Sharī'a Judges in the Ottoman *Nizāmiye* Courts, 1864-1908

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Osmanlı Nizāmiye Mahkemelerinde Şer'ī Hakimler (1864-1908)

Öz ■ 1860'lar yıllarında kurulan Osmanlı Nizāmiye mahkeme sisteminin önemli özelliklerinden birisi, İmparatorluğun birçok yerinde şer'iye mahkemesi hakimlerinin aynı anda Nizāmiye mahkemelerinde de hakimlik yapmış olmalarıydı. Ayrıca, birçok ilmiye mensupları Adliye Nezāreti tarafından Nizāmiye hakimleri olarak atanıyorlardı. Bu makale, Osmanlı arşiv kaynaklarına dayanarak Nizāmiye mahkemelerinde ulemānın devam eden varlığını inceler. İlmiye mensuplarının hukuk hakimi olarak hizmet vermesi genellikle kabul görürken, kazā nāiblerinin ceza davalarını görmeleri bazen sorunlu görülüyordu. Bununla birlikte, devletin mali sıkıntısı ve nitelikli personel yetersizliği, Adliye Nezāreti'nin kazā mahkemelerine bağımsız ceza hakimleri atamasına imkan bırakmamıştır. Ulemā ise Nizāmiye mahkemelerindeki yerlerini korumak için yeni sisteme adapte olmak zorunda kaldı. Ulemānın reform çabaları, kaynakları sınırlı olan Osmanlı devletinde Nizāmiye mahkeme sisteminin işlemesini sağlamıştır.

Anahtar kelimeler: Nizāmiye Mahkemesi, Kadı, Nāib, Osmanlı Ulemāsı, Yargı Reformu, Hukuk Eğitimi

Introduction

In the 1860s, the Ottoman Empire created *Nizāmiye* courts, which adjudicated cases according to state law and did so independently of the existing *sharī'a* courts.[1] Inspired significantly by the French judicial system (although

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the Ottoman tradition's influence was no less important), the Nizāmiye courts applied codified laws made by the state and adopted both the collegiate-court system and the appeal system.[2] In contrast, the sharī'a courts were built upon the single-judge system and in principle had no appellate court. Administratively, the Nizāmiye courts came under the supervision of the Council of Judicial Ordinances (*Dīvān-ı Ahkām-ı Adliye*) in 1868 and of the Ministry of Justice (*Adliye Nezāreti*) in 1876, whereas the sharī'a courts were supervised by the *Şeyhülislām*'s Office or the *Bāb-ı Meşīhat* (hereafter *Meşīhat*). Although these two court systems were administratively separate and worked quite differently, many of the Nizāmiye courts in the provinces were presided over by judges of sharī'a courts in the same locations. The Council of Judicial Ordinances and the Ministry of Justice in princeple had no authority over the

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O*suman teikoku no shoso* (Tokyo, 2012). The Turkish conventional abbreviations for the Hijri months have been used in the footnotes (M, S, Ra, R, Ca, C, B, Ş, N, L, Za, Z).

1 To the best of my knowledge, the Ottoman term "Nizāmiye courts" (*Mahākim-i nizāmiye*) first appeared in 1867 in the detailed regulations for the application of the general *Vilayet* Law (the provincial reform law) as a generic term to denote all the "councils" that were established by the Vilayet Law to hear legal cases. Omri Paz has recently asserted that the term "Nizāmiye court" appeared earlier, in 1862, but he does not specify exactly what the term stood for. Since the vilayet reforms beginning in 1864 introduced a centralized court system that was clearly separated from the administrative councils and the policing institutions as well as from the sharia courts, here I use the term "Nizāmiye courts" to designate the newly established courts that were organized during the course of the provincial reforms in the 1860s and developed thereafter. Thus, I limit the discussion to the role of the ulemā in the Nizāmiye courts after 1864. *Vilāyetlerin İdāre-i Mahsūsası ve Nizāmātının Suver-i İcrā'iyesi hakkında Ta'līmāt-ı Umūmiyedir* (İstanbul: Matba'a-i Āmire, 1284), 3; Omri Paz, "Documenting Justice: New Recording Practices and the Establishment of an Activist Criminal Court System in the Ottoman Provinces (1840-late 1860s)," *Islamic Law and Society*, 21 (2014), pp. 81-113, p. 100. For the earlier judicial reforms during the Tanzimat period, see Sedat Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu (Nizāmiyye Mahkemeleri'nin Kuruluşu ve İşleyişi 1840-1876)* (Eskişehir: Anadolu Üniversitesi Edebiyat Fakültesi Yayınları, 2004).

2 The Nizāmiye courts are an understudied field in modern Ottoman history and have only recently become a focus of study. Six books on this topic have appeared in the current century; they have, along with some important articles, improved our understanding of the Ottoman judicial reform. Sedat Bingöl, *Hırsova Kazā Deāvī Meclisi Tutanakları* (Eskişehir: Anadolu Üniversitesi Edebiyat Fakültesi Yayınları, 2002); Bingöl, O*smanlı'da Yargı Reformu*; Ekrem Buğra Ekinci, O*smanlı Mahkemeleri: Tanzimat ve Sonrası* (İstanbul: Arı Sanat, 2004); Ruth A. Miller, *Legislating Authority: Sin and Crime in the Ottoman Empire and Turkey* (New York and London: Routledge, 2005); Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri (1876-1914)* (İstanbul: Boğaziçi Üniversitesi Yayınevi, 2008); Avi Rubin, O*ttoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011).

appointment of sharīʿa judges, who simultaneously served as president judges of the Nizāmiye courts. Additionally, the Ministry of Justice appointed many members of the *ulemā* as Nizāmiye court judges. This situation was not a temporary measure during the initial reform period; it continued until the final years of the empire.

Scholars have generally considered the presence of sharīʿa judges and members of the ulemā in the new institution an exigency during a period that witnessed a shortage of personnel for the new institution.[3] However, some recent studies have drawn attention to elements of the sharīʿa inherent in the Nizāmiye system, arguing that the presence of the ulemā was a natural outcome of the system's syncretism. In a recent study, Avi Rubin portrays the Nizāmiye court system as a typical example of legal borrowing and thus as a syncretic institution that brought together the indigenous sharīʿa and kanun and foreign French law.[4] The coexistence of the sharīʿa-based *Mecelle* (Ottoman Civil Code) and French procedural law has likewise been explained in the context of legal borrowing. Ruth A. Miller even claims that there was a consistent state policy of recruiting ulemā for the Nizāmiye courts.[5] According to her study, the ulemā were central to the judicial reforms in the Ottoman Empire and played an important role, especially in the administration of criminal justice. Although both of the abovementioned studies represent a valuable departure from the dualistic approach to the Ottoman judicial reforms and place Ottoman experiences in a global context, they are not void of misinterpretations of historical sources, and they fail to discuss two important aspects that I emphasize here: financial constraints and the ulemā's reform efforts. In this article, I investigate the background of the ulemā's continuing presence in the Nizāmiye court system by drawing upon Ottoman archival documents, and I reexamine the conventional and revisionist views.

3 Enver Ziya Karal, *Osmanlı Tarihi*, VII, *Islahat Fermanı Devri (1861-1876)* (Ankara: Türk Tarih Kurumu, 1956), p. 169; Demirel, p. 87; Ekinci, p. 173; David Kushner, "The Place of the Ulema in the Ottoman Empire During the Age of Reform (1839-1918)," *Turcica*, 29 (1987), pp. 51-74, p. 61.

4 Rubin, *Ottoman Nizamiye Courts*; id., "Legal Borrowing and its Impact on Ottoman Legal Culture in the Late Nineteenth Century," *Continuity and Change*, 22(2) (2007), pp. 279-303.

