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Selçuk ERAYDIN

Yazı İşleri Müdürü

Dr. Câhid BALTACI

NEŞİR HEY'ETİ

Dr. Câhid BALTACI

Selçuk ERAYDIN

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WESTERN INFLUENCE UPON THE OTTOMAN INSTITUTIONS : THE COUNCIL OF STATE AND THE COUNCIL JUDICIAL REGULATIONS

By Hulûsi YAVUZ

I

Ö Z E T

Osmanlı Devleti'nde batılılaşma hareketleri, 1854 Kırım Harbi'nden sonra daha da hızlanmıştır. Bilhassa 1856 Islahat Fermanı'ndan sonra, Fransız ve İngiliz elçilerinin tazyiki ile zecrî bir hal almıştır. Bu zorlama, bizzat bu son fermanın hazırlanışında alenî olarak yapıldığı gibi, batılı fikir ve hayat tarzının, bir İslâm cemiyeti olan Osmanlı ülkesine çeşitli kanallarla sızması sûretiyle de olmuştur. Bugünkü adliye teşkilâtının esasını teşkil eden Divân-ı Ahkâm-ı Adliyye ile bugün Danıştay denilen Şûrâ-yı Devlet'in kuruluşu işte böyle tesirlerle olmuştur. Bunlarda belli/başlı üç tesir vardır:

a) Fransız tesiri, b) Sadriâzam Âli Paşa'nın Girit isyânını bastırıp geldikten sonra hazırladığı lâyiha, c) Genç Osmanlıların fâaliyetleri. Aşağıdaki araştırmada batıdan müteessir olan bu üç tesir üzerinde durulmuştur.

Since the Crimean War in 1854, the influence of the west was more obviously felt in Turkey. Consequent upon which the social and the political life of the country was encouraged to follow the western model. The Muslim Ottoman State together with the institutions of it were obliged to be reformed. In fact the main reason for the initial stages of westernization were that Turkey had a common border

with Europe and the western ideal could easily be penetrated into the country through mass media, books, students who had studied in the capitals of Europe and some influential statesmen who had been fascinated by the western way of life as well as western civilization. Therefore, one of the main indications of the western influence had emerged on the establishment of the Council of Judicial Regulations and the Council of State.

Ahmed Cevdet Paşa (1822-1895) 1, an open-minded 'âlim and a distinguished Ottoman historian, was an architect of many educational, legal and to some extent administrative reforms. His fame stands on his works, In particular, it was the work of Ahmed Cevdet Paşa made after 1868 which made him an immortal figure in Turkish legal history. During the reign of Sultan (Abdu'l-'Aziz (1861-1876) improvements and modifications of the judicial organization were based on the Paşa's ideas2. The office which made him responsible for all the legal modernization was that of the Presidency of the Council of Judicial Regulations **Divân-ı Ahkâm-ı 'Adliyye**), which was set up together with the Council of State, on 11 Zi'l-ka'de 1284/5 March 1868. Then, the old Supreme Council of Judicial Ordinances, which had been joined by the **Tanzimât** Council in 1861, was replaced by these two new bodies the Council of Judicial Regulations and the Council of State. Cevdet Paşa was given the task of making regulations and establishing other institutions of the Council of Judicial Regulations It became a supreme court of appeal and cassation. Mithat Paşa, too, took charge of establishing the Council of State3.

It is believed that the foundation of these two top Government offices was stimulated by the following three factors: a) French influence, b) the memorandum of 'Âli Paşa sent back from Crete late in 1867 while he was restoring order in the agitated island, and his impressions there, c) and the advent of the Young Ottomans4.

Since the Crimean War, France had maintained a watch over the Porte, and wished the Ottoman Government to carry out internal reforms. France had a traditional connection with the Ottomans in reforming Turkey's military institutions. It was with French assistance

(1) Further on his life and works see, H. Yavuz, «Ahmed Cevdet Paşa and the Ulema of his time», **İslam Tetkikleri Enstitüsü Dergisi**, VII: 3-4 (1979), pp. 177-198.

(2) E. Ziya Karal, **Osmanlı Tarihi**, Ankara 1954, vii. p. 165.

