"FOR HIS CORRECTION AND AS A DETERRENT EXAMPLE FOR OTHERS" MEḤMED ʿALĪ'S FIRST CRIMINAL LEGISLATION (1829-1830)

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Abstract

Until now, the first criminal legislation promulgated by Meḥmed ʿAlī has been available only in an unreliable Arabic summary. In this essay, I edit and translate the original Ottoman Turkish text, as found in the Egyptian National Archive. The edition and translation are preceded by an analysis of the code in which I argue (1) that this code is best regarded as an expression of Meḥmed ʿAlī's attempt to centralize and rationalize the governmental apparatus and the administration of justice, in order to tighten his control over Egypt; and (2) that the document can be read as an articulation of the perceived social distance between the Turkish-speaking ruling class and other groups in Egyptian society.

THE CONVENING OF THE CONSULTATIVE COUNCIL (*Meclis-i Meşveret, Meclis-i ʿUmūmī*)[1] in September 1829 (3 Rabīʿ I 1245)[2] marked the beginning of Meḥmed ʿAlī's legislative activity in the fields of criminal, constitutional and commercial law. During that year (1245 H., 1829-1830 C.E.), two criminal codes were introduced, one dealing with crime in general and the other specifically with rural crime. The latter, commonly called *Qānūn al-Filāḥa* and enacted in Shaʿbān 1245 (January-February 1830), has been printed several times in its Arabic version and is well known.[3] The former, enacted on 21 Rabīʿ I 1245 (20 September 1829), has only been published in two rather inaccurate Arabic summaries.[4] The original text, written in Ottoman Turkish, has

[1] Since Ottoman Turkish was the only administrative language during the first half of the nineteenth century, I use the Turkish rather than the Arabic terms for administrative bodies and institutions; these terms are transliterated according to the guidelines of the *International Journal of Middle Eastern Studies*.

[2] For the *Meclis-i Meşveret* see Sāmī (1928-1936), 2, 349-54; Deny (1930) 110-11; Rāfiʿī (1972), 516-22.

[3] The *Qānūn al-Filāḥa* was first printed in Rajab 1245 H. (January1830 C.E.). It consists of the penal provisions listed in an appendix to a manual on agriculture entitled *Lāyiḥat zirāʿat al-fallāḥ wa-tadbīr aḥkām al-siyāsa bi-qaṣd al-najāḥ* (Būlāq: Rajab 1245). It was reprinted in Shawwāl 1256 (November/ December 1840). A slightly modified version of this law was later included in sections 1-55 of *al-Qānūn al-Muntakhab*, printed in 1845. Text in Zaghlūl (1900), *Mulḥaq*, 100-55 and Jallād (1890-95) iii, 351-78.

[4] Sāmī (1928-1936), vol. 2, 354 (based on *al-Waqāʾiʿ al-Miṣriyya*) and Zaghlūl

never been printed and is found in the Egyptian State Archive (Dār al-Wathāʾiq al-Qawmiyya). There are two versions of the code (henceforth called documents A and B, respectively).[5]

Document B and the first part of document A (A.1) contain a criminal code divided into ten (unnumbered) sections. Although the wording of these versions differ, their contents are identical. The text of Document B contains the minutes (*hulāṣat*) of the meeting of the Council that were sent to the various officials concerned. Document A is worded more like a law and in addition contains the following legislation:

- an appendix to this law, enacted on 20 Shaʿbān 1245 (14 February 1830), consisting of one section (A.2)
- six sections, enacted on the same day and identical with some sections of the *Qānūn al-Filāḥa* (A.3);
- an undated firman of Ibrahim Pasha regarding gypsies *(Nūrī)*, beggars, vagrants etc. (A.4)

In this article I will analyze this criminal code and present the transcribed Ottoman Turkish text of document A and its English translation. In analyzing the code I will also take into account, to some extent, the *Qānūn al-Filāḥa*, which represents the same stage in the development of criminal legislation. Instead of focusing on the purely legal aspects of this code, I will try to read it as a social and political document that expresses the views and ideologies of the ruling class of Egyptian society in the early nineteenth century. Studied from this perspective, the document is significant for two reasons. First, it is an expression of the endeavor to centralize and rationalize government and the administration of justice; second, it can be read as an articulation of the social hierarchy as perceived by the ruling class.

But first a survey of the contents of these laws. The code contained in documents B and A.1 deals chiefly with misappropriation of state and private property, either by officials or private persons (sections 1-3 and 7-10). In addition it addresses counterfeiting, homicide and robbery (sections 5 and 6). Section 4 stipulates that the relatives of persons sentenced to prison may submit petitions for their release before the

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(1900), 163 (based on an Arabic rendering of the document to be found in Dār al-Wathāʾiq al-Qawmiyya; henceforth DWQ). Baer (1969) does not mention this code in his survey of early nineteenth-century penal legislation.

[5] DWQ, Dīwān-i Hidīwī Turkī, Daftar qayd al-khulāṣāt, Sin/2/40, Sijill 23, pp. 12-17 (henceforth referred to as document A) and Sijill 12, pp. 1-2 (henceforth referred to as document B). There also exists a document containing an Arabic translation of document A, with the exception of the firman of Ibrāhīm Paşa: Maḥfaẓat al-Mīhī, doc. 8.

termination of their sentence. A.2 contains only one section (11), addressing embezzlement of state property by tax collectors and sheikhs in Upper Egypt. The four sections of A.3 deal with theft of fruits and animals (12 and 13), lying to officials (14) and the wounding of a tax collector by a peasant who refuses to pay his dues (15). These sections are identical with sections 4, 19 and 7 of the *Qānūn al-Filāḥa*.

Ibrāhīm Pasha's firman (A.4) is arranged differently from documents B and A.1: It contains four sections, each subdivided into two paragraphs. The first paragraph of each section describes the punitive measures to be taken with respect to the members of the groups defined in the second paragraph. But whereas the other laws impose penalties for committing certain acts, this decree establishes that punitive measures must be taken against certain groups of people, regardless of whether they have committed criminal acts or not. The measures are not specfic with regard to the duration of imprisonment: persons apprehended are to be sent to forced labor in factories or drafted into the army for an unspecified period.

The provisions of the code were effective for only a short period. That the code was applied appears from orders given to lower officials directing them to deal with criminal cases, "*ḳānūnnāme manṭūḳca*", according to the enacted law code, which can only refer to the Ḳānūn al-Filāḥa or the criminal code presented here.[6] The sections on misappropriation by officials were replaced in 1837 by the *Qānūn al-Siyāsetnāme*, the penal provisions of the Organic Law establishing the new organization of government.[7] The section on theft was first amended in November 1835 by a decree of Meḥmed ʿAlī raising the penalty for theft to seven years forced labor.[8] In August 1844, the sections on theft, forgery and homicide were replaced by provisions of a penal law consisting of translated sections of the French Code Pénal of 1810,[9] and the section on highway robbery was replaced by a decree of October 1844.[10]

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[6] See e.g. DWQ, Sin/1/55, Qayd al-awāmir al-karīma li-l-dawāwīn wa-l-aqālīm wa-l-muḥāfaẓāt, Sijill 3 (1251-1252), no. 112, 13 Jumādā II 1251. The term is also used at other places in this sijill.

[7] The law was printed in Rabīʿ I 1253. Text in Zaghlūl (1900) *Mulḥaq*, 4-26. On this law, see Hamed (1995).

[8] Amr to Muhtār Bey, President of the *Meclis-i Mülkiye,* dated 12 Rajab 1251. Sāmī (1928-1936) vol. 2, 454.

[9] Law enacted on 9 Shaʿbān 1260, and included in the *Qānūn al-Muntakhab*, sections 122-97.

[10] Decree of 29 Ramaḍān 1260, included in the *Qānūn al-Muntakhab*, section 197. The wording of the passage raises questions because it implies that until that time highway robbery was punished with capital punishment and that this decree

It has been asserted that the enactment of statute laws dealing with homicide, theft and robbery implied a restriction on the sharīʿa, or even its abolition, in criminal matters.[11] This may have been the case in some Muslim regions. In Egypt, however, such laws were complementary to the sharīʿa. In criminal matters both the qāḍī and the administration played a role, the former applying the sharīʿa, the latter applying the enacted laws and acting on the strength of *taʿzīr* or *siyāsa*. The qāḍī would hear all cases involving violent death, illegal intercourse, abuse, and property claims resulting from theft. He would consider such cases from the perspective not only of private law but also of criminal law. However, constrained by the strict sharīʿa rules of evidence and procedure, he often could not impose punishment. In these cases, administrative officials would try the offense again and examine it from the point of view of public interest. Such officials would also deal with offenses that were not heard by the qāḍī. The administration's jurisdiction in criminal matters was restricted in 1842, when the *Cemʿiyet-i Ḥaḳḳāniye (al-Jamʿiyya al-Ḥaqqāniyya*) was established. Thus, the 1829-1830 codes addressed not the *qāḍī* or judicial councils but the administration. The procedures followed by officials (and later by the judicial councils) dealing with crime did not resemble those of a criminal trial as we understand it now, but were rather of a bureaucratic nature: The official or the council tried the case on the basis of police reports and without publicly hearing the witnesses and the defendant.[12]

The laws under discussion, called *qānūn,* are consistent with the tradition of Ottoman state legislation. Yet there are important points on which they differ from Ottoman criminal laws.[13] The most important is that these new laws (with the exception of those dealing with gypsies and vagrants) clearly specify the penalty for each offense. The Ottoman codes usually limit themselves to defining the offense and mentioning that it deserves punishment.[14] Sometimes the Ottoman codes specify the kind of punishment (e.g. flogging, detention), but hardly ever the quantity, unless the punishment is a fine. Another difference is that the new laws restrict corporal punishment to the death penalty and

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introduced a punishment of forced labor for life. However, section 6 of the Penal Code of 1829 had already replaced capital punishment for highway robbery with forced labor for life.