5 Miller, *Legislating Authority*.

1. The Formative Period, 1864–1879

As part of the Ottoman provincial reforms initiated in 1864, the Nizāmiye courts were created to hear cases according to state law. These provincial reforms, which were first introduced as a model in the Tuna province (*vilāyet*) in the Balkans and implemented in most parts of the empire during the following several years, aimed at reorganizing the state administration into a more centralized and efficient form. This reorganization of the judicial institution was an important undertaking in the provincial reform project. According to the Provincial Reform Law,[6] which was issued in 1867 after a minor amendment to the original law of the Tuna province, a Court of Appeal (*dīvān-ı temyīz*) would be set up in each provincial capital, and each subprovince (*sancak* or *livā*) and district (*kazā*) would have a Council of Appeal (*meclis-i temyīz*) and a Judicial Council (*de'āvī meclisi*), respectively. A president judge (*re'īs*) presided over each court, assisted by associate judges (*mümeyyiz* or *a'zā*) elected from among the local residents, both Muslims and non-Muslims. In addition, the state would appoint an official well acquainted with law to the court in each province and subprovince, but this office was abolished in 1871 for financial reasons.[7] The Council of Judicial Ordinances, in Istanbul, would serve as the Supreme Court.

The new court system was thus established as distinct from other existing courts. However, the judge of the sharī'a court in each province, subprovince, and district assumed the office of president judge of the Nizāmiye court in each administrative unit. At first, the *müfettiş-i hükkām* (inspector of judges or judicial magistrate), appointed from among the senior ulemā, held the office of president of the provincial appeal court and was responsible for examining the decisions of the lower sharī'a courts in each province. In November 1871, in order to reduce the state's expenditure, the office of the müfettiş-i hükkām was abolished and the judge of the sharī'a court of the provincial center took over the position of president judge of the Appeal Court.[8] The first Nizāmiye court regulations, issued in January 1872, explicitly stated that the office of president judge in the provinces

6 *Düstūr*, 1st series (İstanbul: Matba'a-i Āmire, 1289-1302), I, pp. 608-24.

7 It appears that this official served as a second president (*re'is-i sānī*). For the abolishment of this office, see Prime Ministry Ottoman Archives, Istanbul (Başbakanlık Osmanlı Arşivi, BOA), İrade Dahiliye (İ.DH), 641/44621, 8 N 1288 (20 Nov. 1871), lef 3.

8 Jun Akiba, "From *Kadı* to *Naib*: Reorganization of the Ottoman Sharia Judiciary in the Tanzimat Period," in *Frontiers of Ottoman Studies*, ed. Colin Imber and Keiko Kiyotaki (London: I.B. Tauris, 2005), I, pp. 43-60, 54-55.

would be assigned to the sharīʿa judges, or the *nāibs* (*nüvvāba muhavveldir*),[9] as they were called during the late Ottoman period. Although the appointment of the müfettiş-i hükkām required the Sublime Porte's approval, nāibs were regularly appointed by the Meşīhat. As a result, the Meşīhat now assumed the authority to appoint the president judges of the Nizāmiye courts at every administrative level, except for the lower court in each provincial capital, to which the Sublime Porte appointed the president directly.[10]

The stipulations of the 1872 regulations did not last long. In June 1872, several provinces were selected as models, and a Central Court (*mahkeme-i merkezīye*), or also called a Central Large Court (*mahkeme-i kebīre-i merkezīye*), with a newly appointed president, was introduced into each of them. The new courts were first established in Salonica, Sivas, and Amasya, and presidents from the ranks of civil and military officials were appointed to them. The Central Court was designed to function as a court of first instance for crime cases in a province's central subprovince and likewise as an appeal court in which to review cases that were heard in the district courts in each province.[11] However, this system was soon abandoned, and the Court of Appeal was reinstituted in September of the same year. One reason for the annulment of the Central Courts was that

9 *Düstūr*, 1st series, I, 352. For the nāibs, see Akiba, "From *Kadı* to *Naib*."

10 In addition to the Court of Appeal, a Judicial Council (*meclis-i deʿāvī*) presided over by a civil official was set up in each provincial capital as the Court of First Instance. *Düstūr*, 1 series, I, 354; *Takvīm-i Vekāyi*, 1486 (8 Ra 1289/16 May 1872). Before this, there was a Council of Appeal (*meclis-i temyīz*) in each of the provincial capitals, in the capacity of the capital of the central district of the province. For examples, see the provincial yearbooks: *Tuna Vilāyeti Sālnāmesi*, 3 (1287), pp. 27, 34; 5 (1289), pp. 31, 43; *Konya Vilāyeti Sālnāmesi*, 4 (1288), pp. 34, 37; 5 (1289), pp. 34, 35; *Trabzon Vilāyeti Sālnāmesi,* 3 (1288), pp. 34, 37; 4 (1289), p. 32.

11 BOA, İrade Meclis-i Mahsus (İ.MMS), 43/1777, 23 Ra 1289 (31 May 1872); İ.DH, 652/45362, 17 R 1289 (24 June 1872), lef 5, instructions for the Central Courts; *Takvīm-i Vekāyi*, 1491 (26 Ra 1289/3 June 1872). Miller writes, "Although the High Court [i.e., Central Court] would work alongside the Islamic law courts, the line between the two is fuzzy verging on non-existent." This statement is probably based on the misinterpretation of the instructions for the Central Court. The sixth article of the instructions reads, "The Central Large Court will hear crime cases for the first time that took place in the central subprovince of a province and it will review, upon request, the reviewable cases that were heard *independently from the sharia cases at the Judicial Councils* (*meclis-i deʿāvīsinde deʿāvī-i şerʿiyeden başka olarak*) of the provincial capital and of the districts attached to it" (italics are mine). Miller translates the italicized part as "along with the justice councils and Islamic law courts." Miller, *Legislating Authority*, p. 64. See also Id., "Apostates and Bandits: Religious and Secular Interaction in the Administration of Late Ottoman Criminal Law," *Studia Islamica*, 97 (2003), pp. 155-78, p. 176.

they failed to reduce expenditure. The system returned to the 1872 regulations, but noticeably, the presidents of the provincial Courts of Appeal were now appointed by the Sublime Porte from among officials with experience in provincial administration. For example, officials such as the former administrators of Damascus and Homs and the former head of the correspondence bureau of Bursa were brought to the presidency of the Appeal Courts. Nāibs of the provincial capitals now served as presidents of the subprovincial Appeal Councils located in the provincial capitals.[12]

Table 1. The President Judge of the Courts in the Provincial Capitals

	1867	Nov. 1871	Sept. 1872	Mar. 1873	Dec. 1875
Court of Appeal	Müfettiş-i hükkām	Nāib	Civil official	Ulemā	Nāib
Lower Court	Nāib	Civil official	Nāib	Nāib	Civil official

However, the situation changed again. In March 1873, the Şeyhülislām sent a memorandum to the Grand Vizier, claiming that the presidency of the provincial capital's Appeal Court should be commissioned to the nāib of the same location since it required expertise in both sharī'a and statute law. The Şeyhülislām also pointed to the nāibs' knowledge of the *Mecelle*, which was based on Islamic jurisprudence and was being codified in order to be applied in the Nizāmiye courts at that time. The Council of Ministers, which largely accepted the Şeyhülislām's opinion, decided to nominate the presidents of the Appeal Courts principally from among the ulemā who had once served as nāibs of provincial capitals, on the condition that they would not serve as nāibs of the same provincial capital simultaneously (see Table 1).[13] Although the government

12 *Takvīm-i Vekāyi*, 1518 (12 B 1289/15 Sept. 1872), pp. 1-2; BOA, İ.MMS, 44/1806, 8 B 1289 (11 Sept. 1872).

13 BOA, İ.MMS, 46/1943, Şeyhülislām to Grand Vizier, 13 M 1290 (13 March 1873) and Grand Vizier to Palace, 5 S 1290 (4 April 1873). Miller points out that members of the ulemā were preferred for the position of the Appeal Court's president, citing the records of appointments made after this decision. However, as we will see, this was not a consistent policy. Miller, "Apostates and Bandits," p. 177; Id., *Legislating Authority*, p. 64.

recognized the authority of the Council of Judicial Ordinances to select and appoint the staff of the Appeal Courts, in actual practice, the Şeyhülislām's notice designating the nominees was sent to the Grand Vizier, who then reported it to the Sultan.[14] This may reveal a good deal about the power relations between the Council of Judicial Ordinances and the Şeyhülislām.

