THE SOCIAL CONSTRUCTION OF CHILDHOOD IN THE OTTOMAN SOCIETY: A SOCIO-LEGAL ANALYSIS OF CHILDCARE IN EARLY EIGHTEENTH-CENTURY ÜSKÜDAR

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ABSTRACT

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This thesis examines the concept of childhood in terms of childcare in Ottoman Üsküdar in the early eighteenth century. By using Üsküdar Sharia court records, it is aimed to conduct a socio-legal analysis of childcare as custody, maintenance and guardianship of children. Since the socio-legal approach of this thesis presents the results of the social and legal structures of childhood in early modern Ottoman society in family relations, this thesis presents an analysis on the construction of the concept of childhood in the context of parent-child relationships, the importance of childcare, and the social position of children in different childhood periods. In this context, this thesis has two main objectives: The first is to analyze childcare in terms of custody and maintenance until adolescence, and the second is to explore the dimensions of transition from childhood to adulthood in terms of the importance of child guardianship.

Keywords: Childhood, Childcare, Adolescence, Parent-child relation, 18th Century Ottoman Üsküdar

ÖZ

OSMANLI TOPLUMUNDA ÇOCUKLUĞUN SOSYAL İNŞASI: ON SEKİZİNCİ YÜZYIL BAŞLARI ÜSKÜDAR'DA ÇOCUK BAKIMININ SOSYO-HUKUKİ ANALİZİ

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Bu tez, 18. Yüzyıl başlarında Osmanlı Üsküdar'ında çocuk bakımı açısından çocukluk kavramını incelemektedir. Üsküdar Şer'iyye Sicillerini kullanarak, çocukların velayeti, nafakası ve vasiliği anlamında çocuk bakımının sosyo-hukuki analizinin yapılması amaçlanmaktadır. Bu tezin sosyo-hukuki yaklaşımı, erken modern Osmanlı toplumunda çocukluğun sosyal ve hukuki yapılarına ilişkin sonuçları aile ilişkileri bağlamında sunduğundan, bu tez, ebeveyn-çocuk ilişkileri bağlamında çocukluk kavramının inşası, çocuk bakımının önemi ve farklı çocukluk dönemleri bazında çocukların sosyal konumu üzerine bir analiz sunmaktadır. Bu bağlamda, bu tezin iki temel amacı vardır: Birincisi ergenliğe ulaşana kadar çocuk bakımını velayet ve nafaka açısından anlamak ve ikincisi çocukluktan yetişkinliğe geçişin boyutlarını çocuk vesayetinin önemi açısından incelemek.

Anahtar Kelimeler: Çocukluk, Çocuk bakımı, Ergenlik, Ebeveyn-çocuk ilişkisi, 18. Yüzyıl Osmanlı Üsküdar'ı

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CHAPTER 1

INTRODUCTION

"Is this your son?" they asked.
"Is this the one you say was born blind?
How is it that now he can see?"
"We know he is our son," the parents answered,
"and we know he was born blind.
But how he can see now,
or who opened his eyes, we don't know.
Ask him. He is of age; he will speak for himself."
John 9:19-21 (NIV)

Childhood emerges as a life stage that is occasionally neglected but perhaps shapes one's whole life. Not everyone remembers their childhood as the best time, and it may be even a time some would want to be rid of. Childhood is always praised even as heaven, nonetheless, having a say on one's own life has been something gained by leaving that childhood and by becoming individual brought on by adulthood. Throughout history, children have always been allowed to live with the wishes of their parents, maybe never even. When they questioned the blind man with whom Jesus opened his eyes, the Pharisees who did not believe him asked the man's parents. However, the parents, who were afraid to answer, discarded the responsibility of their children by saying "he is of age, he will speak for himself."[1] It seems old as history to define the difference between childhood and adulthood by the right to "speak for oneself" and the parental authority. However, how this line between these stages is defined has always remained in doubt, even today. We still ask when our childhood ended and when we started to speak for ourselves. Hence, my curiosity towards childhood history has been shaped by searching for an answer to the meaning of childhood.

[1] John 9:13-23 (NIV)

What we call a child in our modern world today is still confusing. The meanings we attribute to childhood are connected with our social and cultural background. Childhood as a changing concept has been constructed over time by social and legal structures in terms of children's rights, parental responsibilities and childhood boundaries. Thus, to understand this concept, legal structures and law will provide a broader perspective on how the concept of childhood has been shaped. The Declaration of the Rights of the Child (1924), the first international human rights document, was an important step towards the creation of an international concept of childhood and the starting point of the international legal process for children.[2] While such international agreements have been effective in the important transformations of the concept of childhood, the roots of these transformations come from the historical developments of law in different contexts. To address this issue, it will be illuminating to observe the course of events in judicial records and the law to understand that the concept of childhood has changed over time.

The main question that shapes the framework of this thesis is how the notion of childhood was constructed in early modern Ottoman society through the application of the law, particularly in terms of childcare. In this regard, this thesis is conducted as a socio-legal analysis of childcare. My purpose here is to examine judicial court records and judicial orders to have an analysis of the socio-legal position of childhood, which primarily requires a close childcare scrutinization, in the context of early eighteenth-century Ottoman Üsküdar. This research will reveal an analysis of how social and legal structures shaped children's needs. In this context, after defining childhood concept in early modern Ottoman society, this thesis is conducted around two main objectives: (1) a socio-legal analysis of childcare until reaching puberty in terms of child custody and child maintenance, and (2) a socio-legal analysis of the transition from childhood to adulthood in terms of the importance of child guardianship in early eighteenth-century Ottoman Üsküdar. Overall, this thesis seeks

[2] The League of Nations accepted this declaration in 1934. Then, a new declaration was adopted by the General Assembly of the United Nations, *the Declaration of the Rights of the Child (1959)*. Trevor Buck, *International Child Law*, 3rd ed. (Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2014), 89.

to find the notion of childhood in early modern Ottoman society, focusing on how childcare had been transformed and shaped in time by social and legal influences.

The definition of childhood in early modern Ottoman society is one of the objectives determined in this thesis. To create an analysis of the Ottoman concept of childhood, my decision to discuss is the historiography of childhood. Starting with the theoretical discussion of the concept from a broader perspective, it is a need to understand the concept of childhood in a comparative approach by comparing between early modern Ottoman society and early modern European societies to discuss the past from a broader perspective. After forming the theoretical background, the social and legal constructions of the concept of childhood in early modern Ottoman society will be discussed in terms of childhood boundaries such as fetal period, infancy, main childhood, and adolescence.

Nevertheless, the central focus is not on children living with both parents without being a subject matter in court until adolescence, but on children who became the subject matter of the court cases related to childcare or child protection because their parents divorced, died, or disappeared. Hence, the foremost purpose of this thesis is the socio-legal analysis of childcare in terms of child custody, child maintenance and child guardianship in the context of family relations, and social position of childhood. There are two dimensions of this socio-legal analysis that I focus on: (a) children's relations with their parents, siblings, and relatives; and (b) the importance of childcare in the society by observing parental acts, and other social entities as children's custodians and guardians. Building social bonds between children and others will be discussed in the context of the decision-making process of the court cases related to children at the Üsküdar court in the early eighteenth-century. In summary, this research will also be helpful to explore the construction of the family institution regarding the social position of children in early modern Ottoman society and the construction of individuality within family ties.[3]

[3] As Iris Agmon sees the individual in their study, taking the family as a unity for the social and political order needs an analysis of the individuals in their family relations for understanding society. Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, N.Y: Syracuse University Press, 2006), 5.

1.1. Methodological Settings

1.1.1. The Socio-legal Approach

Investigating the issue of childcare in a legal context will not only shed light on the concept of childhood in early modern Ottoman society but will also serve to provide an analysis of the relation between law and society. In that matter, this thesis needs a discussion of how Islamic law was applied in the Ottoman context. As we know, the literature on the implementation of Islamic law in the Ottoman context already has insightful studies to understand the social and legal structures.[4] Based on the literature on the contextual analysis of Islamic law, why it is vital to take the law in the context of its social position is the fact that the law has not been a purely theoretical concept. Having said that, it is to acknowledge that Ottoman law was also constituted by dimensions of 'the internal logic, and the structure of a culture,'[5] and social realities.[6] Therefore, this thesis is based on the analysis of the relation between law and society, exploring the way in which judicial rules were applied in response to local needs and expectations.

Dealing with the law with its social and cultural dimensions provides an effective approach for social historians to understand social concepts as to how they have been shaped over time. The increasing interest in the socio-legal approach among Ottoman history scholars creates a debate on the interaction of law and society in the context of

[4] For example, Haim Gerber's works on Islamic law in the Ottoman context bring about us a theoretical discussion of the law and its practices. See Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994).; Boğaç A. Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Cankırı and Kastamonu (1652-1744)*, Studies in Islamic Law and Society 17 (Leiden; Boston, Mass: Brill, 2003).

[5] Gerber, *State, Society, and Law in Islam*, 26.

[6] As Geertz's demonstration, the law has a flexible structure even in the same law system from a different culture to another. There is a central position of the law in understanding the society because 'the law is a distinctive manner of imagining the real' according to Geertz. Clifford Geertz, "Local Knowledge: Fact and Law in Comparative Perspective," in *Local Knowledge* (New York: Basic Books, 1983), 184.

their historical structures.[7] Leslie Peirce, in their*[8] study of *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, focuses on the court's negotiation with the local people of Aintab by exploring how the gender notion was constructed through the interaction with the court in the context of legal culture in the classical Ottoman period.[9] In the same vein, while defining the relation between the court and the family unite in their study of the socio-legal analysis of family and court in Ottoman Palestine, Agmon emphasizes how 'both interact and transform themselves.'[10]

The literature shows that looking at Islamic law in the context of the Ottoman courts requires cultural, social, and historical analysis because the social concepts and their transformations interacted with the court.[11] Thereupon, the socio-legal approach of this thesis is to examine the implementation of Islamic law by the Ottomans by negotiating

[7] There are different examples for socio-legal studies in the Ottoman history context: Agmon, *Family & Court*.; Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 2000).; Başak Tuğ, *Politics of Honor in Ottoman Anatolia: Sexual Violence and Socio-Legal Surveillance in the Eighteenth Century* (Leiden; Boston: Brill, 2017).; Betül Başaran, *Selim III, Social Control and Policing in Istanbul at the End of the Eighteenth Century: Between Crisis and Order* (Boston: Brill, 2014).; Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire*.

[8] * In this thesis, I use the singular "they/them/their/themself" as pronouns to avoid assuming the gender identity of people whose gender is not indicated. I believe that gender biases that are assigned according to social norms and which are considered to be "obvious" over these norms should be reduced in academic writing. Therefore, "she" or "he" will not be used for the scholars whose works are referred to in this thesis. According to the Chicago manual of style, the singular use of the word "they" can be used for third-person singulars whose gender is unknown, and it takes plural verbs in use: *The Chicago Manual of Style*, 17th ed. (Chicago; London: The University of Chicago Press, 2017), 241.

[9] Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003), 1–2.

[10] This transformation in their study is analyzed in the context of Ottoman modernization and the transformation of Ottoman legal culture: Agmon, *Family & Court*, 4.; Agmon also argued that it was based on the notions of gender and social justice, and the kadı saw the family institution as a framework to contribute to the reproduction of these notions with the judicial decisions. Agmon, 129.

[11] In this discussion of the interaction of court and society, Boğaç Ergene argues the social context of the court played an influential role. According to Ergene, two types of court models can be used to evaluate the Ottoman court system: The bargain model and the court model. While the court model seems to have a rule-driven process, the bargain model represents a "utilitarian" system that aims to maximize the combined interests of the parties. Ergene claimed the fact that the process of dispute resolutions in Ottoman courts had been managed by these qualities of court and bargain models in the Ottoman court system. Ergene, *Local Court, Provincial Society, and Justice in the Ottoman Empire*, 191–200.

with social and cultural norms in society. By acknowledging that law and social realities had been effective in restructuring each, it will be clear that the mutual interaction of law and society could be analyzed with a socio-legal analysis. From this perspective, I consider the court cases involving children to explore the socio-legal significance of childcare in the context of the relation between the concept of childhood and the implementation of Islamic legal principles.[12] To be theoretically clear in the socio-legal approach to the concept of childhood, the "socio" in this socio-legal analysis is my main focus in this study because an understanding of "socio" through legal interpretations and court records in social and historical contexts helps to understand how a society developed its social concepts.[13] However, I need to assert, by necessity, that I acknowledge the social cannot be pictured in a unitary way through socio-legal analysis.[14] Using this method, I attempt to enlighten some parts of the Ottoman social realities in a socio-legal context, because it is beyond the scope of this thesis to create a comprehensive and singular analysis of this social concept, childhood.

1.1.2. Methodology

While drawing the limitations of this thesis, it is necessary to point out the spatial and temporal scope in terms of sources and methodological approaches. In accordance with my sources, the exact timeframe of my thesis, which is roughly the early eighteenth century, focuses on the period between 1706 and 1739, the time mostly coincides with

[12] The law could define the rights of children, parental responsibilities, and the social position of childhood concerning its social construction. Adrian James and Adrian L. James, *Key Concepts in Childhood Studies*, Second edition (Los Angeles: SAGE Publications Ltd, 2012), 64–66.; Also as an important example for childhood studies in a legal context, in 2018, the work has been published by Ibrahim in which they focused on the child custody issue in the context of the flexibility of Islamic law. Ahmed Fekry Ibrahim, *Child Custody in Islamic Law: Theory and Practice in Egypt since the Sixteenth Century* (Cambridge, United Kingdom; New York, NY, USA: Cambridge University Press, 2018).

[13] I am using, for my study, this perspective of the socio-legal theory with the approach of understanding the 'socio' under the effect of the important theoretical discussions on socio-legal studies. For this issue of understanding the social realities through the law, Dermot Feenan indicated that the socio-legal studies could not provide us 'a singular understanding of the social' but could provide us a few insights into it by separating from the traditional legal studies. Dermot Feenan, "Introduction," in *Exploring the "Socio" of Socio-Legal Studies*, ed. Dermot Feenan, 2013 edition (Houndmills, Basingstoke, Hampshire, UK; New York, NY: Palgrave Macmillan, 2013), 8.

[14] Feenan, 7–8.

the reign of Ahmed III (1703-1730) and the early years of the reign of Mahmud I (1730-1754). The eighteenth-century Ottoman history has been studied by many scholars within the scope of the periodization debate in terms of transformations in state organization and social structures.[15] By focusing on the early eighteenth-century with legal practices, this study aims to examine the changing and stable perspectives of the social and legal structures on the concept of childhood in the period between the late periods of the established classical Ottoman state and the beginning of its transformation.[16] Although the studies on eighteenth-century Ottoman history focus on different social and legal concepts,[17] this thesis differs from other studies by focusing especially on the concept of childhood in terms of childcare, taking into account judicial practices. It is not possible for this study to determine precise definitions of childhood and childcare in early modern Ottoman history, nevertheless, concentrating on a time slot of roughly 33 years from the early eighteenth century will make important contributions to understanding the socio-legal meaning of the concept.

An important reason to consider the early eighteenth century is based on one the main discussions of childhood historiography. As I will discuss in the next chapter, the eighteenth century is considered a turning point for the theory of the "invention of childhood," claiming that the notion of childhood started to be shaped as a modern concept in this century by starting to be developed in sixteenth and seventeenth centuries. However, counter arguments involving contextual analysis claim the existence of an established concept of childhood in medieval and early modern times

[15] Scholars have been discussing the early modern Ottoman period in terms of different periodization and categorizations. See: Linda T. Darling, "Another Look at Periodization in Ottoman History," *The Turkish Studies Association Journal* 26, no. 2 (2002): 19–28; Karen Barkey, *Bandits and Bureaucrats: The Ottoman Route to State Centralization* (Ithaca, N.Y: Cornell University Press, 1994); Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (New York: Cambridge University Press, 2010).

[16] Darling, "Another Look at Periodization in Ottoman History," 21.

[17] The literature on eighteenth-century Ottoman history has many topics discussed, such as crime, sexual violence, state transformation, and so on. See:Başaran, *Selim III, Social Control and Policing in Istanbul at the End of the Eighteenth Century*; Tuğ, *Politics of Honor in Ottoman Anatolia*; Fariba Zarinebaf, *Crime and Punishment in Istanbul: 1700/1800* (Berkeley: University of California Press, 2010); Dana Sajdi, ed., *Ottoman Tulips, Ottoman Coffee: Leisure and Lifestyle in the Eighteenth Century* (London: I.B. Tauris, 2014).

in terms of children's relations with social and legal structures.[18] Therefore, by focusing on the temporal scope of this thesis, I aim to discuss early modern Ottoman childhood on the existence of the concept in the context of European childhood historiography.

Üsküdar, the Asian town of Istanbul, represents the spatial scope of this thesis with its court records. In the eighteenth-century Ottoman Empire, Üsküdar seems to have preserved its calm character by staying away from the central riots and international traffic on the Anatolian side of the Bosphorus. Thus, Üsküdar did not develop as an international district and had a more rural character than the European district of Istanbul, Galata.[19] Studying Üsküdar, a predominantly Muslim city close to the capital of the empire, will help us paint a picture of the Ottoman Turkish-speaking Muslim community. That is why in this thesis I mainly deal with cases related to the Muslim population.

In the context of spatial and temporal scope, this thesis relies predominantly on analysis of the judicial texts, which are the fatwas (the legal opinions) of early modern Ottoman muftis, and *Şeyhülislam*s (the grand mufti, or the official title of the leader of other muftis in the empire), and the cases from the early eighteenth-century Ottoman Üsküdar court records - archival sources will be presented in detail in the next part of this chapter. My methodology for generating the sources is based on a random selection of Üsküdar court records between 1706 and 1739, as the scope of my research is limited in the early eighteenth-century. I shall acknowledge that there is an effective relation between shaping the scope of work and accessing sources. Accordingly, the contextual limitations in this thesis are mostly based on my ability to reach out to the sources and use them within a limited time.

Considering the framework of this thesis, the question of how to use these sources arises. In this study, I use the qualitative analysis method to comprehend the childhood and childcare concepts of society with a context-based analysis approach. My purpose

[18] Colin Heywood, "Centuries of Childhood: An Anniversary—and an Epitaph?," *The Journal of the History of Childhood and Youth* 3, no. 3 (Fall 2010): 347–56.

[19] Zarinebaf, *Crime and Punishment in Istanbul*, 12–13.

is to use this method to look at the cases in question within their context and to study them within the broader perspective of eighteenth-century Ottoman history. Therefrom, this study is necessarily conducted as an analysis of the relation between judicial rules and social realities. In my opinion, social concepts can indeed be read by law and practice; however, it is very important to be aware of the fact that the law and the court were areas sterilized by the authorities' discourse. While examining the Ottoman law, it is important to read the legal codes and the court records carefully, as they were shaped by the state and religious authorities. As a matter of fact, as Ze'evi explained to the Ottoman court records, we cannot take any source as an actual mirror of the reality, as all sources are complex and produced by the influence of many social, cultural, political, religious structures, and all other symbols which need to be deconstructed.[20] Nevertheless, centrally located for this study, Ottoman Sharia court records are of great importance in terms of their recording formats and contents as primary sources for use and analysis for social history, because they are the result of judicial rules and their encounter with social entities under judicial authorities.[21] Therefore, the court was not an institution that worked only with its own rules and regulations but rather it was a place where the social issues and norms were interacted and reproduced. Within this context, these records could be read as a reflection of the society in the form of performing the social roles such as parenting and being a child at the court as a legal arena.[22]

Analyzing the legal documents that I use in this thesis is crucial in terms of their discourse and contents. According to Michel Foucault's theorization of discursive formation, the discourse in the hands of authority not only creates the norms of the

[20] Dror Ze'evi, "The Use of Ottoman Sharīʿa Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5, no. 1 (1998): 35–56.; Agmon, *Family & Court*, 7.; In the context of social history, it is important to be aware of "mediated, fabricated, textual and therefore constructed character of the legal documents": Tuğ, *Politics of Honor in Ottoman Anatolia*, 8.

[21] Ergene draws attention to the issue of how record-keeping has been shaped as a translation of the negotiation between judicial rules, local realities, and traditions. Boğaç A. Ergene, "Why Did Ümmü Gülsüm Go to Court? Ottoman Legal Practice between History and Anthropology," *Islamic Law and Society* 17, no. 2 (2010): 227.

[22] Beshara Doumani, *Family Life in the Ottoman Mediterranean: A Social History* (Cambridge, United Kingdom; New York, NY, USA: Cambridge University Press, 2017), 54.

society but also prevents unwelcomed norms by enforcing 'what ought to be'.[23] From this point of view, focusing only on what was recorded in these court records will not help us improve our understanding of the Ottoman state and society, instead, we will also have to think about what was not recorded. Therefore, I will go through a discourse analysis of the texts of the court records and the fatwas. The language and explanations of the legal documents I use will be taken into consideration with language analysis.[24] Providing an in-depth example of the discourse analysis method, Peirce examined gender and age definitions in early modern Ottoman society through discourse analysis of the court records that show us how life cycle stages were understood.[25] The language, words, and descriptions in these court records and fatwas provide us with basic information about the social and legal structure of social realities such as family unity, how children were defined, and children's relations with others.

As one other essential concept, gender should be considered in the analysis of the court records. Gender norms and gender roles in the construction of childhood were defined from the beginning of children's lives as they were important in creating social beings suitable for society. Therefore, in this thesis, the theory of performativity will be useful in understanding individuals acts in the context of how the reconstruction of gender identities had been effective in socio-legal definitions of life stages and child development. In this context, based on Butler's theorizing of "gender as performativity", placing gender analysis at the center of this study will enable the deconstruction of gender roles in parent-child relations in the context of parental behavior and childcare practices.[26] In this way, how the family institution and family

[23] Michel Foucault, *The History of Sexuality*, vol. 1 (New York: Pantheon Books, 1978), 100–101.

[24] Reading historical realities through the language needs an examination of the vocabulary, definitions. For this methodology, I have been inspired by many scholars and their works. See Lloyd S. Kramer, "Literature, Criticism, and Historical Imagination: The Literary Challenge of Hayden White and Dominick LaCapra," in *The New Cultural History*, ed. Lynn Hunt (University of California Press, 1989), 99–107.; Agmon, *Family & Court*, 30.; Leslie P. Peirce, "Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (New York: Brill, 1997), 169–96.

[25] Peirce, "Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society," 172–90.

[26] Butler's theorization of gender performativity helps us to understand the roots of acts and their deconstruction. See: Judith Butler, "Performative Acts and Gender Constitution: An Essay in

roles had been constructed socially and historically in terms of the binary gender system will be analyzed in this perspective.[27]

Thus far, I have drawn my methodological perspective and limitations in this thesis. In short, I have a social constructionist perspective on the construction of childhood in different terms. The contextual analysis of childhood will not be isolated from social norms and social roles, taking into account the social construction of childhood and how childhood was understood in religious and cultural contexts.

1.2. Judicial Texts as Sources

After explaining my methodological approach, I shall explain the primary source of this thesis. As I have already mentioned I use the Ottoman Üsküdar sharia court records, *Şer'iyye Sicilleri*, from the early eighteenth century.[28] These court records include different issues, such as the case records of inheritance sharing, selling

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Phenomenology and Feminist Theory," *Theatre Journal* 40, no. 4 (December 1988): 520. Also, Feminist theories are adopted to understand the historical process of gender constructions. How the roles of women and men in terms of private and public lives have been changed over time could be understood by the historical evidence in the way of the deconstruction of the gender notion in terms of family. Adrian Wilson, *Family*, 1 edition (London: Routledge, 1985), 25.

[27] Statements made by interpreting parental and family roles as natural and biological have been criticized by Feminist scholars by deconstructing the patriarchal origins of such roles and their social, cultural, and historical dimensions. There are many Feminist theories and perspectives that can explain the structure of the family in patriarchal societies. The historical structures of family roles and how they are changed may be the most discussed topics in feminist literature because gender inequality is reconstructed by reproducing women's domestic roles and men's power for social control through the institution of family in society. Since feminism has rich literature, I can give some examples of these. For more comprehensive explanations for different feminist theories, see: Rosemarie Tong, *Feminist Thought: A More Comprehensive Introduction*, 4th ed. (Boulder: Westview Press, 2014).; Christine Flynn Saulnier, *Feminist Theories and Social Work: Approaches and Applications*, 1 edition (Routledge, 1996).; For understanding women's oppression in patriarchal societies with different dimensions, see Caroline Ramazanoglu, *Feminism and the Contradictions of Oppression* (London: Routledge, 1989).; For the discussion of social and psychological constructions of parenthood see Nancy J. Chodorow, *The Reproduction of Mothering* (Berkeley: University of California Press, 1978).; Shulamith Firestone, *The Dialectic of Sex: The Case for Feminist Revolution*, 1 edition (New York, NY: Farrar, Straus and Giroux, 2003).

[28] I reached these records from the archive of the Center for Islamic Studies (ISAM – in Turkish *Islam Araştırmaları Merkezi*). Turkiye Diyanet Foundation – ISAM holds the Ottoman court records in their digital archive including those from Ottoman Istanbul Sharia courts with 28.409 registries and microfilm of their originals are kept in İstanbul Müftülüğü. For more information: "ISAM Library: Databse for Kadı Registers Catalogue," accessed January 25, 2021, http://ktp.isam.org.tr/?url=kaynaksicil/.

properties, marriage, divorce, child custody, social problems, homicide, fighting and many other social issues. Indeed, Ottoman social history scholars tend to use these court records for many years, and this has spawned numerous studies using court records in Ottoman historiography.[29]

As the focus area of this thesis, Üsküdar, as the Asian town of Istanbul, was one of the three towns called *Bilad-i Selase*, with Galata and Eyub. The town was governed by its own *Kadı*, the judge, with the assistance of the five other delegated judges (*nâib*s) for the subdistricts of Kartal, Pendik, Gebze, Şile and Anadolu Kavağı.[30] Besides, a *subaşı* (chief of police) and a division of the janissary corps were in charge of the control of the town under the judge's (*kadı*) authority.[31] Hence, Üsküdar, as a typical Ottoman town, had its character with the governmental system. Üsküdar was a growing town in the eighteenth-century, it was a popular town for the new migrants coming from Anatolia. With this migrations, new neighborhoods at the beginning of the eighteenth century enlarged Üsküdar towards the *Bağlarbaşı* and *Selimiye* subdistricts.[32] There were many different neighborhoods and villages at the eighteenth-century Üsküdar, some of them that were mentioned at the court records which are used in this thesis are *Bulgurlu, Kadı, Pendik, Viran* as villages, *karye*s; and *Ahmed Çelebi*, *Arakiyeci Elhac Mehmed*, *Arakiyeci Elhac Cafer*, *Cami-i Kebir*, *E'ş-şeyh Selami* and/or *Selami Efendi* and/or *Selami Ali*, *Evliya Hoca*, *Gerede*, *Hace Hatun*, *Hamza Fakih*, *Hasan Aga*, *Hayreddin Çavuş*, *Kefçe, Mehmed Paşa and/or Paşa, Mir-i Ahur, Pazarbaşı, Reis, Salacak*, *Selman Ağa, Solak Sinan*, *Şecâ' Bâğî, Valide, Tenbel Elhac, Torbalı, Toygar Hamza, Yeni Mahalle* as neighborhoods, *mahalle*s.

