

CHAPTER FIVE

MINORITY RIGHTS IN ISLAM

FROM *DHIMMI* TO CITIZEN

Recep Senturk

Until the nineteenth century, at least a dozen legal traditions were practiced in the Ottoman Empire: five non-Islamic (Jewish, Armenian, Orthodox, Catholic, and Copt) along with four Sunni (Hanafi, Shafi'i, Maliki, and Hanbali) and several Shiite (such as Zaydiyya and Jafariyya). During the late nineteenth century, under European influence, secular law (such as international commercial courts) was also added to the Ottoman legal system. Each community produced and practiced its own canon law, thereby contributing to the diversity of legal discourse. The state did not produce any of these laws nor did it single out any of them as the official law of the state; instead, Muslim and non-Muslim civil groups crafted them. The state stood in equal distance to all and equally respected each one.

By contrast, at the turn of the twentieth century, which was a period of intense modernization, only one official law was practiced in the empire. The first Ottoman constitution was declared on December 23, 1876. It was also the first constitution in any Muslim country. After a general election—the first in Islamic history—the first Ottoman parliament, summoned under the constitution in March 1877, worked for the enactment of Islamic law as the official law to be practiced throughout the empire by all subjects.¹ It was the first enactment of Islamic law by the state, marking the end of the traditional pluralist legal system.

Increasing centralization of state power and bureaucracy during the nineteenth century created a need for uniformity in the legal system. The trend initially emerged in Europe, which the Ottomans emulated while trying to modernize their state and legal system. Consequently,

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the universal application of Islamic law was a short-lived experience in the Ottoman Empire. After the collapse of the empire, the new Turkish republic went even further in the process of Westernization and adopted a secular legal system, a patchwork of quick translations from the legal codes of several Western countries.² At every stage of this process, the identity of minorities and their rights were redefined as a result of the reconfiguration of the relationship between law and religion to facilitate further control of society by the state. With the benefit of hindsight, this was a failed strategy with numerous unintended consequences.

This chapter describes three stages in the history of Islamic law, deriving for the most part from the Ottoman and Turkish experience, as it bears upon minority rights: (1) the classical period, from the seventh century until the end of the eighteenth century; (2) Islamic modernization, from the beginning of the nineteenth to the first quarter of the twentieth century; and (3) secularization, or separation of law and religion, from the first quarter of the twentieth century until the present. This broad and imprecise periodization is derived from the Ottoman and Turkish history and its unique experience of secularism. Consequently, it may not be applicable to all Muslim countries. The purpose of this analysis, however, is not to provide a historical survey of the Muslim world as a whole, but to demonstrate the fluidity of the concept of minority and the rights accorded to it within the lengthy and diverse history of Islamic tradition. The primary focus will be on the Ottoman Empire and Turkey, but will also draw on the experience of the broader Muslim world and its relations with Europe and the United States.

ISLAMIC LEGAL TRADITION

Islamic legal tradition is best understood as part of Western legal tradition, as is the religion of Islam.³ Indeed, the history of law in Europe and the history of law in the Muslim world have been closely intertwined since the Middle Ages, with striking parallels at each stage of major transformation in the Islamic and European legal tradition.

Under classical Islamic law, both Muslim and non-Muslim minorities enjoyed a considerable degree of freedom. This situation produced a state of legal pluralism that embraced Muslims and non-Muslims

with divergent perspectives on law. The situation was termed “Open Law,” meaning a legal system that allowed multiple legal systems and discourse communities to coexist peacefully within a society. The governing principle in that period was, “A legal opinion cannot nullify another one.”⁴ Classical Islamic legal discourse produced two sets of rules, namely those aimed at regulating the internal affairs of the Muslim community and those aimed at regulating the affairs among different religious communities as well as between non-Muslims and Muslims. These rules derived from principles that all legal traditions unanimously accepted. Muslim jurists from the classical era defined these principles as *al-daruriyyat al-shar’iyyah*, “axioms of law,” because they were taken as given without dispute. Islamic law did not produce laws to regulate the internal affairs of non-Muslim communities, but non-Muslims were allowed to apply to a Muslim court if the conflicting parties were agreeable.

Under this system, each religious community had considerable autonomy to regulate its own internal affairs in accordance with its canon law. This right was granted to all religious communities, including Buddhists, Hindus, Zoroastrians, and Sabians, along with Jews and Christians. The latter two were called the People of the Book to indicate the intimate connection of their religions with Islam. It is a common misconception that Islamic law granted freedom of religion only to the People of the Book. A brief review of Islamic classical legal texts⁵ and their practice, particularly in Iran and India,⁶ demonstrates that the opposite was the case. Furthermore, each Muslim school of law (*madhhab*) had the right to practice Islam in accordance with its own interpretation.⁷ As new legal discourse communities emerged among Muslims and non-Muslims, the Open Law approach allowed their participation in the plurality of legal systems under Islamic rule.

Among the students of that period, those who compare Islamic law with minority rights in Muslim and non-Muslim societies during the Middle Ages find Islamic law progressive.⁸ Yet those who look at Islamic law retrospectively from the vantage point of contemporary standards of minority rights find it restrictive or oppressive.⁹ The former strategy is adopted by apologists while the latter strategy is adopted by opponents of Islam. In reality, both perspectives are selective—partial and one-sided—and tell only half of the story. The analysis

that follows, in contrast, uses an historically grounded, balanced, and critical approach.

The question of whether Islam has already provided or can ever provide equal rights for minorities within a democratic and pluralistic system is related to the broader discussion of the relationship between religion and law: can any religion do so? Moral and legal justification of the rights of minorities is a prerequisite for the sustainable protection of minority rights within a pluralistic and democratic system of governance. Such a justification is currently provided either by a secular ideology or by a religion, with a wide gap in between the two sources. The official discourse in modern democracies is usually characterized by a secular vision, while the more popular discourse is characterized by a religious vision. Is this gap logically required because the secular and religious justifications are mutually exclusive? Or is it possible to ground pluralism and democracy simultaneously on both religious and secular ideas?

Traditionally, the answer has been either secularism or religion. Recently a trend has emerged, however, that aims to construct a new framework that would allow combining secular and religious viewpoints on pluralism and democracy.¹⁰ If there is nothing in the religious and secular approaches to make them mutually exclusive on their view as to the inviolability of the rights of others, then it seems plausible to allow them to work together with a synergy in promoting pluralism and democracy. With the resurgence of religion everywhere in the world, such an approach may better serve mutual respect.

The prevailing conviction is that religion cannot safeguard or respect the rights of minorities because these rights can be guaranteed only from a nonreligious or secular legal perspective. This argument is based on the claim that only secular law can be neutral and equally distanced from various belief systems and faith communities. The fact that all religions have often been misused to justify oppression of religious minorities supports this claim. Furthermore, religion has also been misused to justify oppression of other groups such as women, racial minorities, and colonized people. However, this view suffers from one-sidedness because history also shows that the same religions have contributed to the emancipation of minorities, if not to their final deliverance from oppression. For instance, the civil rights movement in America was led by Christian religious leaders. The Jews were given

sanctuary by the caliph in Istanbul after their flight from Spain. Likewise, secular ideologies, such as nationalism and communism, have been used by some of their followers to justify oppression of minorities. Consequently, the connection between a particular type of culture, religious or secular, and respect for, or disregard of, minority rights is not straightforward. To clarify the relationship between the two requires a balanced, comprehensive, and deliberative approach.

Therefore, I will look at the question of minority rights in Islamic law from this perspective and will explore the possibility of bridging the present gap between secular (rational) and religious (scriptural) approaches to the inviolability of the other. Islamic jurisprudence provides a framework that can be used, as an example, to demonstrate that secular and religious reasoning in legal matters are not mutually exclusive. Rather, if properly bridged, they affirm each other.

I will also demonstrate how minority rights in Islamic law are grounded on the principle of *adamiyyah* (humanity), which entitles a human being to *dhimmah*, the right to legal personhood with accountability and inviolability. In doing so, I will use the works of the universalistic school of Muslim jurists from the classical period and will compare those views with the views of the communalistic school of the same period. I will also build upon the Ottoman legal reforms from the nineteenth century. I will use these two precedents at the conceptual and practical levels to demonstrate how Islamic law and the present universalistic approaches to human and minority rights can be bridged by exposing the commonalities between them—commonalities that are hardly known today to the proponents on either side.