In December 1875, a ferman concerning domestic administration was promulgated, which included the stipulation that the nāib of the provincial capital should serve as the president of the Appeal Court of the same location (see Table 1).[15] Accordingly, new instructions were issued, and these remained valid during the following several years. The ferman originally aimed to secure the judicial power's independence from the executive power in order to meet the demands of the Great Powers, thus stipulating the separation of the presidency of the Council of Judicial Ordinances from the office of the administrative head of the judicial institution (which led to the establishment of the Ministry of Justice), the irremovability of judges, the integration of the commercial courts into the Nizāmiye court system, and the fair selection of associate judges. Although it is not clear why the Appeal Court's presidency was given to nāibs on this occasion, the financial collapse of the Ottoman state in October of the same year was probably relevant; the abolition of the independent office of the Appeal Court's president could lighten the state's financial burden. Through the new arrangement, the offices of the president of the subprovincial Appeal Councils that were located in each provincial capital were filled by civil officials appointed by the Ministry of Justice. Their salary was lower than that of court presidents at the provincial level.[16]

These post-1872 developments reveal that the direction of the institutional reforms was not predetermined. We can observe that the Sublime Porte and the Ministry of Justice were negotiating with the Meşīhat over the authority to appoint judges and also that financial concerns greatly influenced the course of

14 BOA, İ.MMS 46/1943, Grand Vizier to Palace, 5 S 1290 (4 April 1873). For examples of appointments of Appeal Court presidents, see BOA, İ.DH, 664/46292, 27 S 1290 (26 April 1873); İ.DH, 665/46359, 25 Ra 1290 (23 May 1873).

15 *Takvīm-i Vekāyi*, 1776 (16 Za 1292/14 Dec. 1875); *Düstūr*, 1st series, III, 2-9; Ekinci, p. 191.

16 The salaries of the presidents of subprovincial appeal councils ranged between 4000 and 7000 guruş (many of them were given a salary of 4000 guruş), whereas those of the presidents of the appeal courts had been 5000 to 7500 guruş. See BOA, İ.DH, 714/49928, 6 Z 1292 (3 Jan. 1876); İ.MMS, 44/1806.

the reforms. Importantly, the officials with experience in provincial administration were appointed to the office of the presidents of provincial Appeal Courts, though for a short period. In his memorandum, submitted in early 1872, the Ottoman statesman and historian Cevdet Paşa, who in general expressed a favorable opinion regarding the employment of the ulemā in the Nizāmiye courts, stated about the criminal courts in particular: "Since so many men have been raised for the criminal courts from the scribal service (*tarīk-i kalemiyye*), it would be appropriate to select from among them the legal officials needed to the criminal courts."[17] The subsequent development seems to have followed his view.

2. The Nizāmiye Judiciary under the Ministry of Justice

New Regulations of 1879

After more than ten years of trials, the Nizāmiye court system took on a decisive form with a series of new laws and regulations issued in 1879. The Law for the Organization of the Nizāmiye Courts, the Code of Criminal Procedure, and the Code of Civil Procedure were issued, and the institutions of public prosecutors, lawyers, and public notaries were established. At this point, the Court of Cassation (*mahkeme-i temyīz*) replaced the Council of Judicial Ordinances in Istanbul, while a Court of Appeal (*mahkeme-i istīnāf*) was established in each provincial capital and a Court of First Instance (*mahkeme-i bidāyet*) in each subprovince and district.[18] The provincial Nizāmiye courts were, "in case of necessity," to be divided into civil and criminal sections, which would be presided over by different judges. In practice, the Appeal Courts in the provincial capitals as well as the Courts of First Instance in the provincial and subprovincial capitals generally contained separate civil and criminal courts, while, on the district level, a single president judge would hear both civil and criminal cases, with the exception of a few districts.

Although there was no stipulation concerning the nāibs' double role in the 1879 Law for the Organization of the Nizāmiye Courts, it was anticipated that many Nizāmiye positions would still be assigned to nāibs to fufill additional duties. The additional clause of the 1879 law stated that an official from the Ministry of Justice should be present at the Committee for Selection of Sharī'a

17 Cevdet Paşa, *Tezākir, 40-Tetimme*, ed. Cavid Baysun (Ankara: Türk Tarih Kurumu, 1967), p. 101.

18 *Düstūr*, 1st series, IV, pp. 235-50; IV, pp. 257-317 and IV, pp. 131-222.

Judges (*Meclis-i İntihāb-ı Hükkām-ı Şer'*) in the Meşīhat to check the applicants' qualifications for service as president judges in the Nizāmiye courts. The Ministry's intention to interfere with the selection of sharī'a judges who also served at the Nizāmiye courts is evident here. The document that originally proposed this additional clause prepared by the Minister of Justice, Sa'īd Paşa, shows that an agreement had already been reached between the Ministry of Justice and the Meşīhat and that the judge of the Court of Cassation's civil section, Rauf Efendi, was nominated for the position at the Committee for Selection. Since Rauf Efendi was a civil court judge and at the same time served as a teacher of the *Mecelle* at the Sultānī Law School, it is likely that his duty was to check applicants' competence to deal with civil cases.[19] In fact, after 1879, nāibs generally continued to serve as presidents of the civil sections of Nizāmiye courts at the provincial and subprovincial levels, where courts were divided into civil and criminal sections. Nāibs also maintained the presidency of the First Instance Courts in nearly all districts; hence, in principle, nāibs would hear all civil, criminal, and shar'ī cases at the district level. The earlier practices continued, but it is important to note that the criminal section presidents of the provincial Appeal Courts and the subprovincial Courts of First Instance were now appointed directly by the Ministry of Justice. Thus, a criminal court system that was independent from the Meşīhat was established at the provincial and subprovincial levels. Furthermore, each provincial capital had a Court of First Instance as well, for which the Ministry of Justice appointed the presidents of both its civil and criminal sections (see Table 2).

19 BOA, Yıldız Perakende Evrakı Adliye ve Mezahib Nezareti Maruzatı (Y.PRK.AZN), 1/42, memorandum of the Minister of Justice, 22 Ca 1296/1 Mayıs 1295 (13 May 1879). The Sultānī Law School was a special course for legal studies set up in the Sultānī School (the Galatasaray Lycée) in 1874. For Rauf Efendi's position, see Ali Adem Yörük, "Mekteb-i Hukuk'un Kuruluşu ve Faaliyetleri (1878-1909)," M.A. thesis, Marmara University, 2008, pp. 23-29, 9; *Sālnāme-i Devlet*, 35 (1297), pp. 103, 400.

Table 2. President Judges of the Nizāmiye Courts at Different Administrative Levels after 1879

	Provincial Capital	Sub-provincial Capital	District Capital
Court of Appeal			
Civil Section	Nāib		
Criminal Section	Independent*		
Court of First Instance			Nāib
Civil Section	Independent	Nāib	
Criminal Section	Independent	Independent	

* "Independent" means that judges were appointed directly by the Ministry of Justice.

The Law for the Organization of the Nizāmiye Courts of 1879 introduced a new procedure for recruitment and appointment that required an applicant for the president's position of a Court of First Instance to have served as an associate judge for more than four years.[20] A year later, in June 1880, *Mekteb-i Hukūk*, or the Imperial Law School, opened to train the Nizāmiye personnel.[21] Graduates of this law school could be appointed to the office of associate judge of a Court of First Instance after serving their traineeship at the Nizāmiye courts for one year. The regulations of the school also stipulated that, three years after its opening, only Imperial Law School graduates were allowed to serve at a Court of First Instance.[22] This prescription was never fully carried out, not only because nāibs continued to function as president judges of the Nizāmiye courts, but also because the number of Law School graduates was too small to fill all the Nizāmiye positions. In 1888, the Ministry of Justice introduced an examination system that would qualify nongraduates of the Law School for the judicial offices of Nizāmiye courts.[23]

20 According to the law, one could become an associate judge of a Court of First Instance only after (1) passing the examination of the Ministry of Justice or (2) serving as a trainee associate judge (*a'zā mülāzımı*), an examiner (*mümeyyiz*), or a court scribe for more than four years.

21 For the detailed work on the Law School, see Yörük, "Mekteb-i Hukuk."

22 *Düstūr*, 1st series, IV, pp. 472-477.

