ulema, without notable resistance, stemmed from the affinity of such ideas with the constitutionalist elements that were already present in the Ottoman political experience.⁵ Constitutional modernization in the Ottoman Empire, heralded by the decree of Tanzimat in 1839, was thus as much a sequel to Ottoman constitutionalism as a recreation of contemporary Western ideas and structures.

Constitutionalism in this study refers to political ideas and actions, normative values and legal structures as well as restrictive mechanisms and compactual agreements of constitutional import, produced within the Ottoman polity owing to its own experiences in government and political theory with no direct influence from Europe. The history of constitutionalism in the Ottoman Empire by no means displays a linear progression from a disorderly government to an orderly one, or from an arbitrary regime to a constitutional one. Nor does it prove that all political actions or ideas with constitutionalist effects were prompted by constitutionalist aims per se. Rather, it shows that there had always been a strong constitutionalist tendency in Ottoman polity and, whether by chance or design, certain political and legal developments in theory and practice served the ascendance of constitutionalism in government. Originating from the constitutional

5 For the influence of the Ottoman experience on Namık Kemal's modernist thought, for example, see Şerif Mardin, "Freedom in an Ottoman Perspective," in *State, Democracy and the Military: Turkey in the 1980's*, eds. Metin Heper and Ahmet Evin (Berlin and New York: Walter de Gruyter, 1988): 23-35.

mechanisms inherent in the classical political order, the outcome of the constitutional developments from the sixteenth through the eighteenth centuries was that the ruler, despite occasional periods of autocratic rulership, increasingly had less power to dictate the regime of his choice, but had to accommodate the order and laws shaped from below by the ruling institutions as well as the social structures that had developed among his subjects.

Intricate and diverse as were the ideas, events and structures that formed it, Ottoman constitutionalism was fostered by a variety of intellectual traditions, government practices, and social dynamics. Among the principal sources of inspiration for constitutionalism were Islamic jurisprudence, political theory in its various strands, a wide range of communal and institutional customs, and the Ottoman law (*kanun*). However diverse these intellectual springs may be, neither statesmen nor political thinkers in the constitutionalist tradition, despite debating numerous issues, seemed to have perceived an inherent conflict among ancient political ideals, religious strictures, state laws, and restrictive mechanisms in Ottoman polity.

Representing Sultanic Authority

A well-established constitutional mechanism in the classical order, stated in the Ottoman *kanun* and commonly advocated in reform treatises, was the delegation of sultanic authority to the two highest-ranking representatives of the sultan, the grand vizier and, increasingly from the sixteenth century on, the *şeyhülislam*. The grand vizier was, in both theory and practice, designated as the deputy of the sultan over both men of the pen and men of the sword, symbolized by the gifts, including a pen case (*divit*) and a sword, that he received upon his appointment.⁶ Although men of the pen by definition included the ulema, facilitated by the fact that fewer and fewer grand viziers came from an ulema background, since the recognition of the *şeyhülislam* as the head of the ulema after the mid-fifteenth century, the institution of ulema never fully came under the authority of the grand vizier. Throughout Ottoman history, there was no single case of promotion from the office of *şeyhülislam* to that of the grand vizierate or vice versa, thus rendering these the most strictly separated functions in Ottoman government. When the office holders acted in alliance, these two offices could function to restrict or

6 Aydın Taneri, *Osmanlı İmparatorluğu'nun Kuruluş Döneminde Vezîr-i A'zamlık: 1299-1453* (İzmir: Akademi Kitabevi, 1997), 92.

supersede the very sultanlic authority which they represented. Otherwise, these offices were usually at odds and tended to restrain each other's sphere of authority over government.

In government practice, along with extensive institutionalization from the mid-fifteenth century onwards, the office of the grand vizierate evolved from being a chief deputy of the sultan to the chief governorship of the Empire. From Mehmed II on, the general tendency among the Ottoman sultans was to withdraw from actual government and to delegate their full authority to their grand viziers by turning them into de facto rulers of the state. As the personality of the sultan became less and less relevant to the actual government, more emphasis was placed in advice literature, for example, on the qualities and government of the grand vizier than those of the sultan.⁷

In response to the common perception that disorder was spreading in government and society, from the mid-sixteenth century forward, the prevailing tendency among statesmen and political writers was to advocate fervently the idea that the grand vizier should have independence (*istiklâl-i tam*) in government in order to reestablish order.⁸ Grand vizier Lütü Paşa who suffered from an uneven relationship with Süleyman the Lawgiver was the first to hint at the idea: "The opinion that the [grand] vizier gives to the ruler should be approved," he wrote after his dismissal, "and the issues the [grand] vizier submits should not be rejected."⁹ A century later, sharing the same view with Lütü Paşa, Hezarfen reformulated it in a legal format: "It became a kanun, by according him [the grand vizier] independence (*kemâl-i istiklâl*)," he stated, "not to overturn what he [the grand vizier] submits [to the ruler]."¹⁰ In practice, however, except for the terms of unusually powerful grand viziers, the actual power of the grand viziers may have diminished

7 See, for instance, Celalzâde Mustafa, *Mevâhibü'l Hallâk fî Merâtibî'l Ahlâk*, (ms. Süleymaniye Kütüphanesi, Fatih 3521), 162a-232a.

8 Metin Kunt observes that, in pursuit of acquiring independence free from the influence exerted by people close to the sultan, the independence of the vizier became one of the most important issues in government in the second half of the seventeenth century. See, Metin Kunt, "Sadr-ı A'zam," *Encyclopedia of Islam*, 2nd ed., VIII (Leiden: E. J. Brill 1995): 751-752.; See also Koçi Bey, *Koçi Bey Risâlesi*, ed. Yılmaz Kurt (Ankara: Ecdâd Yayınları, 1994), 17, 34.

9 Lütü Paşa, *Âsafnâme*, 64.

10 Hezarfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Kavânîn-i Âl-i Osmân*, ed. Sevim İlgürel (Ankara: Türk Tarih Kurumu Yayınları, 1998), 84.

after the sixteenth century.¹¹ However, in fits and starts, the sphere of the grand vizier's authority over the military and the government gradually widened, and the pursuit of independence for the grand vizier became a staple of reformist projects proposed by political writers.

Signaling the concept of the independent vizierate was the appointment of İbrahim Paşa (d. 1536) with exceptional authority by Süleyman the Lawgiver, who sought someone to share the burden of government. "Leaving all state affairs to the control of one person [the ruler]," the sultan reportedly said, "is not right."¹² Despite his being a grand vizier to one of the most diligent of Ottoman sultans, İbrahim Paşa might well have had grounds for flaunting his position in front of the Hungarian ambassador: "It is I who govern this vast Empire," he boasted, "what I do is done. I have all the power, all offices, all the rule."¹³ Following the precedent of İbrahim Paşa, the independence of the grand vizier became a permanent question in Ottoman polity. Selim III's (d. 1808) correspondence with his grand vizier, at the turn of the nineteenth century, illustrates that the question of a grand vizier's independence was yet to be settled: "It is incumbent upon the rulers, by granting full permission (*ruhsat-ı kâmile*) and independence (*istiklâl*), to execute what grand viziers submit," the sultan instructed, and "in turn, it is incumbent upon grand viziers to assign every task to a suitable person by managing the statesmen, military and other personnel accordingly."¹⁴

Despite the appellation "absolute deputy" (*vekil-i mutlak*) in the code of Mehmed II,¹⁵ with the possible exception of the terms of a few grand viziers, this

11 Pal Fodor, "The Grand Vizieral *Telhis*: Study in the Ottoman Central Administration 1566-1656," *Archivum Ottomanicum* 15 (1997): 137-188.

12 İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin Saray Teşkilatı* (Ankara: Türk Tarih Kurumu Basımevi, 1988), 51.

