

CONCLUSION OF JUDICIAL RELATIONS BETWEEN OTTOMAN EMPIRE AND UNITED STATES OF AMERICA WITH CONTEXT AUTOCRATIC MODERNITY AND CONSTITUTIONAL MONARCHY

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I prepared this thesis named **“Judicial Relations Between Ottoman Empire and United States of America with context Autocratic Modernity and Constitutional Monarchy”** that has four chapters, appendix and documents, conclusion and bibliografia.

I)At first chapter, I tried to research **“The Period of Autocratic Modernity Between the Years of 1808-1876”**. I researched at the Introduction of This Chapter, **Concept of Modernity, Ottoman Modernity and Turkish Modernity of Republic Period and Varieties of Modernity Concepts and Ottoman Modernity**. The title of the topic of First Chapter is, **“Exchanges of State Administration at the XVIIth and XVIIIth century.”** Under this title, was tried The Ottoman transformation period. It was evaluated at this deterioration, the role of Sultans of the Ottoman, scholar and other classes. It was worked at reformist books and articles of the Ottoman Period. It was studied reformist Sultans Selim III and Mahmut II’s reforms and reflection of these Sultans’. Also was studied about **“The Role of Reformist Buroucracy about Modernity”** and **“The Ottoman External Relations at the Context of Modernity”**. In addition to was evaluated, at the context of modernity, Sened-i Ittifak, The Edict of Reorganisation (Tanzimat Fermanı) and The Edict of Reform (Islahat Fermanı) that these were very important.

The Ottoman State was a **land-State** that was enwidened as a military-theocratical one. This wasn’t cut its relation from West at all; it was enwidened to the West and reached more perfect time during the Kanuni (Lawmaker) Sultan Suleiman The Magnificent’s period. Deterrioration of this State was begun also Kanuni’s last times; freedom of speech restricted, fanaticism was been much more, education of foreign language restricted and The Ottoman State closed its inner; was given with a edict of Sheykhulislam (fetwa). Whereas the West was chanced, with new explores and inventions at the end of practicing of knowledge with technology and the Mediterranean Area was losed its old importance.

It is known that transformation or reform concepts at the Ottoman before 1750, as reanimation of Turkish-Islamic tradition; where as after 1750, generally, was taken West as a model. Classical Age of the Ottoman was a synthesis of Turkish Traditions and Islamic civilisation and a little Byzantian impressions. Topkapı Palace and Divan-ı Hümayun (Council of State) was the central of Ottoman State Organisations was divided four chapters: The Administration, Law, Financial Acts, and the Bureoucracy; that was known as four principal (Erkan-ı Erbaa). From the view of sociology human being was divided four chapters: Human been belong sword (seyfiye), scholar

(ulema), bureaucracy (kalemiye) and other people (tebaa). From the view of another, administrators was divided as executives (ehl-i örf, hükümetlü) and scholar or ehl-i şer' (scholar, müftü and judge). It is known administrators the term of "askeri" and the class of agricultural, commercial and art men or women as "reaya".

While this system was degenerated, after 1750, reforms came to the agenda. Indeed the transformation concept was not reality only after 1750; but, before 1750 was reform acts. Before Fatih (conquerer) Sultan Mehmet, gave the land of State to the Statesmen and this land was given changed as private land or pious foundation. Fatih Mehmet was changed this system to the old manner. But during the period of Bayezit II, Sheykhs (presidents of the sects) and scholars changed this system to the bad manner.¹ Sultan Bayezit II permitted Jewish, to establish printing house with the conditionals of the Jewish' and Wests' books will published.² At the year of 1537, Sheykhul Islam Ebussuud Efendi has established the scholar system again.

The history was flowing at speedy trend at the century of XVIIIth and XIXth; especially XIXth century was a century of history speed up. Certainly the period of modernisation was not restricted with Reorganisation (Tanzimat) Area. At this area was taken from West militarial, administrative and political organisations; reformist Sultan Mahmut II changed bureaucracy entirely.