23 *Düstūr, Birinci Tertib* (Ankara: Başvekālet Devlet Matbaası, 1937-43), V, 1058-62; *Cerīde-i Mahākim*, 449 (6 L 1305/4 Haziran 1304/16 June 1888), pp. 5002-6.

Ulemā in the Nizāmiye Positions

In actual practice, who were the judges appointed by the Ministry of Justice? Miller argues that the ulemā were especially recruited for the criminal courts. She found that between 1861 and 1908, 62% of the appointments to the criminal court hierarchy were members of the religious establishment.[24] Miller's findings are based on her assumption that those who had the title "Efendi" were members of the ulemā and those who had the title "Bey" were civil officials. However, this assumption is in fact completely wrong; during the late Ottoman period, the title "Efendi" was used for anyone who was literate, whereas "Bey" was given as an official title to sons of Paşas as well as to military officers with the rank of lieutenant colonel (*kaymakam*) and colonel (*miralay*).[25] Civil officials of higher rank could bear the title "Bey," but no strict correspondence existed between the civil-bureaucratic ranks and these titles.[26] There were also some ulemā members who held the title "Bey." Hence, Miller's calculation does not reflect the actual presence of the ulemā in the Nizāmiye court system.

Although it is difficult to define who the ulemā were in the late Ottoman context, one major criterion was official rank, which was arranged in three distinct state-official hierarchies, namely military (*askeriye*), civil-bureaucratic (*mülkiye*), and religio-judicial (*ilmiye*). This classification scheme has certain limitations. First, some judges had no rank. Among them, those who were medrese-educated and had served as medrese teachers, sharī'a court judges, or sharī'a court scribes may be regarded as members of the ulemā, but information on their backgrounds is often inaccessible. Furthermore, their ilmiye rank could be switched to that of civil bureaucrat, but "conversion" in the opposite direction was rare. According to our definition, such converts from the ilmiye to the mülkiye would

24 Miller, "Apostates and Bandits," p. 173; id., *Legislating Authority*, p. 73.

25 François Georgeon "Lire et écrire à la fin de l'Empire ottoman: quelque remarques introductives," *Revue des mondes musulmans et de la Méditerranée*, 75/76 (1995), pp.169-79, p. 177; Şemseddin Sāmī, *Kāmūs-ı Türkī* (İstanbul: İkdām Matba'ası, 1317, repr., İstanbul: Enderun Kitabevi, 1989), I, 138, 297; A. Heidborn, *Manuel de droit public et administratif de l'Empire ottoman* (Vienne: C. W. Stern, 1908-12), I, 186; Hüseyin Kazım Kadri, *Türk Lugatı* (Ankara: Maarif Vekāleti, 1927), I, 257; Mohammed Djinguiz, "Les titres en Turquie," *Revue du Monde Musulman*, 3 (1907), pp. 244-58, p. 248.

26 Although Djinguiz writes that civil officials holding the rank of *Sāniye* (Second Grade) or above (but below *Vezīr*) could be called "Bey," there were actually many Efendis among the Nizāmiye judges with the ranks *Sāniye* and *Mütemāyiz* (Second Grade, First Class). Djinguiz, p. 246. Cf. Heidborn, I, p. 186.

be classified as civil officials. After all, official rank does not reveal the bearer's religious or political inclinations. Nevertheless, the rank may have concerned one's identity, since it indicated one's official affiliation with the organization; those who held the rank of ilmiye belonged to the ilmiye hierarchy, with the Şeyhülislām at the top. Moreover, rank determined one's headgear—turbans for ulemā and fezes for civil officials— that symbolized a man's social standing. It is important to note that one's rank did not always correspond to one's official position. Officials with an ilmiye rank could work under the Ministry of Justice or the Ministry of Education, for example, without taking off their turbans, but not vice versa: in principle, an official wearing a fez could not serve as a sharī'a judge.

An examination of the official rank of the criminal section presidents of the Appeal Courts in the provincial capitals clearly shows that after 1890, civil officials came to form a great majority among them (see Table 3). In Istanbul, as Table 4 shows, the judiciary (presidents and members) of the criminal section of the Court of Cassation was largely composed of judges belonging to the civil bureaucracy for the entire period. For criminal court positions, priority was obviously given to civil officials.[27]

Table 3. Criminal Section Presidents of the Provincial Appeal Courts

Rank	1883	1890	1897	1904
Civil Bureaucracy	7	18	18	23
İlmiye	7	3	5	2
Unknown	7	2	1	1
Total	21	23	24	26

Sources: *Sālnāme-i Devlet*, 39 (1301); 46 (1308); 53 (1315); 60 (1322).

27 Miller observes that most of the appointments to Nizāmiye criminal courts were from other criminal court positions during the later period (1891-1909). Miller, "Apostates and Bandits," p. 174; id., *Legislating Authority*, p. 73. Contrary to her general argument, it is because of this specialization that judges holding civil-bureaucratic ranks (not ulemā) dominated the criminal court positions.

Table 4. Judges of the Criminal Section of the Court of Cassation

	1883	1890	1897	1904
Civil Bureaucracy	9	7	5	7
İlmiye	1	1	1	0
Unknown	0	0	0	0
Total	10	8	6	7

Sources: *Sālnāme-i Devlet*, 39 (1301); 46 (1308); 53 (1315); 60 (1322).

In the civil courts, however, the policy of the Ministry of Justice seems to have been different. Table 5 shows that holders of the ilmiye rank were found in significant numbers among the civil section presidents of the First Instance Courts in the provincial capitals, whom the Ministry of Justice appointed independently. In the civil section of the Court of Cassation, ilmiye-rank holders were a minority (Table 6), but the presidency was always given to one of the high-ranking ulemā.[28]

Table 5. Civil Section Presidents of the Provincial First Instance Courts

Rank	1883	1890	1897	1904
Civil Bureaucracy	6	6	5	6
İlmiye	10	7	12	19
Unknown	5	10	6	0
Total	21	23	23	25

Sources: *Sālnāme-i Devlet*, 39 (1301); 46 (1308); 53 (1315); 60 (1322).

Table 6. Judges of the Civil Section of the Court of Cassation

Rank	1883	1890	1897	1904
Civil Bureaucracy	4	6	5	5
İlmiye	3	3	2	2
Unknown	0	0	0	0
Total	7	9	7	7

Sources: *Sālnāme-i Devlet*, 39 (1301): 326; 46 (1308): 284-285; 53 (1315); 60 (1322).

28 This practice was still in force in 1917. *Sālnāme-i Devlet*, 68 (1333-1334/1917-1918), p. 157.

Apparently, the appointment of sharīʿa specialists to the civil court positions was deemed preferable. This was no doubt because of the Ottoman Civil Code, the *Mecelle*, which required knowledge of Islamic jurisprudence.[29] In 1881, Cevdet Paşa, then the Minister of Justice, wrote in his memorandum that those ulemā who were skilled in Islamic jurisprudence were superior to those in the other two groups (i.e., those trained in the Nizāmiye court system and those who were educated in Europe and had served under the Ministry of Justice) in the civil courts, although he admitted that not many ulemā were proficient in statute law, especially the law on civil procedure. He also stated that he would assign the offices of president judge (of the civil section of the Court of Cassation and the criminal section of the Appeal Court in Istanbul) to the ulemā class whenever possible.[30] Obviously, his policy for the Court of Cassation was retained by his successors.[31] There was probably a tacit agreement between the Ministry of Justice and the Meşīhat regarding the presidency of the civil section of the Court of Cassation. More importantly, Cevdet Paşa's memorandum reveals that his original aim was to secure Muslim dominance in the Nizāmiye judiciary. He clearly states that the education principles of the Law School were determined as a means to necessitate the precedence and superiority (*tekaddüm ve tefevvuk*) of Muslims over non-Muslims. In the Law School, the focus of education was now the Ottoman language (Turkish) and Islamic jurisprudence, especially the *Mecelle*; the secretarial class (*ketebe sınıfı*) would prevail in the former and the ulemā in the latter.[32] For Cevdet Paşa, priority was given to Muslim domination,

29 Kushner, pp. 62-63.

30 BOA, Yıldız Esas Evrakı (Y.EE), 39/2, Cevdet Paşa's memorandum, cited in Yörük, pp. 218-19. Cevdet refers to "the first president" (*reis-i evvel*), that is, the president judge of the civil section in the case of the Court of Cassation and that of the criminal section in the case of the Court of Appeal in Istanbul. The latter was a member of the ulemā in 1880. *Sālnāme-i Devlet*, 36 (1298), p. 231.