13 İbrahim Paşa then continued: "What I wish to give is given and cannot be taken away; what I do not give is not confirmed by anyone. If ever the great Sultan wishes to give, or has given anything, if I do not please it is not carried out. All is in my hands, peace, war, treasure. I do not say these things for no reason, but to give you courage to speak freely." See Hester Donaldson Jenkins, *Ibrahim Pasha: Grand Vizir of Suleiman the Magnificent* (New York: AMS Press, 1970), 82.

14 Enver Ziya Karal, *Selim III'ün Hatt-ı Hümayunları*, 2 vols. (Ankara: Türk Tarih Kurumu Basımevi, 1942), 1: 39.

15 See *Kanunnâme-i Âl-i Osman*, ed. Abdülkadir Özcan as "Fatih'in Teşkilât Kanunnâmesi ve Nizâm-ı Âlem için Kardeş Katli Meselesi," *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Dergisi* 33 (1982): 7-56.

office never fully represented the sultan. Besides the grand vizier, the sultanic power was also delegated to other members of the imperial council by conferring upon them independence in their respective spheres of authority. Yet, there was always some non-delegated authority exclusively held by the sultan, creating a constitutional tension between the legal designation and practical authority of the grand vizierate that led some grand viziers to search for ways to assume the undivided full authority of the sultan. The kind of independence most grand viziers pursued, however, was not so much the extension of their sphere of authority to include that of other high officials, but mostly the prevention of unauthorized individuals, such as the palace dignitaries, who, given their proximity to the sultan, could use their influence to meddle in state affairs. Formulated to voice this pursuit, the idea of an independent grand vizier entailed the sultan's full agreement with the grand vizier's decisions without exception and the grand vizier's exclusive authority over the government.

Especially during times of disorder, many grand viziers sought independence when they took office, as in the well-known case of Köprülü Mehmed Paşa¹⁶ (d. 1661). To quote Inalcık, "it is said that in 1656 Köprülü Mehmed accepted the grand vizierate on the conditions that the sultan would not reject any proposals which he might submit; that he alone would make all the appointments and dismissals; that the sultan would take no consultant on state affairs other than the grand vizier; that the Palace would protect none of his rivals; and that all calumnies against him would be ignored."¹⁷ This appointment, if it ever took place as such, was the first contractual articulation of a century-long quest for the independence of the grand vizier in government sought by the reformist statesmen and intellectuals.¹⁸

While the grand vizierate formed the locus of the struggle for the independence of government, the şeyhülislamate always enjoyed independence in its original sphere of authority over issuing legal opinions. As established by the code of Mehmed II and reiterated in Hezarfen's law book, in political hierarchy, the şeyhülislam was traditionally considered on a par with, if not superior to, the

16 Mustafa Naîmâ, *Tarih-i Naîmâ*, 6 vols. (İstanbul: n.p., 1281-3), 6: 213-4.

17 Halil Inalcık, *The Ottoman Empire: The Classical Age 1300-1600* (London: Phoenix, 1994), 97.

18 For a discussion of the authenticity and the historical context of this agreement see Metin Kunt, "Naîmâ, Köprülü, and the Grand Vezirate," *Boğaziçi Üniversitesi Dergisi-Hümaniter Bilimler* 1 (1973): 57-63.

grand vizier.¹⁹ Despite his designation as the head of the ulema in the code of Mehmed II, unlike the grand vizier, the şeyhülislam barely possessed any executive power until the early sixteenth century. He never had a regular seat in the imperial council, and his superiority to the grand vizier was only honorary. But during the sixteenth and seventeenth centuries, şeyhülislams successfully exploited their honorary position to acquire political authority and began to exert a more orderly influence on government, especially after gaining control of educational institutions (*medreses*) and the judiciary. By the seventeenth century, şeyhülislams were frequently participating in the imperial council meetings or hosting major consultative gatherings (*meclis-i meşveret*) at their residences.

The emergence of şeyhülislam as the head of the entire educational and much of the judicial administration increasingly restricted the grand vizier's authority to the civil service and the military. By the seventeenth century, as Hezarfen recorded, it became commonplace to portray the sultan's two principle powers -political and religious- as delegated to two top officials, the grand vizier and the şeyhülislam: "The leader (*reis*) of the religion (*din*) alone is the şeyhülislam. The leader of the state (*devlet*) alone is the grand vizier. The leader of both is the victorious ruler."²⁰ Though separated by law and customary practice, the problem of delineating the constitutional lines between the two offices created a persistent tension in government. In the early seventeenth century, for example, grand vizier Nasuh Paşa (d. 1614), who made a proposal regarding appointments to professorships and judicial positions, was warned by Ahmed I (d. 1617) not to infringe upon the şeyhülislam's business and was authorized to do so only after proving the precedent set by Ebussuud Efendi (d. 1574), the much revered şeyhülislam of Süleyman the Lawgiver, who had ruled that those appointments should be left to the grand vizier.²¹

After the sixteenth century, şeyhülislams occasionally outpaced grand viziers in authority and prestige, in a competition that led to serious constitutional conflicts in government. Having already accorded the reigns of power to the şeyhülislam Feyzullah Efendi (d. 1703), Mustafa II (d. 1703) appointed Râmi Paşa (d. 1708) in 1703 as the grand vizier with a stipulation hitherto not heard of: "If you act against the word of the şeyhülislam," forewarned the sultan, "you face

19 Hezarfen, 197.

20 Hezarfen, 197.

21 Hezarfen, 200.

reprimand.”²² The retreat of grand viziers during this period seems to have struck their contemporaries as recorded by the chronicler Silahdar Mehmed (d. 1723): “Because the exalted ruler adopted the şeyhülislam as the well-wisher of the state,” he observed, “he delegated the rein of government (*hükûmet*) and state (*devlet*) to him. Because all public (*cumhur*) affairs are conducted through his [şeyhülislam] reasoning and government,” Silahdar then dramatized, “the viziers remained only in name, reduced to the likes of scarecrows.”²³

The fifth successor to the office after Râmi Paşa in three years, Çorlulu Ali Paşa (d. 1711), the “brave and dignified” grand vizier in the words of his biographer,²⁴ protested the then şeyhülislam Paşmakcızâde Ali Efendi’s (d. 1712) exceptional influence: “As long as the şeyhülislam enjoys more independence than their predecessors in your sublime respect,” he flatly told Ahmed III (d. 1730), “I, this servant of yours, am not able to govern and serve.”²⁵ Besides his personal resentment of the superiority of the şeyhülislam, it was his legitimate objection against the blurring of lines separating government functions between offices that impelled the grand vizier to resort to resistance. Despite recurrent violations of the spheres of authority between the grand vizierate and şeyhülislamate, the principle of a clear-cut separation of the functions between the two offices never lost its appeal and remained among the frequently invoked core principles of government.

Obedience and Resistance

During one of numerous acts of resistance in the seventeenth century, in protest against the excessive powers of high officials, “why do those grand viziers and muftis (şeyhülislams) have all state affairs in their hands?”²⁶ asked one Hasan Ağa, a spokesman for the opposition, the sultan who was officially the ruler but not in charge of the government. The delegation of sultanic authority to high officials, which saved the sultan from personally facing the opposition, enabled the

22 Uzunçarşılı, *Osmanlı Tarihi*, vols. 1-4 (Ankara: Türk Tarih Kurumu Basımevi, 1995), 4.1: 19.

23 Uzunçarşılı, *Osmanlı Tarihi*, 4.1: 15.

24 Dilâverzâde Ömer Efendi, “Çorlulu Ali Paşa,” in *Zeyl-i Hadikatü'l-Vüzerâ* (İstanbul: Ceride-i Havâdis Matbaası, 1271): 10-12.

25 Uzunçarşılı, *Osmanlı Tarihi*, 4.2: 456.

26 Mehmed Halife, *Târih-i Gılmânî*, ed. Kâmil Su (Ankara: Kültür ve Turizm Bakanlığı Yayınları, 1986), 53.

opposition led by the ruling institutions, most notably the Janissaries, to restrict government actions without challenging the sultan himself. In many situations of disagreement between such oppositions and the government, the sultans sought to mediate between parties, while carefully avoiding to take the side of one party and alienating the other. In many other cases, however, by taking the side of the government, the sultans too had to face the opposition directly or act against the government by submitting to the demands of a formidable opposition.

