JUSTICE AS THE REQUIREMENT OF TOLERATION:
CONTEMPTUOUS TOLERANCE AND PUNITIVE INTOLERANCE IN THE SIXTEENTH CENTURY
OTTOMAN EMPIRE


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Approval of the Graduate School of the Social Sciences

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This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Doctor of Philosophy.

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**ABSTRACT**

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This dissertation investigates the historical knowledge of the idea/practice of Ottoman toleration/intolerance, in terms of *a conceptual-theoretical framework* and *methodology* derived from *philosophical theories of toleration, theories of religious toleration of Western historiography* and *critical theories of toleration*, which are in turn revised and reformulated according to "way of reasoning" of the Ottomans. The objective of deriving a conceptual-theoretical framework is related with the attempt to clarify *different linguistic uses of the toleration, the semantics of the concept* and *presenting circumstances, requirements, levels, degrees* and *forms* of the category. Methodologically, the objective is to abolish the hierarchy between *kâfir (infidel)* and *zındîk/ilhâd (heretic)* in terms of identification of subjects of toleration/intolerance in the Ottoman Empire. In order to apply this conceptual-theoretical framework and methodology concerning the idea/practice of toleration, this study focuses on the sixteenth-century Ottoman Empire, particularly its laws (firmans, fetvâ, Ottoman criminal law) and its conception of justice, which is conceptualized as the most important requirement of toleration. The objective is to argue how justice primarily regulated society in order to sustain public order and to

prevent political and economic instability. The idea/practice of toleration/intolerance, in this sense, is discussed as the policy that was incorporated into the discourse of the Ottoman Empire to the extent that it contributed to the regulation objective of justice as the art of government, which was pragmatic and prudent in essence. In accordance with this framework, the idea/practice of tolerance in the sixteenth-century Ottoman Empire is conceptualized as contemptuous tolerance, followed by the analysis of its laws. Intolerance, on the other hand, is named as punitive intolerance which aims for either the reform or the incapacitation of the heretics and infidels in the Ottoman lands.

Key words: 16th century Ottoman toleration/intolerance, contemporary theories of toleration, non-Muslims, Shiites, 16th century Ottoman laws and justice.

# ÖZ

### ADÂLET ÎCÂBI HOŞGÖRÜ:
### ONALTINCI YÜZYIL OSMANLI İMPARATORLUĞUNDA HORGÖREN HOŞGÖRÜ VE
### CEZALANDIRICI HOŞGÖRÜSÜZLÜK


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Bu tez, Osmanlı hoşgörüsü/hoşgörüsüzlüğü fikrine/pratiğine dair tarihsel bilgiyi sorgulamayı amaçlamaktadır. Bunu ise daha çok Batı literatürü içerisinde, felsefe, tarih ve siyaset teorisi disiplinlerince tartışılan, *felsefi hoşgörü teorileri*, *dinsel hoşgörü teorileri* ve *eleştirel hoşgörü teorilerinden* faydalanarak yapmayı hedeflemektedir. Bunun için, söz konusu hoşgörü teorilerinin yardımıyla ortaya koyulan *kavramsal-teorik çerçeve* ve dinsel hoşgörü tartışmaları çerçevesi ile sınırlandırılacak Batı tarihi-Osmanlı tarihi karşılaştırması sonucu ortaya koyulacak *metodolojik katkılar* ile Osmanlı hossgörüsü/hoşgörüsüzlüğü fikri/pratiği analiz edilmeye çalışılacaktır. Pek tabii, bu analiz yapılırken, ortaya koyulan teorik çerçeve ve metodoloji, Osmanlı düşünme biçimi dikkate alınarak tekrar formüle edilecektir. Kavramsal-teorik bir çerçevenin sunulmasının amacı, hoşgörü/hoşgörüsüzlük kavramlarının *farklı dilsel kullanımlarını, semantiğini, koşullarını, gereklerini, seviyelerini, derecelerini ve formlarını* aydınlatmaktır. Metodolojik katkı ise, genellikle Osmanlı hoşgörüsünün/hoşgörüsüzlüğünün özneleri olarak tartışılan gayri-müslimlerin yanı sıra, Osmanlı hoşgörüsü/hoşgörüsüzlüğü söz konusu olduğunda *heretiklerin* (Şiiler ve Şii eğilimli heterodoks tarikatlar) ve *Sûfîlerin* de en az gayri-Müslimler kadar önemli özneler olduğuna

dikkat çekmek olacaktır. Diğer bir deyişle, Osmanlı hoşgörüsü/hoşgörüsüzlüğü deneyimi, söz konusu kavramsal-teorik çerçeve aracılığıyla analiz edilecek ve dinsel "Öteki"nin sınırları Şii ve Şii eğilimli heterodoks tarikatlar ile Sûfîleri de içine alacak şekilde genişletilecektir. Bu kavramsal-teorik çerçeveyi uygulamak ve metodolojinin geçerliliğini tartışmak için onaltıncı yüzyıl Osmanlı İmparatorluğu seçilmiştir. Bu dönemdeki *kanunlar (fetvâlar, fermânlar, Osmanlı ceza kanunu)* ve hoşgörünün gereği (îc**â**bı) olarak tartışılan *adâlet* kavramı tarihsel bölümün temel araştırma konuları olacaktır. Bu çerçevede öncelikle, Osmanlı yönetim sanatı olarak tartışılacak adâlet kavramının, nasıl kamu düzenini muhafaza etmek ve siyasi ve ekonomik istikrarsızlığı engellemek için toplumu düzenlediği ortaya koyulacak, ardından ise, Osmanlı'daki hoşgörü/hoşgörüsüzlük fikrinin/pratiğinin, bir yönetim sanatı olarak adâlet anlayışının düzenleyici amacına hizmet ettiği ölçüde uygulandığı iddia edilecektir. Bu çerçevede, onaltıncı yüzyıl Osmanlı kanunlarında gayri-Müslimler ve heretiklere dair düzenlemeler ve konuyla ilgili ikincil yazın temel alınarak, Osmanlı hoşgörüsü/hoşgörüsüzlüğü sırasıyla *horgören hoşgörü* ve *cezalandırıcı hoşgörüsüzlük* olarak kavramsallaştırılacak ve tartışılacaktır.

Anahtar sözcükler: 16. yüzyıl Osmanlı hoşgörüsü/hoşgörüsüzlüğü, modern hoşgörü teorileri, gayri-Müslimler, Şiiler, 16. yüzyıl Osmanlı kanunları ve adâleti.

*Gülender, Elif ve Ali'ye:*

*Bu kadar kalpten ve karşılık beklemeden sevdikleri ve sevgilerini hissettirdikleri için.*

*Ve tam da aynı sebepler yüzünden sana…*

# ACKNOWLEDGEMENTS

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The system of transliteration:

Both Arabic and Turkish words are spelled according to Ferit Devellioğlu, *Osmanlıca Türkçe Ansiklopedik Lügat* , Aydın Kitapevi, 2007. However, when citing another author or text, I retain the original transliterations provided therein.

**CHAPTER I**

**1. INTRODUCTION**

*[a] historical study of toleration with no theoretical guidance is blind; a philosophical analysis of the concept with no regard to its actual evolution is vacuous. David Heyd*

**1.1 Theories of Toleration and the Ottoman Case**

The question of Ottoman toleration[1] is not a new research agenda. Yet a comprehensive and holistic research on the subject is rare. Firstly, as Ottoman toleration is frequently investigated as a part of the broader history of the Empire, the question of toleration remains a minor one for understanding the state-society relations, or politics and difference. Moreover, subordination of a multipronged research on Ottoman toleration is also apparent in the literature focusing on Islamic toleration/intolerance, as this particular vein of literature chooses to privilege either the comparison of Islam with other religions, or focuses on religious justifications of Islamic tolerance/intolerance, based mainly on Quranic interpretations, while referring to Ottoman toleration by-the-way. Finally, it is mainly the lives of Christians and Jews within the Ottoman territories that are examined under the category of toleration, which neglects possible religious Other(s) as the subject(s) of toleration and underestimates the theoretical framework of the category. In other words, despite existence of references - raised mostly by Ottoman historiography, and secondarily by the literature focusing on the Islamic tolerance/intolerance- concerning the contours of Ottoman toleration at different times and in different spaces, there is hardly any reference to the theories of toleration mainly produced by Western historiography, contemporary liberal philosophy and political

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[1] The distinction between concepts of toleration, tolerance and intolerance will be explained in the following chapter. For now, I can assert that it will be the concept of *toleration* that will be used in order to label all negations of intolerance. In this respect the category of toleration will be accepted as subsuming tolerance. Hence, for all negations of intolerance, the general noun will be toleration unless the authors quoted in this research use tolerance interchangeably with toleration.

theory, since the concern of Ottoman historiography and literature on Islamic tolerance/intolerance has not primarily been the category of toleration.

The present study, then, is primarily motivated by the *traces* mainly produced by Ottoman historiography *on* Ottoman toleration and *the lack of dialogue between ideational*[2] and *critical theories of toleration.*[3] This motivation, accordingly, leads to the main concern of this particular research, which is the investigation and understanding of the idea and practice of Ottoman toleration in terms of the conceptual-theoretical framework, the methodology and the arguments of philosophical theories, Western historiography and critical theories on toleration, respectively. In other words, this research attempts primarily to establish a dialogue between historiography of the Ottoman Empire and those aforementioned theories. In order to do so, firstly, conceptual vocabularies and particular methodologies of *religious theories of toleration* (discussed particularly by Western historiography) and *contemporary philosophical theories of toleration* (which I have already called ideational theories of toleration) are incorporated into the scope of analysis. Secondly Ottoman toleration is analyzed in relation to certain arguments of *critical theories of toleration*, namely *toleration as governmentality* and *toleration as repression*.

The critical theories of toleration illuminate this research in terms of the critical relationship they establish between toleration and power. Thus, rather than following their main arguments, I take them as inspirational ideas to discuss the Ottoman case in terms of *power*. As such, in addition to the attempt to present the theoretical background of the Ottoman historiography on toleration, which has already re-conceptualized, modified or modulated the practice of toleration as a necessary outcome of "way of reasoning" peculiar to the Ottoman Empire, this research also attempts to re-conceptualize, modify or modulate the unexplored aspects of Ottoman toleration via a commensurable methodological and conceptual-theoretical framework derived from

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[2] By ideational theories, it is referred to the *religious theories of toleration* presented primarily by Western historiography, and *philosophical theories of toleration* raised mostly by contemporary political philosophy.

[3] By critical theories I refer to Wendy Brown's conceptualization of toleration as *governmentality,* and Herbert Marcuse's as *repression*, as they both treat toleration as a part of power relations and develop a critical stand when approaching it.

theories of toleration. This attempt is deemed necessary as we should have a conceptual-theoretical and methodological insight of the categories we adopt while approaching to similar cases. Therefore, in this study, I argue that it is the category of toleration, which I regard as an ambivalent concept, that can be clarified in terms of the conceptual-theoretical framework and different methodologies adopted by Western philosophy, political theory and history. Moreover, their combination in a study of the Ottoman Empire provides a fruitful analysis to illuminate toleration/intolerance as idea/practice in the Ottoman lands.

The contribution of this research to the existing literature, then, is firstly the production of a systematic and theoretical analysis of Ottoman toleration in the sixteenth century. Secondly, it is the incorporation of theories of toleration, seldom investigated in the literature as a whole, particularly concerning Ottoman toleration. Thirdly, its focus on the methodological insights of Western historiography enables one to investigate the possible existence of religious Other(s) as the subject(s) of toleration/intolerance—as opposed to concentrating on non-Muslims per se. And finally, the present study provides some methodological conceptual-theoretical clues when approaching any case of toleration/intolerance.

### 1.2. Euro-centric Historiography: Impossibility of Theory in the Idea/Practice of Ottoman Toleration?

Why is it necessary to deal with the question of *what Ottoman toleration refers to* or *whether it was tolerant or intolerant* when there is already an existing literature on the subject? Although acknowledging and primarily following the piecemeal historical knowledge that drew the boundaries of Ottoman toleration, the following statement constitutes the justification for understanding it in the present study in the light of theories of toleration:

> a historical study of toleration with no theoretical guidance is blind; a philosophical analysis of the concept with no regard to its actual evolution is vacuous (Heyd, 2008: 172).

David Heyd here draws attention to the break in the dialogue between Western historiography and contemporary philosophy on toleration that is not hard to comprehend. The historiography on toleration did not so much benefit from the conceptual-normative theories of toleration as it namely dealt with the theories of religious toleration that characterized pre-Enlightenment era. Therefore, Western historians either dealt with the genealogy of the idea of religious tolerance in order to derive theoretical justifications, or they focused on the political narrative, which defined tolerance as the institutionalization of the idea of tolerance via law and government (Kaplan, 2007a: 7). Similarly, contemporary philosophy ignored the considerable historical study on religious toleration because it based its arguments mainly on Enlightenment ideals and, furthermore, dealt with differences that cannot be explained merely as religious ones in the contemporary era. Acknowledging this deficiency, there is a considerable effort in the literature attempting to establish links between the disciplines of history and philosophy on the subject of toleration. Ottoman historiography on toleration, moreover, appears to ignore the theories of toleration consciously. This attitude, I think, was a sure-footed position in order to avoid falling into the trap of Euro-centric historiography. In other words, as the Western literature followed the Western ideational tradition to formulate religious toleration, Ottoman historiography avoided to deal with Western theories as it could lead to an incommensurable analysis.

Within this context, it appears to be a futile effort to benefit from the conceptual and methodological framework of both philosophical theories of toleration and Western historiography regarding the Ottoman case, as there is already a lack of dialogue between those two. Moreover, the ideational traditions of Western historiography and philosophy constitute another important obstacle. Particularly, this Euro-centric historiography, of which the concept of toleration is a particular reflection, enables the introduction of the problem of why it is so difficult to approach *the practice of Ottoman toleration with idea of toleration,* or to put it differently, to establish a relationship between event and theory in the context of the Ottoman case. How then does this Euro-centric historiography constitute a barrier to the studies that attempt to approach Ottoman toleration with a conceptual vocabulary and methodologies of philosophical framework derived from Western historiography? Furthermore, what are the possibilities for overcoming such a

difficulty, if one attempts to find a place for the Ottoman experience of toleration in the literature on the history of toleration, or the literature on religious toleration?

Recourse to the method of Talal Asad provides a useful lead in order to make a comparative analysis between the Ottoman experience of toleration and the Western theories of toleration. I thereby avoid the incommensurability of comparison between different ideational traditions, on the one hand, and avoid the Euro-centric historiography of Western literature, on the other. As Asad explains:

> The West defines itself, in opposition to all non-Western cultures, by its modern historicity… "the West" therefore includes within itself its past as an organic continuity: from "the Greeks and Romans" and "the Hebrews and early Christians," through "Latin Christendom," "the Renaissance," and "the Reformation," to "the universal civilization" of modern Europeans. (Asad, 1993:18).

The narrative of toleration perfectly follows this Western historicity, although this narrative is divided into two main parts, each of which is told by a different discipline on toleration. The first part of the narrative is related to Western historiography, focusing on different times and spaces in Europe—and predominantly on pre-Enlightenment period—in order to investigate the reasoning of religious (mostly Christian) theories of toleration. Contemporary liberal philosophy, on the other hand, relates the second part of the narrative of toleration, which is justified by the Enlightenment tradition. In this respect, although it appears that this problematic Western historicity sets the limits for "local" practices of toleration, it is impossible to understand this "local" practice of Ottoman toleration without "inquiring into Europe's past, because it is through the latter that universal history has been constructed" (Asad, 1993: 200). And in this case, as the universality of toleration is constructed by Western ideas, spaces and scholars, dealing with Western history and its concomitant links with the idea of toleration becomes inevitable. However, when doing so, it seems to be prerequisite to follow the position of the anthropologist proposed by Talal Asad:

> My position is that anthropologists who seek to describe rather than to moralize will consider each tradition in its own terms—even as it has come to be reconstituted by modern forces—in order to compare and contrast it with one other. More precisely, they will try to

understand ways of reasoning characteristic of given traditions (Asad, 1993: 200).

In this respect, I will deal with the Western history and theory of toleration, which is proposed as an answer either to the dissent that Christianity encountered, or to contemporary issues of difference by adhering to the Enlightenment tradition. Yet, this will be done only for a comparative analysis in order to stress the *different ways of reasoning* and thus possible *overlapping and diverging vocabularies and methodologies of toleration* in the context of the Ottoman practice of toleration. Accordingly, this research, from the perspective of the anthropologist that Asad proposes, attempts to challenge the underestimation of the importance of "particular ways of reasoning" by deriving a conceptual vocabulary and appropriate methodological insights from the disciplines of Western historiography and contemporary philosophy—the content of which will be expanded and transformed according to the particular way of reasoning of toleration in the Ottoman Empire.

### 1.3. Toleration: Contextual and Contingent

The endeavor of this particular study is the attempt to establish a dialogue between the methodologies and vocabularies of Western historiography, contemporary liberal philosophy, critical theories of toleration and the practice of the Ottoman Empire by critically scrutinizing the particular ways of reasoning pertaining to each. At the same time it also adheres to the assumption that toleration is a contingent and contextual practice regarding this particular way of reasoning. This statement has been justified by many important scholars. Yet I should privilege Michael Walzer and Wendy Brown, as the former is the reference point for many arguments in this regard (Nederman, 2000: 9), while the latter interprets the contingent and contextual character of toleration by treating it as "a discourse of power" (Brown, 2006), which is one of the main bases of the arguments in the present study.  Before elaboration of toleration as a discourse of power, we should answer how and why Walzer, whose ideas were confirmed with a considerable number of scholars, as well as Brown, argued for "contingency and contextuality" of toleration rather than a normative theory of it?

Michael Walzer, in his well-known work *On Toleration* follows "[a] historical and contextual account of toleration and coexistence, one that examines the different forms that these have actually taken and the norms of everyday life appropriate to each" (Walzer, 1997:3). In order to justify his argument, he concentrates on the particular events and toleration regimes, and presents diverging types of political or constitutional arrangements as reflections of toleration. Accordingly he arrives at the conclusion that there are no universal types of procedures for political and constitutional arrangements for toleration regimes, because the moral claims of everyday life are particular, and not universal. Thus, as Walzer clearly and precisely argues, "[t]here are no principles that govern all the regimes of toleration or that require us to act in all circumstances, in all times and places, on behalf of a particular set of political or constitutional arrangement" (Walzer, 1997:3). I take his stress on "lack of principles governing all regimes of toleration" as a sign of his doubt about a contemporary philosophical theory of toleration that can explain contingent regimes of toleration. In a similar fashion, Wendy Brown also treats tolerance not "as an independent or self-consistent principle, doctrine or practice of cohabitation" but rather comprehends it "as historically and culturally specific discourse of power with strong rhetoretical functions" (Brown, 2007: 9). Concurring with these views, this research also takes Ottoman toleration as a historical and contextual regime of toleration with its own set of political and legal arrangements, defined by its own ideational traditions and power relations.

Yet, this research offers an additional vision, which is the understanding of toleration/intolerance as a multi-formed and multi-layered phenomenon in relation to different ideas, acts, organizations and people. These characteristics of toleration/intolerance can thus explain how this multi-formed and multi-layered logic of toleration/intolerance may function as distinctive markers of contingency and contextuality in theoretical terms. On the other hand, these characteristics can also indicate the parallelism in seemingly multifarious historical and contextual practices of toleration/intolerance. In short, in addition to varying legal and political arrangements of historical cases offered as the reason for contextuality of toleration, I argue the instrumentality of the conceptual-theoretical structure of toleration/intolerance, which I discuss later in this study, as an explanatory ingredient of contingency and contextuality.

In fact the arguments of Walzer and Brown can be further justified within the limits of this particular research via two statements derived from the works of Western historiography and contemporary philosophy. Firstly, the absence of the dialogue between Western historiography and contemporary liberal philosophy on toleration can be read as further evidence of this contextuality and contingency assumed by toleration. The situation, in which the Western historiography cannot benefit from the philosophical theories of toleration, can be treated as the evidence of the difficulty for explaining historical cases of toleration as experienced in the West with a normative theory of toleration. This justification of the absence of the dialogue between Western historiography and contemporary liberal philosophical theories on toleration, and its possible outcomes, is most clearly articulated by David Heyd:

> A purely historical survey would risk the pitfalls of anachronism and the incommensurability of the phenomenon investigated. Abstract theoretical analysis of the idea of toleration that ignores the way the idea has operated in political rhetoric runs the risk of becoming irrelevant, since toleration is not a theoretical concept in the strict scientific sense (Heyd, 2008: 172).

At this point it is possible to conclude that the lack of a dialogue between the studies of Ottoman toleration and philosophical theories of toleration is not an exceptional case. Even for the Western historiography, the contemporary liberal philosophy's commitment to political liberalism of the Enlightenment leads to a break in the narrative of toleration. Thus the contemporary attempts of liberal philosophy to normativize the theories of toleration are treated with suspicion even by Western historians.

In addition to this disagreement concerning the philosophical theories of toleration within the West itself, particularly concerning the ideational traditions, there is also a second issue which can further strengthen the contingent and contextual formulation of toleration. Regarding a variety of historical practices of toleration which cannot be explained simply by the philosophical theories of toleration, a group of philosophers and historians attempt normativizing toleration as an individual virtue/behavior and/or

political act.[4] Benjamin Kaplan is one of those historians who argue that toleration "was not just a concept or policy but a form of behavior…a social practice, a pattern of interaction among people of different faiths" (Kaplan, 2007a: 8). Adopting such a position made Kaplan not only a distinguished scholar because he followed toleration as a behavior, but he could thereby also deal with the lives of ordinary people in terms of the practice of toleration on the inter-subjective level. David Heyd too is among the prominent philosophers who also choose to treat tolerance as an individual virtue rather than a political principle. In short, the difficulty of the dialogue between Western historiography and philosophical theories of toleration on the one hand, and the attempts to confine toleration to an individual behavior or virtue on the other, also justify the focus of the present study on the contingent and contextual character of toleration. Therefore, we can conclude that there is not a single practice of toleration which the world has experienced and which can be explained by a single body of philosophical-religious theories of toleration. History evolves through a multiplicity of narratives of toleration. However, this does not mean that we cannot incorporate a conceptual-theoretical framework for toleration/intolerance.

In this respect, although I endeavor to approach Ottoman toleration within a conceptual-theoretical framework raised by contemporary philosophy, benefiting from the methodology of Western historiography and incorporating the idea of relationship between power and toleration that the critical theories of toleration proposed, I take Ottoman toleration as a contextual and contingent practice. Therefore I specifically focus on the laws issued in—and secondary sources concerning—a delimited period (1545-1566) in order to reveal the particular ideational tradition(s) the Ottomans followed and the power relations included therein. There are a number of reasons for focusing particularly on this period. The most important one among these reasons is the fact that two influential characters of the Ottomans, Süleyman I and his şeyh-ül islâm Ebu's-su'ud ruled the empire together during this period. Additionally, it was this period when the Ottoman Empire officially declared its orthodox Islamic character, the sunnî Islam.

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[4] Not only Kaplan and Heyd as I present in the text, but also "Rainer Forst, Kathryn Abrams, Glyn Morgan, Andrew Sabl and Ingrid Creppell," who are the contributors to the edition *Toleration and Its Limits*, "agree that toleration is best understood as a horizontal relationship between citizens in their public identity to one another, and of citizens' churches, mosques, synagogues, congregations and other religious and ethical associations to one another," *Toleration and Its Limits*, p.5.

Şeyh-ül islâm Ebu's-su'ud was particularly an important figure in terms of the construction of a well-defined legal system. In addition to his exceptional success in the office of Müfti of Istanbul as the şeyh-ül islâm, he harmonized Sultanic secular laws with the Şerîat. Needless to say, the declaration of the Ottoman religious identity officially as Sünnî Islam was influential behind this attempt. Thus when the Ottomans set out to lead the Muslim community, Ebû-sû'ud stood out to harmonize the pluralistic legal system that included secular and religious elements. In this respect, I think, the period under their rule perfectly characterizes a mature era in which laws reflected its bureaucratic as well as religious claims. Accordingly, I argue that these laws can give us clues to the religious Other of the Empire in the broadest sense. Thus this study, rather than making generalization about the Ottoman toleration as a whole, will attempt to understand its contingent characteristics in the aforementioned period via the analysis of relevant laws, in order to highlight power relations and ideas. The power and toleration/intolerance relationship, I hope, will enable me to exceed the limits of contextuality and contingency in order to understand the practices of toleration/tolerance from a conceptual-theoretical framework.

### 1.4. Power and Toleration: Challenging Euro-centric historiography and religious essentialism

Power, within the limits of this research, is regarded important as it can enhance our understanding of  multiplicity of the narratives of toleration, becoming the fertile soil in which the idea and practice of toleration blossoms and disseminates at the expense of "powerless", leading to "acquiescence and sufferance"(King, 1976: 21). So, how does toleration manifest its essence as a discourse of power? It appears that the most contemporary evidence is the "civilizational discourse"[5], which is in fact, on the one hand, an inevitable outcome of Euro-centric historiography, and on the other a very good justification for treating toleration as a discourse of power, at either the "international or domestic level,[6] in order to redeem it from essentialist analysis.

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[5] The term is conceptualized by Wendy Brown, and I stick to her definition. W. Brown, *Regulating Aversion*, pp. 176-205.

[6] Wendy Brown makes a distinction between domestic and international discourses of toleration. As a domestic discourse it refers to "ethnic, racial and sexual regulation", whereas as an

It is clear that the affirmation of the rise of tolerance from within the West, with its strong commitment to political liberalism of Enlightenment not only brings the problematic assertion of universal-local culture and histories, but also has two further conclusions if we concentrate on the concept of toleration per se. Conceived as a part of civilizational discourse, toleration firstly, "provides a standard against which we judge our societies –severely sometimes- and lends moral weight to calls for greater tolerance" (Kaplan, 2007:2). Secondly, it labels "an apparent doctrine of toleration generated on the basis of some non-liberal principles or source" as not "truly intolerant" or as "the outgrowth of some forward thinking mind who has anticipated elements of full-fledged political liberalism" (Nederman, 2000:117). These aforementioned statements pertain to the discourse of the superiority of the West as the tolerant one, while attributes intolerance and incivility to the East.

This kind of a civilizational discourse becomes visible, particularly, in the contemporary discussions of Islamic terror and Muslim immigrants. Having been acknowledged as the contemporary source of religious dissent and difference, the rise of *Islamic terror* and i*mmigration,* have been situated and discussed as a part of this civilizational discourse. The attacks of September 11, and concomitantly, the immediate response to this in the form of the reemergence of the concept of the c*lash of civilizations* opened a new research agenda that attempts to investigate the possibility of a dialogue between different religions, particularly between Islam and Christianity, a dialogue which obviously attributed the virtue of toleration to West and Christianity. Similarly the accelerating immigration towards the European lands made toleration again a part of its civilizational discourse, which proposed itself as the political principle in order to deal with intolerant members of Islamic communities, with the virtue of toleration of the West. This very vaguely defined framework of civilizational discourse, having its roots in the Euro-centric historiography, encounters arguments which consider tolerance in other times and spaces (i.e. Islamic tolerance), thus inevitably falls into the trap of essentialism or cultural relativism mostly confined to theological vocabularies of Christianity and Islam. The recognition of this civilizational discourse also presents itself in the silence of expert historians, who regard toleration as a non-priority research subject. Thus, throughout this

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international discourse it signifies "Western supremacy and imperialism". W. Brown, *Regulating Aversion*, p.7.

research, while I will deal with Western history and theories of toleration in order to reveal out different "ways of reasoning," I will preserve my distance and awareness to toleration as a civilizational discourse in order to avoid essentialism. In this respect treating "toleration as a discourse of power," has the potential to provide two important leverages against a pervading essentialism.

The first of these spaces is the ability to challenge the civilizational discourse of toleration, which separates and hierarchically orders the civilizations (West and East, Islam and Christianity) in terms of essence of religions. As Asad asserts, "the insistence that religion has an autonomous essence- not to be confused with the essence of science, or of politics, or of common sense- invites us to define religion (like any essence) as a transhistorical and transcultural phenomenon"(1993:29). In fact, this call for the separation of religion and politics also demands that religion be distinct "from the domain of the power" (Ibid). In this respect, treating toleration as a discourse of power will dialectically allow to consider religion as a part of power too. Thus, rather than confining the practice and idea of toleration in the different religious essences, we can see the "different ways" that religious power created "and worked through legal institutions, different selves that it shaped and responded to, and different categories of knowledge which it authorized and made available" (Ibid.). Accordingly, this research excludes the theological justification of Islamic or Christian theories as already mentioned, and move in the direction of a this-worldly analysis. This act of situating religion into its specific context (political, economic, and social) is the second space that treating toleration as a discourse of power provides us. The analysis of the laws (secular and religious) will be the chapter in which religious essence is avoided for the sake of the primacy of law, as establishing the links between state and society, although religion was an inextricable part of these. Chapter V, in this respect will focus on a set of laws (Sultanic decrees, criminal law and fetvâs) issued between 1545-1566, when Süleyman the Lawgiver and Şeyh-ül islâm Ebu's-su'ud jointly ruled the Empire. It is within this respect that rather than its essence, the way that Islam permeates politics and society will be the primary concern, as reflected from the narrative of laws. The analysis of these particular laws will be designed according to the conceptual vocabulary and methodological insights derived from Western theories of toleration, derived in Chapter II and III. In chapter IV, with a particular emphasis on the Islamic and Ottoman understanding of justice, and the contextual requirements of the

period, I will incorporate the category of power into my analysis. In this chapter, the "critical theories of toleration"[7] will be my guiding frame via which I will mainly incorporate the concept of art of government and Hunt and Wickham's (1998) discussion of disciplinary power of laws.  This will enable me to carry out the analysis of toleration as a discourse of power that rebounds from the texts of laws. Although Ottoman toleration is discussed in different ways, its analysis using the concepts of art of government and disciplinary power of laws constitutes the original focus of this research.

At this point I should clarify an important point in order to challenge the possible criticisms that can be raised in terms of incommensurability. This point is closely related with the point of whether the critique of Marcuse and Brown, whose approaches are primarily formulated for the critique of contemporary toleration, can be appropriate inspirations for my case. As my research subject is a historical case of religious toleration. Despite these different forms of toleration, contemporary and medieval, I think careful observation of toleration as embedded in power relations makes the works of these two writers timeless, and thus mark them as important guides even for the historical case of the Ottomans. Moreover, my methodology concerning the critical theories of toleration is also similar to ideational theories of toleration. In other words, I will aim to analyze Ottoman toleration critically, by attempting to revise or finding the synonyms of conceptual vocabulary of critical theories of toleration just as I do concerning Western historiography. Thus, Brown and Marcuse will illuminate my path in order to present the way of reasoning and the vocabulary of Ottoman toleration which I think exhibits the mentality of art of government. Moreover, they will be in fact Foucauldian concepts of art of government and disciplinary power I will mainly incorporate into the scope of my analysis when dealing with the Ottoman case. At this point, in order to challenge the incommensurability, because it is clear that Foucault used the concept of disciplinary power particularly for the contemporary societies, I will follow Hunt and Wickham's discussion on the "disciplinary power of laws".

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[7] Wendy Brown inaugurates her book, *Regulating Aversion Tolerance in the Age of Identity and Empire*, by stating that her book idea was inspired by the academic project of Rainer Forst, who invited Brown for revisiting Marcuse's Essay, *Repressive Toleration* for a volume on tolerance. In this respect, reading Marcuse and Brown as complementary critiques of toleration, who based their analysis on the relationship between power and toleration, enabled me on the one hand to acknowledge this relationship, and on the other to propose an analysis with Hunt and Wicham's argument on the disciplinary power of the laws.

### 1.5. Prelude for the Conclusion

Throughout this research I hope to demonstrate the validity of a few primary arguments which are crucial for the integrity of my main thesis that is to understand the idea/practice of Ottoman toleration in the sixteenth century.

The first one among those is to discuss the *prevailing way of reasoning* of a political regime as the determining factor of the contingency and contextuality of any idea/practice of toleration/intolerance. Moreover, I want to demonstrate how this prevailing way of reasoning functions as the requirement of toleration/intolerance. This identification of dominant way of reasoning with the requirement of toleration will enable us to establish the first important link between conceptual-theoretical framework and the historical cases with a special reference to the Ottoman Empire. Regarding the Ottoman Empire, I assume that this prevailing way of reasoning is the notion of *justice* therefore I call it the requirement of toleration. Chapter II and Chapter IV will establish this link, in addition to Chapter II's attempt for demonstrating the levels, degrees and forms of toleration concerning different acts, ideas, organizations and subjects of toleration/intolerance. This latter conceptual-theoretical argument of Chapter II will be verified in the Chapter V, where I will focus on the laws of the sixteenth century. In other words, I will analyze the laws in such a way that I will attempt to present the plausibility of my conceptual-theoretical framework by displaying the level, degree and forms of toleration/intolerance regarding the acts, ideas, organizations, and subjects of the religious Other of the Empire. [8] In this respect, the second link between conceptual-theoretical framework of the ideational theories of toleration/intolerance and the Ottoman case will be established. *The importance of this point regarding the whole thesis is the following: we can understand the idea/practice of toleration/intolerance with a conceptual-theoretical framework which can on the one hand benefit mainly from the contextual-contingent characteristics, and at the same time incorporate a conceptual-theoretical framework.*

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[8] In fact, it will be primarily the degrees and forms of tolerance/toleration/intolerance I will be presenting, as I attempt to understand the politics of tolerance/toleration/intolerance merely on the level of the Ottoman state via the Laws.

The second important point I would like to demonstrate is the need to treat heretics (Shiites and Shiite inclined heterodox orders)[9] and Sûfî orders, in addition to infidels (non-Muslims), also as the important subjects of religious toleration/intolerance. The studies on Ottoman or Islamic toleration/tolerance frequently leave the heretics and Sûfîs out of the scope of analysis in terms of toleration/intolerance, whereas Western historiography primarily deals with the heretics as the subjects of toleration/intolerance. In fact, to include the heretics into the analysis will not necessarily change the conceptual-theoretical framework of toleration/intolerance, yet, I find it important because if heretic is also another subject of Ottoman toleration/intolerance, then, we can argue for the effectiveness of comparative historical methodology. This methodological concern and its use for the Ottoman Empire will be discussed in the Chapter III with its legitimating grounds. Its compatibility with the conceptual theoretical framework will be tested via laws of the sixteenth-century Ottoman Empire in Chapter V.

The final point I want to justify is the need for a critical approach to the category of toleration/intolerance, in addition to aforementioned conceptual-theoretical and methodological concerns of this research. This critical approach takes its inspiration from the strong link between the category of toleration/intolerance and power. Regarding that power does not have to be negative in every situation or in other words, as it can be indeed productive, it could have been a way to treat toleration neutrally. Yet, despite its peace-providing productive aspect, there are a few reasons to be more cautious. Incorporation of toleration/intolerance as a political means, in the first place assume hierarchies among difference, and when this point is combined with its conditionality – where the conditions are determined by the power-holder who is at the top of the hierarchy-, it leaves space neither for deliberation nor for contentiousness. In this respect being critical does not necessarily mean to be extremely captious. Yet being critical refers to judge carefully the link between power and toleration in order to evaluate the problematic aspects of politics of toleration/intolerance namely from the standpoint of

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[9] I inevitably use the term *heretic*, because I follow the vocabulary of theological/religious and historical literature on the Ottoman Empire, which accepts orthodoxy as Sunnism and heresy/heterodoxy as Shiism. In this respect, the term heretic in this research does not include any pejorative meaning from the point of view of the author, as it is obvious that heterodoxy-orthodoxy-heresy is very much defined according to contingent power relations. Thus, it is used as it is the concept that illustrates the mentality of the Ottomans regarding its religious Other.

the tolerated. To adopt such a critical standpoint, I will follow the link between power and the category of toleration. Moreover, I will attempt to demonstrate how the toleration/intolerance experience of the sixteenth-century Ottoman Empire, can be analyzed with the Foucaldian terms of *art of government* and *disciplinary power*. At this point, I assume that timelessness of the category of power will enable me to avoid a likelihood immensurability and anachronism. It will be the Chapter IV, in which I will attempt to demonstrate this argument. Moreover, in Chapter V, I will verify whether it a plausible argument or not by focusing on the mentality of the Laws of the Ottoman Empire.

These three points, which can be considered as the main sub-ideas of my thesis are in fact the constituting grounds of this research. In the Chapter VI, the conclusion part, I will present the final forms of these points and the relations among them by including the findings of my analysis regarding the laws. In other words, it will be the final chapter in which I will present the links between the following chapters and their main narratives.

### 1.6. Summary and Plan of the Next Chapter Plan

The primary concern of this research is to understand the idea and practice of toleration via a dialogue between the practice of toleration as observed in the Ottoman Empire and the theories of toleration, either religious and/or philosophical, or critical. Yet acknowledging the apparent Euro-centric historiography in the works on toleration, I attempt to reveal the particular way of reasoning that characterized Ottoman toleration, which is one of the historically contingent and contextual regimes of toleration among many others. Thus, I endeavor to incorporate a set of the vocabulary and methodology of Western historiography on religious toleration and philosophical theories of toleration, which will be the guiding frame used to situate Ottoman toleration into the theoretical context, by identifying its particularities. As such, I will on the one hand incorporate Western theories of toleration into the scope of my analysis, which is already missing in the existent literature, and on the other, I will also present the background arguments of the debates on Ottoman toleration which did not directly refer to these theories.

Moreover, in order to challenge the Euro-centric historiography and religious essentialism, which is a part of civilizational discourse, this research avoids theological justifications of Islamic or Ottoman toleration, although it takes serious account of the Islamic identity of the Empire, and its substantial influences, particularly concerning the relationship between state and society visible particularly in the laws of the Empire. In sum, having taken toleration as a part of *civilizational discourse* embedded in the dilemmas of Western historicity and essentialism, and *contingent practices* which have their different ways of reasoning, I will follow in particular the link between toleration and power emphasized by Wendy Brown and Herbert Marcuse. Yet they will be mainly Foucault's concept of *art of government* and Hunt and Wickham's discussion of *disciplinary law*, when I analyze the Ottoman case. In this respect, the final chapter of this research will attempt to analyze a sample of laws under focus as a manifestation of toleration/intolerance as a discourse of power, which attempted to regulate its subjects in the name of justice via laws.

Accordingly, the main framework of this research can be presented in an extended version in the following manner. The main objective of this research is to understand the *historical knowledge on the Ottoman Empire*, particularly the ones on Ottoman toleration, with *a derived vocabulary and methodology from philosophical theories of toleration, religious theories of Western historiography and critical theories of toleration,* which will be revised and reformulated according to way of reasoning of the Ottomans. Moreover, the mentality of *contemporary critical theories of toleration* will be emphasized when presenting the theoretical framework of this research in order to present *contextual mechanisms of law and politics* as discourse of power *which governed* the subjects of the Empire in the name of *justice.*

The next chapter focuses on the conceptual framework that will be followed in order to analyze the Ottoman toleration via the help of philosophical theories of toleration. This conceptual framework is derived in order to reinterpret the historical knowledge on Ottoman toleration with the help of the theoretical framework.

**CHAPTER II**


**2. PHILOSOPHICAL THEORIES of TOLERATION**


> *[t]he least danger is from the one that is most different: accerrima fratrum odia, et facilis ex praxima lapsus. Hugo Grotius (quoted in Kaplan, 2007b: 12-13)*


Euro-centric historiography, described previously, was a characteristic of both religious and philosophical theories of toleration, because these primarily dealt with European spaces, times and ideational traditions. Although the focus on space, time and ideational traditions include variations, theological/philosophical justification of Christianity, and values of Enlightenment apparently dominate the Western literature. Yet, this Euro-centric approach, despite its limits, could not prevent Western historiography and contemporary liberal philosophy from dominating the literature concerning methodology and conceptual framework of toleration. It is thus worth questioning why it has been so. In more precise terms, we can reformulate the question as the following: Why did Christianity and Enlightenment inspired theories of toleration, but not others prevail in the literature? It appears that the answer is very much related with being accustomed to religious plurality. In Charles H. Parker's words:

> [t]he reformation burst on the scene rather suddenly, giving rise to violent conflicts in societies quite unaccustomed to religious pluralities. In the Islamic world, pluralism had been the normative condition for centuries, and political authorities had plenty of experience navigating the religious tensions (Parker, 2006: 296).

Parker's statement gives a strong hint in terms of the struggles of Islam and Christianity with the religious Other, and their relation to the theories of toleration. The varying degrees of being accustomed to religious plurality, and different lengths of time that Christianity and Islam lived with the religious Other were crucial factors for pondering on the theoretical justifications of toleration. Islam had obviously developed its regulatory mechanisms concerning the other religions long before Christianity faced such a problem. According to Islamic history, the conditions for co-existence of particularly the non-Muslims were firstly formulated during the time of Hz. Muhammad, when he made a

contract (the Medina Contract) with Jews after he moved to Medina. Yet, a more detailed framework for conditional existence of other religions under the rule and territories of Islam, appeared by the time of Caliph Umar Ibn al-Khattab. This framework known as "the Pact of Umar," was issued for the Christian population of Syria after its fall to the Muslims (Masters, 2001: 21-22). A written contract, yet, became a part of the Islamic law only by the ninth century (Masters, 2001: 21-22). In this contract, the non-Muslim were defined as *ahl al-dhimma* (the people of contract) and given the rights to "property, livelihood and freedom of worship in return for extra-taxes (cizye) and promise not to help Islam's enemies" (Masters, 2001: 19). The details of early content of this contract were as follows:

> They would be subject to the political authority of Islam.
> They would not speak of the Prophet Muhammad, his Book, or his faith.
> They would refrain from committing fornication with Muslim women. This was extended to include the marriage between non-Muslim men and Muslim women. Marriage between Muslim men and dhimmi women was allowed, following the prophet's example, as long as the children were brought up as Muslims. However, non-Muslim wives of Muslim men were free to worship according to their own faith.
> Non-Muslims were forbidden to sell or give a Muslim anything that was in violation of Islamic law, i.e. carrion, pork or alcohol.
> The display of crosses or ringing of bells in public was not permitted, nor any public proclamation of "polytheistic" belief to a Muslim.
> No new churches or synagogues could be built.
> Non-Muslims must wear the girdle over their cloaks and were to differentiate themselves form Muslims by their headgear, mounts, and saddles. This was expanded later to prohibit non-Muslims from riding either horses or camels, limiting them to mules and donkeys.
> Non-Muslims should not teach their children the Qur'an, nor use Arabic in their personal seals.
> No non-Muslim could hold a Muslim slave.
> No public religious processions such as those traditionally held at Easter, were to be allowed. (Masters, 2001: 22)

It is in this sense that neither Islamic philosophers nor contemporary historians on Islam and Middle East attempted to contemplate on a detailed account of the theoretical framework of religious toleration. Pre-existing boundaries of Islamic toleration, and concomitantly the conditions of the lives of religious Other in the Islamic lands made attempts for theorizing toleration irrelevant and unnecessary. These scholars therefore dispense with new theoretical justifications of Islam, and instead confined themselves to staking out a defensive position against charges of intolerance. Contemporary historians on Ottoman history, on the other hand, limited themselves with economic, political and

social aspects of the Ottoman world, which similarly underestimated the need for theoretical justifications of toleration. Moreover, the majority of literature on Islamic or Ottoman toleration limited themselves with the articles of the contract to defend or criticize the tolerant/intolerant character of Islam or the Ottoman Empire.

Christian experience of encountering with the religious Other on the other hand, was comparatively a recent agenda. Although having lived for a long time with other religions, Jews and Muslims, the real threat of religious Other was an outcome of Reformation period.[10] In contrast to Islam where the regulations concerning the lives of other religions were already prescribed, it was the political authorities that decided the fate of religiously Other in the Christian lands. The common policy for Jews and Muslims was letting them live, as they were not a threat to the superiority of Christianity.[11] The religious theories of toleration, on the other hand, were formulated for a more important dissenter, the Protestants. Thus, encountering with its religious Other, Protestants, in a comparatively recent era, the Western philosophers, historians and religious men paid more attention to the theoretical justifications of toleration. Therefore, Christianity and Enlightenment inspired theories of toleration dominated the literature regarding this recent encounter, which led to a more concentrated focus on the question of dealing with the religious Other before Enlightenment, and with the other differences in the post-Enlightenment era.

The explanation I have tried to present was related with the prevailing Euro-centric historiography in the theories of toleration. Why does this research, then, argue for the contingency and contextuality of politics of toleration on the one hand, and yet also ask for a conceptual-theoretical framework of the category on the other, which is formulated according to historical experiences and ideational traditions of Christianity and the West? My answer is simple. If we are referring to a concept, i.e. toleration, we should clarify what it namely refers to. Although the particular histories of different religions, societies, politics and cultures are crucially important for identifying contingent and contextual

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[10] This is the prevailing arguement, yet, I will present the others in the following Chapter.
[11] We also encounter persecution and expel of Jews from Christian lands, despite their non-persecution was the prevailing policy, since the Roman Empire declared Christianity as its official religion.

characteristics of toleration, a shared conceptual-theoretical framework is no less crucial. Similarly, despite the Euro-centric historiography prevailing in religious theories of toleration, a comparative-methodological perspective is also deemed necessary to fulfill the gaps and inspire from different experiences of religious toleration. Accordingly, a study of this Western literature and its concomitant links with the idea of toleration is important in any approach to the Ottoman situation. Yet, it should be re-emphasized that such an attempt will be realized only for a comparative analysis in order to stress the *different ways of reasoning* and/or possible *overlapping and diverging methodologies and vocabularies of toleration* in the context of Ottoman practice of toleration.

Briefly emphasized in the introduction, the narrative of Western toleration, is mainly conveyed by two different disciplines, Western historiography and contemporary liberal philosophy. There is an immense literature produced by these disciplines on the theories of toleration and its relation to particular events. Although these two narrations share the same semantics of the category of toleration -"generally meaning to endure, suffer or put up with a person, activity, idea or organization of which or whom one does not really approve" (King, 1976: 21), - the absence or weakness of the dialogue between these two disciplines displays itself particularly in terms of the particular and divergent methodologies they follow.

These methodological differences become visible, particularly concerning the *difference* on which each discipline focuses, and *times and spaces* on which they concentrate. For Western historiography, the difference is a religious one. Thus they attempt to develop *religious theories of toleration* at different *times and spaces* of Europe. The contemporary liberal philosophy, too, does not oppose the fact that the genealogy of toleration displays a form of response to the dissent emerging from *religious difference*.[12] Thus, in this sense, there is an inevitable relationship between the religious theories of toleration, which are embedded in the European ideational tradition, and its dialectical relationship with Christianity. However, contemporary liberal philosophy firstly diverges

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[12] Preston King categorizes toleration as *religious, civil and racial toleration* each of which prevailed at particular times. In this respect, it is the 16th century, the time of religious toleration, whereas civil and racial toleration are the practices of the 20th century. Preston King, *Toleration*, p. 69. The whole literature of Western historiography on toleration, moreover, justifies King's statement.

from the methodology of Western historiography, in terms of the difference it chooses to concentrate on. It proposes toleration as an answer to the *contemporary differences* that exceeds the limits of religious difference, such as ethnicity, race and sexuality. Obviously, the new era is not only signified by the wars of religions, but also by "[a] plurality of conflicting and indeed incommensurable conceptions of the meaning, value and purpose of human life" (Rawls, 1985: 225). As the second difference, the contemporary narrative situates the origin of philosophical theories of toleration in the Enlightenment period and announces the supremacy of liberal political values.[13] By these different methods, the western historiography attempts to reveal out religious theories of toleration derived from different Western spaces and times. Whereas contemporary liberal philosophy aims to arrive to a philosophical framework via which the response to contemporary difference can be analyzed/proposed/criticized with the vocabulary of philosophical theories of toleration.

This research, which does not aim to discuss toleration in terms of contemporary difference, rather aims to concentrate on the idea of Ottoman religious difference, and thus will exclude the contemporary narrative of toleration and its relation to contemporary differences. The next part, in this regard, will deal only with the conceptual-theoretical framework of toleration (philosophical theory) as has been proposed by contemporary liberal philosophy. This conceptual-theoretical framework of toleration is hoped to provide the correct vocabulary and steps of research in a systematic manner concerning Ottoman toleration. Following this part, which attempts to derive a conceptual vocabulary from the discussions of contemporary liberal philosophy, I discuss the

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[13] A considerable number of contemporary liberal philosophical works on toleration inaugurates with seminal works of John Locke, *A Letter Concerning Toleration*, and/or John Stuart Mill's *On Liberty*. It is no surprise that the first one mainly emphasizing rationality (irrelevancy of compulsion concerning matters of faith) and separation of state and church, and the other prominently stressing autonomy of individual and freedom became the millstones of contemporary liberal thought, and the philosophical normative theories of toleration. Locke's and Mill's ideas are further and mostly enhanced by contribution of John Rawls, who intermingled the ideas of *rationality, secularism* and *individual autonomy* with the contemporary liberal ideas of *pluralism, justice* and *neutrality*. Thus, these main liberal values became the milestones of the contemporary political philosophy and political theory which proposed toleration as a policy in order to answer the demands of contemporary difference. The best literature on the philosophy of toleration may be found in the following volumes: D. Heyd (eds), *Toleration: An Elusive Virtue*; S. Mendus (eds), *Justifying Toleration: Conceptual and Historical Perspectives*; S. Mendus and D. Edwards (eds) , *On Toleration*;Horton, J. and Mendus, S. (eds), *Toleration, Identity and Difference*; J. Horton and S. Mendus (eds) , *Aspects of Toleration: Philosophical Studies*.

methodology of Western historiography concerning religious toleration in order to question possible analogies or discrepancies in relation to Ottoman experience.

## 2.1. A Derived Conceptual Vocabulary from Philosophical Theories of Toleration

There is a general lack of consensus in discussions on toleration regarding the *philosophical normative* framework. On the contrary, *elusiveness and ambiguity* frequently characterize this particular concept. And the *ambiguity* in the *linguistic use*, *semantic discussions*, *circumstances of toleration* and *justifications/requirements of toleration* emerge as the most obviously speculated points concerning theoretical framework of the category. It is in this respect that expert and highly-respected philosophers of toleration, whose names are well known in the theoretical literature such as, David Heyd, Susan Mendus, John Horton,[14] are still contributing to contemporary debates in order to clarify this elusiveness and ambiguity. Despite lack of clarity in the discussions, it appears that it is not impossible to identify some preliminary remarks from this literature, which, although making no definite contribution to the normative theories of the concept, provide an initial framework for approaching Ottoman case.

At this point, I would like to concentrate on these *philosophical debates* and attempt to present my *derived themes and philosophers* from this literature, via which I attempt to approach to historical knowledge on Ottoman toleration. They will be primarily *Preston King, Susan Mendus and Catriona Mckinnon,*[15] whose works will guide this part in relation to discussions concerning *semantics, circumstances, justifications/requirements, levels and degrees of toleration*. I will then attempt to approach Ottoman toleration with this conceptual framework which is designed to allow the situation of the historical knowledge within a conceptual framework. At this point it is necessary to start with

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[14] It is a hard attempt to present the all philosophers on toleration. However, these three names are particularly important in the theory of toleration not only because they contributed to the literature by the best volumes on the subject they (Horton, Mendus, Heyd) edited, but also because their ideas on the subject inaugurated contemporary discussions. I can also admit that there are earlier, yet still important contemporary important philosophers on the subject; one of who I think is Preston King. I will particularly apply to him in the next part when establishing my framework.

[15] P. King, *Toleration*, C. McKinnon, *Toleration: A Critical Introduction to Toleration*, S. Mendus, *Aspects of Toleration*.

lexicological and semantic elusiveness of the category of toleration, so that I can present my semantic guide of toleration when approaching Ottoman case. The reason for this is that, without such a prologue, not only will I  be unable draw the boundaries of the vocabulary of my research, but also I may fall into the same trap of reducing toleration to varying linguistic uses of the term in different contexts.

### 2.1.1. A lexicological and semantic framework

The works that secondarily consider the philosophical/normative discussions on toleration, mostly history and/or sociology, fall into the trap of using toleration interchangeably with different linguistic uses.[16] These linguistic uses of toleration refer to frequent incorporation of *coexistence*, *peaceful coexistence*, *non-persecution* and *absence of persecution*[17] as definition(s) of toleration and/or substitutes for the concept of toleration. Such kind of an association of toleration with these kinds of linguistic uses may at some point refer *rationale* of toleration (e.g. peaceful coexistence, coexistence) and/or a negation of intolerance (e.g. non-persecution, absence of persecution), thus a form of toleration, as observed in different contexts. However, it appears that these do not explain why some scholars incorporate the category of toleration, rather than simply using non-persecution or peaceful-coexistence when focusing on the issue of religious difference and concomitant conceptualization of religious toleration. Therefore I argue, in order to approach any case with the category of toleration, clarification of semantics of the concept of toleration is required, which can be derived from the existing literature. In other words, toleration should not be intermingled with the different linguistic uses of coexistence or non-persecution. Yet, these different linguistic uses should be incorporated and comprehended into semantics of category of toleration, rather than used interchangeably with toleration, so that we can define the specific and broader framework of the category.

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[16] Such attempts perfectly fit with Heyd's definition of the broad view, on toleration. That is associating large variety of contexts and linguistic uses with the concept of toleration. David Heyd, "Is Toleration a Political Virtue," in *Toleration and Its Limits,* pp.171-172.

[17] Regarding the immensity of the literature on toleration, it is quite hard to make a clustering of the scholars who adopt such linguistic uses of the category of toleration. Therefore, rather than such an attempt, I will bring this issue back in the Ottoman toleration discussions, and deal with the relatively limited literature in such a manner.

The confusing lexicological and semantic debates, in fact, start with the nouns of *toleration* and *tolerance*.[18] The general tendency in these discussions is the attempt to clarify the semantics of *toleration* and *tolerance*. And, the conclusion that prevails in the literature appears to identify *toleration* as "a sociopolitical sanction or concession (often unprincipled in its motivation) by which the strong/ majority officially tolerate the weak/minority", and to label *tolerance* as "primarily an attitude – a principled frame of mind- that is less dependant on the power posture of the agents in question" (Tyler, 2008:6). With such a distinction, we encounter the assumption that there is an abstract verb 'to tolerate', which takes different meanings when either implied by the powerful group as an institutional sanction, or when realized in inter-subjective relations. As such, toleration refers to an official/political principle, whereas tolerance refers to an individual attitude. In other words, it seems that aforementioned discussions concerning the verb 'to tolerate' attempt to make a distinction in terms of ethical and political aspects of the verb.[19] Although such a distinction may also be accurate in order to differentiate toleration from tolerance, I would like to apply to Preston King's congruous distinction between these nouns which appears to be more appropriate concerning the agenda of my research. As King's categorization of the terms takes toleration and tolerance as intermingled concepts which cannot be distinguished, at least in terms of the political sanction-individual attitude binary, yet provides a more comprehensive ground in order to observe different forms of toleration.

Not only Preston King, but also the majority of scholars on toleration confronts the elusiveness between the nouns of toleration and tolerance. And, any discussion inevitably finds itself looking at the origins of these nouns. The nouns 'toleration' and 'tolerance' are connected to each other by the single verb 'to tolerate', which has its roots in the Latin

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[18] In order to present a normative framework of toleration, almost all the scholars, somehow, deal with these lexicological or semantic debates concerning the words of toleration and tolerance. For an article that deals with it in details, Andrew Jason Cohen, "What Toleration is," *Ethic*, pp. 76-78.

[19] David Heyd, in the preface of his collected volume, *Toleration an Elusive Virtue*, explains the content of this book as follows: "The problematic status of the idea of toleration in a pluralistic society and the tension between its public use as a political practice and the private manifestations as a personal virtue are indeed the two major lines of discussions running through most of the articles," p. 10. Thus it is a strong position in the discussions of toleration/tolerance to make a distinction between ethical and political aspects of toleration. Heyd does not differentiate these aspects as being labeled by the nouns of either toleration or tolerance. Yet, we can discuss that the lexicological and semantic discussions on the concept benefits from this categorization in order to mark the difference between toleration and tolerance.

root *tolerantia* (King, 1976:12-13). As an original and early contribution to this lexicological debate, Preston King firstly presents how other languages, such as French, Italian, Spanish and Portuguese, have also distinctive nouns of 'toleration' and 'tolerance' as it is in English. He then draws attention to the fact that all these nouns are originally derived from the Latin word, tolerantia.[20] Moreover, King emphasizes that "in the earlier history of this expression, what it and what its derivatives were broadly intended to label was the general notion of enduring (some physical discomfort, such as pain) in tolerance, or putting up with items of various kinds (some intellectual discomfort, like a competing doctrine) in toleration"(King, 1976:12). Yet, the contemporary understanding of the distinction between tolerance and toleration exceeds this conventional (in King's terms) dichotomy of 'endurance' (pain) and 'putting up with' (a competing doctrine). In this respect I will pursue King's construing of the differences between toleration and tolerance, which are in fact in continuation with this early conventional distinction between tolerance and toleration, yet presenting a more comprehensive framework without falling into the trap of semantics of these terms, which are hard to distinguish.

Preston King, in his important work 'Toleration', which appears to be a serious inspiration for the contemporary political philosophy on the subject, presents a precious decoding of the concepts of 'toleration', 'intolerance' and 'tolerance', all of which have their roots in the Latin root tolerantia. He makes the following analysis:

> [we] shall employ 'toleration' to serve a broader purpose than 'tolerance'. 'Toleration' will be used to cover all negations of intolerance, but 'tolerance' will be used to cover the most minimal of these. "Intolerance is construed as an objection to an item combined with negative action against it. Accordingly, the most minimal negation of this intolerance –i.e. tolerance- would consist in the retention of the objection, combined either with a suspension of the negative response or its replacement by a response more positive. It is in this logical sense that toleration is made to subsume tolerance, along with a variety of other negations of intolerance, such as indifference or favoritism, and most particularly that species of favoritism which is instanced in the promotion of a system of equal rights, or democracy (King, 1976:13).

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[20] King excludes German from his statement, as in German, 'toleranz' is the single root noun signifying 'tolerance and/or toleration'. Naturally, the genuine Turkish noun indicating 'to tolerate', hoşgörü derived from the verb hoşgörmek, is far from this Latin root. However, in Turkish there is also the verb of 'tolere etmek' (meaning exactly 'to tolerate') which is also sometimes used in Turkish, with the noun, 'tolerans'.

King's statement in this respect, clarifies chiefly the semantic nuances between toleration and tolerance applied in this research.  I will also take toleration as subsuming tolerance. Toleration, thus, will cover all negations of intolerance, particularly the politics of indifference and favoritism, whereas tolerance will signify the minimum retention of objection such as suspension of execution, imprisonment, corporal punishment, financial burden, prohibition, exclusion. Within this conceptual framework, the following questions will be investigated in the context of the Ottoman toleration/intolerance.  What were the items that were intolerated, objected and combined with negative action against,[21] in the Ottoman Empire? The search of the items will, on the one hand be limited with religious ones, yet on the other be detailed so as to cover "person, activity, idea or organization"(King, 1976:21) that are objected to and rejected by exerting a negative action against it. These negative actions against the objected items will be considered as execution, imprisonment, banishment, corporal punishment, financial burden, prohibition, exclusion. However, although all of these practices may be considered as instances of intolerance, it should be acknowledged that there may be a leveling among these practices. In other words, while execution may be considered as the extreme case of intolerance, the practices of imprisonment, banishment, corporal punishment, financial burden, prohibition, exclusion, may be considered as the acts of intolerance which may be preferable to execution when considering especially the Ottoman Empire, where the superiority of Islam and the Ottoman state is clear. A similar method will be followed in order to investigate the instances of toleration and tolerance. Accordingly, the following questions will be asked. What were the practices of tolerance of the Ottoman Empire? Against which people, actions, organizations and ideas did the Empire exert the minimum retention of objection? Did it only suspend the negative response (execution, humiliation, prohibition, discrimination, exclusion) or did it replace it by a more positive response? Did the Ottoman Empire develop either an idea and/or practice, toleration, attempting to cover also other kinds of negations of intolerance, such as indifference and/or favoritism?