ISLAMIC LAW AND MINORITY RIGHTS: INDIVIDUAL AND COMMUNAL

Islamic law approaches minority rights at two levels: individual and communal. The individual minority person is called *dhimmi*; the minority group is called *millah*.¹¹ A *dhimmi* may be defined as a person with accountability and inviolability, while a *millah*, or *millet*, is a religious community or a nation united around a religious identity and discourse. At both levels, minorities are granted “human” rights and “constitutional” rights. Human rights are universal and therefore do not vary from individual to individual or from community to community.

The latter group, the constitutional rights, may vary from group to group or from individual to individual. No matter how autonomous one is, the individual is always seen as embedded in the network of social relations in the context of which rights and duties are negotiated and determined. The emphasis on *adamiyyah* may be interpreted as emphasis on the autonomy of the individual. Because of the prevalence of the nation-state model during the late nineteenth century, Ottoman reforms concerning the status of minorities in Islamic law dismantled the traditional millet system. The result was a complete reform of Islamic law based on equal citizenship for all individuals, who no longer needed their religious community and leaders in their interaction with the political authority.

THE CONTEST OVER THE RIGHTS OF MINORITIES IN CLASSICAL ISLAMIC LAW

Jurists adopt divergent views on why minorities should be granted rights. Is it because of their humanity, or because of their citizenship? There are contradicting and evolving views advocated by jurists from the classical and modern periods. The cleavage between universalist and communalist jurists can be observed in all major legal traditions, including Islamic law. The former group believes that human beings, be they from the majority or the minority, are entitled to rights by virtue of their humanity. In contrast, the latter group is concerned only with the rights of the citizens of their state, usually called a nation, or with the members of their religious or ethnic community. The same structure can also be observed in Islamic law.

The cleavage between universal and communal perspectives in Islamic law is important for our concerns here.¹² The universalist school grounded human rights on humanity, *adamiyyah*, and thus advocated equal rights for all human beings regardless of their inherited and innate qualities such as class, race, color, language, religion, and ethnicity. This view was first formulated by Abu Hanifa (699–767 CE) in the following precept: Inviolability is due to all human beings by virtue of their humanity.¹³

In contrast, the communalist school did not accept universally granted human rights. Instead, it advocated civil rights, or constitutional rights granted to citizens by virtue of their citizenship. Their

view is summarized in the following precept: Inviolability is due by virtue of faith or treaty.¹⁴

A similar tension is observable in Western legal history. Article 6 of the United Nations Charter stipulates: “Everyone has the right to recognition everywhere as a person before the law.” This statement should be seen as a culmination of lengthy debates and conflicts in human history. Before this declaration, some segments of populations in the West, especially non-citizens and minorities, did not have the right to personhood. Right to personhood entitles one to have rights and responsibilities. Without it, human beings cannot bear rights and duties; in that case, they are treated as property or outcasts, but not as human beings with moral capacity.

In different periods of Western history, minorities were denied personhood, and they were dehumanized in order to justify their deprivation of personhood. Article 6 of the United Nations Charter aimed to end such discriminatory practices. Among the most well-known cases are colonized peoples, racial minorities such as African-Americans in the United States before the civil rights movement, Jews in Europe prior to the Jewish Emancipation, and women until the twentieth century.

PERSONHOOD IN ISLAM

The right to personhood is central to the understanding of the concept of the rights of minorities. In classical Islamic jurisprudence, as related earlier, the term *dhimmah* means accountability and inviolability, which is usually termed personhood in modern legal discourse.¹⁵ Moral, religious, and legal accountability requires one to have *dhimmah*. If one has *dhimmah*, one can bear rights and responsibilities. *Dhimmah* distinguishes human beings from animals because humans are responsible for their actions. Having *dhimmah* is thus a privilege that entitles one to be a full member of society. Accountability before the law is a prerequisite for membership in society, which comes with a right to complete inviolability.

Dhimmah is also commonly understood as “protection,” “treaty” (*‘ahd*), and “peace” (*sulh*) because it is a treaty that puts non-Muslims under the protection of Muslims. Thus, “This is in his *dhimmah*” means that a person is accountable to the law or is under its protection. This accountability may be based on a written contract or a general law.

Islamic jurisprudence stipulates that dhimmah is what makes a person responsible for the consequences of his actions; because he has personhood, others can hold him liable for his deeds and demand that he fulfill his duties—which are their rights. Yet it is unanimously accepted that “one’s dhimmah is originally clear of charges” (*al-Asl fi al-dhimmah al-bara’ah*) unless a charge is proven beyond doubt by evidence. This principle is interpreted as “one is innocent unless proven otherwise.” According to this principle, no one can be held accountable unless there is clear evidence to the contrary. In other words, the burden of proof is on the claimant.

In conjunction with this issue, there is a conceptual debate between universalist and communalist jurists regarding who has dhimmah and on what grounds. This question has divided Muslim jurists. Some have claimed that dhimmah is a birthright and that people have dhimmah after conception by virtue of being human.¹⁶ Others have contended that dhimmah is a gained right and that people obtain it by virtue of their citizenship. The non-Muslim individual who has a right to personhood is called dhimmi, while their community as a whole is called *ahl al-dhimmah*, which literally means “people with accountability and inviolability.” The following citation from the prominent Hanafi jurist Sarakhsi (d. 1090 CE) succinctly elucidates this perspective:

Upon creating human beings, God graciously bestowed upon them intelligence and the capability to carry responsibilities and rights (*dhimmah*, personhood). This was to make them ready for duties and rights determined by God. Then He granted them the right to inviolability, freedom, and property to let them continue their lives so that they can perform the duties they have shouldered. Then these rights to carry responsibility and enjoy rights, freedom, and property exist with a human being when he is born. The insane/child and the sane/adult are the same concerning these rights. This is how the proper personhood is given to him when he is born for God to charge him with the rights and duties when he is born. In this regard, the insane/child and sane/adult are equal.¹⁷

The Universalistic School

According to the universalistic school, all human beings have dhimmah by virtue of their humanity. The term *ahl al-dhimmah* is there-

fore literally true for all human beings around the globe because all people are born with dhimmah. Therefore, dhimmah may be called a birthright or a natural right. The fact that non-Muslim minorities are conventionally called so means nothing other than reiterating and affirming with a written contract that non-Muslims are equal with Muslims in enjoying this right. It indicates that non-Muslim minorities also have the right to legal personhood and that they *acknowledge* their accountability. It may be seen as a declaration of the equality in that aspect between Muslims and non-Muslims. Other non-Muslims, without a treaty with Muslim authority, have to officially acknowledge and register that they accept their accountability and liability before the law for their actions.

From this perspective, the compact of dhimmah is merely an act of acknowledgment by both sides about their rights and duties. This is because non-Muslims are already granted all the rights they may possibly have by virtue of their humanity, and thus signing a treaty with Muslims is not going to bring them new rights. However, the act of dhimmah serves as a confirmation of those rights and duties by both parties. It follows from the above principle that dhimmah cannot be repelled under any condition by any authority, be it either religious or political.

The Islamic discourse on rights is characterized by multiplexity and multiplicity. It is multiplex because it distinguishes between two levels: human rights and constitutional rights. The former are called “axiomatic rights” (*daruriyyat*), while the latter are divided into two categories—*hajiyyat* (requirements) and *tahsiniyyat* (improvements).¹⁸ The discourse is universal at the first level, which is the level of universal human rights; but on the second level, which is the level of constitutional rights, it allows for diversity based on the culture and religion of the minorities.

The universalistic school sees no difference between Muslims and non-Muslims as far as human rights are concerned. The same is true between citizens of an Islamic state and others because human rights are not granted on the basis of citizenship. These basic rights include the right to life, property, freedom of religion, freedom of expression, family, and honor. These rights are granted to all human beings by virtue of their being human.

On the level of constitutional rights, however, the universalistic school allows diversity and accepts differences between Muslims and non-Muslims. These differences manifest themselves in the debates about interreligious marriage, inheritance, and giving testimony against a suspect from another religion. In addition, non-Muslims are not required to join the army or serve the state; these may be seen as advantages or restrictions. Yet there is one clear restriction: a non-Muslim cannot be the leader of a Muslim state. Non-Muslims can occupy any position other than the top leadership.