31 Miller sees in this policy an incorporation of the sharia system into the Nizāmiye system and the great influence of the Şeyhülislām over the Nizāmiye justice. Miller, "Apostates and Bandits," pp. 177-78. However, these ulemā members were president judges of the civil section, and although they were given the status of the first president of the entire Court of Cassation, it is not certain whether they could exert their influence on the criminal section. Cevdet's policy for the Court of Appeal was not maintained; the president judges of all the four sections—crime (*cināyet*), offense (*cünha*), civil (*hukūk*), and commerce—of the Court of Appeal in Istanbul were from the civil bureaucracy in 1883 and 1890, for example. *Sālnāme-i Devlet*, 39 (1301), pp. 327-28; 46 (1308), pp. 286-88.

32 In 1891, ten years after Cevdet's memorandum, classes in French language were removed from

and affiliation with the ilmiye was not necessarily required. He even expresses his distrust of the ulemā in general, who, according to his view, had lost the value and virtue they had in the past. "However," he continues, "there are many among the ulemā who could be employed in the judicial [i.e., Nizāmiye] offices and thus [they were] taken into service according to their merit and competence."[33]

A closer look into the backgrounds of the Nizāmiye judges appointed by the Ministry of Justice suggests that they had a variety of educational and professional backgrounds, most of which probably fell into the following five (or six) patterns: (1) those who served as a clerk for several years in one of the bureaus of the provincial or central administration before being appointed to a Nizāmiye position, (2) those who started their career at the Ministry of Justice (or its predecessors) or in the provincial Nizāmiye courts, (3) Law School graduates who joined the civil officialdom (mülkiye), (4) those who graduated from the Law School after receiving medrese education and remained members of the ilmiye, (5) those who had served in the sharīʿa domain, especially as a nāib, before transferring to the Nizāmiye domain, and later converted their rank to a civil-bureaucratic one (5a) or remained in the ilmiye corps (5b). These patterns seem similar to those of the public prosecutors studied by Rubin.[34] The importance of experience in bureaucracy, which he pointed out for the career of public prosecutors, largely applied to the judiciary as well, but legal and judicial knowledge and experience in the judicial institution probably carried more weight in the recruitment of judges, especially during the later years, when the number of Law School graduates increased.

Although quantitative analysis has yet to be conducted, it is interesting to find that the acceptance of medrese students into the Law School provided them with a greater opportunity to become Nizāmiye judges and public prosecutors.[35]

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the curriculum of the Law School. Miller associates this change with an ideological motivation; however, according to Yörük's study, it was derived more from practical concerns: to spend more time on the study of law rather than giving too much importance to French even for the former medrese students who had never learned French. Miller, *Legislating Authority*, pp. 70-71; Yörük, pp. 84-85. Without its own preparatory schools, the Law School found in medreses a large pool of Muslim students with some sort of introductory knowledge of law.

33 BOA, Y.EE, 39/2, cited in Yörük, p. 219.

34 Rubin, *Ottoman Nizamiye Courts*, pp. 150-51.

35 Miller writes that among the Law School graduates who were appointed in the Nizāmiye system between 1880 and 1895, "at least 40% had been trained in religious rather than civil schools at the primary level [sic: probably the secondary level]." Miller, *Legislating Authority*, p. 75. Each of the seven Law School graduates who received their first appointment to a Nizāmiye court position

It is difficult to assess how their medrese background affected their career life. Some of them converted their rank to that of civil bureaucrat, wheras others continued to wear their traditional attire. Some of the former may have been glad to remove their turbans, and others may have changed their rank only as a means of promotion.[36] After all, since the overcrowding of medreses had become a serious social and political problem during Abdülhamid II's time,[37] many medrese students must have been ready to seek opportunities elsewhere. I would argue that the medrese students' entrance into the Law School represents their adaptation to the new system rather than an infiltration of the medrese element into the Nizāmiye system. I will discuss the issue of adaptation further in the fourth section of this article.

3. Nāibs' Dual Role

The Ministry of Justice's Attempt to Control the Nāibs

As mentioned above, nāibs continued to serve as presidents of the civil courts in the provincial and subprovincial capitals while assuming the office of district court presidents in general. As a result, the Ministry of Justice had no direct authority to select and appoint president judges for these positions. However, the Ministry of Justice apparently regarded its control of the Nizāmiye courts' personnel as an important duty. By means of the additional clause of the Law for the Organization of the Nizāmiye Courts, the Ministry of Justice could already interfere with the appointment procedure for nāibs who would serve in the Nizāmiye courts. Nevertheless, nāibs of provinces remote from the center were often nominated in the provincial centers, whereas the Meşīhat only ratified the decisions of the provinces without the regular procedure of the Committee for the Selection for Sharī'a Judges. In 1894, the Ministry of Justice, which had begun to doubt

between November 1886 and January 1887 was educated in the medreses, whereas five were also educated in the new-style advanced elementary (*rüşdiye*) schools. BOA, İ.DH, 1009/79727; 1017/80223; 1017/80237; 1017/80239; 1017/80244.

36 Halil Halid, a Law School student, came to dislike the ulemā costume during the final years in the Law School (around 1893) and changed his attire on leaving the medrese where he dwelled. Halil Halid, *A Diary of a Turk* (London: Adam and Charles Black, 1903), pp. 134-41. According to his account, only a few students in the law school were wearing the ulemā dress. Ibid., p. 134. As shown in Tables 3 and 4, official rank played a role in the appointment of criminal judges.

37 See Amit Bein, "Politics, Military Conscription, and Religious Education in the Late Ottoman Empire," *International Journal of Middle East Studies*, 38 (2006), pp. 283-301.

the legal knowledge of the nāibs nominated in the provinces, decided that, at the provincial selection committee for nāibs, candidates should take an examination on drafting judicial decrees based on the *Mecelle* in the presence of the public prosecutor or the assistant public prosecutor.[38]

In addition, the Ministry of Justice sought to bring the incumbent nāibs under its strict control. As Rubin points out, the Court of Cassation and the public prosecutors kept the nāibs' conduct under close surveillance. He cites examples of the public prosecutors' accusations of nāibs' wrongdoings and the Court of Cassation's reversals of nāibs' rulings at the Nizāmiye courts.[39] The Ministry of Justice apparently considered it a problem that nāibs were not subject to the same discipline as other judges of the Nizāmiye courts. Absence from work without leave was one such problem. Article 50 of the Law of the Organization of the Nizāmiye Courts provided that judges who were absent without valid reason for a total of three days in a month would be considered as having resigned. In 1897, the Ministry of Justice informed the Meşīhat that some nāibs who served as presidents of district Court of First Instance did not come to work regularly. The Ministry, citing the request of the judicial inspectors of Adana and Aleppo concerning the application of Article 50 to nāibs, claimed that the Şeyhülislām would not permit the delay of business even though it was clear that the article did not apply to nāibs.[40] Consequently, the Meşīhat was forced to meet the Ministry's demand, prescribing that a nāib who absented himself from the office three times would be dismissed.

Perhaps the more serious issue was the fact that nāibs' terms of appointment were fixed for two or two-and-a-half years, whereas judges directly appointed by the Ministry of Justice did not have limited terms. The irremovability of judges had been promulgated in an official statement on provincial reforms in 1864 as well as in the above-mentioned ferman of 1875, and it was guaranteed by the 1876 Ottoman Constitution. The fixed terms of nāibs who served as Nizāmiye court judges were clearly a deviation from this principle. For example, when in 1898 the Ministry of Justice reported to the Meşīhat that business at the court

38 *Cerīde-i Mahākim*, 754 (19 B 1311/15 Kanunısani 1309/27 Jan. 1894), pp. 11182-83. Rubin mistakes the examinations of fatwas given to candidates of *nāhiye* (county) judges for the second-round examinations for the district judgeship. Rubin, *Ottoman Nizamiye Courts*, pp. 118-19.