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[21] According to Preston King when '"objection plus acceptance" implies tolerance, "objection plus rejection" implies intolerance. P. King, *Toleration*, p.57.  Rejection in terms of intolerance refers to a negative action against the objected item.

The answers of these questions may enhance our understanding concerning Ottoman toleration in terms of presenting the multi-layered attitude of the Empire towards religious difference which may have intolerated certain persons, acts, organizations and ideas while tolerating the others. The investigation of the answers to these questions, moreover, may help us to clarify the changing requirements of toleration, which may in turn support the contextuality and contingency of the act of toleration. In this respect, we can read the politics of the Empire in terms of categories of toleration, tolerance and intolerance by analyzing in details the content of negative and positive responses, in order to arrive at conclusions for identifying the tolerable/intolerable acts, ideas, people, and organizations of Ottoman Empire concerning religious toleration.

### 2.1.2. Circumstances and Requirements of Toleration

If our starting point will be tracing the clues of intolerance, following King, then we have to understand the circumstances when the items of intolerance are said to be tolerated. In order to do so, I will still be following King's terminology, into which I incorporate more contemporary discussions. The following quotation, from McKinnon, is the reason why I refer to her for this part. It is an excellent summary of the extensive debates on the category of toleration, which in each item aptly explains the features constituting the circumstances to which the response is toleration:

> 1. Difference: what is tolerated [differs] from the tolerator's conception of what should be done, valued or believed. 2- Importance: what is tolerated by the tolerator is [not trivial] to her. 3-Opposition: the tolerator [disapproves of and/or dislikes] what she tolerates, and is ipso facto disposed to act so as to alter or suppress what she opposes. 4-Power: the tolerator believes herself to have [the power to alter or suppress] what is tolerated. 5-Non-rejection: the tolerator does not exercise his power. 6- Requirement: Toleration is [right and/or expedient], and the tolerator is [virtuous, and/or just, and/or prudent] (McKinnon, 2006:14).[22]

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[22] In addition to K. McKinnon, the best treatment of the debates on the circumstances and requirements of toleration can be found in the following volumes: David Heyd eds., *Toleration: An Elusive Virtue*; Susan Mendus ed. *Justifying Toleration: Conceptual and Historical Perspectives*; Susan Mendus and Edwards, D. ed., *On Toleration*; John Horton and Susan Mendus ed., *Toleration, Identity and Difference*; John Horton and Susan Mendus ed., *Aspects of Toleration: Philosophical Studies*.

Moreover, although McKinnon's presentation of the requirements of toleration is very affluent and in-place, I will situate her categorization of circumstances into that of King's, as conceptually I follow mainly his theoretical framework. The featured characteristics of aforementioned circumstances of toleration, in this sense, will be:

1. *objection (stemming from disapproval and/or dislike).*

   *i.e. your mother does not like you smoking.*

2. *and, yet acceptance (at least, suspension of negative act- tolerance).*

   *i.e. but she prefers to remain silent when you are smoking.*

3. *of an important item (act, idea, people, associations).*

   *i.e. act of smoking.*

4. *by a comparatively powerful individual or a group of individuals  (state, religious men, neighbor, friend).*

   *i.e. your mother.*

5. *who impose a certain kind of self-restraint because objection and acceptance is right, expedient.*

   *i.e. your mother allows you smoking because you are an adult and it is right and/or expedient that you can give your own decisions.*

6. *and the actant is just, virtuous, prudent.*

   *i.e. because your mother is virtuous, just or prudent.*

The fifth and sixth articles, comprising the requirements of toleration, need further clarification and revision according to the objectives of this research. In this research, I deal with not the "ought to" part of conceptual-theoretical framework of toleration, yet I try to analyze the Ottoman political practice/idea of toleration in the way it appeared in the sixteenth century. Therefore, for a conceptual-theoretical framework that can elucidate this specific experience of political toleration of the Ottoman Empire, it is necessary to derive appropriate concepts from these articles put forward by Mckinnon. In fact, the distinction she made between the act and actant of toleration, as well as the attention she

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drew to the difference between prudential and moral characteristics of the requirements can be re-formulated so that it can provide us the proper conceptual-theoretical framework. I will thus investigate whether we can simplify and modify this two-leveled analysis of McKinnon.

Mackinnon suggests a strong link between the nouns of *right* and *expedient,* and the act of toleration/tolerance on the one hand, and the tolerator and the adjectives of *virtuous, just* or *prudent,* on the other. It is, then, necessary to clarify what she may have meant by these nouns and adjectives. According to Oxford English online dictionary,[23] expedient refers to "the quality of being convenient and practical despite possibly being improper or immoral", and right, among a great many meanings, indicates "morally good, justifiable or acceptable" or "the best or most appropriate for a particular situation". It is clear from the definition of expedient that an expedient act does not have to be moral. The actant can realize the desired outcome by acting in an improper yet practical way. Expediency, in this sense, entails a certain degree of pragmatism. Regarding the right character of the act of toleration/tolerance, on the other hand, we can make two suggestions. Right act may ask for moral requirement or similar to expediency, it can denote pragmatism in relation to practical outcome that is deemed necessary. I see no reason for arguing that, Mckinnon expressed the requirement of the act of toleration/tolerance with similar adjectives. Thus I take expedient as the act that may lack moral concern, whereas right as the act with a moral consideration. Both of them aim to arrive to the desired outcome (i.e. peace) in relation to toleration, as I will present later.

We can follow the similar logic in understanding the requirements expected from the actant of toleration. McKinnon presents the tolerator as virtuous, just and prudent. To reveal the most general meanings of the concepts, we can one more time apply to the Oxford English online dictionary. Virtuous refers to "having or showing high moral standards", just means "based on or behaving according to what is morally right and fair", and finally prudent pertains to "acting with or showing care and thought for the future." Accordingly, while virtuous and just tolerator adheres to moral concerns, a prudent tolerator does not have to. In other words, a prudent tolerator is interested in the

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[23] I exclude the philosophical discussions on these categories. I will, nevertheless, deal with them to the extend that they appear in the discussions of toleration throughout the study.

consequence of the act of toleration (i.e. peace) which does not necessarily bound to moral claims. The pragmatic echoes once again find place in prudence, as it is in expediency.

At this point I can turn back to my initial point, which was revising, in fact combining the requirements of the act of toleration, and the requirements expected from the tolerator. I will subsume expediency under the category of prudency, as they may both fall short of moral concerns in relation to expected outcome of toleration (i.e. peace). Moreover, I will incorporate the requirement of rightfulness of the act of toleration and the requirement of virtuousness of the tolerator under the category of justice. As both rightfulness and virtuousness imply moral apprehension as justice does. Moreover, it is apparently the category of justice that occupies a central place in the discussions of Ottoman toleration.  Therefore, with the provision that first four articles remain the same, I will combine the fifth and sixth articles in the following manner, when Christina Mckinnon and Preston King are read together:

5. *(5&6) who impose a certain kind of self-restraint because objection and acceptance is*

    *just or prudent.*

    *i.e because your mother thinks that allowing you to smoke, although she does not like*

    *it, is just or prudent.*

In this respect, the featured characteristics of circumstances and requirements of toleration, when combined with the semantic characteristics of toleration/tolerance, the following frame will be followed: *objection (stemming from disapproval and/or dislike), and, yet acceptance (at least, suspension of negative act- i.e. tolerance) of an important item (act, idea, person/community, association), by a comparatively powerful individual or a group of individuals (state, religious men, neighbor, friend) because acceptance is just and prudent.*

Although the above mentioned framework will be followed in the rest of the research, I should take a further interest in the requirements of the category of toleration. And, this particular interest is related with an important question to which the requirements are proposed as possible answers. Why does the power-holder accept an important difference in spite of disliking it? The answers, in fact, were investigated not only by contemporary political philosophy but also by Western historiography. The theoretical foundations of religious toleration of pre-modern era, and the requirements of toleration conceptualized in the contemporary debates share considerable similarities. *Individual, freedom* and *autonomy* emerge as the core elements constituting the ground for both, which are supported by other ideas, such as *humanism, skepticism, prudence, rationality and morality*.

While freedom and autonomy referred to freedom of individual choice concerning religious conscience in the pre-modern era, they are offered as the liberal values of freedom of individual choice concerning philosophical and moral issues, including, but not limited to, religious ones in the modern era. These basic concepts and related categories, such as *humanism*, *skepticism* and to limited extent *rationality*, under which notions of freedom, autonomy and individual are interpreted, characterized, particularly, the boundaries of western religious theories of toleration. Contemporary discussions, attempting to draw the conceptual boundaries of the term, on the other hand, shared the category of *rationality* and moreover included *morality* into their discussions. In addition to these categories of *humanism, skepticism, rationalism and morality*, which were emphasized in varying degrees by pre-modern or modern scholars, *prudence* emerges as another category upon which there is a strong consensus for characterizing either the framework of religious theories of toleration or requirement of the act of toleration in the contemporary philosophical discussions. Thus, we can aptly argue that the grounds constituting the theories of religious toleration, which were the concern of western historiography, overlap with the discussions of contemporary philosophy, which attempts to present the requirements of conceptual boundaries of the concept. Accordingly, the requirements of toleration, as discussed in the contemporary liberal philosophy and political theory (including religious theories of toleration), can be summarized as ideas of "humanism, skepticism, rationality, morality and prudence".

The mentality of prudence comes into prominence among these discussions when discussed as the sole requirement of toleration. Susan Mendus states

> Sometimes…it is prudent to tolerate that which we dislike, either because toleration will bring economic advantage or because intolerance will promote unrest and civil strife (Mendus, 1987:5).[24]

Although prudence, fulfilling the objective of economic advantage or peace, is a strong requirement of toleration, there are important oppositions to such a statement. It is Susan Mendus who presents the most convincing debate, firmly arguing that prudence is not a sufficient explanation for the requirement of toleration if "unsupplemented by any further argument" (Mendus, 1987: 5). She asserts that such context-related explanations reduce toleration only to cases where there is a need for relative peace and order and/ or economic advantage. As such, Mendus attempts to raise a stronger ground for the act/idea of toleration so that it could be an effective answer to difference.  She draws attention therefore to the fact that *peace* and *economic advantage* substitute the requirements such as morality or rationality. She argues although prudence can be supplementary, one should discuss morality and rationality as the requirements of toleration in the first place.  From Mendus's perspective, another criticism of prudence is that "it *(prudence)* does not in itself explain why intolerance may be expedient" (parenthesis added: Mendus, 1987: 5). Thus, the majority of political philosophers avoid proposing prudence alone as the requirement of toleration. In this respect, the debates concentrate more and more on the concepts of *rationality* and *morality* in the contemporary philosophical discussions of toleration, concepts which we did not encounter in Mckinnon's or King's discussions.

Rationality as the requirement of toleration follows two different arguments, one of which is primarily nourished from John Locke and the interpretations of his seminal essay, 'An Essay Concerning Toleration'.[25] John Locke's offer of the separation of the Church and

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[24] The mentality of prudence, that prudence seeking economic advantage or peace and order, is frequently brought as an explanation not only to Ottoman case per se, but also to Western practices of religious toleration.

[25] For an article that discusses the rationality of Locke, please see: M. Cranston, "John Locke and the Case for Toleration," in *On Toleration*, Susan Mendus and David Edwards (eds), pp.101-122, and S. Mendus, "Introduction," in *On Toleration*, pp.5-7.

the State, concludes that other-worldly issues (spiritual matters, the care of the souls) cannot be the concern of the civil magistrates, "because his power consists only in outward force", while "true and saving religion consists in the inward persuasion of the mind."[26] As Cranston states:

> Locke says, for while force can make a man go through the outward movements of ritual observance, it cannot compel a man's mind or save a man's soul; it can only produce hypocrite if it makes a man pretend to conform by outward observance only. Force can never produce that 'faith and inward sincerity' which alone can 'procure acceptance with God' (Cranston: 1987:108).

It is in this respect that forcing an individual, particularly in the case of religious faith is simply irrational, as it cannot achieve a change in belief, which is a matter of individual conscience. Thus, the requirement of toleration as rationality, in Lockean terms, calls for non-compulsion regarding religious matters from both the state and the Church. Susan Mendus presents the second argument for rationality as the requirement of toleration as follows:

> The recognition that we are all fallible, all frail and liable to error, when coupled with the belief that rational discussion may help us to correct our mistakes and approach nearer to the truth, generates a presumption in favor of toleration. On this account, refusal to tolerate is a form of intellectual arrogance, a blindness to the possibility that 'I may be wrong and you may be right' (Mendus, 1987:6). [27]

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[26] Cranston quotes from *The Works of John Locke*, 4 volumes (London, 1727), p.255: M. Cranston, "John Locke and the Case for Toleration," in *On Toleration*, p. 107.

[27] For such a discussion of rationality see Karl Popper's essay in the same volume, "Toleration and Intellectual Responsibility," pp.17-43. Mendus makes an important reference to skepticism and relativism debates concerning historical literature investigating the theories of religious toleration. She states: "Very often, in the history of philosophy the demand for toleration has been allied to skepticism, or even relativism. Here the reason, given in favor of toleration, is not simply that we don't know the truth, but that there is no truth (skeptic's claim), or event that, since there is no truth, any opinion is as good as any other (the relativist's claim). Although this may seem to provide an argument in favor of toleration, it is salutary to note that, particularly in the 16th and 17th centuries, commitment to skepticism or to relativism often generated great intolerance. This was because of the power of the earlier argument, the argument of prudence. For even if we allow there is no truth (for example about religious matters), or that any opinion is as good as any other, prudential considerations concerning the peace of society and civil order might nevertheless dictate intolerance and the suppression of unorthodox beliefs. Skepticism and relativism therefore provide only a prima-facie case in favor of toleration, certainly not a guarantee of it. By contrast, where relativism is rejected, the need to discover the/ truth, and the recognition of one's own fallibility, may combine together to produce a presumption in favor of toleration", "Introduction," in *On Toleration*, 6-7.

Finally, comes, the discussions of moral right as the requirement of toleration.

> in cases where incompatible life-styles coexist, as in our society, the
> need for toleration will be great, and the primary justification of
> toleration may be given not by reference to considerations of public
> order, nor by consideration of which is objectively the best way of life,
> or the correct religious belief, but rather direct appeal to people's right
> to lead their own lives in whichever way they think best (Mendus,
> 1987:8).

Moral right as such is legitimized either by stressing the irrelevancy of compulsion regarding the ways of life, similar to the mentality of rationality, or by emphasizing the 'value' of each different way of life (Mendus, 1987:9). There is yet another important argument that attempts to replace sentiments and feelings, which constitute the elements of *objection*, with morality. Peter Nicholson, in this sense is usually referenced regarding his definition of toleration: "Toleration is the virtue of refraining from exercising one's power with regard to others' opinion or action although that deviates from one's own over something important, and although one morally disapproves of it" (Nicholson, 1985: 166 ). In this respect, rather than arguing for morality as the right of a *good way of life* that may change from person to person, Nicholson sets the moral as "rational and thus subject to argument," thus, rather than sentiments and tastes- such as disregard, dislike, hate- which Nicholson label as non-moral, he proposes toleration as a moral ideal. [28] In this respect *morality as the requirement of toleration* and *morality as forming the element of objection*, are not, in fact, same things. The latter one contributed to the discussions of *weak and strong senses of the word of toleration* and *limits of toleration* which are extrinsic themes to the objectives of this research.[29]

Can we also discuss morality and rationality as the requirements of toleration concerning the Ottoman case? Although the answer can be affirmative, I will, yet, stick to

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[28] For a critique of Nicholson's perspective see B. Warnock, "The Limits of Toleration," in *On Toleration*, 123-139.

[29] M.Warnock contributes to the distinction between weak and strong senses of toleration. She asserts: "In the weak sense, I am tolerant if I put up with, do not forbid, things which is within my power to forbid, although I dislike them or feel that they are distasteful. In the strong sense I am tolerant only if I put up with things which is within my power to prevent, even though I hold them to be immoral," "On the Limits of Toleration", in *On Toleration*, pp.126-127.However, she draws attention to the *blurred edges* of weak and strong senses of toleration.

justice and prudence as the requirements of toleration in the Ottoman context. Such a preference is primarily related with the fact that morality and rationality discussions concerning the Ottoman Empire are mainly related to the teachings and orders of Islam. As in the context of Ottoman toleration, rationality is discussed firstly with reference to the Quranic statement of "*no compulsion in religion*". In other words, it suggests that it is rational not to force people regarding issues of belief, while it is irrational to do vice versa.[30] This statement and its practical reflections are analyzed with respect to politics and practices of *conversion*.[31] As the type of conversion, forced (compulsory) or voluntary, compromises an important part of discussions of toleration/intolerance of non-Muslims at the Ottoman lands. While the discussions of rationality find its expression in Ottoman practice of conversion, morality can also be discussed with reference to Islam. In the Ottoman Empire it was the Islamic morality that inevitably prevailed. It was basically the legal system via which we observe the preservation and continuity of Islamic morality along with public order. Concerning morality and rationality, in this respect, I think, they are complementary to the main requirements of toleration. In other words, they are insufficient in explaining the requirement of toleration in the Ottoman lands unless supported by the ideas of justice and prudence. This research, therefore, argues it is prudence that is the most important justification of the act/idea of toleration. However at this point I argue that as far as prudence is considered, we have to focus on which idea complements, and provide the legitimizing ground for prudence. I therefore argue, as one of the main arguments of this research, following the Ottoman scholars that, it was *justice* via which the logic of prudence was satisfied. Accordingly, despite acknowledging the mutual relationship between requirements of toleration, morality, rationality, prudence and justice, this research privileges justice as the requirement of toleration, which also explains the intimate, mutual yet secondary requirements –morality and rationality- of toleration within the Ottoman context.

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[30] Although the idea of rationality in the West and East appears to signify different things in terms of rationality-secularism relationship, they both agree on the irrationality of compulsion concerning the issues related to faith. We can thus argue that despite apparent discrepancies in the reasoning of Western and Eastern rationalism in terms of its reflection to politics-religion relationship, rationality discussions in essence share the same logic, irrationality of compulsion.

[31] I would like to thank to Sureiyya Faroqhi for directing my interest to conversion debates in relation to discussions of toleration.

More important than already made statements, I argue that it is primarily the *requirement* that characterizes the forms, levels, and degrees of toleration/intolerance. It is obvious that the discussions that are raised by contemporary philosophy, political theory, and to a limited extent history, attempt to formulate the requirements of justifications of toleration as contributing to "ought to". They, thus, discuss the requirements of toleration as if they are conditions/objectives/virtues that are specific to the act/idea of toleration. In other words, they identify any of these requirements as the condition/objective/ virtue that make the practice of idea/act of toleration possible. However, it is clear that the category of toleration is not totally an abstract term, rather it nurtures heavily from theology and historical practices, although it requires its proposal either as a virtue or as a policy by religious men, philosophers or rulers in order to deal with difference and dissent. In this respect, I think, the requirements of particularly religious toleration, such as rationality, skepticism, humanism, freedom of conscience, morality or justice are either theological, or practical or philosophical expectations of the rule and/or ruler. That is why rather than prudence, they are frequently emphasized. Particularly concerning the subject of this research, I primarily deal with "is" instead of "ought to", although I present a tentative normative discussion in the conclusion part.

My argument further states that the category of toleration is in secondary priority for the political rule/ruler. Religious toleration which is the idea/practice followed for the rationale of peaceful-coexistence in religiously pluralistic societies is only a complementary part of the main objective of the ruler political rule/ruler. It is the requirement that should be comprehended in the first place in order to understand the complexity of the relation between toleration and its requirement. As it is particularly the requirement that shapes the forms, levels, degrees, coexistence of toleration and intolerance, which is the evidence for the impossibility of pure toleration/intolerance. It is in this respect that the requirements of toleration, which are justice and prudence, in the Ottoman case, forestall the discussions of toleration/intolerance. The following part will clarify the discussions on the levels and degrees of toleration.

### 2.1.3. Levels and Degrees of Toleration

At this point, there are further questions and several important points regarding the analysis. First of all, it has already become quite clear that the ideas and/or acts of objection and acceptance are crucial in terms of signifying the meaning of toleration. Secondly, objection and acceptance deserve further attention concerning the different levels and degrees it initiates. The idea that the degree of objection may vary is presented by King in the following manner:

> 1-item implicated is objected to, somehow, in itself. 2-the item is objected to more than to some other item or items. 3-the item is objected to more than to all other items"(King, 1976:44).

If we go on with our example of the smoking daughter and the tolerant mother, we can make the following assumptions considering the degrees of toleration:

1. *our mother may be objecting to smoking, as she does not like cigarettes themselves (money, smell).*

2. *our mother can object to her daughter smoking  more than her drinking alcohol.*

3. *our mother can object to her daughter smoking more than her being obese and drug addicted.*

King's statement on acceptance similarly displays that the item may be accepted on different levels:

> One may tolerate a person when one is prepared to associate with him on some of these (*home, club, church, firm or state*) levels but not on others. Suppose we tolerate a Jew, or a Catholic, or an Anglican in the sense that we object him for religious reasons, while accepting association with him for pecuniary reasons. Our tolerance here may imply ready association on some levels, such as the firm and the state, but disassociation on other levels, such as the home, the club, and the church"(King, 1976:53).

Now we can make the following assumptions considering the levels of toleration: *Our mother may tolerate her daughter's act of smoking at home, in her room. However, she may also be intolerant (opposes and rejects, disallows) when her daughter wants to smoke at a restaurant. The reason may be mother's concern that she doesn't want being judged as an irresponsible mother. In this respect, our mother may give different reactions of tolerance/intolerance according to the context of smoking.*

We can further incorporate this discussion of levels and degrees of toleration/intolerance into our aforementioned framework of semantics, circumstances, and requirements of the category of toleration. Then the following definition characterizes the tolerance/toleration that will be guiding this research: **objection (stemming from disapproval and/or dislike), and, yet acceptance (at least, suspension of negative act-i.e. tolerance) of an important item (act, idea, person/community, association), on some levels (home, club, church, firm or state) and in varying degrees (i.e. community more than individuals, worshipping more than visibility), by a comparatively powerful individual or a group of individuals (i.e. state, religious men, neighbor, friend) because acceptance is just and prudent.**

By emphasizing different levels of objection and degrees of acceptance, King in fact asserts that there is not "pure tolerance". As such, he emphasizes the fact that the degree of toleration may differ (i.e. toleration and tolerance), in addition to the possibility of toleration/ tolerance at some levels, whereas its nonexistence (intolerance) on others, despite the subject/object of toleration may remain the same. That is why it is hard to distinguish a political regime or the political ruler purely as tolerant or purely as intolerant. They most of the time co-exist. That's why this research understands toleration as a multilayered concept which deserves an in-depth analysis in relation to different levels and degrees.

### 2.2. Conceptual Vocabulary: A Dialogue Between Ottoman Toleration and Contemporary Philosophy

In accordance with the aforementioned philosophical conceptual framework that is derived from the already presented discussion concerning the category of toleration, the following statements will constitute the conceptual-theoretical boundaries of this particular research.

First of all, *toleration* will be used as the concept that *subsumes tolerance*, and refers to *all negations of intolerance*. Negations of intolerance, characterizing the form of toleration/tolerance are obviously not uniform, rather they are multi-form. Thus, it will be primarily the attempt of displaying different forms of toleration where these possible negations of intolerance vary from *indifference* (i.e. let it live, neutrality) to *favoritism and recognition* (i.e. autonomy) or *from suspension of the negative response* (i.e. execution) to replacement by a considerably more positive response (i.e. respect). All these possible negations of intolerance at the end are desired for peaceful-coexistence, which is the rationale of the act of toleration, in a religiously plural society. This part of the conceptual framework of toleration is required in order to redeem the category of toleration from different linguistic uses of the term. In other words, rather than simply reducing toleration to one of the linguistic uses of the term, such as *non-persecution or communal autonomy-* which are in fact correct yet inadequate, this research argues for taking into account the other possible forms of toleration. Moreover, *toleration* should not be used interchangeably with peaceful-coexistence, yet this latter concept should be regarded as the ideal that the politics of toleration aims to realize. Peaceful-coexistence is an objective that any political order would want to secure for the legitimacy of its rule. Thus the idea of peaceful-coexistence cannot explain what toleration is, but it can be treated as the main rationale of the act/idea of toleration.

Intolerance, on the other hand, refers to objection and rejection of an item combined with a negative action against it (i.e. execution, imprisonment, banishment, corporal punishment, financial burden, prohibition, exclusion). Although, execution is frequently and clearly regarded as the sign of intolerance, the others such as prohibition

or exclusion constitute *"but" or "however"* parts of the statements that identify non-persecution with toleration. Yet, as I argue that there are different forms of negative actions, I will regard imprisonment, banishment, corporal punishment, financial burden, prohibition, exclusion also as negative acts, thus act of intolerance. I think that limiting non-persecution to the act/idea of toleration per se attributes more value to the category than it deserves, as it usually interprets other possible negative actions as less important. In fact, although the permission of living by the powerful one is apparently important concerning the case of its absence, I regard the others as also important forms of intolerance despite their comparative underestimation.

While the conceptual boundaries of toleration/tolerance and intolerance provide the clues for interpreting different forms of toleration, the levels and degrees of the category contribute to this multi-formed characteristic as well as to the fact of impossibility of pure toleration. We cannot simply arrive at the conclusion that difference, i.e. religious difference (ideas, acts, organizations, people), is either purely tolerated or intolerated in a given context. There can be contexts and instances where difference (i.e. religious ideas, acts, organizations, people) may be tolerated on some levels, but intolerated on others. Moreover, although the object/subject of toleration within the boundaries of this research is the religious ideas, acts, organizations or people, we can also argue that, in addition to possibility of co-existence of intolerance and toleration concerning these differences on different levels, there is the possibility that while some of the religious ideas, acts, people and organizations may be tolerated, the others may not. In addition to this point, they may be tolerated or intolerated on varying degrees. Thus, concerning religious difference, one should take into account the possibility of co-existence of toleration and intolerance in relation to different levels and degrees, although they are mainly analyzed as a whole. Approaching toleration as such, in other words, acknowledging that pure tolerance does not exist, as there are different levels of the world that surrounds us (i.e. social, political, economic world) and varying subsets of religious ideas, organizations, acts and people, we will also be able to identify different requirements-justifications of toleration. Moreover, we can also arrive to the conclusion that it is the requirement/justification that prevails in comparison to the politics of toleration, as requirement defining the objective of the political rule/ruler is also the

evidence for changing forms, levels and degrees of objects/subjects of toleration/intolerance.

This conceptual-theoretical clarification regarding toleration and intolerance, then, is important in two senses. Firstly in addition to forms of tolerance/toleration such as non-persecution and communal autonomy, the multi-forms toleration/tolerance/intolerance take, can present and clarify the reasons in relation to the ambiguity of literature regarding toleration/intolerance. The attempts trying to distinguish a political regime as purely tolerant- with regard to the terms of non-persecution, peaceful-coexistence, communal autonomy,- or purely intolerant- with regard to persecution- encounter an important dilemma. What if the religious Other is not persecuted but excluded? What if non-persecuted religious Other persecuted under the same authority in another context? What if the existence of communal autonomy cannot prevent persecution? What will be the case if peaceful-coexistence could be provided despite persecution or prohibition? For both the Western historiography and Ottoman case, these questions, and thus the dilemmas are relevant. The ambiguity of the statements in relation to absence or existence of toleration/intolerance, I think stems from avoiding this possibility of co-existence of different forms of toleration/intolerance. Once we acknowledge this interrelated existence of toleration/tolerance and their varying forms, then we can more elaborately make our analysis on experiences of toleration/intolerance. Secondly, by accepting this conceptual framework, and concomitantly the impossibility of pure toleration/intolerance, we can more objectively make comparisons between Western and Eastern, or Christian and Islamic practices of toleration/intolerance. In fact, we can give up comparing them by confining the analysis to "more" and "less" categories, which can provide us grounds for a fruitful dialogue between different practices. In this respect, this research argues that, as far as the category of toleration in general, and Ottoman toleration in particular, is considered, we cannot privilege any one of those linguistic uses as fully explaining toleration. Instead we have to approach toleration in a holistic manner which should convert all of these linguistic uses being subsumed under the category of toleration. It is only in this sense that the ambiguity and elusiveness, moreover essentialist and historicist analysis in comparative studies of toleration can be clarified, and the idea/practice of toleration can be theoretically understood.

I would like to close this part by stressing that the requirements of toleration are frequently brought forward as *prudence, morality* or *rationality* by contemporary philosophical theory. Moreover, in the part concerning the circumstances of toleration, I have tried to stress *justice* as another requirement of toleration complementing the requirement of prudence. Although, as Susan Mendus stresses, these requirements are not "mutually exclusive", but "mutually reinforcing" (Mendus, 1987: 10), I will primarily discuss *prudence* and *justice* as mutually reinforcing elements concerning the requirements of Ottoman toleration, and take others as complementaries. As mentioned before, I argue that it is mainly the expected or existing priorities/ characteristics/ objectives of the political rule/ruler that is conceptualized as the requirement of toleration. Hence, it is the requirement of toleration that primarily constitute the boundaries of toleration/intolerance in a given political order. I, therefore, take justice as the requirement of toleration at the Ottoman lands, because both religious and political conceptualizations of justice are firmly followed by the Ottoman rulers in order to sustain public order, wealth and their legitimacy. Moreover, when we conceptualize the requirement of toleration as one of the possible legitimacy grounds of political rule/ruler, prudence emerge as the most important mutually reinforcing element. As any political rule or the ruler should adhere to prudence in order to secure its legitimacy and continuity whatever the specific requirement is expected or attached to politics of toleration. Henceforth, this research argues for the intimate relationship between justice and prudence as characterizing different forms, levels and degrees of toleration in the Ottoman context.

### 2.3. Summary and Plan of the Next Chapter

The main argument of this chapter is the need for a conceptual-theoretical framework for the category toleration, in regard to the Ottoman case, to take an approach that can be derived from contemporary philosophical debates. The objective of deriving such a framework is related with the attempt to clarify *different linguistic uses of the toleration, the semantics of the concept* and *presenting circumstances, requirements, levels and degrees* of the category. As such, it is aimed to view Ottoman case through a theoretical lens which can help us to systematize the knowledge on Ottoman toleration.

Moreover this framework will enable us to argue that there is not 'pure tolerance' as Preston King claimed. In other words following this derived conceptual framework will help us to describe different forms of intolerance and its negations- tolerance and toleration- to different levels and degrees. Finally, a closer look at the requirements of toleration will also help us to see that toleration is the response given to an important difference stemming from various needs, such as *prudence, and justice,* which can confirm the possibility of multiple justifications concerning the act of toleration.

The next chapter deals with Western historiography on toleration in order to make a comparative methodological analysis between Western and Ottoman historiography. As such, it attempts to discuss the possibility of treating Shiites and Shiite inclined heterodox orders as also the religious Other of the Empire, which is kept in the background when compared with Christians and Jews.

**CHAPTER III**

**3. WESTERN HISTORIOGRAPHY ON TOLERATION**

> *Historically speaking, the story of toleration must be told not according to a single, more or less cohesive narrative, but as the tale of many divergent and potentially conflicting visions"* (Laursen and Nederman, 1996:5).

In the previous part, the discussions of contemporary liberal philosophy on the category of toleration and a derived conceptual-theoretical framework from these discussions were designed to view the Ottoman case through a theoretical-conceptual lens. This part, on the other hand, will present the narrative of Western historiography, via which I attempt to investigate the possibilities of a dialogue between it and Ottoman toleration in order to explore the reasoning pertaining to Ottoman world, by either adopting, revising or investigating particular methodologies or arguments of Western historiography. This attempt may enhance our understanding of the background of the discussions on Ottoman toleration, which are nourished by, yet at the same time, avoid, these discussions. This avoidance is due to the issue of toleration only occupying a limited place within the broad historiography of the Ottoman Empire. As such, in this part, on the one hand I attempt to benefit particularly from the methodology and arguments of the Western historiography in order to unveil the links of the debates concerning Ottoman toleration, and on the other, I raise the question of the possibilities of new perspectives concerning the hints that may be gathered from Western historiography.

So, what was the narrative of theories of religious toleration which contemporary philosophical theory also acknowledged as the origin of discussions on toleration? Moreover, can this narrative, theories of religious toleration, provide any insight concerning the Ottoman experience? These will be the guiding questions of this part, particularly focusing on the narrative of religious toleration.

### 3.1. Narratives of Religious Toleration at Different Times and Spaces of Europe

The narrative of theories of religious toleration is predominantly told by Western historiography. Despite the overwhelming consensus on the period of Reformation, which called for religious theories of toleration, the western historical literature investigating the emergence of the theories of religious toleration give us neither *a linear narrative* nor a *unique origin concerning the genealogy* of the theories of *religious toleration*. On the contrary, this historical literature on the emergence of the theories of religious toleration introduces us a rich world of varying narratives, each of which excavates different spaces of, and times in Europe in order to reveal the signs of intolerance/tolerance, and concomitant philosophical, theological and political attempts of religiously constructed justifications/requirements of toleration. As such, via the western historical literature on religious toleration, we firstly wander in the worlds of the late ancient and medieval periods, and then the Reformation and the Enlightenment eras of Europe, each of which in its own context provides illuminating discussions of religious intolerance and toleration. This particular research agenda of *the historiography of toleration*, together with its motivations and methodologies are very well summarized by Schribner, a considerable scholar on German Reformation history. He states that "the historiography of tolerance" deals with "the idea of tolerance and its theoretical foundations" and "largely focused on the questions of religious liberty, on how to deal with religious heterodoxy and dissent" (Schribner, 1996:32). His statement on the research agenda of the historiography of tolerance makes visible three important points worth examining in the Ottoman context as well. In other words, in order to present the methodological or conceptual links between the Western historiography and the debates on Ottoman toleration, the particular way of reasoning peculiar to Ottoman case should be questioned in terms of *theoretical foundations of toleration, the question of religious liberty* and *the religious heterodoxy and dissent.* As such, we can explore whether these points were also issues for debate regarding the Ottomans. Moreover, we can identify the different ways that these points are interpreted in the Ottoman context. This comparative analysis concerning Ottoman and western historiography on the subject of toleration will eventually be helpful in investigating the possibilities for contributing to the literature on the Ottoman toleration.

### 3.1.1. Emergence of the Heretic

The historiography of tolerance, in order to deal with the aforementioned points, follows a number of narratives that enlighten the heterodoxies and dissents in different periods and geographies of Western history, so that it can present the grand narrative of the idea of religious toleration and its theoretical foundations. The first genealogy of the historical studies on toleration can be presented as that which contributes to the argument that the polytheistic Greek and Roman Empire did no less face with religious difference than their monotheistic inheritors.[32] Despite the efforts to trace the origins of toleration to the polytheistic Greek and Roman Empires, this line of argument remains secondary, and the scene of toleration is commonly opened up by emphasizing the period when Christianity declared its superiority in the European lands. In this respect, the origins of the narrative of religious toleration, as far as Christianity is considered, traces back to the Roman Empire, the fourth century A.D., when the Roman Empire, had which hitherto followed pagan cults, declared Christianity as its official religion.[33] This official recognition of Christianity by the Roman Empire, accordingly, became a watershed in the history of religious toleration, because it changed the binary of *polytheism* and *religious other* on European lands to *monotheistic Christianity* and *its heretic*. In other words, the superiority of ancient polytheistic gods and their cults, which regarded Judaism and Christianity as the religious other, as unauthorized pagan cults, was replaced with superiority of Christianity in the western world, which now had to define its own religious other. Therefore, in order

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[32] Of course, there is also a large of group scholars who display their discontent with the attempts that traced the origins of theories of toleration to ancient times. Some of them display their position by launching their narratives from medieval or from Reformation and Enlightenment period. And, some of the scholars sometimes makes explanations why toleration was not an issue for ancient period: "At nearly all stages of their history the Romans were willing to accept foreign cult and practices; this de facto religious pluralism is entirely attributable to the polytheistic character of Roman religion and had nothing to do with principles or values sanctioning religious toleration, a concept unknown to Roman society or law and never debated by Roman philosophers or political writers", P.Zagorin, *How the Idea of Religious Toleration Came to the West*, p.4. Zagorin also presents some works that stresses the absence of concept of toleration in Ancient times: Peter Garnsey, "Religious Toleration in Classical Antiquity," in *Persecution and Toleration*.

[33] The encounter of paganism with the religions of the book is totally a different narrative, which is out of the scope of this research. Yet John B. Henderson states: "All but unknown in the era before the rise of great religions. The heretic attained the status of the "ultimate" other in these post-classical civilizations. He was all the mire dangerous because the threat he posed came from within the culture, though it might be imaginatively associated with dark forces from beyond the pale. To control this threat required the strenuous and disciplined efforts of the greatest philosophers and theologicians in several religious traditions." *The Construction of Orthodoxy and Heresy, Neo-Confucian, Islamic Jewish, and Early Christian Patterns,* p. 1.

to "state their identity and define the boundaries of their community", early Christians focused on "developing doctrine" (Goddard, 1995:49), which inevitably brought the definitions of orthodoxy and heretic. "Enforcing orthodoxy" has become relatively easy considering "the official status of Latin Christianity and the growing intersection of the powers and the interests of the ecclesiastical magistrates and secular rulers" (Laursen and Nederman, 1998: 17).

Christianity, as one of the largest monotheist religions dealt specifically with this religious other under the name of heresiography.[34] In order to present "scientifically the errors of others" [35], deviating from "the right or correct opinion"[36], Christian heresiography declared Catholicism as the orthodoxy, and its deviant sects, namely Protestantism and its denominations[37] as the heretic. This binary was a powerful division, as the true Christian creed, Catholicism, and its heretic, Protestantism and its denominations, was defined by the Church synods and councils (Henderson, 1998: 11). As Nederman stated, "the heretic, while claiming to be a true Christian, posed a direct threat to the unity of orthodox faith that was regarded as the hallmark of the universal church" (Nederman, 2000: 7). Although heresy, deviance from the true Christian faith, was not the only form of deviance or dissent in ancient and medieval Christianity, it appeared to be major source of antagonism considering the boundaries of Christianity. A*postates, infidels, and the schismatic* were also deviant or dissenters (Henderson, 1998: 18), but these did not pose as important a threat to true Christian belief, Catholicism, as Protestants.

Christianity sometimes declared infidels, especially Jews and Muslims, also as heretics (Henderson, 1998: 19), but in fact these were not condemned in the way that

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[34] This does not mean that Islam did not have the branch of heresiography. The Islamic heresiography will be discussed later in details,

[35] Heresiography is defined as "the science of errors of others", John B. Henderson quotes from Wasserstrom, *Between Muslim and Jew*, p.154 in *The Construction of Orthodoxy and Heresy, Neo-Confucian, Islamic Jewish, and Early Christian Patterns*, p.2. In this respect, heretic is the one who makes the error.

[36] "The Greek roots of the English word ortho and doxa, mean "the right or correct opinion." Henderson, *The Construction of Orthodoxy and Heresy, Neo-Confucian, Islamic Jewish, and Early Christian Patterns*, p.18.

[37] In addition to the division of Catholicism and Protestantism, each furthermore split up into rival confessions. When Orthodox Christians were the part of Catholic Christians, "Lutheran, Reformed (known colloquially as Calvinist), Anabaptist, and others" were the confessions of Protestantism itself.

heresy implied. Non-Christians were labeled as infidels, and they "had always remained distinct peoples-alien tribes who worshipped different gods." (Kaplan, 2007b: 2-3). Thus the unbelievers were less a source of dissent and antagonism for Christianity, when compared to heretics. The Dutch case, in this sense, provides some important insights into the practices of toleration/ intolerance concerning other religions under Christianity.[38] Indeed, the Dutch case supports my forthcoming argument that the treatment of other religions (i.e. Jews and Muslims in the Dutch case) presents striking common features with the Ottoman appeal to Jews and Christians. The most important commonality between the two is the affirmation of the priority of other sect(s) as the religious Other, in terms of act/idea of toleration/intolerance. The Dutch Empire officially accepted Calvinism in the sixteenth century. It thus officially promoted the position of the Reformed Church, yet did not enforce either registering with a church or regular attendance. In fact, the ruling elite were interested more in sustaining public order than the theocratic tendencies of Calvinism (Parker, 2006: 269). In order to do so, after declaring the superiority of Calvinism in Dutch lands and monopolizing public religious observance, Dutch rulers granted freedom of conscience to everyone. Yet, this did not mean that the boundaries of this freedom were not drawn. On the contrary there were specific regulations in relation to acceptable forms of belief and worship.

The Dutch rulers strictly prohibited Catholicism, and restricted other Protestant denominations (i.e.: Lutherans, Mennonites, Remonstrant), yet reserved a particular freedom for the Jews and Muslims. Being at war with Catholic Spain was the most influential reason for the strict pressure on the belief of the Catholics. As Parker stated:

> the Dutch government by the early 1580s, had outlawed all expressions of Catholic devotion and secularized all Church properties, Anti-Catholic edits against worship, priests, processions, catechetical instructions, religious women, images, and other expressions of papist

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[38] I chose the case of Dutch Empire, as the scholars find similarities between Dutch and Ottoman experiences of toleration/intolerance. Charles H. Parker, for example, finds a similarity between the Dutch Empire and Ottomans, as both were rules in a religiously pluralistic environment. Although religious pluralism is a well-known characteristics of the Ottoman Empire, Dutch case is given a specific emphasis as an exceptional case running counter to much of the rest of Europe, because it encountered with this religious pluralism namely after its revolt against Spain at the end of the sixteenth century (Parker, 2006: 271). Moreover, the availability of research on the Dutch Empire concerning other religions was also influential for particularly focusing on this case in order to make a comparative analysis between Ottomans and Dutchs regarding their policies of religious Other.

superstition reappeared periodically throughout the 17<sup>th</sup> century (Parker, 2006: 273-274).

Such regulations displayed that Catholics were neither persecuted nor subjected to physical violation. Yet, as Parker argued, Calvinists "engineered a process of Protestanization through social and economic pressure (Parker, 2006. 274). Although the Protestant denominations were subject to less pressure compared to Roman Catholics, they also shared the restrictions of the limited religious freedom, and were under constant political pressure from the Dutch government until 17<sup>th</sup> century. These Christian dissenters, thus, in terms of religion, had to "organize discreetly, worship privately, and be buried alongside Calvinists", yet they enjoyed most civil rights except appointment to governmental offices (Kaplan, 2007b: 12).  In this respect, they were in fact like Jews and Muslims, remaining outside of the scope of the religious limitations of the Dutch Empire, although they suffered more from civil disabilities (Kaplan, 2007b: 11).

Jews had the rights of self organization, holding their own worship places, constructing their synagogues, and having their own cemeteries (Parker, 2006: 273; Kaplan, 2007b: 12). In contrast to the strict boundaries formulated for Catholics and some other Protestant denominations in terms of the public presence and visibility of their religions, the Jews were officially permitted a public presence. There are two different yet interrelated explanations for such an attitude. Parker argues that Jews were permitted those rights because "they remained outside the Christian order, and they did not contest the identity of the public church" (Parker, 2006: 273-274). Kaplan, refers to Peter von Rooden, and reemphasizes a more elaborate explanation to this situation. He states, they were treated in a more positive manner because they were "foreigner" or "outsider" (Kaplan, 2007b: 13). Moreover Kaplan includes the Lutherans into the domain of accepted and non-prohibited religious dissenter, as in the 17<sup>th</sup> century they were allowed to establish Churches, albeit without towers or bells (Kaplan, 2007b: 12). Kaplan argues this was due to the "foreignness" they shared with the Jews. Jews, speaking mostly Portuguese or Yiddish, writing in Spanish, and Lutherans as the first or second-generation immigrants from German lands remained as foreigner in the Dutch social and religious life (Kaplan,2007b: 13). It is in this sense that they were not treated as posing a threat to the Dutch political and religious order, despite their visibility. The same mentality applied also

to the Muslims. They were considered as foreigners, to whom the response should be hospitality according to Hugo Grotius (Kaplan, 2007b: 13). In sum, regarding the Christian dissenters, the Dutch Empire officially suppressed them, but informally permitted private worship (toleration in the form of connivance in Kaplan's expression), while Jews and Muslims were officially protected.[39]

Apostates were all together another topic for Christian heresiography, and were regulated in similar manners in all monotheistic religions. Conversion to a religion different to the official religion of the lands meant heresy; thus apostasy was punished by execution. As far as schismatic are considered, the Catholics managed to live with them in peace without even the need for discussion of toleration, as they "acknowledged not the pope but the patriarch of Constantinople and his colloquies as their spiritual leaders….whose faith did not differ essentially from their own (Kaplan, 2007a:3). Yet, Christian theology also drew attention to the fact that an "inveterate or long-standing schism might pass over heresy" (Henderson, 1998: 19). Accordingly, superiority regarding all aspects of life in the medieval and early Christian history was regarded as opening a new stage in the history of Europe as persecution,[40] which primarily targeted the heretics

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[39] Parker sees an analogy and makes a comparison between Roman Catholics living under Calvinist Dutch Empire, and Jews and Christians living under the rule of Ottoman Empire. Thus, he contrasts the formal proscription of the Catholics by the Dutch Empire to the protection of Jews and Christians by the Ottomans (Parker, 2006: 270). Yet, I think we should rather compare the policies in relation to Muslims and Jews in the Dutch Empire, with the Jews and Christians in the Ottoman Empire. It appears that both threat the other religions in a considerably similar way. Both Empires officially recognized some of the rights of the unbelievers, though in different ways. Moreover, I argue that, we should rather compare the Catholics of the Protestant Dutch Empire with the Shiites of the Sunni Ottomans. As, for both they are the heretic, religious Other, that are treated as a more important threat than non-believers to the officially promoted religion and sect. In this respect, it is a matter of question whether the policy of official suppression and informal provision of private worship for Catholics was also relevant for the Ottoman policy-makers. The answer will be sought in the following parts not for making a comparative analysis, yet for presenting the attitude of Ottomans towards its heretic.

[40] The signs of labeling this period as the era of persecution rather than the era when the theories of religious toleration emerged can be clearly observed as a strong tendency in the literature. Such an observation stems from two interrelated veins of historical literature concerning their emphasis on the genealogy and discourse of religious toleration. The first line of discussions associates the rise of theories of religious toleration with reformation era. *Rise of Toleration* by Henry Kamen is a good example in this sense, as he is one of the earliest historians concerning the history of religious toleration. In this respect, we can accept that the literature on the history of religious toleration which inaugurates their focus era with Reformation and then continues with Enlightenment obviously reject the possibility that the origins of theories of toleration may be traced back to early European and medieval Europe. Moreover, there is also another line of discussion in the historical literature concerning religious toleration, which excludes not only pre-Reform era form their focus

as the religious other. Furthermore, it is also overwhelmingly agreed that it was Reformation era when the heretics, i.e. Protestantism and its confessions, became more visible and antagonistic than ever for orthodox Christians. It is not hard to argue the validity of the same mentality regarding the religious Other of the Protestants. For them, too, rather than infidels and schismatic, it was primarily the Catholics who were religious Other, as the Dutch case, mentioned above, confirms.

### 3.1.2. Religious Toleration/Intolerance: Pre-Reform vs. Reform Era

The arguments of the scholars who dealt especially with the eras which pioneered the Reformation, attempted to discuss "the principled (not simply pragmatic or politique)" character of existence of theories of religious toleration (Nederman and Laursen, 1996: 8; Nederman, 2000: 117). By focusing on the medieval authors, Nederman demonstrates how their thoughts called for toleration even before the Reformation era, with the principled arguments:

> Whether because of the frailties of the human mind and understanding (as conceived, for example, by Peter Abelard and John of Salisbury), or the material needs of the members of the human community (Marsiglio of Padua), or the ordained patterns of sociocultural development (Nicolas of Cusa, William of Rubruck, and Bartelomé de Las Casas), these authors embraced, if only indirectly, some policy of toleration as a result of their conception of the natural predicament of humankind. Tolerance is required because intolerant practices are not and cannot be efficacious in light of some significant and irremovable dimension of human existence. Toleration is, therefore, not a good or an end in itself, but a course of action or inaction sanctioned, ultimately, by God himself inasmuch as He created and endowed humanity with certain capacities and frailties" (Nederman, 2000: 5).

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era, but at the same time stresses the persecuting character of medieval and early European Christianity. The identification of medieval and early European history with persecution of religious other recently has been challenging by another group of scholars, For such a review of the literature please see: C. J. Nederman and J. C. Laursen (eds.), *Difference and Dissent Theories of Toleration in Medieval and Early Modern Europe*, Laursen and Nederman (eds.), *Beyond the Persecuting Society Religious Toleration before Enlightenment*, C, J. Nederman,*Worlds of Difference: European Discourses of Toleration*.

In this respect, some scholars dealt with the pre-Reform era in order to argue that it is in this period that we can witness the principled justifications of religious toleration. However, despite the efforts to name the pre-Reform period as one that called for toleration, it was the era of Reformation period and the following "age of religious wars", 1550-1650,[41] when the emergence of toleration became inevitable. Kaplan summarizes this period as follows:

> We think of that age, which followed the Protestant Reformation, as one of repression in many spheres and persecution in the religious. Black-clad Puritans established theocratic regimes, banning the pleasures of the flesh and hunting reputed witches. Catholic inquisitors ordered heretics burned at the stake, while their kings strove for absolute power. Mobs committed atrocities in God's name, and a serious of religious wars pitted Protestant and Catholic armies against one another on a continental scale (Kaplan, 2007a:2).

Such a justification is again best explained by Benjamin Kaplan. He concludes because the movements were "continental in scale", and because "the millions of Europeans experienced the divisions in an intensely intimate, local way" (Kaplan, 2007a: 3-4), religious divisions did not become an important concern, not only for religious men, but also for politicians and ordinary people until the Reformation, and the following era. Thus, it is commonly agreed that, only in such a context, with war taking place both on continental and local scales, it became a matter of importance to deal with the emerging forms of *religious pluralism*, i.e. the heretics and their dissent. In fact, there is one more concern regarding the attempt to label post-Reformation as the one in which tolerance emerged: the distinction between toleration and concordance (Nederman and Laursen, 1996: 9). Concordance, as the dominant idea of sixteenth century, allowed Catholics and Protestants live in the unity of faith and politics. This unity, however, did not imply the acceptance of differences, but "temporary forbearance" (Nederman and Laursen, 1996: 9). Therefore, toleration was the opposite of Concordia, and could not become an issue until the period following the mid sixteenth century. Within such a background, the Reformation era is closely scrutinized by Western historiographers in order to introduce theories of religious toleration, which investigated the justifications of toleration in

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[41] In the periodization of the Western historiography, the Reformation and counter-Reformation belong to early modern history, and it is followed by Enlightenment era as the signifier of modern Europe. The era pioneered the early modern era, on the other hand, is identified with Medieval era in terms of periodization.

theology, although these justifications were not always offered by religious men.[42] In other words, the frequent concentration on the era of Reformation as the opening scene in theories of religious toleration was closely related with the shaking of the firm superiority of Christianity in the European lands, which concomitantly entailed new discussions concerning the "freedom of conscience and freedom of worship" (Grell, 1996: 1). The sources of religious toleration in this era were underpinned mostly with the ideas of *humanism* and *skepticism,*[43] each of which had theological justifications. Additionally, "free trade and mercantilism" were also discussed as "promoting greater religious liberty" (Grell, 1996: 2). It is in this respect that Erasmus, Sebastian Castalion (1513-1563), Michel de l'Hopital (1507-1573), Francois de la Noue (1531-1591), Jean Bodin (1520-1596) emerged as the Reformation era figures who contributed to the theological and philosophical justifications that led to the emergence of theories of religious toleration.

The narrative of religious theories of toleration, as briefly outlined here, dealt on the one hand with the principled ideas of the need for religious toleration, while on the other the political requirement of religious toleration is also emphasized by the concept *prudence,* whatever the time and wherever space. From the perspective of the debates of prudence, "pragmatic conjuncture" (unusual constitution, political, social and economic situation)[44], and its mainly economic considerations are presented as the requirement of toleration rather than theological or philosophical principles concerning it.[45]

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[42] The best treatment of literature that identifies Reformation era with toleration is: W. K. Jordan, *The Development of Religious Toleration in England* 4 vols. and J. Lecker, *Toleration and Reformation*, 2 vols., O. P. Grell and B. Schribner (eds). *Tolerance and Intolerance in the European Reformation.*

[43] For the "symbiotic relationship between toleration and skepticism", King, *Toleration*, pp.122-131. quoted in Nederman, "Toleration, Skepticism, and the Clash of Ideas: Principles of Liberty in the Writings of John of Salisbury", in *Beyond Persecuting Society*, p.53.

[44] For an important research that stresses the primacy of economic requirement, prudence, of religious toleration please see: B. Schribner, "Preconditions of Tolerance and Intolerance in Sixteenth century Germany," in *Tolerance and Intolerance in the European Reformation*, p.32. Bob Schribner, while approaching his case of Erfurt, Germany, states that: "the degree of religious toleration thus achieved was dependent not on any ideals about the philosophical or theological desirability of toleration, nor an altruistic regard for the minorities, but was a consequence of Erfurt's unusual constitution, political, social and economic situation, what might call a 'pragmatic conjuncture', which overrode other, under different circumstances stronger, considerations tending towards intolerance and even fanaticism.", "Preconditions of Tolerance and Intolerance in Sixteenth century Germany", in *Tolerance and Intolerance in the European Reformation*, p.32. As we can obverse in this statement, an important historian on German reformation, refuses *philosophical or theological desirability of toleration*, while explaining the toleration experience of

The following parts, after this presentation of the narrative of the Western historiography, will examine the following questions: What is the relevance of these narratives of Western historiography for the Ottoman Empire? How can research on Ottoman toleration benefit from the expertise of these disciplines, considering their systematic concentration on toleration as an answer to religious difference? Or, did Ottoman Empire also follow the similar methodology? Thus, the next part will present the religious other of the Ottoman Empire, making a comparative analysis between the construction of the religious other by each religion –Christianity and Islam-, and will attempt to make links between the vocabulary of the Ottoman toleration and that of Western historiography.

### 3.2. The Religious Other: A Dialogue between Western historiography and Ottoman Toleration

As far as the content of the works produced on toleration by western historiography are concerned, first of all we should conclude that it is the *religious theories of toleration* and *their principled justifications (neither pragmatic nor politic)* on the one hand, and *pragmatic conjuncture* (unusual constitution, economy, politics and society) on the other, that are to be investigated, when dealing with the dissent of the religious Other. In other words, when grounding the foundations of religious toleration, they followed *morality, skepticism, humanism* and/or *rationality* discussions, or *prudence* as the principled justifications, which in fact refer to the requirements of toleration concerning conceptual-theoretical framework. As far as the religious theories of toleration are concerned, it is the religious figures of Christianity, either orthodox or heterodox, and their theological justifications that prevail in relation to *the community's welfare* or *individual's right*.

Erfurt. Thus, throughout his work, he avoids philosophy and possible philosophical normative theories of toleration. In fact, such a position is not an exceptional case of Schribner, yet, we can admit that the dialogue between philosophical normative theories and history, particularly in the case of toleration, is almost never established. The criticisms, raised particularly by Susan Mendus that targets purely pragmatic analysis have been already stated.

[45] Ole Peter Grell stresses the discussions concerning the "significance of free trade and mercantilism", in other words "the economic considerations" rather than emergence of Protestantism in promoting religious liberty in the age of Reformation. O. P. Grell, "Introduction", in *Tolerance and Intolerance in the European Reformation*, p. 2.

Moreover, these theories privileged the Christian heretic as the religious Other and who should be addressed regarding the issue of toleration.

The investigation of the *theoretical foundations of religious toleration* in order to secure freedom of conscience, its analysis according to the definition of *religious orthodoxy and heterodoxy*, and analysis of *pragmatic conjuncture* have also been characteristics of the literature on Ottoman toleration. This literature nevertheless privileged the *infidels* rather than *heretics*, while focusing on both principled requirements and pragmatic conjuncture concerning religious toleration. Although it is very much related with the Islamic identification of toleration and non-Muslims, it seems important to investigate the real heretic of the Ottomans regarding religious dissent and its regulation. The main concern of this part of the research, in this sense, is primarily to investigate the heretic of the Ottoman Empire, which will help us to consolidate the requirement of religious toleration. But before this, I will briefly refer to principled justifications of Islamic/Ottoman toleration, and pragmatic conjuncture and Ottoman toleration relationship regarding *infidels* as the heretic.

### 3.2.1. The Religious Other: the Kâfir (Infidel)?

In Islam, similar to Christianity, the freedom of conscience and worship were important questions, despite the acknowledgment of Islam as the true belief, or the absolute Truth. However, this freedom, different than Christian and Western emphasis on the primacy of the individual, accepted the precedence of the interest of the society over the individual.[46] Accordingly, individual freedom was regarded as sacred as long as individual freedom of conscience posed no threat to the *public interest (maslaha)* by violating the laws of God or the rights of others (Yousif, 2000: 35). Therefore, as well as in the West, in the East, the religious foundations for the freedom of belief and faith have been investigated in order to find a justification for religious toleration. In other words, this is a common way to justify toleration in religious terms for both the West and East.

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[46] Whether it is the individual or society, whose interests are regarded as the primary objective of the Islam is open to debate. While a group of scholars discuss the supremacy of interest of the society over that of the individual, like Ahmed Yousif, there is yet another group argues for the latter's' superiority. Salam. "Emergenge of Citizenship in Islamdom," *Arab Law Quarterly.*

Accordingly, *rationality*, *humanism*, and *skepticism* have also been identified as particular ideational traditions attributed to Islamic justifications of toleration, particularly concerning *heterodox Islam* (Goldzier, 1981: 165). Yet, it was the idea of rationality and justice that prevailed in Islam, particularly concerning the Quranic statement of *no-compulsion in religion* and respectively *dhimma status* accorded to *infidels*. In this respect well-known quotations from the Qur'an are cited in order to support the claim of the tolerant aspect of Islam:

> Let there be no compulsion in Religion: Truth stands out clear from Error: whoever rejects Evil and believes in God hath grasped the most trustworthy hand-hold that never breaks. And God heareth and knoweth al things.

> O ye who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents or your kin, and whether it be (against) rich or poor: For God can best be protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice), or decline to do justice, verily God is well-acquainted with all ye do.

> O mankind! We created you from a single (pair) of a male and female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verify the most honored of you in the sight of God is (he who is) the most righteous of you. And God has full knowledge and is well-acquainted (with all things). [47]

The above mentioned excerpts are the most widely applied regarding debates of Islamic tolerance. The first stresses that Islam permitted *the freedom of conscience* and *religious plurality,* with its emphasis on the requirement of *no-compulsion in religion*, or importance of the *faith and will*. The second recalls the understanding of *justice,*[48] and the third stresses *the unity of mankind*. Therefore, the general conclusion regarding the theological sources of tolerance in Islam asserts that "the Islamic world view, which is built upon the universal principles of unity, justice and benevolence, is consonant with the very

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[47] In sequential order: Surah al Baqarah (2): verse 256, Surah Al Nisa (4): verse 135 quoted by Syed Othman Alhabshi and Nik Mustapha Nik Hassan ed., *Islam and Tolerance*, ix, p. 57, 52.