(3) Cevdet, **Tezâkir**, iv. p. 84; Ebul'ula Mardin, **Medeni Hukuk Cephesinden Ahmed Cevdet Paşa**, İstanbul 1946, p. 58; A. Haydar Mithat, **Mithat Paşa, Hayat-ı Siyâsiyyai Tabşıra-ı İbret**, İstanbul 1325/1907, p. 61; A. Mithat, **Üss-i İnkılap**, i. p. 107.

(4) E. Ziya Karal, **Osmanlı Tarihi**, vii. p. 145.

that the first attempts were made in training and reconstructing the Ottoman army in the time of Mahmûd I (d. 1754), Mustafa III (d. 1774), and Selim III (d. 1808). Moreover, France contributed more military supplies to Turkey during the Crimean War than the other members of the allies. In 1867, therefore, she tried to interfere with the reforms in return for her aid in the war⁵. In a note, dated 22 February 1867, the French government alleged that, at least, nineteen articles of the Hatt-ı Humâyûn of 1856 had failed in the face of the inertia of the Turkish Government⁶.

The French note urged the fulfilment of the **Hat**. Among other things that it singled out were: the question of admitting Christians to offices of the State; the participation of all in military service as a means to achieve equality and a sense of public spirit; the organization of public instruction which requires secondary and mixed schools, and schools for the training of teachers; the foundation of a university open to both Muslim and Christians, in which was taught not only medicine, but also other sciences, history, management, and law. Further, the French memorandum suggested the extension of the administrative and judiciary system already introduced in some provinces as a result of the new organization of the vilâyets in 1866. This system, it continued, which did honour to the Turkish Government and deserved to be encouraged, rested on an increasingly complete separation of the judiciary and the administrative commands, and on the creation of mixed civil tribunals, made up of equal members of Muslims and non-Muslims, judging lawsuits between Muslims and non-Muslims. It was necessary to examine whether the method of election adopted for the formation of those civil tribunals was liable at that time, and at least in the future, to give good choices, and if the position which would henceforth be made for the Christian judges, was of a kind to place them equal to their task. Moreover, the development of the institution of the Tribunals of Commerce was to be considered. The drawing up of a new code of commerce more complete than that which existed then, was essential. It would be necessary to introduce in it all the articles of the French Civil Code applicable to commercial matters. The French memorandum continued

(5) Engelhardt, *Türkiye ve Tanzimat: Devlet-i 'Osmâniyyenin Târih-i Islâhâtı*. transl. Ali Reşad, Istanbul 1328/1910, p. 222; cf. Mahmûd Celâlü'd-Dîn, *Mir'ât-ı Hakikât*, (Istanbul 1326/1908), pp. 28ff.

(6) See, Note sur le Hatt-ı Houmayoun de 1856, en date de Paris, le 22 février 1867 (17 chéval 1283), in Le Baron I. de Testa, *Recueil des traités de la Porte Ottomane*, Paris 1892, vii. pp. 418-422.

that those who drew up the Ottoman code, in fact, limited themselves to copying certain provisions of their code of commerce, without thinking that the general principles of the contents were in the Civil Code, from which they had to be extracted in order to make them figure in the Code of Commerce in their proper contexts. 7

On the other hand, Monsieur Nicholas - Prosper Bourée, the French ambassador to the Porte, was a close friend of 'Âli Paşa, the Grand Vizier of the time. He has been inculcating in 'Âli Paşa the idea of strengthening the Ottoman administration by the liberal institutions, that is, a council, similar to those of the French and Austrian **Conseil d'État**, in which there could be representatives of both Muslim and Christian communities 8.

The second factor influencing the replacement of the Council of Judicial Ordinances (**Meclis-i Vâlâ-yı Ahkâm-ı 'Adliyye**) by the new Council of State and the Council of Judicial Regulations, was 'Âli Paşa's own ideas which he pronounced in his memorandum. He sent several communications from Crete when he was settling the affairs of the Island from October 2, 1867 onwards. Of these, the one which was dated 3 **Şa'bân** 1284/30 November 1867, is famous and conveys what he had in mind. He was, evidently, influenced by the speech of Napoleon III, who spoke in the French Parliament, about the urgent need for better conditions of the Christians in Turkey 9.