Resistance came to be the most effective weapon in the hands of the opposition to achieve political demands or to hold the sultan accountable because there was no legal procedure in sharia law or Ottoman kanun to subject the sultan to a judicial process. The ruler, in the advice literature of the time, was defined with such metaphors as “soul (*ruh*) of the world,”²⁷ “axis (*kutb*) of the time”²⁸ and “heart (*kalb*) in body,”²⁹ implying that the order of the world depended on his presence. Similarly, reflecting the juristic view, a sixteenth-century treatise, for example, defined the sultan as a governor above whom there was no other governor, rendering his actions and orders final, and free of any procedural checks.³⁰ Despite the absence of higher institutions to make him accountable, the sultan’s prerogatives never turned obedience into an absolute obligation on the part of his subjects, either in Ottoman law or in political theory, thereby leaving room for legitimate resistance.

Against this backdrop, acts of disobedience and resistance emerged as legitimate political instruments to restrict the abuse of authority. Reflecting juristic perspectives, mainstream political treatises of the time prescribed obedience to a ruler with the strongest words possible as long as his orders did not violate the sharia.³¹ Few of these sources, however, explicitly provided any guidance in the

27 See, for example, Taşköprülüzâde Ahmed bin Mustafa, *Risâla fî Bayân Asrâr al-Khilâfa al-İnsâniya wa al-Salana al-Ma'nawiya* (ms. Süleymaniye Kütüphanesi, Cârullah 2098), 89b.

28 Ârifî, *Ukûd al-Jawâhir li Dhakhâ'ir al-Akhâ'ir* (ms. Topkapı Sarayı Müzesi Kütüphanesi, Revan 415), 3a.

29 Hasan Kâfi el-Akhisarî, *Usûlü'l-Hikem fî Nizâmi'l-Alem*, ed. Mehmet İpşirli as “Hasan Kâfi el-Akhisarî ve Devlet Düzenine Ait Eseri,” *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Enstitüsü Dergisi*, 10-11 (İstanbul 1979-1980): 239-278, 252.

30 Lütfi Paşa, *Khalâs al-Umma fî Ma'rifa al-'A'imma* (ms. Süleymaniye Kütüphanesi, Ayasofya 2877), 13a.

31 See, for example, Birgivi Mehmed, *Dhukhr al-Mulûk* (ms. Süleymaniye Kütüphanesi, Esad Efendi 615/8), 98b.

case of a sultan's violation of the sharia and proclaimed disobedience as an obligation of the ruled.³² The juristic theory never prescribed a specific procedure by which the ruler may be judged for a possible violation of the sharia and, therefore, warranting legitimate opposition. Instead, it ruled that obedience to the ruler was an obligation even if he were unjust (*câir*, *zâlim*). This ambiguity enabled both the political authority and opposition to exploit cases of dispute in favor of their respective interests. Thus, depending on how the case was presented, the ruler could still expect obedience even if it was an injustice while the opposition could justify disobedience if it could present it as a violation of the sharia.

Nonetheless, this loosely stated juristic principle of conditional obedience was sanctioned by the Ottoman kanun in more concrete terms by extending it beyond the violation of the sharia to the kanun and customs.³³ By stating such violations as injustices, the Ottoman kanun, in principle, granted all subjects, including the statesmen, the right to refuse orders from above that are contrary to laws and customary practices. Illegality, in Ottoman administrative usage, referred to acts that contradicted the sharia, the kanun, established customs as well as breaching official records, permits or agreements.³⁴ The Ottoman kanun codes were, from the outset, issued to remove injustices and uphold justice between the subjects and the state. It is not a coincidence that Ottoman kanun codes, increasingly from the mid-sixteenth century on, came to be titled as edicts of justice (*adâletnâme*).³⁵ The Ottoman kanun, by establishing the obligations of the ruled in specific legal terms and equating the application of law with justice, enabled the ruled to conceive their obligation to obey as conditional, if not contractual. This more specific conception of conditional obedience served well the opposition's

32 See, for example, Mustafa Âlî, *Nushatü's-Selâtin*, ed. and trans. with notes Anreas Tietze as *Muṣṭafâ Âlî's Counsel for Sultans of 1581*, 2 vols. (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1979-1982), 1: 20.

33 For examples suggesting a conception of obedience conditioned by mutual expectations, see Halil Inalcık, "Adâletnâmeler," *Belgeler* 2/3-4 (1965): 49-145; see also Mustafa Akdağ, *Türk Halkının Dirlik ve Düzenlik Kavgası*, (Ankara: Bilgi Yayınevi, 1975), 330-33.

34 Among others, the term *hilâf-ı kanun u şer* is arguably the most extensively used term in the classical age in reference to illegality. In later centuries, among many others, the term *gayr-i meşru* or *nâ-meşru* came to be more extensively employed and acquired a more comprehensive meaning than the former. For various forms of abuses and violations of law considered as injustices see Inalcık, "Adâletnâmeler."

35 For the continuity between *kanunnâmes* and *adâletnâmes*, see Halil Inalcık, "Suleiman the Lawgiver and Ottoman Law," *Archivum Ottomanicum* 1 (1969): 105-138.

need to gain a legally-justified stand for passive disobedience or active resistance, depending on the severity of the conflict.

Considered from a legal perspective, whether it was the sharia, the kanun, or customs, the relationship of obedience was, in theory, constructed on the basis of law that was binding for all parties involved. For those who conceived the relationship of obedience as such, any breach of law could be considered as an injustice thereby justifying resistance against the responsible party. In most confrontations, law and justice, both manipulated to suit the cause, served as main points of reference for both the opposition and the government to justify their actions and expectations. Thus acts of disobedience and resistance, prompted by a government act not congruous with the law or claimed to be as such by the opposition, worked as a legitimate form of checking the authority of the sultan and the government.

Acts of resistance and disobedience, especially on the part of the ruling institutions, despite turning violent or being arbitrary in many cases, functioned as a recognized form of opposition and political participation. Opposition was more common and effective when directed against government officials and their decisions than against the sultan himself. Though reactionary in many cases, the opposition at times initiated new proposals as well, functioning as a political interest group to influence decision-making in government. The Janissary opposition, for example, effectively worked to influence certain government decisions such as appointments, monetary policy, and decisions of war and peace. In one such action, after the death of Mehmed II, the Janissaries forced Bayezid II (d. 1512) to pledge not to devalue the currency.³⁶ In the mid-sixteenth century, fiercely criticizing the administration of their commander and the grand vizier Rüstem Paşa (d. 1561), the Janissaries threatened Süleyman the Lawgiver, at the height of his power, with rebellion if he failed to dismiss those officials.³⁷ By the seventeenth century, the Janissary involvement in decision making, while still lacking a procedural basis, was not something to dispense with in the political process. The frequent acts of resistance and the open revolts of this period were not erratic resentful reactions against the government but an effective use of a venue for participation in decision making.

36 Cemal Kafadar, *Yeniçeri-Esnaf Relations: Solidarity and Conflict* (unpubl. MA thesis, Montreal: McGill University, 1981), 69.

37 M. Tayyib Gökbilgin, "Rüstem Paşa ve Hakkındaki İthamlar," *İstanbul Üniversitesi Edebiyat Fakültesi Tarih Dergisi*, 8/11-12 (1956): 11-50.