[48] Only the theological roots of justice concept will be incorporated into the scope of this research in order to present its practice and conceptualization in the lands of the Ottoman Empire. Justice understanding, which is usually interpreted independent of the idea and practice of the Ottoman toleration, will constitute an important part of this research, presented in the following sections. In other words, rather than reviewing the already existent literature on the Islamic tolerance/intolerance, the justice understanding of Islam and its re-conceptualization as a policy by the Empire will be given priority within the framework of this research.

nature of the human soul" (Alhabshi and Nik Mustapha Nik Hassan, 1994: 2) and also, therefore, with toleration. If Quranic statements were stressed by the Islamic philosophers to justify the tolerant character of Islam, the Quranic doctrines of cihâd (*jihad), haraç (kharaj), cizye (jizya), dhimma status of Dâr-ü-lharb , practices of conversion* and the regulations of *religious law concerning zimmî (dhimma)* in the Islamic lands were commonly stressed as expressions of Islamic intolerance/tolerance by another group of scholars.[49]

This literature, which puts forward the case for regarding Islam as intolerant, treats *haraç* and *cizye* as burdens that enable "to pursue jihad without hindrance" (Bat Ye'or, 1985: 52) via the fiscal restrictions they charge to the members of other religions. These fiscal restrictions are not regarded as providing a context for toleration, even a discriminatory one, of the other religions. On the contrary, they are interpreted as the mechanisms for forcing conversion (even though the actual act of conversion was voluntary). According to this literature, being bounded by these fiscal restrictions, conversion, the prerequisite of *cihâd*, emerges almost as a coercive option concerning the member of other-religions, as accepting conversion would mean lifting the heavy tax burden from the shoulders of recent converts. In this respect, *cihâd, haraç* and *cizye* symbolize intolerance in the Islamic lands because they are seen as the background mechanisms for forcing conversion. In fact, while *cizye* is an openly discriminatory regulation on the *zimmî* population, regardless of whether it leads to conversion or not, it is also accepted as obvious basis of toleration from the *zimmî* point of view, because it allowed the co-existence of other religions along with Islam despite fiscal constraints. This vein of literature, accordingly, although attributes intolerance to Islamic regulations concerning the members of other religions, it at the same time acknowledges a limited understanding of toleration (conceptualized as non-persecution) that treats non-Muslims

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[49] H.,İnalcık, *The Ottoman Empire The Classical Age 1300-1600*: "Cizye (Jizya): The poll-tax paid by non-Muslims in Islamic states",p.219; "Haraç (kharaj): a poll-tax paid by non-Muslims in Islamic states"; p.221; "Dârülharb: 'the abode of War', the non-Islamic lands", p.219. For some articles, which particularly discusses the above mentioned concepts, and also questions the 'myth' reserved to the Ottoman Empire regarding its relationship to Christians and Jews, please see: Ibn Warraq, "Foreword: The Genesis of a Myth", 13-26; Robert Spencer, "The Myth of Islamic Tolerance",29-56; Samuel Shadid, "Rights of Non-Muslims in an Islamic State", 59-72; Walter Short, "The Jizya Tax: Equality and Dignity under Islamic Law?", 73-90, in Robert Spencer, (eds.), *The Myth of Islamic Tolerance, How Islamic Law Treats non-Muslims*.

as second class citizens (Warraq, 2005: 15, 18; Short, 2005:94; Ye'or, 1985: 55-74,117-118; Shadid, 2005: 63, Littman and Ye'or, 2002: 100). [50]

As far as the Ottoman Empire is concerned, even from the *zimmî* point of view,[51] it is commonly agreed that "the Turkish conquest inaugurated a much more tolerant era, and the situation of dhimmis greatly improved in the regions under Ottoman rule, particularly during the sixteenth century" (Ye'or, 1985: 62), as the Ottomans allowed "a degree of freedom and even encouraged the social advancement of their elite" (Ye'or, 1985: 78). Thus, these debates, focused particularly on the existence of the Ottoman "millet system and particular laws" regulating the *zimmî*, Christians and Jews. [52] Ottoman Empire, indeed, was committed to conservatism in terms of preservation of the order, thus followed Islamic tradition and Law regarding the status of non-Muslims living in its newly conquered lands. The laws of the Empire, particularly the *fetvâ* (fatwa),[53] therefore took into account the rights and obligations, formulated in the *Pact of Umar*, previously concerning non-Muslims. In this respect, after converting its lands into tribute paying territories, the Ottomans accorded non-Muslims the status of *ahl-al dimma* (İnalcık, 1997: 14,) and started to collect *cizye* from all able-bodied adult male dhimma.[54] Starting with the reign of Mehmet II, *ahl-al dimma*, Christians and Jews, were legally protected in the Empire. [55] The *millet system*, despite the ambiguity of the concept,[56] was regarded as

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[50] It was not only fiscal restrictions, but also vestimentary restrictions that were also treated as an important basis for the second-class status attributed to dhimma population.

[51] Bat Ye'Or is one of the important scholars concerning the studies on Islamic tolerance from a dhimmi point of view.

[52] For the best volume, which is still the most important source on the millet system and the Jews and Christians in the Ottoman Empire see Braude, B & Lewis, B. (eds), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*. Moreover: Molly Greene ed., *Minorities in the Ottoman Empire*; Bat Ye'or, *Islam and Dhimmitude, Where Civilizations Collide*; Bat Ye'or, *Dhimmi, Jews and Christians under Islam*.

[53] H.,İnalcık, *The Ottoman Empire The Classical Age 1300-1600*:"Fetvâ: a written answer to a legal question, issued by the şeyhülislâm or another müftî", p.220 "Şeyhülislâm: the head of the hierarchy of the ulema", p. 225; "Ulema: the doctors of Muslim canon law, tradition, and theology",p.226; " Müftî: an officially appointed interpreter of the şerîat", p.223; "Şeriât:the sacred law of the Islam", p.225.

[54] Jennings in his *Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri* argues that despite the existence of controversies among Muslim scholars, the non-Muslim religious class was exempted from paying the jizya, p.240.

[55] Macit Kenanoğlu, in his book *Osmanlı Millet Sistemi Mit ve Gerçek*, argues that even before the reign of Mehmet II, in the early formation period of the Ottoman Empire, Islamic policy of ahl al-dhimma and eman (protection) was pursued. p.71.

the evidence of this legal recognition and protection for almost four million non-Muslims in Balkans and one hundred and fifty thousand non-Muslims in Anatolia by the end of the fifteenth century.[57] Before explaining the discussions concerning the reality/myth of millet system, it may be advantageous to present a bird-eye view of the literature which supports its existence; a literature consists of contributions from a considerable number of historians. It is commonly agreed that via the millet system, the Empire provided a degree of autonomy, though limited, regarding religious issues to *ahl al-dhimma*. It did so by leaving religious and intra-communal issues, such as marriage, divorce, inheritance, custody, burial, education, keeping order, collection of the taxes, to the domestic authority of Chief Rabbi of Jewish millet and to Patriarch of Christian millets. They were allowed to solve any issues regarding their own communities except criminal law, land registration and cases involving Muslims, in their ecclesiastical courts (Gradeva, 1997: 41, Jennings, 1978: 271). Yet, at the same time, the Empire secured the right to apply to Islamic courts if the non-Muslims subjects preferred so, in any situation. In other words, they were free to take advantage of the legal pluralism in the Empire. Interestingly, there is much research based on Kadî sicils (court records) that presents the active involvement of non-Muslim subjects in the Muslim courts (Gradeva, 1997; Jennings, 1978). The reason for such a preference appears to be related with the more favorable outcomes that the Muslims courts provided, particularly in the cases of marriage, divorce and inheritance.[58]

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[56] The ambiguity and ambivalence of existence/absence of millet system became a concern for Ottoman historians particularly after Benjamin Braude's controversial article, *Foundation Myths of the Millet System* in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society,* Braude, B & Lewis, B. (eds). His discussion mainly states that the concept of millet did not refer to non-Muslims, despite occasional use of the term. In these occasional and exceptional cases, furthermore, it referred to foreign Christians or Jews as opposed to non-Muslims of the Empire, pp. 70-71. He arrives to this point after investigating the use of concept of millet in pre-Tanzimat sources, and reveals that for the Christians, concepts emphasizing ethnicity such as Rumi (Greek), Ermeni (Armenian), and Latin (Roman Catholic); for the Jews Yahudi and rarely Musevi are incorporated. Moreover in the Arab lands nasara; and gebran (Christian infidel), zimmi (Turkish pronunciation of the Arabic dhimmi), taife (group, people, class, body of men, tribe), and cemaat (congregation, religious community) are the concepts that are used, p.72. In conclusion, he makes the statement that "millet in the empire's heyday did not denote an autonomous protected community of non-Muslim Ottoman subjects", p. 70.

[57] According to İnalcık, by the 1490, there were in Balkans 674.357, and in Anatolia 32.628 poll-tax paying non-Muslims (İnalcık, 1997:29).

[58] Gradeve in Orthodox Christians in the Kadî Courts, 17th century summarizes the cases that the Christians apply to Muslim courts as follows: to obtain a divorce, to conclude a second or subsequent marriage, to marry a relative whom one could not marry according to Church, to confirm an act that previously had been certified by the ecclesiastical courts, be it a marriage or divorce, to avoid allegation of immoral behavior by the police functionaries, to have their inheritance rights which are limited to men in Christian customary law, "Orthodox Christians in the

Thus, pragmatic concerns of the non-Muslims, most of the time, overcame the religious considerations, despite the Church's attempt to prevent the contact between its flock and Muslims, particularly from the sixteenth century onwards (Gradeva, 1997: 44, 51).[59] Although each of the millets was equal in terms of the rights and obligations in accordance with their *ahl al-dhimma* status, it is now considered that the Jewish Rabbi took precedence over the others, probably because they were less a threat to Islam regarding their lack of territorial base (Olson, 1979: 76). The prudential objectives for permitting, and empowering the structure of millet system, on the other hand, were clear. They were mainly aimed at "breaking the power of the landed lords in the Balkans and Anatolia," and "undermining the potential of a united Christian crusade against the Ottoman Empire" (Olson, 1979: 75-76). This narrative, in fact, does not derive its explanatory power from the structure of millet system per se. Rather, it provides knowledge on the position of *dhimma* derived mainly from the Laws and Kadî sicills. Thus, although I am aware of the discussions on the existence/non-existence of millet system, I argue Ottoman Empire regulated the affairs with infidels with a specific mechanism, whether this be called the millet system, or something else, yet even so they were under the control of the central state rather than living as autonomous or semi-autonomous bodies.

The aforementioned boundaries of toleration discussions marked the subjects of Islamic tolerance or intolerance, particularly in the context of the Ottoman Empire, as Christians and Jews. Accordingly, the dissidents of Islam are predominantly presented as other monotheistic religions, rather than the heretic conceptualization of Western historiography, which has occupied the religious toleration discussions in Europe since

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Kadı Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century,"in *Islamic Law and Society*, pp. 62-63. Timur Kuran also adds the extensive dealing with Muslims, variations in court fees and superior powers of enforcement of Islamic court. p. 490-91. He moreover argues that this legal pluralism, the opportunity to choose between courts, resulted in a greater advantage for non-Muslims in relation to developments in the West concerning economy. They used the advantages of Western courts in solving their disputes mainly related to economy. T. Kuran, The Economic Ascent of the Middle East's Religious Minorities: The Role of Islamic Legal Pluralism." *The Journal of Legal Studies* 2004, p. 477.

[59] Gradeva's examples from nomokanons (civil and ecclesiastical laws) present the concern of the Christian Church for prohibiting the dealings with the Muslim community. In one of them issued in the beginning of 18th century the following statement takes place: "The Pagans should not know what you do among yourselves, neither should you accept any unbeliever as a witness [to your case], because this is a sin, nor should you be tried by them. You must own them nothing, either a tax, or fear…" (Gradeva, 1997: 44). The objective beyond such statements should be prevention of conversion to Islam (ibid., 44) as well as refusal of the dominance of the Islam on already acknowledged domains of autonomy.

ancient times. Moreover, because the main objective was already presented as revealing the lives of Christians and Jews in the Islamic Ottoman Empire, the concept of toleration and the conceptual vocabulary of the philosophical/normative theories, as well as critical theories, remained in secondary place in terms of importance.

While the principled justifications of the tolerant/intolerant character of Islam and/or Ottoman Empire are derived from theological sources, there is also another group of studies which contributed to the analysis of "pragmatic conjuncture" (the analysis of the unusual constitution, and the political, social and economic situation). These studies usually regarded toleration as "non-persecution, peaceful-coexistence, and absence of persecution", and once identifying toleration as such, they focused on how non-persecution, peaceful-coexistence, and absence of persecution were provided via the historical analysis of pragmatic conjuncture. Thus, they usually narrated either the relations between non-Muslims and Ottoman State, or between the heterodox orders and Ottoman State by privileging Ottoman history and its pragmatic conjuncture, rather than toleration per se. Moreover, at some points, there emerged studies which attempted to analyze Ottoman history by bringing together both non-Muslims and heterodox orders, yet these also privileged aspects of Ottoman pragmatic conjuncture, rather than toleration.[60] All of these remained close to the well-known characteristics of the Ottoman toleration, and in fact narrated Ottoman history from many different aspects; the legal system (Ottoman jurisprudence), everyday relations (cultural and social life), and the institutions of the State were variously focused upon by different studies.[61]

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[60] The work of Karen Barkey, *Empire of Difference* is important in this sense. Barkey, in her work, brings together both the non-Muslims and the heterodox orders as the "difference" of the Ottoman Empire. However, she interprets non-Muslims under the category of toleration, while she refers Sufi orders as the agents of dissent. Moreover, like the majority of the scholars she excludes the conceptual vocabulary of toleration, and takes toleration as non-persecution. Moreover, as she asserts that she wants to place to Ottoman Empire in the history of Empires, she mostly confines herself to the pragmatic conjuncture which narrates almost three hundred years of Ottoman Empire. In this respect, her contribution to the idea of Ottoman toleration is unquestionable in the sense that she dealt with religious other under the broader category of toleration and difference. Yet, it can be asserted that her attempt also lacked the systematic account to Ottoman toleration, as she ignored particularly the conceptual vocabulary of toleration.

[61] I will deal with the discussions of this literature in the following chapters.

The exceptional contribution of both veins of literature (the perspective of pragmatic conjuncture, and the principled justifications of Islamic toleration/intolerance) to the literature on Ottoman toleration is obvious. Especially the latter, the literature on Islamic tolerance/intolerance, although not primarily focused on the Ottoman Empire itself, made a considerable contribution to the literature on the Empire in two senses. Firstly, it helps us to witness the possible religious theories of Islam in a similar fashion to that of Western historiography, and secondly, it produced a concentrated knowledge on the content of Islamic laws concerning non-Muslims. In this respect, the observation of similar theological justifications of toleration, and moreover similar regulation of other religions, in either the West or the Ottomans, enhance my argument. It is not the essence of different religions that necessitates to treat religiously Other. Rather, it is the idea that, regardless of numbers, other religions are by definition minority and weaker, and therefore do not represent a great threat to the prevailing faith. In this respect, I argue that these studies have directly contributed to the portrayal of the relationship between the Ottomans and other religions, nevertheless they left the possible religious Other(s) as the subjects of toleration/intolerance.

Who was in fact the religious Other of the Islam and Ottoman Empire in the sixteenth century? What are the contours of this particular vocabulary with its own way of reasoning that characterized the religious other of Ottoman Empire, to whom the policy of toleration/intolerance was given as the answer? Can we say that, in the literature there is an over-emphasis on the position of infidels? Can the existence of cases presenting similarity between the treatment of the non-Christians in the European lands, and the non-Muslims in the Ottoman give us the clues for an alternative formulation of religious Other in the Ottoman lands? In this respect, can we argue that it is necessary to draw attention to the heretics, rather than infidels (non-Muslims) concerning the religious toleration/intolerance?

### 3.2.2. Religious Other: Zındîk/İlhâd (Heretic)?

The theories of religious toleration raised by Western historiography, while presenting their religious justification of toleration, based their works on the religious

other of Christianity. Christian toleration, or the principled justifications developed within Christianity, emerged in the first place to identify and deal with heretics, and to certain extent also with infidels. Therefore, the case of the heretics was primary in the doctrinal discussions within Christianity. Concerning toleration, Western historiography frankly states that it was the heretics, namely the Protestants, who were the main objects of tolerance or intolerance. The infidels, non-Christians (Muslims and Jews), on the other hand, were also dissenters, yet they were attributed a secondary importance. The reason for this, as presented previously, was the announcement of orthodoxy as Catholicism by the Church itself in order to distinguish the heterodoxy, or the heretics, from the orthodox belief. Thus, the heretics were the Protestants according to the Catholics, and vice versa. The infidels, on the other hand, did not much suffer from the violence characterized the relations between the sects of Christianity. It was probably because they were foreign, or the fact that religion necessitated hospitality or they were not a threat to, and in fact they were sometimes beneficial for, the dominant religion.

This research argues that it is necessary to follow the vocabulary of Western historiography concerning the religious other, as it presents a comprehensive set of concepts. This vocabulary, composed of terms of *orthodoxy, heterodoxy, heretics, schismatic and infidels* marks and analyses the religious other of Christianity to whom toleration/intolerance was given as the answer. Yet, one of the main concerns of this research, when attempting to make a comparative analysis, is to identify different ways of reasoning for each case. It is in this respect that the reasoning of the religious other can be narrated by tracing the *orthodoxy, heterodoxy, heretics, schismatic,* and *infidels* in Islam. This clearly shows that Islam and the Ottoman Empire had its own vocabulary and narrative of the religious other.

The search for heretics in the history of Islam can be connected to the early discussions within the Islamic community, which concentrated mainly on the "leadership of the community" and the question of "who was a Muslim."[62] The question of who was

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[62] Hugh Goddard, *Christians and Muslims: from double standards to mutual understanding*, p. 56. It was already stated that for the Christians "issues of doctrine were the most significant internal focus of early Christian thought", in addition to the discussions of "organization and leadership of

going to lead the Muslim community led to the emergence of three different lines of thoughts, which either stressed "spiritual merit (the Khawarji), blood relationship to Muhammad (the Shii'a, since 'Ali was Muhammad's closest surviving male relative), and, after some time, since their initial claim rested simply on military victory, membership of the same tribe as Muhammad (the Umayyad clan)" (Goddard, 1995: 57). In this respect, the main sects of Islam were in fact an outcome of the discussions on the leadership of the Islamic community, which was political in character. The question of "who was a Muslim" on the other hand entailed that "anyone who claimed to be a Muslim should be recognized as such" (Goddard, 1995: 57), as it was the "inwardness of faith that brings people together" (Goldzier, 1981: 166). Such discussions on the nature of political leadership, and the characteristics of the true Muslim, excluded the primacy of doctrinal issues when answering these questions. While Christianity was primarily based on doctrinal issues when considering the questions of both the leadership of the Christian community and the identity of true Christians, in the Islamic thought, in contrast, orthodoxy and heterodoxy were elusive in the sense that there was no religious institution which declared the orthodox, true path of belief, true believer and the leader of the community. As Goldzier explains it:

> In Islam there are no councils and synods, after vigorous debate, fix the formulas that henceforth must be regarded as a sound belief. There is no ecclesiastical office that provides a standard of orthodoxy. There is no exclusively authorized exegesis of the sacred texts, upon which the doctrines of a church, and the manner of their inculcation, might be based. The consensus is the highest authority in all questions of religious theory and practice, but it is a vague authority, and its judgment can scarcely be precisely determined (Goldzier, 1981: 162-63).

It is in this respect that announcing orthodoxy and labeling the opponent was not as easy as it was for Christianity. The definition of orthodoxy and its opponents was primarily based on consensus, which shifted, evolving into different Islamic societies. This point does not in any sense mean that no orthodoxy or its opponent was declared by Islam. Clearly, there were categories in Islam too, but again with a different kind of reasoning and implications. The declaration of orthodoxy in Islam was closely related to the emergence of sects, which was a part of the question of who could rule the Islamic

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Christian community, the attitude towards political authorities, number of groups which are usually described as extremists since they took an aspect of Christian teaching." Ibid. pp. 53-54.

community, and who was the real Muslim. The real sects were those "whose members depart from the Sunna…on essential issues of fundamental importance for all Islam, and who on such issues contradict the *ijma (consensus)*'" (parenthesis added, Goldzier, 1981: 168). This departure of deviance from the *Sunna* (doctrines and practices attested in the time of Muhammad), and *ijma* (consensus) was called as *bid'a* (innovation) in the Islamic term (Henderson, 1998: 19). However, not all varieties of bid'a were considered as heretical in the mentality of the Islam. The bid'a which was recognized as heretical was expressed by the term "*ghuluww*" (excess), considered to be one of the characteristics of Shiites "who venerated their imams to the point of deifying them or regarding them as divine incarnations, thus compromising the oneness of God and committing the cardinal sin of shirk (polytheism)"(Henderson, 1998: 19). In this respect, the sectarian schism within the history of Islam is considered as Shiites, who departed from the Sunna of the Prophet, and thus made the error of ghuluww (excess). Accordingly, the orthodoxy was usually considered as "Sunnism", whereas heretics were "Shiites". It is in this sense obvious that Islam and the Ottoman Empire had its own vocabulary for defining the heretics.

*Zındîk, kâfir* and *ilhâd* were the concepts that were used almost interchangeably in order to signify the heretic of Islam:

> *Zindiq* meant "any extreme or seditious doctrine- to some forms of Sufi belief- or no belief at all,"
>
> *Ilhad* meant "the man who rejects all religion, the atheist, materialist, or rationalist,"
>
> *Kafir* meant "unbeliever." (Henderson, 1998: 19-20).

Goldziher and Henderson had emphasized that the synonymous of heretic in Islam was *kâfir,* which had serious implications,[63] yet in the early Islamic period, they "could live socially unmolested, and could even be active as highly regarded teachers of the law and

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[63] Ignaz Goldziher quotes these from *Introduction to Ibn Toumert*, p.57 (163) and states : "A real kafir is cast out of the community; it is forbidden to associate with him in any manner; one may not eat with him; a marriage concluded with him is invalid; he must be shunned and despised; one may not pray with him if he acts as prayer leader; his testimony cannot be accepted in court; he cannot act as the guardian of a woman entering into marriage; when he dies, the prayer for the dead is not said over his body. If he is seized, one must first make three attempts to convert him, as one would with an apostate, and if they fail, he is to be put to death."

faith" (Goldzier, 1981: 164). However, when the religion intermingled with politics and when the heterodox doctrines opposed to state, then the heterodoxy became clearly distinguished from orthodoxy, and a means of persecution. The Ottoman Empire was no exception to this. As far as the Ottoman Empire, and particularly the period under consideration is considered, it was clear that Sunnism was declared as the orthodoxy,[64] and it became the official religion of the State, particularly in the sixteenth century. Once Sunnism was declared as the orthodoxy, then the religious Other, the *zındîk* or *ilhâd,* was declared as Shiites in general, and the *Râfızîs* or *Kızılbaş* in particular, in the context of the Ottoman Empire.

Shiism had clear theological-political differences in comparison to Sunnism. The most important religious-political difference was the dispute over the leadership of the Islamic community. Shiites argued for the leadership of Imam Alî, as according to Shiites, Alî's legitimate rulership stemmed from his being the cousin and brother-in-law of the Prophet, Muhammad. Theologically, on the other hand, they followed the doctrines of "manifestation of God in human form (tecelli), in reincarnation, the multiplicity of forms" and "proclamation of divine unity (tewhid), which becomes in reality, the assertion of the identity of Ali and Divinity" (Doja, 2006: 435, 436). However, what made the Shiite, or those inclined towards Shiism, heterodox orders were their blunt expression of political inclinations towards Safavid Iran. The Kızılbaş[65] attachment to the Iranian Shah, and thus opposing the rule of Ottoman Sultan, was the most significant among the factors which made them heretics in the fullest meaning of the term.

The background narrative for the support of the Safavids, and identifying heretics as Shiites and those inclined to Shiism in the context of Ottoman experience, compromises of three-layers. We can identify these as political-religious, socio-economic, and religious explanations, which when combined, present a comprehensive picture of the intersection of politics, economy and religion. The political-religious layer is intimately related with the

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[64] Henderson states that, "modern historians sympathetic to the Shi'a reject Sunni heresiographers' categorization of the Shiites as heretical, instead classifying Sunnism and Shiism as two parallel orthodoxies," *The Construction of Orthodoxy and Heresy, Neo-Confucian, Islamic Jewish, and Early Christian Patterns,* p. 54.

[65] The term Kızılbaş was considered as a honorary title for the Turkomans who supported the Safavids. They distinguished themselves with the red headgears they used (Karolewski, 2008: 439).

emergence and empowerment of Safavid dynasty in Iran under the rule of Shah İsmâîl, who was crowned in 1501 (Doja, 2006: 432). Shah İsmâîl represented the "extreme Shiite sect of Safiyy al-Dîn of Ardabil- the ancestor of the Safavid dynasty-" and thus declared Shiism as the official religion of Safavid Iran (İnalcık, 1973: 194). This shift in the religious-political identity of Iran also opened a new era for the Ottoman state. After the rise of the Safavids as the protector of Shiite Islam, the Ottomans more strictly adhered to its *sünnî* character. Defending Sunnism as the true belief, they declared Shiism as heretical. In Dressler's account, this tension between Sunnism and Shiism was in fact "invented" as an outcome of the political tension between the Safavids and the Ottomans, as Shiism hitherto had not been a concern for the Ottomans (Dressler, 2005). The reciprocal expansion policies of the Empires and the ongoing conflict between the two Empires accelerated, when the Shah attempted to mobilize the dissenting Turcoman tribes against the Ottomans. The reasons for the proliferation of the dissent of Turkoman tribes, and thereby their manipulation by the Safavids is another reason why the terms Safavid, Shiite and heretic became associated. This second line of explanation illustrates socio-economic deprivations of the Ottoman nomadic and semi-nomadic groups particularly in eastern parts of Anatolia due to the centralization and sedentarization politics of the Empire (Barkey, 2008: 167; Karolewski, 2008: 440-41, Canbakal, 2009: 562). This point was crucial in terms of explaining the accelerating dissent against the Ottoman Empire, and its manipulation by the Shiite Safavids. The Imperial concerns required a central administration, which would enable the increased tax collection necessary to sustain the military and the treasury. This in turn, necessitated exerting pressure on the nomadic and semi-nomadic groups to adopt a settled life so that the Empire could increase its revenues and potential military power. These rational organizational objectives of the Ottomans, predominating since the reign of Mehmed II, escalated sedentary activity and taxes by forced settlement. However, it also raised the dissent among the many Turcoman tribes of Anatolia because, from the standpoint of the Turcoman tribes, the practical outcomes of the centralization policy of the Empire meant "loss of service-based privileges (due to the gradual elimination of the tribal militia in particular), marginalization of the tribal elites" (Canbakal, 2009: 562), "land expropriation, high tax burden, plagues and crop failure" (Karolewski, 2008: 440-41). Accordingly, it was not surprising that they were easily instrumentalized by the Safavids as a political-military threat to the Ottomans. The Safavids "sent spies into Ottoman territory to feed, cloth, convert and politicize these

poorer nomadic populations" (Barkey, 2008: 175), thus gaining the support of the remaining segments of Turcoman tribes which had not yet declared their loyalty to Shiite Iran. In this respect, the oppositional character immanent to Shiism, was further incorporated by these Turcoman tribes in order to challenge the power of the Sünnî Ottoman Empire (İnalcık, 1973: 191). The religious explanations can only be added as complementary to the political-religious and socio-economic explanations, which are this worldly explanations for identifying heretic as Shiites. The religious explanation, in addition to the previously mentioned beliefs and practices peculiar to Shiism, draws attention to the perception of Shah İsmâîl in the eyes of the Kızılbaş, Turcoman supporters of Safavids. Doja aptly summarizes this point:

> In Kizilbash ideology, the divine manifestation was indeed incarnated in the Safavid sovereign, adored and deified by his partisans, and the invocation of the temporal shah became a manifestation of the spiritual shah. Shah Ismail tended thereby to be assimilated to Ali, the eternal god of heaven manifested on earth as the "king of men" (shah-ı merdan), and he proclaimed himself as the envoy of God (Mehdi) to save the Anatolian Turcoman from the hand of the Yezid, that is the Ottomans. The followers, in that way fanaticized and carried away by a blind faith in their young Shah, proclaimed his divine character, prostrated themselves before him in prayers, and threw themselves into battle with abandon (Doja, 2006: 435).

So far, considering the heretic of the Ottoman Empire, it has to be noted that the opposition to the state was the primary reason for opposition based on religious difference, rather than doctrinal issues. In other words, being Shiite was not considered to be an important difference until it became a threat to the State. This point is important in the sense that the analysis of the heretic of the Ottoman Empire focuses on the turning point when the religious difference became a political threat rather than a theological-doctrinal difference. Although the definition and marking of the religious other displays the differences between Christianity and Islam, this research argues that the heretics should also be evaluated as the subject of tolerance/intolerance together with infidels, at least concerning the period under focus, when it was the threat to the state that was primarily considered as the cause of intolerance. In this respect, the Shiite heterodox orders, particularly the Kızılbaş, were the *zındîk or ilhâd*, while non-Muslims were usually considered under the category of the infidels, *kâfirs*.

### 3.2.3. Sûfî Orders: Zındîk or Kâfir (Heretic or Unbeliever) ?

There is yet another group, the Sûfîs, who have a more complex role in the discussions of orthodoxy, heterodoxy, and heresy.[66] Under which category should we situate the Sûfî orders? Were they the *zındîk / ilhâd* or the *kâfir* of the Islam, and the Ottoman Empire? The answer cannot be seen as completely clear-cut, as the treatment of Sûfî orders were also embedded in contextual requirements, mainly political and economic concerns, of the Ottoman rule. We know that Kızılbaş also emerged from among these heterodox Sûfî orders. Yet, while they were persecuted, some of the orders were tolerated in different forms I will try to explain. Focusing on these cases reveals that it was not simply the Shiite character that resulted in intolerance, yet it was again political and economic context that shaped the attitude towards the other Sûfî orders.  Thus, it is worth presenting the contextual conditions and assumed reasons, which led to treatment and persecution of some of the Sûfî orders as heretic, while other conditions and reasons led to protection and acceptance of others.

It is clear that Sufî orders represented the heterodox aspect of the Islam.  Yet most were deemed to co-exist with the orthodox Islam neither as *kâfirs* or *zındîk s and ilhâds* within the territories of the Ottoman Empire. The majority of tariqats (sufî orders) in the Ottoman Empire had difficulties neither with the madrasa (religious institution) nor with the central government (Ocak, 1998: 125). Properly speaking, they were frequently acknowledged and protected by the Ottoman authorities. In other words, the Sûfî, defined as "anyone who believes that it is possible to have direct experience of God", and, Sufism defined as "those tendencies in Islam which aim at direct communion between God and man" (Trimingham, 1973: 1-2) occupy a privileged position in the Ottoman Empire until the seventeenth century. Nevertheless, it is a matter of question how Sufism opposing to intermediary institutions, i.e. "external rationalization of Islam in law and systematic theology" (Ibid.), in the Way for the experience of the God is tolerated by the Ottomans, who strongly favored Sünnî-Islamic law, especially after the sixteenth century. There are

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[66] I have already reserved a seperate section to Kızılbaş as the heretics of the Ottoman Empire. It was because they were the group who were most clearly regarded as the heretics. Yet, in fact, they should also be treated as a part of the broader history of early Ottoman  formation process and heterodox Sufi orders. As obviously they were in fact a part of Turkoman tribes, who pursued heterodox doctrines, as many others did.

varying explanations for this particular situation. The Sünnî character of Sufism on the one hand, and their softer approach to Vahdet-i Vücud *(monism)* (italics added, Ocak, 1998: 125) on the other are presented as two underlying reasons. Trimingham also agrees on the Islamic elements as characterizing Sufism. However, he does not confine them to Sünnî elements per se. He argues that the Halvetis, Naksibendis, Mevlevis, and Bektashis, who predominated in the Sûfî orders in Anatolia, were nourished mainly from Islam and the Islamic tradition. Moreover, he argues that they owe little to non-Muslim sources in their development, although the "ascetical-mystical life and thought of Eastern Christianity" were to a limited extent visible in their practices (Trimingham: 1973, 2). In addition to the Islamic character of Sünnî and Shiite orders, the role played by the Sûfî orders in the formation period of the Ottoman Empire in terms of the Islamization of Anatolia, and Balkans emerges as the most important factor for the softer attitude towards the Sûfîs.

The crucial role of the Sûfîs in the Islamization process is frequently traced back to the period of Seljuks. The nomadic and semi-nomadic Turcoman populations, whose religious belief can be best explained in terms of syncretism, started to move to Anatolia after the Mongol conquest, from the eleventh century onwards. Those having settled in urban areas of Anatolia were more easily assimilated into the orthodox Islamic structure. Yet, the nomads who lived mainly in the rural areas and the frontiers were out of the influence of this urban based, theological Islamic structure. Their incorporation to Islam, though not in the orthodox path, was facilitated by gâzîs[67] and dervishes, who were also a part of the wave of migration to Anatolia with the nomadic or semi-nomadic populations (İnalcık, 1973: 186). These gâzîs and dervishes, called frequently baba or abdal,[68] incorporated Shaman and natural cults into their heterodox belief (Faroqhi, 2005:22; İnalcık, 1973: 186). In compliance with their nomadic-tribal life, these elements were easily accommodated by such groups. Later, the dervishes became also influential in the Islamization of the Christian population of both Anatolia and Balkans. They acted as the

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[67] H.İnalcik, *The Ottoman Empire The Classical age, 1300-1600*:"Gâzî: A warrior fighting onbehalf of Islam", p.220.
[68] H.İnalcik, *The Ottoman Empire The Classical age, 1300-1600*:"Baba: 'father' (1) a name sometimes given to the elders of various dervish groups. (2) The head of a Bektaşî lodge", p. 217; "Bektaşî order: a dervish order founded by Hacci Bektaş Velî (fl. Second half of the thirtheenth century", p. 218; "Abdal: (1) a name sometimes given to itinerant dervishes. (2) a rank in some dervish orders", p. 217.

mediatory figures for smooth adjustment of Christians to Islam. Trimingham elaborately presents the reason and effectiveness of the Sûfîs in this process:

> The mystics, manifesting a fervor and spirit quite different from that of legalistic Islam, a spirit which also expressed itself in practical social aspects such as hospitality to travelers and care for the sick and poor, were mediators of Islam to the Christians of the region (Trimingham, 1973: 23).

The clash between the nomadic groups of the Anatolian population and the Ottoman state intensified at occasions, not in fact due to the clash between the heterodoxy-orthodoxy but due to the inconsistency between the nomadic way of life, and a central government. For the Ottoman State, the way for increasing the state revenues necessitated forcing this nomadic population into a settled agricultural life, so that it could extract taxes. Yet, this tendency for centralization and tax collection led to discontent among the nomadic and semi-nomadic groups.[69] The state, therefore became an object of dissent, with its all institutions, including its orthodox religion. In fact, it is not hard to conclude the dissent was a reaction to the economic concerns of the Empire, which characterized the politics. In other words, the dissent of the heterodox orders and their followers was political in character rather than religious. In this respect, the earlier recognition, respect, and protection provided to heterodox Sûfî orders were lifted for many, particularly when the enhancement of centralization and orthodoxy in the Ottoman lands started to characterize the Ottoman political and religious identity.[70] Parallel to the Ottoman policy of clinging to orthodoxy as the religious identity, the heterodox orders were left considering what they should do in order to survive. Those who opposed to domestication displayed their discontent either by revolts (i.e. Şeyh Bedrettin), or establishing new sectarian orders (i.e. the foundation of Bayramî order,-who would later divide and would predominantly follow Melametis, leading to the spread of the Hurûfî movement).[71] Some chose to accept the protection and aid of the Ottoman state. These were mainly the orders, such as Mevlevis, Halvetis and Nakşibendis, which were institutionalized in the urban centers, and furthermore, acknowledged Sunnism. Also among these orders were Bektashis, who pursued Shiism with a Turkic tradition, and

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[69] This point had been discussed in the previous section, on the part regarding Kızılbaş.

[70] H. İnalcık argues that it was the reign of Bayezıd I, when Orthodox Islam and centralization characterized the Ottomans, *The Ottoman Empire The Classical Age 1300-1600,* p. 188.

[71] H.İnalcık, The *Ottoman Empire The Classical age, 1300-1600,* p. 188.

benefited from the privileges of the State, namely by leading the spiritual leadership of Janissary corps. These orders benefited from the aid provided by the vakfs, and most of them were respected by the Ottoman rulers and the elite. In contrast, others chose to refute all forms of alliance with the State, and chose to survive as secret orders, such as the Melametis. Finally, some displayed their dissent in a more potent form, and allied with the Shiite Safavids in order to oppose the State. Râfızîs/Kızılbaş emerged from among the last group of these heterodox orders, as described previously. The point they became considered heretic was the time when they began to challenge the legitimacy and the power of the State, thus the public order. Similarly, the categorization of other Sûfî orders also shifted suddenly from Sufism/heterodoxy to heretics when they became a political threat to the Empire and/or become a competitor in the power relations.[72] In this respect, we can conclude that the religious Other of the Ottoman Empire were primarily *zındîk and ilhâds* (Kızılbaş and other dissenting Shiite inclined Sûfî orders), and secondarily *kâfirs* (non-Muslims). Thus, the laws under focus will be analyzed according to the critical theories of toleration, by particularly focusing on the regulation on *Shiite inclined heterodox Sûfî orders, mainly Kızılbaş,* and *non-Muslims*.

### 3.3. Summary and Plan of the Next Chapter

The main argument of the chapter is to incorporate the *zındîk (heretic),* in addition to kâfir (infidel), in terms of identification of subjects of toleration/intolerance in the Ottoman Empire. In other words, this research will argue that rather than privileging and merely focusing on *non-Muslims (kâfir/infidel)* as the religious other of the Empire, the *Shiites* and *the Shiite inclined heterodox Sûfî orders (zındîk/ilhâd/heretic)* should be also considered as equally important subjects of toleration/intolerance. This research arrives at such a conclusion through derivations from the methodology of Western historiography. In the Western literature, the investigation of the religious other concludes with labeling non-Catholics (e.g. Protestants), as deviant and thus heretic. Accordingly, religious

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[72] In the 17th century, we encounter with Kadızadeli movement who also targeted Sufi orders, particularly Halvetis and Mevlevis as the heretics. In the *Honored by the Glory of Islam*, Marc David Baer aptly argues that it was not a coincidence that the members of Halveti and Mevlevi order "were their competitors for posts as preachers in İstanbul's imperial mosques," p.74.

theories of toleration are presented in terms of response given to heretics. Although this research does not attempt to argue for an exact analogy between Western theories of religious toleration and the Ottoman experience concerning their different ideational traditions, it yet argues that the Subjects of toleration/intolerance within the boundaries of Ottoman Empire were also primarily heretics, and secondarily infidels, particularly in the sixteenth century, concerning the degree of disliked yet accepted, or disliked and opposed, important difference.

After presenting the mentality of the critical theories of toleration and the way for applying them to Ottoman idea/practice of toleration/intolerance in the next chapter, the content analysis of the laws will be made according to the conceptual framework, methodological priorities and critical theories of toleration.

**CHAPTER IV**

**4. JUSTICE AS THE ART OF GOVERNMENT**

### *4.1. Why do we need a Critical Lens on Toleration?*

The previous chapters mainly emphasized the impossibility of pure toleration/ intolerance via its conceptual-theoretical framework, and also incorporated Shiite inclined heterodox orders, particularly Kızılbaş, as the religious Other of the Ottoman Empire, along with the non-Muslims. In addition to these statements, the following section presents the final part of the theoretical framework of this study, which presents the framework of a critical approach to the case of Ottoman toleration based on the relationship between toleration and power. [73] The main question of this part is thus, as follows: Why is it necessary to follow a critical approach to the category of toleration despite its powerful rationale of peace, which provides the act/idea of toleration a strong ground of existence, and an important shelter for the criticisms?

The peace rationale, which in fact does not eliminate the dissent but regulates it (Kaplan,2007a:9 ), gains prominence regarding religious difference, as religious dissent is one of the crucial antagonisms leading to violence and persecution in different spaces and at different times of the world. Despite the existence of varying forms of intolerance (execution, imprisonment, banishment, corporal punishment, financial burden, prohibition, exclusion), once peace has successfully replaced violence and persecution via

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[73] As it has been stated in the Introduction part, by critical theories of toleration I especially refer to Wendy Brown, *Regulating Aversion Tolerance in the Age of Identity and Empire* and Herbert Marcuse, *Repressive Tolerance, A Critique of Pure Tolerance*. The common denominator that brings these two names together is their stress on power when analyzing toleration. However, it is obvious that they are not the only ones who developed such a perspective to toleration. Katherine Holland, "Giving Reasons: Rethinking Toleration for a Plural World," in *Theory and Event* 4.4 (2000); Anne Phillips, "The Politicization of Difference: Does This Make for A More Intolerant Society?", in *Toleration, Identity and Difference*, J.Horton and S.Mendus (eds.), J. Stolow, "Transnational Religious Movements and the Limits of Liberal Tolerance," unpublished MS, Departments of Sociology and Communication Studies, McMaster University, Ontario, 1998. [Wendy Brown, *Regulating Aversion*, Notes to Chapter 1, note 8, p.210]

tolerance (e.g.: non-persecution), or favoritism, incorporation, indifference, or recognition (toleration), the complex power relations beyond the act/idea of tolerance/toleration remain secondary. Positiveness is attributed to the very act of toleration/tolerance and its rationale, peace. In other words, it is the politics of toleration and peace binary which is given as a response to religious difference, and dissent that is exalted. Therefore, either incorporated as a political instrument or proposed as a moral virtue, the act of toleration contributing to peace hinders a powerful critique that may be raised against the category as any critique will appear to be targeting peace rationale. If toleration aims to sustain the peaceful-coexistence of difference, religious, philosophical or other, why should we approach toleration with suspicion or with criticism? I can offer three main answers for these questions:

1.     The politics of toleration replaces the value of equality.

2.     The idea/act of religious toleration is nurtured by religious essentialism, and thus,

a.     It is closely related with civilizational discourse.

b.     It underestimates the complex relationship between religion, politics and economy.

3.     Toleration depoliticizes dissent via regulation of the society by disciplinary power.

While the statements of 1 and 2a are more appropriate criticisms for the contemporary politics of toleration, 2b and 3 are those most suited for approaching mainly to the act/idea of Ottoman toleration in a critical manner.  Although I will explain the latter statements in details, it is also necessary to present the former ones to identify their relevancy/irrelevancy to the Ottoman case.

Civilizational discourse, as also mentioned in the introduction, levels civilizations in a hierarchical way. Regarding the binaries of East and West, and Islam and Christianity, it is the West and Christianity that is most frequently declared as tolerant. The intolerant one, accordingly, becomes the East and Islam. In this new picture, the liberal West declares its supremacy over illiberal civilizations in regard to its capacity for toleration. What makes this ability-disability for the act/idea of toleration possible is closely related

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with the so-called essence of Christianity, and further, the tradition of Enlightenment.  As our concern is the religious tolerance, then, we can argue that it is the religion, the essence of Christianity bringing tolerance whereas, the essence of Islam leading to intolerance as far as non-Western civilizations are concerned. If centering religion and its essence into the center of analysis is the first step of civilizational discourse, detaching religion from politics and economy is the second. Then, it becomes theological justifications extracted mainly from Quranic teachings, hadiths and related Islamic traditions,[74] or Christian theology that guides the discussions of toleration/intolerance. One of the objectives of this research was stated as the attempt to avoid essentialism. Therefore, I ignore the theological principles of toleration as the main ground of the discussion. In fact, in the previous chapter it was clear that theological justifications of toleration regarding both Islam and Christianity in relation to religious Other shared considerable similarities. *The public interest, peace, justice, humanism* are emphasized in varying degrees by both religions. In other words, neither of these religions advocated the persecution or degradation of the religious Other. It is in this sense that I will not primarily take into account the religious justifications of toleration, but rather consider them as a part of political, social and economic environment, which I argue are determining factors for the requirement of toleration.

Regarding equality, I follow the point that Wendy Brown emphasized: The idea of, mainly, equality is being replaced with the idea/practice of toleration in the contemporary era.[75] Toleration as a political instrument of neo-liberal era acknowledges the necessity for accepting difference. Yet, this acceptance is heteronomous, it is subject to external controls and impositions because it is the power-holder that tolerates the difference. Thus the power-holder preserves the right to suppress the Other in cases when it attempts to seize the power. The politics of toleration therefore, despite its strong rhetoric of peaceful co-existence, demands the condition of inequality at the first place. It assumes and accepts the categories of equals and non-equals according to the degree of power they hold. Moreover, it aims to sustain these borders because the opposite would dispossess

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[74] The edition by R. Spencer, *The Myth of Islamic Tolerance How Islamic Law treats non-Muslims*  is particularly important in this sense. As the book brings together a considerable number of scholars who explores tolerant/intolerant character of Islam via teachings of Islam, and usually agree on intolerant character of Islam yet tolerant character of Ottoman Empire.
[75] Wendy Brown, *Regulation of Aversion*, pp.9-10.

the power from the power-holders. The reward for accepting, or indulging, inequality displays itself mainly as tolerance, and in some cases as toleration. We glorify non-persecution, which is only one form of tolerance, as representing the generous act of the power-holder(s). The forms of intolerance, negative action against the difference, discrimination, humiliation, exclusion, prohibition, disrespect are nevertheless underestimated both by the tolerated, who does not seek equality, and the tolerator, who does not aim to yield equality to those lacking power. The weaker Other is content with the gift of life. The powerful one, on the other hand, in exchange for permission of Other's life, adheres more strongly to intolerance in the forms of discrimination, humiliation, exclusion, prohibition. Thus, if non-persecution, or sometimes communal autonomy, is one form of tolerance or toleration, in fact it is intolerance that prevails. The superiority of intolerance is indeed related with the inequality reserved for difference, which is intrinsic to mentality of the power-holder.

For the Ottoman period, the previous discussion is in fact an incommensurable criticism as the idea of equality was absent in the politics of the Empire until Reform (Tanzimat) period (Davison, 1954). The superiority of Islam on the institutional as well as everyday level was an unquestionable aspect of Ottoman world that clearly legitimized inequality and sometimes limited freedom for non-Muslims, and in particular, heterodox believers. The works on the idea/practice of Ottoman Empire, therefore, direct their attention to the absence or existence of the act of non-persecution, rather than criticizing the politics of toleration in terms of its relation particularly to inequality. In this respect, the hints in relation to the existence of rationale of toleration (i.e.: peaceful co-existence) elicit affirmation of politics of tolerance (i.e. non-persecution) and toleration (communal autonomy, i.e. *millet* system) despite intolerance (i.e.: corporal punishment, exclusion and prohibition). On the other hand, its absence entails the critique of this non-existence (i.e. peaceful coexistence) rather than the mentality of the politics of toleration itself which affirms inequality in the society. In this respect, although for the Ottoman Empire, equality was not a concern, regardless of the context, the inequality intrinsic to the act/idea of toleration should not be underestimated. Thus, unless the idea/practice of toleration is purged from inequality, in the normative and practical level, we should keep on treating it critically. I will come back to this point in the conclusion part. Yet, at the moment, the attempt to approach to the Ottoman case of toleration, inevitably necessitates the

construction of the critical framework in such a way that it would be consistent with the reasoning of the Ottoman world which firmly accepted inequality. From the critical theories of toleration, therefore, rather than deriving incommensurable concepts and debates that may lead to anachronism, the normative categories that can be used in order to approach to Ottoman case will be determined. This normative category will be primarily *power,* and this I will incorporate as the denominator of the previous statements presented as the requirements for approaching toleration critically.  In this respect, if I restate my initial question, why should we approach toleration with suspicion or with criticism?, my answers, limited to the Ottoman case will be as follows:

1. The idea/act of religious toleration is nurtured from religious essentialism, and thus, it underestimates the complex relationship between religion, politics and economy.

2. Toleration depoliticizes dissent by regulation of the society, particularly by the disciplinary power of the Laws.

Both of the statements shed light on the relation between power and toleration, which forms the explanatory ground of the next part.

### 4.2. Power, Toleration and Justice

Incorporating power relations into the analysis of toleration may help us to reveal the specificities of toleration on the level of power. Accordingly, we can argue that toleration as a category is not a trans-historical, trans-cultural phenomenon, yet it is strongly related with politics, commonsense and science, with "the domain of the power" (Asad, 1993:29). In this respect, treating toleration as a discourse of power will dialectically allow us to take religion as a part of power, also. Thus, rather than confining the practice and idea of toleration in the different religious essences, we can see "different ways" in which religious power created "and worked through legal institutions, different selves that it shaped and responded to, and different categories of knowledge which it authorized and made available" (Asad, 1993:29). As such, we can approach Ottoman toleration not only in terms of Islamic essence, but in terms of the immanent

relationship between politics, economy and the religion. The need for the replacement of religious essence with the complex dynamics of power is the reason why I prefer to analyze the act/idea of toleration in the concrete reflection of the relationship between religion and the state, in the laws of the Empire, rather than tracing the mentality of the act/idea of toleration in the religious texts or practices per se. Before reading the laws of the Ottoman Empire with such a perspective, I will incorporate the discussions of power into the center of their discussions. Accordingly I can present how I will be able to criticize the mentality of toleration in the context of the Ottoman Empire, without opposing to the rationale of peace, yet by presenting depoliticization as another rationale of act/idea of toleration.

The contemporary critical theories of toleration have a consensus on the depoliticizing/passificizing effect of toleration. Having considered power as underlying the politics of toleration, critical theorists Wendy Brown and Herbert Marcuse treat toleration as achieving depoliticization and passivity either by governmental tactics or repression. Brown inherits the concept of governmentality from Foucault, and uses it as complementing toleration in the contemporary era. Thus, it seems not plausible to adopt this conceptualization of governmentality to the sixteenth-century Ottoman Empire. Thus, concerning that Foucault used the concept in order to label the *modern form* of *art of government*, I treat Ottoman experience of toleration/intolerance as a medieval form of art of government which also succeeded to depoliticize, passificize and regulate the population. Moreover, I attempt to treat laws as also satisfying the logic of this medieval form of art of government and disciplinary power. Thus, in order to discuss especially the validity of the logic of disciplinary power concerning laws, I follow the arguments of Hunt and Wickham, who criticize *power conceptualization* of Foucault (Hunt&Wickham, 1998). Therefore, the next part will explain the method for incorporating the concepts of art of government and disciplinary power of laws as the concepts that will complement toleration in the context of Ottoman Empire.

I could not recourse to Foucauldian concept of governmentality, or the modern form of art of government, as he takes it as the characteristic of the modern societies. Yet, it is necessary to present what he meant by the concept so that I can present how I

distance myself from his analysis of modern form of art of government. The following long quotation gives the contours of his definition of governmentality:

> Government is defined as a right manner of disposing things so as to lead not to the form of the common good, as the jurists texts would have said, but to an end that is "convenient" for each of the things that are to be governed. This implies a plurality of specific aims: for instance, government will have to ensure that the greatest possible quantity of the wealth is produced, that the people are provided with sufficient means of subsistence, that the population is enabled to multiply, and so on. Thus, there is a whole series of specific finalities that become the objective of government as such. In order to achieve these various finalities, things must be disposed- and this term, "dispose" is important because, with sovereignty, the instrument that allowed it to achieve its aim-that is obedience to laws-was the law itself: law and sovereignty were absolutely inseparable. On the contrary, with government it is a question not of imposing law on men but of disposing things: that is of employing tactics rather than laws, and even of using laws themselves as tactics- to arrange things in such a way that, through a certain number of means, such-and-such ends may be achieved (Foucault, 2001: 211).

There are two important points in this conceptualization of governmentality. The first is Foucault's point regarding periodization. He identifies governmentality with the emergence of government in the eighteenth century in the European lands. He particularly emphasizes this period as it is the time when economy was first introduced into political practice (Foucault, 2001: 207). We can raise criticism to the peridoization of Foucault by following Hunt and Wickham. They argue, although the boom in government was in fact visible in the eighteenth century, the period is not unique in the history concerning "the sophisticated governmental techniques throughout the history such as ancient Egypt, ancient Greece, ancient Rome and many examples from both the western and eastern worlds in the period from the fall of Rome to the middle of the eighteenth century" (Hunt&Wickham, 1998: 76). Thus, following the arguments of Hunt and Wickham, I could take Ottoman period of sixteenth century as an example of period when the expansion of government was a feature. Yet, as such a claim would require a further analysis of the Ottoman history, which would exceed the limits and concerns of this research, I choose to comprehend this period as the era in which we can observe another form of art of government. Thus, I argued the sixteenth-century Ottoman experience of toleration/intolerance strongly embedded in the idea of *justice as the art of government*.

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The second point regarding Foucault's concept of is related with his distinction between forms of power. While Foucault conceptualized the term governmentality, he counterposed *juridical power* and *disciplinary power* (Hunt&Wickham, 1998: 64). His preference for such decomposition was embedded in identification of judiciary sovereignty with political sovereignty in the pre-modern era. Whereas, under constitutional sovereignty of the modern era, he argued, it was disciplinary power that predominated. As such, he draws attention to a specific rationality or different rationalities of the state that allow for the exercise of the political sovereignty over an entire population (Foucault, 2001: xxiii). Hence, these rationalities, namely those embedded in disciplinary power open a path for a political analysis that is freed from analysis based solely on state-institutions (Foucault, 2001 : xxv). However, the exclusion of other possible sources of law, such as "popular self-regulation, customary rights, competing specialized jurisdictions (ecclesiastical, guild, commercial, etc.), local and regional autonomies and other forms of law," (Hunt&Wickham, 1998: 60) is one of the criticisms Foucault faced for reducing judiciary power to political sovereignty in the pre-modern era. Such a criticism is directed at Foucault not only in terms of his exclusion of other sources of judiciary sovereignty, but also it is an introduction for criticism of Foucault's expulsion of law from the site of disciplinary power. Hunt and Wickham argue:

> Contrary to Foucault, disciplinary power is not opposed to law, but rather that law has been a primary agent of the new modalities of power, law constitutes distinctive features of their mode of operation. …state law is always involved with, if not preoccupied with, the task of either exercising control over or exempting from control the different forms of disciplinary power (Hunt&Wickham, 1998: 65, 66).

Accordingly, I argue that the link between governmentality and toleration, which Brown used to criticize toleration in the neo-liberal era, may not be valid for the sixteenth-century of the Ottomans. However, I follow Hunt and Wickham in terms of the critique they raised against Foucault in terms of the distinction he made between judiciary and disciplinary power. I consider that judiciary power is, in the first place, aimed at disciplining subjects, though in conventional ways. In this respect, by opposing the distinction between juridical power and disciplinary power, I will discuss a historical form of art of government in the Ottoman Empire in the sixteenth century, when juridical power intersected with the disciplinary one. As, although the non-constitutional central

government in the Ottoman Empire was largely dependent on juridical power in the sixteenth century, the primary aim of juridical power was to discipline the Subjects under rule. Furthermore, I believe that other disciplinary tactics, which remain out of the boundaries of laws, can also be observed in the sixteenth century Ottoman Empire, particularly concerning the regulations of non-Muslims. In this respect, the particular mechanism of "*assimilation, deportation, emigration*[76] *and methods of conversion*" can be mentioned as the evidences of disciplinary power of Ottoman government[77] which although still practiced by the state may give the clues for sites of exercise of disciplinary power. Similarly, *cooperation, economic support and privileges* can be emphasized as other diciplinary tactics regarding the heterodoxy and heretics.

I further argue that it is not simply the act/idea of toleration but it is the idea of justice which I take as the requirement of toleration as fulfilling the objective of art of government, at least in the Ottoman context. Thus, my position is considerably different than that of Brown, in the sense that I establish a relationship between justice and the art of government in terms of the Ottoman case. Similarly, I diverge from Marcuse's conceptualization of toleration as repression, as the notion of justice turns into the requirement of intolerance of the religious Other (when the justice notion accepted within the boundaries of the Ottoman Empire is disturbed), that cannot limited with repression but also may refer to execution, imprisonment, corporal and financial punishments, prohibition, exclusion. In this respect, the following part will discuss the possibility of comprehending *justice* as the requirement of Ottoman toleration, which substituted the contemporary disciplinary power of modern states. In order to discuss this, I will present the justice discussions in relation to the Ottoman Empire. This framework of Justice, embedded in power relations in the Ottoman Empire will enable us to grasp why it can be

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[76] Halil İnalcık discusses these mechanisms as the methods of conquest of the Ottomans. Ottoman Empire, pursuing expansion policy, followed particular mechanisms in order to deal with the subjects of its newly conquered lands. Assimilation, deportation and emigration were thus these policies in terms of adopting particularly the non-Muslim subjects of these lands. Halil İnalcık, "Ottoman Methods of Conquest," *Studia Islamica*, pp. 103-129.

[77] The tactics for disciplining the other parts of the society, i.e. disciplining the askerî class in terms of preventing their abuses against the tax-payer subjects via complaint mechanisms, and prescripts of justice can also be elaborated within this context. In the section on "Ottoman Justice", this point will be highlighted again.

considered as the requirement of toleration and how it could have managed to regulate, and discipline the society in relation to toleration/intolerance particularly via laws.

### 4.3. Justice and Toleration

It has been the idea of justice that prevailed in the discussions of toleration in the Ottoman lands. In fact, it did not only prevail, but at some points, toleration was even identified with justice. Concerning this strong relationship between toleration and justice, when constituting the conceptual framework, I have argued that I will treat justice as the requirement for toleration in the Ottoman lands. In fact not only this common identification, but also acceptance of Justice as the prevailing way of reasoning in the Ottoman lands also drew my attention to the concept of Justice when thinking toleration/intolerance. Nevertheless, there are still two important questions to answer: Can we elaborate justice as a strong concept that can replace toleration at the Ottoman lands?[78] Or, rather, is it appropriate to discuss it as the strongest requirement of toleration in the Ottoman context, according to my conceptual-theoretical framework? Before giving a precise answer to these questions, it is firstly necessary to present the justice understanding of the Empire, which is apparently influenced by both Islamic and pre-Islamic Indo-Iranian notions. Subsequently, we can properly place the justice notion into debates of toleration, or better to say, we can establish the link between justice and toleration in the Ottoman lands.

### 4.3.1. Islamic Justice

The Ottoman Empire declared its Sünnî-Islamic character just after it completed its formation period, during which it had pursued a more flexible policy in terms of its Islamic identity.[79] After internalizing Sunnism as the official religious sect, Sünnî Islam and Islamic traditions started to occupy the agenda of the State in a more visible manner. The justice notion was no exception, regarding the fact that justice occupied a central place in the Islamic thought. Although I argue for the exclusion of religious essentialist explanations,

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[78] I should thank to Prof. Eric Zurcher for drawing my attention to this question.
[79] I attempted to present the signs of this flexibility, particularly with reference to discussions of the close relationship between the Ottoman state, and the gazî and dervishes.

the Islamic conception of Justice will inevitably need to be dealt with. Yet, the character of the Islamic justice notion, which was in fact instrumental for the characterization of the law, politics and social structure, can be comprehended as a part of political thought rather than a religious concept per se. It is in this sense that I take advantage of the discussions of Islamic justice notion, which is a complex concept open to varying interpretations.