The first half of 'Âli's memorandum described the internationally isolated and internally dangerous condition of the Empire. 'Âli Paşa started by referring to the world's political changes which put the Empire into a desperate situation. France, he said, began to interfere with our every single issue as if there was no treaty between us. «Every nation has a right to elect its own governor and government whenever it wishes. One nation cannot oblige the other to obey its own sovereignty» France was reported to have said. By uttering this, (Âli added, France wanted to agitate people in the world, notably the Christian minorities in Turkey. England, too, he continued, abstained from the cases which were not harmful to its economic interests, and in particular, it did not oppose nationalism because England itself is a free country; therefore we can no longer hope England to help us in any way. Apart from that, the Grand Vizier remarked that Russia

(7) I. de Testa, **Recueil des traités de la Porte Ottomane**, vii. p. 420.

(8) Enver Ziya Karal, **Osmanlı Tarihi**, vii. p. 145.

(9) Mahmûd Celâlu'd-Dîn, **Mîr'ât-ı Hakikât**, i. p. 30.

has had interests in Turkish territories since the time of Peter the
own ends. Even when it attempted to achieve its goal fifteen years
ago Western Powers stood against it, and eventually the Treaty of
Paris was signed in 1856. The rest of the memorandum of 'Ali Paşa,
which conveys the circumstances of its time, can be summed up as
follows:

«The Ottoman State was left alone. In order to resist
the external peril and internal difficulties it has been dest-
roying its most productively essential population, and
spending certain revenue for defence. Consequently, the
State has been left with no money to spend on development,
and no time to think about the best regulations for the be-
nefit of the country. Neither the people nor the public tre-
asury can endure this burden any more. It is no longer
possible to keep more than ten million Christians as Otto-
man subjects who are filled with aspirations to become
independent. So, there is no time for half measures. Wit-
hout caring about any minor losses at the expense of the
country, it is even more than a *farz* (obligatory duty) to-
day, to put an end to the external danger and to rescue
the State of Muhammed and the people of Islam, from a
whirlpool of annihilation into which they are urged to fall.
It is more than likely that the Empire will have to face in-
ternal riots and international upheaval if the measures are
not taken in time. A whirlwind has appeared on the ho-
rizon, that is, the integrity of the Empire is in danger due
to external intervention and domestic revolt, so some car-
go must be jettisoned to save the ship.

In this age, Europe spreads abroad the ideas of liberty,
equality, and the opportunity for everyone to be able to
obtain employment and rank, regardless of race and sect.
This is the case in Europe; there is no word of Catholics,
Protestants, Jews and atheists, all are forgotten when one
applies to office. These European ideas have had much af-
fect on our Christian subjects most of whom are educated
in Europe and Greece, and so better fitted for office than
any one else. And such educated people are increasing.
«We do not have equal rights with Muslims in legal mat-

ters, because we are not Muslim. We are forsaken, and left with certain jobs and duties although we, too, are citizens and subjects of the same State», some of the Christians were reported to have said. Therefore, it is going to be impossible to rule them if the State does not take measures to stop the foreign influence on its subjects, by improving their conditions. As their education is advancing step by step, they always hope for more support from the Powers. So, their conditions should be good as those of whom they envy in Europe. The only means to achieve this is to give them equal opportunities in jobs, ranks, and legal matters. Then they would no longer pay attention to the siren call of foreign propagandists, and instead would regard themselves not as held in subjection by a Muslim state, but as subjects of a monarch who protects all equally.

Finally, there is no alternative other than employing Christians in governmental affairs, but with the condition that they have to be able to write and read Turkish about which, neither themselves nor the Powers would say anything. And again, there is no choice other than doing it, because we cannot treat the Christians as if it were two hundred years ago. Besides, we could not resist the two hundred million population of the Christian Powers who stand as the protector of the non-Muslim minorities. Here, we have to change our attitudes towards them, otherwise we would lose the Ottoman Empire. In that case our nation and religion would have no owner.

One of the important reasons for the Christians' irritation is the absence of suitable schools, and their children go to Greece and Russia where anti-Turkish feelings are inculcated. It is, therefore, an essential duty upon the State to teach the people. The only safeguard against the agitators is the fusion of all the subjects, Muslim and non-Muslim in the same schools.