The Communalist School

Not all Muslim jurists in the classical period agreed with the views of the universalistic school. The competing communalist discourse, represented by Muhammad ibn Idris al-Shâfi'i¹⁹ (d. 820), Malik Ibn Anas²⁰ (d. 795), and Ahmad ibn Hanbal (d. 855), maintains that having dhimmah is a status that only Muslims can enjoy. Non-Muslims achieve that status by virtue of the compact they make with the Muslim authority. From this perspective, dhimmah is a gained right and privilege; it is also the basis of other rights to be gained by virtue of signing a treaty with the Muslim authority. Enjoying legal personhood requires fulfilling the conditions of the treaty. Otherwise, it will be lost. One of the conditions of keeping legal personhood is to pay the special poll tax, *jizya*, to the state.²¹

In contrast with the universalist school, the communalist school lacks the abstract concept of human qua human as a possessor of rights. Instead, it relies on the religiously defined categories, such as disbeliever (*kafir*) and believer (*mu'min*). Nor does it support the concept of birthrights or natural rights as the Hanafis do. For the communalist school, all rights are gained and granted by the law. As mentioned above, the right to inviolability is gained by virtue of faith (*iman*) or a treaty of security (*aman*). One is automatically considered a citizen of the Islamic state if one is a Muslim, and consequently his dhimmah is respected. The non-Muslim who makes a treaty with the Islamic state can also become a citizen and gain the right to dhimmah. Only then can he become accountable and inviolable. By the treaty of dhimmah, Muslims take non-Muslims under their protection, grant them minority rights, and accept accountability for their security. In other words, they take non-Muslims under their dhimmah.

JIZYA

From the perspective of the communalist school, the *jizya* is the fee for dhimmah, which entitles one to inviolability, *'ismah*, and residence in the Muslim state, *sukna*. But universalist jurists argue otherwise. For them, dhimmah and *'ismah* are not subject to monetary exchange; they are inalienable universal rights that are granted at birth.²² From this perspective, as Muslims are required to pay *zakat* and other annual charities and taxes, non-Muslims are also required to pay taxes in the form of *jizya*. For the Hanafi school, *jizya* is acceptable from all non-Muslims, including the People of the Book and non-Arab pagans, the only exceptions being Arab pagans and polytheists. For the Shafi'i school, *jizya* is acceptable only from the People of the Book and Zoroastrians and not from the followers of other religions because the Qur'an and *hadith* did not list them among those who are allowed to make peace with Muslims and pay *jizya*.²³ Mughals and Ottomans, who followed the Hanafi school, indiscriminately collected the *jizya* from the followers of all religions.

Among non-Muslim subjects, only the able, the young, the healthy, and working male adults were required to pay *jizya*. Non-Muslim women, children, the aged, the sick, the unemployed poor, the disabled, and clergy were not required to pay *jizya*.

The *jizya* was negotiable if a territory surrendered willingly to Muslim rule and made a peace treaty with Muslims. Once the *jizya* was set for a certain amount after mutual agreement, the state was never allowed to change it unilaterally. If a territory was conquered by force, however, the amount of *jizya*, according to the Shafi'i school (one *dirham*, silver money, per month), was the same for all non-Muslim citizens regardless of their income level. By contrast, the Hanafis divided non-Muslims into three categories and required them to pay different amounts: a rich dhimmi was required to pay 48 dirham per year, a middle-class dhimmi was required to pay 24 dirham per year, while a low-income dhimmi was required to pay only 12 dirhams per year. It was possible to pay the tax in monthly installments.

If a dhimmi accepted Islam, according to the Hanafi school, his past *jizya* charges were waived. The Shafi'i school, however, required that past *jizya* be paid because this was debt in exchange for a good, namely, the security that the dhimmi received.²⁴

In the Ottoman Empire, jizya traditionally was collected by the representatives of each millet organization to be transferred in whole to the state. The income generated by these taxes was used to sponsor public services. During the nineteenth century, the Ottomans standardized taxation for all citizens, Muslims and non-Muslims, and abolished jizya.

BASIC RIGHTS IN ISLAM

Regardless of the above noted debate about how rights are justified, Islamic law grants six basic rights to individuals, be they Muslims or non-Muslims. An individual is presumed to be part of a millet organization. Nevertheless, individuals have rights that are granted to them universally and equally regardless of their religion, race, gender, and culture.

These rights are seen as given and are not subject to debate. Therefore, they are termed “axiomatic principles of law” (*al-daruriyyat al-shar’iyya*). They are also known as “the objectives of law” (*maqasid al-shari’ah*). These rights are

1. the right to the inviolability of life (*‘ismah al-nafs* or *‘ismah al-dam*);
2. the right to the inviolability of property (*‘ismah al-mal*);
3. the right to the inviolability of religion (*‘ismah al-din*);
4. the right to the inviolability of freedom of expression (*‘ismah al-‘aql*);
5. the right to the inviolability of family (*‘ismah al-nasl*); and
6. the right to the inviolability of honor (*‘ismah al-‘ird*).

Because these rights are universally granted, minorities also enjoy them. Accordingly, the life, property, religion, mind, family, and honor of all individuals are inviolable, regardless of their inherent, inherited, and acquired qualities such as race, religion, gender, culture, and education.

Minorities are allowed to fully practice their canon law provided that they do not contradict these six axiomatic principles of Islamic law. In that case they are prevented from practicing those rules that explicitly violate these basic rights. Consequently, Muslim rulers prohibit-

ed the practice of *sati* in India.²⁵ Likewise, they prohibited the practice of marriage with siblings among some Zoroastrians in Iran.

Communal Rights of Minorities in Islamic law

Broadly speaking, Islamic law recognizes two major groups: Muslim millet and non-Muslim millet, each with subdivisions. The Muslim millet is divided into two major groups—Shiites and Sunnis—again each with subdivisions, each of which is called *madhhab* (referring to a school of law). The subgroups under the non-Muslim millet are also called millet. The institutional organization in which all these groups are connected to each other horizontally and to the Muslim ruler vertically is called the millet system.

This pluralistic social and legal structure was facilitated by a particular view of “normative truth.” The pluralistic theological approach to legal and moral norms made possible the coexistence of different millets and madhhabs side by side within a given society. Islamic jurisprudence accepted from the very beginning that normative truth is multiple rather than unique. There was a consensus that this was the case at the societal level. The disagreement was on whether normative truth was multiple in God’s eye as well: Does God allow human beings to have different normative rules while He knows that only one of those rules is correct? Or does He perceive all of the normative rules adopted by human beings as correct? Are all these “valid” opinions and doctrines as long as they are supported by rational and scriptural evidence, even though they might not be “correct” in God’s eye? The answer to this question can never be known or judged. Even those who accepted the view that the normative truth is one in God’s eye agreed that He allowed it to be diverse in human society and therefore He is not going to punish those who failed to know the truth in His eye. Prophet Muhammad said: “God gives two rewards to a legal scholar who is correct in his reasoning and judgment (*ijtihad*) while He gives one reward if the legal scholar is mistaken in his reasoning and judgment after doing his best.” What counts here is the serious and sincere effort to discover what is right and wrong given the limitations of the human mind. In any case, Muslim jurists in the classical era assumed that God allowed normative truth to be multiple at the societal level.

Muslim jurists also accepted that Muslims are not the only representatives of normative truth. Secular and religious reasoning would

lead human beings to the normative truth whether it is carried out by Muslims or non-Muslims. Human beings have the intellectual capacity to discover what is right and wrong in all matters, said the Mu'tazilites.²⁶ For them the role of divine revelation is only to affirm what human beings can discover rationally by using their minds. Yet the majority of the jurists from the Sunni and Shiite schools agreed that even if we cannot discover what is right and wrong by relying solely on our minds, our minds concur with what is right and wrong after we learn it from divine books and prophets.

Furthermore, Islamic law grants "validity" to pre-Islamic religions, which legitimizes the practice of their law by minorities. Muslim theologians accepted that all divine or heavenly religions are from God and that their followers worship the same God. Religion with God is one, yet it is revealed to all nations with their languages because God never punishes a society without sending them a messenger who speaks their language. From this perspective, all religions are previous forms of God's religion, which preserved their authentic form to varying degrees. Islam came to affirm the message of these earlier religions and to correct what was tampered with, but not to falsify them. From this approach, the superiority of Islam is in being the most recent message of God to humanity:

Those who believe (in the Qur'an), and those who follow the Jewish (scriptures), and the Christians and the Sabians,—any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord; on them shall be no fear, nor shall they grieve (The Qur'an, *Al-Baqarah* 2:62).