The Islamic understanding of justice does not follow a singular explanation. Rather it is nourished from varying sources for its justification. Yet, it would not be wrong to argue that the debates, in fact, take place in the space marked by two main axes. The first axis favors Divine Wisdom and Revelation (mainly Quran and tradition) as the only source of the notion of justice. On the other hand, the other emphasizes the influence of Greek and Persian traditions as influential sources on the conceptualization of Islamic justice (Khadduri, 1984: xiv).[80] It is obvious that the objective of this part is not to determine the external influences on Islamic notion of justice. However, I think, we should develop a skeptical position in regard to both lines of thought as it is misleading to accept either one as the sole source of Islamic notion of justice. In other words, the incorporation of foreign elements into the Islamic order homogenously is unrealistic, whereas total rejection of this impact is also similarly problematic. There is clear evidence in Islamic philosophy which asserts the impact of particularly the Greek philosophers, and also of Persian traditions, on the conceptualization of justice. Thus it is a matter of question of the extent to which these Islamic philosophers were included into or were influential on the Islamic

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[80] Khadduri is one of the important figures who argued for the importance of the ancient Greek and Iranian traditions in the formulation of justice in the Islamic philosophic thought. The reflection of justice understanding of Aristotle in the works of Islamic philosophers such as al-Farabi, Ibn-i Sina and Ibn Rushd, who attempt to harmonize Revelation and Reason, empowers such a stand point. Boğaç Ergene, in *An Ottoman Justice: Interpretations in Conflict*, summarizes the Aristotelian and Platonic justice understanding as follows: "In Aristotle's Nicomachean Ethics, a just social order refers to an arrangement in which every person does the work that is his by nature, in the best way that he possibly can. Accordingly, in a just political order each individual is given a rank and function that would fit his nature and capabilities (idiopragein). No one remains idle unless he is ill, and everyone does what he has to do in appropriate measure and at the appropriate time. Social justice, thus, refers to the preservation of this hierarchical order in which the security and happiness of the citizens are assumed to be guaranteed. Hence, according to Plato, a just political action can be anything that aims to preserve the status quo within this divided social structure. Because this idealized order is considered to be just in itself, any political action that could preserve this order would also be just" pp. 56-57. Ergene argues that in the Ancient Greek thought while justice is a structural quality of the social order, in the Ottoman context it is characterized as an external variable Ibid. p. 57.

legal schools, which were primary formulators of Islamic justice via Şerîat (religious law). The argument of Divine Wisdom and Revelation as the sole source of Islamic notion of justice is similarly unconvincing, because being encountered with different dynamics and contexts, the Islamic rulers even interpreted and modified *Şerîat* in different ways. The possibility of modification of Şerîat was namely due to the existence of practices of *icmâ'*(consensus) and *kıyâs* (analogy), which were considered as derivative sources along with the primary ones of Quran and Sunnah. Consensus and analogy, which vary according to different schools of Law, provided the space for the *furu* (the acts of the State and rulers), and *ictihâd* (the personal reasoning of the ulema-religious scholars). In short, the foreign influences on Islamic justice are secondary for the research objective of this research, as generally speaking it is the contextual needs of the Islamic rule that defines the content of the justice notion, as long as these do not challenge the main boundaries set by primary sources, the Quran and the Prophetic tradition. It is in this sense that even in a strongly Islamic state, such as that of the Ottomans, there are ambiguous and controversial debates on the formulation of Justice. What, then, does Justice mean, especially in Islam? After understanding that, maybe, it will be easier to see whether it is Islamic formulation of justice itself, or its possible adaptation and refinement that leads to confusion about the nature of the conceptualization of Justice in the Ottoman lands.

Justice, which in Arabic is *'adl*,[81] refers to varying set of definitions:

> first, to straighten or to sit straight, to amend or modify… second, to run away, depart or deflect from one (wrong) path to the other (right) one,… third, to be equal or equivalent, to be equal or match, or to equalize,… fourth, to balance, or counter-balance, to weigh, or to be in a state of equilibrium,… Finally, adl (or 'idl) may also mean example or alike (Q. V, 96), a literal expression which is indirectly related to justice (Khadduri, 1984: 6).

Among these interrelated meanings of justice in Arabic, the meanings of *to equalize/equivalence* and *to balance* are those that prevail. These two meanings, attributed to *'adl* (justice), characterize mainly, the objective of protecting the harmony in

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[81] 'Adl is an abstract noun, derived from the verb 'adala." And, the antonym of the noun 'adl is jawr. Khadduri draws attention to the point that jawr is not a modified form of 'adl, and thus it is not produced according to the logic of English nouns of justice-injustice, where the latter is formed by attributing a negative meaning to the former. May be it is in this respect that jawr is used interchangeably with its synonyms such as "zulm (wrongdoing), tughyan (tyranny), mayl (inclination), inhiraf (deviation)" Majid Khadduri, *The Islamic conception of Justice,* p.6.

the society, so that order and peace could be sustained. To equalize or equivalence implies equating dissimilar entities, and accordingly assigning each into proper place (Rosen, 2000: 155). Conceived as such, justice necessitates an appeal to different groups of society in equivalence, according to their differences. As the categories of difference in Islam are shaped mainly according to religion, sex, and slavery, justice requires that non-Muslims, women, slaves, and their opposites, the free Muslim men all be kept in their proper places. The former category of difference is confined to inferior positions, while the latter is privileged in the social structure. Yet, in order to avoid *jawr* (injustice), it is also necessary to appeal to these subjects in a proportional equality, according to their places in the social structure. In other words, justice implies to demand what the subjects may afford according their place in the society. The need for balance comes to the fore, in the case that these desired categories and their places tend to change. As the relationships between the individuals are contextual, the changes should be carefully watched, and when necessary they should be balanced (Rosen, 2000: 155). The reason for this is that, the disturbed balance (injustice) not only presents change in the places of categories of social structure, but it further implies that the requirement to equalize is also underestimated. Thus, it is clear that both the literal meanings and its incorporation into Islam present the priority given to the protection of social order and harmony by continuously watching and preserving the boundaries between the members of the different categories of the society, as well as the need for equivalence in order to be just. These acts, denoting justice, furthermore find their materialization in the acts of the Ruler. In other words, because it is necessary to implement the justice of the Divine Wisdom in this world, this duty is assigned to the ruler of the Islamic community. To equalize and balance, the acts expected from the Ruler, moreover are combined with the virtues of the Ruler, such as *temperance* and *fairness* that would complement his justice.

These points mainly discussed with reference to semantics of the word justice itself, can be presented as the framework of the idea of Islamic justice in its most general sense. Yet, in fact there are varying categories that were influential in its formulation and justification. Among these are justifications for theological, philosophical, ethical, legal, political, and social justice prevailing in the Islamic literature, which have a consensus on the priority of God as the source of justice. Yet, philosophical justifications attempt to establish a dialogue between Divine wisdom and Reason (i.e. âl-Kindî, âl-Fârâbi, İbnü- Sînâ,

İbnü-Rüşd), theological and legal justifications focus solely on Divine Wisdom and Revelation, ethical justifications identify justice with human virtues (i.e. Gazâlî), and political justifications limit themselves with the question of who will rule the Islamic society (Khadduri, 1984: 13-126). Moreover, in accordance with political developments and rising threats (i.e. Crusades and Mongols) from the other religions to Islamic Empires, new concepts are introduced to the discussions of Islamic justice. Then, the names of İbnü Teymiyye, al-Tawfî, İbnü-Khaldun, and their focus on the conceptualizations of *maslaha (public interest)*, *siyâsa shar`iya (political law)*, and *asabiyya (a form of social solidarity)* dominated the discussions of justice, with a greater emphasis on the social aspect (Khadduri, 1984: 134). It is hard to distinguish and elaborate which of these categories were most influential in the Islamic conceptualization, as they all agree on the Divine will as the main source of Justice. Yet, it would seem that primarily *legal justice* and secondarily *political and social justice* that can help us to understand the practice of justice as practiced in the Ottoman lands.

Legal justice is important, and reflective on the justice notion of the Islamic Rules, while the other aspects (i.e. theological, philosophical, rational, ethical, and social justice) remain at the level of debate until they are put into practice via Laws by the will of Sovereign. It is in this sense that, according to Khadduri, legal justice is "the sum total of other aspects of justice", because ethical, philosophical, rational or other aspects of justice are no longer only expectations but are elements incorporated into reality. In addition to assimilation and modification of the other aspects of justice into jurisprudence, it is particularly the procedural (formal) characteristic of legal justice, which manifests itself in the degree of regularity, meticulousness, and impartiality in the application of Law (Khadduri, 1984: 144), that further privilege it. Legal justice, thus, formally designates the way related to exercise of other aspects of justice in the real life. In terms of legal justice, the Islamic implications display differences, yet Sünnî-Islamic understanding- which the Ottoman Empire also acknowledged- is based namely on legal justice, which is "justice in accordance with the Law" (Khadduri, 1984: 135). This position, followed by the Sünnî School of Law, materialized in the ideas of Ash'ari, who is regarded as the leading advocate of Sunnism. He states that

> the measure for distinguishing just from the unjust acts is set forth in
> the Law, under the rules of 'permissions' and 'prohibitions,' denoting
> that all prohibited acts must be considered unjust and all others

just…There is really nothing inherent in the nature of things to guide man on questions of justice and injustice except the Law (Khadduri, 1984: 94).

In practical sense, justice via Laws (Şerîat) was realized by stating *helâl* (rights/permissions) and *harâm* (wrongs/prohibitions). The definition of rights and prohibitions alone could not draw the boundaries of just and unjust acts, yet they "indicate the path (the term Shari'a indeed bears this meaning) by virtue of which God's justice and other goals are realized" (Khadduri, 1984: 135). Therefore, the substantial character of the Laws proposes the elements of justice that should be contained in the substance of law. And the debates seem to have a consensus on the Substantive aspect of Law:

> The Law is the path to guide men to do the good and to avoid evil….More specifically, the Law is designed to protect the public interest (maslaha), since man is not always aware of what is good for him and his people (Q.II, 216), and only God knows that which is in the best interest of all (Khadduri, 1994: 137).

It appears, then, that it is the substance of law where social justice understanding comes to the stage, as the protection of *maslaha* (public interest) emerges as the basic substance of legal justice. Accordingly, the acts contrary to public interest are regarded as unjust, and vice versa. This idea of legal justice that aims to protect the public interest is accompanied by the ideas of freedom, equality, brotherhood, which in fact, remained secondary to the purposes of law, while moderation and toleration were particularly considered as important moral and legal obligations.

> Designed to protect the believer's interest and promote the general good, the Law is not intended to impose obligations beyond the capacity of believers to fulfill them. A certain relaxation of the Law is deemed necessary. This relaxation is permitted in accordance with the principle of moderation, consisting of equity and justice, by virtue of which the individual would be able to maintain a balance between an obligation and his capacity of fulfillment. The principle of toleration requires the State to grant protection to other communities that share belief in the One God were they to live in the Islamic State, and to refrain from the use of force whenever negotiations and peace were entered into between Muslims and non-Muslims (Khadduri, 1984: 138,144).

In Islam, therefore, the legal justice aims to promote public interest and common good primarily by preserving the balance between the duties of the believers and their capacities for fulfillment of these obligations. Thus, parallel to its semantics, *adl* (justice) asks for the treatment of the subjects according their positions in the social structure. Moreover, whenever this equivalence is disturbed either in terms of their places in the society, or the conflict between their capacities and obligations, justice requires rebalancing the society. Toleration, mainly formulated for the believers of other religions, is in fact also a part of the whole justice notion. The belief and interests of the non-Muslims should be protected and force regarding conflicts between Muslims and non-Muslims should be prevented, so that the harmony and order in the society could be realized.

The political justice understanding is the last important reflection of the Islamic justice notion which we can observe in the Ottoman lands. Political justice displays the prevailing authority type in a particular territory of Islam in general, and in the Ottoman Empire in particular. In the understanding of the Islamic political justice, it is open to question who will be responsible for the exercise of justice on the earth in the name of God. Traditionally, this question is one of the major points of divisions among the four legal schools of Islam,[82] with the major clash observed between the Sünnî and Shiites. As stated previously, according to Sünnî tradition, a member of the Prophet's tribe and according to Sii'te a member of the Prophet's family should be the Sovereign in this world in order to justify Divine power. This split was not only on the question of the leadership of the Islamic community, but it was also on the question of the Sovereign of the political rule. Considering that Sünnî tradition became the orthodox sect of Islam, we can conclude it was a member of Prophet's tribe who became the one who could lead the Islamic community. Accordingly, the caliphate system developed in the Islamic lands. In other words, the Caliphs were empowered with the exercise of the judicial office, and accordingly, justice itself. The transfer of the Caliphate to the Ottoman Empire coincides with the reign of Sultan Selim I, who defeated Egypt, Syria and Hejaz, and overthrew the last Abbasid caliphate, from which time, the Islamic community started to be ruled by the Ottoman caliphate. In this manner, "the Ottoman Sultan claimed the sacred position of

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[82] The major legal schools of Islam are Hanefî, Shafi'i, Maliki and Hanbali. Ottoman Empire followed the Hanefî legal school in terms of Şerîat .

the Caliph, vicar of the Prophet of God, Commander of the Faithful, and Supreme Imam of Islam" (Qadri, 1974: 67-68). Following the transfer of the Caliphate to Ottoman Sultans, the following Sultans after Selim I also acted as:

> the shadow of God upon earth and, without any restraint of civil or constitutional laws, possessed an absolute power of life or death over their subjects and their properties. They combined legislative and executive power in themselves though they did not openly violate the restraints put up by the sacred laws of Islam (Qadri, 1974: 68).

The Sultans, as the shadows of God on this world became the responsible agents for exercising justice in the name of God. The important point to be emphasized here is the fact that although the Imperial edicts of the Sultan were absolute, and were not subject to any limits, in fact, they were in compliance with the teachings of Qur'an and Sunna.[83] The next part attempts to present detailed discussions on the Ottoman justice notion, which is not only under the Islamic influence, but also benefited also from Indo-Iranian traditions. Accordingly, the will be on the extent to which the Ottoman justice notion overlapped with the Islamic notion of justice, and the extent to which other traditions shaped the justice understanding of the Empire.

### 4.3.2. Justice in the Ottoman Empire

The discussions on the Ottoman understanding of justice do not follow a singular explanation; rather, similar to discussions of the Islamic notion of justice, there are also two main arguments on the justice understanding of the Empire. While one argues for the Islamic influence on the conception of Ottoman justice per se, the other stresses the Indo-Iranian tradition as being influential in the political justice[84] formulation of the Ottomans. Naim Gerber, as the representative of the first line of thought, after presenting the close relationship between the Ottoman Empire and its Islamic identity, argues that:

> it's unconvincing that the basis of the legitimizing ideology of the Ottomans was rooted in Iranian concepts of divine rights of Kings as

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[83] The details of political justice and its relation to Şerîat and Imperial codes will be discussed in the next part when dealing with the laws under focus.

[84] In the previous part, I presented political justice notion of Islam as the discussion pertaining to the identity of the ruler (Sunni or Shiite) of the Islamic community. In this part I also use the concept to identify the justice understanding of Ottoman Ruler and bureucracy.

the shadow of the God on earth, or even the Iranian concept of justice….the idea of justice 'adāla, and the ruler's obligation to refrain from zulm (oppression) and to take care of the poor and needy, is germane to the Shari'a itself, and need not to be looked for in the Iranian world (Gerber, 1999: 50-51).

Halil Inalcik, on the other, reveals the genealogy of Indo-Iranian tradition of justice in the intellectual and political world of the Ottomans. Thus, confining his analysis mainly to this-worldly aspects of the Ottoman rule, İnalcık presents the secular grounds of the justice notion in the Empire, mainly based on Near-Eastern traditions. Although each of the arguments has proper grounds, I argue for the co-existence of both Islamic and Indo-Iranian understanding of justice in the Ottoman lands. Firstly, regarding Islamic notion of justice, in accordance with the arguments of the previous section, the following statements can be made to justify its incorporation by the Ottomans:

1. The Islamic political justice understanding was materialized in the Ottoman Empire as the acceptance of Sünnî Islam and leadership of caliphate, the Ruler of the Islamic community, to exercise Divine justice in the World.

2. Legal justice was pursued by the Ottomans by adhering to jurisprudence formulated by Hanefi School of Law.

3. The preservation of public interest and common good discourse of Islamic social justice constituting the substance of Sünnî-Hanefi jurisprudence also prevailed in the Ottoman lands.

As I aim to explain in the following parts, this link between Islamic justice notion and its incorporation by the Ottomans does not invalidate the co-existence of Indo-Persian tradition, and its related conceptualization of justice. I argue for the following reasons as the possible answers which are instrumental in explaining not only the possibility of co-existence of both notions of justice in the Ottoman lands, but also to understand the sometimes overlapping, and sometimes complementary meanings of these two different conceptualizations of justice:

1. *The legal pluralism*: The Ottoman legal system was two-layered. One of the layers was founded upon Şerîat, whereas the other included secular law, *kanûns*, based on the will of the Sultan.[85] The kanûns of the Empire dealt with mainly fiscal and administrative aspects of the Ottoman rule which were not within the legislative scope of the *Şerîat*. In addition to the Islamic regulations, therefore, the Ottomans most probably benefited from Near-Eastern traditions in terms of their administrative structure.[86] In this respect, we can argue that the duality or pluralism in the legal structure was also the reason for the duality, or plurality, of notion of justice in the Ottoman Empire. It was the notion of Islamic justice that prevailed in the fetvâ, laws of Şerîat. The kanûns, on the other, followed the Indo-Iranian conceptualization of justice to govern its territories. This point, duality of legal system leading to duality of justice, can imply that Islamic and Indo-Iranian conceptualizations of justice are totally different. Yet, it seems to me that this duality mainly refers to different scopes and contexts which predominated in each. Moreover, I argue that there are considerable similarities between the two conceptualizations of justice for which the following point can be explanatory.

2. *Incorporation of pre-Islamic Indo-Iranian conceptualization of the concept of justice into religious-political system of the Islamic Middle Eastern civilizations*: In the previous section, I suggested that in the discussions of Islamic justice, the degree and source of foreign influences are one of the main axis. In other words, for the scholars, it is a matter of question to identify the sources that were influential in the Islamic thinking. These discussions are quite constructive if we don't favor the statements like "Islam has sprung up all of a sudden full into broad daylight" (Goldzier, 1912: 163). Then, we should acknowledge the impact of foreign elements, which are as important as internal developments in the formation period of Islam

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[85] A more detailed account of the Ottoman legal system will be presented in the following chapter.

[86] There are also contraversial discussions concerning the influence of Byzantine and Iraninan Empires on the institutions and ideas of the Ottoman Empire, likewise of the Islam. It is almost inevitable that we should acknowledge the infuences of Byzantine Empire not only conisdering the geographical proximity, but also the the possbile influence of Byzantium in the institutions of pre-Islamic medieval states. Yet the featured discussions, like the one proposed by M.Fuat Köprülü, frequently follow the relationship and influence of Abbasids and Sassanids, who have influenced Byzantium Empire and at the time were influenced from it. M.F. Köprülü, *Bizans Müesseselerinin Osmanlı Müesseselerine Tesiri*, p. 206

(Goldzier, 1912: 163-164). We can, thus, aptly argue that pre-Islamic Iranian traditions, ideas, and institutions probably had a considerable impact on the Islamic thought, including the notion of justice.[87] In this research it is impossible and in fact irrelevant to seek the clues for the encounter and mutual interaction of Islam with pre-Islamic eastern civilizations, and the Greek world. Yet, after presenting the Ottoman debates favoring the influence of Indo-Iranian traditions, we can at least observe the similarities and differences in a limited way in relation to notion of justice.

I assume that the details of the discussions concerning Iranian influence on the Ottoman conception of justice will further justify these already stated points, which argue for the co-existence of Islamic and Iranian conceptualization of justice. Moreover their differences will be identified mainly according to the aspect of life they were influential on, while their similarities will be investigated in the relationship and interaction between pre-Islamic Indo-Iranian tradition and Islam.

 "Protection of the reâyâ from the oppression of the military elite" and "putting everything/everybody in their proper place" are the prevailing definitions that characterize the Ottoman justice. Boğaç A. Ergene summarizes the reason for different conceptualizations of justice in the Empire as the outcome of power struggle between the absolute Sovereign and the opposing ruling elite (Ergene, 2001: 52-87). In other words, according to Ergene, the justice notion of the Ottomans played between the claims of an all-powerful Sovereign and his protection of the Subjects on the one hand, and the demands of a part of political elite asking for mutual rights and obligation from the ruler on the other. Even among these two very secular sounding meanings of justice, embedded in power relations, the second one directly refers to the Islamic conceptualization of justice. The idea of justice as "putting everything/everybody in their proper places" shares an apparent similarity with the *adl* (justice) concept which we previously discussed in terms of the act of "to equalize" and "to balance".  It is not surprising that this latter

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[87] Acknowledging that Justice had been an important mechanism of conduct in the pre-Islamic Middle Eastern political systems, Halil İnalcık further argues for the incorporation of this specific understanding into Islamic state system by the Persian bureaucrats and literati in the service of the Caliphate (İnalcık, 1993: 70).

conceptualization of justice began to appear mainly when a part of the bureaucratic and military elite were discontented with the absolute authority of the Ruler, which they thought underestimated the Islamic limitations to power. "Protection of the reâyâ from the oppression of the military elite", on the other hand can be considered as the reflection of Indo-Iranian conceptualization of justice in the Ottoman territory. Yet the parallelism between the objective of protection of reâyâ and adl, which asks for the balance between the capacities of the subjects on the one hand, and the demands from these subjects on the other is also an apparent evidence for possible interaction between Islam and the pre-Islamic Indo-Iranian tradition.

Halil İnalcık, one of the most respected historians of the Ottoman Empire, is the one who strongly emphasizes the influence of Indo-Iranian traditions on the justice notion of the Ottomans. He thus particularly presents the genealogy of Ottoman justice understanding to show the dominance of the near-Eastern state tradition on the political thinking and the bureaucracy of the Empire. This specific notion of justice, according to İnalcık, has a particular meaning that cannot be "limited to the ethical notion of equity", but referring mainly a pragmatic view (İnalcık, 1993: 70-71). And, this pragmatic concern was the objective of sustaining regular collection of the taxes without coercion and violence. Although exerting pressure could also be a medium for raising revenues, the historical experience proved that despotism did not only lead to loss of power in the long run, but also damaged the production capacities of the taxpayers and decreased the revenues of the state as a result (İnalcık, 1993, 71). Hence, the primary condition of production and ability for the payment of the taxes is the security of the lives and well-being of the Subjects, which in turn secure the power of the state. Accordingly, the pragmatic concern of the political justice was in a way legitimizing and consolidating state power in order to maintain the economic and political stability of the political regime. An unquestionable aspect of such an attitude to Justice was its heavy reliance on the absolute power of the Sovereign.

İnalcık infers the existence of this *pragmatic concern*, and the need for an *all-powerful ruler* in the Near-Eastern tradition of justice by emphasizing the links with between the advice literature of Indo-Iranian tradition, and Ottoman-Turkish literature.

Accordingly, he presents the influence of the Indian-origined Kelile and Dimne (by Beydebâ -İbnü'l-Mukaffa), the Iranian-origined Kabusname (by Keykavus bin İskender), and Siyasetname (by Nizamü'l Mülk), on Kutadgu Bilig (by Yusuf Has Hacib). In the examples of this Indo-Iranian advice literature, *justice and fairness* are frequently emphasized as the properties of the Ruler, who is expected to rule his subjects according to Just rules without oppression. The outcome of the obvious and proved relation between these different examples of advice literature also finds its expression in Kutadgu Bilig, which marks the qualities of a Just ruler as the following:

1. To maintain the standard of gold and silver coins.
2. To govern the people through just laws and give no opportunity for the strong to dominate the weak.
3. To prevent banditry.
4. To open roads and keep them safe.
5. To treat everyone in accordance with their status in life. (quoted in İnalcık, 1993: 6).[88]

Moreover, similar to the texts of Indo-Iranian literature, in Kutadgu Bilig "reason, knowledge, gentleness, forbearance, a sweet tongue, honest hearth, generosity" are also attributed to the Sovereign (İnalcık, 1993: 8,9). The most concrete form of pragmatic justice understanding of the Indo-Iranian tradition of justice is visible in Kutadgu Bilig as the formulation of "circle of equity":

> To preserve the state, a large army and many soldiers are needed; to feed the army there's need of great riches and wealth; in order to obtain this wealth the people must be prosperous, for the people to prosper just law must be set forth. If any of these is neglected all four will cease, and if all four are neglected, the kingdom will begin to come apart the seams (İnalcık: 1993, 5).[89]

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[88] For the Turkish original: 1) Para ayarını temiz tutmalı, 2) Halkı adil kanunlarla idare etmeli ve kuvvetlinin zayıfı hükmü altına almasına meydan vermemeli, 3) Haydutları ortadan kaldırmalı, 4) Yolları açık ve emin tutmalı, 5) Herkese mertebesine göre muamele etmeli.

[89] For the original Turkish: Memleket tutmak için çok asker ve ordu lazımdır. Askerini beslemek için de çok mal ve servete ihtiyaç vardır, bu malı elde etmek için halkın zengin olması gerekir. Halkın zengin olması için de doğru kanunlar konulmalıdır. Bunlardan biri ihmal edilirse dördü de kalır. Dördü birden ihmal edilirse beylik çözülmeye yüz tutar. The versions of circle of equity can be found in the Ottoman literature with minor differences. For the similar understanding of circle of equity formulated by Kınalızade and Hasan Kafi please see Boğaç A. Ergene, *An Ottoman Justice: Interpretations in Conflict (1600-1800)*, footnote 13, p.57.

In this circle, the dialectical and the pragmatic relationship between the maintenance of the power of the State and the prosperity of the Subjects become clearer. The Sovereign, being just or adhering to just laws in accordance with the mentality of the circle of equity, is the key for İnalcık's final formulation. Justice, for the preservation of the well-functioning of this circle, or that is to say for the maintenance of order, refers "prevention and elimination of oppressive acts *zulm*, by those who exercise power in the name of the ruler" (İnalcık: 1993, 71). In this respect, the main subjects of justice were the reâyâ and it was the military class who was considered as the possible actant of zulm.[90] This conceptualization of justice, in the vast Ottoman territories, required a specific mechanism in order to follow, prevent and punish *zulm* that could be exerted by the military class. İnalcık presents the main characteristics of this mechanism as "the principle of accessibility, the idea of just era and royal watch on injustices" (İnalcık: 1993, 72-73). Accessibility, put simply, meant that any member of the reâyâ class had the right to conduct his complaint to the Ottoman *Dîvân-ı hümâyun* or *divan al-mazâlim* concerning oppression by tax-collectors, the local military or governors. The idea of the just era, on the other hand, referred to adherence of the Ruler to the idea of justice. He displayed his sensitivity to injustices by regularly issuing *adâletnâmes* (periodical prescripts of justice) which prohibited the abuses of power such as:

> [f]forcible marriages, false testimonies…collection of taxes which was not carried out in accordance with tax registers, the illicit collection of dues and services, making false accusations to collect money from the peasants, or frequently visiting villages with large retinues with the pretext of investigating criminal acts and in the process, forcing the peasants to feed them and to pay indemnifications (İnalcık: 1993, 74-75).[91]

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[90] In the Ottoman Empire, it was mainly the concept of erkan-ı erba`a that explained the main social classes compromised of warriors, bureaucracy, agriculturalists, merchants-guild members, B. Ergene, *An Ottoman Justice: Interpretations in Conflict (1600-1800)*, p.55. In the more simplified and frequently encountered way, these classes were the reâyâ and the military. Yet other social categories defined on the basis of religion, sexuality and slavery are also useful for understanding the social structure of the Empire.

[91] İnalcık deducts these points mainly from the prescripts of justice, dates 1565 and the others issued in the reign of Süleyman I.

The acts contrary to the prohibitions mentioned in the prescripts of justice were subject to siyâsa[92] punishment. In addition to accessibility of royal power for the complaints of the reâyâ concerning abuses of the military, and prescriptions of justice that warn and punish the opponents, the Ottoman rule had also an eye on its public agents. It did so by establishing organizations in order to monitor injustice. In other words, it frequently sent spies into those areas from where complaints about zulm were received. This well established system, nourished from Indo-Iranian political systems, became a considerable part of the bureaucracy of the Empire for a well-functioning justice, and the prevention of zulm. Despite the prevailing conceptual boundary of justice discussed by İnalcık, there are also controversies in relation to this conceptualization in the Ottoman history, which, according to Ergene were underestimated (Ergene, 2001:54). The reason and content of alternative conceptualizations of justice are important in the sense that they present the strong relationship between justice and power.

The most prominent feature of the already presented political justice conceptualization, influenced by the Indo-Iranian tradition and meaning prevention of abuses of power by the military class, invested the Sovereign with an almost quasi-divine power. Ergene argues that in the adâletnâmes, this quasi-divine power of the Sovereign is legitimized on two different grounds. Firstly, the Sovereign sounds as a pious and modest Muslim ruler, consistent with the Hanefî tradition of caliphate, and secondly, he is considered as a this-worldly, charismatic ruler for whom the injustices mean a threat to his personal will, power and legitimacy (Ergene, 2001:60-61,63). In fact, particularly in the eras of Süleyman I and Selim I, it is the charismatic and extra-şer`î representation of rulership that prevails, while by the Islamic revival at the end of the seventeenth century the Islamic character of rulership predominates (Ergene, 2001:63-64).[93] No matter what the legitimating ground was, this absolute power was deemed necessary because it was only the limitless power of the Ruler that could shelter and guarantee the life and prosperity of the weak (İnalcık, 1993:72; Ergene, 2001:63). Moreover, it was also a sign

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[92] Siyâsa punishments were designed for the crimes that remained out of the boundaries of sharia and tazir punishments. They could not be substituted by fines, and they were severe including capital punishment.

[93] Ergene points out this shift by mainly benefiting from the works of Cornell Fleisher, *Bureaucrat and the Intellectual*; *The Law Giver as Messiah: The Making of the Imperial image in the Reign of Süleyman*, and Madeline Zilfi, A *Medrese for the Palace: Ottoman Dynastic Legitimation in the Eighteenth Century*.

that "Sultan was the sole individual in the Empire having an inalienable right to the revenue" (Deuwes, 2000:3). The main opposition to this conceptualization of justice came primarily from those who resented this unlimited power of the sovereign because this power, while protecting the weak from the zulm of the military elite could also arbitrarily challenge the legitimate rights of the members of the military elite (Ergene, 2001:75). It is in this respect that the opponents of official conceptualization of justice in terms of absolute power of the Sovereign argued for the definition of justice as "putting things in the places where they belong".[94] The Justice formulation of putting things in their proper places was mainly due to changes in the struggle for the bureaucratic posts. Those thought improper for particular positions or those thought illegitimately executed from their posts were the primary reason for the discontent of the bureaucratic elite. They rather asked for:

> acknowledgement of the mutual rights and obligations of the ruler and his servants (meaning the military elite), and the honoring of what is considered to be the proper order and stratification of society (Ergene,2001: 75).

This alternative definition of justice was no less pragmatic than the official conceptualization of the justice in the Ottoman Empire. This time it was not the Sovereign who was trying to empower his power and legitimacy, but rather, the military elite trying to secure their places in the administration by challenging the authority of the Ruler. Especially in the late seventeenth and eighteenth centuries, the accelerating competition in the bureaucratic posts due to the crisis in the Ottoman Empire, and concomitant corruption, brought forward this second formulation of Justice. In this period these two conceptions of justice contradicted each other as the pressure on military elite to raise their revenues and secure their shorter terms of tenure increased the zulm on the reâyâ , which in turn necessitated their punishment, according to official definition, but also meant injustice in terms of the alternative one (Ergene, 2001:80-82). In fact, although circle of equity also favored the military class, the aforementioned imbalances concerning the changing dynamics in the state-power binary brought into account this latter formulation of justice. The emphasis on the bindings and limitations of the shari'a rules on the absolute power of the ruler, moreover, also gained prominence in the latter period

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[94] Quoted from Mustafa Àli, Mustafa Àli's Counsel for Sultans, vol.1, p.17 in B. Ergene, *An Ottoman Justice: Interpretations in Conflict (1600-1800)*, p.75.

concerning the increasing conflict between the ruler and his servants. Despite the complex power relationship behind different formulations and privilegement of justice in the Ottoman Empire, both the protection of the reâyâ from the zulm, and putting everything in its proper place aimed at producing a well-functioning social order with minimum conflict.

From these discussions, we can derive main characteristics of Ottoman justice, and present its relation both to Islamic notion and Indo-Iranian tradition:

1. *Ottoman justice, in the first place, aimed the preservation of public order (nizâm-ı âlem) and public interest (maslaha)*: Protection of public order, and public interest (maslaha) prevailed in both Islamic and Indo-Iranian traditions of justice. This is in fact the point where we clearly observe the influence of pre-Islamic Indo-Iranian traditions on Islam, and the Ottoman Empire. It was primarily İbnü Teymiyye who developed the concept of siyâsa shariyya (political law) as complementing the Şerîat. İnalcık notes that, İbnü Teymiyye supported his view with secular sources, such as the views of Nizâm al-Mülk, as well as with the Quran and tradition of the Prophet. (İnalcık, 2000: 68-69). Hence, either Islamic or Indo-Iranian, the views of primacy of public order and public interest prevailed in the political thought and laws of the Empire.

2. *Protection of the public order depended on the preservation of proper stratification of the social structure (to equalize) and keeping the boundaries between social groups (balance)*: The way the society is stratified in the Ottoman society, reflected the duality of Islamic and secular sources on the political-administrative structure. The Islamic notion of justice, as already stated, stratified the society according to categories of men/women, Muslim/non-Muslim, and slave/free individuals. Preserving and protecting these domains as separate, accordingly, was the main objective of the Islamic justice, and concomitant public order understanding. As the most important categorization was made in terms of believers of the True faith and the Others, the boundaries and conditions of the lives of non-Muslims were carefully designed by the Şerîat. This mentality of stratification designated Ottoman social structure too, which could be best

observed in the Laws of the Empire. Yet, in fact, the Ottoman political-bureaucratic structure, in accordance with the reason of the circle of justice tradition, mainly favored the categories of reâyâ (flock) and askerî (military) in the stratification of the society. Hence, it appealed to a distinction between reâyâ (tax-payers) and askerî (exempt from tax) as the main classes of the Ottoman society. Protecting the boundaries between the reâyâ and askerî was crucial, as the fiscal and political continuity of the system heavily depended on the proper and smooth functioning of this mutual relationship. These seemingly different, yet in fact intersecting and complementary notions of justice- on the basis of the idea of protecting the public order- have important implications concerning the pragmatic and prudent characteristics of justice, and its use as an art of government in the Ottoman Empire. The way it protects the public interest appears to be the best ground via which we can observe these points.

3. *Protection of the reâyâ from zulm of the askerî is prerequisite for the preservation of public interest, and thus public order*: For the Ottoman Empire, public interest meant avoiding clashes between groups in society, namely reâyâ and askerî, so that the reâyâ could continue to fulfill their economic responsibilities, and the askerî would know that it could not challenge the authority of the Ruler. Behind these discussions regarding public interest lay the mentality of the acts of to equalize and to balance because the zulm of the askerî mainly meant that the reâyâ was asked for more than it could provide, i.e. extra tax, illicit fees, etc. Apparently, whether it was to equalize or to balance, parallel to the logic of the circle of justice, public interest was confined to the spheres of economic benefit and persistence of political power.

4. *Public order and public interest depended on the absolute power of the ruler:* To keep the subjects of the Empire in their desired social categories, to preserve the boundaries between them, to provide the obedience of reâyâ to the military, unless encountered with zulm, to prevent zulm, and to obtain obedience of both of the categories to the Ruler required an all-powerful Sovereign. Ottoman rulers enjoyed this absolute power in the name of justice, particularly in the reign of Süleyman I.

5. *Justice in the Ottoman Empire functioned as a prudential and pragmatic means of art of government[95]:* Regulating society via conception of justice displayed how the Empire defined "the possible field of action" (quoted in Foucault and Law: D&P, 1982: 221) of its subjects, and disciplined them when any Subject, namely the military elite, posed a threat to the legitimacy of the ruler, an increase in the revenues, and the power of the State. The Sultan tried to control the abuses of power by the restoration of justice, which in fact implied "the establishment and maintenance of the proper relations of power" (Deuwes, 2000: 143). In short, justice was an Ottomon form of art of government for successfully controlling, regulating and disciplining the subjects of the Empire, especially the military class,[96] for preserving the public order and public interest. Moreover, whenever a threat to justice system (abuse of power or imbalance within and among the classes) emerged, it actually meant a threat to public order, and power, and the legitimacy and continuity of political rule. Thus, at least in the Ottoman Empire, whenever justice failed to regulate its subjects, it chose to intolerate (punish) them.

Having explored the main characteristics of the Ottoman notion of justice, it is time to go back to my initial questions. Can we replace the concept of toleration with that of justice in the Ottoman Empire? Or can we regard it as the basic requirement of toleration? These questions are crucial considering the way of reasoning peculiar to Ottoman Empire, because in Western historiography and philosophy, the main category for the protection and maintenance of public order is discussed in terms of the category toleration, whereas

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[95] Although I will discuss the politics of justice and its relation to art of government in terms of infidels and heretics, this relationship in another way (justice and regulation) is emphasized previously by other scholars in terms of the whole flock. Karen Barkey, in *In Different Times Scheduling and Social Control in the Ottoman Empire, 1550 to 1650,* interprets the "rotation policies and "the incorporation of bandit mercenaries through deals with specific time limits" as tactics of the Ottoman Empire stemming from the idea of circle of equity. She argues that Ottoman Empire successfully used "temporal dimensions of rule to regulate the behavior of various groups in society", Ibid. p.464. In other words, it restricted the time of offices for the groups - provincial military, the members of the judicial hierarchy and mercenaries,- and subjected them to routine rotation as they could be potentially a threat to the state by establishing patron-client ties or hindering inter-class alliances, (Ibid, pp. 464,466). Moreover, this strategy also contributed to the state power and centralization as the elites were kept bounded to state with the expectation of offices when their time came, Ibid, p.479.

[96] The objective of dicipling the askeri class behind the idea of justice is also emphasized by Dick Deuwes, *The Ottomans in Syria: a history of justice and oppression,* p.3.

justice is included as one of the requirements of this concept. Yet, in the Islamic world and the Ottoman Empire, justice is presented as prerequisite for protecting public interest and providing public order. Moreover, it is justice that is privileged, while toleration is presented as a complementary element of justice, particularly in the Islamic thought. Although in the West and in the East, we should indeed acknowledge varying levels of emphasis made either on justice or toleration in order to protect public interest and public order, there seems to be no good reason for distinguishing West and East in terms of primacy given to these categories.

Justice, in general in the Islamic world, and in particular in the Ottoman Empire, was the main category for preserving the public order. This meant, justice was not the primary category for dealing with 'difference', especially religious difference. Thus, it was neither the political nor legal understanding of justice that namely aimed to deal with difference, particularly religious difference. On the contrary, it was still the realization of category of toleration, which was aimed at via justice, particularly concerning non-Muslims, as Khadduri asserted. In other words, Islam also proposed toleration as the main category for dealing with the religiously Other. It is in this respect that I take justice as the requirement of toleration, which fulfills the objective of art of government and discipline.

### 4.4. Summary and Plan of the Next Chapter

The Ottoman political structure was chiefly characterized by the existence of an absolute Ruler who acted in accordance with the rules of Sünnî-Hanefî Islam following the ancient traditions. The injustice and justice conceptualization, therefore, similarly benefited from both the ancient traditions and understanding of Islamic justice. Following the Indo-Persian tradition, Ottoman rulers were portrayed as "the shepherd protecting his flock, the reâyâ, and leading them in the righteous path...and the Ottoman Sultans endeavored to indicate to the masses that the Sultan was their ultimate protector against all manner of local abuses and injustice" (İnalcık, 1997:17). The pragmatic concerns of the ancient traditions of justice moreover, as İnalcık argues, were also pursued by the Ottomans because the absence of justice would lead to "unrest and conflict, impoverishes the people, and drys up the sources of the ruler's treasury" (İnalcık, 1993:10). The material

basis of justice was obviously embedded in the legal system. Whether understood as Islamic justice (legal, social, political), or political-bureaucratic justice (official and alternative), it was the laws and courts via which justice was realized. Toleration/intolerance, in this sense, was only one of the necessities of the justice notion that characterized the Ottoman rule. Justice primarily regulated the society in order to sustain public order and prevent political and economic instability. The act/idea of toleration/intolerance, in this sense, was incorporated to the extent that it contributed to this regulation objective of justice, which was pragmatic and prudent in essence.

The following part will deal with the laws under focus in relation to the religious Other of the Empire. The main objective in the following section is accordingly, first to present the instances that display the impossibility of pure tolerance, concerning the levels, degrees, and forms of toleration/tolerance. Secondly, it aims to discuss justice as prudentially and pragmatically governing dissent, and preserving order as the requirement of toleration.

**CHAPTER V**


**5. OTTOMAN LAWS under FOCUS**


The laws are the texts that best represent the official concerns and priorities of the State in regard to maintaining public order. In addition to its function of voicing the institutional discourse of the State, the Law in the Ottoman Empire is important as it particularly represents the way of realization of Islamic legal justice as well as the Indo-Persian traditions of justice, both of which are important in the formulation of conceptual-theoretical framework of toleration. Thus, Ottoman laws occupy a central place in applying the re-formulated framework of toleration that is closely related to the notion of justice in the Ottoman Empire. At this point I should clarify a few points in order to justify my decision for recourse to Ottoman law, which has already been analyzed in detail regarding non-Muslims.


It exceeds the methodological confines of this study to examine documents from the archives. Moreover, it is almost impossible to deal with the already uncovered and transcripted sources, of which the laws under focus are an example, as "the first" scholar, because they have already been analyzed by a considerable number of scholars as important sources for shedding light on many different aspects of the Ottoman world. In this sense, I cannot argue for the originality of my sources. Nevertheless, I can argue that reading these Laws through the lenses of my proposed conceptual-framework can help us articulate new insights. In this respect, parallel to the objective of this study, I attempt to scrutinize them critically in order to reveal different *levels* and *degrees of tolerance/toleration/intolerance* concerning different *subjects*, *acts, ideas and organizations of the religious Other* of the Empire. In other words, following the idea that there is no such thing as pure toleration/intolerance, I attempt to grasp to what degree and level the acts, ideas, people and organizations (limited to the religious Other) are intolerated/tolerated. As such, I will be able to identify instances of minimum retention of objection (tolerance), replacement of negative response by a more positive one, such as indifference, favoritism, recognition, incorporation (toleration), and also the forms of

objection such as persecution, humiliation, prohibition, discrimination, exclusion, disrespect (intolerance). Therefore, I argue, a close reading of the laws will provide us with clues for discussing the heterogeneity, plurality and coexistence of practices of tolerance/toleration/intolerance concerning different subjects, acts, ideas and organizations of the religious Other.

In fact, since laws, be it Sultanic or Şer'î, mainly draw the boundaries of intolerable subjects, acts, ideas or organizations, I will be able to reveal primarily conditions of intolerance. However, this will also enable me to draw conclusions regarding degrees and levels of tolerance/toleration by picturing the contrary situations. Moreover, the materialization of the notion of justice in these laws further illuminates how justice functions as the requirement of toleration/intolerance. In this chapter, in addition to the textual analysis of laws in accordance with my proposed framework of toleration, I discuss the regulation tactics of the Empire by drawing on secondary resources in cases where the laws do not provide sufficient clues.

In order to investigate the answers for these questions via a specific *group of laws*, I limit myself to a particular time and space with respect to the huge territory and history of the empire. Nevertheless, my decision to examine this particular set of laws is determined by my judgment as to which ones can best provide the clues regarding the regulations of the religious Other in the empire. Thus, I searched for and selected the period and the space in which the legal and administrative system reached its maturity and defined its legal attitude towards (particularly) the Kızılbaş, Christians and Jews: hence my choice of the period 1545-1566 when Süleyman I and his Şeyh-ül islâm Ebu's-su'ud ruled the Ottoman Empire together. Moreover I extended my time interval to the latter part of the sixteenth century (1567-99) when necessary—for example, in the absence of relevant laws—during which the influence of these secular and religious rulers endured. So, what, particularly, are the reasons for selectively concentrating on this period and the laws issued in it?

*5.1. Time and Space under Focus*

Firstly, the sixteenth century signaled a break with the formative years of the Empire and influenced its development until the eighteenth century. The break with the formative years is important regarding the objective of my research, which aims to focus primarily on laws as the formal representation of the mentality of Ottoman rule that can reflect absence/existence/forms of the politics of toleration. The absence of central authority and the official declaration of Caliphate in the formative years, motivated the analysis of Ottoman toleration during that period within the framework of the Shamanic and Sûfî influences of the Gazâ' tradition. Scholars frequently regarded the syncretism of heterodox Sûfî orders as an important element leading to a smooth Ottomanization and Islamization of particularly the Christian subjects of the Empire. This important binary articulation of the Gazâ' tradition and Sufism, therefore, led to the prevailing argument that the Ottoman Empire was tolerant towards the religious Other. Yet, once the rulers of the Empire declared themselves the Caliphs of Islam, and integrated its legal system with the Şerîat, the previous legitimate ground of the Gazâ' tradition and the Sûfî orders in relation to discussions of toleration significantly lost relevance. Toleration then became a matter of Islam in general, and Ottoman political and economic concerns in particular. Therefore, focusing on the sixteenth- century as the specific period of the present study is motivated by the combination of bureaucratization[97] and the emergence of a developed legal structure, which was crucial in terms of governing the whole flock on the legitimate grounds of Islamic legal tradition.

If a break with the formative years—is one the main reasons for concentrating on the sixteenth century, it is in fact Süleyman I's announcement of the Ottomans as the protectors of Sünnî-Islam that makes this era specific because this identification of Ottoman rule with Sunnism was crucial, in terms of identifying heretics and following Islamic precepts concerning the other religions. This formal link between Sunnism and the Ottoman Empire was established after the defeat by Selim I of Mamluks, who maintained the Caliphate in Cairo. Thus the Ottomans became the leading Empire of the Islamic world.

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[97] This does not mean that the Ottoman Empire did not have a bureaucracy (kalemiyye) before the sixteenth century. Yet, its empowerment overlaps with this century due to relative centralization of the Empire when compared with the formative years.

Yet, the reluctance of Selim I to declare his caliphate, and instead taking "the title of protector (servant) of Mecca and Medina", later gave Süleyman I the chance of "styling himself caliph of the all Muslims" (İnalcık, 1997:20). This was also the sign that in contrast to previous rulers who claimed religious legitimacy based on popular Islam, Süleyman I attributed the source of his legitimacy to canonical Islam. As Imber states:

> by the mid 16th century, canonical Islamic texts and a canonized view of Islamic history had ousted folk religions and the Turkish epic tradition as sources for dynastic legitimating. The mid 16th century also saw a systematic attempt to define and justify Ottoman rule in terms of the Islamic juristic tradition (Imber, 1995:151).

Accordingly, this period witnessed the accelerating influence of Islam, and thus the effect of the fetvâ within the territories of Islam. Ebu's-su'ud, the most influential şeyh-ül islâm, whose fetvâs were regarded as the source of Islamic regulations of the empire, succeeded in harmonizing the secular law with the Şeriât. After his long career in different hierarchies of Ilmiye and offices in Ottoman legal structure, he was promoted as the *chief of Ulema* of the Ilmiyye class and the chief religious men of the Empire in 1545, and with the title of Great Şeyh-ül islâm, he reigned until 1576. Ebu's-su'ud was an important figure in the Ottoman Empire because he institutionalized the office of Şeyh-ül islâm. As Imber explains, the procedure for issuing fetvâ was largely informal before his rule, depending on the talents and experiences of the office-holder. In contrast, specialized and trained staff of the office during the time of Ebu's-su'ud ensured continuity and maintained legal standards in fetvâs (Imber, 1997: 14). Thus, concerning the objective of capturing the institutional-religious perspective on the religious Other, the fetvâs of Ebu's-su'ud are the most relevant regarding his effectiveness in the office of Şeyh-ül islâm.

Finally, in the sixteenth century, in addition to aforementioned characteristics, the rule under Süleyman the Lawgiver and the Mufti of Istanbul, Ebu's-su'ud, is the span when we can most clearly observe the regulations targeting the heterodox believers who revolted against the Empire, particularly in the late fifteenth and early sixteenth centuries. Moreover, conflicts towards the end of the sixteenth century, the so-called Celali revolts,[98]

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[98] S, Faroqhi, "Politics and Socio-Economic Change in the Ottoman Empire of the later 16th century," *Süleyman the Magnificent and His Age: The Ottoman Empire in the Early Modern World*, p.96.

also enable us to observe to the extent to which they are tolerated/intolerated according to major laws issued in the reign of Süleyman and Ebu's-su'ud. Provisions concerning Shiite and Shiite inclined heterodox orders, the second group of religious Other, together with Christians and Jews, are thus most visible in the laws of the sixteenth century.

Regarding these important points in relation to Süleyman the Law-giver and his Şeyh-ül islâm Ebu's-su'ud, I focus primarily on laws that characterize the period of their combined rule: 1545-1566. In addition to this time restriction, I also limit myself with a spatial one, which is an inevitable outcome of the huge territory over which the Ottoman rule was effective by the mid-sixteenth century. The Ottoman Empire covered a huge territory extending from the Balkan provinces to the Middle East. Therefore, the central classical administration could not be univocally effective in every part of the Empire. This fact led to the inevitable allowance of local variations within Ottoman territories, which in a way signified the legal pluralism prevailing in the Empire.[99] Thus, the regulations, particularly concerning the Christians and Jews, display considerable differences regarding the intensity of the minority population in the provinces

> The Ottoman Empire was a Muslim polity, but in its European territories, Muslims, except locally, formed a minority. In its Asian territories where the population was predominantly Muslim, Christians could form a local majority. Equally there was a large Jewish population, particularly in Istanbul and Thessaloniki and particularly after the settlement of the Jews who had been expelled from Spain (Imber, 1997:5).

In this respect, Christians and Jews of the Arab peninsula or the Balkans could be subject to flexibility concerning the laws implied in these provinces. In addition to varieties concerning the intensity of the population in different provinces, there was yet another factor. It was mainly urban Christians and Jews who were subject to restrictions, whereas in the rural areas the population was almost untouched (Dávid, 1995: 75). In this respect, although I do not confine my analysis to a specific space, I limited myself to the major cities of Anatolia, the Balkans and the Ottoman-Arab lands. The availability of a rich group

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[99] Géza David, "Administration in Ottoman Europe", *Süleyman the Magnificent and His Age: The Ottoman Empire in the Early Modern World*. M. Kunt& C.Woodhead eds., p. 71, Colin Imber, *Ebu's su'ud*, p. 5-6. Although Imber mentions legal pluralism, he carefully emphasizes the authority of the Sultan and the network of Muslim courts as unifying Ottoman legal structure. p.6.

of secondary sources, mainly derived from kadi sicils, facilitated the process of analyzing the absence/existence/forms of toleration/intolerance of Christians and Jews. With respect to the laws, I concentrate on fermâns and, when applicable, on those collections of laws to which the whole "flock" was subject. Finally, as far as the analysis of the kadi sicils is concerned, I limit myself to the Istanbul kadi sicils.

### 5.2. Sources under Focus

The primary sources for this research are the laws that were in force between 1545-66 in particular, and throughout the sixteenth century in general, which were effective in the whole territory rather than in a specific province. The law texts are rich material sources exhibiting the discourse of political power. As a site of "political contestation and cultural production" (Delaney, 1998: 488), they provide valuable clues concerning dynamics of state-society relationships. Additionally, I treat them as means of regulation of the society in order to present how the requirements of toleration, particularly justice, functioned as a pre-modern form of art of government in order to discipline, and thus depoliticize, the subjects of the Empire.

Following Hunt and Wickham (referred to in the previous chapter) and their significant point in proposing the law as that which realizes disciplinary power, I regard the laws of the Ottoman Empire as a means for regulating and disciplining the subjects. Thus I treat justice and law interchangeably as the requirement of toleration in the context of the Ottoman Empire. Moreover, this requirement (justice) is prudential in the sense that it attempts to preserve the power of the Sovereign by mentality of the art of government and the disciplinary power of laws.

By focusing on these laws, I aim to derive "the categorical map of exclusions and inclusions" (Delaney, 1998: 489) regarding the religious Other of the Empire. Regarding the objective of identifying the institutional perspective on toleration/intolerance, I will

concentrate mainly on the Ottoman criminal code (OCC)[100] –as an example of kanûn-nâme effective in the whole territory—and fermâns (sultanic decrees)[101] of Süleyman I; the fetvâs of Ebu's-su'ud,[102] and the relevant records of cadi courts[103] as the historical evidence through which I will investigate the regulations concerning the Shiite and Shiite inclined heterodox orders, Christians and Jews. Before the analysis of these laws, then, it is necessary to explain why it is not primarily the state and political theory, but rather the laws and legal theory on which I chose to concentrate. This point is very much related with the statement of Haim Gerber, who argues that it is the law rather than the state itself that is the starting point, "since the law analytically precedes the state: the law which is God's command, comes first, and the state is merely the tool devised to facilitate the implementation of law."[104]

Thus, Islam, being a constitutive identity of the Ottoman Empire, led Islamic law to be an important source of its judiciary mechanism. Accordingly the Islamic rules, Şeriât[105] became the primary source upon which the Ottoman legal system rested. These Islamic rules in the Ottoman Empire were based mainly on the fiqhs of ulema of the Hanefî School of law. The sultans of the Empire allowed Hanefî tradition to endure as "it was already published in the cities of pre-Ottoman Anatolia which provided the first judges and jurists in the Ottoman realms" (Gerber, 1999: 25). The rules of the sharia were constituted and implemented by the jurists, who were strong members of İlmiyye class and the qadis.

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[100] Uriel Heyd, *Studies in Old Ottoman Criminal Law*.

[101] Ahmet Refik Altınay, *Onuncu Asr-i Hicride Istanbul Hayatı*; Ahmed Refik, *Onaltıncı Asırda İstanbul Hayatı*.

[102] Ebu's-su'ud's fetvâs: M.E. Düzdağ, ed. *Şeyhülislam Ebussuud Efendi Fetvaları*, M. E. Düzdağ, *Şeyhülislam Ebussuud Efendi'nin Fetvalarına Göre Kanunî Devrinde Osmanli Hayatı*.

[103] I will use the Kadı Sicils that are transcripted and published: *İstanbul Kadı Sicilleri 14 Numaralı Sicil (H.953-955/ M. 1546-1549), İstanbul Kadı Sicilleri Üsküdar Mahkemesi 17 Numaralı Sicil (H. 956-963/M.1549-1556), İstanbul Kadı Sicilleri Üsküdar Mahkemesi 26 Numaralı Sicil (H. 970-971/M.1562-1563), Kadı Sicillerinde İstanbul, XVI. Ve XVII. Yüzyıl*. Regarding the dates of the published Kadı sicils, the periods between the years 1544-1546, 1556-1562 and 1563-1566 are left out of the scope of this research.

[104] H. Gerber, *Islamic Law and Culture 1600-1800*, p.43. (cites from Gibb, "Constitutional Organization," p.3. )

[105] Şerîat is the laws based on the orders of God. Thus it primarily takes the teachings of Quran, sunnah and fiqh as the framework. Thus it is not surprising that 'Durer and Gurer' of Molla Husrev and 'Multeka' of Ibrahim Halebi are regarded as the civil laws of the Empire. A. Akgündüz, *Osmanlı Kanunnameleri ve Hukuki Tahlilleri,* c.1 p. 45

Earlier only muftis, and later on Şeyh-ül islâms,[106] were able to issue fetvâs, which became influential and binding laws for the entire Empire. The fetvâs were mainly issued as answers to questions raised by the Subjects of the Empire on particular cases. Fetvâ therefore did not include the details of these cases. Rather, the abstract formulation of the questions characterized the fetvâ, which eliminated details such as real names[107] as much as possible. This was necessary in order to give the fetvâ the character of a decision on a general point of law (Gerber, 1999: 52).

Contrary to the common tradition of the Islamic societies basing their legal system solely upon Şeriât, the Ottoman Empire also reserved space for the will of the Sultan, which constituted another main pillar of the judiciary system. These laws issued by the Sultan are called kanûn (*örf-î hukuk, siyâset-î şer'îye, kanûn-nâme*) and they mainly regulated the aspects of life pertaining to agriculture, administration and the military (Akgündüz, 1990 : 45). In Heyd's words, kanûn meant:

> legal rules or prescriptions generally, including those of the religious law of Islam: e.g. kānūn-i şer', kavānīn-i şer'īye
>
> a single statute of a secular law enacted by the sultan, a regulation.
>
> A collection of such regulations relating to a certain matter or certain matters, a code or kānūnnāme: e.g. Kānūn-i Yürükān, Kānūn-i Alay.
>
> The whole body or institution of such secular state law as opposed to the sharī'a: e.g. şer'a ve kānūna muhālif" (Heyd, 1973:167).

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[106] The appearance of a position called Şeyh-ül islâm was a peculiarity of the Ottoman state. As Gerber states, he was "the head of the entire body of the 'ulamā', a position that evolved slowly over a period of several hundred years and reached its final form in the latter half of the sixteenth century with Ebu's-su'ud Efendi. With Ebu's-su'ud Efendi, the şeyh-ül islâm assumed his characteristic role as the head of the religious institution, in other words the office holder responsible for all nominations within that religious institution, or at least the more important among them "(Gerber, 1999, 30).

[107] 'Instead of the true names of the persons involved, fictitious names are used Zeyd, 'Amr, Bekr, Beshir (or Bishr), Khalid, Velid, Sa'id, Miibarek, etc. for men; Hind, Zeyneb, Khadlje, 'Ayishe, Umm Kiilsum, Rabi'a, Sa'ide, Meryem, etc. for women. The same names are generally given to non-Muslim subjects and even Christian or Jewish foreigners, but in some fetvas special names are used for Christians (Nicola, Yani, Mikhal, Yanko, Khristo; Maria, Matruka) and Jews (Elia)…Where, exceptionally, the fetva refers to certain individuals (such as viziers or other high officials) by their true names, these are not persons directly involved in the case'. H. Gerber, *Islamic Law and Culture 1600-1800* p. 52-53.

It was primarily the feudal structure of the Empire that necessitated a secular law, as the land was the primary source of revenues and military power of the Empire. Thus, laws were issued in order to cover deficiencies, as the Shari'a was silent on fiscal matters. Secular laws, therefore, covered fiscal, administrative, land and criminal law.

The kanûns, mainly fiscal and criminal, were either in the form of fermâns or kanûn-nâme, which, in fact, was the name given for compilation of fermâns. Kanûn-nâmes were usually effective across the whole Empire, although some were specifically issued and compiled for different regions. Those effective in the whole territory were called general law-book, whereas the others effective only in a particular region were called district law-book (Gerber, 1999: 41). The methodological codification of laws occurred in the late fifteenth century, when the rulers "acquired a means of legal control of the Empire's resources which supplemented and strengthened the system of bureaucratic surveillance that was already in place" (Gerber, 1999: 41).

Although the superiority of the şerîat rules was clear in the Empire (Gerber, 1999: Heyd: 1973), it did not simply mean that kanûns were not influential.  Barkan, for example, has argued that the sole basis of the kānūn was the sultan's will as expressed in Imperial decrees (fermâns). Moreover, to become valid and binding, they did not require the confirmation or sanction of the Şeyhülislām (Barkan, 1943). Indeed, there is no evidence confirming the submission of the kanûns or kanûn-nâmes first to the Şeyhülislām for his prior approval before gaining legal force. In fact, it is commonly agreed that it was generally the agrarian and criminal codes that qadis followed (Gerber, 1999). Accordingly, the analysis of the kanûns necessitates dealing with "the Ottoman Criminal law"(Heyd, 1973: 93-131) and fermâns decreed by Süleyman the Lawgiver in order to understand the codes followed by the qadis in the courts, in addition to fetvâ of Ebu's-su'ud.

There is one more important point to stress in this regard. The different sources of the judiciary system in the Ottoman Empire, Şeriât and kanûn, were one reason for the varying categories of difference. Concerning the kanûn, the main stratification was based on economic terms. The primacy of agricultural revenues in terms of the income of the

Empire led to classification of the subjects of the Empire into the reâyâ and the askerî classes. The former denoted the tax-paying subjects, whereas the latter signified the receivers of those taxes. The reâyâ overwhelmingly consisted of peasants, and the askerî was composed of fief-holders or those directly paid a salary from the treasury (Gerber, 1999: 40-41). The Şeriât, on the other hand emphasized other categories of difference. The Hanefî tradition regarded difference in terms of categories of free-Muslim, tributary infidel, protected resident and slaves.[108] Additionally, gender categories also cross-cut the categories of free-Muslim and tributary infidel. This categorization of difference conceptualized according to either religious or secular laws found a place in the laws. Many of the fermâns or fetvâs took these categories into account when describing a norm. Therefore in some cases, a kanûn on taxation could state a specific order for non-Muslims as in the case of taxes on pigs. [109] In other words, a secular regulation on the reâyâ or the military class also took into account religiously defined difference. In this respect it is important to identify these cross-cutting differences in the legal documents when identifying forms, levels, and degrees of toleration/intolerance.