[11] See e.g. Baer (1969), 126.

[12] Cf. Peters (1997) and Peters (forthcoming).

[13] For Ottoman criminal law in general, see Heyd (1973); for Ottoman criminal law in Egypt, see Faraḥāt (1993).

[14] Thus in the *Ḳānūnnāme-yi Mıṣr* of 1525. Faraḥāt (1993), 509.

flogging. Under Ottoman law the range of corporal punishment was very wide and included the amputation of parts of the body (nose, ears, hands, male organ), impaling and branding.[15] During the first decades of Meḥmed ʿAlī's reign cruel corporal punishments[16] still occurred.[17] The market inspector (*muḥtasib*) of Cairo had a particularly bad reputation for his resourcefulness in this respect.[18] It would seem that this new legislation manifests Meḥmed ʿAlī's intention to put an end to such practices. In the absence of travellers' reports to the contrary, we may assume that he was generally successful.[19] Moreover, cruel methods of execution also fell into disuse. The last instance of impaling occurred by the end of the 1830s[20] and the normal form of execution became hanging.

A final novel aspect of the new codes is the prominence given to imprisonment with forced labor. The prisons were located either at the Alexandria Dockyards (*līmān*, *lūmān*) or in government building sites in local districts.[21] The decree against vagrants and gypsies mentions in addition forced labor in factories (probably for wages)[22] and military service as punishments. The latter punishment is also included in the *Qānūn al-Filāḥa*.

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15 See U. Heyd (1973), 262-65. For the cruel and publicly executed modes of capital punishments during the later Mamluk period in Egypt, see Espéronnier (1997).

16 Hanging and flogging are no doubt cruel punishment. However, in the context of early nineteenth- century Egypt, I use the term "cruel" in connection with punishments to refer to mutilation (e.g. amputation of the hand) or to punishments adding additional suffering to the death penalty.

17 For the application of the punishment of amputation of the hand in the year 1812, see Jabartī (1297 H.) vol. 4, 144.

18 See Jabartī (1297 H.) vol. 4, 277-78 (Shaʿbān, Ramaḍān, 1232), Lane (1966), 125-27. De Forbin (n.d.), 66.

19 See e.g. Lane's observation that in the 1830s theft was no longer punished by amputation (Lane [1966], 110). This was the policy of the central government, although it does not exclude the possibility that local officials treated their subjects cruelly. Travellers often recount the arbitrary behavior of officials, but do not mention punishments other than flogging, except for the reports on the *muḥtasib* and one or two more or less identical stories that the authors seem to have copied from one another, which makes it difficult to judge their veracity.

20 M. Gisquet, who visited Egypt in 1844, mentions the year 1839 (Gisquet [n.d.], vol. 2, 132), whereas V. Schoelcher, who was there in 1845, dates the event to 1837 (Schoelcher [1846], 24). See also Guémard (1936), 261.

21 The latter punishment is mentioned in section 11 of the penal code (*ebniye-yi mīriyede istihdām*) and also in section 17 of the *Qānūn al-Filāḥa*: "to be employed for one year in the government building sites (*ʿimārat al-mīrī*) in the *maʾmūriyya* while being shackled."

22 This seemed to be the rule with regard to vagrants and gypsies. See e.g. *al-Waqāʾiʿ al-Miṣriyya*, 5 Jumādā II 1247.

The code is clear about the objectives of punishment. It mentions correction and rehabilitation of the culprit[23] and, especially in connection with capital punishment and life imprisonment, deterrence.[24] To emphasize the deterrent aspect of capital punishment, the Civil Council (*Meclis-i Mülkiye*) issued instructions in November 1834 to the effect that the bodies of persons who had been hanged were to remain on the gallows for one day and that posters were to be distributed and posted all over the country informing the people of the sentence.[25]

Although retribution is not explicitly mentioned, the law establishes a clear correspondence between the seriousness of the offense and the resulting harm, on the one hand, and the severity of the penalty, on the other. In the older systems of criminal law, this notion often took the form of "mirroring" punishments, i.e. punishments reflecting the act for which they are a retribution. An example can be found in classical Islamic law, where, according to some *madhhab*s, retaliation for manslaughter is to be carried out after due trial by one of the heirs of the victim, using a weapon or method similar to the one used by the perpetrator.[26] In the early modern period, comparable notions of punishment existed in Europe. Such punishments were meant to enhance their deterrent effect.

In the new criminal laws, however, this visible and qualitative correspondence between crime and punishment disappeared and was replaced by a quantitative one. With the exception of the death penalty, punishment was made uniform and quantifiable and consisted in imprisonment or flogging. Its primary aim was no longer deterrence, but rather retribution and rehabilitation of the culprit. In several instances the measure of retribution is precisely quantified in the new code. The section dealing with common, unqualified theft (section 3) is a case in point. It contains a table where the value of the stolen property is related to the length of imprisonment:

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[23] The texts uses the Arabic phrases *tarbiyat*^{an} *lahu* or *li-ajl al-tarbiya*, "for his correction" (A9; A10; B3; B7) and also the word *ta'dib*, "teaching a lesson" (A10; B10).

[24] "*Ibrat*^{an} *li-ghayrihi*, *ʿibrat*^{an} *li-sā'irīn*", "as a deterrent example for others" (A5; A6; A7; A8; B1; B8). See also Doc. A, section 7: "Since it is necessary to prevent embezzlements that occur, they shall in this manner be prevented."

[25] Order dated 19 Rajab 1250. DWQ, Dīwān-i Hidīwī, Maḥāfiẓ, Mulakhaṣṣāt dafātir, no. 63 (Daftar 806, old [1250 H.]), document 74.

[26] Ibn Rushd (1960), vol. 2, 404.

Table 1: Penalties for theft in the code of Meḥmet ʿAlī

value of stolen property	penalty (forced labor)
1 - 1,000 pts	1 year
1,001 - 5,000 pts	1.5 years
5,001 - 10,000 pts	2 years
10,001 - 20,000 pts	2.5 years
20,001 - 40,000 pts	3 years
40,001 - 60,000 pts	3.5 years
60,001 - 100,000 pts	4 years[27]

Thus the code created a precise and objective correspondence between crime and punishment, providing unambiguous instructions for officials applying the law. In some cases these tables are quite complicated: a decree issued in February 1830 making the violation of price regulations a punishable offense establishes that the punishment (here the number of lashes) is a function of (1) the seriousness of the offense (i.e. the difference between the price received and the price fixed by the government), (2) the physical constitution of the offender (in order to ensure that the measure of pain inflicted on offenders was roughly the same), and (3) the number of previous convictions for the same offense.[28] This precise and quantifiable relationship between crime and

[27] There is a slight difference in wording between document A and document B. Here I have followed the latter, which seems to be more consistent.

[28] The decree can be summarized in the following table (numbers refer to the numbers of lashes):

Table 2: Punishments for violations of price regulations according to the Decree of 1830

physical constitution:	strong	medium	sick or old
the seriousness of the violation expressed in its monetary value			
1 fiḍḍa	50	33	18
2 fiḍḍa	75	50	25
3 fiḍḍa	100	66	33
4 fiḍḍa	120	80	40

If the value of the offense exceeds 4 fiḍḍa, the culprit receives 20 additional lashes for every fiḍḍa. In the case of second or further offense, the number of lashes and additional penalties are determined according to the following table:

punishment constitutes, in my view, an important aspect of the rationality of these laws.