Based on this view toward other religions, Muslim jurists agreed that the laws of previous religions may also serve as a source of Islamic law in case there is a problem for which Muslim scriptures do not provide an answer. This principle is commonly known as "laws of the ones before us" (*shar' man qablana*). It may be seen as going beyond merely allowing the non-Muslim canonical laws to exist or tolerating their practice by their followers, as it also opens a gate for give and take, for dialogue and constructive interaction. From this perspective, the truth is shared by all social groups and not monopolized by a particular group or the ruling class. The multiplex understanding of the normative truth from a relationalist, as opposed to essentialist, perspective

helped reduce social and cultural tensions among divergent truth claims. It also prevented differences in values, beliefs, and ideas from turning into social and political conflicts.²⁷

Muslim Minorities

The current literature on minorities under Muslim rule focuses exclusively on the non-Muslim minorities and millet system without exploring the Muslim approach to the multiplexity and multiplicity of normative truth, which is the Islamic approach to non-Muslim minorities and the millet system. Yet, if one wants to have a full picture, one has to pay attention to Muslim minorities as well.

What was life like for minority Muslims—those who were ethnically, linguistically, or denominationally different from the majority? Muslim minorities were primarily organized as madhhab and Sufi orders, two enduring forms of civil association in Muslim societies. The relationship between Arabs and non-Arabs was problematic during the rule of the Umayyads (c. 661–750 CE) because of their official ideology based on Arab supremacy, *shu'ubiyyah*. During the rule of the Abbasids, there was a period of religious persecution known as *mihna*, when the state adopted the view of one madhhab, namely the Mu'tazilah, and oppressed the others. There were also periods when Sufis were persecuted because of their belief in *wahdat al-wujud*, the best example of which is the life and execution of Hallaj.²⁸

These are some of the rare examples that demonstrate what could have happened if Islamic law had not been objectively implemented. Overall, however, during Islamic history, Muslim minorities, be they ethnic or religious, enjoyed complete equality with the Muslim majority. It is possible to say that the problems mentioned above were instigated for nonreligious reasons, such as political motives, clash of interests, and personal rivalries.

Classical Islamic law required that non-Muslim communities be organized as millets under their religious leader and follow their canonical law. As explained above, the Islamic view of other religions and legal systems plays a large role in justifying such legal pluralism. In the Qur'anic verse cited, the mention of Sabians, who are not part of the People of the Book, may be seen as an indication that religious freedom is not restricted only to the People of the Book. The status of millet and the rights emanating from it are granted not only to Christian

and Jewish communities—who are considered People of the Book, *Ahl al-Kitab*—but also to Zoroastrians in Iran and to Hindus and Buddhists in India.²⁹

Consequently, throughout Islamic history a great number of Muslim and non-Muslim communities managed to maintain their identity and culture.³⁰ This does not mean that there were no discriminatory practices toward non-Muslims, particularly when viewed from the perspective of modern human rights standards. However, compared to the practices of their counterparts during the Middle Ages, the degree of religious freedom granted by Islamic leaders, although it looks insufficient today, was immensely progressive and crucial.

Structurally speaking, classical Islamic law granted non-Muslim communities the right to considerable autonomy or self-determination in their internal affairs regarding education, tax collection, law, and religion, along with exemption from military and state service. When needed, the leaders of the millets negotiated the amount of *jizya* with the state. They also established and managed their own institutions such as places of worship, schools, courts, and pious foundations.

Andalusia is usually seen as the prime example of the embodiment of tolerance in Islamic law pertaining to minorities. Yet Andalusia is not an exception but, rather, an extension of Islamic practice in other parts of the world. For instance, the roots of the millet system may be traced back to the Medina document, or *Al-Wathiqah*, signed by the leaders of the religious communities at the time of the Prophet Muhammad.³¹ The four Rightly Guided Caliphs who came after Muhammad, as well as the Umayyads, Abbasids, and the Mughals, also contributed to the evolution of the system. Therefore it would be a mistake to think that the millet system is an Ottoman innovation.

THE CASE OF THE OTTOMAN EMPIRE

The Ottoman Empire followed the tradition of the millet system,³² and, beginning with Sultan Mehmet Fatih (the Conqueror), improved its institutional structure by explicitly stating that rights of non-Muslim communities be addressed to them in the royal decrees. These decrees were called *Ahdnâme*, and because they were accompanied by the Sultan's pledge, they had the force of an international contract.

Greek Orthodox Christians were not established as the first millet after the conquest of Constantinople by Sultan Mehmet, as is commonly assumed in the literature. Rather, they had the same communal rights all along under the Seljuqs and the Ottomans prior to the conquest of Constantinople in 1453. The Orthodox patriarch had been granted the same rights as the leaders of other communities that had previously come under Islamic rule. The patriarch was allowed to apply Orthodox law in secular and religious matters. What Sultan Mehmet, who after the fall of Constantinople considered himself the Eastern Roman Emperor, did was to grant a charter to the patriarch of the Orthodox Church, Genady II.

As the policy of religious pluralism and multiculturalism was consolidated by the millet system, it allowed the Jews to form their own community and to establish independent religious, educational, and legal institutions in Istanbul. Historians commonly note that the freedom that was granted to the minorities within the Ottoman territories attracted large numbers of displaced Jewish communities that were among the victims of persecution in Spain, Poland, Austria, and Bohemia:

[W]hile in Russia, Rumania, and most of the Balkan states, Jewish communities suffered from constant persecution (pogroms, anti-Jewish laws, and other vexations), Jews established on Turkish territory enjoyed an altogether remarkable atmosphere of tolerance and justice.³³

Armenians were another religious community that formed a millet under the Ottoman rule. Sultan Mehmet issued a royal decree, or *Ahd-nâme*, establishing the Armenian patriarchy in Istanbul under Patriarch Hovakim. As a result, a great number of Armenians reportedly emigrated to Istanbul from Iran, the Caucasus, eastern and central Anatolia, the Balkans, and Crimea—not because of persecution or forced dislocation but because Sultan Mehmet made his empire a true center of Armenian life. The Armenian community thus expanded and prospered together with the Ottoman Empire until the Armenian uprising after the collapse of the millet system.

In 1463, Sultan Mehmet also granted a charter of rights, or *Ahd-nâme*, to the Bosnian Franciscans. The *Ahdnâme* granted significant rights to the Catholic Church in Bosnia represented by the Bosnian

Franciscan official Andjeo [Angel] Zvizdic. Andjeo Zvizdic “Vrhbosanski” remained the “Sultan’s faithful subject, obedient to his rule,” as he had promised in the Ahdnâme, until his death in 1498. The Ahdnâme stated the following:

I, Sultan Muhammad Khan, announce to all the people that the recipients of this imperial firman, the Bosnian Clergy, are held by me in my great esteem, and I therefore order that: No one should disturb or meddle with them or their churches. They are to live in peace in my Empire. Those who have fled should feel free and secure. They should return and settle again without fear in their monasteries. They must not be disturbed either by My High Majesty, or by my viziers, employees, subjects or any other inhabitants of my Empire. No one should attack, insult or endanger either them, or their lives, or property, or their churches. And if they wish to bring some person from foreign lands into my state, they are allowed to do so. Having made this imperial order, I make the following sacred pledge: By the Creator of earth and heavens, who feeds all his creatures, by the seven sacred books, by our great Prophet, and by the sword which I wear, I swear that no one shall act against what has been written here while this clergy remains subject to my service and faithful to my rule (Dated, May 28, 1463).

These decrees should be seen as a confirmation of existing rights rather than the granting of new rights that had not existed in Islamic law. In fact, issuing such decrees has been a custom of Muslim conquerors. For instance, it is commonly known that Caliph Umar issued decrees with a similar content to the Christians after Jerusalem came under Islamic rule in 637 CE.

The millet system may be seen as a major reason why the Ottoman Empire survived so long. The system afforded the right of self-governance to the communities and delegated power and the numerous administrative burdens to local authorities. Representatives of the millets, but not Ottoman officials, had to deal with their communities on many issues. The religious heads of these communities were elected by the members of their communities, and their role was to establish and maintain relations with the state. These leaders served as the bridge between the government and their communities, thus functioning as intermediaries between the state and society. The different

community groups themselves acted independently of the state, as they had the authority to organize their own judicial, educational, and religious affairs.³⁴

MANAGING INTER-MILLET RELATIONS

Regulating the relations among different millets was a daunting task and posed some problems. One issue was the testimony of a witness against a suspect of another religion. Some Muslim jurists ruled out such testimony because of possible prejudice due to the religious difference between suspect and witness; some jurists, however, thought that religious difference was not an issue in testimony. Another problematic issue was that of interreligious marriage. Muslim males were allowed to marry women of the People of the Book, but Muslim women could not. This was based on the rationale that a Muslim man would respect his wife's faith because, as a Muslim, he is required to believe in her prophet and sacred book. But a Christian or Jewish man does not believe in the Prophet Muhammad and the Qur'an and consequently is not obliged by his religion to respect a Muslim woman's faith. Non-Muslim communities, too, completely restricted interreligious marriage.