### 5.3. The Analysis of the Sources


In this part of the research, I treat the laws of the Empire as media realizing the objective of justice that characterized the Ottoman political rule. In this sense, I accept that the laws aimed to *keep everyone in their proper place* and *balance the demands and capacities* of the Subjects of the Empire to *sustain public order, preserve wealth* and *protect legitimacy*. This required the analysis of the relationships in society that were fluid and complex regarding the intersection of gender, class and religion in the identities of the subjects of the Empire. Thus, sometimes the Ottomans could be intolerant to non-

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[108] C. Imber, *Ebu's-su'ud: the Islamic legal tradition,* p.78. Imber states that the protected residents were foreign ambassadors and residents who enjoyed protected status, although in practice it tended to be a treaty relationship with the Sultan, rather than strict Hanefî law that defined their status. And slaves of the Sultan's household were an exemption including simple menials, governors and viziers serving on the Imperial Council, and members of janissaries.

[109] C. Imber states: "Taxes on pigs, for example, are strictly speaking illegal. Since pigs are forbidden to Muslims, they have no commercial value and cannot therefore be subject to taxation. The district law-books, therefore, avoid the word 'pig' with the euphemism janavar ('beast') or else refer to this impost not as pig-tax, but as pig-bid'a, the term bid'a carrying the sense of an innovation which is contrary to the shari'a and therefore forbidden,"*Ebu's-su'ud: the Islamic legal tradition,* p. 50.

Muslims, in order to secure their legitimacy in the eyes of the Muslim subjects, or to sustain public order. And yet from time to time, they could be tolerant to non-Muslims to preserve their wealth. It is obvious that the possibilities can be multiplied. However, it was primarily justice, the idea to equalize and balance in order to preserve the boundaries between the different groups (i.e. Muslims and non-Muslims) and prevent the reâyâ from oppression (i.e. taking into consideration the balance between their demands and capabilities) that functioned as the requirement of toleration/intolerance of the non-Muslims. Thus, it is a question of identifying the boundaries of the proper places that the Ottoman state reserved for its subjects, particularly its religious Other. Moreover, it is also a question of answering in what points the state protected its religious Other against abuses that violated the balance between the demands placed on them and their capacities.

In this respect, I attempt to identify firstly the moments of tolerance/toleration which overlap when the ruler achieves to keep everyone in their proper places. However, it should be noted that keeping the subjects in their proper places necessitates intolerance of particular subjects, acts, ideas, and organizations, since that officially approved place should be cleared from any antagonism or possible threat to order. This means that the politics of tolerance/toleration becomes effective only when the difference in question is domesticated, depoliticized and thus poses no important threat to the power-holder, and everything he represents, i.e. public order and legitimacy. In this respect, undomesticated or un-depoliticized acts, ideas, organizations of the religious Other always face the threat of intolerance. When the State cannot fulfill the objective of keeping its religious other in its proper place, it appeals to politics of intolerance. In both cases, but mainly in the case of intolerance, the political rule regulates its flock primarily with the disciplinary power of laws. Laws drew the boundaries of disliked but acceptable acts, ideas, people, organizations that would not violate the line of demarcation between different groups of the subjects of the Empire.

In order to regulate its religious Other(s), the Ottoman Empire carefully followed the notion of justice. The laws formulated the boundaries of opposed and acceptable, or opposed and objected acts, ideas, subjects and organizations. As such, the Ottoman

Empire could keep its religious Other(s) in their proper place, which was defined according to the assumption of superiority of Islam and Sünnî Muslims. Thus, it is not simply the general category of religious Other that should be investigated in terms of its relation to toleration/intolerance, yet it should be the different acts (i.e. practices of worship, conversion), ideas (i.e. belief), organizations (i.e. church, vakf, lodges) and subjects (i.e. women, men, religious men) of the religious Other that we should concentrate to understand the impossibility of pure toleration/intolerance. Moreover, this impossibility of pure toleration/intolerance will be clearer when we identify the forms they take. In this respect—keeping in mind that the shift from forms of toleration to forms intolerance depends on the degree of threat that these acts, ideas, subjects and organizations pose to order, legitimacy and wealth, and more generally to the objective of justice in the Empire—I present in the analysis that follows how the Ottomans governed firstly the non-Muslims to keep them in their proper place (depoliticized, passificized, domesticated).

### 5.4. Justice as the Requirement of Contemptuous Tolerance and Punitive Intolerance

### 5.4.1. Infidels as the Religious Other

#### 5.4.1.1. Contemptuous Tolerance

In contrast to the common definition of toleration as non-persecution, which is frequently used to label Ottoman experience of toleration/intolerance, I prefer to generalize my ideas under two main categories, namely contemptuous-tolerance[110] and

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[110] I think the correct vocabulary for the prevailing idea/practice of toleration/tolerance in the Ottoman case is tolerance. I favor this point as I cannot argue that minimum retention of objection is replaced by a more positive attitude such as indifference, communal autonomy or respect. (These examples define the content of the term toleration and there are only a few cases that can be examples of the idea/practice of toleration. I will discuss them later in the text). Despite the strong arguments of communal autonomy, i.e. the discussion of Kymlicka's, based on the existence of the millet system, I would like to preserve my reservation on the subject. As has been presented in chapter II, it is a controversial question whether we can talk about the existence of a millet system with generalizable characteristics. Even if there is a structure as such, it is hard to conclude that the Ottoman Empire acknowledged non-Muslims' communal autonomy in the perfect sense of the term, which in the most general sense should mean the ability to take independent decisions regarding their communal matters without being restricted by the Laws of the Empire. This was relevant only to a limited extent. In other words, it was true that non-Muslims could abide by the requirements of their purely religious issues such as regulations on marriage, divorce, birth or

punitive intolerance. I will attempt to present these two categories as the general framework of idea/practice of tolerance/intolerance in the Ottoman Empire, beneath which we can encounter also other forms of toleration/tolerance/intolerance. I maintain the idea/concept of contemptuous tolerance as I think it was the mentality of contempt that best reflected the inferiority attributed to non-Muslims as well as the superiority of Islam and Muslim subjects, which were defined by both Islamic teachings/traditions and the notion of justice. Moreover, the idea of contempt is also consistent with the logic of toleration which assumes a power-holder and a powerless subject, where the first would probably have no (or minimum) respect for the latter.

Contempt in this respect characterized the background idea and attitude of presentation of this inferiority and disrespect, which furthermore asked for different forms of intolerance that mainly attempted to discipline the non-Muslim subjects regarding any act, idea, and organizations that challenged this superiority-inferiority relationship. Acceptance of this contempt by the tolerated was, therefore, the first condition of tolerance in the Ottoman lands. [111] Yet, it was not enough. They should also satisfy the conditions that would help to preserve this contempt or inferior ranks or disrespect, which I conceptualized as conditional tolerance. Finally we encounter the form of tolerance as intra-communal favoritism, which does not invalidate the attitude of contempt yet privileges some members of the non-Muslim community mainly due to prudential and pragmatic concerns. I will formulate this point as the first statement of this

education. For those, they did not have to follow or apply to Muslim authorities, though they had the right to do so if they wished. Yet it seems unrealistic to expect that the members of the Christian and Jewish communities were exempted from the limitations to preserve public order, wealth and legitimacy of the rule. And it is not strange that they would be left free regarding their purely religious issues, as belief in Christianity and Judaism was already accepted in the territories of the Empire, although it was in the form of contempt. Thus, the Ottoman Empire, in governing the acts, ideas, and organizations of the non-Muslims by primarily the OCC, fetvâ and sultanic decrees, more probably displayed the signs of tolerance rather than toleration, as it did not incorporate more positive policies towards the non-Muslims except in a few cases. It is in this framework that I maintain that it was mainly tolerance in the form of contempt rather than toleration that particularly drew the boundaries of acceptance of the beliefs and existence of non-Muslims.

[111] It could be a way to follow Foucault's statement of "rank in itself serves as a reward or punishment," *Discipline and Punish*, p. 181, and to discuss that ranking the non-Muslims in the secondary position was a punishment. Accordingly it could also be possible to argue that non-Muslims were intolerated as they were treated with a negative action, which was degrading/contempt in this case. However, regarding the conceptual-theoretical framework that I have tried to formulate, toleration is objection and acceptance of an important difference in different forms. Thus, the form I labelled as contempt draws attention to this ranking process.

part, and then present a more detailed discussion on the origins of this contempt, which is quite familiar to scholars of Islam or the Ottoman Empire, and other forms of tolerance.

*Statement 1 (S.1.): The Ottoman Empire was tolerant of belief in Christianity and Judaism, their believers, and their requirements (i.e. religious institutions, practices) in the form of contempt. Moreover, the possibility of even this contemptuous tolerance was linked to preservation of inferior rank and disrespect. That is why I label the form of tolerance rebounding from the texts of the Ottoman Laws as contemptuous tolerance.*

To oppose and accept the religious Other was related to the Quranic orders and Islamic traditions which affirmed their presence as they were the "People of the Book". Yet from the very beginning, this acceptance did not necessarily mean that they would be regarded as equal or respectable subjects like the Muslims. Rather, the Ottomans acknowledging Islam officially as the true belief, tolerated being a Christian or a Jew with the attitude motivated by the idea of insignificance and worthlessness of the Christians and Jews, of their beliefs and the requirements of their beliefs. Moreover, the historical and political reasons for this contempt were very much related to the Islamic tradition of the contract, Pact of Umar, in addition to orders of primary sources of Islam. (I think, the Ottoman state pursued the boundaries of this Pact as it was consistent with its theological-political conceptualization of justice,[112]in addition to the Empire's strong commitment to Islam). Although I mentioned this pact in the second chapter, I find it useful to restate the main points of this pact, as my argument regarding contempt is very much related to them:

> They would be subject to the political authority of Islam.
> They would not speak of the Prophet Muhammad, his Book, or his faith.
> They would refrain from committing fornication with Muslim women. This was extended to include the marriage between non-Muslim men and Muslim women. Marriage between Muslim men and dhimmi women was allowed, following the prophet's example, as long as the

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[112] In order to govern its subjects, namely their dissent, the Ottoman State did not hesitate to incorporate flexible and prudent politics concerning the pact, when necessary. It is frequently emphasized that "flexibility, prudence and negotiation" were pursued in order to deal with the dissent of various social groups in the Empire (Pamuk,2004: 228; Dávid, 1995: 89: Barkey, 2008)

children were brought up as Muslims. However, non-Muslim wives of Muslim men were free to worship according to their own faith.

Non-Muslims were forbidden to sell or give a Muslim anything that was in violation of Islamic law, i.e. carrion, pork or alcohol.

The display of crosses or ringing of bells in public was not permitted, nor any public proclamation of "polytheistic" belief to a Muslim.

No new churches or synagogues could be built.

Non-Muslims must wear the girdle over their cloaks and were to differentiate themselves form Muslims by their headgear, mounts, and saddles. This was expanded later to prohibit non-Muslims from riding either horses or camels, limiting them to mules and donkeys.

Non-Muslims should not teach their children the Qur'an, nor use Arabic in their personal seals.

No non-Muslim could hold a Muslim slave.

No public religious processions such as those traditionally held at Easter, were to be allowed. (Masters, 2001: 22)

The majority of these points of the Pact find place in the Sultanic decrees and the fetvâ collection of the Empire.[113] When we read these articles successively, they cannot say whether non-Muslims are purely tolerated or intolerated. However, they obviously give us the portrait of the non-Muslim community. They were allowed to live and were protected in the Muslim lands in a framework whose boundaries were drawn by the power-holder, the Islamic ruler. Thus, they had to firstly acknowledge their place in society: They were non-Muslims, and were thus inferior. Moreover, they had to remain in this category by satisfying particular conditions stated in the Pact. While some of these conditions necessitated extra burdens (i.e. financial burden such as haraç/cizye), some of them asked for intolerance, punishment and discipline. While some of these conditions (extra burdens and restrictions) can be comprehended under different forms of toleration/tolerance, a few others can be examples to the forms of intolerance. In this respect, I treat this concept of contemptuous tolerance, as undermining the forms of intolerance and other forms of toleration/tolerance, which are instrumental in explaining the defined boundaries of relations with the non-Muslims.

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[113] My analysis regarding these laws on non-Muslims, therefore, will be merely approaching them with the category of toleration/intolerance in order to interpret them with my proposed arguments and conceptual-theoretical framework.

The contempt embedded in the idea/practice of tolerance disseminated almost everywhere regarding the relations with the non-Muslims. As an important example of this conditionality for the preservation of contempt, we can focus on the laws regarding the collection of haraç/cizye.

### 5.4.1.1. i. Conditional Tolerance

**Haraç/Cizye**

Contempt, which is sometimes identified with "humiliation" or "second-class citizen" by the related literature, was best materialized by the implementation of the policy of haraç/cizye, which was a fiscal burden only on the shoulders of the non-Muslims. It was an important condition to be fulfilled as the payment of the haraç/cizye was the primary condition for the acceptance and protection of the non-Muslims in the Muslim lands. In other words it was the condition to be satisfied in order to pursue the politics of tolerance.[114]

Despite the attempts of some scholars to incorporate haraç/cizye into their analysis as the sign of intolerance, I prefer to comprehend it under the heading of conditional tolerance. This preference is primarily related with the conceptual boundaries of this research regarding toleration/tolerance and intolerance. Intolerance refers to opposition and rejection of an important difference combined with a negative response. Although haraç/cizye can be considered as the negative response, we cannot say that the belief in religions of the Book and/or the existence of non-Muslims in the Ottoman lands is rejected. It is in this respect that, I treat haraç/cizye as one of the conditions for the continuity of tolerance, though it was contemptuous. Moreover, I prefer to use haraç/cizye instrumentally to present how conditional tolerance idea serves to the objective of justice that assigns inferior and disrespectful rank to the non-Muslims.

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[114] As discussed previously, in the Chapter II, one of the reasons for labeling Islam as intolerant was closely related with the collection of kharaj/jizya. Within the boundaries of this research, however, it is interpreted as one of the signs, among many others, of the inferior rank and the contempt assigned to non-Muslims rather than being the sole mark of intolerance.

Additionally, it also presents a good example to illustrate the second justice objective of the Empire, which is balancing the demand and capacities of the subjects.

Justice as the requirement of toleration, as discussed previously, does not only aim to sustain the distinction and rank between the Muslims and the non-Muslims, yet it also aims to satisfy the objective of preserving the balance between the demands and capacities of the reâyâ : i.e. the amount of the haraç and the capacity of the non-Muslims for being able to pay it.[115] The regulations concerning the taxes collected from the non-Muslims carefully consider this idea of balance. The fetvâ on the amount of collectible taxes from the non-Muslims classifies the non-Muslims first according to their wealth, and then announces the amount of the tax to be collected from them. This attempt can be observed mainly in the fetvâ no 416 and 414. In the former, it is asked what is referred to by wealthy, average and the poor. The response states that the ones owning up to two hundred drachma (dirham) are poor, between two hundred and ten thousand are average, and more than ten thousand are rich *(ELCEVAP: İkiyüz dirheme mâlik olmayan fakirdir, iki yüz dirhemden onbine varınca vasat-ül-hâldir, onbinden yukarısı fâiktir)* (Fetvâ no 416: p. 97). Based on this classification of the wealth status, in the fetvâ no. 414, the amounts of taxes that should be collected from the non-Muslims are announced. From the poor twelve, average twenty, and the rich forty drachma (dirham) should be collected *(ELCEVAP: 'Amele kâdir olan kâfir, ki iki yüz dirhem- i şer'îye kâdir olmaya, ol makûle ednâdır, on iki dirhem-i şer'î alınır. İki yüz dirhem-i şer'îye kadir olup 'amele kâdir olan evsat makûlesidir, olunca, yirmi dirhem-i şer'-î alınır. On bin dirhem-î şer'îye mâlik olan a'lâ makûlesidir, onların cizye-i şer'iyyeleri kırk dirhem-i şer'îdir)* (Fetvâ no. 414: p. 97). Moreover, one of the fetvâs, though indirectly, states that the disabled and poor are exempt from the taxes, such as cizye, ispençe and avârız-i 'urfiyye[116] that the non-Muslims should pay (Fetvâ no. 417: p.97).  In this respect we can develop our first statement:

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[115] The objective of preserving the balance between the demands and capacities of the non-Muslims is also apparent in the Ottoman Criminal Law. As I present in the section on Punitive Intolerance, this burden of kharaj/jizya is taken into consideration when the fees that the non-Muslims have to pay for the crimes they committed are determined.

[116]H. İnalcık, *The Ottoman Empire The Classical Age 1300-1600*: "İspençe: the name of the çift resmi as paid by Christians", p.222. "Avârız-i 'urfiyye:extra-ordinary taxes levied on the reâyâ", p. 217.

*S.2.: Haraç/ cizye were the visible, material reflection of conditional tolerance and the idea of justice in the Empire. The politics of justice firstly necessitated to define and preserve the boundaries between groups in society. It therefore assumed the inferiority of the non-Muslims, for whom the Ottomans did not have respect but contempt. This inferiority and disrespect, therefore, were primarily marked with the obligation of paying haraç/cizye. Although haraç/cizye was probably not a heavy burden for the non-Muslim subjects—as according to the notion of justice, the collection of taxes was exercised according to differences in wealth—[117]its symbolic representation of contempt and conditionality was important.*

It is clear that despite the payment of the haraç/cizye, the contempt and inferiority reserved for non-Muslims do not change. It is only a condition for the validity of the Pact, which has already confirmed this inferiority and contempt. The occupational and juridical restrictions regarding non-Muslims in this sense can be a complementary idea to present paying haraç/cizye does not make non-Muslim subjects as equals with the Muslims. Rather, invalidity of their witness against the Muslims and their exclusion from official duties such as military and bureaucratic posts enhance our arguments that their conditional tolerance, underlined by contempt, continues in their everyday life.

### Churches and Vakfs

I have already presented haraç/cizye as one of the major condition for the acceptance of the belief and believers of the religions of the Book. The regulations concerning churches and vakfs also share the same mentality. They are accepted yet their acceptance is subject to conditions described mainly in the fetvâs.

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[117] Jennings argues that the amount of the jizya that non-Muslims were obliged to pay, at least in Kayseri, was "certainly not great enough to impose a burden so unequal as to put individual dhimmis at a substantial economical disadvantage in their competition with Muslims for land and trade" Jennings, *Zimmis in the Early 17th Century Ottoman Judicial Records*, p.235. Although his analysis is limited to seventeenth century Kayseri, we can approach his argument positively regarding the justice notion aiming to balance demands and capacities of its subjects.

The acceptance of the church in the Ottoman lands depended on the form of the conquest of Istanbul. As it was conquered with peace and by the cooperation of the non-Muslims, the ancient churches were allowed to exist. *(ELCEVAP: ...kenâyis-i kadime hâli üzerine ibkâ olunmak sulhle fethe delâlet eder...)* (Fetvâ no. 456: 104). Yet in addition to the condition of cooperation of non-Muslims with the Ottoman ruler, Sultan Mehmed, in the conquest, the acceptance of ancient churches was also subject to the condition that they would be preserved in their original shapes. This meant that in case of its damage, the Ottoman state would allow its repairment *(MES'ELE: Bir şehrin içinde, kâfirlerin kadimden kiliseleri olup, hâliya üstü harâb olsa ta'mir olunur mu? ELCEVAP: Olunur.)* (Fetvâ no. 465: 106). Yet, no additional parts are allowed *(MES'ELE: Bir kasabada bir kilisenin avlusu küçücek iken, kefere bir miktar yer alıp tevsîa kâdir olurlar mı? ELCEVAP: Şimdiye değin iktifa etmişler, min ba'din dahi iktifâ ederler)* (Fetvâ no. 466: 106). If extra parts are added during the process of the repairment, the Ottoman ruler orders its demolition *(MES'ELE: Bir şehirde kefere kiliselerinde, evvelden yok iken, keşişler sâkin olucak ba'zı odalar ihdâs eyleseler, müslümanlar ma'rifet-i hâkim ile yıktırmağa kâdir olurlar mı? ELCEVAP: Olurlar, kiliseye muttasıl ise)* (Fetvâ no. 467: 106). In addition to prohibition of additional parts when repairing the churches, the use of material that is incompatible with the original one is also prohibited. If it is the case, as specifically asked by a fetvâ, it is ordered to abolish and reconstruct it with its original material *(ELCEVAP: ...Kilise hedm olunup, evvelki gibi binâ ettirilir)* (Fetvâ no. 468: 106).[118]

The vakfs of non-Muslims is also conditionally tolerated by the Ottoman state. One of these conditions is related with the procedure of donation and ownership of the vakfs, and the other concerns the type of the properties that could be considered as vakfs. In this respect, when we concentrate on one of such questions, we see that it is asked whether it is religiously appropriate to vakf a house to the church, which later on donate it to the poor *(MES'ELE: Zeyd-i zimmî mülk evini kiliseye, ba'dehu kilise harab oldukta fukaraya vakf edip, hakim dahi mezkûr evin vakfiyetini Kabul edip hüccet vermek şer'an*

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[118] Similar conditions are emphasized in Sultanic promulgations: Balat kapısı dışında nizamsız yapılan kilisenin yıkılmasına dair (On the demolition of church built illegally out of Balat gate), Ahmet Refik, *On Altıncı Asırda İstanbul Hayatı (1553-1591)*, p.44; Yolsuz yapılan kiliselerin yıktırılmasına dair (On the demolition of illegally built churches), Ibid., p. 45; Sulumanastırda yolsuz yapılan ermeni keşişhanesine dair (On the illegally built Armenian monastery in Sulumanastır), Ibid. , p. 46-47.

*câiz olur mu?)* (Fetvâ no. 469: 106). The answer states that it is invalid to donate the property to a church. Yet if it is donated to its dwellers, and then to the poor, it is religiously proper (ELCEVAP: Kiliseye vakıf bâtıldır. *Amma sâkinlerine vakf edip anlardan sonra sâir fukarâya şart vermek şer'îdir)* (Fetvâ no. 469: 106).[119]

Thus the first condition for accepting a vakfs is donating it to the poor or to the poor dwellers of the Church rather than the Church itself. It appears, therefore, the Ottoman state allows for family vakfs rather than religious ones, as the latter would mean accepting the charity of the Christianity which could challenge the superiority of Islam in terms of monopolizing even the charity. The second condition, as stated, is related with the type of the properties that can be considered as the vakfs property. Fetvâ no. 453 is helpful in this manner. In the question it is asked whether it is appropriate to interfere in the donation of animals, vineyards and orchards, and mills to the dwellers of the monastery and the poor. The answer clearly states that if they are animals, vineyards and orchards, mills and shops that are made over to the dwellers of the monastery and the poor, then no one can interfere. Moreover, the answer frankly asserts that one cannot make over lands and fields to even dwellers and poor, unless the priests get the title deed and pay its tax as regular subjects do. *(ELCEVAP: Vakf ettikleri davar ve bağ ve bahçe ve değirmen ve dükkân makûlesinden olup, manastıra vakf etmeyip, gelen giden fukaraya vakf edicek aslâ dahl olunmaz. Tarlalar ve mezra'alar ise asla vakfa kabil değildir. Amma anı dahi mîrîden tapuya alıp "rahibler tasarruf edip sâir re'âyâ gibi cemî hukûkunu verdikten sonra kimse dahl etmiye…)* (Fetvâ no. 453: 103). At this point we can make our related statement:

*S.3.: Similar to the condition of payment of the haraç/cizye tax (which is the material manifestation of the acceptance of the superiority of Islam and the ruler, and the contempt reserved for them) to accept belief and believers of Christianity and Islam, the acceptance of church and vakfs of non-Muslims were also subject to conditions. In other words churches and vakfs of non-Muslims were also conditionally tolerated.*

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[119] Similar statements also take place in fetvâ no. 452, 453,454,455, pp. 103-104.

### 5.4.1.1. ii. Tolerance as Intra-communal favoritism

**Religious-men**

If the classification of amount of haraç/cizye according to the capacities of the non-Muslims is the first sign of the conditional tolerance and justice objective of the Ottomans, the exemption of the non-Muslim religious men from this tax is the other. In the fetvâ no. 450 it is asked whether the poor members of the monks of the Church are subject to pay haraç *(MES'ELE: Kilise keşişlerinin fukâralarına haraç vermek lâzım olur mu?)* (Fetvâ no 450: 103). In the following fetvâ, moreover, the question excludes the adjective of "poor", and asks the same question by adding the possibility of exemption from the tax of *ispençe*. *(MES'ELE: Keşişlerden cizye ve ispençe ma'fuv mudur, yoksa alınır mı?)* (Fetvâ no 451: 103). The answers for the both questions mention that if they do not have a contact/agreement with the people, then, they are not responsible for it. *(ELCEVAP: Aslâ halk ile muhâlâtaları yok ise olmaz)* (Fetvâ no 450 ,451: 103).

Despite the general contempt and conditionality for the non-Muslims, this policy of exemption displays how the Ottoman state takes into account the hierarchies among them.[120] In this respect, despite the general idea of contempt characterizing tolerance idea of the Ottomans, we can argue that non-Muslim religious men are tolerated more than ordinary subjects. Thus if we think that contemptuous-conditional tolerance is the concept for the general attitude of the Ottomans towards the non-Muslims, we can make a slight difference in this conceptualization concerning religious men of the other religions. Opposition and acceptance of them are not merely grounded on the minimum retention of the objection, but they are treated more favorably. However, this point does not necessitate incorporating the category of toleration instead of tolerance regarding non-Muslim religious men. It is closely related with what favor/favoritism means at this point. Favoritism does not signify a policy that situates any member of the non-Muslim society in a more respectable position than the Muslim subjects. It treats some members

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[120] In the previous paragraph I also mentioned that the disabled and the poor are exempted from the kharaj/jizya. Yet, this exemption, I think does not necessarily allow us to discuss an alternative to the tolerance/toleration pair regarding them. This policy was very much related to the prudential justice characteristics of the Ottoman rule, which knew that those subjects would not be able to fulfill their obligations even if they were held responsible.

of the non-Muslim community as more respectable than the other members of the same community. It therefore merely refers to a distinction between the degree and form of tolerance, which does not invalidate the general contempt relevant for the whole. In this respect we can name the form of tolerance for the non-Muslim religious-men as intra-communal favoritism.

### Landlords

Not the Laws under focus, yet the secondary literature on the subject gives us the clues for the other non-Muslims who are also subject to tolerance in the form of intra-communal favoritism.  It is clear that such a policy is an outcome of the need for "flexibility, pragmatism and negotiation" to govern a huge territory, yet, the incorporation of local, customary practices into legal system inevitably created favors for the particular members of the non-Muslim community. The survival of pre-Ottoman "monopoliye tax" in the Balkan provinces is a good evidence for the positive discrimination, or intra-communal favoritism, towards landlords. As Dávid Géza states:

> [t]he monopoliye tax allowed the landlord…to sell his own, locally produced wine, received as a tax from the peasants, for a period of two months or 70 days, during which no one else was permitted to put wine on the market… (Dávid, 1995: 79).

It was clear that exemption of religious-men from particular taxes, paid by the other non-Muslim subjects, provided them a more advantageous position. The landlords in the Balkan provinces of the Empire benefited from a similar advantage by keeping the monopoly of selling their vines in their hands for two months or seventy days. It is in this respect that I also treat them as the subjects of tolerance in the form of intra-communal favoritism. At this point we can make our following statement:

*S.4.: The religious men and landlords are tolerated in the form of intra-communal favoritism although in general it was still contemptuous tolerance that characterized the attitude towards them.*

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So far I have presented the prevailing form of tolerance as contemptuous tolerance. Moreover I argued that I treat the act of payment of the haraç/cizye, the churches and vakfs as examples of conditional tolerance. Regarding the religious men and some landlords, on the other hand, I claimed that tolerance is exercised in the form of intra-communal favoritism, as we see a more positive policy towards them regarding an obligation valid for all non-Muslims. In the following section, I will incorporate my second category, punitive intolerance. In parallel fashion, I think it is quite appropriate to present particularly the forms and degrees of intolerance regarding different acts, ideas, organizations and subjects of the non-Muslims. Moreover, I think, as a general category (like contemptuous tolerance) punitive intolerance is inclusive and it can cover the mentality of the other forms of intolerance, which I name mainly as incapacitating and reformative intolerance. I think intolerance, at the end, exerts particular forms of punishments which aims to discipline (particularly by reformative punishments) the acts, ideas, organizations of the non-Muslim subjects, which are considered as a threat to the idea of justice which is the basic medium of art of government in the Ottoman lands.

### 5.4.1.2. Punitive Intolerance

In the theoretical part of my research, namely in the second chapter, I discussed intolerance as *objection to an item combined with a negative action against it*. Similar to my reservation regarding the identification of toleration with non-persecution per se, I had also doubts for identifying intolerance merely with persecution. Thus, I did not take this negative action only as persecution, yet I tried to comprehend it under the general category of punishment, which I think covers execution, imprisonment, corporal and financial punishment, exclusion and prohibition (supported by force or corporal punishment in case of violation) as construing the varieties of negative action.[121] At this point it is necessary to make a rearrangement regarding these different negative actions

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[121] In fact, psychological punishments such as humiliation, contempt and disrespect could also be classified under the category of punishment. Yet, as the laws merely give us the visible and material forms of punishments, I excluded them from its scope. Moreover, as I discussed in the previous section, I treated some of these acts or feelings (i.e. contempt and disrespect) as characterizing tolerance. Moreover, I tried to argue that it was this contempt that essentially defined the other forms of tolerance as well as punitive intolerance.

so that we can make a more elaborate classification of forms of intolerance, which I treat under the general category of punitive intolerance.

Considering that Laws drew particularly the boundaries of permissible and impermissible acts, ideas, organizations, subjects, we can argue that they provide us what kind of acts, ideas, organizations of the non-Muslim subjects are impermissible. In this respect tracing the impermissible aspects of lives of non-Muslims in the Laws, is in fact takes us to the items of intolerance. In order to reveal the forms of this intolerance, on the other hand, what we need is to define the content, form and objectives of the punishments. In this respect, I will attempt to clarify the content, type and the objectives of punishments by focusing on Islamic-Ottoman legal system, and types and objectives of its punishments. In fact, they provide us important insights not only in terms of the forms of intolerance but also in terms of the relationship between intolerance, justice, art of government and disciplinary power of the Laws.

In the Ottoman legal system, we can categorize the punishments, according to its own vocabulary, as ta'zîr and siyâsa punishments, which regulate *"discretionary punishment of sinful or forbidden behavior or of acts endangering public order or state security (ta'zîr and siyâsa)"* (Peters, 2005:7). Peters states that ta'zîr and siyâsa punishments are often used interchangeably. Nevertheless, he draws attention to differences between the two, which are crucial regarding the arguments of this research. Firstly, he discusses that **"whereas ta'zir punishments can only be imposed for acts that are forbidden in the Shari'a, siyasa punishment may be administered for any act threatening public order, regardless of whether or not the perpetrator is to be blamed for it"** (Peters, 2005: 68). Ta'zîr punishments, in this respect define the proper punishment which is not determined by the Shari'a.[122] It includes mainly corporal and financial punishments. Secondly, it is the objective of each punishment that differs. **Ta'zîr aims reform of the offender and deterrence in the related order. Siyâsa, on the other hand, aims to protect public order and thus prevents the acts of individuals that can be a**

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[122] Shari'a orders punishments of *hadd, retaliation and diya* for the determined violation of the rights of God and Man. They are as severe as siyâsa punishments. Ta'zir, accordingly, punishes the crimes that are out of the scope of *hadd, retaliation and diya*.

**threat to law and order. It does so by incapacitating individuals by execution, imprisonment, and banishment from life** (Peters, 2005: 31, 68).

I find this distinction between the types of punishments important, because it can guide us in terms of the degrees of intolerance. In other words, we can conclude that the items that are subject to siyâsa punishments—*execution, imprisonment, and banishment* from life (exile and galleys) —are intolerated in the most extreme degrees. Since siyâsa punishments are primarily designed for punishing the items that are considered as important threats to the public order, we can moreover justify the importance of justice as the requirement of toleration, which aims primarily at the preservation of public order. Siyâsa punishments most probably challenge the items that break the lines between the established hierarchies in society. Ta'zîr punishments, on the other hand, give us the clues for the items that are intolerated less, when compared with the items of siyâsa punishments. Although this does not mean that ta'zîr crimes constitute no threat to the public order, we will see that ta'zîr punishments mainly takes into account the possible violations of the borders between religiously established hierarchies that are based on the idea of contempt regarding other religions. In other words, the items that challenge the inferior ranks and contempt assigned to non-Muslims are subject to ta'zîr, which are in fact considered as a less threat to the public order. Although the preservation of the borders between the different groups of the society, justice, constitute the main idea of both the siyâsa and ta'zîr punishments, we see that the first punishes the items more severely, probably because they are more important threats to the public order, wealth and legitimacy of the Empire.

It is in this respect that I label the general category of intolerance as punitive intolerance. Moreover I argue we can differentiate sub-forms of intolerance, incapacitating and reformative intolerance, according to the types of ta'zîr and siyâsa punishments, both of which are punitive and disciplinary at the end. Yet here I make a slight difference, and under reformative intolerance, which is conceptualized according to ta'zîr punishments, I included the punishments of exclusion and prohibition. Thus, in the next section, under the general category of punitive intolerance, I will deal with the forms

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of incapacitating and reformative intolerance both of which punish and discipline difference according to politics of justice.

### 5.4.1.2.i. Incapacitating Intolerance

**Invalidation of the Pact/Contract**

As I stated above, one of the material reflections of contemptuous tolerance, more specifically conditional tolerance, was fulfilling the condition of the payment of the haraç/cizye, which would mean the acceptance of the articles of the Pact, therefore of contempt. The fetvâs concerning the questions and answers on haraç/cizye, in this respect, also include some important statements that acknowledge the importance of the contract between the dhimma and the Muslims.  In fact, they are fetvâs no. 437, 438 and 439 that provide us with the cases when the dhimma status is invalidated. The questions in these fetvâs mainly ask what would happen if the non-Muslims behave in a disobedient manner towards the Muslims, i.e. if they irregularly pay their haraç/cizye *(…ve haraçların dahi bi şahsihi getirmeyip içlerinden birisiyle gönderseler, ve eskeri köyleri bir yıl haraç verirlerse iki üç yıl vermeyip geçirseler…)* (Fetvâ no 437:  101); if they rebel against the Sultan *(Bir karyenin kâfirleri Pâdişâh-i âlempenah hazretlerine âsî olup…)*(Fetvâ no 438: 101). The answers strictly draw the boundaries of the cases when the contract between the dhimma and the Muslims is invalidated. These cases are to cooperate with another non-Muslim country, to capture an Islamic region or declare a war and killing Muslims *(Yâ dâr-ül-harbe lâhik olup, yahut bir vilâyete mustevli olup, ehl-i islâm ile muhârebe ve mukâtele…) (Fetvâ no. 437, p. 101)*.

The answers do not state any other cases that lead to the invalidation of the contract between the non-Muslims and the Ottoman state. The answers stating that there are varying degrees of disobedience *(Merâtib-i isyan mütefâvittir)* (Fetvâ no. 438, p.101) in fact make a distinction between disobedience that leads to dissolution of the contract and others that would be subject to punishments stated in the criminal law.  Unpayment of the haraç, theft and banditry, living in the mountains because of the oppression of the sancak beg or opposition to the orders of sancak beg, in this respect, do not necessitate

dissolution of the contract *(Haraç vermemekle harâmîlik ve hırsızlık etmekle, sancak beylerinin zulmünden kaçıp dağlarda nîhbe (veya, bîhte, bîhne) olup, sancak emirlerine itâ'at etmemekle zimmet mütenakkaz olmaz)* (Fetvâ no. 439, p. 101). This of course does not mean that the Ottoman state accepts such acts as proper; it definitely intolerates them. However, this intolerance, while preserving the basis of contract, considers these acts as crimes and asks for their corresponding punishments, which are not limited to non-Muslims per se. It is in this sense that in one of the answers of the fetvâ it is openly stated that it is legitimate to kill bandits *(Harâmileri katl olunmak meşrûdur)* (Fetvâ no. 438, p. 101).

Another fetvâ in the collection does not mainly refer to the subject of invalidation of the pact, but refers to a similar act that can be treated as a violation. In this particular fetvâ, the Muslims ask for the proper act towards bandit non-Muslims who injure Muslims and steal their goods *(Bir mağarada bir nice zimmî kat-î târika mübaşeret edip, gece ile bir nice müslümanları basıp, cümlesin mecruh edip, nisâbdan ziyade malların alıp tutsalar, mezburlara ne lâzım olur?)* (Fetvâ no 446: 102). The answer orders for the amputation of their hands and feet. Within this framework, we can make the following first statement regarding section on punitive intolerance-incapacitating intolerance:

*S.1.: The acts of non-Muslims that aim to cooperate with a non-Muslim country, to capture an Islamic region, to declare a war on Muslims and to attempt to kill and injure them are subject to intolerance in the form of incapacitation (i.e. execution, severe corporal punishment) as their status shifts from protected People of the Books to the enemies of Islam and State.*

These acts are the serious violations of the contract between the Muslims and non-Muslims, which permits the existence and protection of the non-Muslims in the Islamic lands in certain conditions which obviously excludes these aforementioned acts. Thus, once these rejected acts are realized by the non-Muslims, they do not only challenge the passive, depoliticized and inferior rank assigned for them, but they also constitute a serious political challenge to the public order and power of the Ruler. Therefore these acts

are intolerated in the extreme form of intolerance that is incapacitation realized mainly by execution.


### Conversion to Islam


The discussions on the conversion policies of the Ottoman Empire more or less follow the similar path. They agree on the absence of a systematic policy of conversion, particularly forced conversion, unless there is a crisis.  Indeed, officially, there appears to be no regulation or law that orders for the forced coercion. Similarly there are not considerable complaints from the non-Muslim subjects regarding the systematic coercion of Muslim subjects.[123] However, this does not mean that conversion of the non-Muslims followed extra-legal tactics. These tactics were quite clearly and convincingly discussed by İnalcık as early as 1954. İnalcık interprets the topic of conversion as part of the assimilation policies of the Ottoman Empire. As İnalcık argues, both in Anatolia and Balkans, the Ottoman Empire pursued a "large scale Turkish settlement" rather than "mass conversion" to assimilate its non-Muslim subjects (İnalcık, 1954:126). Additionally *deportation, social and economic factors* were also intentional tactics of the Ottoman Empire in order to assimilate the non-Muslims without forcing them for conversion. Thus not only the objective of escaping from the burden of cizye, but also social factors i.e. "the risk of losing social status, or the local organizations and traditions of individual non-Muslim communities" (Minkov, 2004: 13) are regarded as important reasons for voluntary conversion.  As such, the Ottoman State successfully achieved considerable numbers of conversion without coercion particularly in the Balkans.


When we review the Laws, we come across a few fetvâs that define the conditions of conversion, and the acts that the converted should fulfill after the process. In this respect, the questions as well as the answers pertain mainly to the obligations of Islam, i.e. circumcision (i.e. fetvâ no. 369: p. 90), alms and sacrifice (i.e. fetvâ no. 373, 374: p.91),

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[123] In his analysis of Kayseri court records, Jennings states that he observed only two cases where the non-Muslims applied to the Muslim court with the complaint of coercion from Muslims for conversion to Islam. He moreover concludes that "the sharia court seems to have provided a refuge and the Muslim community seems to have provided witnesses to protect the zimmi," *Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri*, p. 246.

the procedure of conversion (i.e. fetvâ no. 358,359,360,361,362,363,364,365: pp.89-90). There is little evidence in this part regarding the acts/decisions concerning the disliked and accepted, or disliked and opposed subjects, ideas, acts and organizations, except the treatment of heretic after conversion into Islam. It is the case where we clearly observe the act of incapacitating intolerance which is realized by two different incapacitating punishments according to sexuality of the subject.

Incapacitating intolerance in the form of execution comes into prominence when the male non-Muslim converts to Islam, but after that he becomes unbeliever (*kâfir*). The answer to the question of what is going to happen if it is the case is quite clear: He is forced to convert, if he does not, he is persecuted *(ELCEVAP: İslamâ cebr olunur, gelmezse katl olunur)* (Fetvâ no. 370, p. 90). In the case of conversion into Islam and then turning into a heretic, we see that there is a difference between the attitude towards male and female non-Muslims. It is another question that allows us to make this statement. In that particular question, it is asked whether the persecution of female non-Muslim is necessary, if she converts into Islam, but then became unbeliever (*mürted*) *(MES'ELE: Hind-i zimmiye, İslâma geldikten sonra mürted olup, irtidâdı üzerine musır olsa katil lâzım mıdır?*) (Fetvâ no. 371, p.90). The answer is no for this particular question. Yet it orders imprisonment until her death. Thus the form of incapacitating intolerance shifts from persecution to life-long prison punishment. In this respect, we can present our next statement:

*S.2.: In the sixteenth century Ottoman Empire, when non-Muslims became heretics after they have converted into Islam, the incapacitating intolerance exerts the punishment of persecution for the males and life-long incarceration for the females. Thus, on the level of the state, the act of becoming heretic after conversion into Islam was subject to objection combined with extreme degrees of negative action against it, i.e. incapacitating in the form of persecution and life-long incarceration.*

We can interpret this regulation as the importance given to conversion into Islam. Although in the Ottoman Empire, conversion is regarded neither as compulsory, nor as

forced, it is obvious that the choice of true belief by the unbeliever (*kâfir/mürted*) is regarded as something to be preserved.

### Owning Slaves

In the part of the fetvâs called Limits of their Rights (*Haklarındaki Tahdidler*), we one more time encounter the objective of keeping Islam and Muslims in the superior ranks both qualitatively and quantitatively. The qualitative supremacy reserved for the Muslims is provided by depriving the non-Muslims from some of the rights acknowledged to the Muslims. The right to own slaves is one of them. To own slaves, which is in fact a sign of wealth and privilege is a right given only to the Muslim subjects. Therefore, the non-Muslims who own slaves despite the order of its prohibition are subject to severe punishment *(ta'zîr-i şedîd)* and lengthy imprisonment *(habs-i medid)* (Fetvâ no 400, p. 94).[124]

The same restriction is also available in the sultanic decrees. Although the related decree ["Prohibition of Selling Slaves to Non-Muslims /Gayri müslimlere esir satılmamasına dair) (1575)" (Refik, 1988: 50)] basically confirms the prohibition of ownership of slaves by the non-Muslims, it additionally draws attention to the motive for this ban and mentions another incapacitating punishment. Concerning the motive, firstly it appears that the Ottoman state affirms that the slaves could more easily convert into Islam if they are owned by the Muslims. Thus, the Sultanic decree display the discontent regarding the sale of slaves to Jews and Christians, by emphasizing the inclination of those slaves to Islam, which were yet converted to Judaism and Christianity *(…ve bazı dahi taze olub müslüman olmağa kabil iken aldıkları esirleri Yehuda ve nasranî eyleyüb…)*(Refik, 1988: 50). The second motive on the other hand can be discussed as the discontent regarding the possibility of ownership of Muslim slaves by the non-Muslims. In the same decree it is stated that some of those sold slaves to the non-Muslims were Muslims *(İstanbul kadısına hüküm ki Hâlâ esirci tayifesi Yehuda ve nasranî tayifesine esir beyi*

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[124] Although the punishment of owning slaves by the non-Muslims include both incapacitating (habs-i medid) and reformative (ta'zîr-i şedîd) ones, I choose to interpret it in this section, as the following part of the text will display that it is mainly incapacitating punishment that prevails concerning the ownership of the slaves.

*eyleyüb satılan esirlerin bazı müslüman olup…)*(Refik, 1988: 50). In this respect, the non-Muslim subjects are deprived of having slaves because owning a Muslim slave could damage the superiority of Islam, or non-Muslims owning a non-Muslim slave could constitute a barrier for their conversion into Islam.

Accordingly, in the Sultanic decree the act of selling or buying is punished by condemnation to galleys, which was a sign of incapacitating intolerance and punishment *(Yahudi ve nasârâ tayifesine kimesne esir satduğu malûm ola alan ve satan ele getirilüb küreğe konulmak mukarrerdir)* (Refik, 1988: 50). In another Sultanic promulgation it is ordered that the male slaves and concubines should be held and they should be resold to Muslims. It moreover states that if his order is not obeyed, those ones will be subject to severe siyâsa punishment *(…İmdi minbaad eğer yahudidir ve eğer nesârâdır esir alup istihdam etmeğe emrim olmıyub ve azadlu olanları anlardan alınub ehli islâma teslim olunub ve bilfiil esir olanları dahi alınub ehli islâma beyi olunmaların emir idüb buyurdum ki…Minbaad eğer yehudidir ve eğer nesârâdır eğer esirdir eğer mu'takdır alub istihdam etmiyeler Şöyle ki badettenbih birinde mu'tak yahud esir buluna asla bir ferdin özrü makbul olmıyub eşeddi siyaset olunacağın mukarrer bilüb…)* (Refik, 1988: 43-44). In this respect, we can conclude:

*S.3. The act of owning slaves by the non-Muslims was subject to incapacitating intolerance, sending to galleys, as it could be a barrier to potential conversions and lead to the damaging of Muslim superiority (if the slave of a non-Muslim were a Muslim).*

### Morality  (Adultery and Fornication)

The non-Muslims were not simply subject to punitive intolerance regarding issues related only with their religious difference. Yet, at the same time, they were treated like ordinary Muslim subjects concerning the regulations of morality and order which is the issue of the Ottoman Criminal Code. [125] In the first chapter of the OCC, "On Fornication

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[125] Criminal law, in general, can be defined as "the body of laws regulating the relationships between the state and individuals in terms of designating for the outlawed acts and the due

and Other Offences" as well as in the others,[126] we encounter binary categories upon which the content and form of corporal, and amount of financial punishments are determined. In this respect, male-female, married-unmarried, boys-men, girls-women, slaves-free people, Muslim-non-Muslim, rich-poor dichotomies emerge as important binary categories.[127] The punishments differ mainly according to these differences. These categories become visible in the first thirty articles of the first chapter of OCC. Although, in almost each article (and inevitably in each different case), the actants are differentiated according to categories of sexuality, marital status, class and age, we also observe overlapping categories (i.e. marital status and sexuality) concerning the punishments of fornication and adultery:

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punishments to be inflicted by the state for the protection of public good." (Quoted in Ömer Düzbakar, Abortion in the Islamic-Ottoman Legal Systems, *JISHIM 2006*, no.5. p. 28: Akşit, MC. İslam Ceza Hukuku ve İnsani Esasları (MuslimCriminal Law and Its Human Dimensions), (Istanbul: Gaye Vakfı Yayınları, 2000): 33). The outlawed acts include violation of both the *rights of God* and the *rights of man* (italics added, Düzbakar, 2006: 30). In the classical criminal law texts, "*violations of the rights of man* like *homicide* and *wounding*, "subdivided into a) those regarding *retaliation (qisas)* and b) those regarding *financial compensation (diya)*" (italics added, Peters, 2005: 7). The *offences against God*, on the other hand, were "*theft, banditry, unlawful sexual intercourse, the unfounded of unlawful sexual intercourse (slander), drinking alcohol and apostasy (according to some schools of jurisprudence)*" (Italics added, Ibid). And each hadd a fixed punishment called *hadd*, and its main purpose is enforcing deterrence from acts that are harmful to humanity and public order (Peters, 2005: 53, 54). We have previously stated that Ottoman kanûns were harmonized with the Şerîat laws in the reign of Süleyman the Law giver, by the influential contribution of Şeyh-ül islâm Ebu's-su'ud. Thus, the OCC is designed mainly according to the rules of Şerîat . The outlawed acts defined as *hadd crimes* in the OCC include *theft, fornication (especially adultery), accusation of fornication (kazf), highway robbery, drinking wine and drunkenness, apostasy (especially from Islam to other religions) and rebellion*, while *qisas crimes* encompass *murder (katl)* and *assaults and battery* (müessir fiil/Gerh) (Düzbakar, 2006: 30).

[126] I follow Uriel Heyd's collection of the 'Ottoman criminal code (OCC) of Süleyman I'(Uriel Heyd, *Studies in Ottoman Criminal Law*, pp. 95-103) as it is the most comprehensible criminal code of the Ottoman Empire. Having benefited from various manuscripts, he constitutes a reliable source for Ottoman history. Moreover, he offers the opportunity of comparing different manuscripts as he presents different phrases or statements that the other manuscripts include. In this collection, there are four main chapters, each setting the framework for hadd, qisas or ta'zir punishments. The first chapter is called 'On Fornication and Other Offences. The second one is 'On Mutual Beating and Abuse, Killing and the Fines for Them'. The third one is named 'On Fines and [Capital or Severe Corporal] Punishment for the Drinking of Wine, Theft, Robbery and Other Transgressions, Etc.'. And the final chapter is 'On Suspects and Their Connections'. These chapters and their content display that hadd and qisas crimes are incorporated in the OCC as consistent with the Şerîat . I will incorporate only the first chapter of the OCC, as it includes a specific article for the non-Muslims. The rest of the code on the other hand is valid and binding for the all subjects of the Empire. I think, therefore, it is irrelevant to include all of the crimes as items of punitive intolerance as they are not limited to non-Muslim subjects per se.

[127] We derive these binaries from the text by taking into account the pronouns used for defendants such as 'person, unmarried, married, widow, girl, married Muslim woman, male slave, female slave, boy'.

1.  Married man and women. (Provided that they are not sentenced to death, they pay 300 akçe if they are rich, 200 akçe if they are in average circumstance-).[128]
2.  Unmarried man and women- widow or girl-. (They pay 100 akçe if they are rich, 50 akçe if they are in average circumstances, 30 akçe if they are poor).[129]

The punishments for different forms of fornication include castration[130], branding vulva[131], chastation (commonly complemented with fine for every one, two or three strokes)[132] and imprisonment/incarceration[133]. The important point regarding these types of punishments lies in their potential for explaining the crimes that the Ottoman Empire regards as acts compelled to different degrees of punishment. The punishment of castration covers the acts of abduction (of a girl, boy or women) and intention of malice. If these acts characterize the crime, then not only the principal criminal, but the ones who join him as an accomplice are also subject to same punishments as the principal criminal. Accordingly, the Ottoman mentality regards abduction and malignancy- which signify unwillingness and compulsion on behalf of the victim, as the crime which deserve the second severest punishment after being stoned to death. The higher amount of the fines concerning adultery, and punishment of castration regarding fornication by abduction and malignancy, clearly manifests the sacredness of marriage and dislike for forced extra-marital sexual intercourse. In this respect, the OCC announces the legitimacy of sexuality within the boundaries of marriage, either forced or willed. Accordingly, the related articles on fornication attempt to contribute and preserve this framework of morality.

If we concentrate on our main subjects, non-Muslims, we can argue that there is almost no difference between them and Muslims regarding the crimes of fornication and adultery, except for the amount of the fines they pay and their exemption from death sentence. The thirty-first article of the CC presents the first difference

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[128] Articles 1 and 5. Heyd, pp.95-96. As far as married men are considered, being poor or worse leads to a reduction in the amount of the fines paid. Yet, concerning women, the classes are limited to being rich or being in average circumstance.

[129] Articles 2,3,4. Heyd, p. 96.

[130] Articles 10,11. Heyd, pp. 97-98.

[131] Article 11,. "If a person abducts a woman or girl,...If the women or girl is willing and runs away from her house, her vulva shall be branded". Heyd, p. 98.

[132] Articles 12, 16,17,18,19,20,22 ,24, 25, 26, 27,28, 29. Heyd, pp. 98,99, 100,101, 102.

[133] Article 20,21. Heyd, p.100.

But if these offences are committed by infidels, a rich one shall be liable to half the fine [imposed] on a rich Muslim, one in average circumstances to half the fine [imposed] on a Muslim in average circumstances, and a poor one to half the fine [imposed] on a poor Muslim. [134]

Subjection of the members of other religions to same punishments with a reduction in fines is primarily related with the cizye tax which is already a burden on their shoulders. Thus, this reduction is obviously not a favor to Christians and Jews, but it is an outcome of balance objective of the Ottomans to ensure the possibility of the proper exercise of the punishment. Provided that inequality of tax burden between Muslims and non-Muslims is eliminated by reducing the fines by half, the Ottoman state moreover considers class differences between non-Muslim communities as it also took into account when collecting haraç/cizye.

The fetvâs, moreover, draw the limits of incapacitating punishments. It is frankly stated that the non-Muslims are not subject to the punishment of stoning to death regarding fornication and adultery. The first fetvâ (no. 447) deals with zina between two dhimma, and the other (Fetvâ no. 448) deals with zina between a non-Muslim men and Muslim woman. In both cases the fetvâs mention it is long imprisonment in addition to the punishment of zina that the Şerîat orders. *(ELCEVAP: Mel'unlara recm yoktur, amma hadd-i zina vurulduktan sonra zaman-i tavil zindanin ahbes mevazi'inde hapis lazimdir)* (Fetvâ no. 447: 102*). (ELCEVAP: Katl olunmaz, hadd-i zinadan sonra zaman-i tavil zindanin ahbes mevazi'inden çıkarılmaz)* (Fetvâ no. 448: 102). Yet there is another fetvâ (no.449), which presents an exception. If a non-Muslim commits zina with the Muslim wife of a Muslim man, he is executed unless he converts into Islam *(ELCEVAP: İslama gelirse katilden halas olur…)* (Fetvâ no. 449: 103). So, what can be our next statement regarding fornication and adultery?

*S.4.: The acts of non-Muslims such as fornication and adultery were subject to incapacitating intolerance. The Islamic criminal law considered these acts as offences against the rights of God and they were subject to hadd punishment. In other words they*

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[134] In the other chapters, except the chapter of "Mutual beating, abuse and killing", OCC does not pursue the policy of reduction in the fees for the non-Muslims.

*were threats to Islamic morality which was an indispensable part of public order. The observability of incapacitating intolerance of non-Muslims (i.e. execution, long-term imprisonment), in this respect, display that the non-Muslim subjects are also expected to behave according to the moral codes of Islam and the Empire,[135] which is not contradictory with the ideal of justice.*

### Blasphemy

Another act of non-Muslims, which challenges the inferior rank assigned to Christianity and Judaism, is to swear to the Prophet of Islam, and thus it is also subject to incapacitating intolerance. This symbolic expression of disrespect to Islam is punished by execution if the habitual act of the defendant is approved by a considerable number of Muslims *(ELCEVAP: Mu'tadı idüğü bir iki kimse ile mâ'lum olmaz. Bi garaz müslümanlar "mu'tadır" deyu hakime i'lâm edip, hakkından gelmediğinin sebebini beyan edicek, bizim eimmemiz kavliyle 'amelen, ta'zîr ve habs ile iktifa olunmayip, "katl olunur" diyen eimme kavilleri ile 'amel olunmak emr olunmuştur. Mu'tadi idugu zahir olucak katl olunur)* (fetvâ no 445: 102).

The degree of incapacitating punishment, execution, in the case of swearing to Islam and its replacement by lighter punishments in the case of swearing to Christianity by a Muslim or Jew is important. As it draws attention, one more time to the contempt that characterizes the attitude of the Ottomans towards the non-Muslims and their religions. Although disrespect to Islam, i.e. its prophet, is subject to incapacitating intolerance, disrespect to Christianity and Judaism by the Muslim, or to Christianity by the Jews is also subject to intolerance that is between incapacitation and reform. Moreover even the act is subject to incapacitating intolerance, it is not punished by execution, yet, at worst by imprisonment. The fetvâ no. 441 and 442, for example, ask the proper religious attitude regarding a Muslim who swear to the religion and belief of a non-Muslim *(MES'ELE: Zeyd-i*

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[135] It is a question of how the other religions, Judaism and Christianity, treat the acts of fornication and adultery. If they treat it also as an important part of their moral and public order, then subjection of non-Muslims to similar regulations of Islamic law would not be so unusual. Yet, if they don't, we can conclude that not only the acts, ideas, subjects, and organisations of non-Muslims that challenge their inferiority and rank in the Ottoman society is subject to intolerance, but also that they are expected to abide by the moral codes designed particularly for Muslims.

*Müslim, Amr-i zimmînin ağzına ve dinine şetm eylese şer'an ne lâzım olur?)* (Fetvâ no 441: 101) *(MES'ELE: Zeyd-i Muslim, Amr-I zimminin dinine ve imanina cima lafzi ile setm eylese, ser'an ne lazim olur?)* (Fetvâ no 442:101). The answer for the previous question is that they deserve ta'zîr, the answer for the latter moreover states that as the one who swears to religion of the Book is infidel, he must renew his belief *(ELCEVAP: Din-i semaviye setm eden kafirdir. CEVAB-I Diğer: İmana şetm tecdid-i imani multezimdir)* (Fetvâ no 432: 102). If he is the Jew who swears to Christ and Mary, he is punished by severe beating *(darb-i şedid)* and long imprisonment *(habs-i medid)*. (Fetvâ no. 433: 102). At this point, we can propose our fourth statement

*S.5.: The blasphemy, which in this case is the act of swearing to it by the non-Muslim subject is intolerated in the form of incapacitation, execution/imprisonment.*

### Disrespect and Offensive Acts against Muslims

In the fetvâs, in the part on the relations with the Muslims, there are two cases which draw our attention to the rank and distinction tried to be preserved between the Muslim and non-Muslim subjects of the Empire. The first one deals with the case, in which a Muslim subject demands an office in the State from a non-Muslim *(MES'ELE: Zeyd-i müslim, Amr-i zimmînin özengisine düşüp "bana mansıp veya bir hizmet alıver" önüne düşüp mülâzemet eylese, Zeyde ne lâzım olur?)* (Fetvâ no. 385, p. 92). The answer is clear. If it is the case, curse and pain are required *(ELCEVAP: La'net ve 'azâb lâzım olur.)* (Fetvâ no. 385, p. 92). Commitment and respect presented to a non-Muslim, in exchange for a benefit, is unacceptable as it disregards the inferior status assigned to non-Muslims. In another case, similarly the esteem for the non-Muslims and additionally the offensive attitudes of the non-Muslims towards the Muslims are discussed. In the question it is asked whether it is religiously proper if a State officer does not fulfill his responsibilities, and appoint a non-Muslim for his own duties, who offend the Muslims by imprisoning them, behaving immorally and making some other mistakes *(MES'ELE: Zeyd-i muhtesip, cihet-i ihtisâbı kendi zabt etmeyip, Amr-ı zimmiye ber-vech-i maktû' verip, Amr nice sâlih müslümanları habs edip, aralarında fısk u fücür edip ve hınzır etin pişirip, envâ türlü kabayıh edip müslümanları rencîde eylemek şer'an câiz olur mu?)* (Fetvâ no. 386, p.

92).The answer asks for punishment in this particular case. It orders that the non-Muslim - Amr-, who offends Muslims should be subject to severe punishment *(ta'zîr-i şedîd)* and lengthy imprisonment *(habs-i medid)*. Zeyd, on the other hand should be dismissed *(Zeyd-i kâfirin azli vâcibdir)* (Fetvâ no. 386, p. 92). These two cases show us that the Ottoman religious laws do not only try to govern the non-Muslims, but it also attempt to structure the possible field of the action of the Muslims. It is in this respect that, it forbids the respect and esteem for the non-Muslims in addition to punishment for offensive and disrespectful acts of the non-Muslim subjects.[136]

If these two cases present the rejection combined with negative action, regarding respect to non-Muslims, and the offensive acts of the non-Muslims towards the Muslims, there are also articles in the fetvâ collection which display the intolerance towards the disrespectful attitudes of the non-Muslims. Among them, to swear to Muslims and criticism regarding Islam are considered as important ones. In the fetvâ no 440, the question asks for the proper religious punishment for the dhimmi who swears to a Muslim *(MES'ELE: Zeyd-i zimmî, Amr-i müslimin-ne'uzubillahi ta'alacîma' lafzi ile ağzına ve avretine şetm eylese şer'an ne lâzım olur?)* (Fetvâ no. 440: 101). The answer orders severe punishment (ta'zîr-i şedîd) and long imprisonment (habs-i medid). In another fetvâ, the appropriate attitude towards a Jew, who argues that since the birth of Muhammad the world has been full of evil and haram, is asked *(MES'ELE: "Muhammad Mustafa (sallallahu aleyhi ve sellem) dünyaya gelelden beri –haşa sümme haşa- fitne ve fesad ve haramzedelik eksik olmadı" diyen Zeyd-i yahudiye ne lazim olur?)* The answer orders severe punishment (ta'zîr-i şedîd) and long imprisonment (habs-i medid) (Fetvâ no. 433: 102).