39 Ibid., pp. 147-48.

40 Istanbul Mufti's Office, Meşīhat Archives (IMMA), Meclis-i İntihab Karar Defteri, 1899, fol. 19a, no. 1850, 8 C 1315 (4 Nov. 1897).

in Nevşehir was in confusion due to the "lack of competence" of the nāib, Fehmi Efendi, the Meşīhat saw no problem because he had already been replaced.[41] Earlier in 1887, the governor of the Suriye province proposed that before nāibs applied to new positions, they should obtain reports confirming their good conduct from the administrative council and the provincial committee of justice (*encümen-i adliye-i vilāyet*) of their previous place of appointment. According to the governor, nāibs charged with misconduct would rarely be brought to court, because they would leave office and escape before the approval for prosecution was given. In response, the Meşīhat claimed that its office was responsible for keeping track of nāibs' personal histories and that such reports were not necessary.[42] These examples show that the Meşīhat played the role of protector of nāibs against the intervention of the Ministry of Justice and provincial governors.

Nāibs' Dual Role Questioned

One may wonder whether the expansion of the authority and organization of the Ministry of Justice led to the questioning of the nāibs' dual role as both sharī'a and Nizāmiye judges. Surprisingly, among the reports and proposals concerning the judicial institution that were submitted during the reign of Abdülhamid II, as far as I know, only one had explicitly criticized the nāibs' dual role in general. The report in question was prepared in January 1896 by the undersecretary of the minister of justice and the head of the Petitions Department (*istid'ā dā'iresi*) of the Court of Cassation.[43] It points out that one of the judicial institution's major problems was the quality of judges and other court personnel, who allegedly did not meet the standards required by the law. According to the report, the offices of the court president were entrusted to nāibs, who were employed at a meager salary and did not know the provisions of the penal code and the judicial regulations. It also pointed out that since the nāibs performed the duties of a local council member and bailiff in addition to those of a nāib and president judge, they could not properly carry out their duties at the Nizāmiye court, which caused much abuse and many delays. To prevent these problems, the authors of the report

41 Ibid., fol. 112a, no. 2628, 9 L 1315 (12 May 1898). For a similar example, see Meclis-i İntihab Karar Defteri, 1877, fol. 55b, no. 347, 9 Ş 1304 (9 May 1887).

42 IMMA, Meclis-i İntihab Karar Defteri, 1877, fol. 67b, no. 455, 18 Ş 1304 (18 May 1887).

43 Osman Köksal, "Adliye Örgütünün Problemleri ve Yapılması Gerekli Düzenlemelere dair II. Abdülhamit'e Sunulan bir Layiha," *OTAM*, 9 (1998), pp. 263-85. The writers of the report can be known from the document cited in the next note.

suggested that the most desirable course of action would be to appoint Law School graduates to the offices of president judge, associate judge, and public prosecutor at all district courts. However, several thousand liras were required to achieve this goal, and even when the treasury could afford this amount, the number of Law School graduates and those who were qualified through examination was insufficient to fill all the posts, which comprised nearly two thousand positions. Hence, the report proposed that for the time being, criminal court judges should first be appointed to one hundred important districts, where prosecutors and salaried associate judges should also be installed. In short, the main reason for maintaining the nāibs as presidents of the Nizāmiye courts was the shortage of financial and human resources. Nāibs were deemed problematic especially in their performance as criminal judges because this proposal did not require civil judges to be independent from the nāibs, but instead proposed the appointment of independent criminal judges. Therefore, it appears that the nāibs' duty as civil judges of the Nizāmiye courts was considered acceptable. The report did not criticize the nāibs' role as civil judges at the provincial and subprovincial levels, at which independent criminal judges had already been serving.

The Council of Ministers approved this reform proposal and prepared a document to announce the measures to be taken, the first of which was to appoint a Law School graduate as a second judge (to preside over criminal cases), an assistant prosecutor, and an investigating magistrate at each district Court of First Instance, while sharīʿa judges would stay at their position (as president judges).[44] It seems, however, that the decision of the Council of Ministers was not ratified by the sultan. Nevertheless, the document shows that the government recognized the issue concerning the nāibs' duty as criminal judges.

In addition, there are some examples of criticism of nāibs who could not sufficiently carry out their duties, especially concerning criminal cases, because of their heavy workload. For example, in 1903, the governor of the Zor subprovince in Syria requested the appointment of a criminal judge to the subprovincial Court of First Instance, because the heavy workload of the nāib was causing delays in the trials of criminal cases.[45] Moreover, the inspector of Eastern Anatolia, Ahmed Şakir Paşa, pointed out that district nāibs were not only responsible for

44 BOA, Yıldız Sadaret Resmi Maruzat (Y.A.RES), 78/45, 27 B [N?] 1313/ 29 Şubat 1311 (3 Jan. 1896).

45 BOA, Dahiliye Nezareti Mektubi Kalemi (DH.MKT), 726/14, From Ministry of Interior to the Ministry of Justice, 22 Ra 1321 (18 June 1903).

civil, commercial, misdemeanor, and felony cases, but also served as members of the district administrative councils, sharīʿa judges, and bailiffs, stating, "It is above anyone's ability to properly perform such many duties." He proposed to appoint an independent investigating magistrate, because in the subprovinces he inspected, criminal cases were entrusted to one of the elected members (associate judges) who also served as investigating magistrate.[46]

In fact, before the report of 1896 problematized the nāibs' dual role, court presidents who were independent of the office of nāib had been appointed to some districts in the Edirne province from as early as 1879. It is not clear whether these presidents were the only president judges in the district Nizāmiye courts or served as criminal judges while the nāibs assumed responsibility for civil cases.[47] Later, in November 1902, as part of the reforms of the Rumelian provinces (Selanik, Manastır, Kosova, and Yanya), the government decided that the district Courts of First Instance in these provinces were to be divided into civil and criminal sections; judges from the Ministry of Justice would preside over the latter, whereas nāibs would serve as presidents of the former.[48] This decision was implemented in many of the districts in these provinces. Basically, the reforms of the Rumelian provinces were measures taken to avoid the intervention of the Western Powers, who were then increasingly pressuring the Ottoman government over the issue of the "Macedonian question." However, separation of criminal justice from civil justice in the hands of nāibs was not merely a measure to meet the demands of the Europeans, who generally had a negative opinion of the nāibs and the sharīʿa courts. It had also been on the agenda of the Ottoman government, as we have seen.[49]

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46 BOA, Y.EE, 132/36, Report of Şakir Paşa, 9 Kanunıevvel 1312 (21 Dec. 1896).

47 According to the personnel record register, Salih Sarım Bey became the president judge of "the civil and criminal sections" of the Lüleburgaz court in March 1879 and then the president judge of "the civil, criminal, and commercial sections" of the Kırkkilise court in May 1882. However, the document concerning his appointment to Kırkkilise mentions him as "the former second president" of the Lüleburgaz Court of First Instance who was now appointed as "the president" of the Kırkkilise Court of First Instance. BOA, Dahiliye Nezareti Sicill-i Ahval Defterleri (DH. SAİD), 3/864; İ.DH, 847/68006, 29 R 1299/8 Mart 1298 (20 March 1882).

48 Saʿīd Paşa, *Saʿīd Paşa'nın Hātırātı* (İstanbul: Sabah Matbaʿası, 1328), III, 156. Many graduates of the Law School are found among the presidents and the assistant public prosecutors of the district courts of first instance in the Selānik province who were appointed in January 1907. This shows that the government preferred recruiting Law School graduates as stated in the 1896 proposal. BOA, İrade Adliye ve Mezahib (İ.AZN), 1320-L/7, 20 L 1320 (20 Jan. 1903).