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What were Meḥmed ʿAlī's motives in enacting these codes? There is no doubt that the code contained in document A.1 and document B was, first and foremost, meant to curb extortion and embezzlement by officials. Five of ten sections deal with this type of offense. There was, however, another purpose, equally important, and very much in evidence in the *Qānūn al-Filāḥa*. This was the centralization of power, which was achieved by giving officials who administered the criminal law precise instructions that left them little or no room for exercising their own judgment in meting out punishment. The introduction to the *Qānūn al-Filāḥa* expresses this notion:

> There are reports that offenders who had to be punished by the officials (*ḥukkām*) were often given more lashes than the number that was due to them. This would sometimes result in their death. In order to eliminate this tyrannical behavior it is necessary that the punishment imposed on all [sorts of] offenders be precisely defined, and that the honorable heads of the departments (*maʾmūr*s), district chiefs (*nuẓẓār al-aqsām*) and subdistrict officers (*ḥukkām al-akhṭāṭ*) be instructed that in punishing offenders they are not to exceed [the punishment] that has been defined for them.[29]

Table 3: Punishments for repeated offenses according to the Decree of 1830

2nd offense:	redoubling of number of lashes + 10 days detention
3rd offense:	a threefold increase of the number of lashes + 30 days detention
4th offense:	a fourfold increase of the number of lashes + 3 months forced labor
5th offense:	the same number of lashes as for a first offender who has received 1 fiḍḍa in excess + 6 months forced labor + prohibition to work as a shopkeeper.

Sāmī (1928-1936), vol. 2, 360, quoting *al-Waqāʾiʿ al-Miṣriyya*, no. 108, 16 Shaʿbān 1245.

[29] *Lāyiḥat zirāʿat al-fallāḥ wa-tadbīr aḥkām al-siyāsa bi-qaṣd al-najāḥ* (2nd impr., Būlāq, 1257), 61. The introduction to Document B contains a similar passage, this time with regard to imprisonment:

> Although during the past month of Ṣafar the blessed a debate has [already] taken place in the [General Consultative] Council, occasioned by fact that formerly it was deemed sufficient to impose forced labor in the Alexandria Harbor [without specifying a term] and that [now] it is necessary to specify appropriate penalties for some offenses that are [nowadays] current, [the outcome of] this [debate] has this time been confirmed and renewed on details by the General [Consultative] Council meeting in the *Ḳaṣr-i ʿĀlī* (...).

A third motive, as appears from a slightly later document, was that Meḥmed ʿAlī believed that fixed penalties instead of arbitrary punishment would contribute to the acceptance of the system of criminal law. In the preamble of an order that he issued to his cabinet (*Şūrā-yi Muʿāvenet*) in 1842 to establish the *Cemʿiyet-i Ḥaḳḳāniye*,[30] Meḥmed ʿAlī argued:

> If an offender is sentenced to penalties laid down [by law] without the slightest partiality and with justice and equity, then that person will have no further objections. It is evident that the impact of penalties laid down [by law] may be enormous. For this reason, there is in Europe much attention to, and interest in, this matter. As a result, when they [viz., the Europeans] impose punishments, they investigate and make clear the offender's fault and the punishment that he deserves, to such an extent that the accused does not make any further protest and accepts [the punishment] whole-heartedly."[31]

Finally, it is likely that Meḥmed ʿAlī wanted to enhance his legitimacy by emphasizing his role as the patron of justice for his subjects. Meḥmed ʿAlī threatened his officials that if they disobeyed his laws and if persons died as a result of flogging or a bastinado, the officials would be sued before the qāḍī and, in addition, exposed to capital punishment or exile (probably to Abū Qīr).[32] That such directions were necessary indicates that criminal liability for such unlawful behavior was not self-evident. By curbing the high-handed behavior of officials, these codes aimed at protecting Egyptian subjects. However, this was not done by granting the latter more rights, e.g. by creating legal remedies and judicial proceedings to deal with wrongful acts committed by servants of the state (with the exception of section 10, which gives some rights to persons suspected of theft). Rather, these legal texts must be read as a pledge on the part of the sovereign to see that justice was done once he was informed by petition of any injustice suffered by his subjects. The new laws were meant to confer greater legitimacy upon Meḥmed ʿAlī's rule, and thus enhance his power. The idea that law limits the powers of the sovereign by granting rights to subjects or citizens is totally alien to these codes, as evidenced by the fact that they were not promulgated, and that copies were sent only to officials, without any instruction to make them public.

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[30] For the Cemʿiyet-i Ḥaḳḳāniye (al-Jamʿiyya al-Ḥaqqāniyya), see Peters (forthcoming).

[31] Zaghlūl (1900), 182-83.

[32] Order of Meḥmed ʿAlī dated 28 Rabīʿ II 1245, prompted by the report of a provincial official indicating that some people had died as a result of the beating administered to them. Sāmī (1928-1936) vol. 2, 356.

It took Meḥmed ʿAlī several years to assert his authority, as indicated by the various instructions he gave to local officials. In 1834 he issued a decree to his provincial administrators reaffirming that sentences in criminal cases, especially death sentences, were to be submitted to him for approval, after the case had been investigated and tried locally.[33] One day later, he directed one of the governors of Upper Egypt to initiate an investigation into rumors that the district chief (*nāẓir ḳism*) of Girga had executed eighteen persons within a short span of time.[34] When, in 1835, he learned that the governor of the Buḥayra Province had cut off the nose and ears of a peasant who had uprooted cotton plants, he censured the governor and instructed him that flogging, imprisonment and death were the only punishments that he was allowed to impose for such acts.[35] The absence of such orders after 1835 suggests that Meḥmed ʿAlī had acquired total control of criminal justice. Sentences in serious cases were henceforth submitted to him for confirmation. During the same period, travellers reported that the number of death sentences decreased.[36]

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It was Meḥmed ʿAlī's ambition to impose a centralized and rational order upon his realm. The effects of this endeavor are evident in various domains of society, such as agriculture[37] and the military.[38] Criminal law, by its nature, is crucial to such a policy of disciplining, and the new laws must be regarded as an means to achieve this centralization and rationalization. The idea of centralization was very much vested in his person. Mehmed ʿAlī wanted to be the ultimate authority in criminal justice and the new laws expressed the notion that all punishment derived from his omnipresent authority, even if it was in fact imposed by his agents. Lawfully inflicted punishment ought to represent and symbolize the centrality of his power.

In addition to being an expression of Meḥmed ʿAlī's aspiration to dominate the country, these new laws mark a transition from the period

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[33] Order dated 20 Rabīʿ II 1250. Sāmī (1928-1936), vol. 2, 426.
[34] Order dated 21 Rabīʿ II 1250. Sāmī (1928-1936), vol. 2, 426.
[35] Orders of 2 and 22 Ramaḍān 1251. Sāmī (1928-1936) vol. 2, 456, 458.
[36] Fahmy (1997), 140, referring to Bowring, who travelled in Egypt in the late 1830s. See also Dodwell (1931), 201.
[37] See, for instance, *Lāyiḥat zirāʿat al-fallāḥ*, specifying in great detail agricultural activities and the duties of peasants and officials. See Rivlin (1961), 86-99.
[38] See Fahmy (1997), esp. ch. 3: "From Peasants to Soldiers: Discipline and Training".

in which punishment was often cruel and arbitrarily imposed to a period characterized by rational punishment, consisting in controlled and precisely measured penalties; and from a period in which deterrence produced by brutal spectacles was the main objective of criminal justice to one in which punishment aimed primarily at disciplining the offender. The movement towards greater centralization and rationalization and the increased importance of disciplining the criminal rather than deterring the public resemble developments that took place in Western Europe around the turn of the nineteenth century.[39]

However, there are important differences as well. In Western Europe these changes were part of the process of emancipation of the bourgeoisie and the struggle for the recognition of civil rights. Codification of criminal law was a means to ensure the fundamental freedom of citizens against the arbitrariness of rulers. This political process was accompanied by public debate and a vast number of publications on the need for penal reform, beginning with Cesare Beccaria's *Dei delitti e delle pene*, published in 1764. There is nothing comparable in Egypt. If these laws offered protection to his subjects, this stemmed from Meḥmed ʿAlī's sovereign will and was not the result of a political struggle for fundamental rights. Moreover, there was no public debate on the matter of penal reform in Egypt, and the preambles of the new laws contain only a few short remarks. Whether the reforms were seriously discussed among the small ruling class cannot be established yet. If these discussions took place, they left, to the best of my knowledge, no written traces.

This leads to the question of why Egypt introduced penal reforms similar to those adopted in Western Europe at roughly the same period. Perhaps this was due to European influence, mediated by European experts in Egypt and Egyptian students who had been to the West. The European example is referred to several times in laws enacted in the 1840s and, as noted, the penal law enacted in 1844 was a translation of a number of articles of the French Code Pénal of 1810. That there was some European influence already in 1829 is probable, but cannot be proved with certainty. However, the main factor, behind the reforms, I believe, was the spread of public security in most of Egypt as a result of Meḥmed ʿAlī's greater control over the country, better police surveillance, and, greater efficiency in tracking and apprehending criminals.[40] As Foucault has noticed with respect to Europe, the greater the chance

[39] See e.g. Weisser (1979), O'Brien (1982), and Foucault (1989).
[40] See e.g. Guémard (1936), 257.

for a criminal to be apprehended, the less the authorities feel the need for spectacles of cruel exemplary punishments in order to discourage crime. The greater efficiency of the police and the resulting increase in public safety may well be the common factor that explains the resemblance in penal law reform in Egypt and Western Europe.