Apostasy and blasphemy were among the most common crimes according to all canonical laws during the Middle Ages, including Islamic law. Yet the punishment classical *Shari'a* stipulated for an apostate was never implemented unless the case was politically charged. Building new worship places required permission from the state. Ottomans did not proselytize non-Muslims, nor did they allow followers of other religions to proselytize each other.

Members of different millets were required to carry symbols of their faith in public places to reveal their identity. This regulation regenerated the existing configuration of authority relations within the society by maintaining social identities. It was also part of freedom of expression. However, during the period of modernization, as the role of religion in forming social identities declined and secular identities prevailed over religious identities, such rules looked obsolete and restrictive.³⁵

The most important restriction in the millet system, from a modern perspective, was not allowing a non-Muslim to take the responsibility

of “general leadership,” or *al-walaya al-‘ammah*. Under classical Islamic law, non-Muslims were allowed to serve as minister and prime minister (*vizier*), but not as the ruler of the state. The same restriction applied—and in many Muslim countries still applies—to Muslim women as well, because according to classical Islamic law only a Muslim man can assume the responsibility of “general leadership.”

MODERNIZATION: FROM *DHIMMI* TO CITIZEN AND FROM MILLET SYSTEM TO NATION-STATE

As the Muslim states, notably the Ottoman Empire, gradually began to modernize, the definition of minority shifted from religious to ethnic terms as a secular approach to identity gained prevalence.³⁶ “Minority,” under classical Islamic rule, meant primarily non-Muslim citizens. Their entitlement to human and constitutional rights had been a major issue in classical Islamic law as discussed earlier. But after the abolition of the millet system, religious differences lost all consequence, and, instead, ethnic differences became important.³⁷ The millet system had minimized the impact of ethnic differences. But over the course of the nineteenth century, especially after the collapse of the religion-based millet system, such differences became important. This trend was accompanied by the rise of a nationalist spirit, which during the nineteenth century spread from Europe to the Muslim world. Consequently, ethnic groups became conscious of their identity and began to demand more rights, if not total independence. In response, the Ottomans had to reform their traditional system and grant equal citizenship and rights to their non-Muslim subjects.

The Ottoman Reforms

The first royal decree—the Royal Decree of the Rose Garden (*Gulhane Hatt-i Humayunu*)—was launched in 1839 during the *Tanzimat* Reforms.³⁸ This declaration, which may be seen as the first declaration of human rights by a Muslim state, assured all citizens of their basic rights, namely the right to life, property, freedom of religion, protection of honor, education, employment, and due process. The *Tanzimat* declaration was grounded on the doctrine of *‘ismah* (inviolability) in Islamic law. The document is especially significant for its recognition of equal rights for Christians in education and in government admin-

istration. Exemplifying egalitarian principles, the decree declared: “All Muslim or non-Muslim subjects shall benefit from these rights. Everyone’s life, chastity, honor, and property is under the guarantee of the state according to the Shari’a laws.” Representatives of all religious groups and the ambassadors of European states were present at the declaration ceremony, which ended with a prayer led by the *Shaikhulislam* (the highest-ranking Muslim cleric and administrator of religious affairs on behalf of the sultan).

The second stage in this process of reform was the meeting of the Royal Advisory Council of the Ottoman Sultan (*Meclis-i Meshveret*, advisory assembly) on March 24, 1855, to discuss how to reform the rights of minorities, particularly the Christians, in the empire—rights that had been regulated for centuries in accordance with classical Islamic law. The reformist sultans and statesmen aspired to make the Ottoman state a modern European nation. These aspirations, coupled with internal pressures from minorities and international pressures from European allies and foes, triggered reform in Islamic law. Following their deliberations, the advisory council sought the opinion and blessing of the *Shaikhulislam* for their decisions and obtained it. On March 26, 1855, the council met once again and produced the most important official document on reforms regarding minority rights in Islamic law.

The document advised the Ottoman sultan to adopt modern European standards on the following six issues: accepting the testimony of non-Muslims as equal to that of Muslims; granting non-Muslims high-level official titles; employing them in state jobs; accepting them into military service; allowing them to restore their churches; and abolishing *jizya*. The document stated that these reforms would facilitate the membership of the empire in the European community of states, as recommended by Lord Palmerston, the British ambassador in Istanbul. Sultan Abdulmejid (who ruled 1839–1861), approved the document.³⁹

The Islamic justification for these reforms came from the work of Muhammad Shaibani, the great student of the Muslim jurist Abu Hanifa (699–765), *Kitab al-Siyar al-Kabir*.⁴⁰ Through this work, the Ottoman scholars and statesmen who were attempting to reform the law according to the universalistic perspective rediscovered the roots of the universalistic school in Islamic law. This strategy proved useful

for getting the *ulema*—community of legal scholars—and the Muslim community to comply with the new reforms.

Thus the ground was laid to treat non-Muslims as equal citizens with Muslims under Islamic law with the blessing of the caliph and Shaikhulislam, the highest authorities of Islamic faith. This process of reform heralded the beginning of the end of a period during which non-Muslims had been treated differently. On February 18, 1856, these reforms were announced to the world in the form of a human rights declaration (*Islahat Fermani*). In 1875, the Imperial Edict on Justice (*Ferman-i Adalet*) provided for the independence of the judicial courts and ensured the safety of judges. Eventually, in 1876, these reforms found their way into the first Ottoman constitution, which clearly stated that all citizens of the state are equal.

The 1876 Constitution marks the most important step along the road to the rule of law in the Ottoman Empire, initiating the First Constitutional Period (which continued for one year under the rule of Abdulhamid II). Although this first constitution is seen as somewhat restrictive regarding the exercise of powers, it nevertheless for the first time recognized a parliamentary system. The constitution had provisions covering basic rights and privileges and the independence of courts and the safety of judges, among other aspects. In 1908, the Young Turks who dethroned Abdulhamid II launched the Second Constitutional Period and laid the foundations of a parliamentary system, which continued until the fall of the Ottoman State.⁴¹

Constitutionalism and the End of the Millet System

Proclamation of the constitutional system meant the abolishment of the traditional millet system and the introduction of the modern nation-state model to the Ottoman Empire.⁴² As the dhimmis became equal citizens on the individual level, there was no need for them to continue to form separate communities under their religious leaders based on their religious and cultural identity. Rather, the identity of major millets such as the Jewish, Armenian, Rum, Catholic, and Orthodox became subsumed under a new identity, namely that of the Ottoman millet. The concept of millet (religious community) shifted from religious to secular and ethnic content and came to mean “nation.” But this project of integrating all religious communities under one national identity failed, however, as ethnic groups rose as minori-

ties with distinct secular identities. The Ottomans were caught unprepared about how to cope with this new wave of secular nationalism, as Islamic law was silent on this new configuration of relations based on ethnic identity.⁴³

The transition from a religious approach in the network of social relations to a secular ethnic approach was not easy. Armenians may be seen as the victims of the collapse of the millet system under which, as did all other religious minorities, they led a safe and secure life with their Muslim neighbors for centuries. As secular ethnic identity gained prominence, the role of secular leaders increased. Most of these secular leaders worked to secure independence from the Ottoman Empire in the Balkans and Anatolia. With the collapse of the empire, scores of nation-states emerged on its territory with religious and secular regimes.

The emergence of nation-states turned ethnic groups into minorities as the newly founded nation-states adopted national identities. In the modern era, the Muslim Brotherhood has opposed the demands of ethnic minorities who have been deprived of their cultural rights, rights that they enjoyed under classical Islamic rule. This opposition has been justified mostly in the name of national cohesion.

The foregoing shows that both secular and religious approaches may be used to promote or undermine minority rights. Muslim countries with secular regimes as well as those with religious regimes provide ample examples for this observation. Today, both religious and secular regimes in the Muslim world are frequently accused of violating the rights of minorities—evidence that the type of regime is not the determining variable in this process.