[29] The use of Ottoman Sharia court records for social history began very early and has a rich literature. Economic and social historians use these records in different ways and for different research purposes. There are some literature review studies on the use of Ottoman Sharia court records: Yunus Uğur, "Mahkeme Kayıtları (Şer'iye Sicilleri): Literatür Değerlendirmesi ve Bibliyografya," *Türkiye Araştırmaları Literatür Dergisi* 1, no. 1 (2003): 305–44.

[30] İsmail Hakkı Uzunçarşılı, "İstanbul ve Bilād-i Selase Denilen Eyüp, Galata ve Üsküdar Kadılıkları," *İstanbul Enstitüsü Dergisi* 3 (1957): 217.; Zarinebaf, *Crime and Punishment in Istanbul*, 28.; Evliya Çelebi, *Evliya Çelebi Seyahatnamesi*, vol. 2, ; (İstanbul: Zuhuri Danışman Yayınevi, 1969), 171.

[31] Zarinebaf, *Crime and Punishment in Istanbul*, 28.

[32] M. Hanefi Bostan, "Üsküdar," in *TDV İslam Ansiklopedisi* (İstanbul: Türkiye Diyanet Vakfı, 2012), 364–68.

I use, in this thesis, Üsküdar court records from the period between 1706 and 1739 when approximately 65 registries were kept at this court, vol. 331 to vol. 396.[33] In this thesis, I transliterate cases from Üsküdar court records, while also using some examples from the already transliterated records. I do not focus on a specific registry, but I use several records of deeds and decisions from 7 different court registries recorded between 1706 and 1739 at the Üsküdar court. The volumes 331 (1704/5), 336 (1707/8), 345 (1712/3), 355 (1714/1715), 383 (1729/1732), 395 (1737/8), 396 (1738/9) of the Üsküdar Court records (ÜCR) are used in this thesis as the primary sources. Also, supportive cases from some Üsküdar Court records of different years are used, such as vol. 303 (1650/90). The cases are varying, and randomly selective cases from these records. These records related to children are mostly the cases of deciding maintenance payment (nafaka), appointing and changing of guardianship (vasi) and custody (hidane), divorce (talak, 'hul), inheritance share (veraset).

As explained, the court records as one of the essential archival documents for Ottoman history consisted of the cases heard at the court. These records had a formal language, and the cases were recorded in the official discourse. By focusing on the characteristics of the cases, we could say those related to child support, changing the guardian, or *hul'* divorce, were, generally but not always, sued by women. In such cases, we can see Muslims and non-Muslims from different neighborhoods of Üsküdar as the subjects. Because Üsküdar had a dominantly Muslim population, and non-Muslim Christian and Jewish communities used generally their community courts,[34] dominantly the subjects

[33] From these records, six registries, vols. 335, 346, 347, 348, 352, 358, have been transliterated into Latin alphabet See: M. Yaşar Ertaş, "Üsküdar Kadılığı 335 Numaralı Şer'iyye Sicili Defteri (1118-1119/1707)" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 1994).; M. Saffet Çalışkan, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/346 Nolu Defter) (12 Cemaziye'l-Ahîr-17 Şevval 1124/17 Temmuz-17 Kasım 1712)" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 1993).; Emin Kutluğ, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/347 Nolu Defter) (1 Ramazan 1124 / Safer 1125)" (Unpublished MA thesis, İstanbul University, Social Science Enstitute, 1993).; Ebru Okuyan, "Üsküdar Kadılığına Ait 348 Nolu Şeriye Sicili Transkripsiyonu (H. 1124-1125/M. 1712-1713)" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 2003).; Mehmet Genç, "1126 Tarihli Üsküdar Şer'iye Sicili" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 1999).; Halis Kavrazlı, "Üsküdar Kadılığı 358 Numaralı Şeri'yye Sicili Defteri (1128/1717)" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 1995).

[34] Eugenia Kermeli, "The Right to Choice: Ottoman Justice Vis-à-Vis Ecclesiastical and Communal Justice in the Balkans, Seventeenth-Nineteenth Centuries," *Studies in Islamic Law*, 2007, 165–210.

of the cases used in this thesis consisted of Turkish-speaking Muslim people. Besides, in the records, we can see the social identities were mentioned, such as *Elhac*, *Beşe*, which gives us clues about the social positions of the litigants and defendants.

The cases had a typical character in terms of their recording. Firstly, the litigant was introduced, and the neighborhood they lived in and their name. In most records, women were introduced with the approval of some other men who were also the case's witnesses. After defining the litigant and the defendant, the claim and words of the litigant were recorded. Then the judge's decision was recorded by the official formula almost the same in all cases. The date of the case and the witnesses were recorded at last. Whoever was mentioned in the case was recorded with their father's name.

Besides the court records, I also use the fatwas, the legal opinions, of Ottoman *Şeyhülislam*s, as my theoretical source for Ottoman law. These fatwas that I use are from the influential fatwa collections of official Ottoman *Şeyhülislam*s (the grand muftis) in the early modern period; *Şeyhülislam Ebussuud Efendi* (d.1574),[35] *Şeyhülislam Feyzullah Efendi* (d.1703),[36] *Şeyhülislâm Yenişehirli Abdullah Efendi* (d.1743).[37] The fatwa collections of these Ottoman official muftis were accepted as the most respected fatwa collections by the Ottoman *Fatvahâne*, the unity that conducted the process of fatwas.[38] I use their fatwas from the published transcriptions. Even though the court records and the fatwas occupy the center of my analyses in this thesis, the theoretical sources of the jurisprudence of the Islamic Hanafi school, which had been dominantly shaped the Ottoman law, would also be used to compare the court practices with the theoretical explanations. The fatwas shaping the Ottoman law were

[35] Şeyhülislam Ebussuud Efendi, *Ma'rüzat*, ed. Pehlul Düzenli and Mustafa Demiray (İstanbul: Klasik Yayınları, 2013).; H. Necati Demirtaş, *Fetvâları Ile Şeyhülislâm Ebüssu'ûd Efendi* (İstanbul: Akıl Fikir Yayınları, 2016).; Şeyhülislam Ebussuud Efendi, *Şeyhü'l-İslam Ebüssu'ud Efendi fetvaları (Fetava-yı Ebüssuud Efendi)*, ed. Ahmed Akgündüz (İstanbul: Osmanlı Araştırmaları Vakfı, 2018).

[36] Şeyhülislam Feyzullah Efendi, *Fetava-yı Feyziye*, trans. Süleyman Kaya, Osmanlılarda Hukuk ve Toplum 2 (İstanbul: Klasik Yayınları, 2010).

[37] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, trans. Süleyman Kaya et al., Osmanlılarda Hukuk ve Toplum 3 (İstanbul: Klasik Yayınları, 2012).

[38] Salim Öğüt, "Fetava-Yı Feyziyye," in *TDV İslam Ansiklopedisi* (İstanbul: İSAM, Türkiye Diyanet Vakfı İslâm Araştırmaları Merkezi, 1995), 443.

based on the theoretical discussions of different Hanafi scholars. That is why I use the translated works of *Mülteḳa'l-ebḥur* of *İbrâhîm b. Muhammed b. İbrâhîm el-Halebî* (d.1549), who was an influential scholar of the Hanafi school of Islam in the 16th century Ottoman Empire,[39] and *The Hedaye* of *El-Mergīnânî* (d.1196), who was an influential scholar of Sunni Islam whose work was shaped many fatwas in the Ottoman law,[40] as the theoretical base of Islamic law in the Ottoman context.[41]

1.3. Thesis Outline

After the main questions of the thesis are introduced in this section with their methodology and sources, three main chapters of the thesis follow. The first one, namely Chapter 2, which is on childhood history has two main topics I focus on. The first part of the chapter introduces the main arguments in childhood historiography through the main works revealed. Since this part of the chapter is conducted as a literature review section, childhood historiography is introduced, and studies on Middle Eastern and Ottoman childhood are also included. After reviewing the literature, the concept of childhood in early modern Ottoman society is discussed in the next part of the chapter. This second part consists of discussing childhood in the context of the life cycle and introducing socio-legal terminology for childhood cases in early modern Ottoman society to help understand the debates in the rest of the thesis.

The third chapter is carried out as a discussion of childcare within family relations. This section focuses on parent-child relations with awareness of child development stages. The two main sections of the chapter are the prenatal period and the postnatal period in the context of child custody and maintenance. In the first part, the main focus

[39] For detailed information see: Şükrü Selim Has, "Halebî, İbrâhim b. Muhammed," in *TDV İslam Ansiklopedisi* (İstanbul: Türkiye Diyanet Vakfı, 2006).

[40] For detailed information see: Ferhat Koca, "Mergīnânî, Burhâneddin," in *TDV İslam Ansiklopedisi* (Istanbul: Türkiye Diyanet Vakfı, 2004).

[41] İbrahim Halebi, *Mevkûfat: Mülteka Tercümesi*, trans. Mehmed Mevkufati and Ahmed Davudoğlu, vol. 2 (İstanbul: Sağlam Yayınevi, 2007).; İbrahim Halebi, *Mevkûfat: Mülteka Tercümesi*, trans. Mehmed Mevkufati and Ahmed Davudoğlu, vol. 3 (İstanbul: Sağlam Yayınevi, 2007).; İbrahim Halebi, *Mevkûfat: Mülteka Tercümesi*, trans. Mehmed Mevkufati and Ahmed Davudoğlu, vol. 4 (İstanbul: Sağlam Yayınevi, 2007).; Ebü'l-Hasan Burhaneddin Ali b. Ebi Bekr Merginani, *The Hedaya, or Guide; Commentary on the Mussulman Laws*, trans. Charles Hamilton, vol. 1 (London: By T. Bensley, 1791).

is on the social and legal position of the fetus, and the second part is on child custody and childcare from birth until the end of childhood. In general, parental responsibilities and legal attitude will be discussed in terms of childcare.

The fourth chapter, the last main chapter of this thesis, mainly deals with adolescence. In this chapter, there are three sections on adolescence, guardianship and children's relationships with their guardians after reaching adolescence. These will be discussed in the context of transition from childhood to adulthood in terms of the legal basis of child guardianship and children's rights. The relation between children and their guardians will be discussed in the context of children's property, and the arrangements of child marriage and divorce.

CHAPTER 2

THE HISTORY OF CHILDHOOD

In this part of the thesis, I present two important topics about childhood history to help shaping the rest of this thesis. As I mentioned earlier about the need to study childhood history, we first look at previous debates on childhood from a broader perspective of the historiography of European and Ottoman childhood. In this part of the theoretical discussion on the concept of childhood, I offer an analysis of the childhood literature and the main debates with scholars' arguments about childhood history. After this discussion, I open a special discussion on the history of early modern Ottoman childhood. In the second part of this chapter, I discuss the main characterizations of early modern Ottoman childhood. The socio-legal perspective of the concept of childhood and legal terminology of childhood will be instrumental in understanding the rest of the thesis and our main debates. Thus, this concrete discussion would be helpful, following the theoretical discussion of childhood historiography, to understand the main characterization of childhood in early modern Ottoman society.

2.1. Literature Review: A Theoretical Discussion on the Notion of Childhood in the Past

Childhood history, which began as a part of family history, has become a research topic for social history, with studies focusing only on the concept of childhood. Historiography of childhood in early modern Europe mainly questions the existence of the concept of childhood in people's minds. Since the earliest studies, the literature of childhood history has discussed the existence of the concept, the social position of children, and their relations with others in terms of child-rearing, children's rights, and parental responsibilities. While this literature has grown with many empirical and theoretical types of research, the problem of the existence of the concept of childhood in early modern times remains important in terms of Ottoman childhood history.

2.1.1. Opening the Field: "The Invention of Childhood"

As a fundamental starting point for childhood historiography, Philippe Aries wrote *L'Enfant et la vie familiale sous l'Ancien Régime*,[42] published in English as *Centuries of Childhood: A Social History of Family Life*.[43] As the first comprehensive discussion of childhood and children's history, their work was instrumental in opening theoretical debates of the concept.[44] Starting to analyze the concept of age, Aries drew pictures of the ancient, medieval, early modern, and modern perspectives of human life span, their main claim was the fact that childhood as an idea did not exist in medieval times.[45] In fact, according to Aries' analysis of the childhood history of France, the notion of childhood began to be developed in the sixteenth century and the child-centered understanding of family began to take shape in the eighteenth century.

Aries' theory of the "invention of childhood" assumes that medieval life was adult-centered, and that childhood was not considered as a stage, but merely a non-adult period. According to this argument, children had not been treated uniquely to be adults, as there was no notion of childhood until the "invention of childhood" in modern times.[46] However, Aries did not argue that children were neglected or despised due to the lack of the notion of childhood, but in fact, the argument is that in medieval societies, the specific nature of children different from adults was ignored. Accordingly, children were left alone in society until they settled in adult life.[47] After all, the idea of childhood was built and invented over the centuries with the formation

[42] Philippe Ariès, *L'Enfant et la vie familiale sous l'Ancien Régime* (Paris: Librairie Plon, 1960).

[43] Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York: Knopf; Vintage Books, 1962).

[44] Hugh Cunningham, *Children and Childhood in Western Society since 1500* (Harlow, England; New York: Pearson Longman, 2005), 4.

[45] Ariès, *Centuries of Childhood*, 15–32.

[46] Harry Hendrick, "The Evolution of Childhood in Western Europe C.1400-C.1750," in *The Palgrave Handbook of Childhood Studies*, ed. Jens Qvortrup, William A. Corsaro, and Michael-Sebastian Honig (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2011), 100.

[47] Ariès, *Centuries of Childhood*, 128.

of schools and the formation of the modern family type.[48] This theory of discovering childhood has been discussed by many scholars; while some studies are conducted as based on this theory, some critics have developed new ideas in childhood debates. Studies based on Aries' theory have contributed to the literature by seeking answers to the question of how the concept of childhood was built before 'modernity'. In this debate on the view of modernity, the eighteenth century stands as a turning point for the transition to modernity, especially in the sense of childhood, with the "Industrial revolution," "modern school formations," "Enlightenment," and other social changes. Also, according to the arguments about the "invention of childhood," the most important reasons for the emergence of the notion of childhood as a modern concept were the visibility of children in the public sphere and the decline in birth rates.[49]

The question of childhood before modernity has shaped the studies supporting the theory of "invention of childhood" with concerns about the construction of the family, the transformations of child-rearing, and so on. Hence, some of the most notable examples based on this theory have continued to develop this literature. In the study of *The History of Childhood*, Lloyd de Mause claimed that the parent-child relation did not develop in early modern times, so parental care is a modern age concept. [50] De Mause believed that parent-child relation has been developed by "psychogenic" changes in personalities.[51] Likewise, Edward Shorter, in *The Making of the Modern Family*, thought that children were treated brutally, and they were neglected because of the lack of the notion of childhood.[52] Shorter took the invention theory forward by claiming the "good mothering" concept is modern society's construction, which was

[48] Cunningham, *Children and Childhood in Western Society since 1500*, 5.

[49] Heywood, "Centuries of Childhood: An Anniversary—and an Epitaph?," 54.

[50] Hendrick, "The Evolution of Childhood in Western Europe C.1400-C.1750," 101.; Lloyd. De Mause, *The History of Childhood: The Untold Story of Child Abuse* (New York: P. Bedrick Books, 1974).

[51] Cunningham, *Children and Childhood in Western Society since 1500*, 7.

[52] Hendrick, "The Evolution of Childhood in Western Europe C.1400-C.1750," 101.; Colin Heywood, *A History of Childhood: Children and Childhood in the West from Medieval to Modern Times* (Cambridge, UK; Malden, Mass: Polity Press, 2001), 41.; Edward Shorter, *The Making of the Modern Family*, First printing. edition (New York: Basic Books, 1975).

developed through the "evolution of modern family".[53] In the same vein to the supportive claims of "the invention of childhood" thesis, Lawrence Stone claimed in *Family Sex and Marriage in England 1500-1800* that in the eighteenth-century child-centered family type was developed through the new construction of the notion of childhood.[54]

These three authors and Aries agreed that childcare had seen major transformations over time, and their primary argument is that the eighteenth century was a turning point for the "invention of the notion of childhood." In this theory, it is not claimed that there is no knowledge about children, but the main argument is that there was a lack of awareness about the unique nature of childhood and that children were treated as if they were at the lowest level of society. Further, the later work of Mause, Shorter, and Stone advocated the existence of formal and brutal parental acts towards children. Therefore, the main argument for the "invention of childhood" theory is shaped by answering how children were treated by their parents and society, provided there was no notion of childhood.

2.1.2. A Contextual Approach to Childhood History

Even though Aries' work remains important in opening up the field of childhood history by asking the right questions, the main argument has been rightly criticized for not being sufficient to understand medieval and early modern childhood history.[55] Some criticism brought to their work is on the lack of cultural and social realities in historical context. However, the main counter arguments are actually about the existence of the notion of childhood before "the modernity" in the context of the family relations, especially parent-child relations.[56] Leading criticism to earlier theories on

[53] Cunningham, *Children and Childhood in Western Society since 1500*, 9.

[54] Hugh Cunningham, *The Invention of Childhood*, First Edition edition (London: BBC Books, 2006), 7.; Hendrick, "The Evolution of Childhood in Western Europe C.1400-C.1750," 102.; Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800* (New York: Harper & Row, 1977).

[55] Miriam Müller, *Childhood, Orphans and Underage Heirs in Medieval Rural England - Growing up in the Village* (Birmingham, UK: Palgrave Macmillan, 2019), 3–4.

[56] Heywood, "Centuries of Childhood: An Anniversary—and an Epitaph?," 354–56.

childhood is Linda Pollock's work, *Forgotten Children: Parent-Child Relations from 1500 to 1900.*[57] While Aries argued that the notion of childhood was constructed as a modern concept and did not exist in the past, Pollock's main argument was that the concepts of childhood and parenthood can be understood in different periods by examining the parent-child relation in context. In their theory, Pollock argues the fact that we will see that parenting practices have not encountered significant transformations when examined in the context of child-parent relations. This kind of examination showed that we can talk about the existence of the notion of childhood in the past, that is, before "modernity."[58]

> "The sources used reveal that there have been very few changes in parental care and child life from the 16th to the 19th century in the home, apart from social changes and technological improvements. Nearly all children were wanted, such developmental stages as weaning and teething aroused interest and concern and parents revealed anxiety and distress at the illness or death of a child." [59]

Pollock argues that unlike the brutal parenting theory before the emergence of the "modern family," the parental consciousness of childhood can be understood in the contextual parent-child relation. As a matter of fact, childhood is a concept that has a unique meaning in terms of time and space and has been transformed from past to present over time. Just because children were seen as different from modern times in the past does not mean that the notion of childhood did not exist in the past. Children were treated differently than today, but still, they were treated as children in terms of law, medicine, and education. [60]

With the claim that the understanding of childhood has continuity in terms of childcare from the Middle Ages to the modern ages, we can focus on the realities of children in terms of their family relations and social position. It was then argued that the concept of childhood existed in early modern history, with Pollock's claim and research on

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[57] Linda A. Pollock, *Forgotten Children: Parent-Child Relations from 1500 to 1900* (Cambridge Cambridgeshire; New York: Cambridge University Press, 1983).

[58] Pollock, 33–67.

[59] Pollock, 268.

[60] Pollock, 52.

parent-child relations. In addition to this discussion, the question of whether there was childhood awareness in the past remains at the center. Therefore, to understand the concepts of childhood and family in world history, pre-modern parent-child relations should be studied in different cultures. As explained, the literature mainly discusses the existence of the concept of childhood or children's awareness of the unique nature in pre-modern times. As Pollock argues, we need to focus on the everyday realities of children in the past so that we can find out how children were perceived in pre-modern societies. Even if we cannot deny the socially structured aspect of childhood, childhood may not have been invented as a modern concept because parent-child relations existed in the past and were contextually constructed. Thus, the fundamental question for childhood history may be how societies perceived childhood and children's lives in the past rather than asking whether there was a notion of childhood.

2.1.3. A Literature Review of The History of Ottoman Childhood

In the context of the theoretical debate on the notion of childhood, when we look at childhood history in Middle Eastern societies, we can find important studies on the position of children in medieval and early modern Muslim societies. Avner Giladi's work, *Children of Islam: Concepts of Childhood in Medieval Muslim Society* (1992), provides us with valuable information about childhood in medieval Islamic societies, especially in the Arab world, as the main sources of Giladi's work are medieval Arabic texts.[61] While the historiography of the child in the Middle East has a growing literature, religious and social meanings are at the center of childhood debate in Islamic societies.[62] Focusing on the notion of childhood and the daily lives of children, Giladi argues that the unique nature of childhood was reflected in the law and tradition in Islamic societies. As part of childhood historiography that begins with Aries' theory, the same questions must be answered for childhood history in medieval and pre-modern Islamic societies and Ottoman society. For this reason, we need to look at how childhood was perceived and what childhood meant for Muslim societies. How

[61] Avner Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society* (Basingstoke and Oxford: Macmillan, 1992).

[62] For another important example of Childhood in Islamic societies, see Elizabeth Warnock Fernea, ed., *Children in the Muslim Middle East* (Austin: University of Texas Press, 1995).

childhood was perceived as a unique stage from adult life in pre-modern Islamic societies can be found in social responses to child death, child education, and the legal status of children, as evidenced by the emotional responses to child deaths in medieval Islamic societies we see in Giladi's work.[63]

When we focus on the literature of the concept in Ottoman history, there is a recently developed literature on the history of early modern Ottoman childhood. Different materials such as court records, legal codes, educational books, pictures have been used to analyze the concept of childhood in early modern Ottoman history. There is also some critical research on the childhood history of late Ottoman society. However, childhood historiography in Ottoman society does not yet have a comprehensive study that can show us the main trends in child-rearing or the concept of childhood. Thus, little has been found in the literature on the question of how childhood was understood in early modern Ottoman society.

The absence of studies on the notion of Ottoman childhood in the pre-Tanzimat period may have led to some generalizations about Ottoman childhood, claiming that the concept was new and invented in the modern period. Indeed, even the historiography of childhood in late Ottoman and early Republican Turkey has been also done by relying on "the theory of discovery of childhood."[64] Marianna Yerasimos claimed that the notion of childhood did not exist in early modern Ottoman society, using paintings from the sixteenth to nineteenth centuries, giving an early example of childhood literature in early modern Ottoman society. Based on Aries' theory, Yerasimos assumed that the children's clothes were small forms of adult clothing, so children were

[63] Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society*, 14–15.

[64] Gottfried Hagen, "'He Never Took The Path of Pastime and Play': Ideas of Childhood in Ottoman Hagiography," in *Scripta Ottomanica et Res Altaicae: Festschrift Für Barbara Kellner-Heinkele Zu Ihrem 60. Geburtstag*, ed. Ingeborg Hauenschild, Claus Schönig, and Peter Zieme (Wiesbaden: Harrassowitz Verlag, 2002), 96.;. Nazan Maksudyan, *Orphans and Destitute Children in the Late Ottoman Empire* (Syracuse, New York: Syracuse University Press, 2014), 7.

seen as “little adults” and childhood was not different from the concept of adulthood with a unique characterization.[65]

Bekir Onur published a book in 2005 that examined childhood in the context of daily life practices from the late Ottoman period to the early period of Republican Turkey. In their book, Onur saw the concept of childhood in transition in terms of schooling, dressing, and playing games during the Ottoman modernization period. Their claim is that the notion of childhood existed in Ottoman society in different terms, but during the modernization period, it transformed into a notion of childhood in the “modern and real” sense.[66] In 2013, Yahya Araz published their book on children in early modern Ottoman society, focusing on childhood in law, society, and family in terms of the concept, death, education, child labor, by using court records. The period of analysis in their book is from the sixteenth to the early nineteenth century.[67] Araz's comments on the concept in early modern Ottoman society show the developmental understanding of childhood and the existence of the concept of childhood. They interpreted these cases as different social, economic, and cultural contexts that shaped the understanding of childhood in different ways.[68] With Araz's work, the importance of court records in childhood research has been proven once again, as those records reveal social actualities as a result of the encounter of social representatives and legal authorities. For this reason, Araz's works, created with empirical findings, stand as important examples in childhood historiography in early modern Ottoman society.[69]

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[65] Marianna Yerasimos, “16.–19. Yüzyılda Batı Kaynaklı Gravürlerde Osmanlı Çocuk Figürleri.,” in *Toplumsal Tarihte Çocuk: Sempozyum, 23-24 Nisan 1993*, ed. Bekir Onur (İstanbul: Tarih Vakfı Yurt yayınları, 1994), 67.

[66] Bekir Onur, *Türkiye’de Çocukluğun Tarihi: Çocukluğun Sosyo-Kültürel Tarihine Giriş* (Kızılay, Ankara: İmge Kitabevi, 2005), 529.

[67] Yahya Araz, *Osmanli Toplumunda Cocuk Olmak* (İstanbul: Kitap Yayinevi, 2013).

[68] Araz, 24.

[69] Articles on Ottoman childhood history by Araz has been published for some examples see: Yahya Araz, “17. ve 18. Yüzyılda İstanbul ve Anadolu’da Çocuk Evlilikleri ve Erişkinlik Olgusu Üzerine Bir Değerlendirme,” *Kadın/Woman: Journal for Women’s Studies* 13 (2012): 98–121.; Yahya Araz, “‘Ölmek İçin Çok Erken!’ 17. ve 18. Yüzyılda Anadolu’da Kazaların Sebep Olduğu Çocuk Ölümleri ve Yaralanmları Üzerine Bir Değerlendirme,” *Tarih Dergisi* 2012/2, no. 56 (2013): 25–54.

Zehra İlhan studied childhood as their master's thesis, revealed in 2017, as one of the most recent studies in the literature. The thesis entitled *The Socio-legal Status and Pictorial Representations of Children and Adolescents in Early Modern Ottoman Society* focuses on the depictions of children and adolescents in Ottoman paintings, as well as their legal depictions with the *fatwas* and *kanunnames*. Based on their representations in early modern Ottoman book paintings, İlhan discusses the issue of the life cycle and the concept of gender in different life stages, with the assertion of the awareness that adolescence was experienced as a transition period between childhood and adulthood.[70] Although this debate brings new insights into understanding childhood and adolescence, we may still need to have detailed information and evidence to understand the socio-legal situation of children and to claim the existence of such a period as adolescence in a socio-legal sense. Also, in the same year, Abdullah Taha Yıldız worked on governing the property of orphan children and orphan care in Ottoman society in their master's thesis. Yıldız examined the property of orphan children in terms of their use and protection, which could show the socio-legal status of those children and their relation with state officials.[71] This study not only enables us to understand the situation of orphan or destitute children but also shows how the authorities problematized these children in the context of the relation between state and society.