An economic factor that may have played a role in the banning of cruel corporal punishment and the decreasing occurrence of capital punishment was the shortage of manpower in Egypt. Maiming and crippling able-bodied men would affect the availability of labor and of soldiers. A similar motive obviously played a role when, in order to stop the 1824 rebellion, Meḥmed ʿAlī ordered that some of the elderly and the disabled be hanged publicly, as a deterrent, since "they were useless and could not perform any task."[41] Forced labor as a punishment was much more profitable for the state than the destruction of the human labor force and potential military recruits. Moreover, the provisions regarding vagrants and gypsies, contained in sections 18-21 of Document A, were obviously occasioned by a shortage of labor in the government factories and a shortage of soldiers for the army.

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Apart from being an indication of a transition to new attitudes toward crime and punishment, these laws are significant for another reason: They can be read as documents charting the social hierarchy as perceived by the ruling class. In order to analyze them from this point of view, I will concentrate on offenses connected with misappropriation, since the protection of private and state property is clearly a central concern of these laws. Ten of seventeen sections of the first three parts of Document A deal with misappropriation, referred to as extortion (*gaṣb*), theft (*seriḳa*) or embezzlement (*ihtilās*). In addition, the punitive measures against vagrants and other urban marginals mentioned in Ibrāhīm Pasha's decree are also justified by the threat they pose to private property.[42] The sections on misappropriation can be summarized as follows:

1. Extortion of private property by high officials (*muḥāfiẓ, meʾmūr, nāẓir*) [Turks]: six months imprisonment in Abū Qīr (Section 2); by

[41] Fahmy (1997), 130.

[42] The description of the four groups mentioned in this decree ends in each case with the words: "It has been observed that the value of the things they steal varies from five to 500 piasters and sometimes even to one thousand piasters."

high ranking sheikhs (also regarded as state servants, *hademe-yi mīrī-ye*): six months forced labor in the Alexandria Dockyards (Section 9).[43] If state property is taken, the term of imprisonment is doubled;
2. Misappropriation by sheikhs[44] and others [Arabs]: forced labor in the Alexandria Dockyards for one to three (or four)[45] years, the length of imprisonment to be determined by the value of the goods stolen (Section 3);
3. Misappropriation of state property by tax collectors or sheikhs in Upper Egypt: one to four months forced labor in state building sites, the length of imprisonment to be determined by the value of the misappropriated goods (100 - 400 piasters) (Section 11, appendix);
4. Misappropriation by Coptic tax collectors: five years forced labor in the Alexandria Dockyards if they can reimburse the value of the stolen goods; for life, if they cannot (Section 7);
5. Misappropriation by Coptic high ranking state servants: death penalty (Section 8);
6. Misappropriation by low ranking rural sheikhs: 300 - 500 lashes (Section 9);
7. Misappropriation by peasants: 25 - 300 lashes with the *ḳırbāç*, according to the nature of goods stolen and the number of previous convictions; forced labor in the Alexandria Dockyards for an unspecified time in the case of a fourth conviction for theft of a goat or a sheep (Sections 12-13);
8. Misappropriation by urban vagrants and marginals (gypsies, beggars, run-away black slaves, fortune-tellers, magicians and treasure-hunters): forced labor in the ironworks (*demürhāne*), in tailor shops and in other industrial establishments; military service for young men; exile to upper Egypt for men who are unfit) (Sections 18-21).

Most provisions deal with misappropriation in an official capacity and, interestingly, it would seem that this is not considered to be an aggravating circumstance (except in the case of the Coptic officials, on

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[43] It is plausible that the stipulation about high ranking sheikhs was added during the debates in the Consultative Council, in response to pressure from precisely this category of sheikhs, who were well represented in the Council. See the list of delegates published in Sāmī (1928-1936) vol. 2, 350-52.

[44] It is not clear what kind of sheikhs are meant here. In other sections, the law establishes rules for high ranking sheikhs serving in the provincial administration and for village sheikhs. Thus, one may assume that the sheikhs referred to in this section are urban sheikhs not employed by the government, such as religious scholars, sufis, and the heads of guilds.

[45] Document B mentions four years.

which see below): Theft committed by high officials (no. 1) is punished less severely than the same offense committed by ordinary subjects (no. 2). Moreover, except in the case of high officials (no. 1), the punishment for theft of state property does not differ from that for theft of private property.

In allowing a differentiation in punishment on the basis of social rank, these laws belong to an older legal order. In classical Islamic law, the judge who punished culprits by means of his discretionary power to punish (*taʿzīr*) sinful behavior, had to take into account the social position the defendants. The underlying idea was that in order to achieve the desired result, namely, deterring the culprit from repeating the offense, the punitive measure should fit his status: for high ranking offenders and *ʿulamāʾ*, the mere disclosure of their deeds or leading them to the door of the court was generally sufficient, whereas the lower classes had to be restrained by all possible means, including imprisonment and beating.[46] This differentiation according to social rank was soon abolished. The *Qānūn al-Siyāsetnāme* of 1837 emphasizes in many sections the equality before the law of all officials regardless of their rank, e.g.: "Anyone who is employed in government service, regardless of his rank ...."[47]

It is my contention that the differentiation in the nature and the measure of punishment manifested in the criminal code of 1829 is largely a function of the perceived social distance between the authors of the document, i.e., the Turkish-speaking rulers of the country, and various other classes in Egyptian society. I will first examine the nature of the punishments imposed. The first distinction that catches the eye is the one between flogging and imprisonment. This distinction coincides with the division between city dwellers and peasants. As a rule city dwellers are not to be subjected to flogging, probably, because of its ignominious character.[48] Village sheikhs are put on a par with peasants

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[46] See e.g. Shaykhzāde (1301 H.), vol. 1, 565-66:

> *Taʿzīr* must be applied according to rank: the *taʿzīr* of the most eminent notables, i.e. the *ʿulamāʾ* and the descendants of ʿAlī consists in disclosure [of their offenses], the *taʿzīr* of notables and leading personalities in disclosure and dragging them to the door of the *qāḍī*, the *taʿzīr* of the middle classes, namely the common people (*al-sūqiyya*), consists in dragging [them to the door of the *qāḍī*] and imprisoning them, and the *taʿzīr* of the lower classes (*al-arādhil*) consists in all this plus beating.

[47] "*Inna kulla man kāna mustakhdam*^{an} *bi-l-maṣāliḥ al-mīriyya in kān ṣaghīr*^{an} *aw kabīr*^{an} *wa-...*". See sections 1, 5, 9, 10, 13, 15, and 17, with varying wordings.

[48] The principle was not applied consistently. In the decree of 1830 mentioned in note 28, flogging was imposed as a punishment for the contravention of price regulations by shopkeepers. Fifteen year later a new law imposed forced labor for

and the imposition of corporal punishment is justified by the fact that agricultural work otherwise would come to a standstill. A further distinction is made between a specified and an unspecified period of imprisonment or forced labor. Only the groups at the base of the social hierarchy, i.e. peasants and urban marginals, could be detained for undetermined periods. These distinctions are shown in the following Table:

Table 4: Punishment differentials between peasants and urban marginals

	flogging	imprisonment	
		indefinite	- definite period
peasants	+	+	-
urban marginals	-	+	-
towns people	-	-	+

Finally the place of detention is indicative of social distinctions: the higher, usually Turkish-Circassian, officials were sent to the Abū Qīr prison, whereas all others were imprisoned in the Alexandria Dockyards (Sections 1, 2 and 9).

Second, there is the matter of the severity of the punishment, especially the length of detention. As noted, illegal appropriation in the pursuit of one's official duties does not seem to be regarded as an aggravated offense; thus, we can disregard this as an explanation for differences in punishment. My contention is that the severity of punishment is related to the ruling class's perception of social distance vis-à-vis other groups in Egyptian society. This is very clear with regard to the ruling group itself. The punishment they risk for extorting their subjects (six months' detention) and the punishment for misappropriation of state property (one year's detention) are shorter than the punishments for the same offenses committed by other categories of persons. If we take into account only death penalty and imprisonment for specified periods, and if we arrange these categories in accordance with the severity of the punishment, we get the following breakdown:[49]

this offense instead of flogging (*al-Qānūn al-Muntakhab*, section 119, enacted in 1844). Interestingly, the military codes stipulate that only in rare instances may soldiers be punished with flogging. See Fahmy (1997), 138.