XIXth century was an area of speed changing and speed developing. The last century of the Ottoman State was divided three area. The **first** area was between **1798-1815** that non-Muslims Ottoman citizens nationalist movements began. The **second** period was between **1815-1886** that the Ottoman Empire was thrown from Europe, gradually. The **last** area was the years of **1897-1914**. With the first world war, the Ottoman Empire was dispersed but this process began for three century. At the century of XIXth, the Ottoman State, was the one of the World biggest State, as land and population; but, institutions, economy, politics and technology of the Ottoman Empire was not bearing its weight. It was the only way the balance policy that with The State was remaining at the World area; but this is not a solution. Derebeyleri (Senyors) and the independent governors were not obey to the Ottoman Central State.³

Prominents of Turkish at the XIXth century, took supra building institutions from the West without knowledge; prominents were not give to population more things; after 1850 the view of intellectuals and administrators were alien to the his population. External powers added to this situation and encouraged the non-Muslim Ottoman population to the Ottoman Empire (with the causes of religion, raceness, economical etc.), so, colonial order was easier. Reform Acts, was taken without doing sub-bulding, was told "I have done and it became", and was taken supra-building institutions.

The Ottoman Empire passed "The Era of Prepare" for a new vetire. After that came Reorganisation Term (Tanzimat) as good news, the area of settlement followed

¹ Ipsirli, "Islahat" (Reform), DİA, C. XIX, s. 170.

² Lewis, *Modern Türkiye'nin Doğuşu (The Birth of Modern Turkey)*, s. 42.

³ See, Çadırcı, *Tanzimat Döneminde Anadolu Kentlerinin Sosyal ve Ekonomik Yapısı (The Structure of Social and Economical of Anatolia Cities at the Period of Reorganisation)*, s. 1-5.

this term.⁴ At the term of harvey (1871-1900) The Ottoman Empire will be die. The hope of the Empire was bureoucrates of Reorganisation (Tanzimat), but not achieved territory's industrialisation. These economical couses collapse the Empire. While opposition of intellectuels growed, begannd at Militarial Medicine of Istanbul the Committe of Union and Progressive (İttihat Terakki Cemiyeti); after this movement have born Constitutionalist Period of Second.

II)At the Second Chapter, was worked on monarchical modernity period; researched at this chapter; The Movement of Constitutionlists at the West and The Ottoman Constitutionlists; internal and external causes of born at named Constitution of 1876 (Movement of Opposition at Reorganisation Period, Minorities at Reorganisation Period and Modernity); preparing of Constitution of 1876 and Opening Speech of Ottoman Parliament; the researching of Constitution of 1876; amendement at the year of 1909 and the acceptation of Parliamentarism. This Chapter ended with a conclusion following 32 years.

III) The Third Chapter allocated the relation between modernity and colonialism and the United States of America as a model; researched in this chapter judicial relations between Turkish-United States of America. In this chapter debated orientalism, Capitulations, Baltalimanı Treaty (1838) and the questions of contemporary about the Ottoman Empire. It was researched in this chapter, about administrial history of United States of America, its place in the World, its history as a State and enwided of its borders. In this thesis was not mentioned the Ottoman-Europe relations; but mentioned relations of the Ottoman-United States of America. It was studied as the Ottoman- United States of America premiere relations, on Morocco, Tunis, Algeria and Tripolis (North Africa, Garb Ocakları); after that studied treaties between Morocco, Tunis, Algeria, Tripoli and United States of America. I have published, premiere, Treaties between Algeria and Tunis with United States of America in original Ottoman script (handwriting) and Turkish reading of this scripts and English translations. Also I published treaties of Morocco- United States of America and Tripoli- United States of America, with Arabic original script and its English translation.

Morocco, Tunis, Algeria and Tripolis were provinces of the Ottoman Empire. The Treaty of the **Morocco-** United States of America were done, 28 June-15 July 1786 (25 Şaban 1200; Şaban: The eighth month of the Arabic lunar year). Its Original was in Arabic. Second Treaty was signed after nine years between the **Algiers-** United States of America on 5th of September, 1795 (21 Sefer 1210; Safar: The second month of the lunar year). United States of America signed all treaties with English as original language but the treaties of the Ottoman-United States of America were Turkish as original language⁵. Sailors of Algeria at **1785**, surrendered 450 United States of American captives with guns; and took them at 1795. United States of America did a treaty with **Algiers** for prevent in front of free trade at Mediterreanean

⁴ See, Kocabaşoğlu, **Kendi Belgeleriyle Anadolu'daki Amerika (America at Anatolia With Its Documents)**, ss. 71-118.