While the claim that childhood was separated from adulthood by its social position and meaning has been discussed in European historiography, it is early to say the same for Ottoman childhood studies. These studies suggest that there is still a need for further analysis of the concepts of childhood and family in early modern Ottoman society. Therefore, the purpose of this thesis is to try to make a new contribution to childhood history by examining the concept of childhood and the socio-legal status of children in terms of childcare, child custody, and guardianship. From a similar perspective, Ahmed Fekry Ibrahim's work on Child Custody in Islamic law in the

[70] Zehra İlhan, "The Socio-Legal Status and Pictorial Representations of Children and Adolescents in Early Modern Ottoman Society" (Unpublished MA thesis, Boğaziçi University, Social Science Institute., 2017).

[71] Abdullah Taha Yıldız, "Kâtip Seyyid Mehmet Nuri Efendinin Eytâm Sicillerine Göre Osmanlılarda Yetim Mallarının Idaresi" (Unpublished MA thesis, Marmara University, Social Science Institute., 2017).

Egyptian context since the 16th century is a new and impressive contribution by showing how Islamic law has been applied in Egyptian court practices taking into account the best interests of children from the early modern Ottoman to the present.[72] The court practices that Ibrahim focused on not only revealed the flexibility of Islamic law over time but also demonstrated the importance of children's best interest in Islamic law in the Egyptian context from the Ottoman era to the modern times of the 21st century.

In addition to the analysis of the law, depending on the theories presented, the reason for examining the parent-child relation by using the records of the Üsküdar local court in this thesis is that I believe that a significant part of childhood history lies behind the actualities of family relations. This belief is based on the existence of some rare studies on Ottoman parents and children. An important example of the parent-child relation in early modern Ottoman society is Meriwether's work entitled *the Rights of Children and the Responsibilities of Women* in which they discussed the socio-legal status of women as the guardians of their children in Ottoman Aleppo.[73] While this article is also shaped through judicial sources, the importance of these studies is based on the discussion of the socio-legal struggles of women as the mother and guardian of their children in an early modern Ottoman city. Judith Tucker's book, *In the House of the Law*, stands as an important example of the theoretical legal debates about family relations, family formation, and also parent-child relations in early modern Ottoman law.[74] As being another example of the history of the parent-child relation in early modern Ottoman society, in the chapter "The Fullness of Affection: Mothering and Fathering" in this book of "In the House of the Law," Judith Tucker provides a theoretical discussion on parent-child relations in the early modern Ottoman Empire in the context of Islamic law.[75] Tucker takes the concept of parenting and the legal

[72] Ibrahim, *Child Custody in Islamic Law*.

[73] Margaret Lee Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," in *Women, the Family, and Divorce Laws in Islamic History*, ed. Amira El Azhary Sonbol (Syracuse, N.Y: Syrcause University Press, 1996), 219–35.

[74] Tucker, *In the House of the Law*.

[75] Tucker, 113–47.

status of children at the center of their debate, examining the fatwas of local muftis. They also explain the childhood periods from pre-birth to adolescence, taking into account the responsibilities and rights of parents in the context of the legal status of children at different ages and periods.

In addition to these studies based on specifically parent-child relation discussions, the literature on family history and kinship relations in Ottoman society provides us with an understanding of children's relations with others. For example, while Meriwther's work "The Kin Who Count" discusses the themes of household, marriage, and inheritance in the context of kinship relations with their legal dimensions, Also, Agmon's work on the family and the court is more specifically based on the late Ottoman legal culture by discussing how family structure and law met and how they affected each other.[76] These studies are essentially important for understanding the legal approach to family relations that can also show the position of children in a legal context.

Besides the issue of children's relations with others, there are other articles dealing with the socio-legal status of children and their legal rights to their own lives. While some studies discuss the legal boundaries and rights of guardians or fathers of children as the legal representative of them, a few that examine specific legal situations give us important clues about how children were perceived by society. For example, the records of some children sold as a commodity by their fathers in exchange for their debts in seventeenth-century Ottoman Crete, which Kermeli described as a unique event, exist as a distinct local finding on the father-child relation.[77] There are some articles on how childhood was perceived in social relations and how guardians had an impact on their lives, for example in the context of child marriage in early Ottoman society. Araz's work focuses on the perception of adulthood with the impact of Ottoman society on child marriage practices in the 17th and 18th centuries in Ottoman

[76] Margaret Lee Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo,1770-1840* (Austin, Tex: University of Texas Press, 1999).; Agmon, *Family & Court*.

[77] Eugenia Kermeli, "Children Treated as Commodity in Ottoman Crete," in *The Ottoman Empire: Myths, Realities and 'Black Holes,'* ed. Oktay Özel and Eugenia Kermeli (İstanbul: The Isis Press, 2006), 269–82.

society. In their study, the court records are examined in the context of the prevalence of child marriages and the right of girls to object to these marriages after reaching puberty.[78] Yazbak, on the other hand, deals with the concept of "Khiyār Al-Bulūgh", which is a legal concept that gives adolescent girls the right to cancel the marriages arranged by their parents in their childhood. In this discussion, Yazbak examines the legal status of child marriages and examines the legal limits of guardians and the sanctions of the judge as a legal authority against these marriages. It also provides a theoretical discussion on the conditions under which girls can have the right to annul this marriage, which they can have as adulthood.[79]

In the light of these studies, it is necessary to analyze the socio-legal status of children in early modern Ottoman society in terms of the social structure of childhood by discussing the arguments of Aries and Pollock on childhood with different perspectives. Although Aries' theory has historically been criticized for ignoring the realities of children, it is difficult to deny the social construction of childhood that has transformed over time. Therefore, while discussing the social construction of childhood in this thesis, the social realities of children in early Ottoman society become our focus to understand the importance of childcare. As the scope of this thesis, the parent-child relation, emphasized by Pollock in order to understand childhood historically, will be discussed in a socio-legal framework and the legal status of children and their parents will be also examined through childcare practices.

2.2. Childhood in Early Modern Ottoman Society

2.2.1. Understanding Age and Life Stages

What a child meant in Ottoman society seems to have an ambiguous answer, as there are many unanswered questions of the social and legal positions of Ottoman children. The characteristics of the spatial context in question were constructed by accommodating different communities with different identities, causing the perception

[78] Araz, "17. ve 18. Yüzyılda İstanbul ve Anadolu'da Çocuk Evlilikleri ve Erişkinlik Olgusu Üzerine Bir Değerlendirme."

[79] Mahmoud Yazbak, "Minor Marriages and Khiyār Al-Bulūgh in Ottoman Palestine: A Note on Women's Strategies in a Patriarchal Society," *Islamic Law and Society* 9, no. 3 (2002): 386–409.;

of Ottoman childhood to have different cultural, geographical, and religious roots. For example, Byzantium, which had a Greco-Roman society with a Christian Orthodoxy culture, played an effective role in shaping the multicultural character of the Ottoman society as it was the dominant culture in the geography before the Ottoman Empire. In Byzantium, the concept of childhood was legally established with the definitions of age and puberty, family responsibilities, as puberty was considered a transition point for marriage and legal representation.[80] As the legacy of this culture, the perspective of Byzantine culture on the concept of childhood influenced the social and cultural meaning of childhood in the multicultural Ottoman society. Besides, since the legal definitions of parental responsibilities and childcare issues were based on Islamic jurisprudence, Islamic cultures were predominantly determinant in the construction of the Ottoman childhood concept. Depending on Islamic law, the boundaries of human-life stages had different dimensions in terms of physical and mental development; while being responsible for actions as an adult in Ottoman society depended on mental development, maturity for sexual interaction was related to physical development. Therefore, when we begin to discuss what childhood was for the Ottomans, we need to understand the boundaries of childhood in terms of age, mental and physical development.

In the modern world, childhood is a stage with different constructions for each stage divided into years, months, or even days. Medical developments, social and psychological findings have helped us to form our worldview in modern times by shaping our perspective on human life and childhood. Of course, we cannot claim that these meanings of childhood in our modern world are the same in history, but it would also be wrong to assume that in early modern times childhood was a fixed concept for every stage from birth to adulthood. The sophisticated understanding of childhood was different from our modern view, but still, there were ideas for different childhood periods in the early modern world. In this respect, in this thesis, I aim to examine the understanding of childhood stages in Ottoman Üsküdar in the early eighteenth century in terms of how childhood needs and childcare were perceived by parents, law, and society. Recording the age of people was not a common habit in the Ottoman records

[80] Ann Moffatt, "The Byzantine Child," *Social Research* 53, no. 4 (Winter 1986): 706.

because rather than recording ages, life stages defined people. In this context, it becomes difficult to talk about clear ages for the boundaries of childhood and adulthood. Although we do not see many records about ages, it would not be fair to claim that there is no awareness of ages and anniversaries.[81] From the perception of human life and age had its own cultural, social, and religious meanings in different societies, and we can say Ottoman society had such concepts and its own unique understanding that shaped childhood periods in terms of different needs and unique natures.

2.2.1.1. Pre-Birth period

As we have said, it is not a modern concept to divide human life into certain stages. Human life began to be defined before birth in the early modern Ottoman world. The awareness of the unborn baby as part of the family can be read through the judicial text. While the *Cenin*, which was attributed to describe the fetus, had a legal position by being recognized as a part of the mother's body,[82] it has been defined the unborn baby as "haml" (ar. lit. carried).[83] Although the unborn baby appeared to be an ineffective member of the family and society, it was legally a member of the family due to its parents' responsibilities. In the next chapter, we discuss this issue further by discussing the socio-legal status of the fetus and the parental responsibilities. Therefore, for now, it is valuable to know the awareness of the presence of the fetus in early modern Ottoman society.

2.2.1.2. Childhood: Vulnerable years

With the birth of a child, more complex and detailed definitions were made for humans. Since childhood stages and ages in early modern Ottoman society were built in terms of their needs and abilities, such structures were of course not independent of

[81] For example, Seyyid Hasan, a dervish from 17th century Istanbul, was recording his and his son's birthdays in a diary, *Sohbetname* See: Tunahan Durmaz, "Family, Companions, and Death: Seyyid Hasan Nûrî Efendi's Microcosm (1661-1665)" (Unpublished MA thesis, Sabancı University, the Institute of Social Sciences, 2019), 57.

[82] Halebi, *Mevkufat*, 2007, 4:224.

[83] Üsküdar Court Records [hereinafter: ÜCR] vol.345 20/B2.

the social structures of gender, religion, and other cultural and social dynamics. Theoretically, the child custody period, in which children were deemed to need nurturance, nourishment, financial support and help to prepare for adult life, was defined differently by gender. Differences in age definitions of the physical and mental maturity of biological sex were part of the social construction of gender from the beginning of human life in the early modern Ottoman world. Social norms and roles for girls and boys became distinct and different as they grew up, and so this made the social construction of gender one of the consequences of the construction of the concepts of childhood and adulthood. In this sense, the meaning of being an adult in early modern Ottoman society was how well the child could adapt to society with the roles of a male or female.

In the Ottoman judicial records, boys were defined as *sagir* and girls as *sagire*.[84] This Arabic word, which means small, minor, young was used in Islamic cultures to describe infants, children, that is, those who have not reached puberty. In other words, the lack of mental and physical maturity in the pre-adolescent period was considered to be a child.[85] While childhood was defined as a period between the period before the child is born and when the child reaches these maturities, these maturity criteria were socially and legally constructed within the context of different times and regions. Although the definition of the concept varied, childhood was seen in early modern Ottoman society as a stage of helplessness, a period in need of nursing and survival. Also, childhood was considered a preparatory stage for them to become "a good man or woman" in the adult world. In this sense, one could argue that in early modern Ottoman society childhood was seen as a gateway to "real life" - this perspective shaped how children communicated with others and how children were positioned in their social environment.

The social meaning of childhood as a preparation stage for adult life can be seen on the tombstone of a child who says "who could not live his world" to describe a child

[84] Peirce, "Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society," 172.

[85] Avner Giladi, "Saghir," in *Encylopedia of Islam* (Leiden: E.J. Brill, 1995).

who died in Üsküdar.[86] The reactions to child deaths show how children were seen in early modern society as a preparatory stage for adult life. As is known, child mortality rates were higher in the early modern world, and the survival of a baby and a child was considered a serious problem by society.[87] For this reason, it was seen that the ages and even months of babies were mentioned in the court records, which can be interpreted as an example of this importance.

2.2.1.3. The End of Childhood and Reaching Puberty

This perspective of life stages raises questions about the boundaries of childhood: When did this childhood end? Or, what should it be to describe a child as an adult? Basically, it was the transition from childhood to puberty, for boys to earn a living, to have sexual and mental puberty, and for girls to have a mature body for marriage and sexual interaction, and to reach mental puberty.[88] However, identifying a child as an adult did not happen immediately, as puberty should be socially accepted with different criteria. According to Islamic jurisprudence, being of age was defined as *baliğ*, and being *baliğ* with having mental puberty (akl') meant to transition to adulthood.[89] Besides, as Halebi explained, these concepts are the physical and psychological conditions of transition to adulthood. Physically, boys were considered pubescent at the beginning of the age of 12 with "wet dreams" or "ejaculation", while girls had to "menstruate" to become pubescent at the earliest age of 9.[90] Having these physical conditions was not sufficient, also the mental puberty was needed to be

[86] "Al-Fatiha for the soul of Seyyid Mehmed Emin, who could not live [be satisfied with] his world. Year 1164" (Fatiha dünyasına doymayan merhum Seyyid Mehmed Emin ruhuna sene 1164): Appendix A.1

[87] Giladi studied on adult reactions to child death in medieval Islamic societies and found religious and emotional reactions to child death. Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society*, 79.

[88] Araz, "17. ve 18. Yüzyılda İstanbul ve Anadolu'da Çocuk Evlilikleri ve Erişkinlik Olgusu Üzerine Bir Değerlendirme," 101–6.

[89] H. A. R. Gibb et al., "Baligh," in *Encyclopedia of Islam* (Leiden: Brill, 1986), 993.

[90] Halebi, *Mevkufat*, 2007, 4:8.

declared by those boys and girls, and the social and legal confirmation of the declarations was necessity in order to be accepted for legally passing to adulthood.[91]

Physical and mental maturity, in general, was important in determining the end of childhood, but when these physical signs were unclear, those at the age of 15 could be considered as an adolescent under classical Islamic law because someone at this age would have to be an adult in all its qualities.[92] However, according to Ebussuud Efendi, a 16th-century Ottoman grand mufti, *Şeyhülislam,* who was one of the most important Islamic legal scholars in early modern Ottoman, when physical signs were inadequate, the age of 17 for girls and 18 for boys should be considered the age of puberty.[93] Therefore, since no clear age was defined for the end of childhood and so the beginning of puberty, we need a contextual analysis to understand the end of childhood in early modern Ottoman society.[94]

As the transition to adulthood was actually a process, it had to be proven that a child was capable enough to make decisions on their own. Therefore, the attitude of the legal authorities to admit mental and physical adolescence was decided individually for the person concerned. As a young adult, it could have been argued that the person considered in court was in a more vulnerable situation and had to prove their capacity of obligation to pass a fully recognized adulthood stage. Therefore, by defining young girls as "bikr-i baliğ" (pubescent the virgin), and young boys as "şabb-ı emred" (beardless lad), their transition from childhood to adulthood was kept under surveillance.[95]

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[91] Halebi, 4:8.

[92] Joseph Schacht, *An Introduction to Islamic Law* (Oxford [Oxfordshire]; New York: Clarendon Press, 1982), 124.

[93] Ömer Nasuhi Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, vol. 2 (İstanbul: Bilmen Yayınevi, 1968), 7.

[94] Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," 225.

[95]." Peirce, "Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society," 173.

This point of view was based on the idea that mental adolescence was not only a personal concern but also a legal issue in early modern Ottoman law, and hence in Islamic jurisprudence. Halebi explains the importance of this stage in the context of legal testimony which was built on mental puberty. Islamic law does not accept the testimony of children, but when a child reaches the age of mental puberty, they can be a legal witness for the events even they witnessed in childhood.[96] In addition to this mentality, by having "capacity of obligation", those who have reached the age of puberty would be accepted to decide about their lives, property, or marriages, and they would be made responsible for religious and social duties.[97] In this context these new qualifies made this transition a social concern indeed.

The most important distinction between a child and an adult in the socio-legal context of Ottoman society was to reach puberty in the sense of having the ability to make decisions about their own lives and bodies.[98] As, in the modern world, what we value about adulthood is still the age of consent, it is still a critical point for social and political debates about children's lives. Reaching puberty in Ottoman society seems to be a critical factor, especially in that a child would have the right to decide about their own marriages, their property, and so their own bodies. Before the development of mental ability, decisions regarding the child's marriage and property were made by their father or guardian.[99] Since the transition from childhood to adulthood is a complex problem of society, the age of custody and consent should be discussed in the context of transition to adulthood. For this reason, reaching puberty in practice its evaluation in a socio-legal context and social construction of practices will be examined in detail in the following sections in the context of early eighteenth-century Ottoman Üsküdar.

[96] Halebi, *Mevkufat*, 2007, 3:214.

[97] Schacht, *An Introduction to Islamic Law*, 124.

[98] Araz, "17. ve 18. Yüzyılda İstanbul ve Anadolu'da Çocuk Evlilikleri ve Erişkinlik Olgusu Üzerine Bir Değerlendirme," 100.

[99] Yazbak, "Minor Marriages and Khiyār Al-Bulūgh in Ottoman Palestine," 393.

2.2.2. The Legal Terminology of Childhood and Childcare

Childcare in early modern Ottoman society was constructed through various dimensions of gender, religion, social and cultural dynamics, and the law system. The social structure of family relations was based on significantly gendered norms that shaped the socio-legal status of children in the form of the parent-child relation. Basically, child-rearing, child health, childcare was constructed as a private culture dominated by female culture in early modern times, making motherhood critical to child-rearing and childhood.[100] In contrast, public matters and material needs were regarded as responsibilities to fatherhood symbolized as authority over children and even the mother. The patriarchal structure of family life in the Ottoman society predominantly shaped family relations and was built as roles in the form of gender-based division of labor between parents.[101]

One of the main sources of early modern Ottoman childhood history is court cases related to childcare, such as child custody, child maintenance, child guardianship. Since these cases were usually recorded in the courts after the parents' divorce or the death of the parent(s), the court records of divorce cases and inheritance sharing will also be effective in answering our questions. The records provide us with a broad perspective and knowledge to analyze family relations and most importantly the socio-legal structure of children's lives in early modern Ottoman society. Therefore, in this part of the chapter, I would like to introduce the main concepts and typical cases of child custody, child maintenance, and child guardianship, focusing on how children relate to their parents and other family members in the legal sense by discussing with a cases from early eighteenth-century the Ottoman Üsküdar court records.

When we examine a classical deed for child maintenance, we would have some insights into the knowledge about children's position after their parents' divorce. One of the most common types of such records is the deeds for child maintenance payments, which were claimed by the child's custodian (who was commonly the

[100] Linda A. Pollock, "Childbearing and Female Bonding in Early Modern England," *Social History* 22, no. 3 (1997): 286.

[101] Agmon, *Family & Court*, 134.

mother) from the child's guardian (who was commonly the father). This example of the court case has important details for us to draw a picture of the classical concepts used in the early modern Ottoman law.

> *İsmihan, daughter of Mustafa, resident of the neighborhood of Ahmed Çelebi in the town of Üsküdar, came to the court and brought a suit. She expressed herself and said: "Hereby this man, present at the court, named Hidayetullah Beğ son of Mehmed Beğ, was my husband before now, and he has irrevocably divorced me* ***(bai'nen tatlik)****. My son named Mehmed the minor* [male, *sagir*], *who was engendered from aforesaid* [male]*'s bed* [sic.] *(mezburun firaşından hasıl) and borne by me, is in my protection* [lit. bosom - *hucr*] *and nurturance under my custody* ***(hidane)*** *by right. My request is that the appropriate amount by the aspect of sharia for the maintenance* ***(nafaka)*** *and guise money to be decided and to be offered for custody." Then, the judge of the signature, pride of the learned, his highness, have decided 3 akçes per day from the current for the amount of the maintenance and guise money for the aforesaid minor [male] by the approval of both parties. The aforesaid woman İsmihan is allowed to spend and consume the mentioned amount for the aforesaid minor; and, in case of need, to borrow by the end to pay back to his father aforesaid Hidayetullah Beğ. It is recorded as it happened.*
>
> *In the Sixteen of Shawwal the reverend of the year Nineteen-hundred-and-thousand*
>
> *Case witnesses: Ali Efendi bin Ali, Osman Efendi bin Eşşeyh Mehmed El-imam, Elhac Mustafa bin İbrahim, Esseyyid Hasan Çelebi bin Halil, İbrahim Efendi bin Himmet, Ebubekir Bey bin Ali, Esseyyid Mehmed bin Ahmed, Mustafa Bey bin Hasan, Elhac Ali bin Murad* [102]

In this record of the case dated January 9, 1708, İsmihan claimed the maintenance payment for her son Mehmed from the father Hidayetullah Beğ, who had divorced by ***talak*** her before. In early modern Ottoman society, women commonly came to the court to have a deed for their children's maintenance payments after the divorce with the father of their children. Like many other divorced women, İsmihan also had the right to custody of her child and was entitled to receive child maintenance from the father of the child. As we have seen, there are different terms and concepts regarding the position of children. Before going further in the discussion of the thesis, we may need to understand the legal implications of these concepts.

First of all, we need to understand the family institution in terms of marriage and divorce in order to discuss the socio-legal status of children in different situations. As

[102] ÜCR vol.336 27/B1.

for Islamic law, the divorce of spouses with children will have legal consequences as parents, as marriage is intended to have children. Thus, there were different types of divorce practices that gave different responsibilities, but there were two common types of divorce in the court records in early modern Ottoman: ***Talak*** and ***Hul'***. In Islamic law, *talak* is considered as "the normal form of divorce", which means "the repudiation of the wife by the husband."[103] *Talak* divorce would result in financial obligations for men, such as the delayed dowry (***mehr-i müeccel)***,[104] the alimony (***nafaka-i iddet***) and accommodation (***meûnet-i süknâ***) for women during the waiting period (***iddet)***.[105] In this divorce, the maintenance payment of the children becomes the responsibility of the father. As in our example of the classic case of a child maintenance request, the mother İsmihan requested the payment of child maintenance for her child Mehmed from the father Hidayetullah Beğ, who "irrevocably divorced" (*bai'nen tatlik*) her. The mother's request was not surprising or unusual, it was simply an expected request from a mother who was divorced with her husband.

Nonetheless, while divorce in Islamic law was only dependent on the decision of the man, divorce by *hul'* meant the divorce by mutual agreement between husband and wife.[106] But in fact, in order to persuade the man to divorce, women had to give up some of their divorce rights or take extra childcare responsibilities. In these mutual agreements, women generally waived their financial rights such as *mehr* (delayed dowry) and the alimony for *iddet* (waiting period); and they took the financial responsibility of their children from the father.[107] *Hul'* divorce type was the most significantly recorded divorce type in court records, and despite the formal language

[103] Schacht, *An Introduction to Islamic Law*, 163–64.

[104] Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, 1968, 2:10.

[105] Halebi, *Mevkufat*, 2007, 2:263.

[106] Schacht, *An Introduction to Islamic Law*, 164.; Fahrettin Atar, "Muhâlea," in *TDV İslam Ansiklopedisi* (İstanbul: Türkiye Diyanet Vakfı, 2005), 399–402.

[107] For more information about the practice of *hul'* divorces in the eighteenth-century Ottoman İstanbul see: Madeline C. Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden; New York: Brill, 1997), 264–96.

of these records, there are many details recorded about spouse relations and parent-child relations.

Hidane, is an Arabic word and was used to define "**child custody**" in the Ottoman legal discourse. Therefore, this concept referred to physical care of children. The custody period, *hidane*, included the period from birth to the end of childhood when the child would reach mental and physical maturity varying according to their gender. Hidane as child custody meant raising, nurturing, and teaching children the basic needs of life in the first years of life. In the usual conditions, custody of the child was regarded as the mother's right that the father could not prevent without a valid reason. According to Schacht, a well-known scholar of Sunni Islamic jurisprudence, in cases such as loss of custody due to the death of the mother or remarriage with someone who is stranger to the child, "the closest female relative, first of the mother, then of the father" would take the custody of the child.[108] As in the case of the mother İsmihan, the custody was registered as the right of the mother, (*bi'hakkü'l-hizane*) and defined as being in her bosom and nurturance (*hucr ve terbiyemde*). Child custody was a private issue in early modern Ottoman society, constructed on "maternal love and affection" as part of female culture. The right of custody of a child was seen as the right of women of maternal lineage as it may have been defined as the family of *hidane*.[109]

Nafaka legally refers to maintenance payment that covers the things required to live.[110] Indeed, *nafaka* was an inclusive word with the meanings of "alimony for the ex-wife," "child maintenance" or "child support," or any other support for someone who needs. Therefore, to be clear in this thesis, I use "nafaka for children" paid during childhood period, so during custody period, as "**child maintenance**" or "**child support**"; and "nafaka for women" after divorce as "**alimony**." When we look at the one for children, the reason for that is the fact that children were seen as needy until they could earn a living of their own unless they owned any property - which could be through

[108] Schacht, *An Introduction to Islamic Law*, 167.

[109] Tucker, *In the House of the Law*, 125.

[110] Merginani, *The Hedaya, or Guide; Commentary on the Mussulman Laws*, 1:392.

inheritance. Fathers were required by law to pay for the maintenance of their children. This was not discussed as long as the parents of the children were still married, but the father was already expected to pay it. However, after the divorce, the mothers who had the custody of their children would come to the court to get the deeds for maintenance payments of their children, just like İsmihan did. As explained in the classical sources of Islamic jurisprudence, in the event of the loss or death of the father, child maintenance was expected to be paid by the paternal grandfather, paternal uncle, or other paternal relatives, respectively, or another relative capable of doing so; but if a child has property from their father's inheritance, their maintenance could be covered from this property with the permission given to the child's guardian.[111]

Vasi, meaning **guardian**, meant the legal representative or protector of the one's property in the legal sense. The legal and natural guardian, *vasi*, of a child was the father in ordinary circumstances, which did not require registration. For example, in the minor Mehmed's case mentioned above, no guardian was registered as the father was already alive and he did not need to be registered as guardian of his child. The difference between child guardianship and child custody is that while guardianship included legal representation, protection of child's property, and or the decision-giver about the child's life, custody was the physical care of children. The guardian, *vasi*, of a child who was appointed in the event of the father's death or disappearance, had an authoritative role holding the right to decide the life of the child in matters such as marriage, property use, or travel.[112] As the legal entity of a child was identified by paternal lineage, the new guardian was generally expected to be the paternal grandfather or paternal uncle, but it was not unusual for mothers to be appointed as guardians of their children after the death of the father.[113] In this thesis, the importance of guardianship will be discussed in the context of how guardian's decisions can affect a child's life.