[49] In this breakdown I have disregarded the tax collectors in Upper Egypt

1. Turkish-Circassian high officials and Arab high ranking sheikhs (six months to one year)
2. Urban sheikhs and private persons (one to four years)
3. Coptic tax collectors (five years to life)
4. High ranking Coptic officials (death penalty)

This breakdown reveals two basic social distinctions: one between the ruling groups and the urban population and one between Muslim high officials and Coptic financial functionaries. The former distinction is self-evident, but the latter deserves some comment. Although the distinction may appear to be of a religious nature, it is actually a social and a functional one. There was a considerable social distance between the Coptic and the other officials. But there was another, perhaps more important reason for the heavy penalties to which they were subject in case of misappropriation. For centuries, the fiscal administration of the country had been a Coptic monopoly.[50] As a result, the knowledge and skills required to audit the financial records were scarce among other officials. The ample opportunities for Coptic officials to defraud the government may explain the severity of the punishment. That higher Coptic officials risked capital punishment for fraudulent acts can be explained by the fact that it was extremely difficult for other officials to check their financial dealings, whereas Coptic tax collectors at the local, village level had fewer opportunities for embezzlement, as they had to cooperate with village sheikhs and other local authorities, who, therefore, were privy to their financial dealings. This is an apt illustration of the general rule that the severity of punishment of a crime is often inversely proportional to the chances for the authorities to apprehend the offender.

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In this essay I have tried to show that law codes can be read and analyzed as social and political documents, reflecting the concerns and ideas of the ruling class. The criminal laws discussed here were an essential instrument for establishing a rational disciplining order. They represent a new era in criminal practice, characterized by controlled and measured penalties, aimed at disciplining and reforming the offender, rather than at deterring the public by cruel and exemplary punishment.

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mentioned in Section 11. This section is enigmatic. The amounts mentioned here are comparatively small and it is not evident why petty embezzlement by tax collectors in Upper Egypt deserves separate mention.

[50] Motzki (1979), 26ff.

This was made possible by more effective police methods which considerably increased the chances that an offender would be apprehended. Furthermore, these laws reflect the social hierarchy as viewed by the ruling class. Comparing the kinds and severity of the punishments for misappropriation (i.e. theft, embezzlement, extortion), which is the central concern of these laws, tells us something about the social relations between the ruling class and the categories of offenders.

APPENDIX ONE

THE OTTOMAN TURKISH TEXT OF THE NEW LAWS[51]

21 Rabîʿ I [12]45 tārīhinde Ḳaṣr-i ʿĀlīde munʿaḳid Meclis-i ʿUmūmīde mücrimlere dāʾir tertīb olunan ḳānūn-i siyāsiyeden naḳl olunmuşdur

[1] Mīrī hidmetinde bulunan muḥāfıẓlar ve meʾmūrlar ve nāẓırlardan bi-gayr-i ḥaḳḳ reʿāyāya ẓulm ve taʿaddī ile gaṣb-i māl edeni ẓuhūr eder ise cüzvī [cüzʾī] ve küllī aldığī şeyʾ kendüsinden taḥṣīl oluna ve altı māh müddet ile Abū Ḳīr'e gönderile.

[2] Ve bu muḥāfıẓ meʾmūr ve nāẓırlardan emlāk-i mīriyeniñ seriḳat ve ihtilāsına cerāʾet edeni olur ise emīn ve bī-garaẓ kimseleriñ taḥrīr ve taḥḳīḳiyle ihtilāsı baʿd al-subūt ne ise kendüsinden alına ve bir sene müddet ile Abū Ḳīr'e gönderile.

[3] Ve bu seriḳat ve ihtilās şeyhlerden ve sāʾirinden ẓuhūr eder ise māli reʿāyā māli olsun mīrī māli olsun biñ gurūşa bāliġ ise bir sene müddet ile ve biñ gurūşdan yuḳarı beş biñ gurūşa ḳadar olsun bir buçuḳ sene müddet ile ve beş biñ gurūşdan on biñ gurūşa ḳadar olur ise iki sene müddet ile ve yirmi biñ gurūşa ḳadar olur ise iki buçuḳ sene müddet ile ve yirmi biñ gurūşdan ḳırḳ biñ gurūşa ḳadar olur ise üç sene müddet ile ve ḳırḳ biñ gurūşdan altmış biñ gurūşa ḳadar olur ise üç sene müddet ile kezālik līmāna gönderile ve işbu aḥkām-i siyāsiye ḳırḳ dört senesi ibtidāsinden bedʾ ile mücrimler ḥaḳḳında icrā olunacaḳ olmağla icrā oluna.

[4] Işbu meşāyihlerden ve sāʾirlerden vech-i muḥarrar üzere līmāna gidenleriñ müddeti tamām olmağsızın aḳribāları hāk-i ʿāli-yi hidīvī ʿarẓuḥāl verüb ʿafv-i ḥafẓ-i dāverī eylediklerinde ol mücrimleriñ iḳlīm-i ʿimāretine ve mīrī maṣlaḥatına yarayacağı bilinür ve tāʾib ve mustağfir oldığı maʿlūm olur ise ve sebīli tahliyesine irāde-yi senīye taʿalluḳ eder ise bu ṣūret zikr olunan müddet-i muḳarrare uṣūlundan müstesnā olmağla düstūrül-ʿamel tutıla ve mūcibince ol mücrimiñ sebīli tahliye ḳılına.

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[51] In presenting the text I have used the transliteration system of the *International Journal of Middle Eastern Studies*.

[5] ḳalpazanlıḳ fiʻli şerʻan ve ḳānūnan memnūʻ olan efʻāldan olmağla bu fiʻl-i münkarı işlemekle her mütecāsir olunlar ele gider ise ömri tamām oluncaya değin ḳalmaḳ ve sāʾire ʻibret olmaḳ üzere līmāna gönderilmesi lāzimeden olmağla olvecihle līmāna gönderile.

[6] Ḳātiliñ fiʻli aʻẓam-i ḳabāyıḥdan ve bataḳcılıḳ ʻameli ekber-i faẓāyıḥdan olmağla bir kimsenin üzerine ḳatl-i māddesi ve bataḳcılıḳ cünḥası sābit olur ise ḳışāşlarına bedel ömürleri tamām oluncaya değin ḳalmaḳ ve āhere ʻibret olmaḳ üzere kezālik līmāna gönderile.

[7] Ḳıbṭī milleti māl-i mīrī seriḳatiyle meʾlūf ve emvāl-i reʻāyāyı ihtilāsı mecbūr olmalariyle ḳurā ḳubbāẓları ve ṣarrāflarınıñ emvāl-i mīriyeden seriḳatı ve māl-i reʻāyādan ihtilāsı ẓuhūr eder ise ve ihtilāsı ne ise ve māli var ise baʻd al-subūt mālinden alına ve kendüsi beş sene müddet ile līmāna gönderile māli yoğısa ʻömri tamam oluncaya değin ḳalmaḳ ve sāʾire ʻibret olmaḳ üzere irsāl oluna ol vecihle ẓuhūr eden ihtilāsıñ defʻi muḳtaẓayātdan olmağla defʻ oluna.

[8] Ḳıbṭī milletiniñ büyükleri hademe-yi mīriyeden olmağla işbu seriḳat-i māl-i mīrī ve ihtilās-i emvāl-i reʻāyā efʻāl-i şenīʻesi anlardan ẓuhūr edüb üzerlerine sābit olur ise o maḳūlalar līmāna gönderilmiyüb ʻibretan lil-gayr iʻdām oluna.

[9] Büyük şeyhler yaʻnī huṭṭ şeyhleri hademeyi mīriyeden maʻdūd olmalariyle cünḥaları vuḳūʻunda anlara da bāb-i evvel ve sānīde beyān oldığı vecihle muḥāfıẓ ve meʾmūr ve nāẓırlar misillü muʻāmele oluna ve līmāna irsāl ile terbiyeleri icrā ḳılına ḥışşe[52] şeyhleri yaʻnī ḳurā şeyhleri zirāʻat ve ḥarāsetle meʾlūf olduḳlarından başḳa ḥışşeleri fellāḥi kendülerinden maṭlūb idüğinden cünḥaları vuḳūʻunda hidmet ve maṣlaḥatlarına sekte gelmemin içün līmāna gönderilmeyüb cünḥasına göre üçyüzden beşyüze ḳadar ḳırbāç urıla zimmetlerinde ẓuhūr eden ihtilās ne ise taḥṣīl oluna ve şeyhliğinden ʻazl olunub sebīlī tahliye oluna.