Outside observers who are not familiar with the Islamic world's cultural dynamics might mistakenly attribute the restrictive practices of secular regimes in Muslim countries to Islamic law. In reality, however, the secularization of the legal system in the Muslim world indicates a complete departure from the principles of Islamic law as outlined here. Turkey is a prime example of a Muslim country with a secular legal system where minority rights are highly restricted.

Secularization of the Turkish legal system did not automatically solve problems of minority rights. Some problems were solved but new problems emerged. The Kurds did not pose a problem under Ottoman rule, as they were allowed to use their language and maintain

their culture. Yet they felt disturbed by the new nationalist ideology and the restrictions imposed on the practice of their culture and language. Religious minorities, too, experienced problems that they had not experienced under Ottoman rule, in particular problems concerning religious education due to the state monopoly on religious education. Even Muslims have experienced problems in religious education for the same reason. The Turkish Republic nationalized pious foundations and outlawed Sufi orders. Missionary activities by Christians were also prohibited. And finally, the headscarf, which a considerable number of Turkish Muslim women wear, was banned during the 1980s for students and state employees. Similarly, around the same time, male students, professors, and state employees were banned from having a beard.

On the other hand, after the collapse of the Ottoman Empire, some of the newly established states like Saudi Arabia professed to practice Islamic law. Some others, including Pakistan, Sudan, Iran, Afghanistan, and Nigeria, recently joined them by declaring Shari'a rule because of the public pressures during the last decades of the twentieth century. Yet their interpretation and practice of Islamic law pertaining to minorities has not been as tolerant as that of the Ottomans or other traditional Islamic states. In particular, the implementation of the penal law of Islam has gone beyond reasonable limits and has drawn protests from both Muslims and non-Muslims. None of these states has adopted the universalistic Islamic tradition outlined here. Instead, they have chosen to implement the most restrictive interpretations of Islamic law.

CONCLUSION

The views in Islamic law regarding minority rights have been heterogeneous and open to evolution, as demonstrated by the reforms in the late Ottoman Empire, the most recent large Muslim state with a multi-ethnic and multireligious population. The universalistic school in Islamic law can be used to build upon to make Islamic law compatible with contemporary understanding of minority rights.

From this perspective, the Ottomans had already solved many of the problems that Muslims intellectuals are struggling with today. However, the chain of memory was broken after the collapse of the Ottoman

Empire, as the reform movement in Islamic law was discontinued and the reformist Ottoman legacy was forgotten. Consequently, today Muslim intellectuals must struggle with the same questions that Ottoman intellectuals and rulers dealt with almost two centuries ago. The classical Shari'a perspective regarding minority rights posed problems in several areas, such as testimony, jizya, and service in the state and the military, and Ottoman scholars had reformed the rules of Shari'a in those areas in the first part of the nineteenth century. Unfortunately, their efforts are completely forgotten today by the specialists in Islamic law who are trying to configure a solution to these problems.

The Ottoman state set an early example for how to deal with minorities under Islamic rule from a liberal perspective. The Ottomans as a world power acted pragmatically in legal matters and thus allowed the evolution of classical Shari'a as required by global developments. Muslim states in the present world should learn from the Ottoman experience and advance it further. This requires restoring the broken chain of memory and reclaiming the Ottoman reformist legacy.

Today, once again, *adamiyyah* (humanity) must be revived as the foundation of human rights for both Muslims and non-Muslims. It provides a solid conceptual ground to build upon. Yet, as discussed earlier, even this school discriminated against minorities at the level of *hajiyyat* (requirements) and *tahsiniyyat* (improvements). These practices, which look discriminatory today from the perspective of modern human rights, should be removed by making *adamiyyah* the foundation of all rights at all levels, namely at the level of universal human rights and domestic constitutional rights.

Today, as a result of emigration from the Muslim world, millions of Muslims are living in the West and, therefore, Muslims have an additional reason to treat minorities as equal citizens under Islamic law.

Another reason to treat all citizens and human beings equally under Islamic law is the fact that globalization has made the entire world a small village. But neighborly relations in this village have yet to be established. Educating Muslims to treat non-Muslims as their equals by reviving the universalistic school of Islam in respect to rights and assuring the world that Islamic law will treat non-Muslims equally are two major steps in this direction. Reciprocity is a universal legal and moral principle that we, as humanity, should adopt today on the individual and communal level. The traditional wisdom, "Do unto others

as you would have others do unto you” and “Say not, I will do so to him as he hath done to me,”⁴⁴ is more valid today than ever before.

Notes

¹ See Robert Devereux, *The First Ottoman Constitutional Period* (Baltimore, Md.: Johns Hopkins University Press, 1963).

² Although the concept of “secularism” was included in the Constitution of the Republic of Turkey in 1937, the principle of secularism had existed de facto since the foundation of the republic. With the abolition of the Caliphate and the Ministry of Shari’a (Islamic Law) and Foundations on March 3, 1924, during the Republican period, and by providing for the unification of education and later the unification of the judiciary, significant steps were taken on the course to secularism. These steps were followed by others such as the Hat Reform, closure of the Sects and Convents, changing the weekly holiday from Friday to Sunday, and the adoption of the Latin alphabet and the Gregorian calendar. Finally, with an amendment put into practice with Law No. 3115 dated February 5, 1937, “secularism” became a constitutional principle.

³ As historians of religion commonly state, Islam is an Abrahamic religion like Judaism and Christianity. All three religions emerged in the Middle East and extended westward. Islamic law facilitated give-and-take with other legal traditions, as Islamic jurisprudence considered pre-Islamic legal traditions (*shar’ man qablana*), mainly Jewish and Christian canon law, as one of the sources of Islamic law. Therefore, it initially built upon the legacy of the previous legal traditions, but later evolved to such an extent that it began to influence Jewish and Christian canon laws.

⁴ In Arabic, *al-Ijtihad la yanqud bi al-ijtihad*. In other words, “an *ijtihad* does not nullify another *ijtihad*.” From this inclusive perspective, whether an *ijtihad* is followed by the majority or the minority makes no difference to the validity of the legal opinion and doctrine.

⁵ On this discussion, see Ibn al-Qayyim al-Jawziyya, *Ahkam Ahl al-Dhimmah*, ed. Subhi Salih (Beirut: Dar al-‘Ilm li al-Malayin [1961], 1983), 3–18. Accepting *jizya* (poll tax) is an indication of granting the status of *dhimmah* to non-Muslims. Ibn al-Qayyim, a Hanbali scholar, writes: “The doctors of law disagreed about from whom *jizya* is collected. This is after they agreed that it is collected from People of the Book and the Zoroastrians. Abu Hanifa said: It is collected from People of the Book, the Zoroastrians and the non-Arab pagans. It is not accepted from Arab pagans. Ahmad ibn Hanbal also supported that view in a narration from him” (p. 3). He also defends the view

that all people, pagans as well as People of the Book, should be granted *dhim-mah* because it is in their best interest to get a chance for direct exposure to Islam and the benefits it affords to humanity. Allah loves this more than killing them (p. 18). See also Ibn Abidin, *Hashiya Ibn 'Abidin Radd al-Mukhtar 'ala Durr al-Mukhtar*, vol. 12, ed. Husam al-Din b. Muhammad Salih Farfur (Damascus: Dar al-Thaqafa wa al-Turath, 2000/1421), 726–728; Burhanaddin 'Ali ibn Abi Bakr al-Marghinani (d. 593/1197), *al-Hidayah Sharh Bidayah al-Mubtadi*, vol. 2, ed. Muhammad Muhammad Tamir and Hafiz 'Ashur Hafiz (Cairo: Dar al-Salam, 2000/1420), 861–862.

⁶ See Sri Ram Sharma, *The Religious Policy of the Mughal Emperors* (Bombay: Asia Publishing House, 1972); Zulfaqr Mubed (d. approx. 1670 AD), *Hinduism During the Mughal India of the 17th Century*, trans. David Shea and Anthony Troyer (Patna: Khuda Bakhsh Oriental Public Library [1843], 1993).

⁷ Only in the modern era did voices emerge to abolish all schools in Islam and unite them under one official viewpoint, a failed attempt by Muslim modernists such as Rashid Rida from Egypt. His call was very appealing to Turkish modernists who wanted to standardize Islamic faith and practice. For the Turkish translation of Rashid Rida's work, see Muhammed Reşid Riza (1935/1354), *Mezahibin Telfiki ve Islam'in Bir Noktaya Cem'i*, trans. Ahmed Hamdi Akseki (Istanbul: Matbaa-i Amidi, 1914). Paradoxically, with this project Muslim modernists advocated suppressing divergent discourse communities in the Islamic community, instead of promoting more diversity in discussions concerning the understanding and practice of religion.