⁵ See for Algiers Treaty, p. 312.

Sea. Algiers Treaty have 23 articles that were signed by **Algerian Commendor (Beylerbeyi), Agha of the Janisseries and chief of the Divan, and all the elders of the Odjiak, nobles of Janissery Odjack and the presentative of President George Washington and reaffirmed by USA Senate**. Algeria took from United States of America as ransom for captives: **585** thousand dollar, as tax for annually 21600 dollar (12000 gold of Algerie). A Similar Treaty signed between Tripoli and United States of America (Tripoli was depended to the Ottoman Empire with a week rope), at 4th November of 1796- 3 January of 1797 (3 Cemaziyel-evvel 1211- 4 Recep, 1211; Cemaziyelevvel: The fifth month of the Arabic lunar year; Recep: The seventh month of the Arabic lunar year). This Treaty consists from 14 article and its original in Arabic. **Bey of Tripoli and Dey of Algiers signed this Treaty, Dey of Algiers** signed this Treaty as protector and guarantor. When researched this Treaty, it is appear that signatures at the under the Treaty were some words belonged to the concept of the Ottoman Empire; for example “pashaw”, “vali”, “mutasarrıf” and “Karamanlı”, etc.

The Treaty of Peace and Friendship, between the **Tunis-United States of America** signed at **28 August 1797-26 March 1799** that original language was Turkish and at its introduction was mentioned about Selim III Han (1789-1807) with praise. This Treaty was signed Bey of Tunis, Prince Hamuda Pasha who commands the Odjiak of Tunis⁶, İbrahim Dey, Suleiman, Agha of the Janisseries and Chief of the Divan, and all the elders of the Odjiak, and President of Congress of the United States of America⁷.

Tripoli-United States of America conflicts at 1801-1805 was conculaded with war, that named the War of Berberies, United States of America beated Tripoli, Navy of the Ottoman was weak and the aid was not come, and United States of America abolish his taxes that were taken for Tripoli. Algeria- United States of America Wars began at 1814 and ended 1816, and Tunis-USA wars ended with same conclusion.

United States of America decided to relate with the Ottoman Empire at 1774 directly, but did a Treaty with the Supreme Port at 1830. In this period relations of political, economical and judicial were done. The first direct Treaty with the Ottoman, was “**Seyr-i Sefain ve Ticaret Anlaşması** (The Treaty of Commerce and Traffic of Ships)” and its original language was Turkish, signed at **7 May 1830**. The Second Treaty was signed at **1862**, its title was **Seyr-i Sefain (The Traffic of Ships) and Commercial Treaty**. The Third Treaty was **The Treaty of Returning of Guilties (Suçluların İadesi Anlaşması)** and the last Treaty was **1874** dated, its name was **The Treaty of Nationality (Tabiiyet Anlaşması)**. These Treaties’ original language were Turkish. Then was researched opening of diplomatical represantives, commercial relations, imports from United States of America about weapon, that the Ottoman Empire was alone in the Europe and weak at technologie. The Ottoman Empire foughted with Russia ten times at XIXth century that the Ottoman was need to arm.

Doubtless it is clear that modernity is very useful but its abusos (colonialism) is possible. Also the Ottoman’s defaults possible at modernisation. Modernisation is not belong only to the West, but this is belong all the World. The Ottoman was under

⁶ Commander or mir-i miran; see, **The Treaty**, p. 426.

⁷ See, **The Treaty**, Document 21, p. 402.

the West Countries's cultural dominion (England, France, Germany and United States of America); but United States of America was very rich about wealth from others. Süper powers of XIXth century belonged with Orthodox Armenians that they were living at east and south-east of Anatolia that this area was very near to the Middle-East and petroleum, this area was the World's virtual area.⁸

England was very affective country in the reforms of the Ottoman. The Ottoman Muslims people (especially Araps), does not want reform but intellectuels of the Ottoman State want reform in the Country. External pressure groups, want reform to recover of non-Muslim of the Ottoman people. The Ottoman Empire did not research form of produce and relation of produce of the West; it was not a healthy evaluating in the Ottoman. Consume as the Western and living as Western (not to be as Western) begins in the Ottoman Territory, and this triggered at economy of consume. Then began dualism and colonialism. So Düyun-u Umumiye happened and implemended this formula "debate and prevent free behavior". Costums of the Ottoman Empire were under the power of Europe to 1914. In the Ottoman Empire has not realised produce factors that soil, business, capital and attempt especially capital.⁹ It was very difficult to come foreign capital in to the Ottoman Empire without security and steady, also tax deal. It was not thought that money come to the Ottoman Empire.