[111] Halebi, *Mevkufat*, 2007, 2:280–81.

[112] Halebi, *Mevkufat*, 2007, 4:292–95.

[113] Tucker, *In the House of the Law*, 138–39.

The terminology used in the judicial texts related to children varies, but nevertheless, these key concepts are the most important to understand these cases. The legal meanings of these terms should be discussed within the social and legal practices. Therefore, the cases we will put at the center of the thesis will shed light on how these terms were understood in a socio-legal context. In early eighteenth-century Üsküdar, childhood was not taken very differently from the general practices of the Empire, so these general statements made in the context of classical Islamic law in early modern Ottoman society will help us understand the discussions.

CHAPTER 3

CHILDREN WITHIN FAMILY RELATIONS: CHILDCARE AND CHILD DEVELOPMENT IN EARLY EIGHTEENTH-CENTURY ÜSKÜDAR

Childhood has often been studied by social historians in the context of the family, and this may have precluded the idea of studying childhood alone. Even though children experienced their lives in family settings, the agency of children has been ignored.[114] Being aware of this problem while writing childhood history, I think that the agency of children in the context of the family institution and their social position should be studied. This perspective builds a constructive analysis of both childhood history and the history of family structure. I also believe that the history of the family structure cannot be understood without asking sub-questions about the concept. Therefore, the social and legal significance of parent-child relations should be examined while considering how the family had been constructed in terms of separate construction of family relations rather than the institution of the family as a union.

From this perspective, in this chapter, I aim to answer the question of how the notion of childhood was constructed through the importance of childcare in parent-child relations, based on the early eighteenth-century Ottoman Üsküdar court records. In this study, I conceptualize childcare as custody, child maintenance, in the context of relations between children and other family members, especially parents. While using judicial texts related to childcare, I take the perspective that the meaning of childhood should be questioned, based on the view that the concept of childhood was shaped by protecting the best interests of children in the Islamic-based Ottoman law.

[114] James and James, *Key Concepts in Childhood Studies*, 58–59.

Besides the judicial texts about the custody or maintenance of children, where we can easily assess childcare issues, divorce cases also seem appropriate to discuss childcare, since most of the decisions regarding the lives of children were made in these cases when the parents were divorcing. As we explained in the previous section, different types of divorce may have different legal implications for parents' relations with their children. Therefore, besides the case records in which children are treated as subjects, we can also obtain findings on how parents and legal authorities perceive the importance of childcare during the annulment of a marriage.

In this chapter, I conduct a discussion of childhood in two main phases with the focus of the early eighteenth-century Üsküdar court to understand childcare in the context of early modern Ottoman society. These two stages will be as follows: The first stage which is on the fetal period is formed by the discussion of the concept of childhood and childcare, which are addressed with the awareness of the existence of the fetus; the second stage is about the main childhood stage, which is conceptualized as the period of custody for the child after birth until adolescence.

3.1. Socio-Legal Position of Childhood Before the Birth

The main question in this part of the chapter is how the pregnancy period is perceived in terms of childcare in the socio-legal context of Üsküdar in the early eighteenth-century. To answer such a question, I aim, here, to understand the legal significance of childcare during pregnancy and even in the event of possible pregnancy. Since the marriage institution aimed to have children, the best conditions for children had been regulated even before the presence of children. Therefore, first, I discuss the legal status of the fetus, so the unborn child, in terms of guardianship, child rights, and so on. Then I take the court cases into consideration for understanding the importance of childcare during pregnancy, taking into account the distinction between the unborn child and the born child.

3.1.1. Fetus as a Matter of Law

3.1.1.1. Pregnancy and Miscarriage

In Ottoman law, fetus, which had a legal position, had certain rights and the law protected the best interest of the fetus. When we consider the fetal period in terms of the legal rights of the parents, the fetus was legally defined as part of its father's lineage while physically attached to its mother's body.[115] The parents had some responsibilities and rights as the mother and father of a child who was not yet born during pregnancy. For example, the responsibility for the protection of the fetus was seen as part of maternal responsibilities in early modern Ottoman, since pregnancy and childbirth as a private issue belong to the female culture. In fact, according to what Pollock said on pregnancy and childbearing in early modern Europe, men acknowledged that, like child-rearing, pregnancy and childbearing issues were also the issues of female culture; besides, women's participation in childbirth was seen as a community duty.[116] In this context, we see that in the early modern era, men considered pregnancy as part of women's culture, but, in fact, they were supportive and helpful rather than completely isolating themselves. The research by Evans and Read for early modern England shows how men psychologically or physically supported women in their families who suffer from miscarriages, shows how men took part as the helpers of women in this culture in which they were not the subjects.[117]

Despite of different experiences in different societies, we can say that pregnancy and childbearing culture, which is a part of the female culture constructed through the women's body, has a universal aspect. Likewise, in early modern Ottoman society, we can see that experiences such as pregnancy and childbearing were similar to universal female culture. Although the unborn baby was legally recognized as the property of the father in early modern Ottoman society, pregnancy and its protection were

[115] Halebi, *Mevkufat*, 2007, 4:224.

[116] Pollock, "Childbearing and Female Bonding in Early Modern England," 286–89.

[117] For detailed research on men's effects on the miscarriage issues in early modern societies, see: Jennifer Evans and Sara Read, "'Before Midnight She Had Miscarried': Women, Men, and Miscarriage in Early Modern England," *Journal of Family History* 40, no. 1 (January 1, 2015): 3–23.

perceived as a period of custody, which was largely the responsibility of the mother.[118] However, still, since children, and basically individuals, were defined by patrilineal ties, the lineage of a child from the fetal period, including pregnant women and the fetus, was expected to be protected by men as the responsibility of the fathers.[119] This responsibility made men a part of the pregnancy process in a socio-legal sense, as the protector and supporter of pregnant women.

A fetus had the right to be born and its mother still was the main responsible for protecting the fetus as its bearer. From this point of view, it can be thought that miscarriage cases in the early modern age were generally seen as caused by women. Of course, it was inevitable that mothers were considered as the first suspects and responsible for the fatalities in the pregnancy process, but, since we know that men were not completely excluded from pregnancy in the early modern age, it should also be discussed how men were involved in the cases of miscarriages. Miscarriage intentionally or by someone else's harm was considered a form of murder, and anyone responsible should be punished according to Islamic law. Even if the protection of the fetus was the responsibility of the mother, according to early modern Ottoman muftis, such as the 16th century grand mufti *Şeyhülislam* Ebussuud Efendi, and other important scholars of Islamic Hanafi jurisprudence, it was recognized that the possibility that the father or anyone else than the mother could cause the pregnant woman to miscarry. The person who caused the death of a fetus had to pay compensation to the father and paternal relative because the fetus belonged to paternal lineage. Also, if this person was heir to the child or the father himself, they would pay this compensation to others and be deprived of the child's inheritance.[120] This blood money called "**gharra**" was calculated as one-twentieth of the normal blood money decided for murder cases

[118] Tucker, *In the House of the Law*, 123–24.

[119] Tucker, 115.

[120] "Query: If Zeyd caused his wife, Hind, to have a miscarriage, what is need by law? The answer: it needs to be fined with half of the blood money; he cannot get a share." Şeyhülislam Ebussuud Efendi, *Şeyhü'l-İslam Ebüssu'ud Efendi fetvaları (Fetava-yı Ebüssuud Efendi)*, 715.; Halebi, *Mevkufat*, 2007, 4:224–26.; Tucker, *In the House of the Law*, 122–24.

according to Islamic jurisprudence.[121] Nevertheless, there were different calculations by early modern Ottoman muftis for this blood money for the death of the fetus, for example, Ebussuud's fatwas say that the person who caused the death of the fetus should be fined half "the normal blood money" (*nıfs-i öşr-i diyet).*[122] Even though there were different opinions about this, one thing is clear that blood money for the fetus was always less than "the normal blood money" paid for the murder of a born child or an adult. According to Tucker, the reason for this difference between the amount of blood money paid for the fetus and the one for the others is that the fetus was not considered a complete human being.[123]

3.1.1.2. Inheritance Right and Guardian of the Fetus

Even if the fetus did not have a fully recognized legal position in early modern Ottoman law, in early eighteenth-century Üsküdar its legal rights were almost as recognized as that of a born child. The inheritance right of the fetus was protected by law and could be protected by a guardian appointed according to Islamic law if needed.[124] It was not rare for the fetus to be viewed as a legal subject but still there are not many records regarding the fetus and pregnancy in Üsküdar court records. However, the records regarding the fetus we have are quite enlightening about its socio-legal position. In these court records, which are usually about inheritance or maintenance payments, the fetus was recorded as *haml* [lit. carried].

The legal approach towards the fetus in İbrahim Beşe's inheritance-sharing case shows the socio-legal position of the fetus in terms of its rights and legal entity. İbrahim Beşe, who lived and died in Tuzla village in Üsküdar, had heirs; his wife Fatıma, his minor son Huseyin, his adult daughters Hanife and Saliha, and his unborn child who was "in his wife's womb." Adult daughters were able to protect their property and inheritance

[121] Muhsin Koçak, "Gurre," in *TDV İslam Ansiklopedisi* (Istanbul: Türkiye Diyanet Vakfı, 1996), 211–12.

[122] Şeyhülislam Ebussuud Efendi, *Şeyhü'l-İslam Ebüssu'ud Efendi fetvaları (Fetava-yı Ebüssuud Efendi)*, 715.; For detailed calculations for the death of the fetus in the jurisprudence of Hanafi Islam see: Halebi, *Mevkufat*, 2007, 4:224–26.

[123] Tucker, *In the House of the Law*, 116.

[124] Schacht, *An Introduction to Islamic Law*, 124.

shares, but a guardian was required to protect the shares of the minor son and the unborn child. Then, on February 24, 1738, the judge appointed the mother Fatıma as the guardian of the minor Hüseyin and the fetus according to the law (*kıbel-i şerden*): "…aforesaid Fatıma was appointed as the guardian to receive and protect the inheritance shares of the aforesaid minor and the aforesaid fetus [lit. carried, haml-i mezkur]…."[125]

Indeed, of course, a guardian was expected to be appointed for minors, but was it possible to appoint a guardian for an unborn child? Scholars of Islamic jurisprudence had different views in their discussions about the legal position of the fetus, its guardian, and inheritance rights. While there are some arguments suggesting that a guardian may be appointed for the fetus and its property,[126] there are also some contrary arguments, for example, according to Tucker's argument based on the fatwas of Hamid b. 'Ali al-'Imadi (an 18th-century Ottoman Damascus mufti) neither father nor anyone else could be appointed as guardian for a fetus who was not fully recognized as a human being before the law.[127] However, this case we encounter in the Üsküdar court records can show us how the legal position of a fetus was actually recognized as a social entity, and how the fetus's rights were protected and monitored by legal processes, and it was accepted their guardians' rights to reclaim their property rights. The practice of appointing a guardian to an unborn child, in this case, was not unexcepted. Similar cases were encountered in different cities of the Ottoman Empire. For example, in a registry of the Konya court dated 1738-1740, three mothers were appointed as guardians of their unborn children to protect their property inherited from the deceased fathers.[128]

[125] ÜCR vol. 396 24/B1.

[126] Mustafa Uzunpostalcı, "Cenin," in *TDV İslam Ansiklopedisi* (Istanbul: Türkiye Diyanet Vakfı, 1993), 369–70.

[127] Tucker, *In the House of the Law*, 116.

[128] These three cases are from Konya Court Records Vol. 54. See; Hatice Sevici, "54 Numaralı Konya Şer'iye Sicili'nin (1-190) Değerlendirme ve Transkripsiyonu (H. 1150 1152/M. 1738–1740)" (Unpublished MA thesis, Selçuk Üniversitesi Sosyal Bilimler Enstitüsü, 2011), 185–86.; Sevici, 404–5.; Sevici, 481.

In addition to the guardianship issue, it is an important question to ask how the share of the fetus was calculated without knowing its biological gender since the inheritance sharing rules in Islamic law are according to the gender of the inheritors. Although this share can be made after the birth of the fetus, it was shared when other heirs demanded their share before the birth of the fetus.[129] Therefore, in this case, the share of the fetus had to be calculated according to all probabilities, or it could be calculated by assuming the sex of the fetus to be male because only in this way could the best interests of the fetus be preserved. According to the law, the man received more from the inheritance than the share of the woman, that is, if the fetus was born as male, he would not suffer a loss, and if it was born as female, the remaining portion would be distributed among other heirs.[130] In Ibrahim Beşe's inheritance sharing, too, the share of the unborn baby was calculated as if it were a male, and therefore one of the highest shares was given for the fetus: *14511* [amount of money (the same amount with the minor son Hüseyin's share)] *as the legal share for the aforesaid fetus (haml), is delivered to the aforesaid wife* [of Ibrahim Beşe].[131] The findings of Meriwether's research on Aleppo show the prevalence of a similar court practice which is the assumption of the fetus to be male when calculating the inheritance share of the unborn baby.[132] Of course, the assignment of the sex of the unborn baby as male was not unrelated to the idea of "complete human being" as "male" as a socio-legal acceptance in early modern Ottoman society, so the fetus was assumed to be male and preserved in "the highest position."

[129] "By the requests of the aforesaid ones (*mezburtanın talebleriyle*)" ÜCR vol. 396 24/B1.

[130] Uzunpostalcı, "Cenin," 369–70.

[131] "haml-i mezkur için şer-i hisse olub zevc-i mezbure Fatımaya teslim 14511" ÜCR vol. 396 24/B1

[132] Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," 226.

3.1.2. The Maintenance for Pregnant Woman or Fetus?

Avner Giladi argues "the care for one's child starts well before his or her birth, when the potential father asks for a woman's hand in marriage."[133] This expression meant that even 'choosing a rightful mother' for their children was the responsibility of men, and from this point of view, we can question the existence of the childcare responsibilities given to parents during pregnancy in Islamic societies. There were different dimensions of these parental childcare responsibilities that included maintenance payment. For example, we first see the attention to the importance of preserving the lineage of a child by "iddet,*"* which is the waiting period for a woman to remarry after divorce or the death of her husband. According to Islamic law, in order for a woman to have the right to remarry to another man, she had to wait about three menstrual periods to prove that she was not pregnant from her ex-husband, or if she was pregnant, she had to wait for the child to be born.[134] Halebi, one of the influential scholars of the Islamic-Hanafi jurisprudence in the 16th century Ottoman Empire, explains in *Mülteka* that the reason why women were prohibited from remarrying without waiting for the *iddet* period was to protect the child and its lineage.[135] Halebi's statement was based on interpretations of early scholars of Sunni Islamic law, such as Merginani, who lived in the 12th century. Based on these arguments, waiting time was mainly a practice aimed at preserving even the possibility of pregnancy, and therefore, in the case of pregnancy, the period ends only with the birth of the child.[136]

Since divorce brought some responsibilities to men, it was also the responsibility of the man to make a living for the woman he divorced during this waiting period (*nafaka-i iddet*). This period was mainly aimed at tracking the possibility of pregnancy so that the lineage of the possible child would be known. If the woman found out she was pregnant, her ex-husband would be responsible for her maintenance payment until the

[133] Avner Giladi, *Muslim Midwives: The Craft of Birthing in the Premodern Middle East* (New York, NY: Cambridge University Press, 2015), 34.

[134] Schacht, *An Introduction to Islamic Law*, 166.

[135] Halebi, *Mevkufat*, 2007, 2:281.

[136] Merginani, *The Hedaya, or Guide; Commentary on the Mussulman Laws*, 1:406–7.

end of the pregnancy. In this way, according to Merginani, men were even held responsible for the possibility of their children's exist.[137] This interpretation of the waiting period leads us to think about the importance of children at different stages of life and therefore in the fetal period.

Theoretically, pregnancy was the same period as the waiting period, *iddet*. The critical issue here is whether there was a difference between the short waiting time with an average of three menstrual periods to prove that she is not pregnant after divorce, and the waiting time until childbirth during pregnancy for the benefit of the fetus. So, the following question is: What was the meaning of maintenance payment for a pregnant woman after divorce? Was it paid for the woman herself, or was childcare intended during the fetal period? To answer such questions, I aim to consider cases related to prenatal childcare and maintenance of pregnancy.

As we explained, the livelihood of a newly divorced woman during her waiting period was the responsibility of her ex-husband, who paid her alimony. However, there were many examples of women who gave up this right to convince their husbands to divorce by *hul'*.[138] What we have to ask is, could a woman demand the maintenance payment back as soon as she finds out about her pregnancy, even if she had already taken the responsibility of her maintenance for the waiting period after the divorce? Did the law separate the situations of "the waiting period to control pregnancy" and "the pregnancy period," taking into account the presence of the fetus?

> *Query: When Hind had gotten divorced by hul from her husband Zeyd by waiving her mehr and nafaka-i iddet; the duration of the waiting (iddet) was not declared. Could Hind reclaim and take the maintenance if the pregnancy occurs?*
>
> *The answer: Yes, if it has been arranged on the condition of three menstruation.* [139]

[137] Merginani, 1:406–7.

[138] The typical form of a 'hul divorce includes the words of "I renounced from my right of the maintenance for my waiting period" see: ÜCR vol. 336 33/A1

[139] Şeyhülislam Ebussuud Efendi, *Şeyhü'l-İslam Ebüssu'ud Efendi fetvaları (Fetava-yı Ebüssuud Efendi)*, 210.

In this fatwa of Ebussuud, it is not clear whether a woman could claim the alimony during pregnancy if she had already waived the alimony for the waiting period without specifying the time. However, it was basically assumed that the waiting period represents three menstrual periods. Besides, the fatwa of Yenişehirli Abdullah Efendi, who was an 18th-century Ottoman grand mufti, *Şeyhülislam*, similarly shows that this right can be claimed again if the waiting period was defined as three menstrual periods.[140] So, according to the Ottoman muftis, the right of these women to demand maintenance for the pregnancy period depended on their statements in the divorce records regarding whether they gave up the waiting period which resulted in the absence of pregnancy.

When it comes to the Ottoman fatwas, we cannot say that the maintenance payment of the pregnancy period was different from the waiting period of the newly divorced women because the pregnancy was already seen as a waiting period for women to remarry, like the three menstrual periods which women waited to prove that they are not pregnant. However, taking into account the Üsküdar court records of *hul'* divorce and alimony claim cases related to pregnant women, a special term was used to describe this payment given to women by their ex-husbands for the period of pregnancy: *nafaka-i haml* (the maintenance for the pregnancy).

3.1.2.1. *Nafaka-i Haml*

Aişe, daughter of Hasan, from *Arakiyeci Elhac Cafer* neighborhood of Üsküdar, came to the Üsküdar court on May 22, 1712, after she learned that she was pregnant after the divorce. She had asked her ex-husband Hasan Beşe, son of Osman, whom she divorced by *hul'* (*zevc-i muhala*), to pay alimony. As mentioned earlier, in *hul'* divorce cases, women often gave up some of their rights, such as alimony for the waiting period to persuade their husbands to divorce them.[141] However, when it was found out that the woman was pregnant by her ex-marriage after *hul'* divorce, she may hold her maintenance right for the pregnancy period unless she already renounced this right

[140] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 131.

[141] Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," 273.

explicitly. In Aişe's case, Aişe found out that she was pregnant from her ex-marriage with Hasan Beşe after her divorce, then she asked her divorced husband to pay alimony, or namely maintenance for pregnancy, until the end of the pregnancy, and the judge ordered the ex-husband Hasan Beşe to pay 4 *akçe* per day.[142]

We do not know the exact agreement between Aişe and Hasan Beşe whether she renounced her maintenance payment of the waiting period totally during their divorce, or not. However, what we can see from this case is that the maintenance payment decision for the pregnancy period was decided not as alimony of the waiting period (*nafaka-i iddet*), but as a maintenance payment until childbirth. Apparently, this was considered something different from the alimony of the waiting period and also from the child's own right of maintenance, *nafaka*, after the birth. Here, in this case, the receiver of the maintenance appears to be the woman herself but was implicitly the fetus in her womb.

In the cases of *hul'* divorce, we can see a clear distinction between the waiting period and the pregnancy period. In the last days of 1737, a woman named Fatima, daughter of Osman, from *Hace Hatun* neighborhood of Üsküdar, waived her right to have alimony for the waiting period (*nafaka-i iddet*) and wanted to divorce Mustafa's son Elhac Feyzullah by *hul'*. However, she stated that while she explicitly waived her right to have alimony for the waiting period, she also gave up her right to have maintenance (*nafaka-i hamlim*) for her pregnancy if pregnancy occurs from this marriage.[143] Similar practices such as giving up both of them at the same time can be seen in some other cases as well. One example is that a woman named Ayşe from Üsküdar, in 1746, waived the alimony of the waiting period in order to divorce her husband Mehmed by *hul'*, and she also waived the maintenance for the pregnancy period if pregnancy occurs.[144] In addition, in some records of *hul'* divorces, for example, alimony for the waiting period was not even mentioned since it was recorded as that these women gave

[142] ÜCR vol. 345 20/B2.

[143] ÜCR vol. 396 10/A2.

[144] ÜCR vol. 415 20/A3.; Erdal Kılıç, "1158-1159 (1745-1746) Tarihli Üsküdar Sicili" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 1997), 73.

up their maintenance rights for their pregnancy periods (*nafaka-i haml*) because it was already known that they were pregnant.[145] Namely both were referred as "*nafaka*", but the separation between alimony for women during the waiting period and maintenance for the pregnancy is clear as they were addressed and applied differently.

Here, I would like to pay special attention to the logic behind why this term was preferred to understand how the pregnancy period and the fetus were perceived in a socio-legal context. What I argue is the court's use of *nafaka-i haml* instead of using *nafaka-i iddet*, which is theoretically the same thing, can be interpreted as a discursive reflection of the special importance given to the fetal period in terms of childcare in legal practice. Depending on the sources of the classical Hanafi-Islamic jurisprudence and Ottoman law, the maintenance of pregnant women was not considered different from the alimony of the waiting period. However, this particular practice at the court can be seen as an awareness of the presence of the fetus in the context of childcare.

Although the alimony of the waiting period was seen to meet the needs of the woman during the waiting period, the target of the maintenance of the pregnant woman may be seen as the fetus, even if it did not create a legal change. However, as a fetus was identified through its physical attachment to the mother, the maintenance of the pregnancy had been for the mother herself and indirectly for the fetus. For example, on June 8, 1712, Aişe, daughter of Kenan from *Hace Hatun* neighborhood of Üsküdar, demanded maintenance from her ex-husband, who divorced her by *talak*, for the period of pregnancy. In the case of *talak* divorce, women could keep all their rights such as *mehr*, *nafaka-i iddet*, because the divorce was made entirely by the man's will. However, when their divorced husbands did not grant these rights, they could sue them and take their rights by the judge's decision. In this case, Aişe, daughter of Kenan, demanded "the maintenance for herself until the end of pregnancy" (*vaz-ı haml edinceye değin nefsim içün*), and the judge stated that the maintenance payment agreed upon should be given to Aişe until the end of the pregnancy.[146]As these examples can be varied from the cases of the Üsküdar court, even if the theoretical meaning of this

[145] ÜCR vol. 383 42/A1.

[146] ÜCR vol. 345 50/A1.

mentioned maintenance was defined as the alimony of the waiting period, in practice it can be said that it was defined as maintenance not for waiting but for the pregnancy.

Nevertheless, neither the Ottoman fatwas nor the Hanafi-Islam jurisprudence specifically described the maintenance payment given during pregnancy as *nafaka-i haml*. But, still, we know that, by Islamic jurisprudential explanation of the waiting period, the purpose of the waiting period is to watch the possibility of pregnancy; in the case of pregnancy, the duration is different from the waiting period, regarding the presence and welfare of the fetus, because the fetus has also become a legal issue. According to Vehbe Zuhayli, one of the contemporary scholars of Sunni-Islamic jurisprudence, the alimony of pregnant women is not specified, since the Hanafi school considers all types of maintenance payments after divorce as obligatory; however, judicial explanations of the Shafi'i and Hanbali schools of Sunni Islam generally emphasized separately that the alimony of the pregnant woman is obligatory. The important thing here is that the maintenance given during pregnancy is described as aiming at the "unborn child", apart from the born child maintenance, since it is cut with the birth.[147] Considering such explanations, it is not surprising to see this concept in findings from different Ottoman court records. For example, Ahmed Fekry Ibrahim, who worked on Child Custody in Islamic law in Ottoman Egyptian context, identifies this pregnancy maintenance payment as part of childcare obligations in their findings from early modern Ottoman Egyptian court records.[148]

In summary, theoretically, the waiting time and the pregnancy period were not differentiated because the waiting period was already considered as pregnancy and vice versa. Although Islamic law interpreted the reason for the waiting period as the protection and interest of the possible child, it could be said that this concept was ambiguous in the Ottoman fatwas. However, in the cases taken from Üsküdar court records, we were able to learn how childcare awareness during pregnancy shapes the

[147] Vehbe Zuhayli, *İslam Fıkhı Ansiklopedisi.*, ed. Hamdi Arslan, trans. Ahmet Efe et al., vol. 10 (İstanbul: Risale Yayınları, 1994), 111–12.

[148] Ibrahim, *Child Custody in Islamic Law*, 150.

discourse and the implementation of the law in a way that protects the child before the fetus is born.

3.1.3. The Separation of the Fetus and the Child

The ambiguous situation of the fetus ends with its birth, and the fetus becomes the child, a legally recognized human being in early modern Ottoman law.[149] After birth, attitudes towards the child differed from the fetus in the form of changing legal rights and responsibilities. As explained, the children had a legal personality even before their birth, and their private nature was recognized by the legal authorities. Therefore, the concept of childhood and awareness of childhood periods can be understood by looking at how the prenatal period differs from the postnatal period in terms of childcare. In early eighteenth-century Ottoman Üsküdar, even though the fetus was considered a social entity with some rights, there was still an obvious distinction between a fetus and a born child.

While the maintenance of the fetus was controlled and protected indirectly, the born child's maintenance was considered directly as the right of the child. For example, on May 15, 1730, Hanife, daughter of Mehmed Çelebi, came to the court to have a divorce with her husband Elhac İbrahim Çelebi by *hul'*. As a pregnant woman, Hanife renounced her right to have alimony for the period of pregnancy and took the responsibility of the maintenance of her expected child from its birth to the age of 7.[150] This separation shows us the distinction between the fetus and the born child because the maintenance given during pregnancy was considered a different responsibility than the born child's maintenance. In Üsküdar court records, we come across similar cases of that pregnant women, or women who mentioned their possible pregnancy had taken the responsibility of their future children's by indicating explicitly.[151] Thus, although the fetus was recognized as a social being, it was identified by its physical bond with its mother rather than as an independent self, like an already born child.