For being the very backbone of the state's coercive power, the Janissaries earned a privileged status among oppositionary movements, some leading to the deposition of sultans. When the relations between the sultan and the opposition was severed and the sultans failed to divert it from targeting them, the opposition could resort to deposition as the only way to manage a dynastic succession from below because of the absence of institutional means to divest the ruler of his authority. Especially after the sixteenth century, a faction with the Janissaries on its side had the capability to incapacitate the ruling sultan or to oust him. The Janissaries and the ulema, two key players in all dynastic successions, represented respectively the physical power and legal justification in depositions.³⁸ The outcome was that nearly half of all Ottoman sultans were deposed while they were reigning.³⁹ Alderson, the only author who examined depositions in some detail, concludes that "the depositions were an expression of the democratic spirit implicit in the dual institution of sultanate and caliphate."⁴⁰ In none of these depositions was the legitimacy of the dynasty seriously questioned and in each the deposition mechanism worked as a way of transferring sultanic authority to a candidate of the opposition's choice.⁴¹ In Alderson's view, "at least the depositions prove that the sultans were limited in their absolutism to a much greater extent than any other European monarch of the same period."⁴²

Dynastic change initiated from below or rising against the reigning ruler, for obvious reasons, was a controversial issue in both jurisprudence and political theory throughout Ottoman history. Well before the advent of the Ottomans, the mainstream jurisprudence had already stripped rulership of its elaborate medieval conditions and reduced it to the acquisition of power alone.⁴³ In the juristic view, although rebellion was illegitimate and condemned, once the rebel

38 Cemal Kafadar, "Janissaries and Other Riffraff of Ottoman İstanbul: Rebels without a Cause?," *International Journal of Turkish Studies* 13/1-2 (2007): 113-134.

39 Anthony D. Alderson, *The Structure of the Ottoman Dynasty* (Oxford: Clarendon Press, 1956), 59-76.

40 Alderson, 59.

41 Cemal Kafadar, "The Question of Ottoman Decline," *Harvard Middle Eastern and Islamic Review* 4/1-2 (1997-1998): 30-76; In an exceptional case, during the 1703 rebellion, a group of Janissaries deliberated about establishing an alternative regime, named by a certain rebel called Çalık Ahmed, as *cumhur cemiyeti* and *tecemmu devleti*. See Kafadar, "Janissaries and other Riffraff of Ottoman İstanbul."

42 Alderson, 59

43 Lütfi Paşa, *Khalās al-Umma*, 2a-4a.

succeeded and secured his authority, his rule was considered equally legitimate. The authoritative works of jurisprudence contained a variety of cases to justify a rebellion against the rule of an unjust ruler that could be used to bolster the cause of rebels. Calling the rule of a specific sultan just or unjust was more a matter of propaganda than a strictly juristic designation. This flexibility of sharia theory provided justification for restraining political actions of both the rulers and opposition throughout Ottoman history. Thus, all acts of disobedience and open rebellions were at the same time battlegrounds for rival arguments of justification. An act of disobedience, for example, could be declared as either an illegitimate rebellion or a necessary obligation to undertake, depending on the political affiliation of a jurist. Relying on their physical power and often with the support of the ulema, the Janissaries took full advantage of this loophole in the sharia theory to have a say in the political process.

From the late sixteenth century on, by then an already old adage, “sons of Osman do not sit on the dynastic throne unless they pass under the sword of the Janissaries (*kuls*),” frequently haunted the minds of chroniclers.⁴⁴ The Janissary involvement in dynastic succession, which began with their role in the deposition of Mehmed II in 1446, became the rule rather than exception in subsequent centuries.⁴⁵ Selim I, knowing that succession comes with the support of the Janissaries, gained their support not only against his two brothers but also against his father Bayezid II, a move which taught future contenders to the throne that the Janissary loyalty to the ruling sultan could be diverted by intrigue. Some two centuries later, a less successful student of Janissary politics, Mustafa II, realizing that the throne goes along with the support of Janissaries, resigned himself to his fate and faced his deposition contentedly as an expected form of dynastic change: “Servants (*kul*) dethroned me,” acceded the dismayed sultan without any feeling of betrayal, and “in my stead, they enthroned my brother sultan Ahmed [III]. God bless.”⁴⁶

The formal legal justification for depositions or resistance against authority came in the form of *fetva* which emerged as one of the most powerful devices of legitimization in the hands of the opposition. Representing the authority of

44 See, for example, Selânikî Mustafa Efendi, *Tarih-i Selânikî*, 2 vols. ed. Mehmet İpşirli (İstanbul: Edebiyat Fakültesi Basımevi, 1989), 1: 49.

45 Kafadar, Lecture given at Harvard University, March 1994. (Cited by permission of the author); Alderson, 61-62.

46 Uzunçarşılı, *Osmanlı Tarihi*, 4.1: 37.

the sultan in matters of the sharia and yet independent in his judgement, the şeyhülislam's fetva became critical for the success of major political undertakings. In 1588, for instance, the cavalry corps (*sipâhis*), opposing the debasement of the currency, obtained a *fetva* from the şeyhülislam, declaring the devaluation as unjust, and managed to force the sultan to execute his grand vizier and the defterdar for committing such an injustice.⁴⁷

Along with the growing authority of the şeyhülislam, his *fetva* gradually gained an official status. It represented not only his personal view as the head of the ulema establishment but also came to be regarded as the formal ruling of the state's supreme judicial authority. As such, in many cases, *fetvas* of şeyhülislams functioned as a legitimizing judicial decision to sanction the rule of a specific sultan, to dethrone a ruling sultan, or to enthrone a new one. The kind of *fetva* issued by the şeyhülislam that justified or called for the dethronement of a ruler came to be called "deposition *fetva*" (*hal fetvası*). It served to illegitimize a specific ruler while legitimizing the succession of a contender and the oppositionary action at the same time. Whether obtained under pressure or issued on the şeyhülislam's independent reasoning, the deposition *fetva* functioned as an official statement with the force of law, based on the sharia, to legalize the transition of authority from one ruler to another.

With the power to render political authority legitimate or illegitimate, the deposition *fetva* thus came to serve as a constitutional check on government. Leaving aside the immediate causes behind a given dynastic change, the capability of political factions to bring about a legitimate transfer of authority without threatening the legitimacy of the dynasty or the continuity of the state served in Ottoman polity to limit the ruler's authority from below, and paved the way for modern constitutional rulership. It was thus no accident that two Ottoman constitutions of 1876 and 1908 were secured by depositions sanctioned by deposition *fetvas*, and engineered by political factions that had inherited hard-gained experience in managing dynastic successions.

Ruling Institutions in Government

Facilitating dynastic change from below was the participation of ruling institutions in political decision making. Although decision making on major issues

⁴⁷ Inalcık, *The Ottoman Empire*, 92.

was the province of the sultan and the imperial council, the ruling institutions were acting, collectively or through their influential members, as power groups to influence government decisions. Through the institutionalization and centralization process of the fifteenth and sixteenth centuries, the principle institutions of the Ottoman ruling class as well as the palace establishment had developed corporate identities that enabled them to define their own rights and exert influence on politics for their own interest.⁴⁸ Among them, the ulema and the Janissaries were capable of acting on their own accord and exerting political influence based on their institutional strength. During the course of the seventeenth and the eighteenth centuries, these two institutions acquired considerable autonomy and came to define their status as well as their rights through the *kanun* and customs. The ulema and the Janissaries, in this process, emerged as political groups with specific interests within the government, and were able to restrict the ruler's control of government. Despite their ability to act arbitrarily or to solidify the personal rule of a sultan in many cases, the participation of the ulema and the Janissaries in government served as a restrictive mechanism in Ottoman polity.

Constitutionally the most conducive outcome of the integration of the ulema with the state was their participation in government, becoming part of both the decision making process and the executive agency. Kadis, for example, came to carry out many administrative functions in addition to their adjudication in the courts. Two of the regular members of the imperial council were the chief judges of Rumelia and Anatolia, the highest-ranking ulema after the *şeyhülislam*. Their participation in the imperial council meant the representation of the sharia view in the highest court and decision-making body of the Empire. In this way it was ensured that major political and judicial decisions were in line with the sharia as well as with the interests of the ulema.