In this thesis was tried to study the Ottoman modernity process and in that colonialism as the Ottoman-United States of America relations. The Turkish-United States of America relations indeed, was not divided Ottoman-United States of America relations or Turkey-United States of America relations, but before Second World War Turkey-United States of America relations and after Second World War Turkey-United States of America relations. Because before second World War Turkey-United States of America relations generally went commercial point, but after war relations more political than ago. Before 1944 as the Turkish- United States of America relations were evaluated as "returning of criminals" and "nationality" in the scope of commercial. United States of America as other international relations, Treaty of 1830 did with the Ottoman, were not given political character because of Monro Doctrine. United States of America took the princip of the most favored nation from the Ottoman Empire and United States of America benefitted from commercial provilinges.¹⁰

IV) Fourth Chapter allocated United States of America Protestan Missionaries that they were basic of Armenian Problem in the Ottoman, that they were a factor destroying of the Ottoman Empire. In this chapter studied about short history of missionaries, impact of missionaries on the administration of the Ottoman. Also Sects of Christianity were researched to be a basic for topic. The American Board of Christianity for missionaries were studied as building, also studied about measures that were taken by the Ottoman Administration. It was researched that

⁸ More, **America Looks at Turkey 1876-1909**, p. IV.

⁹ Gordon, **American Relations With Turkey 1830-1930**, p. 252.

¹⁰ Armaoğlu, **Belgelerle Türk-Amerikan Münasebetleri (The Relations of Turkish-American With Documents)**, s. IX.

United States of America missionaries functions in the Ottoman Empire. Also the Ottoman education system were criticised that the reality under the alien schools's achieves in the Ottoman territory. The account of Board's Schools were 400 on the head of XXth century and 17500 students. Whereas at 1913, the Ottoman Empire has 69 school and 6800 students.¹¹ In this work were researched about Robert College and others that were opened by United States of America BOARD and compared number of schools and students with the Ottoman Empire's schools and students; conclusely, the Ottoman's schools were 1/6 according to missionaries' school; and students are 1/3 according to missionaries' students, in generally with this cantity quality with missioner schools. The Ottoman educational system was an bankrupt system. Prints of missionaries were four hundred time from the Ottoman Empire's prints.¹²

United States of America were organised its institutions very well, functioned all places of the Ottoman and was more important power with benefiting merchants and missioners. The missioners of United States of America, have teached themselves and learned the Ottoman land inspite of the Ottoman intellectuels in nineteenth century; missioners wrote papers (articles) more than eighty and fifty books between 1820-1880. Missioners behavioered some times prejudice and emperative.

It have studied context of The Turkish-United States of America relations at the aspect of Armenian problem and were studied only between American missioners and Armenian relations. American missioners encouraged and enmovement Armenian problem, also did the same role for forming of **Bulgarian State**. This fourth Chapter ended with interrupt of diplomatical relations Turkey from United States of America (2 April, 1917) and a conclusion.

V) It has been ended a division to this thesis, appendix and documents.

I think I published first time, appendix of number 2, 3, 4 and 5. Also I published first time appendix of number 6, 7, 8, and 9 from Muahedat Mecmuası (The Journal of Treaties of Ottoman). And it was published with Turkish alphabet, premiere, original text of Treaty of United States of America -Algeria and United States of America -Tunis. It was been written in this treaties, from United States of America as "**Merikan Taifesi**" (The Group of Merikan). It was explained with foot-nots as reading Treaties from time to time. It was written Istanbul as "Islambol" in the Treaty of Algeria- United States of America. Hassan Pashaw **Dey (or Beylerbeyi) of Algiers, all the members of the Divan, Agha of Janizeries Odgiak, the olds of Janizeries Odgiak**¹³ signatored on these Treaties of North Africa Provinces. There was Tughra¹⁴ and his Seal of (Vızır¹⁵) Hassan Pasha on the Treaty. In these Treaty instead of "Consol" used the word of "Balyoz"; in English texts instead of

¹¹ Kocabaşoğlu, **Kendi Belgeleriyle Anadolu'daki Amerika**, ss. 219-221; the names of writings about Ottoman Empire in nineteenth century, see, ibid, pp. 231-235 ve 222.