Another complaint is about our law-courts. So, a new civil code, such as Egypt was inaugurating on the Western model, should be drawn up in order to hear mixed cases in the mixed tribunals. This would not contravene the *Şeri'at*.

Lastly, the only solution of the Empire is the fusion of all its subjects in all except religious matters» 10.

It is obvious that (Âli Paşa was forced by the pressure of events to write the words quoted above. Here, he did not mention the Council of State and the Council of Judicial Regulations, at all. But he seems, at least, to be willing to approve of such organizations. It is, however, true that their establishment became a reality as soon as he returned to Istanbul on 29 February 1868. On March 5, 1868, less than a week after his arrival, the order was issued to replace the old Supreme Council with the said two bodies 11.

As far as the civil code is concerned, the significance of his memorandum will remain as one of the reasons behind the codification of the Şerî'at, that is the compilation of the Mecelle by a committee headed by Ahmed Cevdet Paşa from 1868 onwards.

Lastly, there was a growing feeling amongst the intellectuals that the reign of 'Abdu'l-Azîz and the administration of 'Âli and Fuad were extremely autocratic. A third reason for the establishment of the Council of State and the Council of Judicial Regulations was the New Ottoman Society which came to be known in public in 1867. Initially it was a secret society founded by a half a dozen young men in June 1865. Then it was called the Patriotic Alliance (*İttifâk-ı Hamiyyet*). In Europe this group of people was known as *Jeune Turquie*. The original members of the Patriotic Alliance, were Mehmed Bey (1843-1874), Reşâd Bey (later paşa) (1844-1901), Nûrî Bey (1844-1906), Âyetullah Bey (1846-1878), Nâmîk Kemâl (1840-1888), Refîk Bey (d. 1865).

Mehmed Bey, who has been called the «spirit and chief» of the Patriotic Alliance, had received his education in Paris and had returned after being equipped with the ideas of

(10) Hayru'd-Dîn, *Vesâik-i Târihiyye ve Siyâsiyye*, (Istanbul 1326/1908), vol. 5. pp. 72-81; A. Fuad Türkgeldi, *Rical-i Muhimme-i Siyâsiyye*, pp. 118-127. The original of the memorandum may be found in BA, Yıldız archives, K33/Z, 73/1507. M. Celâlu'd-Dîn, *Mir'ât-ı Hakikât*, i. p. 30, and M. Kemal İnal, *Osmanlı Devrinde Son Sadriâzamlar*, İstanbul 1969, p. 320/5, give a summary of it. A.D. Mordtmann published a German translation in the *Augsburger Allgemeine Zeitung* of 18 Sempember 1876, and reprinted in his *Stambul und das moderne Turkenthum* (Leipzig, reprinted in his 75-88 : R. Davison, *Reform in the Ottoman Empire 1856-1876*, Princeton 1963, p. 87, n21.

(11) M. Kemal İnal, *Son Sadriâzamlar*, p. 320/6; Davison, p. 240.

constitution and popular representation. He belonged to an important family whose members had served faith and state. Both Nûri and Reşad had learned some French. They first met Mehmet in the Government offices. It was Mehmed from whom they had learned political notions, while they were working in the Translation Bureau of the Supreme Council of Judicial Ordinances. Reportedly, Nûri was the founder of the Patriotic Alliance, and consequently came to be known as its president. The fourth member, Âyetullah Bey, later to be a newspaper editor, came from a wealthy and well-educated family of statesmen. The **konak** of his father, Suphi Paşa, was a centre of men of learning from amongst Eastern and Western scholars alike. It was unthinkable that an authority on any subject should go through Istanbul without visiting Suphi Paşa. The **konak** was a kind of academy of science. Âyetullah Bey, therefore, had an opportunity to acquire a solid Western as well as Eastern culture. He learned French in his youth. It was Âyetullah who drew up the statutes of the organization on the model of the Carbonari Society, the secret society which in the beginning of the nineteenth century had fought against the restoration in France and Italy 12.