Enjoying traditional immunities and the prestige of representing the religion, the Ottoman ulema, in the seventeenth and eighteenth centuries, evolved into a more autonomous yet politically more active force within the ruling class.⁴⁹ According to Zilfi, during this period, the number of *ilmiye* affiliates increased dramatically and a limited number of extended families came to occupy the majority of high *ilmiye* posts. Siblings of the ulema were given official priority

48 Each of these ruling institutions were further subdivided into various functionally differentiated components.

49 Madeline C. Zilfi, *The Politics of Piety: The Ottoman Ulema in the Postclassical Age (1600-1800)*, (Minneapolis: Bibliotheca Islamica, 1988), 46.

in career tracks through the imposition of a quota system and were assigned an income even before they assumed office. Privileges accorded to the ulema increased and were finally institutionalized by the state through sultanic decrees, most notably those of Ahmed III. Through extended privileges, the ulema were able to retain their official status and corresponding income even when they were not in office. By the eighteenth century the ulema establishment was mostly recruiting their members internally, thus minimizing the entrance of outsiders.⁵⁰

Despite their employment as officials in various institutions of state, the ideal expectation for the ulema, firmly ensconced in Ottoman political thought, was to guide the society, including the government and the ruler, along the right path, and to prevent wrongdoing.⁵¹ This was the duty of commanding right and forbidding wrong in society, conventionally expressed by the jurists through a tripartite division, charging the ulema to perform the duty by word, the ruler by hand, and the public by heart.⁵² Hezarfen, for example, advised the sultan that he should ask and instruct the şeyhülislam to inform and warn him of injustices taking place in the realm.⁵³ Empowered by this canonized division of labor, the leading ulema, in many cases, stood before the sultan and objected to decisions they deemed contrary to the sharia or public interest.⁵⁴ With the inclusion of two *kadıaskers* in the imperial council and the şeyhülislam's occasional participation in decision-making bodies, the moral duty of commanding right and forbidding wrong gained an institutional basis in Ottoman polity, as a constitutional check within the government.

It was a recurrent theme, however, in many Ottoman ethical and historical writings to criticize the ulema for not performing their duty of restraining the

50 Zilfi, *The Politics of Piety*, 47-73.

51 See, for example, *Hırzül-Mülük*, in *Osmanlı Devlet Teşkilâtına Dair Kaynaklar*, ed. Yaşar Yücel (Ankara: Türk Tarih Kurumu Basımevi, 1988): 192-4.

52 Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000), 307-334.

53 Hezarfen, 201; For Koçi Bey's similar advice, see M. Çığatay Uluçay: "Koçi Bey'in Sultan İbrahim'e Takdim Ettiği Risale ve Arzları," *Zeki Velidi Togan'a Armağan* (İstanbul: Maarif Basımevi, 1950-1955): 177-199.

54 Praised in many Ottoman chronicles and political treatises, as exemplary acts of guidance, was şeyhülislam Ali Cemâli Efendi's forthright objection, on several occasions, to Selim I's cruel and illegitimate decisions, which ultimately succeeded in deterring the sultan from executing those decisions. See Yusuf Küçükdağ: *II Bâyezid, Yavuz ve Kanûnî Devirlerinde Cemâli Ailesi* (İstanbul: Aksarayî Vakfı Yayınları, 1995), 51-73.

sultan from acting unjustly or against religious strictures.⁵⁵ This was largely because of the high expectation that ulema should serve as an independent force in society to guide the political authority. Since one of the primary functions ascribed to the ulema was to prevent government injustice, the ulema came to be regarded as the agents not only of God and His religion, against and over the political authority, but also of the society, of the ruled and of the oppressed as well. Whether they acted in this way or not, the ulema were, in mainstream political works, regarded as the embodiment of public conscience and as a legitimate institution of restraint over the government. Taking advantage of the moral authority they possessed as successors to the prophetic mission to uphold and speak for the religion, the strictly institutionalized Ottoman ulema, despite widespread abuses of power by individual members, willfully or not, carried out a constitutional function by impeding arbitrariness in government through their power of adjudication and *fatwa*-giving, and by restraining the accumulation of excessive political power in the hands of any one official or institution through its acquisition of political functions. As such, the ulema, originally functioning as a religious check over Ottoman polity, thanks to their integration with the state, extended their involvement in the political process well beyond their traditional sphere of authority.

Unlike the ulema, the Janissaries did not have a distinct identity at the inception of their corps other than being servant-soldiers of the sultan, and derived their *raison d'être* totally from the sultan. Originally founded to balance the decentralizing power of provincial governors in the fourteenth century, the corps never became a tame vehicle of the sultan's power as intended. The Janissaries remained mostly loyal to the Ottoman dynasty while posing a threat to specific sultans, and increasingly acted as a restrictive structure against the government.⁵⁶ Though called servants of the sultan, they acted more like mercenaries whose loyalty could be secured only when their demands were satisfied.

Namık Kemal (d. 1888), whose ideas served as an intellectual bridge between classical and modern constitutionalism, was one of the first to note the restrictive functions of the Janissaries in government: "It was the sight of thousands of Janissary bodies rotting in the Golden Horn which have made our people unable to

55 See, for example, Taşköprülüzâde Ahmed b. Mustafa, *Miftah as-Sa'adah wa Misbah as-Siyadah fi Mawdu'at al-Ulum*, eds. Kamil Kamil Bakry and Abdel-Wehhab Abu'l-Nur, 3 vols. (Cairo: Dar el Kotob el-Hadissa, 1968), 3: 239-245; Lütfi Paşa, *Tevârih-i Âl-i Osman*, ed. Âli (İstanbul: Matbaa-i Amire, 1341), 45.

56 Kafadar, *Yeniçeri-Esnaf Relations*, 68-70.

speak their mind since the *Vak'a-i Hayriye*,"⁵⁷ he wrote, in protest of the regime of his time, long after the demise of the Janissaries, "for the Janissaries provided a countervailing force to the oppression of officials."⁵⁸ The countervailing force of the Janissaries to which Namık Kemal referred rested in their ability to act collectively. In one late sixteenth-century confrontation, an experienced grand vizier advised the sultan to recognize their bargaining power: "My *pâdişah!* Once the Janissaries (*kul*) come together they get what they ask," he implored, "give at once before pillage."⁵⁹ Their collective behavior in numerous such uprisings prove that the Janissaries were quite conscious of their corporate identity and cognizant of their institutional customs, or *kanuns* as they often called them. The feeling of corporate identity and solidarity was so prevalent among the Janissaries that while the corps were organized through mess halls, with each mess having distinctive characteristics, they rarely confronted each other and often acted collectively, even against their own commanders who represented the authority of the sultan.

The turbulent events in the early nineteenth century gave the Janissaries their moment to achieve the most they could accomplish through traditional means. In 1807, driven by the fear that the military reforms of Selim III to institute a new military corps would eventually replace them, the Janissaries revolted and deposed the sultan after obtaining a *fetva* from the şeyhülislam. Subsequently, a pact titled *Hüccet-i Şer'iyye* was signed by the new sultan Mustafa IV (d. 1808), the Janissaries and the ulema to the effect that the revolt was legitimate and the rebels would not be prosecuted for their actions.⁶⁰ In many previous depositions, the rebels had similarly obtained guarantees for their lives from the newly enthroned sultans, agreements which always remained oral promises.⁶¹ But this signed document

57 The annihilation of the Janissary corps by Mahmud II in 1826.

58 Mardin, "Freedom in an Ottoman Perspective."

59 Solakzâde Mehmed Hemdemî Çelebî, *Solakzâde Tarîhi*, ed. Vahid Çabuk (Ankara: Kültür Bakanlığı Yayınları, 1989), 479.

60 *Hüccet-i Şer'iyye*, ed. Kemal Beydilli as "Kabakçı İşyanı Akabinde Hazırlanan Hüccet-i Şer'iyye," *Türk Kültürü İncelemeleri Dergisi* 4 (2001): 33-48.