[10] Bir kimesne seriḳat töhmetiyle methūm olsa üzerine seriḳat māddesi isbāt olunamazsa[53] ol kimesneleriñ sābiḳası varmıdır yoḳmıdır sorıla sābiḳası yoğısa teʾdīb olunmiyüb beş on gün ḥabs oluna kendüye töhmet eden kimesne bu beş on gün içinde hırsızlığını isbāt edebilür ise bāb-i sālisda beyān olunan ḳānūna taṭbīḳ ile ṣūret-i iḳtiẓā ne ise icrā oluna ve isbāt edemez ise ol methūmın kefīlī eline saliverile ve methūmun ismi ve kefīliniñ ismi ve isnād olunan seriḳat huṣūṣi mufaṣṣalan dīvān defterlerine ḳayd oluna ve bir müddet

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[52] The text has here *huṭṭ şeyhleri yaʻnî ḳurā şeyhleri*. The word *huṭṭ* is evidently a mistake since it is also used to describe the important sheikhs at the beginning of this section. Moreover, the other version of this code uses in this connection the term *ḥışşe şeyhleri*, i.e. the sheikhs of a portion of the village. The corresponding section begins with the words: *Ve kezālik ḥışşe şeyhleriyle büyük şeyhlerin beyinlerinden farḳ olub ḥışşe şeyhleri mīrī hademeden olmadığından...* (Since there is a similar difference between the village sheikhs (*ḥışşe şeyhleri*) and the high ranking sheikhs and since the village sheikhs do not belong to the state servants...).

[53] The text has *olunhmsh* (?) without the *z*, probably a copyist's error.

murūrunda ol methūm üzerine ol serikat māddesi sābit olur ise kefīli bir sene kalmak ve kendisi bāb-i sālisda beyān olundığı vecihle ikāmet etmek üzere līmāna gönderile terbiye oluna ve ol methūma kefīl olur kimesne bulunmıyub bu vecihle hırsızlığı olması mütebādir-i hāṭır[54] olur ise ol vakt keyfiyeti bilenlerden sorıla ve atrāfiyle taḥkīk oluna ve serikata dā'ir üzerine bir şey' tebeyyün eder ise bāb-i sālisda basṭ olunan uṣūl üzere iktizāsı icrā oluna.

Ancak me'mūrlere ve ḥākimlere vācib ve ehemmdir ki methūm olan kimesneyi methūmdur diyerek icrā-yi cezāda ta'cīl etmiyüb garaz ve nefsāniyetden berī olan kimesne ma'rifetiyle ḥāl ve keyfiyeti taḥkīke dikkat ve ihtimām edeler ve min Allāh al-tevfīk.

Fī 20 Ṣa'bān tārīhinde Meclis-i Dāverī karārgīr olub zikr olunan kānūn-i siyasiye zeyl olunan hulāṣeden alınmışdır.

[11] Emvāl-i mīriyeden ihtilās eden mu'allim ve ṣarrāf ve meşāyihiñ ihtilās etdiği māl yüz gurūşa bāliğ ise istirdād olunduḳdan sonra ihtilās eden Aḳālīm-i Ṣa'īdiyeden ise bir māh iki yüz gurūşa bāliğ ise iki māh ebniye-yi mīriyede istihdām oluna ve üç yüze dört yüze nihāyet bu siyāḳ üzere olub icrāsı lāzim gelmekle icrā oluna.

Tārīh-i mezkūrda Ḳaṣr-ı 'Ālīde mun'aḳid 'Umūm-i Meclisinde tertīb olunan siyāset ül-hulāṣeden alınmışdır.

[12] Bir hırsız meyva ve sebze ve kavun ve karpuz ve galle gibi şey' çalar ise ve çaldığı şey' yiyeceği kadar ise hutṭ ḥākimi ma'rifetiyle on kırbaç urıla satılacak kadar ise elli kırbaç urıla ve tavuk çalana yirmi beş kırbaç urıla ve sefīneden galle çalana yüz kırbaç urıla.

[13] Keçi ve koyun çalar ise ve sābikası yoğısa yüz kırbaç urıla ve çaldığı ikinci def'a ise iki yüz kırbaç üçüncü def'a ise üc yüz kırbaç urıla dördüncü def'a ise līmāna gönderile.

[14] Bir fellāḥ veyā şeyh-i beled ḥākime gidüb āherıñ 'aleyhine bilā cerem yalan söyler ise ve kendi ihtiyār eder ise ḳā'immaḳām ve hutṭ şeyhleri ma'rifetiyle tenbīh oluna tenbīh olmıyup yine ihtiyār eder ise tekdīr olunacağı tefhīm kılına ve bir fellāḥ veyā şeyh-i beled ḥākim ḥuẓūrunda kendüden bir şey' sorulduḳda doğrusu söylemeyüb kezbi ẓāhir olur ise şeyh ise elli fellāḥ ise yirmi beş kırbaç urıla.

[15] Bir fellāḥ zimmetinde olan māli edāye muḳtadir iken vermeyüb ṭalab eden ile nizā' eder ise ve bu nizā' göz ve kulağ ve burun ve diş 'uẓvıñ ṣaḳaṭ [sic!] olmasına bā'is olur ise şer'le da'vāları görüle ve muḳtaẓā-yı şer'īsi 'urf ḳākimi ma'rifetiyle icrā olur.

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54 The text has *haṭar*, which is obviously a mistake.

[16] Bir şeyh-i beled firārī celbine gidüb bulduḳda para alub salıverir ise baʿd al-taḥḳīḳ iki yüz ḳırbaç urıla.

[17] Ḳaryelerde olan cezzār veyā fellāḥ bilā ʿuzr dişi ḥayvān zebḥ eder ise ve erkek ḥayvāndan üç yaşından aşağı olanı boğazlar ise ve öküz ve cāmūs gibi ḥayvānları keser ise birinci defʿada yüz ḳırbaç ikinci defʿada iki yüz ḳırbaç urıla.

[The layout of following part of the document is different from the preceding one. The paragraphs are written alternately in horizontal and vertical lines. The vertical ones (indicated with an *a*) contain the measures that are to be taken with the persons described in the following horizontal paragraph (numbered with a *b*).]

[18a] Sağlam olanları demürhaneye ve genç olanları ʿasākire ve ziyāde ʿācız olanları bilād-i baʿīdeye yaʿnī Esnā gibi maḥallere ibʿād ve irsāl olsun ve alaylara gönderilecekler cihādiyeye gönderilüb bunlarıñ hālleri bildirilsünki güzelce ẓabṭ olsun deyü irāde buyrulmuşdur.

(Written horizontally)
[18b] Maḥrūsede ve Maḥrūse civārında kāʾin baʿẓ-ı köylerde Nūrī ṭāʾifası bulunur anlarıñ ḳārılar ve ḳızlar ve küçük çocuḳları baʿẓan Maḥrūsede ruḥṣat bulduḳları evlere ve dükkānlere ve gayrı maḥallere gündüzleri girerler az çoḳ ellerine geçeni alurlar yararlıḳ iḳtiżāsiyle bunlarıñ bu hırsızlıḳ ʿādetleri olmağla işler ve işlemeğe mecbūr olurlar bunlarıñ içinde ʿalīl ve ihtiyārları vardır ve ḥāmila olanı ve baʿẓan ḳucağında ve yanında bir veyā iki küçük çocuğı olanı da bulunur çaldığı şeyʾ beş ḳuruşluḳdan beş yüze ḳadar ve baʿẓan biñ guruşa ḳadar görüldiği vardır.

(Written vertically)
[19a] Bunlarıñ sağlam olanları demürhaneye ve genç olanları ʿasākire ve ziyade ʿacız olanları kezālik zīrde muḥarrar olan şarḥ misillü icrā olunacaḳ.

(Written horizontally)
[19b] Maḥrūse harābelerinde ve Maḥrūse ṣūrı [sic!] hāricinde baʿẓ-ı maḥallerde baʿẓ-ı ʿācız köylü ḳarıları ve ʿalīl ve zelīl erkekleri ve Maḥrūsede doğmuş ve anasız ve babasız ḳalmış erkek ve dişi Mıṣr çocuḳları ve baʿẓan dahi bir ʿillet ile maʿlūl olmuş dilencilik gezmeğe muʿtād etmiş kimesneler vardır ki anlar dahi ruḥṣat bulduḳca ellerine geçeni alurlar içlerinde baʿżı sağlamları var ise de ekserisi düşkün şaşḳın ʿalīl ve zelīl çırılçıplaḳ kimesneler ve çaldıḳları şey dahi Nūrī ḳarıları gibi beş guruşluḳdan beş yüze ve biñe ḳadar görüldiği vardır

(Written vertically)
[20a] Bunlarıñ sağlam olanları daʿvāsını baʿd al-istimāʿ Cihādiyeye ilḥāḳa ve ṣaḳaṭlarını demürhāneye kürek (or: kürük) ve sāʾir yarayacaḳ işe istihdām ettirilsün

(Written horizontally)
[20b] Maḥrūse içinde ve civārinde baʿẓı ḳapusuz baçasız[55] siyāh ʿabīdler vardır ki kimisine ağası izn vermiş ve kimisi ağasına hayr etmemiş kendü başına ḳalmış ve baʿẓınıñ ağası fevt olub bir maḥall bulamamış ve derbeder olmuş bunlarıñ baʿẓıları çürükdir baʿẓısı sağlamdır medār-i taʿayyüş olur bellüce birr-i uṣūlları olmadığından bunlar dahi baʿẓan ḳapma çarpma ve öteye beri el uzatma ḥareketleri görülmüşdür