⁸ When Napoleon Bonaparte tried to stir revolt among the Armenian Catholics of Syria and Palestine to support his invasion of 1798–1799, his ambassador in Istanbul replied: "The Armenians are so content with their lives here that a revolt is impossible." Turkish tolerance towards non-Muslims was so well known that many famous historians commented on their virtue. Voltaire said: "The great Turk is governing in peace twenty nations from different religions. Turks have taught the Christians how to be moderate in peace and gentle in victory." Philip Marshall Brown stated: "Despite the great victory they won, Turks have generously granted to the people in the conquered regions the right to administer themselves according to their own rules and traditions." Likewise, J. W. Arnold stated: "It is an undeniable historical fact that the Turkish armies have never interfered with the religious and cultural affairs in the areas they conquered." Even Politis, who was the foreign minister in the Greek government led by Prime Minister Venizelos, said: "The rights and interests of the Greeks in Turkiye could not be better protected by any other power but the Turks." See <http://www.atmg.org/ArmenianProblem.html>.

⁹ Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire* (New York: Holmes-Meier Publishers, 1982); Bernard Lewis, *The Jews of Islam* (Princeton, N.J.: Princeton University Press, 1987); by the same author, *Race and Slavery in the Middle East: An Historical Inquiry* (New York: Oxford University Press, 1990); Bat Yeor, *The Dhimmi: Jews and Christians under Islam*, trans. Paul Fenton, David Maisel, and David Littman (Rutherford, N.J.: Fairleigh Dickinson University Press, 1985); again by the same author, *The Decline of Eastern Christianity under Islam: From Jihad to Dhimmitude Seventh–Twentieth Century*, trans. Miriam Kochan and David Littman (London: Associated University Press, 1996).

¹⁰ See the works of Michael Perry, in particular his recent book, *Under God? Religious Faith and Liberal Democracy* (New York: Cambridge University Press, 2003). On the relationship between religion, morality, and law, contrast the works of H. L. A. Hart (*The Concept of Law*, 2nd ed. [Oxford: Oxford University Press, 1997]) and his American critics such as Lon Fuller (*Morality of Law* [New Haven, Conn.: Yale University Press, 1964]) and R. M. Dworkin (*Law's Empire* [Cambridge, Mass.: Harvard University Press, 1986]). The recent edition of Hart's *The Concept of Law* has a postscript (pp. 238–276) where he responds to the critiques leveled by Fuller and Dworkin. Also see Harold Berman, *Faith and Law: The Reconciliation of Law and Religion* (Atlanta, Ga.: Scholars Press, 1993); by the same author, *Law and Revolution: The Formation of Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983); John Witte Jr. and Johan D. van der Vyver, eds., *Religious Human Rights in Global Perspective*, vols. 1–2 (Boston: Martinus Nijhoff Publishers 1996); Abdullahi A. An-Na'im, Jerald D. Gort, Henry Jansen, and Hendrik M. Vroom, eds., *Human Rights and Religious Values: An Uneasy Relationship?* (Grand Rapids, Mich.: William B. Eerdmans, 1995; Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham, Md.: Rowman and Littlefield, 1997); Christopher Eberle, *Religious Convictions in Liberal Politics* (New York: Cambridge University Press, 2002); Jeffrey Stout, *Democracy and Tradition* (Princeton, N.J.: Princeton University Press, 2004).

¹¹ The Turkish spelling is “millet.” On the concept, see Recep Senturk, “millet,” *TDV Islam Ansiklopedisi* [Turkish Encyclopedia of Islam], vol. 29 (Istanbul: Center for Islamic Studies [ISAM], 2003).

¹² For a detailed discussion of the philosophical and historical roots of this division in the classical Islamic law, see Recep Senturk, “*Adamiyyah* and ‘*Is-mah*: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law,” *Turkish Journal of Islamic Studies*, no 8 (2002).

¹³ In Arabic: *al-'Ismah bi al-Adamiyyah*. See, for example, al-Marghinani, *al-Hidayah Sharh Bidayah al-Mubtadi*, 852 and 865.

¹⁴ In Arabic: *al-'Ismah bi al-iman aw bi al-aman*.

¹⁵ For the meaning of *dhimmah*, see Ibn al-Qayyim, *Ahkam Ahl al-Dhimmah*, vol. 2, p. 475; Namr Muhammad al-Khalil al-Namr, *Ahl al-Dhimmah wa al-Walaya al-'Ammah fi al-Fiqh al-Islamic* (Amman, Jordan: al-Mektebet al-Islamiyya 1409/1988), 73–74.

¹⁶ Al-Marghinani, *al-Hidayah Sharh Bidayah al-Mubtadi*, 471, 474.

¹⁷ Sarakhsi, *Usul*: “*Li anna Allah ta’ala lemma khalaqa al-insan li haml amanatih akramahu bi al-‘aql wa al-dhimmah li yakuna biha ahlan li wujub huquqillah ta’alah alayhi. Thumma athbata lahu al-‘ismah wa al-hurriyyah wa al-malikiyyah li yabqa fa yatammakana min ada’i ma hummila min al-amanati. Thumma hazihi al-amanah wa al-hurriyyah wa al-malikiyyah thabitah li al-mar’i min hinin yuladu, al-mumayyiz wa ghayr al-mumayyiz fih sawaun. Fakazalika al-dhimmah al-saliha li wujub al-huquq fiha thabit lahu min hinin yulad yastawi fih al-mumayyiz wa ghayr al-mumayyiz.*”

¹⁸ These rights may also be compared with the second and third generation of human rights (see chap. 2 in this volume).

¹⁹ For an English translation of the views of Iman Shafi’i on jurisprudence, see Muhammad ibn Idris al-Shafi’i, *Al-Imam Muhammad ibn Idris al-Shafi’i’s al-Risala fi Usul al-Fiqh: Treatise on the Foundations of Islamic jurisprudence*, trans. Majid Khadduri (Cambridge, England: Islamic Texts Society, 1987).

²⁰ For an English translation of the views of Iman Malik on law, see Imam Malik Ibn Anas, *Al-Muwatta: The First Formulation of Islamic Law*, trans. Aisha Abdurrahman Bewley (London: Kegan Paul International, 1989).

²¹ The *jizya* tax is based on the following verse from the Qur’an: “Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the Jizya with willing submission, and feel themselves subdued” (*Al-Tawbah* 9:29).

²² On this discussion, see Ibn Qayyim al-Jawziyya, *Ahkam Ahl al-Dhimmah*, ed. Subhi Salih (Beirut: Dar al-‘Ilm li al-Malayin [1961], 1983), 18–25. Ibn Qayyim refutes the Shafi’i view. See also al-Marghinani, *al-Hidayah Sharh Bidayah al-Mubtadi*, 865.

²³ See the Qur’an, *Al-Tawbah* 9:29. Bukhari, *Sahih*, “Kitab al-Jizya” (297/6); Malik, *al-Muwatta*, “Jizyat Ahl al-Kitab” (121/1). It is narrated that the Prophet Muhammad took *jizya* from the Zoroastrians of Bahrain; Umar took it

from the Zoroastrians of Iran and Uthman took it from the Zoroastrians of Barbar. See al-Marghinani, *al-Hidayah Sharh Bidayah al-Mubtadi*, 861. ‘Umar bin Dinar narrated the following: “I was sitting with Jabir bin Zaid and ‘Amr bin Aus, and Bjalla was narrating to them in 70 A.H. the year when Musab bin Az-Zubair was the leader of the pilgrims of Basra. We were sitting at the steps of Zam-zam well and Bajala said, “I was the clerk of Juz bin Muawiya, Al-Ahnaf’s paternal uncle. A letter came from ‘Umar bin Al-Khattab one year before his death; and it was read: “Cancel every marriage contracted among the Magians between relatives of close kinship (marriages that are regarded illegal in Islam: a relative of this sort being called *Dhu-Mahram*.)” ‘Umar did not take the *jizya* from the Magian infidels till ‘Abdur-Rahman bin ‘Auf testified that Messenger of God had taken the *jizya* from the Magians of Hajar.”