61 During the Patrona rebellion of 1730, for example, Patrona Halil proposed the newly enthroned sultan Mahmud I to end the rebellion if the sultan promised that the participants of the rebellion would not be prosecuted and that the rebels would be allowed to retain some of their military forces to use in case of an attack against them. The proposal was accepted by the sultan and the guarantees were given under the surety of the şeyhülislam and the kadı of İstanbul. See Münir Aktepe, *Patrona İşyanı* (İstanbul: Edebiyat Fakültesi Basımevi, 1958), 163.

was, as Kafadar put it, “the first legal contract in the Ottoman state between the ruler and his *kuls*.”⁶² A tacit social contract, that Mardin believed to have existed between the Janissaries and the ruler, was made explicit by this compact.⁶³

The *Hüccet* was the first of a series of nineteenth century constitutional documents leading to the actual enactment of the first Ottoman constitution of 1876. First, the *Hüccet* recognized that the sultan and the Janissaries were two separate and legitimate political parties in Ottoman polity. Second, it legitimated the deposition of a sultan by the representatives of ruling institutions by stating that the deposition was carried out with the support of the ulema and statesmen, and in accordance with the sharia and the kanun. Finally, the function and responsibility of the ulema and statesmen in government were delineated: for the former this entailed commanding the right and forbidding wrong, and for the latter it meant abiding by law -the sharia and the kanun- in government.

The preamble of the pact underlined the Janissaries’ assertion of their inalienable rights to participate in government and to oppose policies unfavorable to them.⁶⁴ The Janissaries proclaimed this reality even more explicitly when Mustafa IV, their sultan of choice, was soon deposed by an anti-Janissary coalition led by provincial magnates and executed by the succeeding sultan Mahmud II (d. 1839). In protest against the sultan, the Janissaries asked, “is not a ruler (*pâdişah*) a human being?,” and then declared, “anyone can be a ruler so long as our corps (*ocak*) continues.”⁶⁵ This blunt statement, a threat to replace the reigning sultan, the only male left alive in the family, by an outsider, made clear that the institutional continuity of their corps had priority over the reign of a specific sultan. Regarding their corps as institutionally inseparable from the state, the Janissaries thus proclaimed the sultan only as the head of state, as one recognized to rule within limits.

Subjects between State and Society

While the ruling institutions, like the Janissaries, were turning into political power groups within the central administration, in the provinces, *ayans* (notables) were rising as a new type of social category that was gaining political power.

62 Kafadar, *Yeniçeri-Esnaf Relations*, 115.

63 Mardin, “Freedom in an Ottoman Perspective.”

64 *Hüccet-i Şer’iyye*, 42-43.

65 Enver Ziya Karal, *Osmanlı Tarihi*, vols. 5-9 (Ankara: Türk Tarih Kurumu Basımevi, 1995), 5: 96.

Ayans successfully turned themselves into self-designated intermediaries between the state and its subjects by performing vital political and social services so that both the government and the subjects found their intermediacy indispensable to interact with each other. The rise of *ayans* to political power facilitated political mobilization in society and the dissemination of political authority beyond the privileged ruling elite. Through such developments, the structure of government in the provinces came to be increasingly shaped by the changing social configurations among the locals rather than the policies solely dictated from the center. They thus acquired political and military power in provinces outside the control of the central government and became self-appointed rulers of their respective regions. As Salzmann pointed, administrative and economic transformation in Ottoman provinces led to a new configuration which she called vernacular government that “involved relinquishing key duties and offices to local appointees.”⁶⁶ The decline of the centralized system in the provinces made the cooperation and assistance of local dynasts inevitable for the government, a situation that in turn increased the influence of *ayans* over the central government.

In Inalcık’s findings, the gradual rise of *ayans* from the seventeenth century onward was initially welcomed by the government as a balancing power against the increasing independence of the government’s own provincial governors. *Ayanship*, in the most general sense, referred to local notables of various types acting as intermediaries between the government and the local population who acquired considerable economic power and partook in government decisions regarding the administration of their respective regions. In addition to their official duties assigned by the government, such as revenue-collecting, they performed important civic services in cities such as maintaining public buildings. Based on their local influence, many *ayans* acquired official positions by turning themselves into state officials, opening a venue for subjects outside the ruling elite to advance in government careers while themselves ceasing to be *ayans* proper. These notables gradually assumed a variety of government functions once exclusively performed by state officials sent from the political center. Further, the council of *ayans* was institutionalized in urban centers and, beginning with the late seventeenth century, a chief *ayan* to represent the local community was elected by that council. Reflecting the Ottoman State’s policy of accommodation, in provincial centers, the council of *ayans* merged with the

66 Ariel Salzmann, *Tocqueville in the Ottoman Empire: Rival Paths to Modern State* (Leiden and Boston: Brill, 2004), 153.

governor's divan as a decision-making body for local matters. Various reforms to keep the rise of these magnates consistently failed and, by the second half of the eighteenth century, powerful local dynasts among the *ayans* emerged across the Empire, expanding their sway over large areas. In Anatolia, for example, by instituting hereditary succession for themselves, they abandoned the traditional practice of elections in their respective regions, and neither the lesser *ayans* nor government officials could challenge their supremacy.⁶⁷

It was this increasing involvement of *ayans* in central politics that produced one of the milestones in Ottoman constitutionalism: In 1808, Alemdar Mustafa Paşa (d. 1808), himself an *ayan*, captured the government in reaction to the dethronement of Selim III by the Janissaries, deposed the ruling sultan Mustafa IV and led the way to enthrone Mahmud II. Appointed to the grand vizierate in return for his service, he soon invited the grand *ayans* to the capital for a consultative assembly (*meşveret-i âimme*), through which he intended to buttress the coup with the support of provincial magnates and to reassert the state's authority in the provinces by placing the independent *ayans* under state control while recognizing their status and privileges. The convention was concluded with the signing of *Sened-i İttifak*, a contract composed of seven articles, which addressed such issues as rulership, the vizierate, the law, the military, the nobility and finance.⁶⁸

Despite the low number of *ayans* involved, the *Sened* was rather a broadly-defined contract among the sultan, the *ayans*, the Janissaries, and the ulema. It was, in Berkes' words, "an attempt to establish in clear terms the respective responsibilities and mutual demands of the estates of the realm."⁶⁹ Through concessions from each party, the contract established a delicate balance among competing political groups and granted them the right to check one another. Consequently, the contract recognized the integration of the *ayans* into the government, reaffirmed the legitimacy of the old state structure, and reiterated the authority of law to regulate government functions. The contract recognized the status and privileges

67 Inalcık, Halil: "Centralization and Decentralization in Ottoman Administration," in *Studies in Eighteenth Century Islamic Society*, ed. Thomas Naff and Roger Owen (Carbondale: Southern Illinois University Press, 1977): 27-53.

68 For a complete text of the pact see Ali Akyıldız, "Sened-i İttifak'ın İlk Tam Metni," *İslâm Araştırmaları Dergisi*, 2 (1998): 209-222.

69 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998), 91.

of the *ayans* as well as their right to pass these onto their descendants. The grand *ayans*' suzerainty over lesser *ayans* in their respective regions was recognized, and in state finances, they were given authority to determine tax rates equitably. They were granted the right to use their military power against the Janissaries, in case of the latter's breach of the contract, without permission from the government. Likewise, should the grand vizier or his government breach the contract or act against the law (*kanun*), the *ayans* had the right to resist. Thus this contract testified that, using Ullmann's terminology, the descending authority of the sultan and his government was counterbalanced by the ascending authority of the *ayans* and their provincial rule.⁷⁰ Like the *Hüccet* that preceded it, the *Sened* turned the political demands from below into constitutional checks on the government. If the *Hüccet* was the first compact between the ruler and the ruling institutions, the *Sened* was the first contract between the ruler and provincial magnates as representatives of the subject population.