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[136] The attempt to preserve the respectfulness of Muslim subjects is evident in another fetvâ. In fetvâ number 396, it is asked what is religiously proper if the non-Muslim wife of a Muslim male sells wine in her house *(Zeyd-i müslimin zevcesi Hind-i zimmiye evinde hamr bey' etmekle, Hind-i mezbûra ne lâzım olur?)* (p. 93). The answer states as this harms the honor of the Muslim husband, she should be punished *(Ta'zir olunur, müslimin ırzına şeyn olunur)* (Ibid.).

*S.6. The disrespectful and offensive acts of the non-Muslims towards the Muslims were subject to intolerance in the forms of incapacitation (i.e. long imprisonment) and reform (i.e. tazir-i şedid) as they challenge the superiority of Islam and Muslims.[137]*

### Vine consumption and selling

The last topic I would like to discuss as the item of incapacitating intolerance is the vine consumption and selling. In one of the Sultanic decrees issued in 1571, it is stated that non-Muslims buy vine from the vine ships docking to Galata port. They violate the laws by carrying their vines in leather bottles *(tulum)*, rather than barrels, and wandering in the city by touching their leather bottles to the clothes of the Muslims. The decree, moreover gives reference to a fetvâ which offered punishment of severe ta'zîr *(ta'zîri şedid)* and long imprisonment *(habs-i medid)* for a similar case. Thus the Sultanic promulgation prohibits such acts. Although in this particular decree, the punishment appropriate for such acts appears to be implementation of the orders of the previous fetvâ, in another decree, Sultan orders imprisonment for the ones who openly carry vine and rakı, sell it to Muslims, and turn their houses into taverns. Moreover it orders that even when the non-Muslims give vine to each other, they should do it secretly *(…Yehud ve nesâra tayifesine ve mahrusei mezbure kapucılarına gereği gibi tenbih ve tekid eyliyesinki şehire alânıyyeten fucı ve varil ve tulumlar ile hamir ve arak getürtmeyüb kendü nefisleriyçün gice ile hafiyyeten getürdüklerin dahi müslümana satmıyub ve birbirine beyi eylediklerinde dahi hafiyyeten virüb evlerin meyhane eylemiyüb alânıyyeten hamir ve arak satdırmıyub…Eslemiyüb hilâfı şer'i şerif ve emri münif iş edenleri badessütub mecal virmiyüb habs eyleyüb…)* (Refik, 1988: 49-50).

*S.7.: We can conclude from these decrees that non-Muslims are allowed to consume wine by paying their tax. Yet they are subject to incapacitating intolerance if they consume it openly and sell it to Muslims.*

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[137] Although these acts include both incapacitating and reformative punishments, I classify them under incapacitating intolerance. I think that the existence of punishment of long imprisonment is enough to present us with how they are more intolerated than the items that are only subject to ta'zir punishments.

Regarding the secondary literature[138] we can discuss that these extreme forms of incapacitating intolerance, were written yet not practiced policies. Moreover we can argue, they were primarily designed to deter the non-Muslims from heresy, from the actions that would violate the contract, from the acts that would threat the moral order and superiority of Islam. I strongly agree on the latter, yet I think the reality of the former has a secondary importance for this research.[139] In this respect, in this section I tried to present the acts of becoming heretic after conversion to Islam, acts leading to violation of the pact, owning slaves, fornication and adultery, disrespect to Islam, disrespect and offensive acts against Muslims, and openly consuming vine and selling it to the Muslims as

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[138] In the İstanbul Kadı sicils of the sixteenth century, there is no court record affirming the exercise of execution or life-long incarceration, which however does not invalidate the possibility of its occurrence in other parts of the Empire. Yet there are a few important secondary sources on the Shari punishments—such as amputation of the hand or stoning to death regarding the crime of fornication/adultery *(zina)*—which argue for their unimplementation and against their incorporation as tools for deterrence. In this sense, the statements of Peters (2005), Semerdijan (2008), Pierce (2003) and Acar (2001) are important, although they primarily deal with criminal law. Peters argues, the heavy hadd punishments such as stoning to death or amputation of a hand were usually treated as rhetorical devices in order to warn the public "by emphasizing the seriousness of the violation of property rights and the rules for contact between men and women, in spite of the fact that they are usually punished, not with a fixed but with a discretionary penalty." (Peters, 2005:55; Pierce, 2003: 333). Moreover, Elyse Semerdjian, for example, in Off *the Straight Path: Illicit Sex, Law, and Community in Ottoman Aleppo* develops a similar argument concerning zina. As we will see in the OCC there is a difference between the punishments deemed suitable for married man and women regarding zina. Semerdjian, yet, presents there is not a difference between married and unmarried adulterers in the Quran which is the primary source of Islamic law (2008:6). Moreover when Semerdjian deals with the court records of Ottoman Aleppo, she find out that the actual treatment of crime of zina was much more different than that is in the Islamic jurisprudence. The heavy punishments of fornication are replaced by non-violent executions, such as removal from the community. Thus the articles stated in the OCC, as well as its reflection on the everyday level may display differences than the orders of Şerîat. Moreover, Ismail Acar (Osmanli Kanunnameleri ve Islam Ceza Hukuku (1), D.E.Ü.İlahiyat Fakültesi Dergisi Sayı XIII-XIV, İzmir 2001, ss. 53-68) draws attention to another topic in which we also observe differences between the Shari rules and criminal code. In the OCC, in some cases, the punishment of lash is accommodated by punishment of fine. And, there is a reverse proportion between the status/class of the criminal and the amount of the fine collected. The wealthier ones pay more, and vice versa. Yet Acar argues, in Şerîat it is not the way that is proposed. The higher the class you belong to, the less fine you pay. In this respect, class differences and amount of the fines to be collected accordingly, differentiate in the OCC. Acar furthermore argues that it is *diyet* that the Şerîat accept as the main financial punishment, thus it attempts to avoid financial punishments rather than diyet and encourages the corporal ones. However, in OCC what we observe is the prominence of financial punishments. In other words some of the punishments concerning illicit acts depend solely on the will of the Sultan although the type of punishment is already defined in fiqh. In this respect, we can argue that the Sovereign prioritize public order when issuing sanctions concerning ta'zir punishments.

[139] I particularly attempt to understand forms and degrees of tolerance/intolerance, and its objects/subjects, as found in the mentality of the Ottomans. Thus, the Laws I think, provide us this mentality although in practice the items could be subject to modification which would not invalidate the objective of justice.

the most intolerated items which are punished by incapacitation. In the next section, I will deal with similar concerns by incorporating the concept of reformative intolerance, which punishes rejected items regarding non-Muslims mainly by ta'zîr (corporal and financial), exclusion and prohibition (using force or corporal punishment).

### 5.4.1.2.ii. Reformative Intolerance

### Religious Encounters

The Muslims and non-Muslims in the Ottoman Empire did not live in isolation. They interacted with each other in the everyday life. Therefore, Şerîat drew the boundaries of the conditions of this interaction particularly regarding the religious issues.  The part of the fetvâs called *Relationship with the Muslims* is designed to regulate this interaction.

A considerable number of the questions in this part present the curiosity concerning the possibility of the existence of the non-Muslim subjects in the Islamic rituals. In this respect, we firstly encounter with the questions and answers regarding the non-Muslims taking part in the sacrification ritual (i.e. fetvâ no. 375,376, 377,378). The questions on this matter specifically ask whether it is religiously appropriate if the non-Muslims sacrifice (*sebh eylemek/boğazlamak*) or excorticate (*selh etmek*) the sacrificial animal. Such concerns of the Muslim subjects of the Empire apparently stemmed from the fear of committing a sin regarding their relationship with the non-Muslims, about whom they probably shared the State's contemptuous attitude. We understand from the answers that the şerîat prefers the sacrifice of the animals by the Muslims, although it approves its excortication by the non-Muslims. The answers moreover state that although the meat of the animal sacrificed by the intervention of the non-Muslims is *halal* it cannot be accepted as sacrifice. In another question it is asked whether it is appropriate to give the non-Muslims, the meat of the sacrificed animal. The answer clearly prohibits this *(ELCEVAP: Lâyik olmaz. ehl-i islâma vermek lâzim gerektir.)* (Fetvâ no. 379, p. 91).  Although the questions and answers appear to deal with the details or the minor issues, in fact they are important in terms of presenting the objective of preserving the ranks between the Muslims and non-Muslims. Their interaction on the everyday level was not limited, yet the

Muslims are motivated to exclude the non-Muslims from the sacred processes which should be exercised by the Muslims per se. Regarding the boundaries of the interaction regarding religious rituals there are two more cases that can shed light to the official attitude of the Ottoman Empire. In the first case, it is a matter of question what would happen if a non-Muslims claim to fulfill one of the Islamic requirements (i.e. oblation). The answer clearly states that this claim is invalid, as it could be fulfilled only by the Muslims (Fetvâ no 393, p. 93). And, in another case it is asked what is religiously proper if a Muslim subject accept the gifts of scone and red eggs from a non-Muslim in the Christian festival *(MES'ELE: Zeyd-i zimmî kefere bayramında Amr-ı müslime çörek ve kızıl yumurta verip, Amr dahi alıp Kabul eylese, Amra şer'an nesne lâzım olur mu?)* (Fetvâ no. 391, p. 93). The answer draws attention to the intention of the gift. It does not allow the celebration of the Christian fest by a Muslim, yet it approves to receive the gifts as a neighbor *(ELCEVAP: Be'is yoktur, eğer ol günü ta'zim için olmayıp komşuluk hakkını ri'âyet için olucak)* (Ibid). We can conclude benefiting from these cases that likewise the toleration of belief in Christianity and Judaism in the form of contempt, the Ottoman Empire tolerates the religious rituals (i.e. fests) of the non-Muslim also in the same form. The Ottomans do not attribute esteem or worth to rituals which is materialized in the prevention of its celebration by the Muslim subjects as a religious ritual. This inferiority attributed to their belief and rituals is further enhanced by the sacredness attributed to Islamic religious rituals in which the presence of the non-Muslims is rejected. In this respect we can make our next statement.

*S.1: The act of interaction of the non-Muslims in the Islamic rituals was subject to reformative intolerance in the form of exclusion. Exclusion process was not realized directly by the State itself, yet in this case, the threat of invalidity of the sacred rituals possibly functioned as an important psychological motive for the rigid Muslim society to exclude the non-Muslims at least from religious rituals.[140] Similarly, the Ottoman state was intolerant to the participation of the Muslims in the religious rituals of the non-Muslims.*

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[140] There is yet another case in the fetvâs which challenges this exclusionary attitude concerning religious rituals. In the fetvâ no 389 (p.92), it is asked whether it is religiously appropriate to perform the namaz in a small mosque (mescid) constructed and offered to Muslims by a non-Muslim subject. The answer approves it. We can interpret this answer as the sign of the prudent character of justice. However, it should be noted that the Ottoman laws in general intolerated the

**Spatial encounters (existence, visibility, audibility)**

The objective of preserving the quantitative superiority of the Muslims in the Ottoman Empire is realized mainly by the spatial restrictions. Although in the Ottoman Empire, there were "no ghettos" (Jennings, 1978: 279-280) or "religiously and ethnically clean mahalle" (Gradeva, 1997: 49) preserved for the non-Muslim subjects, this did not mean that they could share the same neighborhood with the Muslims without any limitations.[141] One of the most important restrictions was to allow the non-Muslims to live in the Muslim neighborhoods provided that the majority position of the Muslims is not disturbed. Thus, the questions regarding the selling or renting the houses situated particularly around a mosque or a small mosque *(mescid)* (Fetvâ no, 403,404,405: p. 94-95) was subject to condition of preserving the number of the Muslim community. In other words, selling or renting the house should not lead to a decrease in the number of the Muslim community *("taklîl-i cemâ'ate müeddî olmayıcaktır").* Moreover, if the ownership results in the decrease in the number of the community, the fetvâs allowed for the compulsory eviction of the houses by paying its worth *(ELCEVAP:…Ehl-i islâm mahallesinde kefere süknâsının cevâzı taklîl-i cemâ'ate müeddî olmayacaktır, müeddi olacak aslâ cevaz yoktur. Mülk evleri dahi bey' ettirmek vâcibdir. Fekeyfe ki kira ile olucak) (ELCEVAP: Ol evleri baha ile, cebr ile, müslümanlar alıp, elbette asla te'hir etmeyip, mübâşeret etmek lâzımdır) (CEVAP: Cebr ile, kıymetlerile bey' ettirmek meşrû' ve lâzımdır)* (Fetvâ no 404,405,413: p.94, 97). At this point we can make our sixth statement:

*S.2.: The act of sharing the same neighborhood with Muslims is subject to reformative intolerance in the form of prohibition, if the existence of non-Muslims leads to a decrease*

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benefit that may come from the non-Muslims if it required respect for them or offense for the Muslims.

[141] The clues concerning their relations with the Muslims are frequently investigated in the Kadî sicils. The sicils after the 16th century onwards presented that there were no spatial discrimination of the non-Muslims. Examination of particularly "urban property transactions", i.e. in the Balkan cities, presents that there were not "such a thing as religiously or ethnically clean mahalle…at least from the 16th century onwards" (Gradeva, 1997: 49). The non-Muslims in Anatolia, i.e. in Kayseri, also lived together, without signs of ghettos, in the early 17th centuries (Jennings, 1978: 279-280). Regarding the non-Muslims living in the cities of the Ottoman-Arab world, Masters also argues that they were spatially and economically a part of the lives of the Muslim majority. The fetvâs in fact do not invalidate these claims and findings. However, they emphasize that there are rejected acts, which I consider as acts subject to reformative intolerance.

*in the number of Muslims living in the neighborhood. Invalidation of this prohibition is punished by compulsory eviction.[142]*


In addition to this case of intolerance, non-Muslims were also expected to live in such a manner that they would not disturb the peace of the non-Muslims. Accordingly, their religious as well as everyday practices could only be practiced unless they disturbed and moreover led to the complaints of the Muslims. A sultanic decree that prohibits the opening of taverns in the Muslim neighborhood is a good example in this sense. In the decree it is stated that the non-Muslims opened a tavern in a Muslim neighborhood to gather. And, the Muslims take its presence as an offense. Accordingly the decree forbids such taverns *(Galata ve Haslar kadısına hüküm ki Harici Galatada ehli İslâm mahallâtı arasında meyhane ihdas olunub feseka cem olub müslümanlar rencide oldukları ilâm olunmagın buyurdum ki…müslümanlar mahallesi içinde olan meyhaneleri ref idüb şer-i şerife ve emir münife muhalif iş ettirmeyesin)* (Refik, 1988: 50-51).


The limits for the religious practices of the non-Muslims, yet, is visible in the fetvâ no 406. As the ringing the bell of the church was prohibited, the non-Muslims used a piece of wood and a mallet to call their community for worship. In the question, it is asked whether it is religiously appropriate to object it as the Muslims were disturbed with it *(MES'ELE: Bir kilise müslümanlar mahallesinde vâki' olup, kâfirler nâkûs yerine bir yufka tahtayı nice yerlerden delip ibâdetleri zamanında ol tahtanın orta yerine tokmak ile darb edip, bir savt-I acîb peydâ olup, müslümanlar müte'ezzî olsalar, şer'an ref' olunmaz câiz olur mu?)* (Fetvâ no 406: p. 95). The answer approves the objection. From another fetvâ (no 410, 411: p. 96), however, we understand that it was not simply the disturbance of the Muslims that necessitated the prohibition of the wood and mallet used instead of a bell. Yet, it was in fact the visibility and conspicuousness of the religious

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[142] In a Sultanic decree issued in 1581,"Eyüp Sultan civarında hıristiyanların oturtulmamasına dair" (Prohibition of Settlement of Christians around Eyüp Sultan)", the reformative tolerance turns into incapacitating one (condemnation to galleys). It is not, however related with providing the quantitive majority of the Muslims. Rather we understand that living around Eyüp Sultan is totally prohibited for non-Muslims and sellers (yogurtcu, ekmekci, borekci). Moreover in the decree, it is stated that non-Muslims play music and drink wine. In this respect, the decree prohibits such acts and settlement of non-Muslims and sellers in that particular space.

institutions/rituals/practices of non-Muslims that were objected by the Muslim authorities.

In the fetvâ no 410, it is stated that in a small town, as it is an old tradition of the Christians, they gather and entertain for three days. It is specifically stated that they don't disturb anyone and they donot annoy the Muslims. And, it is asked whether it is proper if the Jews attempt to prevent this celebration *(MES'ELE: Bir kasabada nasâra tâifesi, yilda üç gün bir mahallede cem' olup, âdet-i kadimleri üzere levh ü lu'b edip, amma kimseye zararlari olmayip, ve müslümanlara asla müte'arrız değiller iken, yahudi tâifesi mezburlar ile adâvetlerine binâen men'a kâdir olur mu?)* (Fetvâ no 410: p. 96). This particular question is responded by a sharp answer. The fetvâ states that the Muslims should prevent such a celebration. To argue that it does not disturb and annoy the Muslims is a lie, it is unbelief. To display impiety is harm to the religion. The judge should dissolve their community by beating them. If he allows their gathering he should be dismissed. *(ELCEVAP: Ehl-i islâm men' etmek lâzimdır. "Kimseye zararı yoktur'' demek, kizb-i sarîhadır, dinsiz(lik)tir. Cum'a kılınır kasabada kefere bu vechile alâim-i küfrü izhâr etmek dine zarardır. Ne ol mel'unlar ne yahudi mel'unlar aslâ ol asıl vaz' etmek câiz değildir. Döğe döğe cem'iyyetlerin (hakim) dağıtmak lazımdır. Müsâhele ederse azli vâcibdir)* (Fetvâ no 410: p. 96). As it is clear in the fetvâ, although belief in Christianity and Judaism is tolerated in the form of contempt, their visibility, which is seen as a threat to Islam, is strictly opposed. The argument that religious rituals, provided that they are not visible, are accepted is observable in another fetvâ. In the question it is asked whether the Muslims can destroy an old church in the top of a mountain, in which non-Muslims gather and organize religious rituals. In the answer it is stated that if there is not a festivity around the Church, it is not appropriate to do so, yet if there is, the presentation of unbelief as such should be banned *(ELCEVAP: Eğer etrâfında asla şenlik yok ise ta'arruz olunmaz. Eğer var ise şiâr-ı küfrü bu mikdar izhar etmekten men've zecr olunmak lâzımdır)* (Fetvâ no 411: p. 96). Accordingly,

*S.3.: The visibility/audibility of the religious rituals of the non-Muslims are subject to reformative intolerance in the form of prohibition which calls for corporal punishment (i.e. beating) if the prohibition is not obeyed.*

### Conspicuousness

The prohibition to expose wealth displays itself in a particular fetvâ. In this particular fetvâ, the question asks whether the judge earns merit in the God's sight with prohibiting non-Muslims from arrogance inclined things which are considered as betrayal to Muslims. The things that are assumed to lead to arrogance are building high and ornate houses, riding horse in the city and wearing valuable clothes. *(Ehl-i islâm içinde olan zimmîleri, yüksek müzeyyen evler yapmaktan ve şehir içinde ata binmekten ve fâhir kıymetli libas giymekten ve yakalı kaftanlar giymekten ve ince tülbendler ve kürkler ve sarıklar sarınmaktan, velhâsıl ehl-i islâma ihâneten kendilerini ta'zîmi müş'ir ef'âlden men' eden hakim- indallah-müsâb ve me'cûr olur mu?)* (Fetvâ no. 402, p. 94). The limitations on the animals that the non-Muslims could ride, the houses they could live in, and the clothes they could wear were all material manifestation of their lower status in the Muslim community. Not only in the fetvâs, but also in the Sultanic decrees, an important place is reserved particularly for the regulation on clothing. Thus I will focus on them in a more detailed manner.

The chain of justice, art of government and the disciplinary power of Laws is confirmed by another line of literature, which deals neither with the subject of Ottoman toleration nor with justice conceptualization. This literature deals rather with the body and its relation to the clothing laws. This aforementioned line of literature commonly acknowledges that the body is a site, open for "the intervention and negotiation" of the political power,[143] and clothing laws, as one of the instruments of "economic, social and political regulation on body" (Quataerteret, 1997: 405) are used to construct, control and discipline the subjects. They are initiated to mark the bodies, and respectively embed each subject into proper/desired categories of class, gender, religion, status, age and ethnicity. In other words, by reconstructing the bodies according to appropriate clothing manners, laws determine who is going to be recognized as male or female, upper or lower class, young or old, secular or religious (Çınar, 2005: 55).

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[143]For an analysis of the symbolic and physical importance of the body in the context of modernization interventions and  public sphere boundaries: Alev Çınar. 2005. *Modernity, Islam and Secularism in Turkey: Bodies, Places and Time,* pp. 53-55.

If we go back to the sixteenth century Ottoman Empire, it was particularly the religious identity that the clothing revealed, because the legal regulations materialized in the clothing laws were designed primarily to identify the wearer's religious identity. The rulers wanted to mark the religious identity of their subjects with specific types of clothing, so that they could albeit symbolically, contribute to the preservation of lines and ranks between non-Muslims and Muslims as other regulations in the fetvâs already affirmed. In order to distinguish non-Muslim subjects from the Muslims, the laws on the costumes of non-Muslims define the colors, size and the type of clothes that non-Muslims can wear in the public sphere.[144] In this respect, through these laws, certain clothing, i.e. outwear (*ferace*)[145], and head covers *(yaşmak and arakıyye)*[146] are reserved for Muslim-women *(…ve avretleri ferace giymeyeler…Ve avretleri paşmak giymüyüb…Ve müslümanlar hatunları giydikleri gibi seraser yaka ve arakıyye giymeyeler…)*.[147] Moreover, where non-Muslims are allowed to wear similar clothing, Muslims are distinguished from non-Muslims by permitting particular colors, size or cloth of their dressing. Wearing only "black *ferace and paşmak*"*(...yehud ve sayir keferenin feraceleri surmayı karaca çuka olup…ve paşmakları siyah…ola…)*, or marking themselves by "wrapping a strap" around their headcovers if they wear *arakıyye (…Giydikleri takdirce atlasdan kutnudan giyeler…Amma başlarına alaca kuşak sarınalar…)* were only two examples peculiar to the law of 1 August 1568.

By constructing and contesting identities, and confining the subjects into those identity categories, the clothing laws further become "means of visible hierarchies among social groups" (Quataert, 1997: 405), similar to identity and hierarchy markers of the

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[144]Along with clothing, the law of 1631, also ordered some regulations for the daily life in the Empire, which clearly placed non-Muslims in the lower part of the hierarchy. Riding horse is one of those which is reserved only for Muslim man. Similarly, the non-Muslims are expected to dismount from the sidewalk, when they meet Muslims.

[145] In the public sphere, the Ottoman women had to wear a long coat called ferace which covered the full body.

[146] As far as the sources (especially travelogues, miniatures and pictures peculiar to Ottoman empire) are considered, we see that ferace, yaşmak, and sometimes veil are used as clothing of public sphere. S. Gürtuna, *Osmanlı Kadın Giysisi*, 5. In the laws, it is the word *yaşmak* that is frequently used for the general category of headscarves of Ottoman women. *Yemeni* and *tülbent*, are some specific names that takes place under this general category. Yemeni, in this respect, designates a kind of head scarf made of a loosely woven cotton material.

[147]Ahmed Refik (1988), *Gayri Müslimlerin Giyecekleri Şeylerin Cinslerine dair 7 Safer 976 (1 Ağustos 1568)*, p. 47-48. The same restriction was reiterated in the seventeenth century: Refik (1988), *İstanbuldaki Hristiyanların Kıyafetlerine Dair 21 ş 1040 (March 1631)*, p.52.

shape of houses that the non-Muslims can live in or the animals they can ride. Accordingly, members and non-members of particular communal, religious, occupational groups, the status and rank in those groups and gender categories become visible through clothing laws (Quataert, 1997: 404).[148] In accordance with the pragmatic concerns of political power, the boundaries of identity categories as well as the hierarchies within and between the different categories are negotiated and reconstructed by the revision of those laws. The experience of the Ottoman Empire has, in fact, substantiated this theoretical content. Until the late eighteenth and early nineteenth centuries[149], the superiority of the Muslims over non-Muslims, military over the reâyâ, man over the women, and free Muslims over the slaves were unquestionable hierarchies in the Empire.

The clothing laws furthermore enforced the hierarchy between Muslims and non-Muslims by framing the economic worth and the characteristics of the clothing that non-Muslim could wear, which aimed to secure the superiority of the Muslims in the public sphere. The laws declared the acceptable worth of *ferace (…kıymetde otuz ve kırk ola ziyadeye olmıya…)*,[150] reserved silk and fur for Muslims *(…minbaad Yehudi ve kefere tayifesinin giydikleri ve çukaları ve iskarlad ve kaftanları atlas ve kemha ve sayir harir olmıyub…)*,[151] and limited ostentatious clothing by ordering that non-Muslims should dress plainly *(…Bundan akdem yehud ve nesârâ ve sayir kefere tavifesi âlâ ve hazır libas*

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[148] Quataert remarkably presents the examples from Roman Empire to various periods of Europe which provide evidences of such practices. Bu such regulations, the Empires and states tried to preserve the distinctions and hierarchy between Roman citizens-barbarians or nobles-commoners or aristocracy-bourgeois.

[149] Quataert (1997), argues that the law of 1829 was a critical turn in the history of clothing laws. By this particular law, the Ottoman state ordered all the state officials to wear the same headgear called *fez*. [For the law please see: Ahmed Lûtfî Efendi, *Vak'anüvîs Ahmed Lûtfî Efendi Tarihi II-III*, (İstanbul: YKY, 1999). Nomero 18, pp.509-512]. Quataert argues, this signaled a shift in the policies of the Empire towards the homogenization of its population rather than emphasizing difference. Çınar (2005), on the other hand argued, this law was the sign for "increasing involvement with the idea of nationalism and the initial concerns with the construction of a national subject", as "all regulations involve the homogenization of appearance within a category so as to create differences among categories", p.61.

[150] Ahmed Refik (1988), *Gayri Müslimlerin Giyecekleri Şeylerin Cinslerine dair 7 Safer 976 (1 Ağustos 1568)*, p. 47

[151] Ahmed Refik (1988). *Gayri Müslimlerin İslam Kıyafetinde Gezmemelerine Dair 20 C (cemaziyelahir) 958 (4 September 1577)*, p.51; *İstanbul'da oturan Gayri-Müslimlerin Kılıklarına dair (Fi 21 sefer 976-15 Ağustos 1568)*, p.47; *İstanbuldaki Hristiyanların Kıyafetlerine Dair 21 ş 1040 (March 1631)*, p.52.

*giymeyüb men oluna…kıymetli fahir libastan ictinab üzre olalar).*[152] In particular, the discontent caused by ostentatious clothing and puissant behaviors of the non-Muslims, is quite clearly visible in the laws. Non-Muslims are expected to know their proper place, their hierarchical position in the social structure. Thus, any violation of these hierarchical barriers is regarded as signs of discontent, which is clearly noted, and forbidden in the texts of laws.

Similar to women, whose bodies are marked by clothing in order to keep them in gendered spaces of morality and consumption, the bodies of non-Muslims were also regulated, to remind them of their proper place, which is part of a religiously established hierarchy. In this respect, the law clearly acknowledges that the non-Muslims should appear in the public sphere as inferiors. In other words, marking their differences included a design to make their inferior position visible. Moreover, the inferiority marked by clothing encourages further contempt. The law of 1631 is a remarkable example of an effort of this type. After reminding the particular clothes that non-Muslims could wear, the law frankly permits the right of 'insult and disdain' to Muslims. As such, the hierarchical relation desired between Muslims and non-Muslims was enhanced by clothing and appearance.

In fact, clothing laws are not only means of *political, economic and social regulation* or markers of identity groups and hierarchy. They moreover reflect "the desire to restrain extravagance on the one hand and uphold morality on the other" (Quataert, 1997: 405).[153]

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[152]Ahmed Refik (1988). *Gayri Müslimlerin Giyecekleri Şeylerin Cinslerine dair 7 Safer 976 (1 Ağustos 1568)*, p. 47.

[153] These two important objectives of clothing laws appear in a group of clothing laws issued in the eighteenth century (laws issued in 1726, 1752 and 1792) [Ahmet Refik (1988). "İstanbul Kadınlarının Kıyafetlerine Dair I 1138 (June 1726)", p.86-88; "Kadınların Seyir Yerlerinde Açık Seçik Gezmemelerine Dair b 1167 (May 1752)", p.174-175, in *Hicrî On İkinci Asırda İstanbul Hayatı 1689-1785*; Ahmet Refik (1988), *"İstanbul Kadınlarının İnce Kumaştan Ferace Giymemelerine Dair ş 1206 (May 1792)"*, *Hicrî On Üçüncü Asırda İstanbul Hayatı*, p. 4]. Although they are out of the scope of the research focus of this study, I cannot avoid them due to their importance. These laws primarily referred to the women of the Empire, Muslim and non-Muslim. The Ottoman state, by defining the conditions for the visibility of women in the public sphere, institutionalized dress codes in accordance primarily with the Şerîat. We can observe the signs of this regulation of Muslim women's body in the public sphere in three different laws (laws of 1726- İstanbul Kadınlarının Kıyafetlerine Dair-, 1752- Kadınların Seyir Yerlerinde Açık Seçik Gezmemelerine Dair-, and 1792- İstanbul Kadınlarının İnce Kumaştan Ferace Giymemelerine Dair-), while two other laws defines the

In other words, the clothing laws also aim to discipline the non-Muslim subjects regarding their consumption patterns and moral behaviors. In this respect, while the clothing laws aimed, on a general level, to set the physical markers and proper hierarchies between Muslims and non-Muslims, they simultaneously governed particular behaviors and habits of its non-Muslim subjects. This was closely related with the proper places assigned to each category of subjects. The state did not interfere into moral codes or consumption patterns of the non-Muslims unless they posed a threat to the codes and habits of the Muslim subjects. Thus, the objective of disciplining non-Muslims was not primarily related with their well-being, however, it was the well-being of the Muslim subjects that was prioritized. Thus regarding the objective of preserving qualitative ranks, which I tried to discuss in details via clothing laws, bodies (i.e. clothing), living spaces (i.e. the

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clothing of the non-Muslim women (the Laws of 1 August 1568- Gayri Müslimlerin Giyecekleri Şeylerin Cinslerine Dair**-,** 1631- İstanbuldaki Hristiyanların Kıyafetlerine Dair**-,** and 1726- İstanbul Kadınlarının Kıyafetlerine Dair). The first group of laws sets the *physical limits of clothing* of Muslim women in the public space, and indicate the hierarchy between men and women, defining man as the 'gazer' and the women as 'gazed' at. By those laws "the size of the collar of the outwear (*ferace*) and the length of headscarves (*yemeni*)" (law of 1726), were clearly identified. In fact, the details set for the clothing of the Muslim women were not limited to size or length, but also included the type of cloth. As stated in the law of 1792, the cloths of *ferace* should not be transparent, so that the under dress (*esvab*) could be protected from the public gaze. The law, moreover, prohibited tailors from sewing such *ferace*. The second group of laws, on the other hand, (laws of 1726, 1 August 1568 and 1631), in addition to physical markers of the women bodies, attempts to distinguish Muslim women from non-Muslims in terms of both morality and consumption patterns. The Law of 1726 forbade multicolored and ornate dresses, as well as headscarves which were identified with the non-Muslim clothing, as non-Muslim style of clothing was seen immoral. Law, accordingly, aimed at forcing women to dress in clothes considered proper (virtuous and modest), which obviously meant to dress in clothes appropriate for the Şerîat . Moreover, the *imitation* of clothing style of non-Muslim by some Muslim women was also prohibited by the same law. This imitation was taken as a threat to the order of the society because this practice was identified with *immorality* and *extravagant spending*. As the law clearly indicated, the problem was not restricted to certain women who violated the laws, in fact, the concern was the possibility of such behaviors spreading among all Muslim women. It was feared that these sinless *(sahibei ismet)*, moral and virtuous *(ehli ırz)* Muslim women would force their husband to buy them such religiously forbidden clothes. As such, they would not only pressure their husband to conduct a sinful activity, but also lead to family problems if the husband was unable to afford or refuses to buy the clothes, problems which were said to be already observed in the society. The punishment that was peculiar to the law of 1726 was interesting in this sense as it announced that the clothing of women not in conformance with the law will be torn off. Moreover, it also declared that this will be a threat to their decency (Law of 1726). In other words, the State declared the close relationship with decency and clothing manner, which would be punished in case of violation. In this respect, Muslim women should be covered in the specific manner on the one hand, for protection from the public gaze and to be acknowledged as descent, while on the other, this would avoid confusion of Muslim and non-Muslim woman, where non-Muslims' inferiority was declared by the their clothing that are immoral.

characteristics of housing), and form of transportation (i.e. riding particular animals), can make our next statement:

*S.4.: Non-Muslims were subject to reformative intolerance (prohibition) regarding their acts (i.e. wearing improper clothes, living in improper houses, travelling with improper animals) that would visually and symbolically damage the superior rank (i.e. wealth, morality) assigned to the Muslim subjects.* [154]

What we can conclude up until now is the fact that the toleration of the non-Muslims is based on the initial assumption of the contempt of their religious belief and believers. Once the belief is regarded not as equal but as inferior, then the many acts of the non-Muslims became subject to intolerance in the form of ta'zîr, prohibition and exclusion. Accordingly in this section I tried to present the acts of the non-Muslims which were subject to reformative intolerance. The idea of reformative intolerance stemmed mainly from the different punishments exerted for these acts, which were less severe although the items of reformative intolerance were also a threat to the public order. This reduction in the degree of punishments, as mentioned before, can only be related with the fact that they were secondarily important regarding the public order. In this respect I regarded the acts of interaction of the non-Muslims in the Islamic rituals, sharing the same neighborhood with Muslims which violate the quantitive majority of the Muslims, visibility and audibility of non-Muslim religious rituals, and their clothing as the items of reformative intolerance. Moreover, I presented exclusion, prohibition (i.e. forced eviction, corporal punishment) and ta'zîr as the form of punishments these items necessitated. Now, it is time to focus on the other religious Other of the Empire and see whether this framework of tolerance/intolerance is also appropriate for them.

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[154] In a Sultanic decree issued in 1577, the reformative punishment of prohibition shifts into incapacitating punishment of imprisonment *(…fermanı şerife muhalif libas giyanlar siyaset olunmak mukarrerdir Ol asılları tutdırıp habss idüb arz eyleyesin)* Ahmet Refik, *On Altıncı Asırda İstanbul Hayatı (1566-1591),* p. 51. I interpret this shift as the sign of disobedience to previous laws which were reiterated several times. Thus, rather than regarding clothing as equally important as the items of incapacitating intolerance, I think Ottoman state reissued a decree to enforce the obedience to the law. That is why I take clothing regulations as a part of reformative intolerance.

### 5.4.2. Heretics as the Religious Other

In the third chapter of the present study I argued for the incorporation of Shiites and Shiite inclined heterodox orders as also the subjects of toleration/intolerance. I tried to argue for the validity of my proposal in terms of the discussions on the relationship between heresy/heretics and toleration/intolerance, raised mainly by Western historiography dealing with religious difference. Furthermore, I tried to present the heretic of Islam as the Shiites and Shiite inclined heterodox orders by benefiting from the literature on Islamic and Ottoman history. In this part accordingly, I will attempt to focus only on fermâns and fetvâs related to Kızılbaş and other heretical groups—as they were not given a specific emphasis in the OCC—to present particularly the forms and degrees of toleration/tolerance/intolerance regarding their acts, ideas, organizations. Yet, I should admit that the analysis of the relationship between toleration/tolerance/intolerance and heretics will not be detailed and multi-layered as the attitude of the Ottomans regarding heretics is much more precise, clear-cut and sharp. Let me explain.

Firstly, parallel to the arguments of the secondary literature which focuses on the economic, political and religious environment of the Ottoman Empire, and its relations with Safavids and Kızılbaş, the related laws also confirm that Kızılbaş were "opposed and rejected" subjects. Similarly, for the other heretical groups, which are categorized under the names of *ışık taifesi*[155], *suftehat taifesi, melahide, müteseyyid (pseudo seyyid)*, "opposition and rejection", intolerance, prevailed. In other words, there is hardly any sign that they were tolerated either in the form of tolerance as intra-communal favoritism or conditional tolerance. The form of contemptuous tolerance, which was discussed as the prevailing and underlying form of tolerance/intolerance in terms of non-Muslims, does not appear to be valid for heretics. Rather, we can say at the outset that, heretics were subject to intolerance in the Ottoman lands during the period under examination. This politics of intolerance, however, display similarities with the form of intolerance concerning non-Muslims. It was mainly punitive intolerance, which we can analyze

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[155] Osman Çetin states that Işık is the name given to heterodox orders in the fourteenth and fifteenth centuries. Osman Çetin, *Sicillere Göre Bursa'da İhtida Hareketleri ve Sosyal Sonuçları (1472-1909)*, p. 22, footnote: 82.

particularly in terms of incapacitating intolerance, that materialized via the punishments of execution, imprisonment and banishment from life (sending to galleys or exile).

### 5.4.2.1. Punitive Intolerance

### 5.4.2.1. i. Incapacitating Intolerance

### Enemies of Islam

The fetvâs target Kızılbaş as the primary heretics. That is why the fetvâ collection of Ebû-sû'ud reserves a specific section to Kızılbaş, under the heading of *Mürtedler* (heretics), and emphasizes the incapacitating intolerance regarding them. The sultanic decrees also include specific items regarding Kızılbaş. Yet additionally, they refer to the other Shiite inclined heterodox orders as the heretics. Let me start with the fetvâs.

Already in the first fetvâ of Ebu's-su'ud on *Mürtedler/Kızılbaşlar*, the execution of Kızılbaş is legitimized. The question part of the fetvâ asks firstly, whether it is halal to kill all the members of the community of Kızılbaş. Furthermore it inquires whether the ones who fight with Kızılbaş would be considered as ghazi, and the ones who die in the war would be accepted as martyr. The answer not only confirms the execution of Kızılbaş community, but also approves both the status of being a ghazi and martyr after a war with them *(MES'ELE: Kızılbaş tâifesinin şer'an kıtâli helâl olup, katl eden gâzi ve kızılbaş tâifesinin ellerinde maktul olanlar şehîd olurlar mı? ELCEVAP: Olur, gazâ-i ekber ve şehâdet-i 'azimedir)* (Fetvâ no. 479: 109). The perception of Kızılbaş as the enemies of Islam, with whom the Islamic war is appropriate, and the legitimacy of incapacitating intolerance are further emphasized in the fetvâ no.481. We see in this fetvâ that the attempt for legitimizing incapacitating tolerance is based on their dangerousness when compared with the non-Muslims, and the declaration of religious war against them in the reign of Ebi Bekr *(Bu tâifenin kıtâli sâir kefere kıtâlinden ehemdir. Anınçün Medine-i münevvere etrâfında kefere çok iken ve bilâd-i Şâm feth olunmamış iken anlara gazâ eylemekten, hazret-i Ebi Bekr-i sıddik (radiyallâhu anh) hılâfetinde zuhûr eden Müseyleme-i kezzâba tâbi' olan tâife-i mürtedde üzerine gazâ eylemeğe, eshâb-i kirâm (rıdvânullâhi aleyhim ecma'in) icmaları ile tercih ve takdim buyurmuşlardır. Hazret-i 'Ali (kerremallâhu*

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*vecheh) hılâfetinde havaric kıtâli dahi böyle olmuştur)* (Fetvâ no.481: 111). Thus, acknowledging that Kızılbaş are the enemies of Islam and ghaza is the legitimate way of struggle with them, a few other fetvâs accordingly allow their enslavement including their wives and children (Fetvâ no. 483,484,485).[156]


The emphasis of the fetvâs on incapacitating intolerance, in the type of execution, is also visible in the Sultanic decrees (fermâns). The decrees under focus order the execution of Kızılbaş by some precise phrases such as to vanquish *(haklarından gelinmek)* (Refik, 1932: 13,19,24,26)[157], to burn *(ihrakı binhar)* (Ibid.:22), to kill *(defter edülüb öldürülmeleri),* and to drown in the Red River *(Kızıl Irmağa ilka)*(Ibid:26) . In fact, in the fermâns, not only do we encounter the order of execution, we also see other incapacitating punishments such as imprisonment, sending heretics to galleys and exile. These different types of incapacitating punishments provide us with the clues for differentiation regarding the status of the subjects of incapacitating intolerance. In fact, it is not the collection of Refik that alone gives us this clue, but it is particularly, the important article of C. Imber, *The Persecution of the Ottoman Shīʿites* that arrives to this conclusion through a more extensive analysis of fermâns. It states that the leaders of Kızılbaş groups, *halifes,* were punished by execution (Imber, 1979: 272).  Imprisonment was frequently ordered for the members of the Kızılbaş, who are a part of the askerî (military)[158]. Finally, to send Kızılbaş to galleys or exile if they were ordinary members of the Kızılbaş community was another punishment found proper.[159]

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[156] Treatment of Kızılbaş as slaves rather than kul is particularly emphasized in the fetvâ no. 482 *(MES'ELE: Nahcivan seferinde tutulan Kızılbaş evlâdı kul olur mu? ELCEVAP: Olmaz)* (Fetvâ no 482: 111).

[157] C. Imber also confirms that  the phrase of "haklarından gelinmek" refers to execution of Kızılbaş, *The Persecution of the Ottoman Shīʿites*, p.271.

[158] Imber  presents a few cases regarding the military and heresy relationship. He states: "In 1572, the sipāhi Ahmed and his heretical associates were to be sent 'tied and bound' from Koyluhisar to the capital. The sipāhis of Mosul, found guilty of heresy in 1575, 'were not punished since they were sipāhis, but imprisoned, and their case reported. The beylerbeyi off şehrizol then received the decree to send them escorted to the capital. In 1579, however, the sipāhi Ibrāhīm of Artıkabad was to be executed in the district if found guilty of heresy. In the cases of heretical sancak beyis of Darna and Yemen, the beylerbeyis of Baghdad abd Yemen received orders simply to imprison them and send a report, no doubt pending further instructions," C.Imber, *The Persecution of the Ottoman Shīʿites*, p.273.

[159] Imber argues that exile was the common punishment if the heretic was not a halife and since 1570s, Cyprus has been the most frequent place of exile. Moreover, Imber also states that galleys was another punishment "whenever there was a shortage of oarsmen in the fleet," C.Imber, *The Persecution of the Ottoman Shīʿites*, p.272. Imber bases his arguments on a more extensive

In fact, both the Kızılbaş and the other Shiite inclined heterodox orders of the Empire are considered as the enemy of Islam because of their heresy. However, the specific emphasis on the heresy of Kızılbaş, despite their commonalities with other heretical groups, was due to "their association with Persia and allegiance to the Shāh" (Imber, 1978: 262). Before searching the answer for the question of why they were considered as such a threat to Islam and moreover to the Ottoman Empire, we can make our first statement:

*S.1: The Kızılbaş community—considered as the most important enemy of Islam and the Ottoman Empire because they were heretics and allied with the Safavids—was subject to incapacitating intolerance. There was no difference between sex, age or status in terms of subjects of intolerance if the Muslims were at war with these heretics. Yet, as the fermâns affirmed, the types of incapacitating punishments differed according to status (leader, ordinary member, askerî) of the Kızılbaş subjects. The other heretical groups were also subject to incapacitating intolerance mainly on the basis of their challenge and opposition to Sünnî Islam and their unruliness.*

**Blasphemy**

In the previous part on the non-Muslims, we have presented that the acts of non Muslims which included disrespect to Islam, such as to curse and revile it, were subject to incapacitating intolerance. As far as the heretics are concerned, the best example for the outcome of such a disrespectful act appears in the fermâns called "On the execution of Mehmed who spoke improper about Muhammad in Nevrekop *(Nevrekop'ta Muhammed hakkında gayri münasib söz sarf eden Mehmed'in katline dair, 25 c. 984, 1576)* (Refik, 1932: 35). The fermâns states that if Mehmed recants, swears off his prevarication, and does not renew his faith he should be sent to galleys. Yet if he cannot prove his recantation, he should be executed according to the Sharia. In this respect, we can assert that the type of punishment regarding the cursing and reviling of religion is also the same for the heretics whether he is a Kızılbaş or a disciple of another heretical order. However, we observe an important difference in a case where the offender is a Kızılbaş.

collection of fermâns. He deals with *Mühimme Defterleri* and finds other fermâns on Kızılbaş that are not published by Refik.

Concerning non-Muslims, the related fetvâ seemed to approve their execution by the state itself, if they revile and curse Islam. Thus we can argue that incapacitating intolerance was approved on the level of the state per se. However, regarding a particular case of a heretic, in which we know that the subject is obviously a Kızılbaş, we understand that the State even confirms his execution by an ordinary Muslim subject. The following fetvâ is the reason for distinguishing the level of incapacitating intolerance regarding Kızılbaş, although they commit the same intolerable act realized by non-Muslims. In the question part of the fetvâ it is asked whether anything is religiously necessary, if the son of Amr, Bekr kills Kızılbaş called Zeydi as he cursed Sunnism *(Çâryâre sebb eden, kızılbaş idüğü sicil olunan Zeydi, Amrın oğlu Bekr katl eylese, şer'an nesne lâzım olur mu?)*(Fetvâ no.486: 112). The answer of this question states it is unnecessary to attack *(taaruz edilmez)*, if it is precise that the Bekr killed the Kızılbaş Zeyd when he cursed and reviled *(Sebb ettiği vakit katl ettiği muhakkak ise ta'arruz olunmaz)* (Fetvâ no.486: 112). Although this particular fetvâ confirms the execution of Kızılbaş even by an ordinary Muslim subject, a Sultanic decree states that to curse and revile Sünnî Islam is subject to incapacitating intolerance, in the type of imprisonment *(…Zikrolunan kasabat ve kurada bazı mülhid ve kızılbaş tayifesi olub çar yarı güzin….sebbü şetm idüb…hâşâ çar yarı güzin…şer'i şeriate muhalif italei lisan eyledükleri bigaraz ve mutemedün aleyh kimesneleri…sicil idüb dahi anın emsali mülhidleri habs idüb…) (Amasya'daki Kızılbaşların cezalandırılmasına dair, 992-1583)* (Refik, 1932: 41).

In this respect we see a difference between the type of punishment ordered by the fetvâ and the Sultanic decree. Execution and imprisonment take place in two different types of Laws regarding the same issue. We will later see that this point is not limited to the disrespectful acts against Islam. Thus it is proper to make an explanation. Firstly, we can argue that the Sultanic decrees treat certain acts more flexibile than the Şerîat . Or, secondly, following Imber (1979), we can think that imprisonment for the heretics, either for the Kızılbaş or others, was a temporary solution for some cases, until the Divan (Imperial Court) gives the final decision (i.e. execution for the leaders and abolishment from the life for the ordinary subjects) .[160]Imber's explanation is quite plausible.

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[160] C. Imber states: "In many cases, however, the Dīvān issued no instructions for punishment, but merely ordered the authorities to imprison the accused if proven guilty and to await orders for

It is clear that it is not only the cursing and revilement of Islam, but there are also other acts that are considered as disrespectful against Sünnî Islam. Both the fermâns and fetvâs present such acts and order their punishment by incapacitation. However, the fetvâs clearly mentions the Kızılbaş as the subjects of such disrespectful acts, while in the Sultanic decrees these points take place in different fermâns, which refer either to *ışık taifesi*, or *suhtevat taifesi* or *hurufis* or Kızılbaş. In this respect, the fetvâs identify other disrespectful acts as to display contempt for Islam and the religious order-Shari'a-, to humiliate and burn the Kur'an *(…Ol zâlimler Kur'an-ı 'azimi ve şeriat-i şerifeyi ve din-i islâmı istihfâf eylemekle, ve kütüb-i şer'iyyeyi tahkir edip oda yakmak ile…)*, to curse and revile hazret-i Ebi Bekr, hazret-i ömer, Hz. Aişe *(…ve hazret-i Ebi Bekr ile hazret-i ömer'e (radiyallâhu anhâ)la'n eylemekle kâfir olduklarından sonra,hazret-i Âişe'i sıddîkanın (radiyallâhu anhâ) berâati hakkında bunca âyât-i 'azîme nâzile olmuş iken, anlara itâle-i lisan eylemekle Kur'an-ı Kerîmi tekzîb edip kâfir olduklarından ma'adâ…)* (Fetvâ no. 481: 110). The fermâns, on the other hand, emphasize humiliation of the sacred book of Sunnism by calling it straw and bran, and calling the ones who read it dog *(… ve feraiz kitablarına saman ve kepek dürdür Samanı hayvan soyun ve kepeği kelb yir Anı okıyan dahi hayvan ve kelbdir deyu taan üzre olub…)*[161], prohibiting the visit of the zaviye by the ones called Ömer and Osman unless they change their names *(Ömer …ve Osman…namile varanlara bednamdır deyu isimlerin tebdil ettirmeyince ziyarete ruhsat vermezler)*[162], avoiding to give their children the names of Ebubekir, Ömer and Osman *(ve oğullarına Ebubekir…ve Ömer …ve Osman isimlerin ıtlak etmeyüb)*[163], calling the Muslims openly as Yezid *(müslümanlara alâniyyeten Yezid geldi deyu kelimat idüb)*[164] as some of these rejected acts. The punishment for these items is not execution yet imprisonment. These acts in general overlap with Shiite doctrines and beliefs, which confirm that it was not only the Kızılbaş but also other Shiite inclined heterodox orders that were regarded as the heretic. The difference in the type of punishments, as ordered by the fetvâs or Sultanic decrees, cannot make us to draw a conclusion that the punishment is execution for the Kızılbaş, and imprisonment for the others. This statement is due to the fact that the Sultanic decrees also include Kızılbaş, who are subject to imprisonment. Thus, it seems

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further action. There is no obvious reason why these cases differ from where the punishment is specified," *The Persecution of the Ottoman Shī'ites,* p.272.
[161] *Ahyolu'daki ışıklara dair 975, 1567* (Refik, 1932: 22-23).
[162] *Denizli'de Sarı Baba zaviyesindeki ışıklara dair, 23 rebiülâhir 975, October 156* (Refik, 1932: 22).
[163] *Amasya'daki Kızılbaşların cezalandırılmasına dair, 992-1583* (Refik, 1932: 40).
[164] *Amasya'daki Kızılbaşların cezalandırılmasına dair, 992-1583* (Refik, 1932: 40).

appropriate to argue that Imber's explanation that draws attention to temporariness of the punishment of imprisonment can also be valid for these cases. In this respect we can make our next statement:

*S.2.: Blasphemous acts of heretics against Sünnî Islam and the Shari'a are subject to incapacitating intolerance. While the fetvâs on the related issue confirm the type of punishment as execution for the Kızılbaş, in the Sultanic decrees the type of punishment is imprisonment for both Kızılbaş and other heretical groups. However, since the imprisonment specified in the Sultanic decrees could be a temporary decision, we can conclude that disrespectful acts against Sünnî Islam were subject to incapacitating intolerance, in the type of execution, for both the Kızılbaş and other heretical subjects.*

### Acts Contrary to Sünnî Islam

In addition to disrespectful acts of the heretics, their beliefs and acts contrary to Sünnî Islam are also intolerated in the form of incapacitation. The ways in which Kızılbaş oppose Islam and, accordingly, the reasons for labeling them as heretics, are frankly manifested in fetvâ no. 481. To betray Sünnî Islam *(…ve 'ulemâ-i dîni 'ilimleri için ihânet edip…)*, to worship their sinful and damned leader (…*ve re'isleri olan fâcir mel'ûnu ma'bud yerine koyup ana secde eylemekle…)*, to realize many acts which are prohibited by Islam *(…ve dahi hurmeti nusûs-i kat'iye ile sâbit olan envâ-i hurumât-i dîniyyeyi istihlal eylemekle)* are some of these acts considered as opposition to Islam—in fact, to Sünnî Islam. (Fetvâ no. 481: 110). The fermâns, additionally, show that the cases of opposition to Islam and the related punishments were not simply confined to Kızılbaş but also cover other heretical groups, as it was in the case of disrespectful acts.

Declaration of one of the members of the community as the Prophet *(…nam ışık hakkında hâşâ peygamberdir deyu itikad etdüğünden)[165]*, committing sin by music and song *(…gece ve gündüz saz ve söz ile fisku ficur idüb…),* committing sin by growing wine for the production of vine and selling it *(…zikrolunan kullar tekyenin etrafında bağlar diküb*

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[165] *Ahyolu'daki ışıklara dair 975, 1567,* (Refik, 1932: 22-23).

*üzüm sıkub hamir idüb fisku fucurdan hali olmadıklarından gayri levendata hamir deyüb satub…)*[166], not to fulfill the duty to perform the Islamic daily prayer *(…ve kendüler dayimül evkat tariküssalât olup…)*[167], not to follow the duties of Islamic daily prayer and fasting *(…salat ve savm bilmeyüb…)*[168], opposing to fulfill the duty of Friday prayer and khutba *(…ol ictinab idüb Cuma nemazı kılmıyanlar nemakule kimesneler olub ve hutebâ ve eimmesi mülhid ve rafızî midir nicedir ve bilcümle hutbe istimaından ictinad idüb Cuma nemazı kılmayanlar…*[169]) are presented as some of the acts that are considered as contrary to Sünnî Islam. The punishment for such acts is frequently stated as imprisonment.

The fermâns also give us the clues of an important procedure regarding the contrary acts against Sünnî Islam. They order investigation and confirmation of these acts before punishment. A Sultanic fermâns called "On the improper words of Mehmed- member of ışık community in Varna, Sarı Saltuk zaviye- against shari'a and investigation of the ışık community" *(Varna Kazasında Sarı Saltuk zaviyesinde ışık taifesinden Mehmed'in şeriate mugayir sözleri üzerine ışık taifesinin tecessüs edilmesine dair)* is a good example for this point. In this particular fermâns the kadi of Varna is assigned with the duty of investigating first the reality of the words of Mehmet against Islam and Shari'a, and secondly revealing whether the community of Sarı Saltuk zaviyesi are members of Sunnah or ışık community *(…Mehmed…nam kimesne şer-i şerife ve dinî islâma muhalif bazı kelimat etdüğin bildirmiş. İmdi bundan akdem memaliki mahruseme hükmü şerifim gönderilüb anun gibi zaviyelerde şer'i şerife mugayir ehli bid'at olan ışık tayifesin komıyasun deyu buyurulmuşdu Öyle olsa buyurdum ki varıcak bu hususa mukayyed olup göresin mezkur ışığın arz olunduğu üzre şer'e muhalif kelimat etdüği vaki midir Ne makule kimesne dir Andan gayri zikrolunan zaviyede sakin olanlar ehli bid'at ışık taifesi midir Yoksa ehl-i sünnet cemaat kendü hallerinde midir? Nice dir yazub bildiresin 12 Muharrem 1559-14 Ekim 1559)* (Refik, 1932: 16-17).[170] The orders regarding the investigation of the improper beliefs and acts of ışık

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[166] *Varna'da Akyazılu baba tekyesindeki dervişlerin teftişine dair Rebiülevvel 967- December 1559* (Refik, 1932: 19

[167] *Denizli'de Sarı Baba zaviyesindeki ışıklara dair, 23 rebiülâhir 975, October 1567* (Refik, 1932: 22)

[168] *Amasya'daki Kızılbaşların cezalandırılmasına Dair*, 992, 1583 (Refik, 1932: 40).

[169] *Bozok'ta Cuma namazı kılmak ve hutbe dinlemek istemiyenlerin tecziyelerine dair, 6 Receb 976, 1568* (Refik, 1932: 28)

[170] A similar decree concerning the investigation of ışık community in Sarı Saltuk dervish lodge wa issued on 11 November, 1559. The decree ordered the abolition (men'ü def) of the ones who are

community against the Shari'a is not limited to Varna and Sarı Saltuk dervish lodge. There are many others.[171] In these decrees we also encounter with the mechanisms of investigation. The decrees order secret investigation, for which the state "employed a network of spies and informers" compromised of "centrally as well as locally employed" ones.[172] Accordingly comes, our next statement:

*S.3.: The acts of heretics (i.e. not to fulfill the duties of Islamic prayer and fasting, consuming and selling vine) are considered sins and signs of opposition to Sünnî Islam, which are punished by different types of incapacitating punishments.*

### Unruly Hypocrites

From the fetvâs and Sultanic decrees, regarding the disrespectful and contrary acts to Islam, we understand that both the Kızılbaş and other heretical groups are considered heretical on the basis of their inclination to Shiism. Yet, I think *unruliness* and *hypocrisy* emerge as the keywords to understand the difference between heretical Kızılbaş and other Shiite inclined heretical orders. In this sense, the response, in the fetvâ no. 479, to the question of whether the execution of the Kızılbaş is due to their unruliness and enmity to the ruler and the Islam, or whether there is another reason, is important. It emphasizes that they are heretic, as they are both unruly and hypocrite *(SUAL-İ ÂHAR: Kıtalleri helâl olduğu takdirce, mahzâ Sultan-ı ehl-i islâm hazretlerine bağy ve 'adâvet üzere olup, asker-i islâma kılıç çektiği için mi olur, yâhud gayri sebebi var mıdır? ELCEVAP: Hem bâyîlerdir hem vücûh-i kesîreden kâfirlerdir)* (Fetvâ no. 479: 109). Thus, the terms of unruliness and hypocrisy provide us with important clues in terms of incorporation of incapacitating intolerance which manifests itself frequently with the punishment of the execution.

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not the members of Sunni Islam and act against Shar'ia. A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik*, p. 18.

[171] The following decrees are also on the investigation of ışık community: Investigation of Seydi Gazi ışıkları in Eskişehir *(Seydi Gazi ışıklarının tedibine dair Ramazan 966, July 1558)* (Refik, 1932: 13), On the investigation of dervishes in Akyazılu Baba tekye *(Varna'da Akyazılu baba tekyesindeki dervişlerin teftişine dair Rebiülevvel 967- December 1559)* (Refik, 1932: 19), On surveillance of ışık community in Ahyolu *(Ahyolu'daki ışık taifesinin takip edilmelerine dair 15 Saferül muzaffer 975, August 1567)* (Refik, 1932: 20-21), On the ışıklar in Sarı Baba zaviye in Denizli *(Denizli'de Sarı Baba zaviyesindeki ışıklara dair, 23 rebiülâhir 975, October 1567)*(Refik, 1932: 22), On the ışıklar in Ahyolu *(Ahyolu'daki ışıklara dair 975, 1567)* (Refik, 1932: 22-23).

[172] C. Imber, *The Persecution of the Ottoman Shī'ites,* pp. 263-264.

Kızılbaş firstly oppose to the power of the ruler, therefore they challenge the order and legitimacy of the Ottoman Empire. They are unruly. Secondly, although they live in the Islamic lands, they oppose to the orthodoxy of Sunnism, and as if that were not enough they ally with the enemy of the Sunnism and Ottoman rule, the Safavids. They are therefore hypocrites.