²⁴ Ibn Qayyim also accepts the Hanafi view and refutes the Shafi’i opinion, See Ibn Qayyim, *Ahkam Ahl al-Dhimmah*, 57. For the detailed regulations on *jizya*, see al-Marghinani, *al-Hidayah Sharh Bidayah al-Mubtadi*, 860–866; Abdullah b. Mahmud b. Mawdud b. Mawsili, *al-Ikhtiyar li al-Ta’lil al-Mukhtar* (Istanbul: Mektebet Pamuk, n.d.), 662–871; Ibn Abidin, *Hashiya Ibn ‘Abidin Radd al-Mukhtar ‘ala Durr al-Mukhtar*, 719–742; Ibn Qayyim, *Ahkam Ahl al-Dhimmah*, 22–100.

²⁵ The Mogul rulers of India outlawed the *sati* practice although they could not completely exterminate it. See Sri Ram Sharma, *The Religious Policy of the Mughal Emperor* (Bombay: Asia Publishing House, 1972), 42–44; Zulfaqr Mubed, *Hinduism During the Mughal India of the 17th Century*, 77.

²⁶ Richard C. Martin, Mark R. Woodward, and Dwi S. Atjama, *Defenders of Reason in Islam: Mu’tazilism from Medieval School to Modern Symbol* (Oxford: Oneworld, 1997); George Fadlo Hourani, *Reason and Tradition in Islamic Ethics* (Cambridge: Cambridge University Press, 1985).

²⁷ For the social implications of multiplexity of discourse on political culture, see Recep Senturk, “Towards an Open Science: Learning from the Ottoman Humanities,” *New Millennium Perspectives on the Humanities*, ed. Judi Upton-Ward (New York: Global Humanities Press, 2002), 55–75; also by the same author, “Toward an Open Science and Society: Multiplex Relations in Language, Religion and Society,” *Turkish Journal of Islamic Studies*, no. 5 (2001).

²⁸ The well-known Sufi Mansur al-Hallaj (857–922 CE) was condemned to death by the religious authorities in Baghdad for his unrestrained ecstatic utterances. See Louis Massignon, *The Passion of Al-Hallaj: Mystic and Martyr of Islam*, 4 vols., trans. Herbert Mason (Princeton, N.J.: Princeton University Press, 1982).

²⁹ For a detailed review of the arguments and counterarguments exchanged between universalistic and communalistic schools on whether dhimmah should be granted to the followers of religions other than Christianity, Judaism, and Zoroastrianism by allowing them to make peace with Muslims and pay , see Ibn Qayyim, *Ahkam Ahl al-Dhimmah*, 1–17; Namr Muhammad al-Khalil al-Namr, *Ahl al-Dhimmah wa al-Walaya al-'Ammah fi al-Fiqh al-Islamic*, 75–94.

³⁰ Braude and Lewis, *Christians and Jews in the Ottoman Empire*.

³¹ See Mohamed Berween, “Al-Wathiqah: The First Islamic State Constitution,” *Journal of Muslim Minority Affairs* 23, no. 1 (April 2003): 103–119. An article in this document states the following: “To the Jews who follow us belong help and equality. They shall not be wronged nor shall their enemies be aided. The Jews should contribute to the cost of war so long as they are fighting alongside believers. The Jews of the Bani Araf are one community with the Believers (the Jews have their religion and the Muslims have theirs), their freedom and their persons, except for those who behave unjustly and sinfully, for they hurt but themselves and their families.”

³² For a recent study on the millet system and the references cited there, see Macit Kenanoglu, *Osmanli Millet Sistem: Mit ve Gerçek* (Istanbul: Klasik, 2004). See also, S. J. Shaw, *History of the Ottoman Empire and Modern Turkey* (Cambridge: Cambridge University Press, 1977); by the same author, *Jews of the Ottoman Empire and the Turkish Republic* (New York: New York University Press, 1991); Halil Inalick and Donald Quataert, eds., *An Economic and Social History of the Ottoman Empire: 1600–1914* (Cambridge: Cambridge University Press, 1997).

³³ P. Dumont, “Jewish Communities in Turkey during the Last Decades of the Nineteenth Century in the Light of the Archives of the Alliance Israelite Universelle,” in Braude and Lewis, *Christians and Jews in the Ottoman Empire*, 209–242.

³⁴ See Ilber Ortaylı, “Osmanlı İmparatorlugunda Millet,” *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi*, vol. 4 (Istanbul: İletişim Yayınları, 1985), 996–1001; see also, in the same volume, Cevdet Küçük, “Osmanlılarda ‘Millet Sistemi’ ve Tanzimat,” 1007–1024.

³⁵ Paradoxically, during the last two decades Turkish authorities made the opposite mandatory by prohibiting the carrying and wearing of religious symbols in the public sphere. Later, France also adopted a similar approach.

³⁶ Muhittin Ataman, “Islamic Perspective on Ethnicity and Nationalism: Diversity or Uniformity?” *Journal of Muslim Minority Affairs* 23, no. 1 (April 2003): 89–120.

³⁷ P. Dumont, “Jewish Communities in Turkey during the Last Decades of the Nineteenth Century,” 209–242; K. H. Karpat, “Millets and Nationality: The Roots of the Incongruity of Nation and State in the Post-Ottoman Era,” in Braude and Lewis, *Christians and Jews in the Ottoman Empire*, 141–170.

³⁸ The term *Tanzimat*, which literally means “reorganization,” refers to a period of modernizing reforms instituted under the Ottoman State from 1839 to 1876. In 1839, under the rule of Sultan Abdulmecid, the edict entitled *Hatt-i Sharif of Gulhane* laid out the fundamental principles of Tanzimat reform. Foremost among the laws was the security of honor, life, and property for all Ottoman subjects, regardless of race or religion. Other reforms, which sought to reduce theological dominance, included the lifting of monopolies, fairer taxation, secularized schools, a changed judicial system, and new rules regarding military service. Tanzimat ended in 1876 under Abdulhamid II’s reign, when the ideas for a Turkish constitution and parliament were first implemented for a brief period before they were abolished by the same sultan. The constitution and parliament were reintroduced after Abdulhamid II was dethroned by the Young Turks in 1908.

³⁹ Mehmet Yıldız, “1856 Islahat Fermanına Giden Yolda Mesruiyet Arayışları: Uluslararası Baskılar ve Cizye Sorununa Bulunan Çözümün İslami Temelleri,” *Türk Kültürü İncelemeleri Dergisi* 7 (Istanbul 2002): 75–117.

⁴⁰ Abu Abdullah Muhammad ibn Hasan ibn Farqad al-Hanafi al-Shaibani, *Kitab al-Siyar al-Kabir* (The Detailed Book of Siyar), published with a commentary by Abu Bakr Shams al-Aimma Muhammad ibn Ahmad ibn Sahl al-Sarakhsi (d. 483/1090), *Sarh Siyar al-Kabir*, trans. Salahaddin Munajjid (Cairo: Jamiah al-Duwal al-Arabiyya, 1971). For an early Turkish translation see *Tercüme-i şerh-i siyeri’l-kebir*, trans. Mehmed Münib Ayıntabi (Istanbul: Matbaa-i Amire, 1825). For the English translation see *The Islamic Law of Nations: Shaybani’s siyar*, trans. Majid Khadduri (Baltimore, Md.: Johns Hopkins University Press, 1966). For a French translation see *Le grand livre de la conduite de l’etat: Siyerü’l-kebir*, trans. Muhammed Hamidullah (Ankara: Türkiye Diyanet Vakfı, 1989).

⁴¹ For the intellectual and political history of this period, consult, Serif Mardin, *The Genesis of Young Ottoman Thought* (Princeton, N.J.: Princeton University Press, 1962); M. Şükrü Hanioglu, *The Young Turks in Opposition* (New York: Oxford University Press, 1995).

⁴² For a collection of Ottoman and Turkish constitutions, see Suna Kili and A. Şeref Gözübüyük, *Türk Anayasa Metinleri* (Ankara: Türkiye İş Bankası, 1985).

⁴³ For a recent study on the nineteenth-century Ottoman reforms, see Ali Akyıldız, *Osmanlı Bürokrasisi ve Modernleşme* (Istanbul: İletişim Yayınları, 2004).

⁴⁴ The Old Testament, Proverbs 24:29. This principle is the common core of universalistic thought in various legal systems, religions, and moral philosophies. Matthew's account reads: "Therefore all things, whatsoever ye would that men should do to you, do ye even so to them" (Matthew 7:12). Luke 6:31 closely resembles Matthew's words: "and as ye would that men should do to you, do ye also to them likewise."