[149] Tucker, *In the House of the Law*, 117.

[150] ÜCR vol. 383 42/A1.

[151] ÜCR vol. 336 34/B1.; vol. 345 56/A2.

Even though it has been thought that the notion of childhood was weakly taken into consideration in the past, the developmental characteristic of childhood had been considered in different stages and conditions. Pregnancy, in early modern Ottoman society, brought about new responsibilities for parents, but, the socio-legal position of children had been effectively constructed and shown itself after the birth as a born and live human being. Hence, the responsibilities and legal definitions had been defined more clearly.

3.2. The Importance of Childcare and Child Development

It would be right to say that in early modern Ottoman society, there was an idea of the fact that children had different needs at different ages. In this context, the parent-child relation played an important role in child development, as it was very important to bring up a child in terms of the nurturing, education, and teaching of religion and social norms in early modern Ottoman society. Therefore, in this part of the chapter, I discuss childhood period in the context of their relations with their parents and parental awareness of children's needs. While, firstly, I bring into question of child custody and parental acts towards their children's welfare, nurturing, religious education and so on, I later discuss child maintenance in the context of socio-economic situations of parents.

As the main discussion in this part of the chapter, I discuss the issue of childcare during "the main childhood stage" from birth to the end of childhood while the importance of child custody and the maintenance of children are the main controversy of this discussion. In this context, I focus on how the notion of childhood affects parental behavior and law practice towards child development.

3.2.1. Parental Acts Towards Child Development

From birth to the moment when the child is able to meet their own needs, a child must be detained and prepared for the adult world with the social capacities and norms in early modern Ottoman society. This period of custody, called *hidane*, was not discussed while the parents were alive and still married, as the parents were considered to be legally bound. When we look at Ottoman court records, we can find the custody issues when the parents divorced, or the parent(s) died. I aim to examine the concepts

of childhood and children's family relations in the context of child custody according to the Ottoman Üsküdar court records at the beginning of the eighteenth century.

The social norms taught to individuals from the beginning of life were crucial for the society to keep the social harmony, so social control was built through these norms that constituted family relations, gender roles, and religious life in early modern Ottoman society. In this context, the notion of childhood shaped the lives of children in the way of educating and making them grown up by adults, which made child-rearing children an essential issue in shaping parental and other family roles. Seyyid Hasan, a dervish in 17th century Istanbul, mentioned, in *Sohbetname*, his attitude towards his minor son as having fun together, taking him around, and taking him to different places where possibly he aimed to teach the world around them.[152] The importance given by parents to raising and educating their children was also evident in the structure of society. For example, in the early eighteenth century, there were an average of 41 foundations-funded children's schools in Üsküdar,[153] which may show us that children were treated sensitively to prepare and educate them to adapt to adult life. From this point of view, family relations and social representation had to be adequately prepared, and therefore the upbringing of children was not a simple matter for the Ottomans, because social norms established childcare and children's needs according to their development.[154] Therefore, I want to focus here on parental actions towards children regarding child development.

[152] Durmaz, "Family, Companions, and Death: Seyyid Hasan Nûrî Efendi's Microcosm (1661-1665)," 57–58.

[153] H. Hüsnü Koyunoğlu, "The Sibyân Mekteps (Primary Schools) And Population in Bilâd-i Selâse (Three Towns: Üsküdar, Galata and Eyüp) In The Early Part Of The 18th Century," *Tarih Dergisi*, no. 60 (2014): 28.

[154] As Giladi's giving reference to Franz Rosenthal's words, understanding the attitudes towards children would enlighten our understanding of society and social relations. Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society*, 1.

3.2.1.1. Child Custody: Maternal Care and The Importance of Bringing Up a Child

Since children's development was evaluated according to different ages, we can see different attitudes towards children in different periods during the sensitive years of childhood. At first sight, children were seen as in need of maternal care, preferably by their biological mothers, or maternal grandmothers. The conditions of maternal custody were based on the gender of the child. Girls were expected to stay with their mothers longer than their brothers to learn about "womanhood," as one of the goals of raising children was to prepare them for the gendered society; also, the boys were expected to be taken from their mothers' custody at an early age by their fathers to learn about "manhood" and public life.[155] Such findings, based on legal definitions of parent and child relation, can enable us to learn how children were put under the custody of their mothers after their parents divorced or their father died. Legal authorities defined motherhood as the best protector of children in healthy conditions in the early modern Ottoman Empire. As Tucker argued, mothers' 'fullness of affection,' as described in legal texts, was seen the ideal for the development and protection of children.[156] This legal perception can be interpreted with the words in the court records that define the custody of the mother as 'being in the bosom and nurturance of the mother.'

According to Hanafi-Islamic jurisprudence, the custody of the child was naturally given to the mother after the parents had divorced. If there was no mother or if the mother was not eligible to take custody of the child, women especially from maternal relatives were selected for taking custody of the child.[157] The socio-legal role of women was seen as special educators for children, and mothers were considered the most suitable ones for their children's raising by legal authorities. The legal construction of childcare with a belief in maternal love was not a phenomenon specific

[155] Merginani, *The Hedaya, or Guide; Commentary on the Mussulman Laws*, 1:388.

[156] Judith E. Tucker, "The Fullness of Affection: Mothering in the Islamic Law of Ottoman Syria and Palestine," in *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era*, ed. Madeline C. Zilfi (Leiden; New York: Brill, 1997), 232–53.

[157] Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, 1968, 2:428.

to Islamic societies or early modern Ottoman society. According to Giulia Calvi's work on early modern Tuscany, even if mothers were not allowed to be guardians of their children after the death of their husbands, the children were entrusted to mothers with their 'gratuitous charity and affection;' thus, the best interests of the children were protected by their "mothers' love" which had been socially, historically and legally constructed.[158]

Besides the "expected emotional bond" between mothers and their children, the fatwa of 18th century grand mufti Yenişehirli Abdullah Efendi clearly explains what maternal custody meant in terms of children's needs:

> *Query: Hind is holding the custody of her son, engendered by her divorced husband, Zeyd, by right. Zeyd claims to take the child by saying "the aforesaid child reached his age of 7 and the custody has already ended" but Hind opposes by saying "the child is only 6". What should the judgment be?*
>
> *The answer: The judge looks at the child; if the child is able to eat, drink and dress by self, the custody may end so that Zeyd could take, but, if not, Hind would keep the child.* [159]

In this fatwa, we could see what a mother had to teach until the end of custody to prepare her child to become a self-sufficient adult. The role of motherhood in children's lives was a concrete example of how social relations were defined as the fact that the private life of women prepared the public life of men. The social construction of gender can be read through how parent and child relations were defined and how relations were established between children and their parents, mothers, and fathers.[160]

As Giladi argued, early modern Islamic cultures viewed motherhood as a social issue, not just as belonging to women's culture, because women were repressed by the social norms of the maternal role in Islamic societies.[161] Seen from the perspective of this

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[158] Giulia Calvi, "Widows, the State and the Guardianship of Children in Early Modern Tuscany," in *Widowhood in Medieval and Early Modern Europe*, ed. Sandra Cavallo and Lyndan Warner (New York: Longman, 1999), 212–13.

[159] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 129.

[160] Patricia Crawford, *Parents of Poor Children in England 1580-1800* (Oxford: Oxford University Press, 2010), 13.

[161] Giladi, *Muslim Midwives*, 24–25.

social meaning of the female body, women were not alone in the private sphere because the private culture of women was controlled by the male-dominated society, which defined women with maternal roles.[162] The line between femininity and motherhood was so intertwined that female culture was predominantly shaped through the role of the motherhood, and therefore, the socially and historically constructed idea of 'being a mother is one of the essential criteria for being a woman' has become the most obvious and universal way of oppressing women.[163] For example, Peirce argues that in the early modern Ottoman Aintab, married women without children tried to find ways to "add motherhood role to their identity" because motherhood as a parental role was seen as vital in completing women's social identity.[164] The fact that women performed this gendered "motherhood" role given in a socio-legal sense not in accordance with the law but as the behavior mobilized by the law, provided the reconstruction of gender roles through the role of parenthood.[165] From the perspective of gender performativity, childcare practices that were accepted and performed within the framework of the motherhood role of "female culture" offer an insight into the process of reconstruction of gender roles through parental behaviors such as motherhood and fatherhood in early modern Ottoman society.

This interpretation raises the question of how mothers or fathers socially perceived their roles as defined by the law, since, for example, it cannot be argued that the upbringing of children by their mothers was simply a legal matter. Apparently, this question needs a broader answer to understand the role of parenting in early modern Ottoman society, but we can still study the socio-legal status of childhood by analyzing the relation between parents and their children. Meriwether argues that a strong

[162] For a critical research on the gendered separation between private and public spheres in early modern Ottoman society see: Gülşen Yakar, "Individual and Community, Public and Private: The Case of a 17th-Century Istanbulite Dervish and His Diary" (Unpublished MA thesis, Middle East Technical University, Social Science Institute., 2019).

[163] Paula Nicolson, "Motherhood and Women's Lives," in *Introducing Women's Studies*, ed. Diane Richardson and Victoria Robinson (London: Macmillan, 1997), 202.

[164] Peirce, *Morality Tales*, 149–50.

[165] Judith Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993), 12–13.

emotional bond between parents and children was a norm in early modern Ottoman Aleppo.[166] So, based on this interpretation, what can be said about whether the legal responsibilities of parenting give people social responsibilities and social identities? In this context, for example, by considering the decisions made by mothers about their children, it may be possible to assess whether the legally established a "compassionate motherhood" role did establish a social maternal identity.

3.2.1.1.1. The Struggle of Mothers for Their Children

Even if legal authorities defined mothers as the most suitable caregivers for their children, a mother's legal right to custody of her child could be restricted in different circumstances; one of them was to remarry with someone stranger to children. A stranger to the child meant someone who was not a close relative of the child, such as a paternal uncle.[167] In such a case, the right of custody would pass to the maternal grandmother, aunt, or other relatives, depending on the conditions and the decision of the judge. For example, on May 12, 1712, at the court of Üsküdar, maternal grandmother Fatıma of Fatıma the minor requested child maintenance payment for her granddaughter from the child's father, Ömer Beğ. The reason for this request was that grandmother Fatıma rightfully had taken the custody of her granddaughter because the child's mother, Aişe, married someone stranger to the child (*zevc-i ecnebiyye tezevvüc etmekle*).[168] According to judicial orders, if a mother remarries to someone who is stranger to her children, the mother's custody right would be no longer valid. Similar cases could be witnessed in different Ottoman cities, just like the case of maternal grandmother Emine who had taken the custody of her granddaughter Mine the minor

[166] Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," 223.

[167] "Stranger to the children" means having no kin relation (like uncle and nephew/niece) between children and the man whom the mother married to. See; Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 129.

[168] ÜCR vol. 345 13/B3; There are similar examples of how maternal grandmothers took their grandchildren's custody after the mother's remarriage: ÜCR vol. 383 7/B3

whose mother Fatıma was married someone else after divorcing the child's father Osman in 1718 Ayıntab.[169]

This understanding that the remarriage of the mother would result in the loss of custody of her children was acknowledged not only by early modern Ottoman law but also by other early modern European laws. As Calvi argues that mothers in early modern Tuscany were seen as dead mother for their children if they remarry someone else after the death of their husbands; thus, they were not allowed to take custody of their children after they remarried.[170] The logic behind this perception was that children were considered as belonging to their fathers' family and not allowed to live in a new family of a "stranger male". Because a foreign man was seen as inferior to the children's paternal lineage, the children were put under the custody of other eligible relatives, such as maternal grandmothers, in order to preserve their relations with their paternal family.

However, in such a situation, the relation between the child and the mother may have been ignored. The relationship between mother and child, legally defined as the "bond of love and affection," had to exist as a parent-child relationship on a social dimension beyond legal definitions. To understand this relationship, the decisions made by women in court about the custody of their children should be examined in the context of their social role as mothers. The main issue here is how women struggle against legal norms and patriarchal norms for their children, even while trying to preserve their "motherhood role" constructed by the patriarchal society.[171] We know that the legal position of children in their families can be seen within certain limits that may limit parental behavior and protect the child's socio-legal position. These boundaries required mothers to make some sacrifices in order not to lose custody of their children. For example, Marcus argued that women in eighteenth-century Ottoman Aleppo

[169] Elif Yılmaz, "68 Numaralı Ayıntâb Şer'îyye Sicili'nin Transkripsiyonu ve Değerlendirilmesi (H. 1129-1130 / M. 1717-1718 s. 1-178)" (Unpublished MA thesis, Gaziantep, Gaziantep Üniversitesi Sosyal Bilimler Fakültesi, 2020), 85–86.

[170] Calvi, "Widows, the State and the Guardianship of Children in Early Modern Tuscany," 213.

[171] Tucker, "The Fullness of Affection: Mothering in the Islamic Law of Ottoman Syria and Palestine," 233.

avoided remarrying after divorce for not to lose the custody of their children.[172] However, in the context of early modern Ottoman law, there were also some strategies for women to keep custody of their children when they remarried, even if it required carrying some extra-economic responsibilities. Some research on early modern Ottoman society shows that agreements allowing women to keep custody of their children even after remarriage were not uncommon. The findings of Ibrahim's research on early modern Ottoman Egypt also show us that women were able to retain custody of their children even after remarriage, by taking some financial responsibilities such as maintenance of their children.[173]

On February 8, 1738, a woman named Zeyneb from the neighborhood of *Kefçe* in Üsküdar, and her divorced husband Süleyman Beşe enregistered an agreement on the payment and custody of their daughters. Zeyneb stated that she received the maintenance payment for their daughters from the father Süleyman Beşe from the day they divorced until the day when this case was recorded. The reason for the lawsuit was that Zaynab wished to remarry someone else who is stranger to her children, but she also wanted to keep custody of her daughters. However, under normal circumstances, Zeyneb would lose the custody of her daughters, Habibe and Hadice. As a matter of fact, the mother who wanted to protect the custody of her daughters came to the court to make an agreement with the father of her daughters, Süleyman Beşe. Zeyneb would continue to hold custody of her daughters by making an agreement not to demand anything from her daughters' father as child maintenance and by accepting to provide it by herself for her children from this day onwards.[174] This kind of act of taking responsibility to protect custody of their daughters may be motivated by social norms of the maternal role or other reasons. So, now, we have to ask why and how she made such a deal with her ex-husband.

[172] Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1992), 207.

[173] Ibrahim, *Child Custody in Islamic Law*, 115.

[174] ÜCR vol. 396 19/B1.

It is evident that mothers in early eighteenth-century Üsküdar did not neglect the welfare of their children. The act of mother Zeyneb for retaining custody of her children by taking some responsibilities was not unexpected in early modern Ottoman society. Aişe, from Galata in 1760, wanted to remarry someone else after she divorced, and her daughter Emine's father Mustafa had taken custody of Emine the minor rightfully. However, Aişe, who wanted to keep custody of her daughter even after remarrying, made an agreement with her daughter Emine's father to cover her child's maintenance from her own property for retaking the custody.[175] Another similar example from the late seventeenth-century Ottoman Üsküdar may be an indication that this practice was an established act of motherhood aimed at maintaining custody of their children after remarrying with similar practices in different centuries. On October 13, 1688, a woman named Aişe from the neighborhood of *Kefçe* in Üsküdar, agreed with her ex-husband Ramazan, who held the custody of her son Hasan and daughter Emine, to pay their maintenance in order to take custody of their children even after she remarried.[176] Indeed, what the children meant for their mothers may have been that the children would be considered worthy of taking some extra-economic responsibilities so that they would not be deprived of maternal care.

Speaking of a mother's being aware of her children's needs for their development and treatment, we see different cases of women being willing to take custody of their children, even if it causes some extra-economic responsibilities. As a part of paternal rights over the lives of children during maternal custody, another issue was that a father, as the guardian of his child, could prevent and control his child from traveling to a place far from himself.[177] Therefore, in this context, women who had custody of their children will be restricted from traveling with their children without their fathers' permission. These obligations – which can be interpreted as the signs of the patriarchal authority over women – limited mothers' parental actions even when they had their

[175] Resul Attila, "İstanbul Galata Kadılığı 353 Numaralı Şer'iyye Sicili" (Unpublished MA thesis, İstanbul, Marmara University, Institute of Turkic Studies, 1994), 92.; Araz, *Osmanli Toplumunda Cocuk Olmak*, 58–59.

[176] ÜCR vol. 303 1/B2.

[177] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 130.

own maternal rights given by law. This situation was an effect of the patriarchal-patrilineal social structure that tried to control the women's culture that the father was not involved in. In Giladi's interpretation, the practices such as child-rearing and childbearing belonged to female culture, which came out of the control of men, were causing men to see this culture as a "mystical phenomenon" that threatens their superiority in early modern Islamic cultures. Therefore, the Islamic culture constituted a patriarchal oppression culture in which women felt male domination through their "female roles."[178] When we think about this interpretation, concrete obstacles such as restricting the travel of mothers who hold child custody can be considered as male-dominated society's methods of intervening in an area where men would not want to be isolated.

Nonetheless, motherhood, which was legally constructed to breastfeed, educate and raise children until adolescence, was performed beyond the law in Üsküdar at the beginning of the eighteenth century. On May 12, 1731, a woman named Fatıma, daughter of Halil, from *Evliya Hoca* neighborhood of Üsküdar, came to the court and registered the agreement with Hasan, son of Abdullah, the ex-husband of her daughter Ümmü Gülsüm. According to the agreement, Ümmü Gülsüm, the mother of two children İsmail and Aişe, wanted to go somewhere else (*diyar-ı aher*) with her daughter Aişe, while her son İsmail would stay with his maternal grandmother aforesaid Fatıma. In this case, Ümmü Gülsüm agreed to pay for her daughter's maintenance to persuade her daughter's father to allow her request to keep custody of her daughter on the traveling; his son's maintenance would have to be borne by the father because his maternal grandmother would legally protect Ismail's custody.[179] In this sense, the agreement between these three adults shows us the fundamental dynamics of how family relations were built through childcare practices and the notion of childhood.

We do not know the exact ages of these two children, but because they were described as *sagir*, it can be assumed that they were on average under 7 years old. We also do

[178] Giladi, *Muslim Midwives*, 18–23.

[179] ÜCR vol. 383 44/A3.

not know exactly why the mother chose to look after her daughter instead of her son, but the actions of these two mothers, Ümmü Gülsüm and Zeynep, could be interpreted as a reflection of the dynamics of the women's culture where mothers were expected to teach their daughters femininity as much as they could. Therefore, in the case of these two mothers, Zeyneb and Ümmü Gülsüm, they made peace agreements (*sulh*)[180] with their ex-husbands and enregistered them to protect the custody of their children.

What can we say about the concept of childhood and the socio-legal status of children on these issues? We can interpret that the legal system had authorized the judge to have such pragmatic decisions that seemed to leave the child's well-being to the trust of their parents, allowing mothers, who were the child's "best caregivers," to maintain custody of their children. Therefore, the legal authority did not interfere with the agreement between the mother and father; for example, as in the mother Zeyneb's case, the judge did not question whether her new husband was a stranger to the children. Even if it seems we do not have any fatwa of early modern Ottoman grand muftis that allows the children to live with the mother's new husband, who is stranger to the children, there was still some legal opinions of local muftis that women could be left their mothers who remarried with a stranger in the case that there was no one suitable for custody.[181] Besides, the judge did not object to the mother's traveling to far from the city where the father was, taking her child with her, as in the mother Ümmü Gülsüm's case. As a result, the legal authority left these children to their 'best caregivers' and affirmed the idea of the importance of raising these children by their mothers.[182]

Zeyneb and Ümmü Gülsüm had the chance to protect custody of their children by negotiating with their ex-husbands. Indeed, just as Zilfi interprets the *hul'* divorce as

[180] Sulh was a social and legal contract between two parties, which created a mutual advantage and was seen commonly in the eighteenth-century Ottoman Üsküdar court. See: Işik Tamdoğan, "'Sulh' and the 18th Century Ottoman Courts of Üsküdar and Adana," *Islamic Law and Society* 15, no. 1 (2008): 55–83.

[181] Tucker, "The Fullness of Affection: Mothering in the Islamic Law of Ottoman Syria and Palestine," 232.

[182] Tucker, 240–41.

an example of "bargaining with patriarchy," Kandiyoti's insightful conceptualization,[183] the critical point here is the way that mothers bargained with the patriarchal society to protect their children's development. In this context, we can say the fact that the economic responsibility of children could be used as a bargaining material opened up space for women to fulfill their maternal roles, which were used as oppression against women in the male society, by giving them a chance to keep their "motherhood roles" according to their will.

In the context of Islamic law in practice, it is seen that by making agreements between parents, such issues were resolved differently than regular rules. According to Ibrahim's work on pre-modern Islamic juristic discourse, in early modern Ottoman Egypt, it was not uncommon for mothers to conclude such agreements to retain custody of their children even in cases of remarriage or travel. Moreover, despite "the universal rule of Islam" that normally requires such cases to end with the custody of the children being taken by someone other than their mother, it was not unpredictable for the judge to accept such agreements.[184] Ibrahim thinks that the judge's decision was made to protect "the best interests of the child," sometimes based on the idea that the family's decision was best for the children, or sometimes for other reasons specific to the case.[185] Apparently, when it comes to agreements between fathers and mothers, there was flexibility in the rule of law because the mother's demands were probably not neglected by the legal authorities to protect the best interests of the children. Indeed, this interaction between the legal authority and social agents may have demonstrated how legal rules were applied according to social needs and circumstances to protect the interests of children and parents as a part of social welfare.

Besides the juristic attitudes towards these cases, the reasons for these parental actions may still appear unclear. However, some contextual explanations or comments can

[183] Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," 295.; Bargaining with patriarchal norms and rules by women in the Middle East context has been discussed by Deniz Kandiyoti, "Bargaining with Patriarchy," *Gender and Society* 2, no. 3 (1988): 274–90.

[184] Ahmed Fekry Ibrahim, "The Best Interests of the Child in Pre-Modern Islamic Juristic Discourse and Practice," *The American Journal of Comparative Law* 63, no. 4 (Fall 2015): 886–90.

[185] Ibrahim, 891.

help us understand these behaviors in the context of the parent-child relationship. Firstly, it could be interpreted that the reason for fathers' acceptance of such agreements may have been that it was economically and socially beneficial for fathers, as they would not need to be responsible for the maintenance of their children. For example, father Süleyman Beşe would not be responsible for the upbringing expenses of his two daughters. I would also argue that the gender of these children may have been influential in the acceptance of these agreements by the father and the judge, given the belief that girls should remain in maternal custody longer than boys.

On the other hand, it should also be questioned why these mothers had taken responsibility for all the expenses of their daughters. Can we talk about a motherly love that seemed to her children that she wants to raise them in the best way possible? Here, based on the limited evidence from these court records, we can interpret these two mothers, Zeyneb and Ümmü Gülsüm, as social agents who tried to maintain custody of their children, watched their children's well-being and confirmed that they can be the best caregivers for their children as envisaged in the socio-legal context. Therefore, this ideal relationship defined by legal authorities may have been embraced by mothers as a part of women's culture. Women's performing such maternal roles beyond the legal rules, even by taking extra responsibilities, of course, may not be seen independent from the reconstruction of gender through parental roles, as we discussed before. As was common in early modern times, girls had to be prepared by their mothers for the adult world as a woman; it could be thought that the social construction of gender effectively shaped such a relationship between mother and daughter in a social sense.

We may still not have enough sources to claim the existence of the emotional bond between parent and child, but still, we can see a child's social position in such a situation of a mother's taking some extra responsibility for keeping custody. Of course, besides a parent's desire to keep their children with them for emotional reasons, many motivations, such as economic conditions or child labor, can be the reason for such actions. Thus, as Crawford argues, even if such records do not allow us to interpret the emotional bond between parents and children, it is still important to consider parental

behavior in understanding their feelings for children.[186] In interpreting this way, the socioeconomic status of the parents, the age and gender of the children should also be taken into account, which is why we need to understand every aspect of these cases.

As a matter of fact, as the main focus of this thesis, it is to say that childcare was not only a legal issue but also a concern of society in terms of family relations in early eighteenth-century Ottoman Üsküdar. The fact that mothers gave importance to the development of their children especially in terms of their gender roles, could be seen as women's acceptance and even protection of their motherhood roles by taking extra responsibilities. As I said earlier, the parenting side of this topic needs a broader analysis to understand how mothers struggle to maintain their social roles by taking extra social and economic responsibilities. But, still, by these findings, we can now say that awareness of the periodic development of children effectively shaped child-rearing practices and parental behaviors in early eighteenth-century Üsküdar.

3.2.1.2. Mental Maturity: The Responsibility of Muslim Fathers

Awareness of child development was not limited to learning gender roles or being nurtured by their mothers. We know that childhood was the preparation process for the adult world, which was dominated by the priority of Muslim male identity in early modern Ottoman society. Therefore, children were not neglected by their parents and society in their upbringing because different stages in which their mental, physical and social capabilities developed shaped their socio-legal position. As I explained in the previous chapter when I mention the ages of children in the early modern Ottoman Empire, the development of children's mental capacities to teach different dynamics of society such as religion was taken into serious consideration.

When we talk about the importance of maternal care on a legal basis, we know that even if the mother was Christian and the father was Muslim, which made the children Muslim because they belong to the father's social identity, mothers may not be denied the custody rights of their children without a valid reason. A Christian mother was still seen as the best protector of her Muslim child because it was thought that their mothers

[186] Crawford, *Parents of Poor Children in England 1580-1800,* 18.

could be the best in teaching children basic living needs.[187] But, what I want to focus on here is the fact that the custody right of a Christian mother could be taken when her child's mental ability to learn religious practices was sufficiently mature. This is an important issue for us to understand the awareness that children may have different dimensions of mental development at different ages in early modern Ottoman society. According to Giladi, it is theoretically accepted by Islamic law that the capacity of discernment with the understanding of religion developed in early ages.[188]

On June 12, 1731, in Üsküdar, a man named Ahmed Bese, who was converted to Islam 4 years before the day when the case was recorded, had taken custody of his son Ibrahim from his Christian wife Hugya(?). Ahmed Beşe stated:

> *… 'I have honored by the honor of Islam four years ago, and my wife aforesaid Hugya [a Christian] returned and delivered my son, hereby, present at the court, İbrahim the minor, who was engendered from my bed and borne by my wife aforesaid Hugya, to me. And I have accepted and taken…'…*[189]

According to this record, Ahmed Beşe as the father of İbrahim the minor had taken his son from his wife, Hugya. Even though it was not explained why the father had taken custody of his son from the mother, the possible reason may be that the child was supposed to be raised as a Muslim by the Muslim father and should be prevented from learning Christianity from the Christian mother. One another vital issue of this case is the fact that the parents of the child seem to be still married, we know this because he referred to her as "my wife" (*zevcem*), and also she was described at the record as "his wife" (*zevcesi*). Even though we do not know exactly, it could be assumed that these parents did not live together; thus, the father may have wanted to take his son from the mother while the son was still considered as a child. Therefore, even if a Christian mother would retain custody of her child until the child had reached a certain maturity to understand the religious world, the Muslim father could have the right and the

[187] Merginani, *The Hedaya, or Guide; Commentary on the Mussulman Laws*, 1:389–90.