The rejection by the Ottoman Empire of these unruly acts of the heretical groups and the hypocrisy of the Kızılbaş can be gleaned from the fermâns. I will classify the fermâns in Refik's collection according to statements that present the unruliness of these subjects, rather than according to the different nouns used for the heretics. However, it is clear that there will be one exception regarding my analysis. While Ottoman decrees blame ışık and *suhtevat* community mainly for their unruly acts, ideas and organizations, the Kızılbaş, in addition to these claims, are blamed of hypocrisy regarding their precise inclination to Safavids.[173]

### Unruly Acts

The fermâns referring to unruly acts of *suhtevat* and ışık community emphasize that they carry guns *(…vilâyeti Rum…da suhtevat taifesi ayag üzerine gelüb her bölük kırk ve elli nefer kimesne olub âlâtı harb ve tüfenk ile kasabadan kasabayı gezüb)*,[174] they wander in villages and try to stray some of the Muslims from the correct path of Islam *(…Hâliyâ Oğlan şeyh…babasının müridlerinden bir kimesne şeyh namına kasabai mezbure etrafında*

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[173] Although C. Imber, along with other Ottoman historians, emphasizes the pro-Safavid element in the heresy of Kızılbaş, he also states that "...to curse the Orthodox Caliphs in itself amounted to a defiance of the *sunnite* Ottoman Sultan, and suggested sympathies with Safavid Persia", *The Persecution of the Ottoman Shī'ites,* p. 245. Accordingly he suggests that the Ottoman Empire incorporated other Shiite inclined heretical groups also as cooperating with Safavid Persia. Yet, I think, according to the fermâns, we can identify a difference between the Kızılbaş and other Shiite inclined heterodox orders bu using the terms of unruliness and hypocricy. As, regarding the orders and their members, rather than sympathy for Persia, it is their banditry or theft that is emphasized, while the Kızılbaş are commonly given reference, with respect to the Safavids.

[174] On the cooperation of Çırpan oğlu with Softa in Karesi and Biga sanjacks *(Karesi ve Biga sancaklarında Çırpan oğlu'nun softalarla beraber isyan ettiğine dair 25 zilkade 966, 1558)*, A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik*, pp.15-16.

*olan kurayi gezüb nice kimesneleri idlâl idüb…)*[175]*,* they wonder as drunk, attempt to rob and kill some dhimmi subjects, swear to the Muslims, and kill one *(…nam suhteler ikindüden sonra serhoş ve âleti harb ile Silivri …çarsusunda bazı yahudi ve nesârânın kiminin çalmasın ve takyesin ve kiminin bıçağın ve kiminden hamir akçesin istiyüb ve bazı müslümanlara dahi itale ederken çıkub İstanbul …canibine müteveccih olub kasabai mezbure mekabirinin civarında ayazma yanında …nam zimmîi yapışup soyub katl eylemek istediklerinde mezbur zimmî feryad ettikde etrafta olan ehli harmen ile kasabadan dahi nice müslümanlar ve zimmîler varduklarında mezkûrun suhteler ok atub kılıc ve bıcak çeküb kasabai mezbure cabisi Veli …nam kimesnenin Ali nam kulun ok ve bıçak ile vurub katl idüb…)*[176] and they engage in banditry *(…Haramîlik ider Fesadının nihayeti yokdur…)*.[177] The punishments for the unruly acts stated in these related fermâns are usually include to vanquish them *(haklarından gelmek)*, to punish them with siyaset *(siyaset olması)*, sending them as "tied and bound" to the Sultan *(kaydü bend ile süddeti saadetime gönderilmesi)*, imprisonment *(habs idüb)* and burning *(ihrakı binnar)*.In fact, the prevailing characteristic of these fermâns is the identification of heretics frequently with banditry. Therefore rather than their religious deviance, the Ottoman rule emphasizes their unruliness.[178]

### Unruly organizations

Identification of heretics frequently with banditry and theft also led to continuous surveillance and investigation of particular dervish lodges, as they were considered potential shelters for the bandits and thieves. In this respect the fermâns "On the investigation of tekke in Gelibolu *(Gelibolu'daki tekkenin teftişine dair, 1568)* is an important example.  It orders the investigation of the tekke in Gelibolu as it is claimed that

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[175] On the acts of  one of the followers of  Oğlanlar Sheik who strays people from Islam ( Oğlanlar şeyhi müridlerinden birinin halkı idlâl ettiğine dair, 27 cemazielâhir 967,1559), A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik*, p.17.

[176] On the drunkness of softas in Silivri *(Silivride'ki Softaların sarhoşluklarına dair, 9 Receb 976, 976)* A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik*, pp.15-16.

[177] On the rebellion of softas in Beypazarı and burning of a yuruk who is heretic *(Beypazarı'nda …ında softaların isyanına ve küfür eden bir yürüğün yakılmasına dair, 13 rebiülevvel 975, 1567)*, A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik*, pp.15-16.

[178] For identification of heretics with banditry please see a few other fermâns: *Gelibolu'daki tekkenin teftişine dair*, 21 Safer 976, 1568 (Refik, 1932:23), *Hamit el'inde isyan eden softalara dair* 3 rebiülevvel 976, 1568 (Refik, 1932:23-24), *Kastamoni'de softaların isyanına dair*, Şevval 975, 1567 (Refik, 1932:23), *Denizli'de Sarı Baba zaviyesindeki ışıklara dair* 23 rebiülâhir 975, 1567.

the tekke is the hotbed of the bandits and thieves. Moreover, it orders its abolishment *(ref eylemek)* if it is the case *(zikrolunan tekye ol etrafda olan hırsuz ve harami yatağı olduğu istima olunmağın buyurdum ki…tekye olmayub olvechile sonradan ihdas olub hırsuz ve harami olduğı vaki ise ref' eyleyesin…) (Gelibolu'daki tekkenin teftişine dair, 1568)* (Refik, 1932: 25). Accordingly we can state that in contrast to non-Muslim organizations (i.e. churches, vakfss), which were subject to conditional tolerance, the possible institutions of heretics (i.e. tekkes, zaviyes, dervish lodges) were subject to intolerance. As an additional policy, the Ottoman state orders to disarm the heretics, prohibits the entrance of the softas to soup kitchen if they are armed and if they have no guarantor.[179] Accordingly, it appears that not only subjects but also the organizations are subject to incapacitating intolerance, which takes the type of abolishment regarding lodges.

### Hypocrisy

As I have tried to argue previously it was the hypocrisy of the Kızılbaş subjects that differentiated them from other heretical groups and their unruliness. Kızılbaş cooperated with the Safavids, which was a serious hypocrisy. And, there are a couple of Sultanic decrees which clearly emphasize this link, which I take as the sign of their hypocrisy.

The name of Kızılbaş, in the collection of Refik, appears first in 1570.[180] In this particular decree and others,[181] we see that Kızılbaş are accused of some disrespectful and

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[179] This point is emphasized in a few other fermâns: *Kefilsiz ve silahlı softaların imaretlere girmemelerine dair 967, 1559* (Refik, 1932: 17), *Kastamoni'de softaların isyanına dair, 1567* (...Kefilsiz ve tüfenkle sufteler tutarlar süddei saadetime arz idesin) (Refik, 1932: 23).

[180] In fact the date can be also 1568. As in a decree called *"On vanquishing Süleyman Fakih in Amasya/Amasya'da Süleyman Fakih'in izale edilmesine dair, 1568"* (A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik,* p.26), we encounter with the accusation of Süleyman Fakih with being a caliph of upper region. The decree does not use the term Kızılbaş, yet from the others which directly refer to Kızılbaş and their relation to upper region, we understand that "upper region" refers to Safavid Persia. According to C. Imber's (1979) analysis, on the other hand, the term Kızılbaş appears in 1577 in the Sultanic decrees, *The Persecution of the Ottoman Shī'ites,* p. 248. This is mainly due to the fact that he primarily deals with the fermâns issued for the provinces of Basra, Baghdad and Şehrizol. Ibid., p.246.

[181] A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik: Amasya ve Merzifondaki kızılbaşların tecziyelerine dair,* 2 zilkade 978, 1570, p. 29; *Kastamoni ve Taşköprü'deki kızılbaşların tecziyesine dair,* 8 rebiülevvel 979, 1571, p. 29-30; *Niksar'daki kızılbaşların hapsedilmesine dair,* 24 s. 980, 1572, p. 31; *Amasya'daki kızılbaşların tevkıyfine dair,* 10 Muharrem 982, 1574, p. 34-35; *Elbistan'da bir kızılbaşın katline dair,* 25 receb 985, 1577, p. 37.

contrary acts to Sünnî Islam, like other heretical groups, and immoral behaviors. In these decrees we cannot identify a direct link with the Kızılbaş and Safavid Persia, rather than the common sect they both followed, Shiism. The identification of Kızılbaş with rafızîlik and ilhâd, later on, gives us more concrete signs of identification of Kızılbaş with the Safavids.[182] As the fermâns, which establish a link between Safavids and Kızılbaş, do not use the term of Kızılbaş but incorporate either the terms of "rafız and ilhâd" or merely "rafızî". One of these fermâns is called *"Malatya'da Şah İsmail namile zuhur eden şahsa sadaka gönderenlerin katledilmesine dair, receb 986, 1578"*. In this particular fermâns it is clearly stated that, the ones who delivers alm should be investigated, and if their *rafız and ilhâd* is religiously confirmed, they should be subject to siyâsa punishment *(…hak üzre teftiş idüb ve ilhadları ve nezir gönderdükleri şer'le sabit olursa sicil sonra siyaset etdirüb…)* (Refik, 1932: 51). In another decree, called *"İran'la münasebette bulunan rafızîlerin cezalandırılmasına dair, 28 sabanülmuzzam 987, 1579"*, it is ordered that the ones, whose relationship with the upper region (Safavid Persia) is precise, and thus their rafız and ilhâd is religiously confirmed, should be executed according to the Sharia *(…Ve rafız ve ilhad üzre olup yukarı canib ile muameleleri mukkarrerdir deyu şehadet eyledüğün bildirmişşin…arz olunduğu gibi ise anun gibi rafız ve ilhadı şer'ile sabit olanların ber muktezayi şer'i kavim haklarından gelub…)* (Refik, 1932: 39-40). In this respect we see that any relationship with Safavid Persia is subject to execution, which is commonly identified with rafız and mülhid, the Kızılbaş. Thus hyprocrisy of Kızılbaş is given a specific emphasis, which cannot be limited to the unruly acts of other Shiite inclined heterodox orders.

Among these fermâns, there is one which should be given a special emphasis. It identifies the heretics as Kızılbaş, yet also proposes banditry as a cover to incapacitate them. As I have identified banditry and theft as the unruly acts of the other Shiite inclined heterodox orders, it is worth questioning this point. The fermâns is called *"On vanquishing Süleyman Fakih in Amasya/Amasya'da Süleyman Fakih'in izale edilmesine dair"*. There are three important points in this particular fermâns. First of all it is stated that the man called Süleyman Fakih is a caliph of the upper region (side), which refers to Safavid Persia, and he

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[182] 1572 *(Niksar'daki kızılbaşların hapsedilmesine dair, 24 s. 980)* is the year, when the terms of Kızılbaş and rafızî used together *(…kızılbaş ve rafızîyler olduğın…)*, A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik,* p. 31. In 1577 (*Elbistan'da bir kızılbaşın katline dair*, 25 receb 985), we see that the term Kızılbaş is used with the terms of rafız ve ilhad *(...rafız ve ilhadı sabit olursa...)*, A. Refik, *Osmanlı Devrinde Rafızîlik ve Bektaşîlik,* p. 37.

cooperates with some of the heretics who are also his disciples. They not only attempt to gather but they also stray the Muslims from the true path of Islam *(…Süleyman Fakih dimekle maruf kimesne yukarı canibin hulefasından olub halife namına olan bazı melâhid ve müfsidin ile ittifak ve cemiyet üzre olub halkı idlâl eylemekten…)* (Refik, 1932: 26).

Secondly, the fermâns orders the secret investigation of the case, and if the claims are right about them, it orders to capture and secretly drown them in the Red River *(..hafiyyeten tetebbü idüb dahi mezkûr sahih yukarı canibin hulefasından olub küfrü ilhad üzre olu nameşru evza' ve harekât etdükleri vaki ise toprak kadısı marifeti ile mezkûrları ele getirüb dahi kimesne ifşa eylemadiyen el altından Kızıl Irmağ'a iletüb iğrak eyleyesün) (Ibid.)*. The third point in the decree, finally, presents how banditry is used as a cover for heresy. The fermâns allows their persecution which should be realized by charging them with banditry and theft, if they are not drown in the Red River *(…Ve yahud ahar vecih ve münasib görüldüğü üzre hırsızlık ve haramîlîk eylediler deyu iddia eyleyüb haklarından gelesin) (Ibid.)*

It is obvious that unruly act, that is opposition to State either by theft or banditry, are important crimes that are already subject to incapacitating punishments in the OCC. Additionally, heresy also religiously deserves incapacitating intolerance according to fetvâs. No need to say, hypocrisy is also an important reason for the persecution. So why would the state choose to use theft and banditry as a cover in order to execute heretics, Kızılbaş? I have three possible answers for this question. The first one is the inclination of ordinary subjects of the Empire (reâyâ) to the Kızılbaş. Thus, not to lead to popular discontent, the State could have used the legitimate grounds of banditry and theft for exerting incapacitating punishments. Or secondly, it could have been easier to blame them with such unruly acts, rather than finding precise evidences for their heresy and engagement with Safavid Persia. And finally, it can be true that the Kızılbaş are commonly thieves and bandits. In fact, the first one appears to me the most plausible explanation. After, this point, we can make another statement:

S.4.: *The unruly acts of heretics (i.e. rebellion, banditry) and their potential organizations (i.e. lodges) were subject to intolerance. While we can literally mention incapacitating intolerance regarding unruly acts, we can argue that the potential organizations of heretics were incapacitated metaphorically. They are not allowed to exist if the link between them and banditry assumed for the heretics is confirmed. The Kızılbaş, on the other hand, were intolerated as they were both unruly and hypocrite, due to their engagement with Safavid Persia.*

### Condemnation and Humiliation of Shiite-Kızılbaş Belief

In the section on non-Muslims, I attempted to discuss how the beliefs and accordingly the religious requirements of the beliefs of non-Muslims were subject to contemptuous tolerance. Contempt was instrumental to discuss the inferior and disrespectful rank assigned for their belief and practices, but also their acceptance. As far as heretics are considered, however, not the contemptuousness (and of course not the tolerance), but rather condemnation (and thus intolerance) appears to signify the most appropriate feeling and the attitude of the Islamic rule of the Ottoman Empire towards Kızılbaş and Shiites. They are not simply considered as inferior and disrespectful, and being a mürted/heretic is also clearly condemned and humiliated. Particular statements existing in the fetvâs can provide necessary evidences for this condemnation and humiliation. The definition of the acts of Kızılbaş as foolish *(Efâl-i senî'aları)* (Fetvâ no.480: 109), their descent as impure *(neseb-i tâhire 'alâkaları olmaması)* (Fetvâ no.480: 109) and their acts as misdeed known as everybody (kabayih-i ma'rufeler) (Fetvâ no. 481: 110) present the humiliation mentality of the Ottomans. In another fetvâ, moreover, we encounter the explanation for evil character of their belief which needs condemnation. The fetvâ firstly excludes Shiite-Kızılbaş from other seventy three religions/sects/nations which deserve hell except the Sünnî Muslims *(Şi'adan değil, "yetmiş üç fırka ki, içinde ehl-i sünnet fırkasından gayri nârdadır" deyu hazreti Resûl (sallallahû aleyhi ve sellem) tasrih buyurmuşlardır)* (Fetvâ no.481: 110). The Kızılbaş are not even the members of any of these seventy three religions/sects/nations. Yet they derived some evil and malice (mischief) from each, then mix it with their excessive heresy and constituted an evil sect of heresy was not seen before *(…bu taife yetmiş üç fırkanın hâlis birinden değildir. Her*

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*birinden bir miştar şer ve fesad alıp, kendiler hevâlarınca ihtiyar ettikleri küfr ü bid'atlere ilhâk edip, bir mezheb-i dalâlet ihtira eylemişlerdir)* (Fetvâ no.481: 110).


The condemnation and humiliation of the morality of Kızılbaş can be considered as the most extreme materialization of dislike regarding the heretics. Some of the decrees directly refer to the so-called "blowing candle" ritual.[183] In the decree called "On the punishment of the kızılbaşlar in Kastamoni and Taşköprü/Kastamoni ve Taşköprü'deki kızılbaşların tecziyesine dair 8 rebiülevvel 976, 1568", it is stated that the wife of a Kızılbaş, called Kara Rıza, joins to religious ceremony *(…hatunu meclisi şer'e gelüb…)*, they "blow the candle" and dispose of each other's wives *(…şem'i söyündirub biri birinin avretin tasarruf iderler…)* (Refik, 1932: 29). We encounter with the same claim in another decree. Similarly the Kızılbaşlar are blamed for gathering in the night, allowing their daughters and wives to their religious ceremonies and disposing of each other's wives and daughters *(…gice ile cemiyet idübavretlerin ve kızların meclisine getürüb birbirlerinin avretlerin ve kızların tasarruf idüb…)* (On the punishment of Kızılbaşlar in Amasya/Amasya'daki Kızılbaşların cezalandırılmasına dair, 28 b 992, 1583) (Refik, 1932: 40). These immoral acts of Kızılbaş usually take place in the decrees that can be categorized as the ones presenting the contrary or disrespectful acts against Sünnî Islam. Thus we can conclude that the morality of the heretics, Kızılbaş, is also regarded contrary to Sünnî morality as it is found immoral.


*S.5.: Not only the beliefs but also the morality of Kızılbaş are subject to incapacitating intolerance, as the former is found evil and the latter immoral.*


What kind of statements can we propose regarding the acts, beliefs and organizations of the heretics (namely of the Kızılbaş), which are subject to incapacitating intolerance? I think a comparative analysis between heretics and non-Muslims provides important insights. First of all it is clear that heretics are by no means subject to tolerance/toleration. Rather, they are the subjects of intolerance, in the form of

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[183] Irène Mélikoff *(Uyur İdik Uyardılar)* aptly emphasizes that such a ritual is nothing but a tool for blaming Kızılbaş and Shiism with immorality. She explains the possible reasons for the identification of Kızılbaş, and thus Shiism, with immoral rituals as the participation of women in the religious rituals, and the requirement of gathering secretly, mainly at night.

incapacitation. This means they cannot even benefit from the reformative intolerance, which includes less severe punishments such as ta'zîr, prohibition and exclusion. In fact, they are moreover frequently treated with the most extreme form of incapacitation, which is execution. Yet there is also an important similarity particularly between the acts and beliefs of non-Muslims and Kızılbaş, in terms of the items that are subject to incapacitating intolerance, mainly execution. These differences and similarity help us to make important conclusions.

The clear emphasis on the importance of heretics as enemies of Islam, rather than other religions, confirms my two previous arguments, in addition to the statement of the absence of practice of tolerance regarding heretics. Firstly I argued in the third chapter that other religions (Jews and Muslims) were treated also in a similar manner in Europe by the Christians or Protestants. Thus, other religions were frequently treated with tolerance/toleration mainly regarding the idea that, the least danger comes from the most foreign. Concerning these points, I argued that it was not specifically the essence of Islam or Christianity that allowed the acceptance of other religions, though in a contemptuous form. Rather, in fact, they were powerless, minority, foreign and thus a less important difference when compared with heretics. Tolerance of other religions- which turns into intolerance when particular acts, ideas or organizations of members of other religions constitute a serious threat/danger to the order, legitimacy, wealth of the ruler and the rule,- therefore is not specific to Islam and the Ottoman Empire. The same politics were also pursued by Christianity regarding other religions.

Following this argument I have also argued that the European experience of heresy-intolerance-tolerance relationship could guide us regarding the same relationship in the Ottoman Empire. It was the antagonism that the Catholics or Protestants experienced with each other that led to the attempts for conceptualizing principled or pragmatic justifications for religious tolerance. This point is important in the sense that if we are going to discuss tolerance/toleration as a positive policy of the Ottoman rule regarding an important difference, then we should focus on the treatment of the heretics. As the aforementioned fetvâs presented, they are the Kızılbaş, mürted-heretic, and other Shiite

inclined heterodox orders who are clearly subject to intolerance. We can argue that when the difference is really important, then it becomes harder to tolerate it.

Secondly the similarities between infidels and heretics, in terms of the subjects/objects of incapacitating intolerance punished by execution, are further explanatory in explaining why heretics are not tolerated or not intolerated in different forms. Regarding non-Muslims, we have stated that the acts leading to invalidation of the pact, apostasy after once converted into Islam and disrespect to Islam were subject to incapacitating (execution) intolerance. Yet as far as Kızılbaş are considered we see that they are essentially accepted as heretics/apostates as they refuse Sunnism which is the true way of Islam. Thus being a Shiite makes Kızılbaş from the very beginning the subjects of rejection combined with a negative action. They are converted from true Islam, Sunnism. Thus there is no possibility to tolerate them or to intolerate them in less severe forms, as punishment of conversion from Islam is execution. Secondly the acts of non-Muslims those lead to invalidation of the Pact, such as cooperation with the other infidel countries, had already been pursued by the Kızılbaş. They allied/cooperated with the Shiite Safavids against the Ottomans, which legitimize their persecution. Finally disrespect to Islam by the non-Muslims and to Sünnî Islam by the heretics is similarly intolerated in the form of incapacitation. In this respect, we can conclude that heretics are essentially (religiously) and moreover politically enemies of Sünnî Islam, which necessitates to intolerate them as incapacitation. The next section will investigate the position of the Sûfî orders in the politics of tolerance/toleration and intolerance.

### 5.4.3. Sûfîs as the religious Other?

### Between Tolerance/Toleration and Intolerance

In the third chapter of my research, I argued that it was not easy to categorize the heterodox Sûfî orders either merely as the subjects of tolerance/toleration or intoleration. This was mainly due to the changing conception of Sûfî orders by the State as well as their changing attitude towards the Ottoman Empire. Both of these changes, in fact, coincide with the identification of the Ottoman Empire itself with the orthodoxy. When the Empire

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chose Sunnism as its official religion, positive perception of the Sûfî orders, on account of their early contribution of the Islamization of Asia Minor and the Balkans, suddenly shifted if they openly and excessively incoroporated Shiism. The Sûfî orders in turn also made a choice when orthodoxy and centralization started to dominate the politics of the Ottomans. Some of them chose state protection, i.e. Halvetis, Naksibendis, Mevlevis, and Bektashis, whereas others were assembled around more sectarian sects such as Bayramis, Melamitis and Hurufis. In the previous section, I also emphasized the Kızılbaş, who were in fact a part of Bektashis, as another sectarian group of the Empire. These sectarian attitudes were mainly related with their excessive inclination toward Shiism and thus they were subjects of incapacitating intolerance. In this respect, we can make our first general statement regarding hererodox Sûfî orders.

*S.1.: The heterodox Sûfî orders which allied themselves with the Ottoman state, even if they had mild Shiite inclinations like the Bektashis, were subject to tolerance/toleration. On the other hand, the ones who opposed to the State and displayed extreme signs of Shiism (i.e. Kızılbaş and Hurufis) were considered as heretics, and they were subject to intolerance. Thus, we can argue that the politics of tolerance/toleration and intolerance varied according to the subjects/organizations (of heterodox orders).*

As I have already presented the discussions on the intolerance of the unruly and hypocrite Shiite-inclined heterodox Sûfî orders in the previous section, in this part, I will focus on the general regulations regarding the Sûfîs. Thus, I will apply to the fetvâ collection of Ebû-sû'ud which reserves a specific section to Sûfîs. As such, I hope to reveal forms and degrees of tolerance, and forms and degrees of intolerance where applicable, regarding particular acts, organizations and ideas of the Sûfî orders.

### 5.4.3.1. Conditional Tolerance

**Sunnism**

The form of tolerance regarding the Sûfî orders can be labelled as conditional tolerance, as it was also the case for some of the acts, organizations and ideas of non-

Muslims. Sûfîs were accepted in the lands of the Ottoman Empire, provided that they followed Sünnî Islam, or they did not practice Shiism in extreme and visible forms. This was the first condition for their acceptance.

In the fetvâs, we encounter the phrases that refer to the Sünnî character of the Sûfî orders. Their obedience to the times of Islamic prayer (*Evkât-i hamseye müdâvement*) and religious duties (*envâ-i nevâfile müvâzıbet*) (Fetvâ no. 342: 83) can be presented as some of the relevant examples. However, since most of the Sûfî orders were syncretic, we cannot argue for the pure Sünnî character of the Sûfîs. Yet, we also know that their excessive Shiism cannot be accepted, as the previous section on the intolerance of the heretics, which were mostly extreme Shiites or Shiite inclined orders, has already affirmed. What we can debate is that, if the Sûfî orders do not display signs of extreme Shiite inclination, their existence, beliefs and rituals are accepted with connivance. Thus, we can conclude, to follow Sünnî Islam, or mild Shiism was the reason for conditional tolerance, which is the first statement of this section.

*S.2.: The heterodox Sûfî orders were subject to conditional tolerance, as their acceptance was mainly due to their obedience to Sünnî Islam, or commitment to mild forms of Shiism.*

Nevertheless, following Sunnism or mild Shiism was not enough for tolerance. For being subject to tolerance, those orders should also realize their extra-Sunnah rituals (i.e.*raks and devran*-dance and whirling) as *mübâh* (neither permissible nor forbidden by Şerîat) not as *ibâdet* (worshipping). And, they should avoid fulfilling *zikr (*rituals of memorial of God) as *raks and devran*. Any contrary acts mean that they would be regarded as heretical; thus, they would be subject to incapacitating intolerance as discussed in the previous section.

**Zikr vs. Dance and Whirling**

In the collection of Ebu's-su'ud there are many fetvâs which deal with the procedure and the form of worshipping rituals.[184] There is particularly an emphasis on how the *zikr* should be practiced. In this respect in the questions of the related fetvâs, it is asked whether it is appropriate to practice zikr loudly (...ref'i savtla...)(Fetvâ no. 339: 83), on foot without moving them *(...zikrullah ederlerken galebe ile ayak üzerine kalkıp,...ayakların hareket ettirmeyip zikrullah eyleseler câiz olur mu?)* (Fetvâ no. 341:83), yet, moving their waists and heads *(...amma belleri ve başları hareket eylese...)* (Fetvâ no. 342: 83). In the answers, we see that, provided that their feet are fixed, they can practice zikr on foot, or they can move their waists and heads, although to practice it as sitting and without moving their waists would be more preferable *(ELCEVAP: Eğer belleri tahrik etmeyip başların tahrîk ile iktifâ eyleseler, dahi evlâ idi. Edeb-i zikr-i şerife evfak idi. Amma muhafaza edip edicek be'is yoktur, sâbit kadem olucak)* (Fetvâ no. 342: 83-84). The main reason for such details on the procedural and formal realization of the *zikr*, is the desire to distinguish it from dance and whirling *(raks and devran)*. If the rituals of zikr are practiced according to Sünnî rules (*Edeb-i zikr-i şerife evfak),* then, there is no problem from the standpoint of the Şerîat. However, if they shift to dance and whirling *(raks and devran)* and are accepted as worshipping, then those subjects are treated as heretics; and they thereby become subject to incapacitating intolerance. The reasons for the rejection of dance and whirling, and their treatment as heresy, are clearly explained in the fetvâs. Fetvâ no 348 is particularly important in this sense.

In the question part of fetvâ no. 348, it is asked if Zeyd, a Sûfî, whirls and acknowledges it as worshipping, does his marriage become religiously valid and is his sacrificial animal accepted as *helal*? *(MES'ELE: Sûfî adına olan Zeyd zikr ederken devran edip, ettiği devrânı ibâdet addeylese, nikâhı sahih zebîhası helâl olur mu?)* The answer precisely states that the one accepting whirling as worshipping is a heretic. Only if he accepts it as *mubah* (neither permissible nor forbidden by the Şerîat ), he is not a heretic, but a sinner *(ELCEVAP: Devranı ibâdet addeyleyicek mürteddir...Amma ibâdet addetmeyip, mubah i'tikâd edip, devran ederse mürted değildir...Sâir feseka gibidir....).* In the following

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[184] Fetvâ no. 339,341,342,343, 344,345, pp.83-85.

part of the fetvâ, it is asked why it is heresy, if whirling is regarded as worshipping, while to take it as mübah is not *(BU SÛRETTE: Devranı ibâdet addetmek ile küfür lâzım gelip, mübah addetmek ile olmadığının vechi nedir?)* The answer explains it as the following. Although God does not order whirling as worshipping, to insist on the contrary is slander to God. Thus they are heretic. Apart from slander to God, to accept an act which looks like dissipation as worshipping is also another reason for their heresy. Finally, as also frequently repeated, whirling is found similar to the illicit acts of the infidels.On the other hand, because to regard it as mubah would not mean slander to God, the ones who whirl as mubah cannot be considered as heretic *(…mubah addeden, Hak te'âlâ hazretlerine "emretti" deyu iftirâ eylemez ki kâfir ola, amma ibâdet addeden ol levh-ü lu'b ve abes olmak ile hurmeti mukarrere olduğundan gayri, keferenin küfr-i meşhûrlarına kemal-i müşâbehet ile müşâbih olan fi'l-i kabîh ü münkeri, "Hak te'âlâ hazretinin emridir deyu iftirâ etmek ile kâfir olduğundan gayri…)* (Fetvâ no. 348: 85).[185]

Parallel to the intolerance of heretics, those Sûfîs who regard dance and whirling as worshipping are subject to incapacitating intolerance. It is openly stated in the fetvâ no. 349. Those who insist that dance and whirling are worshipping and that the *ulema* (religious men) are ignorant of it, should be punished by execution *(…eğer memnu olmayıp "ulema ehl-i zevkin esrârına muttali' demek iddi'âsı üzerine fi'l-i şenîa israr ederse zındıktır, elbette katl olunmak vâcibdir* (Fetvâ no. 349: 86). At this point it is necessary to make another statement:

*S.3: The religious rituals of the heterodox Sûfî orders were also subject to conditional tolerance. Zikr, if exercised according to Sünnî Islam, and dance and whirling, if regarded as mübah, are tolerated in the Ottoman lands.*

### 5.4.3.2. Toleration as Communal Favoritism

Although the fetvâs present us general regulations regarding the Sûfîs, we know from the secondary literature that the ones who accepted state protection and were

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[185] Similar questions and answers also take place in other fetvâs such as fetvâ no. 349, 350, pp.85-87.

moreover respected by particular Sultans were subject to toleration. Thus, in contrast to tolerance in the form of intra-communal favoritism, to which non-Muslims were subject, the distinguished Sûfî orders were subject to toleration as communal favoritism. The attitude of the Ottoman Empire regarding particular Sûfî orders was not only minimum negation of rejection and negative act, but it also included a more positive response. This positive response included respect and recognition of particular Sûfî groups. Among them, the Bektashis and Mevlevis are the best known. The first, recognized as the spiritual order of the Janissaries and the latter, to which the Court bestowed respect and loyalty, emerge as the examples of the organizations (Sûfî orders) which benefited from toleration as communal favoritism. Although their names do not take place in the fetvâs, we encounter another one, Halvetis, about whom we know that they also accepted state protection like the Bektashis and Mevlevis. It is possible to infer their distinquishable place from the fetvâ no. 347.

In the question part of this particular fetvâ, it is asked what the proper thing would be, if Zeyd argues that the Sheikh and the community of the Halvetî , and the ones who interact with them are infidels, as Halvetî practice zikr by whirling *(MES'ELE: Zeyd, "Halvetî taifesinin şeyhi ve mürîdi, ve bunlar ile müsâhabet eden kimseler kâfirlerdir" dese, Amr Zeyde "niçin"deyu suâl ettikde, "bunlar devran ile zikrullah ederler" dese Zeyde ne lazım olur?)* The answer orders the punishment of ta'zîr for Zeyd, who blames Halvetîs and the ones interacting with them as the heretics. Moreover it openly states that there are beneficial ones among them *(ELCEVAP: Kizb ü iftirâdan, ve bilmediği yerde mücâzefe etmekten tamamen ihtirâz etmek lâzımdır. Ol tâifede yarar kimseler vardır…"Kâfirdir" demekle Zeyde ta'zîr lâzımdır)* (Article no. 347: 85). It is in this respect that we can make another statement:

*S.4: Some of the Sûfî orders (i.e. Halvetis, Mevlevis, Bektashis, and Nakşibendis) are subject to toleration in the form of communal favoritism as they are probably found wholsome and close to Sünnî Islam. Thus, we can argue that some subjects/organizations (orders) are tolerated more than others.*

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The heterodox Sûfî orders could be subject to tolerance/toleration or intolerance in the Ottoman lands. We can interpret their ambigious position as enhancing our argument that the politics of toleration/tolerance/intolerance may take multifarious forms. Moreover, the category of toleration/tolerance/intolerance does not treat the Sûfîs as a general category. Yet, the politics is shaped according to the acts, ideas and organizations of the Sûfî subjects/organizations.

### 5.5. Summary and Plan of the Next Chapter

If we want to make a concluding remark for this chapter, it can be the difficulty of deciding the most tolerated acts, ideas, organizations of the religious Other. Similarly, it is also not easy to conclude which religious Other of the Empire is the most tolerated one. There are only subtle lines, which can make any of the religious Other, his/her acts, ideas and organizations, subjects/objects of intolerance, when these borders are violated. In this respect, turning into a heretic and being another subject/object of intolerance is quite easy, even for the heterodox Sûfî orders, despite their seemingly respected position in the Ottoman Empire. The form of conditional tolerance and toleration as favoritism are the evidences for the dilemma of limits of acceptance on the one hand, and respect on the other. Moreover, the form of incapacitating intolerance they face, when they cross the borders, and treated as heretics, is also the sign for their elusive position. When we focus on non-Muslims, we see that although they appear to be the most important subjects of the discussions of toleration/tolerance/intolerance, they, in fact, have a wider space of action and less chance of violation of the borders. I take the multi-layered and various forms of tolerance, and intolerance as the signs of this flexibility. For being subject to incapacitating intolerance they should invalidate the rules of agreement for living in the Ottoman state and exercise the acts which are considered as crime for almost all of the flock. That seems to happen quite in unusual times. Moreover, the Ottoman state thinks that it can discipline them, which is affirmed by the existence of form of reformative tolerance. Yet we see, in the case of heretics, there is no way for toleration of them regarding either as subjects or objects. They are deprived mainly from the respect, which in some cases the heterodox Sûfî orders can benefit. Accordingly, what we can conclude is the definite intolerance of the heretics. None but only the existence of incapacitating

intolerance can present us the real religious Other of the Empire, as it was justice that decided the moments of tolerance/toleration/intolerance in the Ottoman lands.

With respect to this picture, I would like to conclude that it should not be tolerance/toleration but the form and subjects/objects of intolerance on which we should focus in order to understand the limits of a political rule when dealing with difference. The existence of intolerance does not invalidate my previous argument that tolerance/toleration and intolerance can co-exist together in different forms, levels and degrees regarding the acts, ideas and organizations of the Other. Yet, the existence of intolerance and the subject/object it intolerates not only provide us with the most important difference, but also the prevailing way of reasoning of a political rule.

**CHAPTER VI**

**6. CONCLUSION**

### *6.1. Background Narrative: The Links between Ideas*

The category of toleration is *ambiguous* and *elusive*, particularly given the consensus on the *contingent* and *contextual* character of the idea/practice. Michael Walzer's *On Toleration* is the strongest work which demonstrates the distinctiveness of each case (of this idea/practice). I strongly agree with the distinctiveness of the different experiences of toleration as the context of an Empire or a nation-state can be structured upon totally different ways of reasoning. In this respect, the category of toleration is indeed contingent; it is conditional, as the Ottoman case also confirms. Yet I do not think this necessarily stems from its being *a different regime of Empire*, as Walzer argued. Moreover, toleration is contextual.  But its contextuality is not simply due to its *interrelatedness to politics, economy, and religion per se*. In other words, although contingency and contextuality aptly characterize the category of toleration, neither of them appears to constitute a barrier to derive a plausible conceptual-theoretical framework to understand "what toleration/intolerance is".

In order to articulate this framework, which would be impossible without the guidance of the Western theories of toleration, it is in the first place this already mentioned contextual and contingent (conditional) peculiarities of any case/experience on which one should focus. I therefore attempted to understand the world of the Ottoman Empire, whose contextuality and contingency are very much shaped according to its particular *way of reasoning*—as Talal Asad theoretically argued in his *Genealogies of Religion*, albeit not particularly in terms of the case of the Ottoman Empire. It was this particular way of reasoning that defined the content of the context and conditions. Moreover, it was this way of reasoning which gave us the answer to the question of why

"toleration/intolerance" was pursued as an Imperial policy. If I turn back to my conceptual-theoretical framework and formulate my statement in its vocabulary, derived from Western theories of toleration, it is possible to claim the following: The strong relationship between *the way of reasoning* and *contextuality* and *contingency* is the primary key for us to understand the *requirement of toleration*. In the Ottoman case of toleration/intolerance, I discussed this requirement as *justice* and *prudence*. This point constituted my first link between the historical cases of Ottoman Empire and Western historical-theoretical literature on the category of toleration.

David Heyd's fruitful suggestion for the need of a dialogue between the theory of toleration/intolerance and the historical experiences that he formulated in his chapter *"Is toleration a political virtue?"* encouraged me in proposing justice as the requirement –as the prevailing way of reasoning of the Ottoman political rule—of the idea/practice of toleration in the Ottoman case to establish this dialogue. Yet to discuss the plausibility of this link, i.e., to treat the prevailing way of reasoning as the strongest requirement of toleration, I needed a strong common denominator. Then I could argue for the relevancy of the dialogue between a conceptual-theoretical framework and contextual/contingent (conditional) experiences of historical cases. In other words I needed *a ground* that could *transcend the limitations of context and condition*, which lay behind the elusive and ambiguous character attributed to the category of toleration/intolerance. The category of *power*, in this sense, fulfilled this task.

My attempt to understand the idea/practice of toleration via the category of power, or vice versa, owes a lot to Wendy Brown's work *Regulating Aversion* and Herbert Marcuse's *Repressive Tolerance*, in which they make a careful observation on the relationship between the category of toleration and power. Talal Asad's distinctive analysis on the relationship of power and religion in his *Genealogies of Religion* was also very helpful for thinking religious toleration with the category of power.

Power-toleration relationship enabled me to break the link between the essence of religion (i.e. Islam, Christianity) and the politics of toleration/intolerance. Religion was

only one element, besides others, that constituted the way of reasoning, which I identified with the requirement of toleration. In other words, the requirement of toleration was not the religion per se, as the Ottoman case affirmed. Yet it was the idea of *justice* which was incorporated clearly as a *theological-political principle*.[186] This statement is important, since the incorporation of justice as the prevailing political principle shows that it was not the essence of religion that required toleration per se.  Rather it was the prevailing reasoning of politics, theological-political justice, as well as its relation to the category of power, that decided toleration/intolerance of the *religious Other*. The following quotation from İnalcık recapitulates my link between justice and power:

> [p]ower and justice were considered not as a dichotomy, but interdependent principles. Power was for justice and justice was power…The ultimate goal of the supreme power was to establish justice and it was justice that consolidated power (İnalcık: 1993: 71).

To agree on the imbrication of power on toleration neither invalidates the contextual/contingent character of toleration/intolerance, nor does it underestimate the importance of religion and politics. It enables us to propose a conceptual-theoretical framework to understand the politics of toleration based on the ground of power, without challenging these premises. The inextricable relationship between *power* and *toleration* can be derived from the strong link between *the Sovereign* and *power,* in addition to the aforementioned relationship asserted by Herbert Marcuse and Wendy Brown.

It is unrealistic to expect from the sovereign (ruler) to act according to the general/universal principles of ruling (assuming that there are any). However, we can expect that *the Sovereign rules prudently to sustain his power (authority)*. The Ottoman experience and ruler was no exception to this. They prudently incorporated the pre-Islamic and Islamic principles of ruling to hold onto power. And, in the Ottoman Empire, this *prudent principle of ruling to preserve power was the idea of justice*. The Sovereign of another Empire or the ruler of a nation state can apply different prudent politics, based on its contextual/contingent history and ideational traditions. Yet, if we concentrate on the

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[186] Although it is irrelevant to discuss whether justice was an Islamic notion or a pre-Islamic heritage to the Ottomans, regarding the intermingling of thoughts of the pre-Islamic civilizations and Islamic Empires, I think we can label the concept of *justice* in the Ottoman Empire as a *theological-political principle*.

details, particularly concerning the historical cases, we can encounter *different ways of reasoning that prevailed in the political sphere in order to preserve power.* In other words, we encounter different requirements for the incorporation of the politics of toleration or intolerance, which is in fact necessary for the preservation of power in the first place. In fact, the philosophical theories of toleration acknowledge this point.

The proposed ways of reasoning which the philosophical theories frequently name as requirements of toleration are *rationality, morality, individual freedom* or *autonomy*, among others. By emphasizing these notions they confirm the importance of requirement, the prevailing way of reasoning, and its relation to toleration. In this respect, *in the X experience of the idea/practice of toleration or intolerance, even if the prevailing requirement (way of reasoning) differs, I argue that to apply the politics of toleration/intolerance merely serves the prudent objective of preserving power*. Thus, within the confines of the present study, it was justice as the prevailing way of reasoning of politics that functioned as the requirement of toleration, which was the particular requirement incorporated as an instrumental/prudent politics to preserve power.

The link between the sovereign and his attempt to preserve power could take us to the discussions on legitimacy, as aptly discussed by Selin Deringil in the *Well Protected Domains, Ideology and the Legitimation of Power in the Ottoman Empire 1876-1909*, and Hakan Karateke and Maurus Keinkowski in the *Legitimizing the Order: The Ottoman Rhetoric of State Power*. It is obvious that the continuity of the power of the ruler is closely bound up with the continuity of his legitimacy. *Preserving public order* and *increasing the wealth of the country* were two necessary conditions for the *legitimacy of rule* in the Ottoman Empire, as they would be similarly important in any other political regime. The Ottoman historiographers, therefore, expediently chose to focus on *the idea of justice* which was the prevailing way of reasoning that underlined the politics of the ruler *as a legitimacy tool*. In fact, Halil İnalcık carefully called attention to the notion of justice and its relation with the politics of the Empire especially in his *Osmanlı'da Devlet, Hukuk, Adâlet.*[187] I therefore drew on his detailed presentation of the historical links of the

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[187] I cannot overstate the crucial discussions I had with Prof. Zurcher, which helped me to deepen the relationship between toleration/intolerance and justice. I am grateful to him.

concept to the Ottomans, as well as the archival sources *(adâletnameler)* he used to support his analyses, as the guiding thread for that part of my work in which justice occupies center stage.[188] Moreover, Boğaç Ergene and his works *Local Courts, Provincial Society and Justice in the Ottoman Empire* and, particularly, *On Ottoman Justice: Interpretations in Conflict* enabled me articulate the proper level of conceptualization and its relation to Islamic jurisprudence. Accordingly, this particular literature enabled me to constitute the contours of my discussion, which took Justice as the requirement of toleration in the Ottoman case. *The politics of Justice mainly aimed to preserve the legitimacy of the rule (power/authority) by preserving public order and increasing wealth. And when toleration/intoleration is required for these objectives, the Ottoman state appealed to politics of toleration or intolerance.*

Having established this framework with the aid of these strong links established by Ottoman historiography, I resorted to Foucauldian concept of *art of government* and Hunt and Wickham's discussion of *disciplinary power of laws* in order to situate justice and toleration/intoleration in the theoretical discussion of power. In other words, *I chose to interpret justice as a medieval form of art of government*. Moreover, *I used the diciplinary power of laws*, whereby toleration/intolerance is mainly exercised, *as a complementary idea to 'justice as art of government'*. Yet, I introduced a slight difference in terms of the vocabulary of Hunt and Wickham, and I elaborated the laws or the Empire as fullfilling the objectives of *incapacitation* or *reform* of its subjects under the general discussion of punitive intolerance. These slight differences were deemed necessary regarding the vocabulary of Ottoman law as well as the forms of toleration/intoleration I derived from the close reading of fetvâs, the criminal code and the sultanic promulgations. Let me explain.

In this research, I chose to trace the clues of forms of toleration/intolerance regarding infidels and heretics in the laws of the sixteenth century Ottoman Empire. The reason for focusing on laws was in the first place related to the availability of transcripted primary sources. Yet the Ottoman laws at the same time provided the perfect ground, on

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[188] I should also state Khadduri's *The Notion of Islamic Justice* which was also very helpful for me in understanding the theological-political character of the notion of justice.

which we could make a proper analysis of the relationship between *justice as art of government*, *justice as the requirement of toleration/intolerance*, *forms of toleration/intolerance* and the *law as diciplining (incapacitating or reforming) the religious Other*. This dialectical relationship can be formulated as the following:

*The idea of art of government aimed "to structure the possible field of action of others" (quoted in Foucault and Law: S&P, 1982: 221). For the Ottoman Empire, it was the principle of justice, accordingly just politics, that could "structure the possible field of action of others". In other words only a Just state/Sovereign could succesfully regulate its Subjects. The idea of justice structured the possible field of actions of its subjects by drawing and maintaining the distinction between groups in society and preventing unjust acts (i.e. oppression—zulm—challenging the proper place). Any act, idea, subject or organization that posed a threat to the regulation objective of justice, accordingly to public order, wealth and legitimacy of the Empire, was intolerated in the form of punishment. Punitive intolerance, if the threat was serious, chose to incapacitate the subjects by siyâsa punishments. If the threat was not considered as serious, the laws contended with reformative intolerance, which aimed dicipline and deterrence namely by ta'zîr punishments. Provided that they were not a threat, these acts, ideas, subjects or organizations were tolerated in the form of contempt, which sometimes turned into conditonal tolerance or tolerance as intra-communal favoritism. It is in this respect that I named the practices of intolerance in the Ottoman Empire as punitive intolerance and reformative intolerance.* These forms of tolerance/intolerance, as well as the reflection of the idea of justice as the art of government therein, are derived from the laws of the Empire.

Although I had reservations concerning a link between *the modern conceptualization of diciplinary power*, and *justice and diciplinary power of the laws of medieval Ottoman Empire*, the legal literature on Islamic and Ottoman Law provided me with strong evidence to support my argument. The works of Uriel Heyd, particularly *Ottoman Criminal Law,* and Colin Imber, *Ebu's-su'ud: The Islamic Legal System*, illimunated my path in terms of understanding the Ottoman legal system in details. Rudolph Peters, moreover helped me comprehend the mentality of the Islamic-Ottoman

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criminal law with his book *Crime and Punishment in Islamic Law*. From these main works and others, I was led to see considerable similarities between Foucault's idea of disciplinary power, Hunt and Wickhams's discussion of the diciplinary power of laws, and the diciplinary power of Ottoman laws.

Finally, the theoretical-methodological framework of this research owes a lot to Preston King's *Toleration.* He brillantly discusses the impossibility of pure tolerance/intolerance, thus drawing our attention to the multifarious forms of toleration/intolerance and their possible co-existence. Moreover, in order to support his hypothesis that there are different forms of toleration/intolerance, he categorially analyzes the objects/subjects (people, acts, ideas, organizations) of toleration/intolerance. Following his division, I present the primary conceptual-theoretical premise of the present study as the statement that a political rule cannot be solely tolerant or intolerant towards its religious Other. It was firstly the shifting dynamics of political and economical contexts—which had a crucial importance in the preservation of *public order, wealth* and *legitimacy*— that made the subjects of toleration/intolerance fluid and changing. In addition to those changing dynamics of politics and economy, the subjects of tolerance/intolerance did not always pose the same degree of threat and dissent to the existing power relations. Thus, their toleration or intolerance was conditional according to their degree of threat and dissent.

Accordingly, political rule incorporated different degrees and forms of toleration/intolerance on different levels regarding the degree of the threat and dissent which different ideas, acts and organizations of the subjects of toleration conveyed. The requirements for this shifting faces of toleration/intolerance were strongly related with the prudential understanding of justice in the Empire. It was the work of Catriona McKinnon (*Toleration: a critical introduction*) which directed my attention to the possibility of a theoretical-conceptual framework despite the emphasis on the ambiguity and elusiveness of the category in the literature. Her attempt to articulate a systematic conceptualization of toleration, and particularly her stress on its requirement, was quite helpful for thinking toleration and its requirements as the most important part of a possible theoretical framework. Needless to say, the Morrell School on Toleration,

particularly Susan Mendus and David Heyd, also illuminated my path when discussing basic propositions of this research.

Against the background of this narrative outlining the formation and emergence of my project, the following propositions, which I formulated as a result of my research and which constitute the basic argument of my thesis, become intelligible:

### 6.2. Theory

1. This research clarifies the ambivalent characteristic of the idea/practice of toleration by basing its argument on the impossibility of "pure toleration/intolerance", which is related to the possibility of existence of "different levels and degrees of toleration", as well as "different objects and subjects (people, idea, organization, acts)" of toleration/intolerance.

2. It draws the boundaries of Ottoman toleration, by privileging justice as the requirement of toleration/intolerance, and interprets justice in relation to its immanent relationship with power and art of government.

3. It argues that the prudential and pragmatic characteristics of Ottoman justice as the requirement of toleration/intolerance successfully regulated its subjects. Different forms, levels, and degrees of toleration/intolerance were therefore decided as a function of this regulation objective.

4. In order to understand the practices of toleration/tolerance/intolerance in the Ottoman lands, one has to focus on the Ottoman conceptualization of justice. Then it will be possible to understand and analyze the tactics of art of government, which take their power from justice and define the boundaries of toleration/tolerance/intolerance.

5. Ottoman justice, based on the idea of equalization and balance, aims to define and preserve the borders between classes (i.e. reâyâ and military, Muslims and non-Muslims), and continuously watches and restructures the qualitative (i.e., extraction of

excess tax, fee, etc.) and quantitative (i.e. physical threat, force) imbalances between them.

6. To equalize and to balance, justice necessitates disciplining subjects by reforming them, when they violate said borders.

7. Justice as the requirement of toleration/intolerance disciplines and depoliticizes the dissent of subjects by the mechanisms of art of government (namely, laws), which is prerequisite for the preservation and protection of the legitimacy of the Sultan, the ruler.

### 6.3. Method

1. This research argues that in addition to Christians and Jews as subjects of toleration, heretics (Kızılbaş or Râfızî) of the Ottoman Empire should also be treated as equally important subjects of toleration/intolerance.

2. Both the Râfızîs/Kızılbaş and the Christians and Jews were subject to the projection of the notion of justice in the Empire as parts of either the categories of the reâyâ and the military, or Muslims and non-Muslims. For each of them, Ottoman state incorporated disciplinary power of laws and depoliticized their possible dissent when it could not reform it.

3. The laws and tactics concerning the heretics and infidels displayed the ambition of the Ottoman Sultan for equalizing and balancing the social categories in the Empire. Thus the forms, levels, and degrees of toleration/tolerance/intolerance concerning heretics and infidels were not shaped solely by their religious identity; but they were conditioned according to their existing and expected economic, political, social and moral positions within society.

### 6.4. A Dialogue between theory, method and the case of the Ottoman Empire

In the last chapter of my research, I discussed the plausibility/relevancy of my arguments, drawing on the category of toleration and Ottoman historiography, by

focusing on the laws of sixteenth century Ottoman Empire. Although my research largely focused on the Ottoman Empire with particular historical (1544-1566, 1567-99), spatial (mainly Anatolia and Rumelia on account of extensive secondary literature), and textual limits (laws issued in this particular period), it is not impossible to read the Ottoman experience of toleration through the grid provided by the above conceptual-theoretical framework and methodology. Accordingly, the following statements may be formulated in terms of this conceptual-framework regarding the religious Other of the Empire:

### 6.4.1 Infidels (Non-Muslims)

### 6.4.1. 1. Tolerance

1. In the Ottoman Empire, the infidels and their beliefs were subject to contemptuous tolerance. The choice between tolerance and toleration depended on my conceptual framework, which defined tolerance as opposing and accepting religious difference by the minimum retention of objection and the suspension of negative response (i.e. execution, punishment, prohibition, exclusion). Yet these negative responses, which are signs of rejection, were replaced by contempt in cases of acceptance.

2. The idea behind emphasizing contempt as the prevailing form of tolerance was related to the conceptual-theoretical boundaries of tolerance/toleration/intolerance (the assumption of a power-holder and powerless subject), the objective of justice (definition and protection of borders between different groups of society), and Islamic teachings/traditions (Pact of Umar). When they are comprehended together, they give us clues to the inferior rank assigned to infidels, and thereby the clues to discrimination and disrespect. Therefore I incorporated the term 'contempt' which I think includes both prejudiced treatment and disrespect concerning the infidels.

3. Contemptuous tolerance was the prevailing idea behind other forms of tolerance and intolerance as well. In other words, whatever forms tolerance/intolerance took, they were based on the initial form/idea of tolerance that is the acceptance of the infidel contemptuously.

4. Conditional tolerance and tolerance as intra-communal favoritism were other forms of tolerance that we encounter in the Ottoman lands. They were important too, as they confirm my argument that there is a plurality of forms and different degrees of toleration/tolerance even in the same space and at the same time interval.

5. Sub-conceptualizations of contemptuous tolerance as conditional tolerance and tolerance as intra-communal favoritism present the differences concerning subjects, acts, ideas and organizations of tolerance. In this respect we can conclude that although contemptuous tolerance is the basic idea/practice, some subjects (the religious-men and some landlords) were tolerated in the form of intra-communal favoritism. Thus if we want to make a comparison between the whole community and these subjects concerning the degree of tolerance, we can state that they are tolerated more than the others. Moreover, the other non-Muslim subjects were tolerated on the condition that they paid their haraç/ cizye. Finally organizations (churches and vakfs) of the non-Muslims were also conditionally tolerated.

### 6.4.1. 2. Intolerance

1. The prevailing form of intolerance in the Ottoman lands was punitive intolerance. Opposition and rejection of particular acts, ideas, organizations of non-Muslims were combined with punishment (execution, imprisonment, banishment, corporal and financial ones, exclusion, prohibition).

2. Punitive intolerance in the Ottoman Empire was further visible in the forms of incapacitating and reformative intolerance. They were conceptualized primarily according to the objective and content of siyâsa (incapacitating) and ta'zîr (reformative) punishments. Then the categories of intolerance were enriched by incorporating hadd punishments (religious counterpart of siyâsa) and exclusion, and prohibition (secular counterpart of ta'zîr).

3. The differentiation between incapacitating and punitive intolerance was instrumental to observe different forms and degrees of intolerance. In this respect, we can conclude that the items of incapacitating tolerance were more intolerated than the items of reformative intolerance.

4. The items of incapacitating intolerance were mainly acts of non-Muslims such as the acts invalidating the pact, owning slaves, becoming heretic after conversion to Islam, adultery and fornication, disrespect to Islam, disrespect and offensive acts against Muslims, and openly consuming wine and selling it to Muslims. They were frequently punished by execution, long imprisonment or condemnation to the galleys.

5. The items of reformative intolerance included the acts of interaction of non-Muslims in the Islamic rituals, sharing the same neighborhood with Muslims which violate the quantitative majority of Muslims, visibility and audibility of non-Muslim religious rituals, and their clothing. They were punished by exclusion, prohibition (i.e. forced eviction, corporal punishment) and ta'zîr (corporal and financial).

### 6.4.2. Heretics  (Kızılbaş and other heretical Heterodox orders)

#### 6.4.2.1. Intolerance

1. The heretics of the Ottoman Empire were subject to merely incapacitating intolerance. The beliefs, acts, and organizations of heretics were neither accepted with contempt, condition or intra-communal favoritism; nor were they rejected in the form of reformative intolerance. They were merely punished by execution, imprisonment, sending to the galleys and exile.

2. Incapacitating intolerance did not make a differentiation between acts (i.e. unruly acts, not to fulfill Sünnî religious obligations, disrespect to Sünnî Islam, hyporcrisy), ideas (i.e. religion and morality), and organizations (i.e. lodges) of the heretics. The Ottoman state aimed to incapacitate all of them.

3. The heretical subjects of the incapacitating intolerance were differentiated on two levels. Firstly Kızılbaş were distinguished from the other heretical movements in terms of their hypocrisy. By cooperating with the Safavid Iran they constituted a considerable threat to the political order. Other than that they shared similar grounds of rejection and incapacitating punishment with other heretical groups. Secondly, the heretical subjects of incapacitating intolerance were differentiated according to their status in heretical movements.  The ones considered most important, like leaders, were

executed. Ordinary disciples were sent to exile or the galleys. And the askerî was imprisoned. Thus we can argue that although all the heretics were subject to incapacitating intolerance, the reasons for their heresy and the type of punishments according to their status varied.

4. Any item relating to heretics was considered an important threat to the notion of justice, as the existence of heretics seriously challenged the superiority of Islam. Moreover their cooperation with Shiite Iran and their attempt for changing the true beliefs of the Sünnîs were serious threats to the supremacy of political order. Thus heretics were subject to incapacitating intolerance not because they challenged their inferior status—since there was not even a place for heresy in the Ottoman Empire if they displayed it obviously. But they were a threat to the notion of justice by challenging the religious, political, economic and moral order. They were the real religious Other of the Empire as their challenge to wealth, order and legitimacy of rule was quite obvious.

5. Rather than reforming (disciplining) heretics, the Ottoman state chose to incapacitate them. Depoliticization and passivity were achieved by severing the subjects from their environment (exile, galleys, and imprisonment) or by totally extinguishing them.


### 6.4.3. Heretic or Privileged? (Heterodox Sûfî Orders)

1. There were mainly two forms of tolerance/toleration (conditional tolerance, toleration as favoritism) regarding the heterodox Sûfî orders. Yet, their rejection meant incapacitating intolerance, as they were treated as heretics if they did not fulfill the conditions.

2. In general, the ideas and acts consistent with Sunnism or mild forms of Shiism were subject to conditional tolerance. Thus ideational commitment to Sunnism and practice of religious rituals in accordance with it were the requirements of conditional tolerance.

3. Not all the subjects/organizations (i.e. orders) of heterox Sûfî orders were subject to same form of tolerance. Some of them were subject to toleration as favoritism. They were favored either by according them certain privileges (i.e. Bektashis) or honoring

them by respect (i.e.Mevlevis). Thus they were not simply accepted but were tolerated with a positive response.

These varying forms of tolerance and intolerance were obviously related to the requirements of tolerance, justice and prudence. The Ottomans did not hesitate to acknowledge some of the non-Muslims or heterodox Sûfî orders privileges/favors, to the others conditions to fulfill for acceptance. Nor did it hesitate to punish serious threats to its justice ideal with incapacitating means, or trivial threats with reformative ones. The prevailing idea of justice—keeping the boundaries between groups and keeping some in inferior ranks—were mainly appropriate for non-Muslims. Thus both the forms of tolerance and intolerance attempted to keep this demarcation line between the non-Muslims/other religions and Muslims/Islam. Possible threats to order, legitimacy and wealth, primarily related to the challenge of these ranks, were carefully governed. The tactics were either incapacitating or reforming punishments, both of which in their own ways passified and depoliticized the acts, organizations, and ideas of non-Muslim subjects. While incapacitation chose to destroy or abolish them from life, reformation chose to discipline.  It is clear that contempt for the other religions occupied both the practices of tolerance and intolerance.

Regarding heretics, on the other hand, it was the politics of incapacitating intolerance, which was incorporated to deal with their difference. However, for heretics, there was not even an inferior rank to be preserved. They were totally rejected subjects in an Islamic Empire. They not only challenged the superiority of Sünnî Islam, but they also created doubts about the truth of the orthodox sect, Sunnism. This could be reason alone for the Ottoman Empire to intolerate them on the basis of its religious identity. Yet, their additional engagement with unruliness and hypocrisy constituted a much stronger and visible threat to order, wealth and legitimacy of rule. Justice could not govern its heretical subjects. Therefore, it chose to incapacitate heretics, their acts, ideas or organizations. Execution and abolishing them from life were the primary tactics for their depoliticization and pacification, as they were not inclined to be reformed. It appears that it was not contempt but hatred that characterized the form of intolerance regarding heretics. However, the heterodox Sûfî orders, which were tolerated either in the form of

conditional tolerance or toleration as favoritism, represented the depoliticized and governable Subjects of the Empire, which could easily turn into a heretic if they did not know their place in the social structure.