Representation among the Ruled

Unlike the competition between the central government and the grand *ayans*, there was a cooperative relationship between the government and lesser *ayans* based on the representative mechanisms in Ottoman polity. According to Inalcik, whether elected by the locals or selected by the government, in the view of Ottoman state tradition, *ayans* were the natural representatives of local communities. In towns, increasingly from the seventeenth century forward, both the members of the council of *ayans* and the chief *ayan* were chosen through the consensus of leading *ayans* gathered in an electoral assembly. It was assumed that the consensus view of this electoral assembly represented the choice of the urban population rather than the view of the leading *ayans* alone. In the late eighteenth century, government orders concerning elections stressed the rule that *ayans* should be elected, without outside interference, as the representatives of the local population. The elected chief *ayan* received a document signed by the electorate and his election was then confirmed by the government. Despite the dissemination of usurper *ayans* (*müteğallibe*), who attained leadership by sheer force, the election system in towns was both the prevailing method and the preferred practice by government. In the government's view, the representative status of *ayans* and their

⁷⁰ Walter Ullmann, *A History of Political Thought: The Middle Ages* (Baltimore: Penguin Books, 1965), 12-13.

good relations with the local population were necessary means for carrying out a variety of government functions efficiently. One reason that the government briefly abolished ayanship in 1786 was the fierce competition among the *ayans* for supremacy and the concomitant spread of abuses to take over the post of chief *ayan* without elections. Subsequently, all the functions of this institution were passed to the *şehir kethüdası* (city head) as the elected representative of the urban population. By this reform measure, Inalcık points out, “the government reaffirmed the concept of obtaining the people’s consent in the conduct of relations between the people and the government.”⁷¹

The institution of a city *kethüda*, similar to ayanship, rested on the customary means of representation in society. Throughout Ottoman history, *kethüda* was the commonly used term for a deputy who represented a person, a community, or an institution in their dealings with the state or other parties. The Ottoman government, for administrative efficiency, conventionally recognized and even encouraged the practice of kethüdaship, either in the form of appointment by the government or designation by those to be represented. The designation enabled the subjects, of their own initiatives, to choose and authorize their representatives to carry out a variety of tasks for their sake including negotiating for their interests, managing their internal affairs or performing certain services. Besides its practice among the ruling classes, neighborhoods, villages, guilds, tribes, and non-Muslim communities could employ a *kethüda* to represent them in dealings with the government.⁷²

The institutionalized practice of kethüdaship in urban administration and guild organization functioned as a civilian form of leadership among the urban population, relatively independent of government interference. A city *kethüda* was elected among urban notables, especially among the wealthy, to carry out certain public functions, such as municipal services, in the name of the local populace. The *kethüda* played a significant role in determining official prices, regularly appeared in the kadi’s court to act as a witness for the city in matters of government such as taxation and appointments, and also acted as the public trustee for

71 Inalcık, “Centralization and Decentralization.”

72 In Ottoman villages, for example, the *sipâhî* (fief-holder cavalryman) represented the sultan’s authority and government interests while the *kethüda*, or any other designated deputy, represented the village community and its interests. See, Halil Inalcık, *An Economic and Social History of the Ottoman Empire*, 2 vols., eds. Halil Inalcık and Donald Quatert (Cambridge: Cambridge University Press, 1997), 1: 175.

the goods taken over by the court. He was influential over civilian groups in the city, particularly guild members, merchants and notables.⁷³

In guilds, *kethüdas* were either appointed by the government or elected by guild members. The election of a *kethüda* was conducted through consultation among the dignitaries of a guild if a candidate were to be chosen by consensus. There was a contractual relationship between the guild members and the *kethüda* to perform certain functions. In addition to mediating the relations between guilds and the government, they had important administrative duties and authority within guilds. Whether appointed or elected, *kethüdas* who did not meet expectations could be ousted by the guild members.⁷⁴ Such representative practices to mediate the relationship between the state and certain members of society thus functioned to check government control of civil organizations by opening a channel for investiture of authority from below.

From Consultation to the Search for Public Opinion

An integral part of all representative and restrictive mechanisms in Ottoman polity was the practice of consultation (*meşveret*) in decision making and the institution of consultative bodies at various levels of government as well as in civil organizations. Besides acting as courts of appeal, for example, the imperial council (*divân-ı hümayûn*) at the capital and similar councils in the provinces convened regularly for decision-making deliberations. In addition, other ad hoc councils (*ayak divânı*) occasionally gathered at the sultan's behest or that of other high officials in the face of exigencies. Such divans turned the act of *meşveret*, which had otherwise been an expedient-driven practice, into a regular institution in the form of councils.

Whether considered as a religious obligation or a practical necessity by its proponents, the Ottoman political treatises, almost in consensus, proclaimed *meşveret* as indispensable for the act of rulership. To prove its value, many political writers, well-versed in history, eagerly narrated the legend that the very establishment of the Ottoman state took place as an outcome of a *meşveret* meeting.⁷⁵ Considering consultation (*müşâvere*) as indispensable for sound government, at the turn of the

73 Inalcık, "Centralization and Decentralization."

74 Eunjeong Yi, *The Istanbul Guilds in the Seventeenth Century: Leverage in Changing Times*, unpubl. Ph.D. thesis (Harvard University, 2000), 157, 169.

75 See, for example, Lütfi Paşa, *Tevârih*, 21.

seventeenth century, Hasan Kâfi argued that its abandonment in government was one of the three principle causes of disorder. “What is suitable and necessary for the ruler and viziers,” he then stated, “that none of them should be independent (*müstakil*) in their decisions (*rey*).”⁷⁶ Sharing the similar concern, histories and advice books, replete with stories illustrating the destructive effects of ignoring *meşveret*, cautioned that any major political decision taken without consultation was bound to fail.⁷⁷ Bowing to this relentless demand for consultation and condemnation of unilateral decision-making, the general tendency among the Ottoman sultans was to conduct *meşveret*, even if only as a formality.

Although *meşveret*, even in its institutionalized form, did not constitute a binding, restrictive check upon the decision of the ruler in the classical order, it nevertheless opened a direct venue to influence the decision-making process. As one of the few channels of participation in decision-making, *meşveret* found widespread appeal among all social groups. The ulema, bureaucrats, Sufis and other men of distinction emphasized the benefits of the sultan’s consultation with them, in order to have a say in government. In most advice books, all laymen, rich and poor as well as Muslim and non-Muslim, were deemed equally eligible for *meşveret* and the most emphasized quality of a consultant in these works was competence in a given matter.⁷⁸

From a legal perspective, the purpose of *meşveret* was to ensure that the final decision was in accordance with the law. For this reason, the ruler was persistently advised to consult with the ulema and statesmen before arriving at a decision. For practical purposes, *meşveret* was a way to reach the most appropriate decision. Authors among the statesmen thus placed more weight on the consultant’s competence on a given matter than moral rectitude or religious piety, and encouraged consultants to tell what they actually thought rather than to be conciliatory. Denouncing the general tendency among statesmen to avoid presenting views contrary to those of their superiors, “*meşveret*,” bluntly declared Ahmed Ali Paşa (d. 1785), “shall not to be conducted solely to commend the ruler’s view.”⁷⁹

76 Hasan Kâfi, 249-250, 263.

77 Many Ottoman chronicles explain the defeat of Bayezid I in the hands of Tamerlane as a result of his neglecting to conduct *meşveret* beforehand but, instead, relying solely on his own view. See, for example, Lütfi Paşa, *Tevârih*, 54.

78 See, for example, Celalzâde, 246a-250a.

79 Elhac Ahmed Ali Paşa: [n.t.], ed. and trans. into French Bistra A. Cvetkova as *Traite de Politique Ottoman* (Sofia: Bibliothèque Nationale, Cyrille et Méthode, 1972), 39b.