[188] Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society*, 52–54.

[189] ÜCR vol. 383 46/A3.

responsibility to take custody of the child from the Christian mother at a certain age of the child, by not regarding the parents' marital status.

> *Query: While Hind the Jew is holding the custody of her son Amr the minor, engendered from her divorced husband Zeyd the Muslim, the child reaches his age of 7, and he knows Islam is the source of salvation by being able to understand religion. Zeyd is missing, and the child has no Muslim relative. By the concern of the possibility of rejecting the religion, the judge orders the child to stay with Bekir the Muslim from the good ones. Could Bekir take the child from Hind, and bring up him?*
>
> *The answer: Yes.*[190]

This fatwa of Yenişehirli Abdullah Efendi shows how important children's ability to understand religion was not only for the family but also for the society. By law, society was expected to preserve children's religious education and watch children's mental development. According to Islamic cultures, approximately the age of six or seven, that is, the age of *tamyiz*, was considered as the child reaching the ability to receive education especially religious education.[191] This case about father Ahmed Beşe taking his son from the mother shows that childhood development was not neglected by parents in practice as well, and that child development was not independent of social norms in early eighteenth-century Üsküdar. Also, Ginio's research on the court's acceptance of children's conversion to Islam shows that the mental development of children was not neglected by legal authorities.[192] Ginio argues "the significance accorded to reaching the age of discernment entails a legal acknowledgement of several stages of childhood, each of which displays different characteristics and is assigned a different legal status."[193] This means that the awareness of children's mental development caused them to be watched by parents to teach them the religious norms because childhood was considered to involve different developmental stages, with different characteristics and legal status.

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[190] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 128.

[191] Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society*, 53–54.

[192] Eyal Ginio, "Childhood, Mental Capacity and Conversion to Islam in the Ottoman State," *Byzantine and Modem Greek Studies*, no. 25 (2001): 104–10.

[193] Ginio, 100.

3.2.2. Child Maintenance: Paternal Support, Poverty, and the Welfare of Children

In this part of the chapter, I discuss the importance of meeting children's material needs and costs for living in terms of poverty and parental responsibilities. As we discussed, the issue of child maintenance payment was one of the most common discussion topics in childcare, as an economic burden for fathers, and as a tool to bargain with patriarchy to create strategies against male domination for women at the beginning of the 18th century in the framework of the spatial context in question. In *hul'* divorce cases, it was common among women to take on extra financial responsibilities for their children's maintenance to persuade their husbands to divorce, or to keep custody of their children in different situations.

> *I take the responsibility of paying the maintenance of my son İsmail the minor, who was engendered from aforesaid* [male]*'s bed* [sic.] *and borne by me, from my own property until his age of seven*[194]

This form can be found in different records of *'hul* divorces.[195] Although child maintenance was the father's responsibility that was not expected to be transferred to someone else, it was legally approved and recorded by deeds that women as mothers took this responsibility in different situations.

As we discussed before, in a society where the divorce decision was under male control, women were bargaining with patriarchal rules by taking extra financial responsibilities or giving up some of their rights. Women would see child maintenance as part of this bargain and would not hesitate to take this responsibility. What I want to focus on here is how men perceived child maintenance payments in a socio-economic context and how paternal roles have an impact on this responsibility. From this point of view, we can ask how fathers, who gave up the financial responsibility of their children and accepted their wives' wishes, perceived their relationship with their children and their social roles of fatherhood. It is possible to say that the socio-legal construct of the relationship between fathers and their children was based on the

[194] ÜCR vol. 336 13/B2.

[195] ÜCR vol. 336 21/B1; 29/A2; 29/B3.; vol. 345 30/A2; 37/A3.; vol. 396 1/B1.

material relationship and the authoritarian role of the father. Or, it was just advantageous for men to retain legal guardianship of their children by not carrying any financial burden when the mother had taken on responsibilities. Still, it may be biased to assume that fathers wait at the first opportunity to be relieved of their children's responsibilities. Hence, it should be answered by focusing on how the relationship between fathers and their children was established, whether children were more than a burden for men, or not.

> *Rukiye daughter of Mehmed, resident of the neighborhood of Reis in the town of Üsküdar, and whose personality has been approved by the statement of those named İsmail son of Abdullah and Mehmed son of Ahmed, came to the court and sued against her ex-husband Osman Beğ, son of Abdulbaki. She expressed herself and said: "When aforesaid Osman was my husband before now, we did not get along, and I requested divorce by hul'. We divorced by hul' in the conditions of that I accepted to renounce my delayed dowry (mehr-i mueccel), my right of the maintenance for my waiting period, my right of residence (me'ûnet-i sükna), and I accepted to meet the maintenance of my daughter named Zeyneb the minor* [female, *sagire*], *who was engendered from aforesaid* [male]*'s bed* [sic.] *and borne by me, and who is now in my protection* [lit. bosom - *hucr*] *and nurturance under my custody (hidane) by right until her age of nine. But, due to the fact that I am still poor and needy, and due to that aforesaid minor* [female] *needs maintenance immediately, my request is that the appropriate amount by the aspect of sharia for maintenance (nafaka) and guise money to be decided and to be offered for custody." The situation of aforesaid Rukiye has been approved by those Muslims recorded at the supplementary, and besides, aforesaid Osman Beğ has acknowledged this. Then, the judge of the signature, pride of the learned, his highness, has approved that it is rightful to decide the maintenance for the aforesaid minor* [female]. *And he decided six akçes per day from the current for the amount of maintenance and guise money for the aforesaid minor* [female]. *The aforesaid woman Rukiye is allowed to spend and consume the mentioned amount for the aforesaid minor; and, in case of need, to borrow by the end to pay back to his father aforesaid Osman Beğ. It is recorded as it is and as it is requested.*
>
> *1150.*[196]

In this case, the mother agreed to pay her child's maintenance before and not demand anything from her child's father, as many other mothers did for having a *hul'* divorce. However, she would not be able to afford her child's maintenance later due to her poverty situation and she asked her ex-husband for the child's maintenance as the

[196] ÜCR vol. 396 3/A1.

father of the child. Could there be a chance for the father to deny such a responsibility that he had been previously "freed"?

Zilfi comments on this issue as that the law protected the welfare of children without regarding the agreement of *hul'* that was done before.[197] This means that the father may not refuse to take this responsibility of child maintenance, claiming that the mother had agreed to receive in return for having *hul'*. Therefore, the father was obligated to pay for the child's maintenance, as the mother could not afford it due to poverty and the child's maintenance had to be met in some way. In this case, however, the father's responsibility for child maintenance payment depended on the specific conditions of the mother's poverty and the father's acceptance. Can we say that the father did not object so as not to deprive his children of his vital needs? Even if legal instructions would not allow children to be left without maintenance, the father's acceptance without an objection may be interpreted as the effect of the social role of fatherhood as the guardian and provider of his children.

However, it does not seem possible to make a comprehensive comment on this issue, because otherwise decisions may be made in such cases but where poverty was not an issue. For example, on October 27, 1747, in Üsküdar, a woman named Hüsna, as the representative of her daughter Safiyye, demanded maintenance for the newborn child Ali from the child's father Molla Ali, who divorced the child's mother Safiyye while she was pregnant. But, Molla Ali objected to this demand with a deed showing that Safiyye had already accepted in exchange for *hul'* divorce that she would meet the maintenance of the child to be born until the age of 7 if it is a boy, until the age of 9 if it is a girl. Based on this, the judge rejected Hüsna's request and did not charge Molla Ali for his child's maintenance.[198] The possible reason why the judge did not accept the mother's request was that the mother could not provide a valid reason, such as poverty. Thus, we could see the essentialness of the poverty situation for the

[197] Zilfi, "'We Don't Get Along': Women and Hul Divorce in the Eighteenth Century," 288.

[198] Deniz Akkaya, "Üsküdar Kadılığı 420 Numaralı Şer'iyye Sicili Defteri 1159-1160/1747-1748" (Unpublished MA thesis, İstanbul, Marmara University, Institute of Turkic Studies, 1999), 163–64.

invalidation of previous agreements made in the *hul'* divorces and for men to accept this responsibility back again.

Of course, the legal authority did not also neglect fathers' ability to provide their children with maintenance payment, so their acceptance and financial situation have been taken into account in decision-making processes regarding child maintenance. The main condition for fathers to be held responsible for the maintenance payment of their children was that the child had no property and needed financial support.[199] Besides, if the father was unable to afford this maintenance, some other relatives (primarily paternal ones) of the child, such as grandfathers, could be given responsibility for that.[200]

In 1738 Üsküdar, father Abdulbaki requested a reduction in the amount of maintenance ordered to be paid to his child after his divorce, as his financial situation did not allow him to provide this maintenance payment. After his poverty was proven by the testimonies of other Muslims in the neighborhood, the judge reduced the amount of maintenance which was 8 *akçe* to 4 *akçe* per day.[201] Poverty was an important social problem that shaped people's lives and relations in early modern times. Another example of how poverty affected such payment issues after divorce is the fact that, in 1741 Üsküdar, Esseyyid Halil asked for permission to delay his debts – of the delayed dowry (*mehr-i müeccel*) and alimony for the waiting period (*nafaka-i iddet*) – that he had to pay to his ex-wife Rukiye, because he was not able to pay them at once due to his economic situation. In this case, the judge allowed the man to make an installment plan for paying his debts by considering his condition of poverty.[202] The legal authorities and the society did not neglect poverty and tried to create arrangements for those who suffered from poverty, but still, in the context of the importance of children's need for maintenance, the regulations had protected the best interest of children. As

[199] Halebi, *Mevkufat*, 2007, 2:266.

[200] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 135.

[201] ÜCR vol. 396 28/A1.

[202] ÜCR vol. 402 29/B2.; Hale Kumdakcı, "402 Nolu Üsküdar Şer'iyye Sicil Defterinin Transkripsiyon ve Değerlendirmesi (H. 1153- 54)" (Unpublished MA thesis, Marmara University, Institute of Turkic Studies, 2009), 114–15.

father Abdulbaki's case demonstrated, the maintenance of the child must be paid as much as the father could, so that the child would not be left destitute.

What would happen if a father had no possibility of paying maintenance for his children, or if a father disappeared without leaving maintenance for his children? As described by introducing *nafaka*, (Chapter 2.2.2.) in such cases, the judge may oblige other paternal relatives, such as grandparents or uncles, to provide it. For example, on May 13, 1730, a mother named Aişe, from *Hasan Ağa* neighborhood of Üsküdar, confirmed with a deed that she had received maintenance for her children from her missing husband's father. In this record, the paternal grandfather, Elhac Ismail, provided maintenance payments to his grandson Ali the minor and his granddaughter Ümmü Gülsüm the minor due to the disappearance of his son Elhac Mehmed, the father of the children, without leaving maintenance for his children.[203]

Consequently, child maintenance was taken seriously, and children were not allowed to be deprived of any financial support if they did not own property in Üsküdar at the beginning of the eighteenth-century. This kind of perception of childhood made children to be seen as needy and dependent, which in early eighteenth-century Ottoman Üsküdar, as elsewhere in the empire, created responsibilities for parents, relatives, and even society. This fragile socio-legal position of the children made it necessary to protect them in any case because they had no chance to live without help.

3.3. Chapter Conclusion: For the Best Interest of Children

Although ages were rarely recorded at the court, the notion that childhood has different stages in itself shaped the judge's decision in the cases related to children and childcare. In this chapter, we saw that the judge and parents considered the special nature and needs of children. Judicial decisions and parental attitudes towards children were shaped by the peculiar nature of children from prenatal to the end of childhood. As discussed in the first part of this chapter, even the possibility of a child's existence was protected by the judicial authorities with different motivations. In such a male-

[203] ÜCR vol. 383 7/A1.

dominated society, the paternal lineage of children was preserved by controlling women's lives and giving financial responsibilities to men.

This chapter showed how individual identities were reconstrued by their maternal and paternal roles concerning childcare. Therefore, understanding the meaning of childcare helped us to discuss how the social norms of motherhood and fatherhood influenced individuals' decisions towards their children's lives. In the socio-legal context of early eighteenth-century Üsküdar, while the legal rules regarding childcare were influential in the construction of parental identities, individuals' own wishes, possibly shaped by the social norms of parental identities, played an important role in the decision-making processes at the court. Thus, the main point focused in the discussion was the influence of the notion of childhood in the court decision-making process in childcare cases.

Early modern Islamic law, and thus the Ottoman legal system, was open to making contextual decisions to protect the best interests of children, and the demands of the parents at court were tried to be met by agreement of all parties. Although no decisions had been made against Islamic judicial principles and fatwas, the court was open to different strategies and agreements to protect the interests of the child within the boundaries of Islamic jurisprudence. Therefore, in the case of peace agreements concluded between parents for the lives of their children, there was a compromise between social subjects and legal authorities, as the judge accepted these agreements on the basis the idea of the fact that family may have been the best to decide for children. The findings of that Ottoman law authorities, which we discussed in this section, applied Islamic law in different periods and places, in childcare cases, by considering the best interests of children, may be interpreted as the existence of a common understanding of childhood in early modern Ottoman law.

In addition to this interpretation of the relation between law and society, this section also sheds light on the socio-legal status of children in Ottoman Üsküdar in the early eighteenth-century in the context of seeing children as adults of the future society. By the fact that their care and relations with others were shaped by legal authorities and social norms, children were originally brought up for the "ideal society." Thus, parental roles and children’s relations with others were mainly aimed at preserving social roles; here, the reconstruction of individual identity in society in terms of gender

and religion was an affective dimension of childcare. This interpretation actually shows us that the perception that children should be raised in the best way had somehow aimed at sustaining the society in the best way, rather than just targeting the best interest of children. Educating and raising children was not only about the importance of children but also about maintaining social cohesion.

To summarize the main topic of the chapter on the importance given to parental care regarding child development and needs in a socio-legal context, it would not be wrong to argue that the development of children at different stages was carefully watched to shape their social roles. Thus, this discussion we take in the context of early eighteenth-century Üsküdar shows us the existence of an established notion of childhood with a detailed awareness of child development, taking into account the unique nature of children in early modern Ottoman society.

CHAPTER 4.

REACHING PUBERTY: AFTER THE CHILDHOOD IN EARLY EIGHTEENTH-CENTURY ÜSKÜDAR

After childhood is mainly discussed in terms of childcare and parental relations, it is of great importance to understand how childhood ended and how adulthood began in Ottoman Üsküdar at the beginning of the eighteenth century. In this section, we will discuss the problem of adolescence and the difference between childhood and adulthood, taking into account the transition period. This section consists of three main discussions. The first one is basically the socio-legal context of adolescence and children's transition to adult life. Secondly, in the section on child guardianship, I discuss both the legal basis of guardianship and to whom guardianship of children was given by which motivations in Üsküdar in the beginning of eighteenth-century. Finally, as an essentially integrative discussion, the relation of children with their guardians as they reach puberty is considered. In that section, I discuss how the decisions made by guardians regarding the lives of children were perceived by these children when they reached adolescence in the socio-legal context of early eighteenth-century Üsküdar.

4.1. Transition to Adulthood: A Discussion on Adolescence as a Life-Stage

As a socially structured stage, the transition to adulthood had social and legal processes of acceptance. As an early modern Ottoman city, legal processes and social structures played an important role in the construction of adolescent identities in the context of Üsküdar in the early eighteenth century. In previous chapters, we have talked about childhood and age in the early modern Ottoman Empire, and we have talked about the physical and legal conditions of this transition. (Chapter 2.2.1.) In this chapter we need to discuss how childhood ends and how a person is accepted as an adult in a socio-

legal context. As we noted earlier, the importance of understanding the construction of adulthood lies behind the distinction between childhood and adulthood of having the right to speak for themselves. For this reason, in this section, we discuss the process of speaking on behalf of oneself and having a legal voice in the context of the early eighteenth-century Üsküdar court, both in terms of theoretical and legal practice.

After childhood, which was considered as the "unconscious" period of life, adulthood brought these children a new socio-legal status. As a scholar of the classical Islamic jurisprudence, Schacht defines transition to adulthood as having "legal capacity" in two ways. Firstly, it was the right to speak for one's own life decisions, such as property, marriage, and so on. This meant "capacity of obligation," which included rights and duties in social life. Also, secondly, the legal acceptance of the person's sane (*akl*') decisions resulted in criminal liability, that is, "the capacity of execution."[204] Criminal liability was a way of accepting one's own will in a legal context. Since children were seen under the control of their guardians, they were not held responsible for criminal acts.[205] While individuals who had just reached the age of puberty had the right to question the actions and decisions of their guardians during their childhood period, they had also been accepted as a legal proxy for their own actions.

Puberty was deemed necessary for a person to have a self-consent, which is why we do not face the testimony of children in the court records. However, there were some exceptions to the fact that minors' testimony was heard, as in cases of sexual abuse.[206] An important example of such cases, studied by Leslie Pierce, is the fact that a minor girl, Ine, was abused by her minor husband's father, Mehmed, in Aintab in the 16th century. Ine, the minor girl, was married off by her father, after that, her husband's father Mehmed sexually abused her; later, Ine went to the Aintab court and sued him with her own statement without a representative.[207] As it is seen, speaking on behalf

[204] Schacht, *An Introduction to Islamic Law*, 124.

[205] Gibb et al., "Baligh," 993.; Halebi, *Mevkufat*, 2007, 4:5–6.

[206] Araz, *Osmanli Toplumunda Cocuk Olmak*, 96.

[207] Peirce, *Morality Tales*, 129–42.

of oneself was not strictly determined by age, as, in such exceptions, the law was actually bent in order to protect the vulnerability of children. Also, because the legal authorities were aware of the developmental state of the mental capacity of children of different ages, they may be open to listening to those cases, like Ine's, from the first hand.

According to Halebi, in Islamic jurisprudence, the judge could accept some decisions of children who might have begun to understand the world without their parents or guardians, such as converting to Islam, which is another example of the legal recognition of a child's decision before puberty. The reasons for this acknowledgment may be the idea that the adoption of some decisions considered as rewarded can be understood by the child without the need for guardian control, and that a child over the age of 7 may have developed a capacity for discrimination.[208] According to Ginio's research, we could see the practice of this legal acceptance at the court records that a non-Muslim child's conversion to Islam at a young age between the ages of 7 and 10 without the consent of their parent or guardian.[209] Thus, although the individual was recognized as a fully adult after reaching mental and physical puberty in the socio-legal context, as we exemplified, there were such exceptions that legal authorities used to recognize children's mental capacity before physical puberty. However, their testimony or decisions on property matters were not accepted at that age, until they were in full adulthood.

On April 23, 1737, the fourteenth-year-old Rabia from the Selami Efendi district came to the Üsküdar court to divorce by '*hul* with her husband Mustafa. Rabia was identified as a "woman" like an adult, proving her puberty in court records. Her legal situation was described as "her age and body reached puberty, and it is described [by others' testimony] her age as fourteenth years old and she is pubescent (*baliğa*)."[210] While she is described as *baliğa*, she is defined as *hatun* (lit. *woman*) because she completed all

[208] Halebi, *Mevkufat*, 2007, 4:15.

[209] Ginio, "Childhood, Mental Capacity and Conversion to Islam in the Ottoman State," 104.

[210] "… sin ve cüssesinin bulûğa tahammülü olup hala on dört yaşında va baliğa olduğu muarrefe olan Rabia binti Süleyman nam hatun zatı zeyli vesikada muharrer el esami müslimin tarifleriyle marufe oldukdan sonra ..." ÜCR vol.395 5/A1.

the necessities for reaching adulthood. But, her husband Mustafa son of Hasan, was described as *şabb-i emred* (pubescent boy).[211] In this case, Rabia and Hasan were allowed to speak on their own behalf as they reached puberty in age and body, which was confirmed by the statements of others. Simply, it could be said that puberty was related to not only age but also physical and mental development; and ultimately, puberty had to be socially sanctioned by others in the court.

Adolescents in the Üsküdar court records in the early eighteenth century were not different from the general characterization of adolescents in the Ottoman Empire. In court records, only adult Muslim males were registered by only their name, but others, including women, slaves, non-Muslims, children, and adolescents, were recorded with different definitions of their identity. Peirce explained the reason for this classification by stating that the authorities only viewed adult Muslim males as a "complete identity" for early modern Ottoman society, and others needed to be defined with their differences.[212] In this context, just like nicknames which are considered as the signs of the social acceptance process of converted individuals in early modern Ottoman society,[213] the different definitions of adolescents at the court records may be interpreted as the social acceptance process of "new adults." Therefore, girls and boys reaching puberty had been defined differently, so that their differences from the "complete identity" were indicated.

Araz argues that even though there are different definitions for young people, the transition from childhood to adulthood was only a direct transition and was not a distinct "youth stage" in itself in the Ottoman legal system. Hence, there was no separate legal status for young people.[214] However, the main point in these records is the socio-legal emergence of the "vulnerable situation" of young people who had been gaining their new identity by adolescence as the definitions of "şabb-ı emred" or "bikr-

[211] "… Mustafa bin Hasan nam şabb-ı emred mahzarında ikrar ve takrir-i kelam idüb…"ÜCR vol.395 5/A1.

[212] Peirce, *Morality Tales*, 144–45.

[213] Güçlü Tülüveli, "Nicknames and Sobriquets in Ottoman Vernacular Expression," *New Perspectives on Turkey*, no. 44 (2011): 177.

[214] Araz, *Osmanli Toplumunda Cocuk Olmak*, 89.

i baliğ" signified the stage of being "young."[215] Although the processes of "proving the maturity" were not strict and legally restricted, they were considered different from the stages of childhood and adulthood. Their adolescence had to be tested by other people to watch the transition processes and protect them during their vulnerable state.

Contextual analysis of the situations of those young girls and boys would demonstrate their vulnerability which was not defined in a legal base. For example, it was expected parental authority would prevent those young adults from being, possibly sexually, abused until their marriage, [216] or young adolescent boys aged 12 to 15 years might have to wait until their older ages for their decisions regarding business to be legally accepted since the judge did not want to have a future problem with other parties.[217] Thus, when a young girl or a young boy was the subject of a lawsuit, they were defined by certain definitions at the Üsküdar court; "bikr-i baliğ" (lit. pubescent the virgin) for adolescent unmarried girls, and "şab-ı emred" (lit. beardless lad) for adolescent boys.[218] As an important example, in the case of Rabia's divorce, even though she was described as a "woman," we clearly see her puberty still in the process of proving, because her adulthood had to be accepted by the testimony of others. Therefore, although these young boys and girls entering puberty were accepted adults before the law, they were also considered to be vulnerable and under social surveillance.

According to Ginio, mental puberty was seen by Hanafi scholars as a developmental process before adulthood such as the absence of reason, the ability to discern, and the complete possession of a flawed mind and reason.[219] The idea of the developmental processes of mental adolescence shaped court practice and the legal status of children and young people. Likewise, as İlhan refers to in their thesis, we can see the existence of "adolescence" between childhood and adulthood through early modern Ottoman

[215] Peirce, "Seniority, Sexuality, and Social Order: The Vocabulary of Gender in Early Modern Ottoman Society," 173–76.

[216] Peirce, *Morality Tales*, 152.

[217] Araz, *Osmanli Toplumunda Cocuk Olmak*, 97.

[218] ÜCR vol.336 33/B2.; vol.383 35/A3.; vol.395 5/A1; 1/A1.

[219] Ginio, "Childhood, Mental Capacity and Conversion to Islam in the Ottoman State," 100.

paintings seen as a different life-cycle stage described with its the descriptions of different symbols and clothes.[220] So, in these circumstances, this transition could be considered as a "youth stage" in itself even in the legal base.

In a way, we know that legal recognition of adolescence is defined in different ways. This stage was when an individual's right to make decisions was recognized by law. Therefore, having this right brought with it the right to question the decisions made by their guardians in their childhood. If it needs to be elaborated, for example, marriage or divorce agreements could be arranged by the guardians for children, even if these arrangements need to be made by one's own decision after reaching adolescence. Nevertheless, the important point here is that these children can object to these regulations after they enter adolescence. For example, Rabia's marriage may have been arranged by her guardian during her childhood, but now as an adolescent teenager she had the right to decide her marriage and divorce without any representation.

Guardianship was the legal representation of childhood, as we will discuss in the next section of this chapter, so a guardian's responsibility includes every legal action taken on behalf of the child.[221] Still, there are many theoretical and practical aspects of guardianship and the right of appeal of young adults after childhood, so we discuss this in detail later in the section. Before discussing how these objections were made or how guardians made their actions reasonable and legal, we need to discuss the socio-legal meaning and construction of the guardianship concept. After that, we examine and discuss the cases related to reaching puberty and objecting to the guardians' decisions, taking into account the transition from childhood to adulthood as as adolescence period.

[220] İlhan, "The Socio-Legal Status and Pictorial Representations of Children and Adolescents in Early Modern Ottoman Society," 163–66.

[221] Mawil Izzi Dien, "Wilaya (in Islamic Law)," in *Encyclopedia of Islam* (Leiden: Brill, 2002), 208.

4.2. Guardianship of Children

4.2.1. The Legal Basis and Validity of Guardianship

As we said earlier, under Islamic law, the consent of children who had not yet reached mental puberty was not recognized in their actions; thus, the legal responsibility for their actions was given to their guardians. Guardianship was a socio-legal position for the protection of children, with the legal representation of those children. In early modern societies, the concept of fatherhood showed similarities in meaning for the authorities and the families, so the father's role as guardian to his children was generally not questioned. As in early modern Spain, where it was not often to appoint a new guardian for children if the father was seen as capable for guardianship,[222] also, in early modern Ottoman law, the appointment of the father as guardian did not need to be recorded, since theoretically the father's right over the child was granted as a "natural right" from childhood until adolescence. That means from the beginning of a child's life, the legal and natural guardian was the father because children were considered belonging to the father's lineage. However, in some cases, even if all fathers were seen as the natural guardian of their children, sometimes they may need to register their legal role as guardians after the death of the mother, possibly due to the use of the child's property inherited from the mother in early eighteenth-century Üsküdar.[223] (Table 1)

The authority of a father as a guardian was not questioned unless there was any harm to his child's life and best interests; for example, if a father misuses his child's property, a new guardian may be appointed by the judge.[224] Thus, in early modern Ottoman

[222] Grace E. Coolidge, "'Neither Dumb, Deaf, nor Destitute of Understanding': Women as Guardians in Early Modern Spain," *The Sixteenth Century Journal* 36, no. 3 (2005): 678.