This research, regarding aforementioned conclusions, offers its conceptual-theoretical framework and methodology to approach other historical experiences of religious toleration. As, I think that, they already provided fruitful outcomes regarding the analysis on the Ottoman case of religious toleration/intolerance. However, whether this conceptual-theoretical framework and method is indeed plausible and relevant or not, can only be understood if they also provide meaningful and comprehensive conclusions regarding other experiences of religious toleration/intolerance.

As the last words, I argue that the politics of toleration/tolerance can only be valuable when the difference is really important and when those in positions of power do not aim to reform or incapacitate this difference by any tactic. At this point, in order to be able to discuss its possibility and the limits of tolerance/intolerance of an important difference, the requirement of the category or the prevailing way of reasoning of a political rule becomes crucial. I want to present some thoughts about this point in the next section.

### 6.5. Further Thoughts

If we do not consider difference as a threat to the existing order, or take it as something to be regulated and something to be disciplined, then incorporation of toleration as a political means appears to be an ineffective idea/practice for dealing with it. Some could argue for effectiveness of the category of tolerance/toleration/intolerance despite its recent form and conceptualization, regarding either the rationale of peace (lack of violence) or the possibility of repression (physical, mental, judiciary) to provide peace. Yet, the hierarchy which toleration assumes between the hegemonic identities/common sense ideas and marginal identities/ideas, which is obviously to the benefit of the former, and its strong inclination towards the conditions that the power holder stipulates, enforce

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me to approach it critically. If we want to treat difference in a different manner, then we should at least give up politics based on hierarchies embedded in power relations and the concomitant rhetoric of conditional "peaceful co-existence". Does this mean that the idea/practice of toleration/intolerance should be left out of the scope of politics or individual relations? Not necessarily. Yet what we understand and what we should understand from this category is important to break its power-related, conditional character.

Difference needs to be treated with respect, and moreover it needs to be regarded as equal. In this respect, maybe what we need is the reformulation of the requirement of toleration as respect and equality, at least on the philosophical level. Then we should expect the rulers and elites to internalize these requirements. As such, toleration as a domestic discourse would not only offer effective politics regarding ethnic, racial, sexual and religious difference, but it can also provide answers for the limits of tolerable acts, ideas, organizations or subjects.

However politics apparently clings to prudence and pragmatism in order to preserve and sustain power for its advantage. Although in most contemporary situations the ruler has to delegate its power and allow for mechanisms of participation in power relations, holding power still has to be preserved or adjusted according to context, which in the end would promote and secure the legitimacy of the power-holder. In such a situation, where preservation of power, no longer absolute as the case may be, is the primary objective, even any trivial threat to this power would be challenged, or more precisely would be intolerated. Recognition of difference, thus, should flourish out of the sphere of power, despite the strength of the statement "power is everywhere". Yet toleration as policy remains dangerous in the sphere of politics, where the latter is understood as a struggle for power in its most violent form. Or, as I have already mentioned, we should expect incorporation of equality and respect as the requirement of toleration, which would avoid prudence and pragmatism.

Indeed, toleration appears to be a more effective means for living with difference in an environment conditioned by mutual respect and equality. Thus, as scholars such as David Heyd argue, toleration should be formulated as a virtue that would characterize

inter-subjective relations. Although power is also immanent in inter-subjective relations, it is more likely that the act/idea of toleration would facilitate the conditions of living in peace, or in an antagonistic yet equal world. Of course, it is obvious that arguing for virtue as the requirement of toleration/intolerance on the normative level does not necessarily imply its incorporation on the everyday level. In fact, the imposition of virtue as the requirement of toleration may be even more difficult than its incorporation as a political principle (on the basis of requirements of equality and respect), since it would require a virtuous political ruler and a strong judiciary mechanism to sustain it. Therefore, incorporating virtue as the requirement of toleration/intolerance on the everyday would require a totally alternative discourse for politics, media and education—a discourse that would treat *any* difference, that is, not only ethnic, racial, religious, and sexual, *but also* class difference, with the same respect and virtue.

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1. Eğilmez, D. Burcu, "İzmir'de Kentsel Dönüşüm ve Dönüştürülemeyen Zorunlu Yoksulluk Halleri", *Değişen İzmir'i Anlamak* (Ankara: Phoenix, 2010), pp.601-638.

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Osmanlı hoşgörüsü/hoşgörüsüzlüğü yeni bir araştırma konusu olmamakla beraber, konuya dair geniş kapsamlı ve bütünsel bir çalışmanın oldukça az olduğu söylenebilir. Öncelikle, Osmanlı hoşgörüsü sorusu sıklıkla Osmanlı genel tarihinin bir parçası olarak ele alınmakta, ve hoşgörü, devlet-toplum, ya da siyaset-farklılık ilişkisini anlamak için başvurulabilecek kavramsal-teorik bir kategori olarak arka planda kalmaktadır. Söz konusu çalışmalardaki, hoşgörüsü kategorisine dair çok yönlü araştırma eksikliği, İslam hoşgörüsünü/hoşgörüsüzlüğünü konu edinen yazında da kendisini göstermektedir. Osmanlı hoşgörüsüne, dolaylı da olsa vurgu yapan bu çalışmalar, öncelikle Kuran ve/veya ikincil kaynakları temel alarak ya İslam ve diğer dinler karşılaştırması çabasına girmekte, ya da İslam hoşgörüsünü/hoşgörüsüzlüğünü dinsel olarak gerekçelendirmeye çalışmaktadır. Her iki yazında da öne çıkan bir başka özellik ise, hoşgörü/hoşgörüsüzlük kategorisi söz konusu olduğunda, kategorinin özneleri olarak Osmanlı topraklarında yaşayan Hristiyan ve Yahudi nüfusun incelenmesidir. Bu da, hoşgörünün/hoşgörüsüzlüğün öznesi olabilecek olası diğer dinsel Ötekilerin göz ardı edilmesi demektir. Söz konusu çalışmalarda, önceliğin hoşgörü/hoşgörüsüzlük kategorisi değil, Osmanlı/İslam tarihi ya da diğer dinler-İslam ilişkisi olması, gerek kavramsal-teorik çerçevenin gerekse ayrıntılı bir dinsel Öteki tartışmasının geri planda bırakılmasının başlıca sebebidir. Bu çalışmanın önceliği ise Osmanlı tarihi içerisinde hoşgörü kategorisini öne çıkarmak, hoşgörü teorilerinden de Osmanlı deneyimini anlayabilmek için kavramsal-teorik bir çerçeve, eleştirel bir bakış ve metod çıkarsaması yapmaktır. Diğer bir deyişle bu çalışma Osmanlı tarihi ve hoşgörü teorileri arasında bir diyalog kurabilmeyi amaçlamaktadır.

### Teori ve Pratiğin Diyaloğu

Bu çalışmanın temel motivasyonu, farklı zamanlarda ve coğrafyalarda vuku bulduğu iddia edilen Osmanlı hoşgörüsüne/hoşgörüsüzlüğüne dair referanslar taşıyan çalışmaların (örn. Osmanlı tarihi, İslam tarihi, İslam felsefesi ve İslam-diğer-dinler ilişkisi), daha çok batı tarihi, modern siyaset felsefesi ve siyaset teorisince üretilen hoşgörü teorilerini göz ardı etmesidir. Diğer bir deyişle, söz konusu çalışmalardaki interdisipliner yaklaşım eksikliği, daha önce belirtilen kapsam ve bütünsellik ile ilgili sorunların temel sebebi olarak görülmektedir. Bu sebeple, tezim, Osmanlı'ya dair hoşgörü/hoşgörüsüzlük

deneyiminin sistemli bir şekilde anlaşılabilmesi için, sırasıyla, Batı felsefesi, tarihi ve siyaset teorisi tarafından tartışılan kavramsal-teorik bir çerçeveye, Avrupa-Osmanlı karşılaştırmalı tarih çalışmasıyla elde edilebilecek metodolojik yaklaşımlara ve daha çok, kimi siyaset teorisyenlerince benimsenen eleştirel bir  yaklaşıma  ihtiyacımız olduğunu iddia etmektedir. Osmanlı-İslam hoşgörüsü/hoşgörüsüzlüğüne dair bilgi ile söz konusu kavramsal-teorik çerçeve, metod ve eleştirel perspektif arasında kurulacak diyalog, bu çalışmanın "Hoşgörü/hoşgörüsüzlük kavramsal-teorik olarak nasıl açıklanabilir? Hoşgörünün/hoşgörüsüzlüğün özneleri/nesneleri kimlerdir/nelerdir?  Osmanlı hoşgörüsü/ hoşgörüsüzlüğü ne demektir?" gibi kimi  temel sorularına cevap verebilecektir.

Osmanlı tarihi ile hoşgörü teorileri arasındaki kopukluk, aslında Avrupa tarihi çalışmaları ile hoşgörü teorileri arasındaki ilişkide de kendisini göstermektedir. Avrupa tarihi, hoşgörü/hoşgörüsüzlük söz konusu olduğunda daha çok Aydınlanma öncesi döneme yoğunlaşmakta ve dinsel hoşgörü teorilerinin çerçevesini çizmeye çalışmaktadır. Bu sebeple Avrupa tarihçileri, teorik gerekçelerini ortaya koymak amacıyla ya dinsel hoşgörünün soykütüğü ile ilgilenmekte ya da hoşgörünün nasıl bir siyaset aracı olarak kurumsallaştığını, özellikle de kanunlar üzerinden analiz etmeye çabalamaktadır. Açıktır ki, Avrupa tarihi için dinsel höşgörü Hristiyanlık ekseninde tartışılmaktadır. Modern liberal felsefe ve siyaset teorisi ise, hoşgörü kavramının ortaya çıkışında, Hristiyanlık ve Hristiyanlıkta  meydan gelen gelişmelerin önemini kabullenmekle birlikte, dinsel hoşgörü konusunda üretilmiş hatırı sayılır bir bilgi birikimini yok saymaktadır. Çıkış noktasını Aydınlanma olarak belirleyen bu disiplin için modern dünya, dinsel farklılar dışında da farklılıklar barındırmakta ve hoşgörü/hoşgörüsüzlük etnisite, ırk, cinsiyet gibi diğer farklılarla da başedebilmek için ortaya atılan bir kategori olarak tartışılmaktadır. Bu sebeple, dinsel hoşgörü teorileri yerine, hoşgörü/hoşgörüsüzlük, farklılıklara verilebilecek bir cevap olarak kavramsallaştırılmakta ve teorik-normatif düzeyde tartışılmaktadır.  Bu çerçevede, her iki disiplin tarafından ortaya koyulan noktalar, temelde Batı coğrafyası, tarihi ve fikir gelenekleri üzerinden şekillense de, hem dinsel hem de modern hoşgörü teorilerinin arasında bir kopukluk olduğu açıktır. Hoşgörü/hoşgörüsüzlüğün Avrupa tarihinin farklı dönemleriyle özdeşleştirilmesi (Aydınlanma/Aydınlanma öncesi) ve vurgulanan farklılık (din/din-etnisite-ırk-cinsiyet) bu disiplinlerin arasındaki diyalog eksikliğinin temel sebebidir. Osmanlı tarihçilerinin de söz konusu çalışmalara- özellikle de Avrupa merkezli tarih yazımı (Euro-centric historiography) ve dinsel özcülük (religious

essentialism) taşıyan yaklaşım sebebiyle-, şüpheyle yaklaşmaları anlaşılmayacak bir durum değildir. Ancak bu çalışma, Avrupa merkezli tarih yazımına (Euro-centric historiography) ve dinsel özcülük (religious essentialism) taşıyan yaklaşıma rağmen, söz konusu disiplinlerce üretilen hoşgörü/hoşgörüsüzlük bilgisinden faydalanmadan, Osmanlı deneyiminin anlaşılamayacağını düşünmektedir. Çünkü, bu çalışma hoşgörü fikrinin/pratiğinin bağlamsal (contextual) ve tesâdüfî/şartlı (contingent) olarak ortaya çıktığını kabul etmekle, hoşgörü rejimlerinin üzerine kurulduğu fikir gelenekleri ve iktidar ilişkileri çerçevesinde bir takım siyasi ve kanunî aranjmanlarla kendisini gösterdiğinde hem fikir olmakla birlikte, herhangi bir hoşgörü deneyiminin evrensel bir kavramsal-teorik çerçeve ve metodolojiye başvurulmadan anlaşılamayacağını düşünmektedir. Ancak, bu yapılırken dikkat edilmesi gereken iki önemli nokta bulunmaktadır. Öncelikle, hoşgörü/hoşgörüsüzlük kategorisinin, Avrupa tarihi ve Batı'nın fikir gelenekleri üzerine kurulan metodolojik ve teorik açıklamaları, Osmanlı deneyimi için ancak Osmanlı fikir gelenekleri ve düşünme biçimleri dikkate alınarak yeniden formüle edildiğinde anlamlı olacaktır. Bu tez ile yapılmak istenen de hoşgörü/hoşgörüsüzlük söz konusu olduğunda Batı literatürü tarafından izlenen kavramsal-teorik çerçevenin ve metodolojinin Osmanlı deneyimini anlamak için ne şekilde kullanılabileceğini göstermektedir. Bir diğer önemli nokta da dinsel özcülükten (religious essentialism) kaçınmak için, dinsel hoşgörü/hoşgörüsüzlüğü İslam merkezli bir perspektif yerine, güç (power) ilişkilerini merkeze alan bir bakış açısıyla anlamaya çalışmaktır. Böylece, din, salt bir teolojik yaklaşımla değil ekonomi, siyaset ve toplum ilişkileri içerisinde analiz edilebilecektir. Bu noktada, özellikle Wendy Brown (2006) ve Herbert Marcuse'nin (1969) güç (power) kavramı ve hoşgörü kategorisi arasındaki ilişkiye dikkat çeken eleştirel yaklaşımları dinsel özcülükten kaçınmak için başvurulacak temel araç olacaktır. O halde, öncelikle bu çalışmanın izleyeceği kavramsal-teorik çerçevenin sınırlarını çizmekle işe başlanabilir.

### Kavramsal-Teorik Çerçeve

Hoşgörü kavramının *muğlaklığı,* modern liberal felsefe ve siyaset teorisinin üzerinde anlaşmaya vardığı başlıca noktadır. Höşgörü kategorisinin hem kavramsal hem de teorik olarak muğlaklığı hoşgörü deneyimlerine atfedilen bağlamsal ve tesadüfi karakter ile yakından ilgilidir.Özellikle tarih disiplini, siyaset ya da fikir olarak hoşgörüyü, daha çok pragmatizmle ya da basiretli/sağduyulu siyaset ile gerekçelendirmekte ve aslında

hoşgörünün daha çok barışı sağlamak ya da zulmü (persecution) engellemek için başvurulan bir araç olduğunu iddia etmektedir. Bu tür analizlerden çıkan sonuç ise hoşgörüyü zulmetmemek (non-persecution, absence of persecution) ya da barış içinde birarada yaşamak (peaceful coexistence) olarak tanımlamaktır. Bu durumda hoşgörüsüzlük de sıklıkla persecution (zulüm) olarak tanımlanmaktadır. Farklı höşgörü/hoşgörüsüzlük deneyimlerinin en kolay genellenebilir özelliği olarak öne çıkan, dinsel çatışmanın engellenmesi ve zulmün önlenmesi için hoşgörü fikrine/siyasetine başvurulması temelde doğru olmakla birlikte, neden hoşgörü kavramı yerine basitçe zulmetmemek (non-persecution, absence of persecution) ya da barış içerisinde bir arada yaşamak (peaceful co-existence) kavramlarını kullanmadığımıza açıklık getirmemektedir. Diğer bir deyişle, hoşgörü kavramını zulmetmemek (non-persecution) ya da barış içerisinde birarada yaşamak (peaceful-coexistence) fiillerine indirgediğimizde, farklılıklarla başetmek için farklı açılımlar sunabilecek bir kategori olarak hoşgörüden uzaklaşılmaktadır. Öyleyse ilk yapılması gereken, hoşgörünün farklı dilsel kullanımlarından (different linguistic uses) ayrıştırılmasıdır. Zulmetmemek (non-persecution) ya da barış içinde yaşamak (peaceful-coexistence), hoşgörü kavramı yerine kullanılmamalı ancak hoşgörünün anlamları içerisinde kendine yer bulmalıdır. Öyleyse, hoşgörünün semantiğinin ne olduğu önemlidir. Ancak buna gelmeden önce, hoşgörü/hoşgörüsüzlüğün ne tür şartlarda (circumstances) kullanılabilir bir kategori olduğuna açıklık getirmek gereklidir.

Hoşgörü/hoşgörüsüzlüğün şartları söz konusu olduğunda, tezim, Catriona Mckinnon'ı (2006) izlemektedir. Mckinnon'a göre, hoşgörü/hoşgörüsüzlük bir kavram olarak kullanılacaksa, öncelikle, hoşgörülenin, hoşgörenin inandığı ya da değer verdiğinden farklı olması gerekir. Dahası, hoşgörülen bu farklılık, hoşgören için önemli olmalıdır. Hoşgören, temelde hoşgördüğü farklılıktan hoşlanmaz ve/veya bu farklılığı reddeder. Ancak, hoşgören, söz konusu farklılığı bastıracak ya da değiştirecek gücü (power) olduğunu bilmekle beraber, bu gücünü kullanmaz. Bu çerçevede, hoşgörü kategorisinin uygun bağlamda kullanılıp kullanılmadığını test edebilmemiz için, önemli bir farklılık (important difference) reddedilse (opposition) bile, gücü elinde tutanın (power-holder), bu farklılığı bastırmadığı/değiştirmeye çalışmadığı bir kabullenmeden (accpetance) bahsediyor olabilmeliyiz. Farklılık-güç-reddetme ve kabul, söz konusu şartlar içerisinde gerçekleştiğinde, hoşgörü kavramından bahsedebiliriz. Şimdi, şartları bir tarafa bırakıp, hoşgörünün/hoşgörüsüzlüğün anlamına daha ayrıntılı olarak yoğunlaşabiliriz.

Bu çalışma, hoşgörü/hoşgörüsüzlük kavramlarının anlamı söz konusu olduğunda, Preston King'i (1976) izlemeyi seçmiştir. King'e göre hoşgörü, hoşgörüsüzlüğün bütün değillemelerini içermektedir. Hoşgörüsüzlük, bir özneye ya da nesneye sonucunda olumsuz eylem içeren bir şekilde karşı çıkmak/itiraz etmektir (objection to an item combined with a negative action against it). Bu durumda, bu çalışma hoşgörüsüzlük olarak, itiraz edilen öznenin idam/öldürme (execution), hapsetme (imprisonment), bedensel ceza (corporal punishment), uzaklaştırma (banishment from life), mali yük (financial burden), yasaklama (prohibition) ve dışlama (exclusion) gibi negatif eylemlere maruz bırakılmasını anlamaktadır. Hoşgörü, ise en minimal haliyle, itirazın muhafaza edilmesi (retention of objection), ancak olumsuz eylemin ertelenmesi (suspension of the negative action) ya da olumsuz eylemin daha pozitif bir eylemle yer değiştirmesidir (its replacement by a response more positive). Bu durumda hoşgörü dendiğinde, söz konusu özneye ya da nesneye itiraz edilse bile, olumsuz eylem yerine, kayıtsızlıktan (indifference), kayırmaya (favoritism) kadar değişebilen bir takım eylemler anlaşılmaktadır. Bu noktada King'in hoşgörü/hoşgörüsüzlük kavramına yaptığı bir başka önemli katkıya dikkat çekmekte fayda vardır. King, hoşgörü/hoşgörüsüzlük kategorilerinin özneleri olarak sadece kişileri değil, fikirleri, eylemleri ve kurumları da dikkate almak gerekliliğine vurgu yapar. Böylesi bir ayrıntılandırmanın faydası, tek bir özne söz konusu olduğunda bile (örneğin gayri-Müslimler), hoşgörenin (örneğin Osmanlı devleti) neden gayri-Müslimlerin kimi eylemlerini, fikirlerini, kurumlarını hoşgörü, kimilerini hoşgörüsüzlük ile karşıladığına, ve dolayısıyla Osmanlı hoşgörülü müydü/hoşgörüsüz müydü sorusuna neden net bir cevap verilemediğine açıklama getirebilmesidir. Çünkü, Osmanlı devleti gayri-Müslimlere karşı bütünüyle hoşgörülü ya da bütünüyle hoşgörüsüzdü demek mümkün değildir. Hoşgörmek/hoşgörmemek çok katmanlı ve farklı şekillerde kendisini gösteren bir kavramdır. Bütüncül bir analiz ile sonuca ulaşabilmek için, hoşgörünün öznelerinin ve nesnelerinin çeşitliliğini kabullenmek ve salt bir hoşgörü/hoşgörüsüzlük tespiti yerine, kategorinin farklı kişilere, fikirlere, eylemlere ve kurumlara karşı değişik formlar alabileceğini kabul etmek gereklidir. King'in semantik katkılarının yanısıra, salt hoşgörü ya da hoşgörüsüzlüğün imkansızlığına yaptığı vurgu (impossibility of pure tolerance/intolerance) bu çalışmada önemli bir yer tutmaktadır.

King'in analizinden, bu çalışmada yararlanılan bir diğer nokta da, hoşgörünün/hoşgörüsüzlüğün farklı seviyelerinin (level) ve derecelerinin (degree)

bulunduğunu kabul etmektir. Hoşgörü/hoşgörüsüzlük farklı seviyelerde gerçekleşebilir. Diğer bir deyişle kimi kişiler, eylemler, fikirler ve kurumlar gündelik hayatta örneğin maddi nedenler sebebiyle hoşgörülürken, devlet katında hoşgörülmeyebilir. Ya da devlet seviyesinde hoşgörülen bir farklılık, söz konusu ticaretse hoşgörülmeyebilir. Bu durumda kişiler, eylemler, fikirler ve kurumların, farklı seviyelerde (levels) hoşgörü ya da hoşgörüsüzlüğe tabii olabileceğini söyleyebiliriz. Hoşgörü/hoşgörüsüzlüğün derecelerine (degrees) gelince, King'in üzerinde durduğu nokta, hoşgörü/hoşgörüsüzlüğe konu olan kişi, eylem, fikir ve kurumların farklı derecelerde (degree) hoşgörülebileceği ya da hoşgörülmeyebileceğidir. Diğer bir deyişle, derece (degree) söz konusu olduğunda, kimi kişiler, eylemler, fikirler ve kurumlar diğerlerinden daha fazla hoşgörülebilir. Benzer bir şekilde, kimi kişiler, eylemler, fikirler ve kurumlar  diğerlerinden daha fazla hoşgörüsüzlüğe tabii olabilir. Bu sebeple, bir kurumun/kişinin hoşgörülü olup olmadığını anlamak için tek bir özne, fikir, eylem ya da kurum değil, hoşgörü/hoşgörüsüzlüğe konu olabilecek her tür özne, kişi, eylem, fikir ve kurum, dereceler (degrees) ve seviyeler (levels) dikkate alınarak analiz edilmelidir.

Bu tezde, hoşgörü/hoşgörüsüzlük kategorisinin kavramsal-teorik çerçevesini tamamlayan son öğe, hoşgörünün gerekçelerini (requirements) ortaya koymaktır. Diğer bir deyişle hoşgörüyü gerektiren fikirlerin neler olabileceğini tartışmaktır. Bu noktaya kılavuzluk eden teorisyenler yine Catriona McKinnon (2006) ve Susan Mendus'tur (1988). Söz konusu teorisyenler ve pek tabii diğerleri hoşgörünün gerekçeleri olarak çeşitli fikirleri/kavramları tartışmaktadır. Bunların içerisinde öne çıkanlar ise sağduyu (prudence), bireysel inanç özgürlüğü (individual freedom of conscience), ahlaki hak (moral right), rasyonalite (rationality), hümanizm (humanism), kuşkuculuk (scepticism) ve adâlettir (justice). Sadece modern hoşgörü teorileri değil, dinsel hoşgörü teorileri de bu gerekçelere çeşitli şekillerde vurgu yapmaktadır. Tezde ayrıntılı olarak tartışılan bu gerekçelerden, Osmanlı hoşgörüsü/hoşgörüsüzlüğünün temel gerekçelerini açıklayabilecek adâlet ve sağduyu kavramları öne çıkarılmıştır. Adâlet, Osmanlı siyasetinin üzerine şekillendiği temel bir düşünce olduğundan, sağduyu ise herhangi bir yöneticiden (ruler) beklenen temel özelliklerden birisi olduğu için hoşgörünün temel gerekçeleri olarak tartışılmıştır. Aslında rasyonalite ve ahlak da tamamlayıcı öğeler olarak söz konusu çerçevede yerini almıştır. Ancak bu öğeler, dinsel bir analiz içerisinde açıklama sunabileceklerinden ve bu çalışma din merkezli bir analizden kaçındığından, daha dünyevi kavramlar oldukları düşünülen adâlet

ve sağduyu fikirleri üzerinde durulmuştur. Çünkü hoşgörünün gerekçesi rasyonalitedir dediğimizde, hem Batı tarihi tarafından çerçevesi çizilen dinsel hoşgörü teorilerinde hem de Osmanlı deneyiminde kastedilen, inanca dair zorlamaların akılcı olmadığıdır. İnancın değiştirilmesi için yapılacak baskı, ya sözde bir inanç değişikliğine yol açacak, ya da daha da derinden Öteki inanca sarılınmasına sebep olacaktır. Bu sebeple inaç söz konusu olduğunda zorlama irrasyoneldir. Osmanlı İmparatorluğu ile ilgili yazın, başka dinlerden İslama dönme pratiklerinin (conversion) çoğunlukla zorlama yoluyla değil gönüllülük esasına dayandığını iddia etmektedir. Bunun arkasında da, inanç ve zorunlu dönme (forced conversion) arasındaki ilişki rasyonalite çerçevesinde tartışılmaktadır. Dahası, Kuran'da yer alan "dinde zorlama yoktur" ifadesi de, dönmenin neden zorla olmaması gerektiğine getirilen dini açıklamadır. Ancak açıktır ki, Osmanlı İmparatorluğu'nda hem zorunlu dönme politikaları (örneğin Devşirme) hem de zorlama ile olmasa da dolaylı olarak uygulanan taktikler ile dönmenin gerçekleştirilebildiği (örneğin sürgün, nüfus değişimi, cizye) tartışılmaktadır. Bu çerçevede, rasyonaliteyi tek başına hoşgörünün gerekçesi olarak değerlendirmek doğru olmayacaktır. Hoşgörünün gerekçesi olarak ahlaki hak (moral right) ise, her bir bireyin kendince en iyi olduğunu düşündüğü şekilde yaşayabileceğine vurgu yapar. Bu sebepten, farklılıklar ve farklı yaşam biçimleri, bireylerin ahlaki hakkı dikkate alınarak hoşgörülmelidir. Tekrar Osmanlı deneyimine dönersek, hoşgörünün gerekçesinin ahlaki hak olduğunu iddia etmek yanlış olacaktır. Çünkü, İslami bir İmparatorluk olan Osmanlı devleti, bireylerin farklılıklarını ve farklı yaşam biçimlerini ahlaki hak olarak hoşgörmekten ziyade, yaşam biçimlerini İslami ahlak kurallarına göre biçimlendirmeyi seçmiştir. Bu çerçevede, farklı dinsel kimlikler için bile, bazı hallerde, İslami ahlakın temel yaşam biçimi olarak sunulduğu görülmektedir. Bu çerçevede, aslında rasyonalite ve ahlaki hak, adâlet ve sağduyu gerekçelerinin tamamlayıcıları olarak tartışılabilecek olsa bile, bahsedilen sebepler yüzünden, bu çalışmada arka planda bırakılmıştır. Hoşgörünün gerekçeleri olarak adâlet ve sağduyu hem dünyevi kavramlar olmaları, hem de Osmanlı'nın düşünme biçimine göre şekillendirileceği en baştan ifade edilen teorik çerçeve içerisinde anlamlı olduğu için hoşgörünün temel gerekçeleri olarak analiz edilmiştir. Hoşgörü ya da hoşgörüsüzlüğün gerekçeleri, bu çalışma kapsamında üzerinde durulan en önemli kavramlar arasındadır. Çünkü daha önce tartışılan hoşgörünün/hoşgörüsüzlüğün farklı biçimleri (forms), seviyeleri (levels) ve dereceleri (degrees), bu gerekçelere göre şekillenmektedir.

Yukarıda tartışılan kavramsal-teorik çerçeveyi özetlemek gerekirse, bu çalışma, analizini şu çerçeveyi izleyerek yapmaktadır. Hoşgörü, önemli bir farklılığa,-ki bu farklılık kişiler, inaçlar, eylemler ya da kurumlar olabilir-, onaylamama ya da hoşlanmama sebepleriyle karşı çıkılması (objection), ancak bu farklılığın yine de kabul edilmesidir (acceptance). Bu kabul ve dolayısıyla hoşgörü her zaman, olumlu bir eylemle farklılığa yaklaşılması anlamına gelmese bile, en azından olumsuz eylemin ertelenmesi ya da durdurulmasına işaret etmektedir. Söz konusu farklılık, çeşitli seviyelerde (örn. evde, kulüpde, kilisede, şirkette veya devlette) ve derecelerde (örn. kurumlar bireylerden daha fazla, ibadet pratikleri görünürlükten daha fazla) hoşgörülebilir/hoşgörülmeyebilir. Gücü elinde tutanın (örn. Devlet, din adamları, komşular, arkadaşlar), önemli bir farklılığı, karşı çıktığı halde kabul etmesinin gerekçesi ise kabullenmenin adil ve sağduyulu olmasıdır.

En başta belirtildiği gibi, bu çalışmada liberal Batı felsefesi ve modern siyaset teorisi tarafından çerçevesi çizilmeye çalışılan kavramsal-teorik çerçevenin yanı sıra, Avrupa tarihinin dinsel Öteki'yi tartışırken izlediği metodoloji de, Osmanlı deneyimine ışık tuttuğu ölçüde dikkate alınmıştır. Bu sebeple, çalışmamda, Avrupa tarihçileri için dinsel hoşgörü/hoşgörüsüzlük söz konusu olduğunda, dinsel Öteki'nin kim olduğunun izini sürmek ve bunun Osmanlı deneyimini analiz etmek için bir ipucu sunup sunmadığını sorgulamak da önemli bir yer tutmaktadır.

### Dinsel Öteki

Dinsel höşgörü/hoşgörüsüzlük teorilerinin çerçevesi daha çok Avrupa tarihçileri tarafından çizilmiştir. Hoşgörünün *teorik temelleri, dini inanç özgürlüğü,* ve *dinsel heterodoksi ve muhalefet,* dinsel hoşgörü teorini şekillendirmek için üzerinde durulan temel noktalar olmuştur. Avrupa tarihçileri; Hristiyanlık teolojisini temel alan din adamları, siyasetçiler ve düşünürlerin fikirlerinin yanı sıra, dünyevi sebepleri de mercek altına alarak (pragmatizm ve siyaset), bahsedilen temel noktalar çerçevesinde dinsel hoşgörü teorilerini oluşturmaya çalışmışlardır. Bu tez de, Avrupa tarihçilerinin, dinsel Ötekileri bulmak için izledikleri metodun Osmanlı deneyimini anlamak için ne derece faydalı olabileceğini anlamak üzere, Avrupa tarihinde dinsel hoşgörü çalışmalarına kuşbakışı da olsa bir gözatmıştır.

Dinsel hoşgörünün tarih yazımı, hoşgörünün ya da hoşgörüsüzlüğün öznesini bulmak için çoktanrılı Yunan ve Roma İmparatorluklarına kadar gitse de, çoktanrılı Avrupa topraklarında hoşgörünün ve dinsel Ötekinin temellerini aramak, ikincil bir yazın olarak kalmıştır. Diğer taraftan, dinsel Ötekinin ortaya çıkışını, Romalıların Hristiyanlığı resmi dinleri olarak kabul ettikleri M.Ö. dördüncü yüzyıla kadar götürmek kabul gören bir yaklaşım olmuştur. Hristiyanlığın Romalılarca resmi din olarak kabulü ile birlikte, dinsel Ötekiyi belirleme süreci başlamıştır. Daha, erken Hristiyanlık döneminde Hristiyan öğretisinin geliştirilmesi ve Latin Hristiyanlığının resmi statüsü, ortodoksinin ve kabul edilen doktrinlere karşı çıkanların (heretik) tanımlanabilmesinde etkili olmuştur. Hristiyanlık, heresiyografi (heresiography) adı altında, kabul gören doktrinlerden sapanları heretik olarak tanımlamıştır. Bu çerçevede, gerçek Hristiyan inancı Katoliklik olarak ilan edilmiş, ve kilise meclisleri ve konseyleri tarafından Protestanlık ve onun mezhepleri heretik olarak ilan edilmiştir. Protestanlığın ortaya çıktığı Reform ve karşı-Reform süreci, ortodoksi ve heretik çatışmasının en gözle görünür hali olması ve sorunun hatırı sayılır bir coğrafya için başedilmesi gereken bir duruma dönüşmesi sebebiyle, Avrupa tarihçilerinin çoğunun hoşgörü/hoşgörüsüzlük teorilerini bu dönem çerçevesinde değerlendirmesine sebep olmuştur. Aslında dönmeler (apostates), ayrılıkçılar (schismatics) ve kâfirler (infidels) de sapkınlık ve muhalefetle özdeşleştirilseler bile, ayrılıkçılar (schismatics) ve kâfirler (infidels) gerçek Hristiyan inancına Protestanlar kadar önemli bir tehdit olarak görülmemişlerdir. Dönmeler (apostates) ise tüm tek tanrılı dinlerde olduğu gibi, heretik olarak kabul edilmiş ve katledilmiştir. Tam bu noktada, Osmanlı İmparatorluğu'na ve dolayısıyla İslamın dinsel Ötekisine göz atmakta fayda vardır.

İslam söz konusu olduğunda ortodoks ve heterodoks olan inançları ayırt etmek, Hristiyanlıktaki kadar kolay değildir. Çünkü, Hristiyanlıkta, resmi Kilise tarafından çerçevesi çizilen ortodoks öğreti ve dolayısıyla heretik tanımlaması (kabul edilen resmi öğretiden ve resmi Kiliseden sapan), İslam geleneğinde farklılık göstermektedir. İslamiyette öncelikle ortodoks mezhebi ilan eden bir dini kurum bulunmamaktadır. Dahası, İslamiyetin erken dönemlerinden itibaren Müslümanlar arasında çatışma ve muhalefet yaratan, öğretilerdeki farklılıklardan ziyade, Hz. Muhammed'in ölümünden sonra İslami cemaate kimin liderlik edeceği olmuştur. Hz. Muhammed'in ailesinden birisinin mi (Hz. Ali), yoksa Hz. Muhammed'in kabilesinin mi (Emeviler), cemaatin liderliğini sürdüreceği, mezhep ayrılıklarının temel sebebi olmuştur. Emevilerin liderliği ele geçirmesiyle birlikte, Ali'yi takip

edenler Şii, diğerleri Sünnî olarak adlandırılmıştır. Bu iki temel mezhep arasındaki çatışmanın öğreti farklılıkları bir yana, daha çok politik karakterli olduğu aşikârdır. Hangi mezhebin ortodoks hangisinin heterodoks olduğu ise farklı İslami topluluklar içerisinde uzlaşma (ijma) yoluyla belirlenmiştir. Ancak, ağır basan görüş, Sünnîliğin ortodoks mezhep olması ve Şiilerin de heretik olan mezhep olarak görülmesidir. Bu durumda, Avrupa ve dolayısıyla Hristiyan tarihinde dinsel Öteki olarak kendisine yer bulan Protestanların, Osmanlı topraklarında ve İslam tarihindeki karşılığı Şiilerdir. Bu sebeple tezim, hoşgörü/hoşgörüsüzlüğün özneleri olarak tartışılan gayri-Müslimlerin yanı sıra, Şiilerin ve Şii eğilimli hererodoks tarikatların da dinsel Öteki olarak değerlendirilmesi gerektiğini savunmaktadır. Kaldı ki, Avrupa ve Osmanlı tarihinde, öteki dinlere karşı uygulanan hoşgörü/hoşgörüsüzlüğü karşılaştıran çalışmalar da göstermektedir ki, diğer dinler, resmi dine tehdit olamayacak kadar yabancı (foreign) görüldüklerinden, benzer şekillerde hoşgörülmüş/hoşgörülmemiştir. Bu sebeple, Osmanlı hoşgörülü müdür hoşgörüsüz müdür sorusunun cevabı sadece diğer dinler (gayri-Müslimler) üzerinden yapılacak bir değerlendirme ile cevaplandırılamaz. Osmanlı İmparatorluğu'nun dinsel Ötekisi diğer dinlerin yanı sıra, heretikleri yani Şiileri ve Şii eğilimli heterodoks tarikatları da içine alacak şekilde genişletilmelidir. Son olarak Osmanlı İmparatorluğu'nun dinsel Ötekisi kategorisine,kimi Sûfî tarikatlarının da katılması gerektiği iddia edilmektedir. Bu iddianın altında ise kimi Sûfî tarikatların Şiilikle, dolayısıyla heretiklikle ilişkilendirildikleri noktada, nasıl dinsel Ötekiye dönüşebildiklerinin hikayesi yatmaktadır.

Böylece, hoşgörü/hoşgörüsüzlük kategorisinin kavramsal-teorik çerçevesinin yanı sıra, Osmanlı İmparatorluğu için dinsel Öteki kategorisinin içeriğinin belirlenmesi, tezimin teorik ve metodolojik çıkarımlarını göstermektedir. Bundan sonraki bölümde ise, bu kavramsal-teorik çerçeve ve metodoloji yardımıyla, öncelikle Osmanlı İmparatorluğu'nda hoşgörünün/hoşgörüsüzlüğün gerekçesi olarak tartışılan adâlet kavramı analiz edilmektedir. Sonrasında da onaltıncı yüzyıl Osmanlı İmparatorluğu'nda, özellikle de Kanuni Sultan Süleyman ve Şeyh-ül islâm Ebu's-su'ud Efendi zamanında (1545-1566) yürürlükte olan kanunlarda (Osmanlı ceza kanunu, fetvâlar, fermânlar, mahkeme kayıtları), dinsel Ötekilerin (gayri-Müslimler, heretikler, Sûfîler) hoşgörülüp/hoşgörülmediğine dair ipuçları aranacaktır.

**Osmanlı Adâleti ve Güç (Power)**

Osmanlı adâleti bu çalışma kapsamında, hoşgörü/hoşgörüsüzlüğün gerekçesi olarak değerlendirilmektedir. Bu gerekçe; güç, din ve hoşgörü/hoşgörüsüzlük kategorileri arasındaki bağın Osmanlı özelinde kurulabilmesi için önemlidir. Dinsel farklılık ve farklılığa verilebilecek bir cevap olarak, hoşgörü kategorisine eleştirel bir yaklaşım olanağı sunan güç ve hoşgörü/hoşgörüsüzlük kategorisi ilişkisi, Osmanlı söz konusu olduğunda öncelikle adâlet ve güç kavramı arasındaki bağ kurularak çözümlenmeye çalışılmıştır. Bu çerçevede, hem dinsel hem de seküler kaygılar taşıyan Osmanlı adâlet anlayışının, ilk olarak nasıl iktidar tarafından bir yönetme sanatı (art of government) olarak benimsendiği gösterilmeye çalışılmıştır. Böylece, İslamın, Osmanlı'da baskın yönetim fikri olarak tartışılabilecek adâlet kavramı ile nasıl içiçe geçtiği, yani dinin siyaset ve ekonomi, dolayısıyla iktidara içkin ilişkisi tartışılmaya çalışılmıştır. Adâlet, din ve iktidar ilişkisi çerçevesinde anlamlandırılabilecek yönetme sanatı, hoşgörü/hoşgörüsüzlük tartışmalarına geçiş yapabilmek için de gerekli zemini hazırlamıştır. Hoşgörüyü de tıpkı adâlet gibi bir iktidar söylemi (discourse of power) olarak gören bu çalışma, bir yönetme sanatı olarak adâlet (justice as art of government) ve hoşgörü/hoşgörüsüzlük arasındaki bağı ortaya koymaya çalışmıştır. Bu bağ ise adâletin, hoşgörünün/hoşgörüsüzlüğün gerekçesi olarak tartışılması olmuştur. Hem İslam hem de islamiyet öncesi Hint-İran geleneklerinden beslenen bu Osmanlı adâlet anlayışı, yönetme sanatını (art of government) gerçekleştiren en önemli araç olması sebebiyle, hoşgörme/hoşgörmeme siyasetine karar vermenin de temel aracı olmuştur. Bu tespit modern hoşgörüyü, Foucault'nun yönetimsellik (governmentality) kavramıyla açıklayan çalışmalardan (örneğin Wendy Brown) ilham alarak, Osmanlı İmparatorluğu söz konusu olduğunda yönetimsellik (governmentality) yerine yönetme sanatı (art of government) kavramını seçmiş, hoşgörü ve yönetişim arasındaki kurulan ilişki yerine ise, Osmanlı adâlet anlayışını yönetme sanatı (art of government) ile ilişkilendirmiştir. Böylece, modern zamanlarda bir iktidar söylemi olarak kavramsallaştırılan ve yönetimsellik olarak değerlendirilen hoşgörü kategorisi, Osmanlı dünyasının bağlamı, fikir gelenekleri, düşünme biçimi dikkate alınarak, iktidar söylemi olması özelliğini muhafaza etmekle beraber, bu kez yönetme sanatı olarak adâletin gereği/ icâbı olarak tartışılmıştır. Çünkü Osmanlı devleti için baskın olan siyaset geleneği hoşgörüden ziyade adâlet, döneme uygun teorik toplumsal düzenleme fikri ise yönetimsellikten (governmentality) ziyade yönetme sanatıdır (art of government).

Ancak burada açıklık getirilmesi gereken bir nokta, bu çalışmanın Osmanlı adâlet anlayışına verdiği öneme rağmen, bunun hoşgörü/hoşgörüsüzlük kategorisinin yerini alamayacağıdır. Çünkü, bir yönetim sanatı (art of government) olarak adâlet, dinsel farklılıklarla başetmenin aracı değildir. Osmanlı İmparatorluğu'nda da dinsel farklılıkların hoşgörü/hoşgörüsüzlük kategorisi aracılığıyla anlaşılması gereklidir. Bu sebeple adâlet ve hoşgörü/hoşgörüsüzlük birbirlerinin yerine kullanılacak kategoriler olarak görülmemekte, tam da bu yüzden Osmanlı adâleti, hoşgörünün/hoşgörüsüzlüğün gerekçesi olarak analiz edilmektedir. Öyleyse bir yönetim sanatı olarak Osmanlı adâleti ne demektir? Ve adâlet îcâbı hoşgörü/hoşgörüsüzlük nasıl anlaşılmalıdır?

### Adâlet İcâb-ı Hoşgörü/Hoşgörüsüzlük

İslami adâlet fikri söz konusu olduğunda, öne çıkan anlamlar eşitlemek (equalize) ve dengelemek (balance) olmaktadır (Khadduri, 1984). Eşitlemenin ve dengelemenin arkasında yatan temel fikir ise, toplumsal düzenin ve uyumun korunmasıdır. Bu çerçevede, İslami adâlet anlayışı, toplumdaki her farklı gruba, farklılıklarına ugun olarak eşit şekilde davranmayı ve her bir grubu toplumda uygun yerde konumlandırmayı hedefler (Rosen, 2000). İslamdaki temel farklılıklar Müslüman/gayri-Müslim, kadın-erkek ve köle-özgür birey ikilikleri üzerinden tanımlandığından, özgür Müslüman erkekler sosyal hiyerarşide en yukarıda olacak, kadınlar, gayri-Müslimler ve köleler ise hiyerarşinin alt basamaklarında yerlerini alacaklardır. Bu toplumsal yapının sürekliliği sağlanmaya çalışılırken, bir yandan da bireylerden, ancak toplumdaki konumlarının el verdiği ölçüde talepte bulunulacaktır. İslami adâlet anlayışındaki eşitlemenin karşılığı budur. Dengelemek (balance) ise, mevcut sosyal hiyerarşinin ve dolayısıyla farklı grupların yerlerinin aynı şekilde muhafaza edilmesini gerektirir. Toplumsal yapıdaki değişiklikler dikkatle izlenmeli ve gerektiğinde dengelenmelidir (Rosen, 2000).

İslami adâlet anlayışının formülasyonunda ve gerekçelendirilmesinde farklı kategoriler izlense de, bunların arasında teolojik , felsefi, etik, yasal, siyasi ve sosyal adâlet kavramsallaştırmaları öne çıkmaktadır. Ancak, kanun haline gelene kadar tüm diğer adâlet kavramsallaştırmalarının tartışma düzeyinde kaldığı dikkate alındığında, yasal adâlet (legal justice) tüm diğer adâlet tartışmalarının toplamı olarak değerlendirilmektedir (Khadduri, 1984). Bu çalışmada da, üzerinde durulan yasal adâlet fikri olmuş, ve yasal adâletin kamu

çıkarını (public interest) ve ortak iyiyi (common good) korumak için, bireylerin ödevleri ve bunları gerçekleştirmek için sahip oldukları kapasite arasında bir denge tutturmayı hedeflediği kabul edilmiştir. Aslında yasal adâlet kadar siyâsal adâlet (political justice) fikri de önemlidir. Çünkü adâleti Tanrı adına bu dünyada kimin gerçekleştireceği, İslam geleneği içerisinde önemli bir sorudur. İslam, adâletin mutlak bir egemen (absolute sovereign) eliyle gerçekleşmesi gerektiğini düşünür. Bu sebeple, siyâsal adâlet, Tanrı'nın dünyadaki gölgesi olan egemenin (sovereign) sivil ya da anayasal kanunlarla sınırlandırılamayacağını belirtir. Kuran ve sünnete uygun davrandığı sürece, egemeni kısıtlayan başka hiç bir güç yoktur. Peki Osmanlı adâlet anlayışı ile İslami adâlet anlayışı arasındaki ilişki nedir?

Osmanlı adâlet anlayışının tamamen İslam kaynaklı olduğunu savunanlar olduğu gibi, Osmanlı adâlet formülasyonunun İslamiyet öncesi Hint-İran geleneklerinden beslendiğini tartışanlar da bulunmaktadır. İslami adâlet kavramı yukarıda kısaca özetlenmiş olmakla beraber, Osmanlılar'ın ne ölçüde bu fikre ve geleneğe sadık olduğunu kısaca ifade etmekte fayda olabilir. Osmanlı topraklarında, İslami siyâsal adâlet anlayışının benimsenmesi, Sünni İslamın ve halifeliğin kabulü ile kendisini göstermiştir. Yasal adâlet anlayışı, kanun yapımında Hanefi Okulu'nun takip edilmesiyle kabullenilmiştir. İslami sosyal adâlet anlayışı da, Osmanlı kanunlarına egemen olan kamu çıkarının (public interest) ve ortak iyinin (common good) korunması fikirleriyle cisimleşmiştir. Özellikle Osmanlı adâleti üzerinde duran çalışmalar ise, adâleti, "reayanın askeri elitin zulmünden/baskısından korunması (protection of the reâyâ from the oppression of the military elite)" ve "herşeyin/herkesin uygun yere koyulması (putting everything/everybody in their proper place)" şeklinde tartışmaktadır. Açıktır ki, özellikle ikinci tartışma, İslami adâlet kavramının semantiğinde öne çıkan eşitlemek (to equalize) ve dengelemek (to balance) ile yakından ilintilidir. Halil İnalcık (1973), ise özellikle birinci tanım üzerinde durur ve Osmanlı adâletinin temellerini Hint-İran geleneklerinde ararken, bu anlayışın pragmatik özelliğine dikkat çeker. Kutadgu Bilig'de yer alan, ve "adâlet çemberi (circle of equity/justice)" olarak adlandırılan Hint-İran adâlet geleneğinin temel fikri şudur: "Memleket tutmak için çok asker ve ordu lazımdır. Askerini beslemek için de çok mal ve servete ihtiyaç vardır, bu malı elde etmek için halkın zengin olması gerekir. Halkın zengin olması için de doğru kanunlar konulmalıdır. Bunlardan biri ihmal edilirse dördü de kalır. Dördü birden ihmal edilirse beylik çözülmeye yüz tutar" (İnalcık, 1993:5). Bu çemberde,

devletin gücü (power of the State) ve halkın zenginliği (prosperity of the Subjects) arasındaki diyalektik ve pragmatik ilişki açıkça gözlemlenebilmektedir. Bu noktada, İnalcık'a göre, Osmanlı devleti de halktan gerekli vergileri toplayabilmek için reâyâyı askeri sınıfın zulmünden korumayı amaç edinmiştir. Osmanlı devleti için adâlet pragmatiktir ve amaç reâyânın askeriyenin baskısından korunması yoluyla, devletin iktidarını (power), egemenliğini (sovereignty), meşruiyetini (legitimacy) koruması ve kamu düzenini (public order) devam ettirmesidir. Osmanlı devleti, bunu yapabilmek için adâletnâmeler yayınlamış ve reâyânın şikayetlerini iletmesine olanak verecek mekanizmalar kurmuştur. Tüm bu tartışmalardan, bu çalışmanın çıkardığı sonuçlar şunlardır. Öncelikle Osmanlı adâleti kamu düzenini (nizâm-ı âlem) ve kamu çıkarını (maslaha) korumayı amaçlamıştır. Kamu düzeninin korunması toplumsal yapının uygun tabakalaştırılmasıyla (proper stratification) mümkündür. Bunun için toplumsal yapıyı eşitlemek (to equalize) ve dengelemek (to balance) önemlidir.  Reâyânın askeri sınıfın zulmünden korunması kamu düzeninin ve kamu çıkarının korunabilmesi için önceliklidir. Kamu düzeni ve çıkarı yöneticinin mutlak iktidarına bağlıdır. Tüm bu açıklamalar dikkate alındığında, bu tezde, Osmanlı İmparatorluğu'nun adâlet anlayışının, sağduyulu (prudent) ve pragmatik (pragmatic) bir yönetim sanatı (art of government) olduğu iddia edilmektedir.  Osmanlı İmparatorluğu'nda adâlet, toplumu yönetmek için başvurulan kuvvetli bir araç olmuştur. Ve bu güçlü araç sayesinde, Osmanlı devleti tüm tebaasını kontrol etmiş, eşitlemiş, dengelemiş ve vakti geldiğinde disipline etmiştir. Hoşgörü/hoşgörüsüzlük de, Osmanlı adâletinin yönetme sanatı hedefine hizmet ettiği ölçüde bir politika olarak izlenmiş ya da dışarıda bırakılmıştır. Bu noktada, bir sonraki bölüme kılavuzluk edecek olan fikirler, daha önce çerçevesi çizilen kavramsal-teorik çerçeve ve dinsel Öteki katagorisinin öznelerinin, fikirlerinin, eylemlerinin ve kurumlarının yanı sıra, hoşgörü/hoşgörüsüzlüğün gerekçesi olarak tartışılan adâlet kavramının toplumu yönetirken ilişkileri ve bireyleri nasıl düzenlediği (regulate) olacaktır. Bu çerçevede, adâlet anlayışı temelinde, hoşgörü/hoşgörüsüzlüğün hangi formlarda, derecelerde gerçekleştiği ve  hangi kişileri, eylemleri, fikirleri ve kurumları kapsadığı analiz edilmeye çalışılacaktır.

### Osmanlı Kanunları

Şimdiye kadar yapılan tartışmanın, Osmanlı İmparatorluğu deneyimi için geçerliliği, onaltıncı yüzyıl Osmanlı kanunlarındaki dinsel Ötekiler analiz edilerek sorgulanmıştır. Bu

çerçevede, Osmanlı devletinin gayri-Müslimlere, Şiilere/ Şii eğilimli heterodoks tarikatlara ve Sûfîlere karşı tavrı, fetvâlar, fermânlar ve Osmanlı ceza kanunu kılavuzluğunda incelenmiştir. Bu analizin sonucunda varılan temel sonuçlardan bazıları şunlardır :

**Gayri-Müslimler**

1. Osmanlı imparatorluğu'nda gayri-Müslimler ve inançları en genel anlamda horgörme şeklinde hoşgörülmüştür. Gerek İslami adâlet anlayışı, gerekse Osmanlı adâlet anlayışı, gayri-Müslümlerin toplumdaki yerini, aşağı (inferior) olarak tanımlamıştır. Bu çerçevede gayri-Müslimler için geçerli olan aşağılama ve saygısızlık, *horgören hoşgörü (contemptuous tolerance)* şeklinde kavramsallaştırılmıştır.

2. Horgören hoşgörü, *şartlı hoşgörü (conditional tolerance)* ve *cemaat-içi ayrıcalık şeklindeki hoşgörü (tolerance as intra-communal favoritism)* kategorilerinde de varlığını muhafaza etmektedir. Cizye, kilise ve vakıflar, şartlı hoşgörünün özneleri; din adamları ve toprak sahipleri ise cemaat-içi ayrıcalık şeklindeki hoşgörü kategorisinin özneleridir.

3. Osmanlı İmparatorluğunda, hoşgörüsüzlük *cezalandırıcı hoşgörüsüzlük (punitive intolerance)* olarak kavramsallaştırılmıştır. Cezalandırıcı hoşgörüsüzlük de kendi arasında, cezanın türüne göre (siyâsa ve/veya ta'zîr) *eylemsizleştirici (incapacitating intolerance)* (örneğin: ölüm, hapis, sürgün, kürek cezası), ya da *reform eden hoşgörüsüzlük (reformative intolerance)* (örneğin: maddi ceza, yasaklama, dışlama, bedensel cezalar) olarak ayrıştırılmıştır. Bu ayrıştırma hoşgörüsüzlüğün farklı formlarının ve derecelerinin gözlemlenebilmesine olanak verdiği için önemlidir. Bu çerçevede, gayri-Müslimler söz konusu olduğunda, eylemsizleştirici (incapacitating) hoşgörüsüzlüğe konu olan eylemler İslam topraklarında yaşamanın temel şartlarını ihlal etmek (örneğin: Müslüman öldürmek, Müslüman topraklarına saldırmak), İslamdan dönmek, köle edinmek, zina, İslama saygısızlık, Müslümanlara karşı saygısız davranmak, şarap tüketmek ve satmaktır. Reform edici hoşgörüsüzlüğe konu olan eylemlerden bazıları ise Müslümanları rahatsız edecek derecede görünür ve duyulur olmaktır.

4. Gayri-Müslimlerin hoşgörüsüzlüğe maruz kalmasındaki temel sebep, adâlet anlayışı çerçevesinde kendilerine biçilen yeri ihlal etmeleridir. Bu sebeple önemli ihlaller eylemsizleştirilmiş, diğerleri reforme edilmiştir.

**Heretikler (Şiiler ve Şii eğilimli heterodoks tarikatlar)**

1. Osmanlı İmparatorluğu'nda Kızılbaşlar ve diğer Şiiliğe eğilimli heterodoks tarikatlar, *eylemsizleştirici hoşgörüsüzlüğe (incapacitating intolerance)* tabii olmuştur. İslamın düşmanı olarak görülmeleri, İslama ve Sünniliğe saygısızlık etmeleri, Sünni İslama uygun olmayan hal ve hareketleri, muhalif ve ikiyüzlü olmaları eylemsizleştirici hoşgörüsüzlüğe maruz kalmalarının temel sebepleri olarak açıklanabilir. Bu çerçevede, gayri-Müslimler söz konusu olduğunda fikirler, eylemler, bireyler ve kurumlara göre değişebilen hoşgörü/hoşgörüsüzlük, heretiklere gelince hiçbir fark gözetmeden hepsini eylemsizleştirmeyi seçmiştir.

2. Heretikler içerisinde özellikle Kızılbaşlar, Safevi İran'la yakın ilişkileri sebebiyle ikiyüzlülükle suçlanmış ve kamu düzenine ciddi bir tehdit olarak algılanmışlardır. İkinci olarak da, cezalandırıcı hoşgörüsüzlük, kişilerin ayaklanmalardaki rollerine göre cezaları farklılaştırmıştır. Önemli kişiler, örneğin hareketin liderleri öldürülmüş, diğerleri sürgüne ya da küreğe gönderilmiştir. Askeri sınıftan birisi heretikse, hapsedilmiştir.

3. Heretikler hoşgörüsüzlüğe maruz kalmıştır, çünkü heretikler mevcut dini, ekonomik, siyasi ve ahlaki düzene ciddi bir tehdit oluşturmaktadır. Adâletin kurguladığı toplumsal yapı içerisinde aşağı (inferior) da olsa, heretikler için yer yoktur. Tam da bu sebepten, Osmanlı kanunları heretikleri reforme etmek (disipline etmek) yerine eylemsizleştirmeyi seçmiştir.

**Sûfîler**

1. Heterodoks Sûfî tarikatları, ya *şartlı hoşgörü (conditional tolerance)* ya da *ayrıcalık olarak hoşgörü (toleration as favoritisim)* kategorilerine tabii olan gruptur. Ancak, bu grup heretik tarafına geçtikleri anda, *eylemsizleştiren hoşgörüsüzlük (incapacitating intolerance)* ile karşı karşıya gelmişlerdir.

2.  En genel haliyle, Sûfîlerin Sünniliğe uygun ya da hafif Şiilik içeren eylemleri ve fikirleri şartlı hoşgörüyle karşılanmıştır. Bu çerçevede, Sünnîliğe bağlılık ve buna uygun dinsel ritüeller şartlı hoşgörünün gerekçeleri olmuştur.

3. Bazı Sûfî gruplar ise ayrıcalık şeklinde hoşgörülmüştür. Bektaşiler ve Mevleviler bu gruplar arasında analiz edilmiştir.


Yukarıda bir özeti sunulan, Osmanlı kanunlarında yer aldığı şekliyle dinsel Öteki'nin analizi, bize hoşgörü ve hoşgörüsüzlük kategorilerine dair önemli ipuçları sunmaktadır. Herhangi bir siyasi rejimi herhangi bir Öteki'ye karşı salt hoşgörülü ya da salt hoşgörüsüz olarak değerlendirmek çoğunlukla mümkün değildir. Çünkü hem hoşgörü hem hoşgörüsüzlük, farklı kişiler, fikirler, eylemler ve kurumlar söz konusu olduğunda reddettiği ya da karşı çıktığı önemli farklılığı çeşitli şekillerde kabul edebilmekte ya da reddedebilmektedir. Bu sebeple hoşgörü, bu çalışma içerisinde *horgören, şartlı, ayrıcalıklı hoşgörü* şeklinde kavramsallaştırılmıştır. Hoşgörüsüzlük de *cezalandırıcı, eylemsizleştiren ya da reforme eden* olarak sınıflandırılmıştır. Hoşgörü ya da hoşgörüsüzlüğün tek bir formu olmadığı gibi, tek bir derecesi de yoktur. Eylemsizleştirici hoşgörüsüzlüğe tabii olan kişiler, eylemler, fikirler ve kurumlar, pek tabii reform eden hoşgörüsüzlüğünkünden daha fazla hoşgörülmemektedir. Ya da ayrıcalık şeklindeki hoşgörü kimi kişileri, fikirleri, eylemleri ya da kurumları diğerlerinden daha fazla hoşgörmektedir. Tüm bu sonuçlara varmamızı sağlayan ise, hoşgörü/hoşgörüsüzlük kategorisinin kavramsal-teorik çerçevesinin çizilmesi ve analizin Osmanlı deneyimi söz konusu olduğunda bu çerçeve izlenerek yapılmasıdır. Ortaya koyulan kavramsal-teorik çerçevenin ve dinsel Öteki'nin öğelerinin herhangi başka bir dinsel hoşgörü/hoşgörüsüzlük deneyimi için geçerli olup olmadığının anlaşılması için, benzer kavramsal-teorik çerçeveyi ve metodu izleyen başka çalışmalara ihtiyaç olduğu açıktır. Ancak, Osmanlı deneyimi ile kavram, teori ve metod diyaloğunun, Osmanlı hoşgörülü müdür değil midir sorusuna daha net ve ayrıntılı bir cevap verdiği umulmaktadır.