The fifth of the traditional six was Nâmık Kemâl, who gained greatest prominence amongst the members. He was also a Translation Bureau employee, and the editor of **Tasvîr-i Efkâr**. He was born in the town of Tekirdağ in December 1840. For a few months, in his youth, he studied at the **Rüşdiyes** of Beyazıt and Vâlide. These were new types of modernized middle schools that had been established during the **Tanzimât**. Most of his time between the ages of ten and sixteen years was spent in extensive travel throughout the country. He accompanied his grandfather 'Abdu'l-lâtif Paşa to the border town of Kars, and followed him later to Sofia during which time he developed his patriotic feelings. By the year of 1857 Kemâl came

(12) Şerif Mardin, **The Genesis of Young Ottoman Thought**, Princeton 1962, p. 21; Ebuziya Tefik, **Yeni Osmanlılar Tarihi**, (Istanbul 1973), pp. 83-84. Further on Mehmed, see, E. Tefik, *ibid.*, p. 79 and *passim*; M.K. İnal, **Son Asır Türk Şairleri**, İstanbul 1969-1970, pp. 945-950; Ş. Mardin, *op. cit.*, p. 12; Miithat Cemal Kuntay, **Nâmık Kemal, Devrinin İnsanları ve olayları**, i. (Istanbul 1944), pp. 357ff., 414-424; Abdu'r-Rahman Şeref, **Tarih Musahabeleri**, İstanbul 1340/1921, pp. 173-175. On Reşad, see, E. Tefik, *op. cit.*, pp. 78-79; M. C. Kuntay, *op. cit.*, i. 381-389; İ. Alaettin Fövsa, **Türk Meşhurları, Ansiklopedisi**, (Istanbul 1947?), p. 320. On Nuri, see, E. Tefik, *ibid.*, p. 87; İ. A. Gövsa, *op. cit.*, p. 288; M.K. İnal, *op. cit.*, p. 1243f.; M. C. Kuntay, *ibid.*, p. 389f. On Âyetullah, see, E. Tefik, *ibid.*, p. 83f.; İ. A. Gövsa, *ibid.*, p. 55; M.K. İnal, **Son Sadrazamlar**, pp. 142-144. See also, Tarık Zafer Tunaya, **Türkiyede Siyasi Partiler, 1859-1952**, İstanbul 1952, pp. 91-96; Kaya Bilgegil, **Ziya Paşa Üzerinde Bir Araştırma**, (Erzurum 1970), pp. 79ff.

to Istanbul and entered the Translation Bureau where he met most of his New Ottoman friends. He studied **Hadis, Fıkıh, Tefsir**, mysticism, Arabic and Persian literature under the great scholars of his time. At the age of nineteen he completed his religious education. In 1864 he became the editor of **Tasvîr-i Efkâr** when its publisher and editor Şinasi Efendi (1824-1871) left Istanbul for Paris. The office of the paper, ever since, became the meeting place of the Patriotic Alliance members 13. While living in exile in Paris and London, Kemâl continued to study law and economics 14. In London he wrote about the constitutional regime, and the social and economic problems of the Empire 15. All his writings appeared in **Hürriyet** from June 29, 1868 onwards in London, and in **İbret**, the latter being published in Istanbul. The sixth member of the group was Refik Bey, the owner of the short-lived periodical **Mir'ât** (Mirror), founded in 1863. He, too, learned some French and worked in the Translation Bureau. He played less of a role in the group than his colleagues because he died in 1865.

The immediate aim of the group was to get rid of absolutism and promote constitutionalism. The original purpose of the Patriotic Alliance, apparently, had not been changed until they were forced to flee to Europe in 1867. Then, the name of the Patriotic Alliance was changed into the **New Ottomans (Yeni Osmanlılar)**, or **Young Ottomans**. The membership had increased to 240 within the last two years. The constitutional regime was not the sole aim for all of them. They were a loose group of individualistic intellectuals who had some common interest in the situation of the Empire in the second phase of the **Tanzimât**.