[223] ÜCR vol.345 10/B2.; Ertaş, "Üsküdar Kadılığı 335 Numaralı Şer'iyye Sicili Defteri (1118-1119/1707)," 4.; Ertaş, 22.; Ertaş, 50. Kutluğ, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/347 Nolu Defter) (1 Ramazan 1124 / Safer 1125)," 13.; Kumdakcı, "402 Nolu Üsküdar Şer'iyye Sicil Defterinin Transkripsiyon ve Değerlendirmesi (H. 1153- 54)," 95.; Taylan Akyıldırım, "259 Numaralı Şer'iyye Sicili Defterine Göre Galata (Metin ve Değerlendirme)" (Unpublished MA thesis, İstanbul, Mimar Sinan Üniversitesi, Sosyal Bilimler Enstitüsü, 2010), 175.

[224] Schacht, *An Introduction to Islamic Law*, 168.; Ömer Nasuhi Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, vol. 5 (İstanbul: Bilmen Yayınevi, 1969), 202.

society, guardianship as a legal issue was often discussed in the event of the death or absence of the father or the father's inability to take guardianship of his child. According to Ottoman law based on Islamic law, the guardianship of a child was given to the closest family member after the father and paternal grandfather. As Halebi points out, the paternal grandfather is like a father to the child in the event of the father's death, absence or incompetence.[225] If the father chose someone for the guardianship of his child before he dies, the guardian would become the one whom the father had chosen. However, if the father had not specified someone as the guardian of his child, the paternal grandfather would be the child's guardian or the one whom the paternal grandfather chose for the child's guardianship.[226] The term *vasi-i muhtar* (lit. guardian the chosen) means the guardian chosen by the father or the paternal grandfather. After all, according to the fatwas of Yenişehirli Abdullah, an eighteenth-century Ottoman mufti, if anyone were not indicated by them as guardian, or all of these possible guardians – the father and the paternal grandfather, and their preferences – were not considered suitable for guardianship due to some reasons, the judge held the right to appoint someone for the guardianship of the child as *vasi-i mansub* (lit. guardian the appointed).[227] Hence, since the protection of orphans' and children's property was a socio-legal issue, the authority of the local judge seems to be effective in changing the guardian, even by someone outside the family. [228]

Nevertheless, the ability of the guardian, even the father, to fulfill the responsibilities had been taken very seriously, as there was always an authority to control and protect the best interest of the child. The important rationale behind this control mechanism may have been interpreted as the child's well-being, property right, and right to life were not abandoned by the state and judicial authority. This mentality could be clearly read through the cases at the Üsküdar court in the beginning of the 18th century. On December 7, 1707, the judge of the Üsküdar court changed the guardian of the minor

[225] Halebi, *Mevkufat*, 2007, 2:167.

[226] Ali Bardakoğlu, "Vesayet," in *TDV İslam Ansiklopedisi* (İstanbul: Türkiye Diyanet Vakfı, 2013), 66.; Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, 1969, 5:180–82.

[227] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 637–38.

[228] Peirce, *Morality Tales*, 218.

Mehmed son of Veli Aga the deceased, because Elhac Abdullah son of Ali, the guardian chosen by the father, was not capable to perform the guardianship responsibilities. In this case, the mother Fatıma daughter of Ali was appointed as the guardian of her son Mehmed.[229] The appointment of Fatima as the guardian of her child brought with it the right to keep the property of the child, as seen in previous records that Mehmed's 80 *guruş* was given to Fatima by Elhac Abdullah.[230]

One important thing I want to focus on in this situation is the questionability of the guardian, taking into account the child's well-being and benefit. As an effective agent in a child's life, the guardian was under the surveillance of others. As in this case of the minor Mehmed, mothers who were the rightful custodians of their children could be the person following the actions of their children's guardians. Changing a child's guardian may be requested by the custodian of the child due to the guardian's "incompetence" or "social disrepute." Indeed, the reasons why a guardian would be changed could be understood by looking at the criteria for appointing a guardian. The judge considered some of the social criteria for appointing a guardian to a minor: The guardian should be socially "prestigious," "honest," "reliable," "religious" and be able to exercise guardianship duty to protect and regulate the child's rights and property for the best interests of the child. That's why the guardians have been defined by their reliability, prestige, and abilities.

A fatwa of Feyzullah Efendi, a seventeenth-century Ottoman mufti, explains how the legal authorities could intervene in the guardianship issue for child's interests:

> *Q: If it is proven Hind, the chosen guardian (vasi-i muhtar) of Amr the minor son of Zeyd the deceased, misappropriated the minor's property, and the judge discharge Hind; could Bekir, the father of the minor's father, guard the minor's property by taking it from Hind?*
>
> *The answer: Yes.* [231]

[229] ÜCR vol.336 17/B3.

[230] ÜCR vol.336 17/B2.

[231] Şeyhülislam Feyzullah Efendi, *Fetava-yı Feyziye*, 467.

With this fatwa in mind, we could see the importance of observing the guardian's responsibilities and the guardian's behavior. Thus, the situation of the guardians was not indisputable after their appointment. Indeed, it can be argued that a guardian's situation was constantly monitored and whether the requested responsibilities were being fulfilled. Even if the guardian was the father, children's rights had not been abandoned by society and legal authorities. Hence, the best interests of children were accepted as something that should be protected and observed by their social environment.

4.2.2. Guardians of Children

After discussing the legal setting of guardianship, we may look who became the guardians of children at the Üsküdar court in practice. Firstly, I want to focus on mothers who were important agents in children's lives as guardians. During the appointment of a child's guardian, motherhood was not a neglected role. In theory, paternal relatives and male relatives were preferred primarily for guardianship, but in practice, mothers' appointment as guardians of their children was not rare in early eighteenth-century Üsküdar. Similarly, Meriwether's research shows us, in Ottoman Aleppo in the late 18th and early 19th century, female relatives, mostly mothers, were appointed as guardians to children more times than male relatives were appointed. [232]

As a matter of fact, we can find many examples in İstanbul in the early eighteenth century, and therefore in Üsküdar, that the judges decided the mothers to be their children's guardians after the death of the father. When we look at a small sample with 100 (as a statically representative number) cases from the court records of Üsküdar and Galata – that mention the guardians of children in different contexts in Istanbul in the early eighteenth century – we see that motherhood played an important role in the issue of the guardianship of their children. (Table 1) Importantly, 48 out of 100 cases indicated the mothers as the guardians of their children after the death of the father, which demonstrates the effective role of mothers in the issue of guardianship.[233] The

[232] Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," 228.

[233] ÜCR vol.303 A/3.; Vol.336 17/B3, 27/A2, 42/B2.; Vol.345 21/B2, 33/A2, 39/A2.; Vol.355 12/B2.; Vol.383 12/A3, 22/A2, 23/A1, 26/A2, 38/B2.; Vol.396 19/A1.; Ertaş, "Üsküdar Kadılığı 335 Numaralı

judge of Üsküdar court defined mothers as "reliable", "religious" and "capable of guardianship" while appointing them as the guardians of their children. Although Meriwether discusses the reasons for appointing mothers as guardians in terms of child's age, lack of male relatives, and mother's close relationships with their children, they conclude that there is no obvious explanation for that.[234] Nonetheless, as an interpretation of the socio-legal reflection of the socially and legally constructed compassionate relationship between mother and child, the judge may have considered mothers, who were already the rightful custodian of their children, as one of the most suitable and trustable relative for guardianship.

Besides, women who were not the mothers of the children had also been appointed as the guardians of those children even when their mothers were still alive. This finding can be interpreted as women were not seen as the guardians of children just in the case of that they were those children's mothers. In 9 cases out of 100, we could see that other women were appointed as guardians. Also, most of those women were seen as the guardians of the children while the mothers were still alive; grandmothers in 2 cases,[235] paternal aunt in 1 case, [236] child's sister in 1 case,[237] and women whose relations with the children were not identified in 2 cases.[238](Table 1) The visibility of women as the guardians of the children shows us that the role of women in social

Şer'iyye Sicili Defteri (1118-1119/1707)," 12, 74.; Çalışkan, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/346 Nolu Defter) (12 Cemaziye'l-Ahîr-17 Şevval 1124/17 Temmuz-17 Kasım 1712)," 76, 80.; Kutluğ, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/347 Nolu Defter) (1 Ramazan 1124 / Safer 1125)," 36, 48, 90, 117.; Genç, "1126 Tarihli Üsküdar Şer'iye Sicili," 27, 59, 124, 151.; Kumdakcı, "402 Nolu Üsküdar Şer'iyye Sicil Defterinin Transkripsiyon ve Değerlendirmesi (H. 1153- 54)," 87, 89, 174, 176, 208, 224, 225, 226, 257.; Akyıldırım, "259 Numaralı Şer'iyye Sicili Defterine Göre Galata (Metin ve Değerlendirme)," 157, 169, 230, 311, 336, 344, 412, 429, 472, 493.

[234] Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," 228–30.

[235] ÜCR vol.303 19/B4; Kutluğ, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/347 Nolu Defter) (1 Ramazan 1124 / Safer 1125)," 74.

[236] Kumdakcı, "402 Nolu Üsküdar Şer'iyye Sicil Defterinin Transkripsiyon ve Değerlendirmesi (H. 1153-54)," 239.

[237] Genç, "1126 Tarihli Üsküdar Şer'iye Sicili," 59.

[238] Çalışkan, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/346 Nolu Defter) (12 Cemaziye'l-Ahîr-17 Şevval 1124/17 Temmuz-17 Kasım 1712)," 43.; Kutluğ, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/347 Nolu Defter) (1 Ramazan 1124 / Safer 1125)," 139.

relations was not neglected by legal authorities in the context of the spatial and temporal framework in question. Even these appointments may be due to the absence of male relatives as Meriwether's argument for mothers' child guardianship, but nonetheless, the legal recognition of women's guardianship capacity gives us important clues about women's role in society.

While much was not mentioned about the kinship of most male guardians with the children in question, the kinship ties of men as guardians may differ as paternal uncle,[239] maternal uncle,[240] maternal grandfather,[241] brother,[242] or male cousin[243] of these children. Therefore, it is difficult to think of a stable model for choosing male guardians. Besides, the issue of guardianship was not seen as a mere family issue in early modern Ottoman society; in fact, protecting a child's life and property was socially and legally important for the community. While state-authorized institutions for the protection of children in need were built in the late Ottoman Empire,[244] in the context of early eighteenth century Üsküdar, the observance of children's rights and protection was also problematized by the governmental authorities. As the best interests of the children were built around the social responsibilities determined by the judge, it seems that local authorities did not allow children to remain unprotected and destitute.

[239] ÜCR vol.337 3/B1.; Genç, "1126 Tarihli Üsküdar Şer'iye Sicili," 114.; Alpaslan Yüksek, "Galata Mahkemesine Ait 141 No'lu Şer'iye Sicili'nin (H. 1098-1099)Transkripsiyonu ve Değerlendirilmesi" (Unpublished MA thesis, Nevşehir, Nevşehir Üniversitesi Sosyal Bilimler Enstitüsü, 2012), 87.

[240] ÜCR vol.336 37/B2.; Ertaş, "Üsküdar Kadılığı 335 Numaralı Şer'iyye Sicili Defteri (1118-1119/1707)," 69.

[241] Ertaş, 106.; Kumdakcı, "402 Nolu Üsküdar Şer'iyye Sicil Defterinin Transkripsiyon ve Değerlendirmesi (H. 1153- 54)," 48, 61.

[242] ÜCR vol.303 10/A1.; vol.396 23/A2.

[243] Akyıldırım, "259 Numaralı Şer'iyye Sicili Defterine Göre Galata (Metin ve Değerlendirme)," 447.

[244] Nazan Maksudyan, "State 'Parenthood' and Vocational Orphanages (Islâhhanes): Transformation of Urbanity and Family Life," *The History of the Family* 2, no. 16 (2011): 172–81.; Also for detailed discussion of problematization of family and population by Ottoman state see: Selçuk Dursun, "Procreation, Family and 'Progress': Administrative and Economic Aspects of Ottoman Population Policies in the 19th Century," *The History of the Family* 16, no. 2 (2011): 160–71.

Table 1: The table showing the statistics of the guardians of children is composed of 100 cases randomly selected from Üsküdar and Galata court records dated 1690-1742.[245]

	When the mother was alive, but father died	When the father was alive, but the mother died	When both parents died	When the father died, but the mother was not mentioned
Mother	48	✕	✕	✕
Father	✕	7	✕	?
Maternal Grandmother	2	-	1	-
Maternal Grandfather	3	-	-	-
Paternal aunt	1	-	-	-
Paternal uncle	1	-	-	2
Maternal uncle	-	-	1	1
Female sibling	1	-	-	-
Male sibling	-	-	-	2
Cousin (Paternal uncle's son)	-	-	-	1
Women (the relation undefined)	2	-	1	1
Men (the relation undefined)	5	-	1	19

[245] Cases are cited in the text, for the rest: ÜCR vol.303 6/A2.; vol. vol.336 37/A1.; vol.383 21/A2, 23/B3, 25/B4.; vol.395 10/A2.; vol.396 10/A2.; Kutluğ, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/347 Nolu Defter) (1 Ramazan 1124 / Safer 1125)," 37, 65.; Yüksek, "Galata Mahkemesine Ait 141 No'lu Şer'iye Sicili'nin (H. 1098-1099)Transkripsiyonu ve Değerlendirilmesi," 66, 80, 82, 125, 126, 180, 187,

In the case of Ismail, the minor from *Miskinler Zaviyesi*, a leprosarium in Üsküdar, we could see how the local authorities played important roles in children's protection. *Miskinler Tekkesi* literally means the sluggish lodge in which leprous people were isolated from society.[246] The minor Ismail was living there under the guardianship of Mehmet after the death of his father Hüseyin Dede. Since the place is a leprosarium, it could be assumed how short the lifespan was there. Thus, the guardian Mehmet died in that place when Ismail was still a child, and a new guardian had to be appointed to the child by the the judge of Üsküdar court. On October 27, 1730, the judge of the Üsküdar court decided on Elhac Hasan, son of Ali, as the new guardian of the minor Ismail. It was not stated whether there was any kin relation between the child and the new guardian, but the new guardian was also probably from the leprosarium.[247] Guessing that Ismail had no other relative than his deceased father, we know that someone must take the responsibility of bringing him to court in order to appoint a new guardian. Even though the first record of the guardianship appointment does not mention who brought the child to court, the following one shows us that the new guardian took charge of the child from Ismail Dede the chamberlain (*kethüda*) of the leprosarium (*Miskinler Zaviyesi*) as the protector of the child during his unguarded period.[248]

In this case, the importance of the role of the local authorities, such as chamberlain, *kethüda*, would be understood as they were protecting children without a guardian in the way of representing as their guardians. Even if there was no institutionalized child protection at this time, still, as a part of the social control mechanism, the local authorities representing the state authority may have been problematizing the situation

197, 361, 403.; Akyıldırım, "259 Numaralı Şer'iyye Sicili Defterine Göre Galata (Metin ve Değerlendirme)," 229, 330, 359, 507.; Kumdakcı, "402 Nolu Üsküdar Şer'iyye Sicil Defterinin Transkripsiyon ve Değerlendirmesi (H. 1153- 54)," 107, 223, 258.

[246] See for detailed information on "Miskinler Tekkesi": Nil Sarı and Ü. E. Kurt, "Üsküdar Miskinler Tekkesi," in *Üsküdar Sempozyumu IV*, vol. 2 (İstanbul: Üsküdar Belediyesi, 2007), 365–86.

[247] ÜCR. vol.383 21/A2.

[248] ÜCR vol.383 21/A3.

of those destitute children who were without guardians.[249] In this context, it was indisputable that the responsibility to protect the interests of orphans was not only related to the duties of family members, but also to the issue of the community and the local authorities including the judge.[250]

At the beginning of the eighteenth century, the protection of children in Üsküdar was taken seriously by different agents and authorities. While taking the issue of guardianship seriously, it may be wondered: How was the best interest of the child protected in practice? Under what conditions were guardians interrogated? How did the children react when they reached puberty and were able to claim their own rights? For answering these types of questions, we need to examine court records in terms of its discourse towards children's best interest and the guardians.

4.3. The Relation Between Children and Their Guardians

As this chapter is conducted with a discussion of guardianship and legal representation of children, we continue to discuss the responsibilities and questionability of these guardians, with the reclaims and objections of adolescents regarding decisions given for themselves in their childhood. So, in this section, I examine how the legal responsibilities and liabilities of these guardians were built by the legal procedures recorded at the court through two different issues which are the property right of children as individual, and the arrangements of child marriage and divorce. These records show us that it was accepted that the child may have the right to appeal after reaching puberty, which helps us understand the socio-legal relation between children and their guardians.

4.3.1. Children's Right to Property

First, we talk about children's property rights and its legal protection. Islamic law attaches great importance to the property rights of the child as an individual and

[249] As Betül Başaran indicated in their work as the sultan was the guardian of the social order, so that means the authorities hierarchically guardian of the social order. Başaran, *Selim III, Social Control and Policing in Istanbul at the End of the Eighteenth Century*, 102.

[250] Peirce, *Morality Tales*, 138.

recognizes these rights even if they exist as a fetus. As I mentioned in the part of the fetal period, the right of inheritance should be legally guaranteed as the property right at every stage of life in the socio-legal context of early modern Ottoman society.[251] Hence, especially the right of inheritance, which remained as the property of the child, was protected by law regardless of who the child's guardian was; but children only after reaching puberty, when they became adults, could take the control of their own property.[252] The guardian may sell the child's property or buy something with the child's money as long as the child's main property does not cover any loss.[253] In this regard, according to the fatwas of Feyzullah Efendi, a seventeenth-century Ottoman grand mufti, the main goal seems to be to preserve the child's property, complete and unharmed, until they reach puberty.[254]

We can find different records of that the property of the child was transferred from the guardian to the child who became an adolescent. On December 16, 1730, in Üsküdar, Emetullah daughter of Elhac Mehmed, wanted to take her share left from her deceased father's inheritance. Emetullah's mother Aişe hold this share, which was 293 *guruş*, as her legal guardian; and Emetullah, as an adolescent girl, claimed to take it back from her.[255] This case is an ordinary recording of the property transfer to prevent any objection from occurring after all.[256] In such cases, we can observe the legal relation between children and their guardians regarding property use.

[251] For a detailed discussion see the 3. Chapter's part in this thesis "3.2.1 Fetus as a Matter of Law"

[252] The rate of orphaned children who had inherited from their parents was high in 18th century İstanbul. Sümeyye Hoşgör Büke, "Changes in the Consumption of Ottomans in the Eighteenth Century" (Unpublished Doctoral Dissertation, Ankara, Middle East Technical University, Social Science Institute., 2019), 19.

[253] Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, 1969, 5:184.

[254] Şeyhülislam Feyzullah Efendi, *Fetava-yı Feyziye*, 472.

[255] ÜCR vol.383 26/A1.; Similar cases can be found in court records. For another example ÜCR. vol.395 10/A2.

[256] Similar cases could be seen in different contexts as well for one example from Galata court records see: Yüksek, "Galata Mahkemesine Ait 141 No'lu Şer'iye Sicili'nin (H. 1098-1099)Transkripsiyonu ve Değerlendirilmesi," 361.

Children could obtain the right to use their property by reaching puberty and could sue their guardians if they think their property had been misused. The important point here is how the guardians managed the children's property and life decisions by being aware of the possibilities of these children to object as reaching puberty. Meriwether's study on Ottoman Aleppo gives us an example of how the adolescents could sue their guardians as they reached puberty in early modern Ottoman society. Muhammed Agha, a young man at the age of his puberty, sued his uncle Ibrahim as his guardian to have back his money that Ibrahim spent for not Muhammed Agha but himself. In that case, the court took the cases seriously and protect the property owner.[257] This example was not rare, actually, and similar cases could be found in Üsküdar court records, as well. On August 27, 1712, Ahmed came to the court stating that he had made a peace agreement with Mustafa Çelebi over 4 *guruş* and 1 *zolata* to withdraw his previous case. Ahmed explained that Alime Hatun, who was his mother and his legal guardian, sold his property to cover his maintenance costs. However, after reaching the age of puberty, he sued Mustafa Çelebi for buying his property from his guardian Alime Hatun below market value. Eventually, they made an agreement and Mustafa Çelebi paid some money to close the case.[258] The striking point here is that Ahmed had not sued his guardian, but the person who paid less for his property. Thus, abuse of the child's property was not only an issue for which the guardian was held responsible but also of those who might have caused it. This shows that the court's stance on appointing guardians was serious because such cases, such as property abuse, could create problems in the future not only for the guardian but also for those involved.

While the boundaries of the guardian may depend on who the guardian was, neither father (or paternal grandfather) nor anyone else as guardian had unlimited authority over the children, especially their property. For this reason, we know that the legal system recognized children as individuals regardless of their family relations and protected all their rights in the context of the early modern Ottoman law system.

[257] Meriwether, "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840," 227.

[258] Çalışkan, "Üsküdar Şer'iyye Sicili (İstanbul Müftülük Arşivi 6/346 Nolu Defter) (12 Cemaziye'l-Ahîr-17 Şevval 1124/17 Temmuz-17 Kasım 1712)," 43–44.

Besides the legal protection of children's right to property, Kermeli gives a distinct example for understanding how the state saw children's lives and protected their legal rights. Even though they describe it as a unique event, the prohibition of the practice of the "father's selling his children as a commodity for his debt" a local and distinct practice in Ottoman Crete, with an *imperial order* in 1659 can demonstrate the state intervention in unaccepted local practices. This case actually shows how effective "power of custom" was in constructing the notion of childhood, as it had taken some time to ban this practice according to Kermeli.[259] However, it also demonstrates how the state can interfere with the boundaries of guardians and fathers by ultimately prohibiting the illegal treatment of children both to protect their legal status and to ensure the correct application of the law.

The view of childhood as a stage in need of protection is not only a modern phenomenon but an acknowledged fact in early modern times. Considering children as social beings and members of society gave them the right to own property. From this perspective, using the child's property for trade or the daily care of the child was expected to be controlled and questionable, without harming the child's interests.[260] Of course, this protection of children's property was not peculiar to Ottoman society in the early modern world. As a similar legal practice to the protection of children's property in early modern Ottoman law, studies conducted in eighteenth-century England show that children's property rights and protections were guaranteed by law and were not entirely left to the children's family by court intervention in decisions of parents and guardians as they could harm the child's social and economic interests.[261]

The early modern Ottoman legal system not only brought certain responsibilities and limitations to children's guardians in their powers but also kept their guardians under surveillance to protect the legal rights of children. Controlling a child's property was a socio-legal issue that was not only observed by the legal authorities but also questioned

[259] Kermeli, "Children Treated as Commodity in Ottoman Crete," 280.

[260] Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, 1969, 5:196–99.

[261] "The Crisis of Child Custody: A History of the Birth of Family Law in England," *Columbia Journal of Gender and Law*, no. 11 (2002): 187.

by another relative of the child or the child who reached puberty. This is an important reason why only the judge could decide the amount of maintenance payment received from the children's own property (usually inherited by the parents). Recording the amount of maintenance payment would also prevent any conflict that may arise between the custodians and guardians of the children. The classic claim of the custodians, generally mothers, about the amount of the child's maintenance payment is as follows:

> *Hereby my daughter named Aişe the minor* [female, *sagire*] *was engendered from the bed of Mustafa son of Abdurrahim, who was my husband and has died ere now, and borne by me. My request is that the appropriate amount from her inherited property, descended from her father the aforesaid the deceased, by the aspect of sharia for the maintenance (nafaka) and guise money to be decided and to be offered for custody.*[262]

In this record, the guardian was not the mother, but as the custodian of her child, she asked the court to decide the amount of the maintenance payment to be covered by her child's property (which was under the control of the guardian), in order to avoid any future problems. As a matter of fact, this maintenance payment was expected to be decided by the judge, even if the custodian was also the guardian. As an example of such cases; on March 9, 1708, in Üsküdar, Fatıma daughter of Elhac Mehmed, came to the court as the guardian and the custodian of her daughter, the minor Ümmü Gülsüm, and asked for the determination of her daughter's daily maintenance amount to be covered by the inheritance left from the father.[263] Hence, such records, which could be found many in the court records, show us that the mother or even legal guardian might not spend the property of minors without legal permission.[264]

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[262] Zevcim olub bundan akdem fevt olan Mustafa bin Abdurrahman'ın firaşından hasıl benden mütevellid işbu kızım Aişe nam sagir babası müteveffa-yı mezburdan müntakil emval-i mevrusesinden kıbel-i şer'den kadr-i ma'ruf nafaka ve kısve beha farz ve takdir olunmak bi'l-hizane matlubumdur" ÜCR vol.336 47/B2.

[263] "zevcim olub bundan akdem fevt olan Abdullah Efendinin feraşından hasıl ve benden mütevellid olub, bihakkın hizane hicr ve terbiyemde ve tesviye-i emerine min kıbel-i şer'i mensube vasisi olduğum, işbu Ümmü Gülsüm sagiri babası müteveffa-ti mezburdan müntakil mal-ı mevrusundan kıbel-i şeri'den kadr-ı mefruz nafaka ve kısve baha farz ve takdir olunmak bilvesaye matlubumdur" ÜCR vol.336 42/B2.

[264] For some examples; ÜCR vol.336 47/B2.; vol.383 26/A3.; vol.383 52/A1.

Another important example of using children's property for their maintenance is that a Christian father named Vartes from Pazarbaşı neighborhood of Üsküdar wanted to use the property of his children (Yanus, Avaş, and Akse) inherited from their mother, Ane, for their maintenance.[265] First, this case shows how a father could be saved from paying child maintenance if the children had their own property. Second, the importance of this case is about the relation between the child and the father. As we can see in the next case that follows, Vartes also had a deed showing that he was the guardian of his children.[266] Often, fathers did not need to be registered as guardians, but sometimes a father may need legal permission to use his own child's property, even for the care of the same child. This recording may also be due to the father's desire to prevent any future objections from his children. Even if, in the legal base, a child could not object to his father's use later – except that the father was morally unacceptable – ,[267] there was still the possibility of objections from the child's other relatives. So, considering every possibility, we can see that sometimes a father may need registration for the legal representation of his children. This case may not be related to the father's belonging to a non-Muslim community, as we mentioned before Muslim fathers also occasionally registering themselves as the guardians of their children after the death of the mother.

After all, we can look at recognizing children's social independence from another perspective. Children's economic rights were not just about protecting their property and maintaining high standards. Having legal rights as individuals, children were also seen as responsible in some cases. These responsibilities concerned the use of children's property for the maintenance of themselves or their relatives in need, if necessary. As we know, it was a serious matter that children could not be left without maintenance. But how was the economic situation of the child seen when this payment responsibility was given to the father and other relatives? As a matter of fact, it has been observed that if a child had any property such as inheritance share, another

[265] ÜCR vol.345 10/B1.