49 In November 1902, the governor of the Kosova province identified as problematic the

Interestingly, in 1906, the office of criminal judge was abolished in several districts in the Balkans and was returned to the nāibs, following the suggestion of the general inspector of the Rumelian provinces, Hüseyin Hilmi Paşa.[50] According to the official correspondence, this decision was made because only a few civil and criminal cases were brought to the courts in these districts, and hence there would be no problem if the positions of criminal judge were assigned to nāibs. Noticeably, this measure was considered a means of reducing treasury expenses.[51]

As mentioned above, the nāibs' additional duty as Nizāmiye court presidents and the persistence of this practice has so far been explained in light of the shortage of personnel for the Nizāmiye courts. More recently, however, Rubin has drawn attention to a circular of 1890 sent by the Ministry of Justice to the provincial public prosecutors, which suggested that the number of candidates holding certificates for Nizāmiye positions through examination at the center or in the provinces had exceeded the number of vacant positions.[52] Nevertheless, six years later, the report of 1896 would claim that there was an insufficient number of Law School graduates and of those certified through examination to fill the positions of district judge and prosecutor. Moreover, the circular of 1890 was sent to the provinces; the selection committees formed at the provincial centers could not give certifications for the position of court president.[53] Therefore, it can be assumed that during the 1890s, the number of qualified candidates was still deemed insufficient for replacing the nāibs as Nizāmiye court presidents.

However, the more important problem was the shortage of financial resources. Financial difficulties constituted the decisive factor of the government's inability to fill the Nizāmiye positions with officials from the Ministry of Justice. Appointment of court presidents who were independent from nāibs would mean duplicating the financial burden of the Treasury, since nāibs' salaries would not

commissioning of the duties of president judge of civil and criminal courts and of bailiff (*icrā meʾmūriyeti*) to nāibs "who were ignorant of stipulations of the law" (*aḥkām-ı kānūniyeye gayri vākıf*). BOA, Bab-ı Ali Evrak Odası (BEO), 1944/145741, Ministry of Interior to the Meşîhat, 1 Ş 1320 (3 Nov. 1902).

50 BOA, İ.AZN, 1324-M/17, 25 M 1324/8 Mart 1321 (20 March 1906); İ.AZN, 1324-S/21, 27 S 1324/8 Nisan 1322 (21 April 1906).

51 BOA, İ.AZN, 1324-S/21, Hilmi Paşa to Grand Vizier, 26 Za 1323/8 Kanunısani 1321 (21 Jan. 1906); İ.AZN, 1324-Ra/6, Grand Vizier to Palace, 25 S 1324/6 Nisan 1322 (19 April 1906).

52 Rubin, *Ottoman Nizamiye Courts*, pp. 78-79; *Cerîde-i Mahākim*, 564 (6 S 1308/8 Eylül 1306/20 Sept. 1890), pp. 8144-55.

53 *Düstūr, Birinci Tertib*, V, 1058; *Cerîde-i Mahākim*, 449 (6 L 1305/4 Haziran 1304), p. 5002.

change regardless of whether they assumed additional duties in the Nizāmiye courts. Hence, even if the Porte or the Ministry of Justice desired to bring the nāibs' dual role to an end, during this period it would have been impracticable due to financial constraints.

One might ask whether the Ottoman government or the Ministry of Justice ever desired to run the Nizāmiye system without nāibs. As we have seen, the nāibs' handling of criminal cases at the district courts was deemed problematic, but their duty as presidents of the civil sections at the provincial and subprovincial levels was rarely questioned. In fact, the Ministry of Justice seems to have considered the nāibs' service at the civil courts acceptable insofar as it could supervise their appointment and discipline[54] —especially since the Ministry of Justice preferred to appoint ilmiye members to the civil sections of the First Instance Courts in the provincial capitals. Therefore, Rubin is correct in stating that "the Ministry [of Justice] perceived the dual role of the *naib* in both the *Şeriat* courts and the civil sections of the *Nizāmiye* courts as a given, and certainly not as an anomaly it had to 'fix.'"[55] However, the Meşīhat, the nāibs, and the medrese students did not see the normality of this situation as firmly guaranteed.

4. The Ulemā's Reform Efforts

For the Meşīhat, the nāibs' role as president judges of the Nizāmiye courts was a foothold in the Nizāmiye domain. Even if the Ministry of Justice had no intention to deprive the nāibs of their duty as Nizāmiye court judges, the Meşīhat had to make a constant effort not to lose the nāibs' positions in the Nizāmiye system. At the same time, members of the ulemā who worked or wished to work in the Nizāmiye courts as well as in the sharīʿa courts were required to adapt to the new situations.

The Nāibs' College (*Muʿallimhāne-i Nüvvāb*, later *Mekteb-i Nüvvāb*) and the Committee for the Selection of Sharīʿa Judges in the bureau of the Meşīhat eventually became the most important promoters of this objective.[56] The College

54 See also, Rubin, *Ottoman Nizamiye Courts*, p. 147. Rubin refers to "a sort of special 'partnership' between the Ministry of Justice and the *Meşīhat* in the civil law," which contained aspects of "conflict and cooperation, tensions and agreement."

55 Ibid., p. 147.

56 For the Nāibs' College, see Jun Akiba, "A New School for Qadis: Education of Sharia Judges in the Late Ottoman Empire," *Turcica*, 35 (2003), pp. 125-63.

added a course on the *Mecelle* to its curriculum as early as 1874, the year the Sultānī Law School opened.[57] The *Mecelle* was included in the examinations for the position of sharīʿa judge by the Committee for the Selection of Sharīʿa Judges in 1876, well before the Ministry of Justice began sending an official to the Committee for the Selection to check the applicants' qualifications to serve at the Nizāmiye courts.[58] The introduction of the Law for the Organization of the Nizāmiye Courts, the Code of Criminal Procedure, and the Code of Civil Procedure in 1879 must have alarmed the ulemā and the medrese students who wished to pursue a judicial career. Less than a month after the enactment of these new laws for the Nizāmiye courts, several students of the Nāibs' College submitted a request concerning the reform of the curriculum. In response, the Committee for Selection of Sharīʿa Judges announced that a course on Nizāmiye court procedures would be given at the college and that any nāib who wished to attend could also take the course (probably while waiting for his next appointment). Consequently, by 1881, a teacher was assigned to the College who would teach procedural law and document writing for Nizāmiye court cases.[59] The regulations for the Nāibs' College were revised in 1883. From that time forward, the *Mecelle* was taught twice a week and, as an exercise, students were required to draw up a judicial decree according to the Nizāmiye court procedure.[60] The motivation behind this new arrangement is made evident in a document prepared by the Şeyhülislām in April 1883, which stated that since the nāibs were also judges of the Nizāmiye courts, they should be proficient in the judicial laws and their educational principles should be improved and expanded.[61]

This shows that the Meşīhat did not oppose the new laws and institutions but made an effort to adapt itself to them and hold fast to its position within the new system. In this sense, the Meşīhat could only be on the defensive and react passively to the Ottoman judicial reforms. Although the adoption of the *Mecelle* guaranteed the ulemā's position in the Nizāmiye court system, they were obliged to conform to the rules and laws set by the Sublime Porte and the Ministry of Justice.

57 Ibid., p. 145; Yörük, p. 24. In 1870, before the inception of the Sultānī Law School, a special course on law opened in a bureau of the Council of Judicial Ordinances. This was the first attempt to train Nizāmiye personnel. See Bingöl, *Yargı Reformu*, pp. 203-7; Yörük, pp. 19-23.

58 Akiba, "New School," p. 146.

59 IMMA, Meclis-i İntihab Karar Defteri, 1872, fol. 55b, no. 1095, 15 Ş 1296 (4 Aug. 1879); *Sālnāme-i Devlet*, 37 (1299), p. 163.

60 Akiba, "New School," p. 147.

61 BOA, İ.DH, 882/70318, Meşīhat to the Porte, 1 C 1300/28 Mart 1299 (9 April 1883), cited in Akiba, "New School," p. 146.