(Written vertically)
[21a] Bunlarıñ içlerinde ufaḳ çocuḳları olanları terzilere ve Edhem Bey ṭarafına ve faburḳalara ve sāʾir ṣanāyiʿ olan maḥallere gönderilsün bu soyları ẓuhūr etdikce daʿvāları subūt baʿd al-subūt [sic!] hemān menvāl-i muḥarrar üzere sālif al-zikr maḥallāte gönderilsün

(Written horizontally)
[21b] Magribīlerden ve sāʾirinden baʿẓı baḳlacı ve mendelci gibi fālcı ve baʿẓ-ı afsūncı ve māl çıḳarmaḳ içün yer ḳazıcı vardır ki anlar dahi birer hīle ile ʿavāmm-i nāsı dolandırmaḳdan hālī değildir erkekleri ve dişleri vardır sağlamca olanı var ise de ʿalīl ve zelīl bulunanları da vardır aldıḳları şeyʾ dahi beş guruşluḳdan beş yüze biñe ḳadar görülmüşdür mendel hükmiyle āhere ẓararları irişe geldiği dahi müşāhede olunmuşdur

[22] Maḥrūsede ve Būlāḳ ve eski Mışırda ve civārlarında başı boş gezen Nūrīler ve Maḥrūse ve ḳurā ahālīsinden ve Ḥicāz ve Sūdān halḳından ve ʿabīd ve fālcı ve afsūncı ve defīneci maḳūlesinden muẓirr-i nās olanlarıñ keyfiyetleri ḳaleme alınub Vālī ül-Niʿam ʿAlā-yi Himem Ibrāhīm Paşa Efendimize ʿarẓ olunduḳda yaramazlığına göre olunacaḳ muʿāmeleyi bālā-yi suʾāla ṣādır olan firmān-i ʿālīleriyle beyān buyurmuş olmalariyle bu maḥalle ḳayd olundu.

APPENDIX TWO

THE ENGLISH TRANSLATION OF THE NEW LAWS[56]

The [following] has been copied from the penal statute (*qānūn-i siyāsiye*) regarding criminals drawn up in the General Council (*Meclis-i ʿUmūmī*), convened in the *Ḳaṣr-i ʿĀlī* on 21 Rabīʿ I [12]45 [20 September, 1829].

[1] If it comes to light that a provincial governor (*muḥāfiẓ*), a department head (*meʾmūr*) or a district chief (*nāẓir*)[57] who is in the service of the state has

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[55] The text has erroneously *pcāsz*. The reading *baçasız* is based on the expression *ḳapusu baçası yoḳ*, "he has no house to go to."

[56] I would like to express my gratitude to Erik Jan Zürcher of Leiden for his kind help in solving some of the problems posed by the Ottoman text.

[57] *Muḥāfiẓ* is synonymous with *mudīr*, governor of a *mudīriyya*, province. A province was divided into departments (*meʾmūriyya*) headed by *meʾmūr*s. These

extorted property by acting unjustly and illegally towards the subjects, the [property] that he has partially or entirely taken shall be collected from him and he shall be sent to Abū Ḳīr for a period of six months.

[2] If such a provincial governor, department head or district chief has the audacity to steal or embezzle state property, this shall be recorded and investigated by reliable and unprejudiced persons. Whatever the amount of the embezzlement proves to be, it shall be taken from him and he shall be sent to Abū Ḳīr for one year.

[3] If it comes to light that such a theft or embezzlement is committed by a sheikh or another person, regardless of whether it was state or private property, he shall be sent to the Alexandria Dockyards for one year if the value [of the stolen goods] is up to 1,000 piasters, for a year and a half if the value is between 1,000 and 5,000 piasters, for two years if the value is between 5,000 and 10,000 piasters, for two and a half years if the value is up to 20,000 piasters, for three years if the value is between 20,000 and 40,000 piasters, and also for three years if the value is between 40,000 and 60,000 piasters.[58] These penal provisions (*aḥkām-i siyāsiye*), which were to be enforced with regard to criminals beginning in the year 1244, shall henceforth be applied.

[4] The relatives of those sheikhs and other persons who have gone to the Alexandria Dockyards in the aforementioned manner may submit a petition to the Sublime Khedival Threshold (*Hāk-i ʿālī-yi hidīvī*) before the completion of their term. If [the vali] grants his sovereign pardon, and if it is known that those criminals will be useful for the prosperity of the region and the well-being of the state and that they are repentant and penitent, and if a Supreme Decree (*irāde-yi seniye*) is issued in connection with their release, then an exception shall be made from the procedure of the aforementioned fixed terms: the ruling of this document [viz., the decree] shall be followed and the criminal in question shall be released on the strength of it.

[5] Counterfeiting is one of the acts that are forbidden both by divine and secular law. Therefore, if persons who have the audacity to commit this abominable deed fall into the hands [of the authorities], they must be sent to the Alexandria Dockyards to remain there until the completion of their life, as a deterring example for others. In this manner they shall be sent to the Alexandria Dockyards.

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were subdivided into districts (*ḳisms*), governed by a *nāẓir*. Between the district and the village there was the subdistrict (*ḥuṭṭ*) with the *ḥākim al-ḥuṭṭ* or *şeyh al-ḥuṭṭ*. The latter was represented by a *ḳā'immaḳām* at the village level. Hunter (1984), 19; Rivlin (1961), 88 ff.

[58] The version of this law found in Document B stipulates that in the last case the period of imprisonment is three and a half years, adding that if the value is between 60,000 and 100,000 piasters, the period of imprisonment is four years.

[6] Homicide is one of the most repulsive deeds, and robbery (*baṭakçılık*)[59] is one of the most shameful acts. Therefore, if a case of homicide or the crime of robbery is proven against a person, he shall likwise be sent to the Alexandria Dockyards to remain there until the completion of their[60] life, as a deterring example for others, instead of their [being sentenced to] death.[61]

[7] The Coptic community regularly steals state property and devotes itself to the embezzlement of the properties of the subjects. Therefore, if it comes to light that a [Coptic] village tax-collector (*ḳābiẓ, ṣarrāf*) has stolen state property or embezzled properties of the subjects, then after the fact has been proven, it [i.e. the value of the stolen property], regardless of what [kind of] property he has embezzled, shall be taken from his property, if he has [sufficient] property, and he shall be sent to the Alexandria Dockyards for five years. However, if he has no property, he shall be sent [to the Alexandria Dockyards] to remain there until the completion of his life, as a deterring example for others. Since it is necessary to prevent embezzlements that occur, they shall in this manner be prevented.

[8] The high ranking [officials] of the Coptic community are state servants (*hademe-yi mīriye*). Therefore, if it comes to light that one of them has committed infamous acts of stealing state property or of embezzling the properties of the subjects, and if it has been proven against him, he shall not be sent to the Alexandria Dockyards but shall be put to death, as a deterring example for others.

[9] High ranking sheikhs, that is *ḥuṭṭ* sheikhs, are regarded as state servants (*hademe-yi mīriye*). Therefore, if they commit crimes, they shall be treated like provincial governors, department heads or district chiefs in the manner set forth in Sections one and two and their correction shall take place by sending them to the Alexandria Dockyards. Village sheikhs [on the other hand] customarily sow and plow, and, moreover, the dues of the farmers of the village quarters (*ḥiṣṣe)* are collected through them. Therefore, if they commit a crime, they shall not be sent to the Alexandria Dockyards, lest their service and usefulness come to a standstill. Instead they shall receive, commensurate with the crime, 300 to 500 lashes with the *ḳırbaç*, and whatever the amount of their debt resulting from the embezzlement that has come to light, it shall be collected from them. Furthermore, they shall be removed from their office and then released.

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[59] Turkish dictionaries usually translate the word *baṭaḳcı* as "fraudulent borrower" or "swindler". My translation, "robber", which fits better in the context, is based on the handwritten Arabic translation, where *baṭaḳcılıḳ* is rendered as *al-baṭāqjiyya quṭṭāʿ al-ṭarīq*. The two published Arabic summaries of the law translate the word with "*quṭṭāʿ al-ṭarīq*". See Sāmī (1928-1936), vol. 2, 354 and Zaghlūl (1900), 163.

[60] The change from singular to plural is based on the Turkish text.

[61] From later judicial practice it is clear that this section would be applied only if the qāḍī could not sentence the defendant to death. See Peters (1997).

[10] If a person is accused of theft and the theft cannot be proven against him, then inquiries shall be made as to whether or not he has previous convictions. If this is not the case, he shall not be punished but put into prison for five or ten days. If the person who has accused him can prove the theft within these five or ten days, the rule set forth in Section three shall be applied and whatever is required shall be carried out. However, if he cannot prove it, the accused shall be released into the custody of his guarantor (*kefīl*) and the name of both the accused and his guarantor, as well as the particulars of the theft that is imputed to him, shall be recorded in detail in the registers of the Divan. If, after some time, that theft case can be proven against the accused, both his guarantor and he himself shall be punished and sent to the Alexandria Dockyards: his guarantor for one year, and the accused for the period set forth in Section three. If no one can be found to be a guarantor for that accused and it is therefore obvious that he was the thief, then inquiries shall be made with people who know his circumstances and he and the people around him shall be investigated. If something concerning this theft is proven against him, that which is required according to the principles expounded in Section three shall be carried out.