First of all they were opposed to the tight grip of Âli and Fuad Paşas on the Ottoman administration. Âli was in particular their ma-

(13) It seems likely that the editorial offices of the newspapers of the times had been one of the places to get together. M. Kemal İnal, **Son Asır Türk Şairleri**, p. 1019, quotes Cevdet Paşa's «Ma'ruzat», in that part which today has been lost, that the New Ottomans used to meet in the editorial office of **Ceride-i Havadis**. Cf. Ş. Mardin, **The Genesis**, p. 127; Davison, **Reform**, p. 188, n60.

(14) M. C. Kuntay, **Namık Kemal**, i. pp321, 537; Ö. Faruk Akün, **İslâm Ansiklopedisi**, Art. «Namık Kemal».

(15) A Good deal of excerpts of Kemal as well as his friend Ziya Bey, can be seen in İhsan Sungu, «Tanzimat ve Yeni Osmanlılar», in **Tanzimat I**, İstanbul 1940, pp. 777-857. «This article (of Sungu) raised considerable interest among Turkish scholars because it purported to refute a myth, that of the Young Ottomans as advocates of thorough Westernization. Sungu showed, by lengthy excerpts from the **Hürriyet**, that in fact this mouthpiece of the Young of government, and that religion was given an undeniably major role in the schemes of reforms»: Ş. Mardin, **The Genesis**, p. 287.

in target. The hatred against him was certainly reinforced by the personal grievences of some of them 16. The second, and strongest bond amongst them was a passionate resentment of the European interference in the affairs of the Empire since the Crimean War 17. This interference started when Russia provoked the Christian subjects to rebel especially in the Balkans, in order to regain the loss of credibility she suffered in the War, and recently attempted the same in Crete and Serbia. Âli Paşa, again, became Grand Vizier on 6 Şevvâl 1283/11 February 1867. It was his fifth Grand Vizierate. Crete was still seething with rebellion, and Belgrade alerted to free itself from Turkish soldiers. Eventually, the city was evacuated three days later. Bloodshed continued in Crete 18. The «Eastern Question» was again on the scene of international politics. In *Tasvîr-i Efkâr*, Kemâl began to comment on current problems criticising foreign intervention in the Cretan affair 19. The Cretan revolution kept the Porte busy for a long time. Expeditionary forces were sent to the island, but they met with little success. At last, in the winter of 1867-1868, Âli Paşa himself went to Crete. The inability of the Porte to deal with the Cretan insurrection caused bitter criticism among many people in the capital 20. Besides, there was a general resentment at European interference in the affairs of the Empire. The new Ottomans' opposition to 'Âli stemmed in part from that sort of interference. 'Âli, according to them, «as foreign minister or grand vizier was forced on many occasions to yield to the pressure of the great powers and to deal with rebellion by conciliation as well as by repression» 21. 'Âli, therefore, «was mercilessly castigated as kaiser, despot, tyrant, grafter, inefficient, weak, and destroyer of the faith of believers in the might of the Padishah and Caliph» 22.

(16) R. H. Davison, *Reform*, p. 175.

(17) Davison, *loc. cit.*

(18) On the conditions at the time of 'Ali's last term in the office concerning Russian agitation, see, M. K. İnal, *Sadrızamlar*, pp. 21-23.

(19) In February and March of 1867 during the time of crisis the Government was very annoyed with two newspapers. One of these was *Tasvîr-i Efkâr*, edited by N. Kemal; the other was the *Muhbir* whose chief editorial writer A. Suavi, had begun to cooperate with the Patriotic Alliance some time after its foundation: Ş. Mardin, 25.

(20) Mardin, *The Genesis*, p. 25.

(21) R. H. Davison, *Reform*, p. 175; cf. Bilgegil, *Ziya Paşa*, pp. 81-83; M. C. Kuntay, *Namık Kemal*, i. pp. 157ff. A retrospective account on the events between 1839-1867 which laid the foundation of the New Ottomans, see, Ş. Mardin, *op. cit.*, p. 14f.; A. Hamdi Tanpınar, *Ondokuzuncu Asır Türk Edebiyatı Tarihi*, İstanbul 1942, pp. 154-160.

(22) R. H. Davison, *Reform*, p. 219. Ali's personal opponents were not only the New Ottomans, but Reşid and Cevdet Paşas were also included. On the reasons, see, M. C. Kuntay, *op. cit.*, i. pp. 157-166.