A wide-ranging reform of the college's curriculum was undertaken in early 1908, a few months before the Young Turk Revolution. New subjects, such as the procedural laws, the Land Law, the Criminal Law, and the Commercial Law, were added to the curriculum.[62] The curriculum reform of the Nāibs' College was made against the background of the above-mentioned question of reform in the Rumelian provinces, that is, the Macedonian question. In the Council of Ministers, which had convened to deal with the administration of justice in the three Macedonian provinces in December 1907, the discussion extended to issues concerning the improvement of the nāibs' conditions in the region. Based on the report of the Ministry of Justice, the Council of Ministers suggested that not only in the Macedonian provinces but also in other regions, closer attention should be paid to the selection of competent nāibs, since they also presided over the Nizāmiye courts. The Council of Ministers subsequently concluded that in order for them to administer justice according to statute law, the expansion and rearrangement of education at the Nāibs' College was necessary.[63] In response, the Committee for the Selection of Sharīʿa Judges prepared a report in January 1908, in which it openly admitted the inadequacy of the Nāibs' College's curriculum and decided to add new subjects, as mentioned above.[64]

There must have been a growing awareness among the nāibs and the officials of the Meşīhat that they were increasingly marginalized in the empire's judicial institution. Apparently, they tried to improve the Nāib's College to match the level of education at the Law School in order to maintain their presence in the Nizāmiye system. The Meşīhat's concern became visible when, in 1909, it requested that graduates of the Nāibs' College be granted the same qualifications as the Law School graduates, such as the license of attorneyship—a request that was dismissed by the Ministries of Justice and Education.[65]

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62 Akiba, "New School," pp. 150, 160.

63 BOA, Yıldız Maruzat Defteri (Y.MRZ.d), 14957, decision of the Council of Ministers, 6 Za 1325 (11 Dec. 1907), p. 4. My earlier article mistakes the decision of the Council of Ministers for that of the Committee for the Selection of Sharia Judges. See Akiba, "New School," p. 149. The government also decided to open law schools in the provinces at this juncture, which must have alarmed the administrators and students of the Nāibs' College. The provincial law school was opened in Salonica in 1907, and in Konya, Baghdad, and Beirut in the following years. See Seyit Taşer, *Osmanlı Devleti'nin Taşra Hukuk Mektepleri: Ortadoğu ve Balkanlardan Çekilme Sürecinin Eğitim Kurumlarındaki İzleri* (Konya: Çizgi, 2014).

64 Akiba, "New School," p. 149.

65 BOA, Şura-yı Devlet Evrakı (ŞD), 225/13, Minister of Justice to the State Council, 27 S 1327/7 Mart 1325 (20 March 1909).

Conclusion

As we have seen, the development of the Ottoman Nizāmiye court system did not take a predetermined course. There were a number of trials and setbacks especially during the formative years. The course of reforms cannot be explained as motivated solely by ideological considerations. To the contrary, the struggle between the Meşīhat and the Ministry of Justice (or the Sublime Porte) was continuously at issue. A frequent issue of conflict was administrative authority over the judiciary personnel. Apparently, the preference for ilmiye members as civil court judges was a consistent policy for the judiciary. Sharīʿa judges appointed by the Meşīhat simultaneously served as civil judges at the Nizāmiye courts at the provincial and subprovincial levels, while the Ministry of Justice preferred to appoint members of the ulemā to the office of civil judge of the First Instance Courts in the provincial capitals. Their presence in the Nizāmiye civil courts was rarely questioned, because their expertise in Islamic law was considered advantageous for hearing civil cases according to the sharīʿa-based *Mecelle*. At the district level, nāibs continued to hear both civil and criminal cases, which was sometimes deemed problematic. However, the appointment of independent criminal judges in all districts was impracticable, not only because of the shortage of qualified personnel but also due to the state's financial incapability. Indeed, the exhausted condition of the Ottoman Treasury had repeatedly hampered the implementation of the original reform plans since the first years of the Nizāmiye court system. The abolition of the office of müfettiş-i hükkām in 1871 was one of the earlier examples of revision for budgetary reasons. Only during the Second Constitutional Period did the Ministry of Justice begin to directly appoint criminal judges to districts, some of whom assumed the duty of civil judge as well. However, this was not universally applied; many sharīʿa judges still served simultaneously as Nizāmiye judges in subprovinces and districts in 1917.[66]

66 Demirel, p. 90; *Sālnāme-i Devlet*, 68 (1333-34/1917-18). The Ministry of Justice grew increasingly skeptical of the nāibs' ability as Nizāmiye judges. For example, a judicial inspector reported that the sharīʿa judge (*kadı*) of the Malatya subprovince was "suitable for serving [only] in the position of subprovincial kadı on the condition that he would not get involved in the judicial [i.e., Nizāmiye] duties." The report also stated, "He comes to work, that is, to the sharia court, everyday regularly. From there, he enters the civil court or the administrative council and sits in his place until the afternoon, but that's all (*işte o kadar*). He always manages civil trials with the help of the members [i.e., associate judges]. . . . When the scribe writes [a document] and hands it over to him, he signs his name but has no habit of adding a word from himself." IMMA, Sicill-i Ahval Dosyaları, 830 (Kafkasyalı Ali Cevad), *sīret varakası* (report of one's conduct),

The employment of nāibs and ilmiye-affiliated judges in the Nizāmiye system may have also been a measure to appease the ulemā and to prevent their possible opposition.[67] Some discontented ulemā actually spoke out against the Nizāmiye court. For example, as early as 1865, in the Tuna province, the nāib of Rusçuk and the müfettiş-i hükkām were dismissed because of their objection to the reform.[68] Moreover, on the occasion of the establishment of the Council of Judicial Ordinances in 1868, a dissenting voice was heard from the ulemā circle, asking, "What is the need for organizing the Nizāmiye courts and councils when there were a lot of sharī'a courts?"[69] Even though some ulemā members were unhappy about the shrinking of the sharī'a court's authority, the Nizāmiye court system increased rather than diminished their opportunity to gain official positions.[70] This may have worked to alleviate their latent discontent. Giving the presidency of the Court of Cassation's civil section to a member of the ulemā was apparently a concession to the Meşīhat.

Overall, however, the ulemā were obliged to adapt to the new system in order to maintain their positions in the Nizāmiye domain. For many of them, this was the only way to survive in the Ottoman bureaucracy, regardless of what discontent about the reforms they might have. Some of them even abandoned their ulemā status, donned a fez, and took up a career as a civil official. The Meşīhat also had a pressing need to retain its influence on the Nizāmiye system and strengthen its position in the Ottoman judicial institutions. For that reason, the Meşīhat repeatedly renovated its educational system, to which the ulemā and medrese students were ready to conform. Some of them made their way into the Law School to find further opportunities in the Nizāmiye institutions. Ultimately, it was their reform efforts that enabled the Nizāmiye court system to function for nearly half a century in the Ottoman Empire, despite its limited resources.

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29 Ağustos 1331 (11 Sept. 1915). See for similar examples, IMMA, Sicill-i Ahval Dosyaları, 775 (Sirozlu Mehmed), *sīret varakası*, 18 Nisan 1332 (1 May 1916); 1136 (Çermikli Ahmed Fehmi), *sīret varakası*, 29 Eylül 1331 (12 Oct. 1915).

67 Kushner, p. 61.

68 Bingöl, *Yargı Reformu*, p. 170.

69 Cevdet Paşa, p. 85.

70 Kushner, p. 70.

Sharīʿa Judges in the Ottoman Nizāmiye Courts, 1864-1908

Abstract ■ One of the important characteristics of the Ottoman Nizāmiye court system established after 1864 was the fact that sharīʿa court judges served simultaneously as judges of the Nizāmiye courts in many places of the empire. Additionally, the Ministry of Justice appointed many ulemā members as Nizāmiye judges. Drawing upon the Ottoman archival sources, this article investigates the background of the ulemā's continuing presence in the Nizāmiye courts. Although the ilmiye members' service as civil judges was generally accepted, the district nāibs' handling of criminal cases was sometimes deemed problematic. However, the Ministry of Justice could not appoint independent criminal judges to the district courts due to financial constraints as well as a shortage of qualified personnel. In order to maintain their positions in the Nizāmiye courts, the ulemā had to adjust themselves to the new system. As a result of their reform efforts, the Nizāmiye system worked despite the empire's limited resources.

Keywords: Nizāmiye Court, Sharīʿa Judge, Ottoman Ulemā, Judicial Reform, Legal Education

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