During the sixteenth century, the procedural form of *meşveret* in government, firmly ensconced in both theory and practice, remained strictly consultative and was ordinarily limited to a few officials, usually through their participation in councils. From the seventeenth century forward, the fragmentation of governmental political power made the broad-based *meşveret* indispensable for decision making. In the face of the ulema, the Janissaries, palace dignitaries, guilds, and provincial notables became more autonomous than before; and since candidates for the throne were kept alive, grand viziers and sultans resorted to the support of powerful political factions to buttress their decisions. The şeyhülislam and the commander of the Janissaries, for example, who had only occasionally attended the imperial council for consultation, became regular members of the consultative assembly (*meclis-i meşveret*), along with the increasing participation of low-ranking state officials. Thus the assembly-based *meşveret* gradually superseded or replaced the council-based form while becoming more frequent, inclusive, and decisive than the latter.⁸⁰

By the time of the reign of Selim III, at the end of the eighteenth century, the occasional broad-based *meşveret* in the form of assemblies had evolved into a regular decision-making body.⁸¹ During this period, the sultan and statesmen were reluctant to decide even petty state matters unilaterally and the purpose of *meşveret* became the way to reach a consensus (*ittifâk-ı ârâ*) before making a decision.⁸² One of the topics increasingly deliberated in these assemblies was the public opinion on issues under discussion. In many of Selim III's decrees and instructions for *meşveret*, for example, he added a clause asking "what would people say about this?" The sultan expected the consultative assemblies to reach a decision that was congruous with, or reflective of, the public view. In one such decree, issued during deliberations on declaring a war, the sultan stressed his expectation unequivocally: "On this matter [war], the ruler and the [grand] vizier can not have opinions [alone]," the sultan instructed, "this enormous matter is mine, yours [grand vizier's], the şeyhülislam's, the viziers', the statesmen's and of all."⁸³ The sultan's many other decrees also elucidated his conviction that the

80 Carter Findley, "Madjlis al-shūrâ," *Encyclopedia of Islam*, 2nd ed., V, (Leiden 1986): 1082-86.

81 Stanford Shaw, *Between Old and New: The Ottoman Empire Under Selim III 1789-1807* (Cambridge: Harvard University Press, 1971), 72-73.

82 See the text of the royal decree in Karal, *Selim III'ün Hatt-ı Hümayunları*, 2: 113, 149; Ahmed Ali Paşa, 39a.

83 Karal, *Selim III'ün Hatt-ı Hümayunları*, 2: 149.

making of major political decisions was not his personal province or the reserve of government dignitaries alone, but a collective effort of at least the ruling elite, for the benefit of all, including the ruled. His correspondence with government officials further suggests that, for the sultan, public opinion mattered not only to garner political support but for its intrinsic value as well.

The Age of Contained Sultans

We expect that the ruler, out of his whim and desire, should not dismiss or punish anybody from among the servants and soldiers of the court except for a crime or a wrongdoing. But if the crime and offense become apparent then we bow our heads to [welcome] any punishment that is in accordance with the sharia and the kanun.⁸⁴

As recounted by Bidlisi, this was the joint reply of the Janissary dignitaries to Selim I's enthronement speech in 1512 whereby the sultan had proclaimed the rules of allegiance for the servants. The Janissaries informed the tenderfoot sultan that their loyalty was subject to government by law, not to arbitrary decisions. At the time, however, the Janissaries held an exceptional power, which they had lacked for the previous half century: the capacity to replace the ruling sultan with the prince of their choice. It did not take long for Selim I to realize the seriousness of this restraint on his power when the opposition of a dissenting group of Janissaries, upon the sultan's scolding them for creating turbulence, put this check into action: "We cannot bear such scolding," they clamored, "because there are currently eleven inheritors to the dynasty who can sit on the throne and not spare a minute on matters of government and protection."⁸⁵ The danger was immediate and the sultan, who had inherited a half-century old custom of fratricide, ordered the beheading of all other princes instantly. For another century, the relentless practice of fratricide deprived the opposition of the opportunity to restrain the ruling sultan by aligning themselves with other princes. Some three hundred years later, in 1808, Selim I's distant progeny Selim III, who by then had inherited a two-centuries-old custom of a loosely observed primogeniture, practiced since the abandonment of fratricide, neither had the power nor the will to repeat what

84 İdris-i Bidlisi, *Selim Şah-nâme*, ed. Hicabi Kırlangıç (Ankara: Kültür Bakanlığı Yayınları, 2001), 99-100.

85 İdris-i Bidlisi, *Selim Şah-nâme*, 112.

Selim I did without hesitation. The Janissaries, who managed to replace Selim III with Mustafa IV, not only exercised the kind of power they had always sought, but declared it as their legitimate right in a carefully worded compact:

The sincere supporters of the sublime state since ancient times, the commanders and soldiers of the Janissary corps, with the support of and in alliance with all the noble ulema and other loyal officials among the statesmen, with the sole and pure intention of reforming the world, rose up. In accordance with the sharia and the kanun, they cut the rope of allegiance (*teba'iyyet*) from the former ruler and stretched their hands for oath of allegiance (*bey'at*) to Mustafa Han...⁸⁶

Illustrated in these episodes is the difference between a sixteenth-century ruler and his counterpart on the eve of political modernization. From the late sixteenth century on, except for the reigns of a few sultans who resisted the tide, the political power that the Ottoman ruler wielded gradually diminished. The abandonment of fratricide with the reign of Ahmed I weakened the ruling sultan's position as the sole source of legitimate political authority and enabled the ruling classes to restrict the power of individual sultans by tying their allegiance primarily to the dynasty.⁸⁷ During the next two centuries, the ruling institutions, rising as secondary structures in the state organization, grew in power, acquired privileges, and came to control career lines internally.

This countervailing function of the ruling institutions reveals a distinctive characteristic of Ottoman constitutional history: The principle machine restraining the ruler's authority, in both time and effect, was not the newly arising social classes but the very traditional ruling institutions of the Empire. These ruling institutions, founded to suit the personal rule of the Ottoman sultans, were the first to set the precedent of functioning as a check on the ruler's will. As these institutions acquired more political power and became more connected with the society at large, they increasingly conveyed the political demands of the ruled.⁸⁸ It was this precedence of the ruling institutions to function as intermediary structures between state and society that facilitated the participation of subjects in the

86 *Hüccet-i Şer'iyye*, 42-43.

87 For Janissary allegiance to the dynasty see Kafadar, *Yeniçeri-Esnaf Relations*, 70.

88 For an analysis of the relationship between the Janissaries and the shopkeepers in Istanbul see Kafadar, *Yeniçeri-Esnaf Relations*; for a brief account of the Janissaries and the ulema who established themselves as *ayans* in provinces see Inalcık, "Centralization and Decentralization."

political process. The sultans were then obliged to rule in compliance with demands from below and in alliance with powerful political factions formed among the leading representatives of the ruling institutions. What seemed according to the dynastic view of Ottoman history to be an age of weak sultans following an age of strong sultans becomes, from a constitutional perspective, nothing less than an age of “contained sultans.”

Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Modernity

Abstract ■ This study treats the advent of constitutionalist themes in the Ottoman Empire from the sixteenth through the eighteenth centuries. Modern scholarship tend to attribute the origins of Ottoman constitutionalism to nineteenth century westernization through which European models and ideas were domesticated for structural changes in government. In traditional Ottoman historiography, including the very Ottoman observers themselves, the post-sixteenth century era was often criticized as one of increased arbitrariness in government. In disagreement with these two positions, this study argues that the gradual transformation of the classical Ottoman system of the sixteenth century brought about new social formations, administrative structures, legal arrangements, and political principles of constitutional import. As a result, throughout the early modern period, the sultan’s political power gradually declined and countered by the power of newly arising groups that became part of the decision making process.

Keywords: Ayan, Constitutionalism, Fetva, Grand Vizier, Hezarfen, Hücet-i Şer’iyye, Janissary, Kanun, Max Weber, Meşveret, Ottoman, Selim I, Selim III, Sened-i İttifak, Sharia, Sultan, Ulema

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