¹² M. Akif Ersoy, compared the Ottoman Scholarship with the missioners and said: "Missioners studied day and light, whether ?/Whether, scholarship were expected the sound of God?"

¹³ "**Odgiak**", means garrison or garrison renders the Turkish word "odgiak" which means originally a hearth and, as a military term, a regiment of the Janizaries; see, The Treaty, p. 305.

¹⁴ "**Tughra**" is yhe name siga, a kind of calligraphic monogram in which a ruler's names are inscribed. The tughra takes the place of the signature; see, Treaty, p. 305.

¹⁵ See **The Treaty of Algiers**, 1795, p. 303.

“Muselman” word used the word of “Turk”. In this Treaties’ about judiciary powers, if two sides of case were American citizens Consolness was autoritised, in other states court of Algeria was autoritised by the Treaty. It was very free for USA represantiteves by Algeria Administrators, for example accepted for coming to the Algeria from United States of America to bring papas and represantitives and his buildings and his freedom of travel and represantitives free of intervention.¹⁶ This Treaty have ended with United States of America must pay to the Algeria cash and tax for annually.

It was presented ancien Turkish text, its reading in Turkish and English translation of the Treaty of **1245/1830** that acted between the Ottoman- United States of America; also ancien Turkish text, its reading in Turkish and the Treaty of **1862** dated Ottoman-USA English translation and also presented in appendix that acted in **1874** that acted between twice the Ottoman- United States of America. At the appendixes of 11 and 12, published premiere about the the Ottoman Pasha’s acknowledges at the year **1329/1911** on Armenian populations; also presented this Ottoman Pasha’s valuable books second page at appendix of 13.

At Treaty of **1830** the Ottoman- United States of America, that its original text in Turkish language, wrote United States of America as “**The State of America**”, where as at the Treaty of **1862** was written from United States of America as the concept of United States of America (Hükümet-i Müctemia-ı Amerika).

It was presented some documents at the Chapter of “Documents”. Edicts of 1, 2, 3, and 4 and briefs of these edicts were taken from **Mühimme Defteri** that were published by **Presidency of Prime Ministry of Ottoman Arshieves**, and these documents were read from ancient Turkish as all. It was researched all not-books that were published by the Presidency of Prime Ministry of Ottoman Arshieves and selected and read these four documents. The first document was sent to the The King of France, and the documents of 2, 3, and 4 were sent to the Governor of Algeria of West (Cezair-i Garb Beylerbeyi). The fifth document is a genel fetwa (verdict) that this was get possible to union with non-Muslims, this fetwa were selected from Hatt-ı Hümayun Tasnifi (The File of Edicts of the Ottoman Sultans), Presidency of Prime Ministry of Ottoman Arshieves. Also the last document were selected from the same file (tasnif) that it was about Egypt that it was modernised its army by France.

The Ottoman State giving importance to the organisation of arshiv (Hazine-i Evrak). As known, there were 150 million documents and 300 thousands of notebooks at the Presidency of Prime Ministry of Ottoman Arshieves. **Mühimme Defterleri** (Mühimme Notebooks) were especially important in these Notebooks that insist of between the dates of 961-1323 (1553-1905).¹⁷

It is clear that concret similars and differents between the Ottoman Empire and Republic of Turkey. Turkey is a State of remain but it is heir of the Ottoman Empire; as this heritage differs Turkey from other 25 countries, entirely. Turkey modernisation proses followed Ottoman modernisation proses each other. The reformists of Republic constructed Republic on the society of Empire that passed its

¹⁶ See The **Treaty of Algiers**, 1795, Division Number is, XVII.

¹⁷ 5 Numaralı **Mühimme Defteri**, (973/1565-1566), Divan-ı Hümayun Sicilleri, s. V ve IX.

last century with pain of modernisation. Turkish Republic completed the Ottomans' entire non-modernisation period.

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