Now, on the other hand, it is necessary and important that the officials (*me'mūrlar ve ḥākimler*) not act too hastily in imposing punishment on the accused, on the grounds that he is [already] accused, and they must be meticulous and careful in the investigation of his situation and circumstances through a person free from prejudice and rancor. And all success comes from God

[The following] was decided in the Sovereign Council (*Meclis- Dâverî*) that was convened on 20 Ş[aʿbān] [1]245 [14 February 1830], and has been copied from the minutes which have been added as a supplement to the aforementioned penal statute.

[11] If a tax collector (*muʿallim, ṣarrāf*) or sheikh who embezzles state funds is from Upper Egypt, he shall be employed, after having returned the property that he has embezzled, on the state building sites (*ebniye-yi mīriyye*), for one month, if the value of the property embezzled by him amounted to 100 piasters, [and] for two months if the value amounted to 200 piasters. Since it is necessary to apply this method [of calculating the sentence] until 300 and 400 [piasters], it shall be applied.

[The following] was taken from the minutes of (i.e. concerning a decision on, RP) a penal statute drawn up in the General Council (*Meclis-i ʿUmūmī*) that was convened in the *Ḳaṣr-i ʿĀlī* on the aforementioned date.

[12] If a thief steals things like fruits, vegetables, sugar melons, water melons and cereals, and if the quantity of things stolen by him is as much as he would eat, he shall be given ten lashes with the *ḳırbaç* by the commissioner of the subdistrict (*huṭṭ ḥākimi*). However, if it is a quantity that would be sold, he

shall be given fifty lashes. A person who steals a chicken shall be given twenty-five lashes and a person who steals cereals from a ship shall be given 100 lashes.

[13] If someone steals a goat or a sheep and he has no previous convictions, he shall be given 100 lashes with the *ḳırbaç*. If, however, he has previous convictions, and it is the second time he has stolen, he shall be given 200 lashes. If it is the third time, he shall be given 300 lashes. As for the fourth time, he shall be sent to the Alexandria Dockyards.[62]

[14] If a peasant or a village sheikh goes to a district commissioner (*ḥākim*) and tells a manifest lie against someone else, and if he does so of his own free will, he shall be given a warning by the canton lieutenant (*ḳā'immaḳām*) and the district sheikhs. If he does not heed this warning and does so again, of his own free will, he shall be given to understand that he will be reprimanded. If a peasant or a village sheikh, upon being asked something in the presence of the commissioner, does not tell the truth in that matter and his lie is apparent, he shall be given fifty lashes of the *ḳırbaç* if he is a sheikh and twenty-five if he is a peasant.[63]

[15] If a peasant who is capable of paying his debt does not pay it but starts a fight with the person who demands [payment], and if this fight results in damage to an organ such as an eye, an ear, a nose or a tooth, their case shall be dealt with according to the shari'a, and the administrative official (*'urf ḥākimi*) shall execute whatever the shari'a requires.[64]

[16] If a village sheikh goes out to fetch fugitives and finds them, but takes money [from them] and releases them, he shall be given 200 lashes of the ḳırbāç after the case has been investigated.[65]

[17] If a butcher in the villages or a peasant slaughters a female animal without an excuse, kills a male animal under the age of three, or butchers animals like oxen or buffaloes, he shall be given 100 lashes of the *ḳırbāç* for the first offense and 200 lashes for the second one.[66]

[For the sake of clarity I (RP) have placed the concluding paragraph [22], with the details of the origin of the text, at the beginning of this section.]

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62 Sections 12 and 13 are identical to section 4 of the *Qānūn al-Filāḥa* (1830).

63 This section is identical to section 19, second paragraph of the *Qānūn al-Filāḥa* (1830).

64 This section is identical to section 7 of the *Qānūn al-Filāḥa* (1830).

65 This section is identical to section 36 of the *Qānūn al-Filāḥa* (1830).

66 This section is identical to section 38 of the *Qānūn al-Filāḥa* (1830). This penal provision apparently was intended to maintain the reproductive capacity of the existing livestock and to prevent the slaughtering of draught animals needed for farmwork.

[22] Here it is recorded that a report on the circumstances of the gypsies (*nūrī*) who are wandering around unemployed in Cairo, Bulaq, Old Cairo and their surroundings, and on the cirsumstances of those who are harmful to the people among the inhabitants of Cairo and the villages, among the people from Hejaz and Sudan and and among such slaves, fortune-tellers, magicians, and treasure-hunters, was written and submitted to the Benefactor and the Sublime Grace our Lord Ibrahim Pasha, and that, in a noble order (*firmān-i ʿālī*) issued in response to the above-mentioned problem, he has explained what action must be taken against these persons in consideration of their mischief.

[18a] A decree has been issued to the effect that those [among the following] who are healthy are to be removed and sent to the ironworks,[67] those of them who are young to the troops, and those of them who are very unfit to remote regions, i.e. to places like Esna. Those of them who are to be sent to the regiments shall [first] be sent to the Ministry of War (*Cihādiye*) and their circumstances must be reported [to it] so that they can be thoroughly recorded.

[18b] In Cairo and some villages on the outskirts of Cairo there are gypsies. Sometimes, [even] in broad daylight, their women, daughters and little children enter houses, shops and other places in Cairo, for [the entrance of] which they have found permission, and they take whatever gets into their hands, be it little or much. Since they have these thievish habits, they must be compelled to [perform] different jobs and tasks. Among them there are those who are disabled, old and pregnant and sometimes there are also those who have one or two small children in their arms or at their sides. It has been observed that the value of the things they steal varies from five piasters to 500 and sometimes even one thousand piasters.

[19a] Those among these [viz., the following persons] who are healthy [shall be sent] to the ironworks, those among them who are young [shall be sent] to the troops, and [with regard to] those who are very unfit the same measures shall be taken as in the explanation mentioned below.

[19b] In the ruins of Cairo and outside the city walls of Cairo there are at certain places some poor peasant women and disabled and contemptible peasant men, and [also] city boys and girls who were born in Cairo and have become orphans, some of whom are also disabled. It is their habit to wander around and beg. They, too, take what comes into their hands whenever they are given permission [to enter houses and shops]. Although there are some healthy persons among them, most of them are destitute, confused, disabled and contemptible (*ʿalīl ve zelīl*) and stark naked. It has been observed that the value of the things they steal, as with the gypsy women, varies from five piasters to 500 and sometimes even one thousand piasters.

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67 Probably the iron foundry in Bulaq. Cf. M. Fahmy (1954), 34.

[20a] Those among the following persons who are healthy shall be enrolled in the army after their cases have been heard. The disabled [shall be sent] to the ironworks and employed in shovelling (or: working the bellows, *körük*) and other jobs for which they are fit.

[20b] In Cairo and its surroundings there are at certain places some homeless black slaves. Some of those have been given leave by their masters, but others have been of no use to their masters and are now left to their own devices. Others again did not find a place after their masters had died, and they became beggars. Whether they are disabled or healthy, this becomes a means of livelihood for them. They are evidently devoid of honesty and it has been observed that sometimes they also commit actions like snatching and thieving.

[21a] Those among the following who have small children shall be sent to the tailors, to Edhem Bey,[68] to the factories and to the other industrial establishments. As soon as these kinds of people appear, they must immediately be sent in the aforementioned way to the places listed above, after their cases have been proven.

[21b] Among the North Africans[69] and other groups there are some fortune-tellers like the *baḳlacı*[70] and the *mendelci*,[71] and some magicians (*afsuncı*) and treasure hunters (lit.: people who dig in the earth in order to bring out money), none of whom is innocent of cheating the common people, each with his own tricks. Among them there are men and women. Although some of them are quite healthy, there are also [many] who are disabled and contemptible. It has been observed that the value of the things they steal also varies from five piasters to 500 and sometimes even one thousand piasters. It has also been noticed that the practices of those fortune-tellers called *mendelci* have come to the point that through it others have been harmed.

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[68] Edhem Bey was an official responsible for the arms and ammunition industry. Sāmī (1928-1936), vol. 2, 454 (21 Rajab 1251), 449 (29 Rabīʿ II 1251); M. Fahmy (1954), 37.

[69] Lane (1966), 274: "a celebrated Maghrabee magician".

[70] A fortune-teller who predicts the future by throwing beans.

[71] A fortune-teller who predicts the future by contemplating the surface of a reflecting liquid, such as ink or oil. On *ḍarb al-mandal*, see Lane (1966), 275ff.

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