[266] ÜCR vol.345 10/B2.

[267] Bilmen, *Hukukı İslamiyye ve Istılahatı Fıkhiyye' Kamusu*, 1969, 5:190.

relative, even fathers, would not have to pay for the child's maintenance; thus the child's guardian should use the child's own property for the maintenance.[268] Besides, according to the eighteenth-century Ottoman Mufti Yenişehirli Abdullah, the judge could allow the maintenance of a needy relative of a child to be compensated from the child's property.[269] Here we can interpret that accepting the legal autonomy of children in their property entails the responsibility to meet their own livelihoods or even their relatives'. Indeed, this perspective proves children's social and economic situations were taken into consideration during the construction of the notion of childhood in early eighteenth-century Üsküdar.

4.3.2. Child Marriages and Divorces

Marriage as a social contract was not seen as a matter of age in Ottoman society because it was understood as a social union regardless of physical competence for sexual interaction. Even if the marriage contract was arranged, sexual interaction required the child's physical maturity, which could occur even before mental puberty.[270] This can be interpreted as the child's physical maturity for sexual interaction was not a sufficient determinant for puberty. In this context, childhood in early modern Ottoman society was not an obstacle to marriage, as children could legally marry off by the decision of their fathers or guardians without their consent. Such actions show how an individual's consent was placed under the control of their guardians during childhood.

However, the decision to marry off the child by the guardian has been a controversial issue. Even if the child's marriage was arranged by fathers or guardians, the validity of that marriage or its dissolution after reaching puberty was dependent on different circumstances. Theoretically, according to the Islamic Hanafi jurisprudence, after reaching puberty boys would have no problem with divorce, while girls could only have the "the right of rescission" if their guardian was not their natural guardian who

[268] Halebi, *Mevkufat*, 2007, 2:266.

[269] Şeyhülislam Yenişehirli Abdullah Efendi, *Behcetü'l Fetava*, 135.

[270] Araz, "17. ve 18. Yüzyılda İstanbul ve Anadolu'da Çocuk Evlilikleri ve Erişkinlik Olgusu Üzerine Bir Değerlendirme," 103.

was their father or paternal grandfather.[271] This right of rescission, which was emerged by puberty and was called "Khiyār al-Bulūgh", was mainly accepted by Ottoman law. According to Yazbak, this was practiced at the courts of Ottoman Palestine in accordance with the legal opinions as a young girl would have the right to annul her marriage arranged during her childhood just after she reached puberty, which is her first menstruation.[272] Besides, Ebussuud's fatwas explained how "Khiyār al-Bulūgh", which is the right of rescission, should be applied. According to Ebussuud, if a girl's marriage was arranged by her unnatural guardians in childhood, she could appeal to and annul her marriage soon after reaching puberty.[273]

It is still an issue whether a girl could oppose marriages or divorces made by her natural guardians – father or paternal grandfather. This was a controversy even in the main sources of Islamic law. But basically, it was the guardian's responsibility to protect the child's rights in the best possible conditions, even if the guardian was the father. The divorce rights of young girls who have just reached puberty were not limited to marriages arranged by the guardians who were not their fathers or paternal grandparents. Some authorities in Islamic law said that marriages made by their natural guardian could also be annulled if it harmed the best interests of the child. Therefore, this discussion may show how the best interests of the child had been protected by law, even from their own fathers. We know from Halebi that even Hanafi sources have different explanations on this issue. Abu Hanafi said that a father can arrange a marriage for his children even with those who are not equal to the children; while Abu Yusuf and Imam Muhammad said that fathers are also obliged to protect the best interests of their children, thus, if deemed necessary, marriages arranged by the fathers can also be invalidated by the judge.[274] In the context of child marriage, protecting the best interests of children meant protecting their socio-economic rights and status. Guardians were expected to preserve the socio-economic status of minors in order to

[271] Schacht, *An Introduction to Islamic Law*, 161–62.

[272] Yazbak, "Minor Marriages and Khiyār Al-Bulūgh in Ottoman Palestine," 386–89.

[273] Demirtaş, *Fetvâları Ile Şeyhülislâm Ebüssu'ûd Efendi*, 362.

[274] Halebi, *Mevkufat*, 2007, 2:144–45.

prepare them for society. Thus, the marriage of a minor was expected to be between equal partners in terms of their economic and social status.

On July 22, 1712, Osman son of Mehmed, from Cami-i Kebir neighborhood of Üsküdar, went to the court for his minor daughter Ümmü Gülsüm's divorcing by *hul* with Ali Beşe son of Ramazan. The father Osman, as Ümmü Gülsüm's natural guardian, gave up her marriage payment on behalf of her. However, Osman said, "If my daughter aforementioned Ümmü Gülsüm does not become tolerative to this divorce by *hul* after reaching puberty, and reclaim three thousand *akçe* as her marriage payment by suing her husband aforementioned Ali beşe, I will be the indemnifier and pay the aforementioned three [thousand] *akçe* to my daughter aforementioned Ümmü Gülsüm."[275] Probably it was the father who had arranged the marriage and now the father wanted his daughter to divorce when she was still minor. Osman wanted his daughter to divorce by giving up the marriage payment, which could mean harming the child's interests. In this recording, the father's being voucher for the unpaid marriage payment can be interpreted as the father's awareness of the fact that his daughter could object his father's decision as she reaches puberty.

Considering the theoretical debate on child marriage and divorce, we can better understand the divorce case of Ümmü Gülsüm the minor. The guarantee the father gave for the marriage payment, which he waived on behalf of his daughter, can be interpreted as the legal recognition of the minor girl's right to object even against the acts of the father after reaching puberty. Since an important aspect of a minor's marriage, or divorce, proceedings was the protection of the minor girls' rights emerging from marriage and divorce, their rights were expected to be protected by their natural or non-natural guardians. The discourse of securing a minor girl's rights can also be seen in divorce decisions made by non-natural guardians such as the mothers. When guardian mothers made a divorce agreement for their minor daughters, these mothers who were not natural guardians, registered themselves as guarantor for the waived rights such as marriage payments due to the possibility of their daughters'

[275] "Eğer ba'del buluğ kızım mezbure Ümmü Gülsüm hulu'-ı mezbure mecize [icazet veren] olamayub mihr-i müeccel olan üç bin akçeyi zevci merkum Ali Beşe'den taleb ve dava iderse, meblağ-ı mezbur üç [bin] akçeyi kızım merkume Ümmü Gülsüme ben zamin olub eda edeyim" ÜCR vol. 345 57/A1.

claim later. On January 11, 1708, the mother Ümmi Gülsüm from the Eşşeyh Selami neighborhood in Üsküdar, came to the court to divorce her daughter Aişe from her husband Mehmed. As her daughter's guardian, Ümmü Gülsüm, made a divorce agreement by waiving Aişe's marriage payment of three thousand *guruş*. In this case, Ümmi Gülsüm registered herself as the guarantor of this money, which Aişe could demand by reaching puberty.[276]

In the end, when a girl holds the right to annul a marriage arranged by a non-natural guardian or to reclaim her divorce rights; there was still the possibility of annulment of a marriage arranged by natural guardians and objection to divorce decisions of them. Yazbak's study also argued that even natural guardians were expected not to abuse their guardianship authority by arranging an unequal marriage for the child. In the case of abuse of guardianship authority in an unequal marriage, the marriage contract may not be binding, so the girl may have the right to rescission. [277] Nevertheless, abuse of the paternal authority should also be regarded as "abuse" in a social sense, because the father's authority may have represented the paternal role in society. Therefore, such decisions should not undermine the belief in paternal authority in society while protecting the best interests of the child. Yet, still, the same discourse in the records of divorce proceedings organized by natural and non-natural guardians demonstrates the notion that it is important to protect the best interests of a child regardless of family ties.

Of course, in early modern Ottoman society, not only were minor girls married by their guardians. Similar marriages were made by guardians for minor boys as well. In a lawsuit held at Galata Court on June 14, 1725, we see that an adult woman named Fatıma sued her husband's mother and guardian Aişe for divorce from her minor husband İsmail. In this record, we see that Aişa was addressed instead of the husband İsmail, who was still a minor, to fulfill Fatıma's divorce request.[278] Most likely, this

[276] ÜCR vol.336 27/A2.; Similar cases could be seen at different times at the Üsküdar court, ÜCR vol.395 8/A1.

[277] Yazbak, "Minor Marriages and Khiyār Al-Bulūgh in Ottoman Palestine," 403–4.

[278] Akyıldırım, "259 Numaralı Şer'iyye Sicili Defterine Göre Galata (Metin ve Değerlendirme)," 311.

marriage was already arranged by Ismail's mother, and she also now had a say in the termination of this marriage. As a result, we see that the issue of child marriage did not only cover girls and that boys and girls could be married off by their guardians. These cases show us both the legal status of childhood and how children's lives may be shaped by their guardians. Although children would have the right to speak about these agreements when they reach adulthood, the fact that many important decisions could be made by the guardians during childhood shows once again the social and legal importance of the guardianship institution. For this reason, it was expected that the judge would act diligently in the choice of guardian, at least in terms of Islamic legal theory.

4.4. Chapter Conclusion: One Day They Will Speak

What can we say about these cases? How can we see the change in the socio-legal status of individuals after the transition from children to adulthood in Üsküdar at the beginning of the eighteenth century? As Pierce says, legal authority focused on the individual as an element of maintaining social order. In fact, such cases show that the individual maintains the power of authority by keeping the individual within the boundaries of norms, as Pierce claimed in their work on Ainteb.[279] In our discussion on the rights of individuals to claim their childhood rights and the protection of individuals' rights by law in every period, we see especially the legal awareness of the concept of childhood and a developmental perspective towards childhood. What I want to explain here is that the reason for the legal processes regarding the control of guardians lies behind the idea of legal recognition of the "children's legal entities" in the Ottoman legal system. In this context, the legal protection of a material issue such as property right in every period of life, and the fact that individuals would have the right to speak about their childhood, played an important role in establishing trust in the legal authority of the state.

Since childhood was seen as a stage of life and a preparation period for adult life, children were not separated from the society, knowing that one day they will speak for

[279] Peirce demonstrates the abused child Ine's story and her challenge at the Aintab court was an important example of the legal authorities' concern for individual safety. Peirce, *Morality Tales*, 142.

themselves. This perspective had shaped the legal practices in terms of the protection of the child as an independent individual. Sure, family relations had been evaluated and praised in a socio-legal context, but we could still see that these relations could be questioned to protect the best interests of the children. Of course, the belief that the family is the most reliable institution in the lives of children was very effective, we can see this in the trust that the legal system had in the relation between parents and their children. However, children were not ignored on the basis of this confidence, and even families were not separated from social and legal inquiries. As we have seen in this chapter, the awareness of the vulnerability of childhood had manifested itself in court cases applied in the transition from childhood to adulthood. The protection of property rights and the questionability of vital agreements that may have been occurred without the consent of children, such as marriage or divorce, support this understanding.

As a result, the authority of fathers and guardians over children was not only concerned with the use of the property but also encompassed decisions regarding the lives of the children, such as about employing or marrying them. However, the father's rights about the child's life were not as limitless as we can see. As we have discussed in this chapter in the context of property usage and the issues of marriage and divorce. Hence, we see the recognition of the child as an "individual" and the state's recognition of the "child's individual existence" separately from the family, through the legal rights of the child.

In this section, besides a theoretical discussion, I have discussed the socio-legal status of children in such cases through the relations between their parents or guardians. While parental identities were shaped in social, cultural, and religious contexts, awareness of children's legal independence was central to the shaping of responsibilities and limitations. The parents or legal guardians of the children were controlled by the legal authority, taking into account the children's rights and socio-legal status. Therefore, legal rules regarding children can even limit the behavior of parents towards their children. This shows us that in early eighteenth-century Üsküdar, the concept of childhood had a legal position, even with an understanding that sanctions were applied to their protection, taking into account their periodic variability and fragility.

CHAPTER 5

CONCLUSION

In this thesis, I have aimed to examine the social construction of childhood through childcare, which I conceptualized as custody, maintenance, and guardianship of children in the context of early eighteenth-century Üsküdar. The presence of the notion of childhood in the past, which has been the major controversy of childhood historiography since the very beginning, has not been addressed much in the context of Ottoman history. Thus, the main aim of this thesis has become to scrutinize whether the notion of childhood existed in early modern Ottoman society, in the context of the social construction of childhood with the problematization of childcare as part of both legal debates and everyday practices. In this context, this thesis has attempted to contribute to the existing literature of Ottoman childhood history in two primary contexts with a socio-legal approach: (1) How was childhood perceived in terms of its character, developmental stages, and being a part of life? (2) How did the importance of childcare have an impact on parental behavior and the implementation of the law?

To conduct a socio-legal analysis of childcare, my primary sources in this thesis comprised of childcare-related cases randomly selected from Üsküdar court records dated between 1706 and 1739, and the relevant legal opinions of early modern Ottoman grand muftis and scholars of Hanafi-Islamic jurisprudence. Thus, as the methodological approach of this thesis, I have discussed the application of legal principles in the Üsküdar court by using the court cases with relevant theoretical views.

In the second chapter of this thesis, I primarily attempted to explain how Ottoman childhood has been incorporated into the main debates in childhood history through a literature review. Based on the existing literature on childhood history,

the historical analysis of the existence of the notion of childhood through parent-child relations has become the focus of my discussions by shaping the main perspective of my thesis. In the following part, I have introduced early modern Ottoman childhood in terms of the life stages, and the legal terminology related to childcare in order to set the framework of the concept in question.

Starting the main analysis of this thesis, in the third chapter, I have discussed the notion of childhood in childcare practices within social and legal circumstances through parent-child relations in early eighteenth-century Üsküdar. This discussion has been held in two main dimensions as (1) the socio-legal presence of the notion of childhood from the prenatal period, and (2) practice of parental care even before the birth of children to their adolescence. In the context of analyzing the decisions and statements at court cases related to child custody and child maintenance, it has been shown that awareness of the developmental stages of childhood shaped parental responsibilities and legal practices towards the protection of the child's best interests. Therefore, a socio-legal awareness of the unique character of childhood from prenatal to adolescence had determined not only the parental roles but also the children's relation with society. Looking at how childhood impacted parenting practices, I have opened a discussion of the formation of the family institution through parent-child relations.

Taking into consideration the findings, we have found a social construction process in which childcare responsibilities were progressed not only by law but also by individual decisions on the path directed by the law in early eighteenth-century Üsküdar. Individual decisions of parents about childcare issues were shaped commonly to protect both the best interest of their children and their social prestige as being a parent instead of taking advantage of the economic opportunities provided by the law. Thus, parental roles were performed in the way of parents' taking extra childcare responsibilities by sometimes women's persuading the legal authorities and the fathers, or by sometimes men's accepting the demands of their children's mothers. The socio-legal emphasis on the welfare of children and the importance of parental roles had become a factor that shaped, or even bent, the application of the legal rules through agreements between

parents based on individual preferences. In this context, childcare emerged as a useful bargaining tool in interpersonal agreements on the one hand, and important practices in reinforcing socio-legal identities on the other.

After discussing the importance of childcare so far, by the fourth chapter, I have brought into the question how children found a place in the socio-legal context as social individuals, having their own rights separate from their family relations. Discussing the post-childhood period showed us important details about both the legal status of children and adolescents and their relations with their guardians in early eighteenth-century Ottoman Üsküdar. Firstly, although we could not find a legal definition of adolescence in the theoretical sense, in practice the legal reflections of adolescence as a separate life-cycle stage, in the way of the social acceptance process between childhood and adulthood, has been revealed through the Üsküdar court records. In the light of these findings, I have argued the fact that reaching adulthood has emerged not only as an individual issue but also as a social concern since the right to decide about personal matters also brought legal responsibilities. The second main issue in this chapter is that reaching the age of puberty would bring about having not only the right to make decisions for their present lives but also the right to question the decisions made in their childhood by their guardians. Hence, because childhood was actually taken into account as a part of ongoing life, children's relations with their guardians were kept under surveillance by social and legal agents to protect their rights and interest in early eighteenth-century Üsküdar. In this context, the findings have shown that the social and legal structures had ensured the protection of children until adulthood, by the acceptance of childhood as a unique stage of life. Following this period, the fragility and uncertainty of adolescence, as a social acceptance process, in the socio-legal context made this transition period a separate stage of life. Therefore, in the context of early eighteenth-century Üsküdar, we can accept the existence of the notions of childhood and adolescence perceived as socio-legal positions different than adulthood in terms of their developmental characters and needs.

The answers for the main questions like the existence of the notion of childhood asked in childhood historiography have been still deficient in Ottoman childhood

history, besides, there are few studies dealing with the concept of childhood and its relationship with other structures as the main subject. However, this thesis serves as a progressive contribution to the debate on the existence of the notion of childhood in early modern Ottoman society, with its findings on the socio-legal analysis of childcare. Discussing the concept of childhood and childcare practices in the socio-legal environment has revealed significant indications about the relations between children and social structures such as family, religion, and gender. All in all, this thesis contributes to the literature on Ottoman childhood history with its findings on the meaning of childhood, the perception of child development and post-childhood, and the interaction of children with social dynamics.

Furthermore, there are still many steps to be taken in the history of Ottoman childhood, and one important of these is the analysis of the concept based on different sources, going beyond judicial sources. A study based on personal narratives, for example, in which the child is the subject could give us much more information about the daily experience of being a child in history. Besides, we can still read childhood experiences through family relations, perhaps still best with parent-child relations. Therefore, another important step is to ask questions about early modern Ottoman parenting and emphasize this in terms of understanding childhood experiences. Combining the concepts of parenthood and childhood in a study definitely shed light on the socio-historical construction of the Ottoman family institution.

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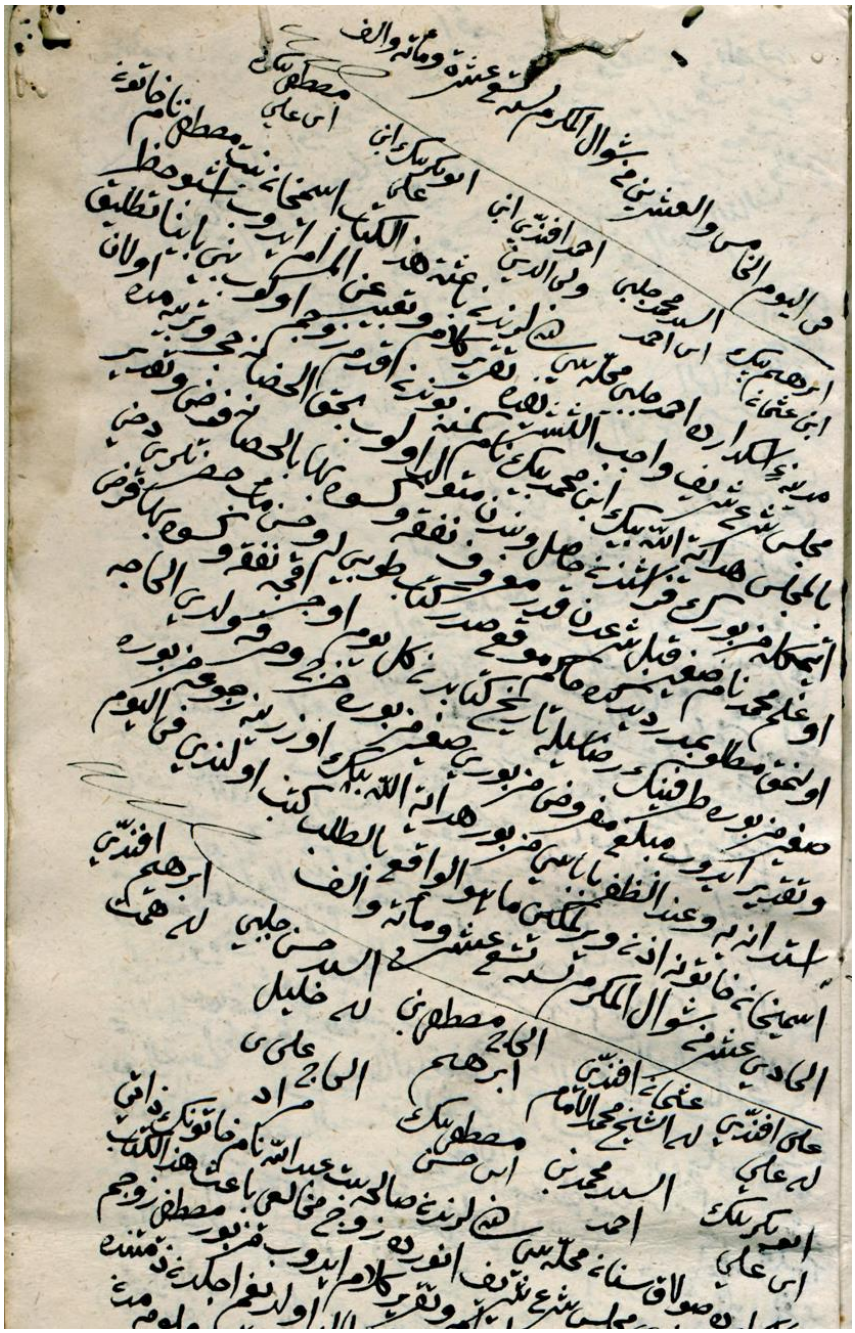
APPENDICES

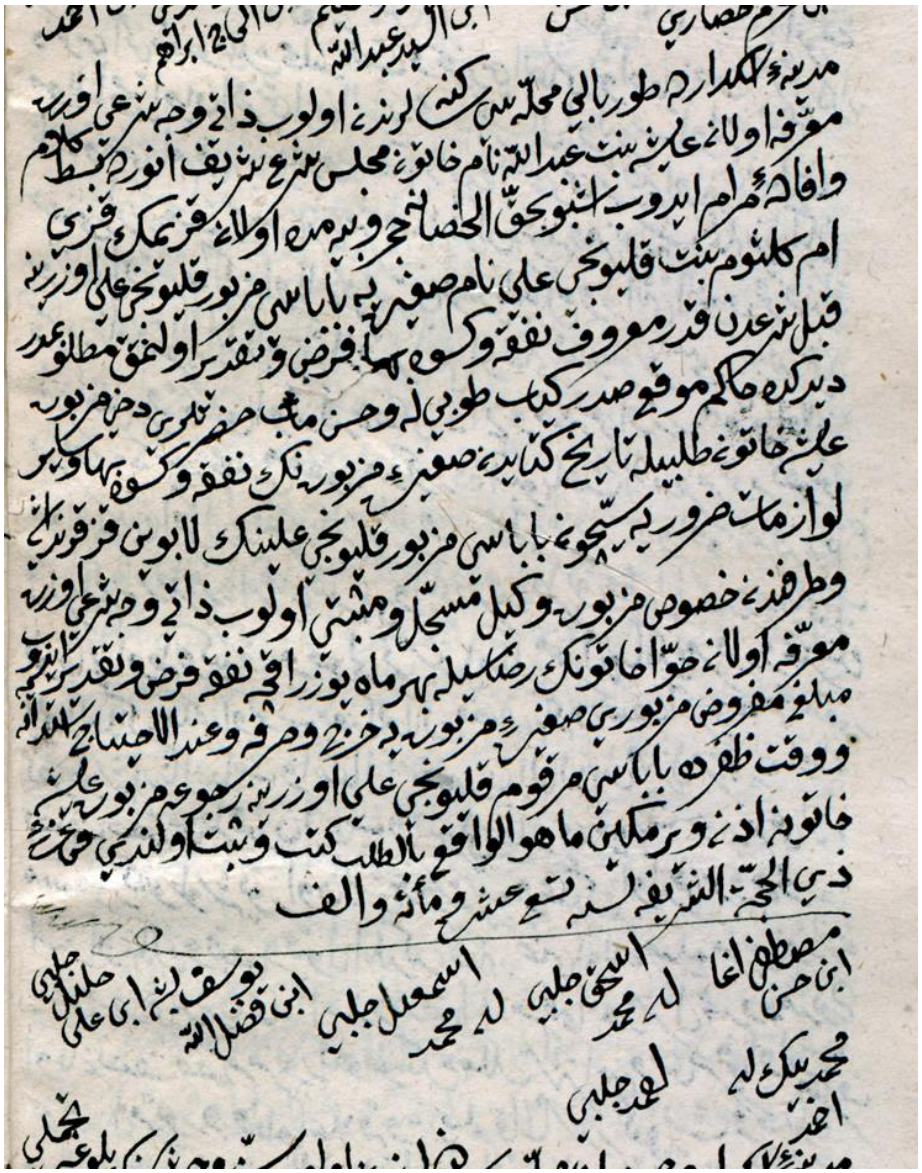
A. PHOTOGRAPHS

A.1: Photograph of a child tombstone, taken on 2 August 2019 by the author of this thesis.

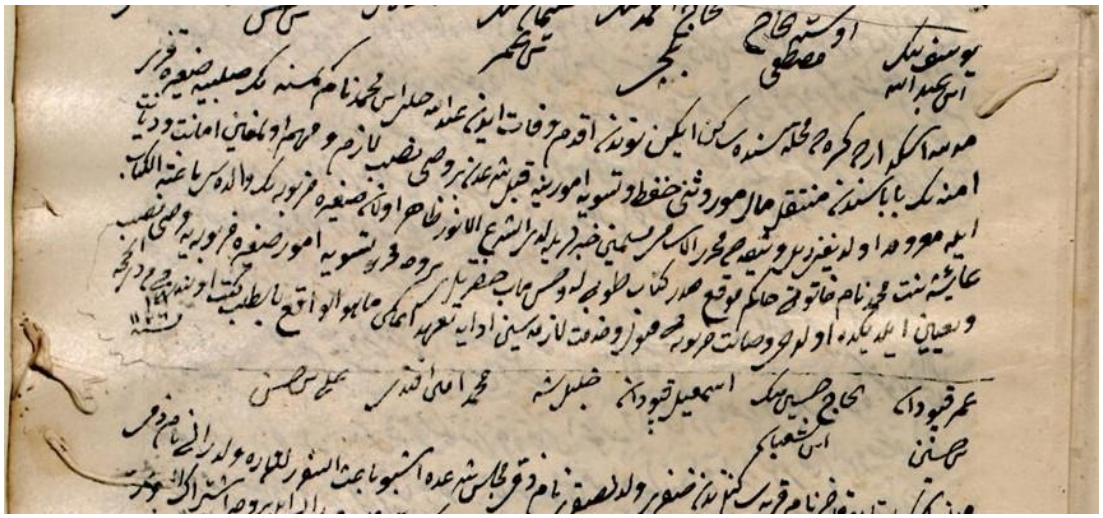
B. FACSIMILES OF SOME COURT RECORDS



B.1: A case record of child maintenance in Üsküdar Court Records Vol. 336 27 B/1



B.2: A case record of child maintenance in Üsküdar Court Records Vol.336 43/A1



B.3: A case record of appointment of child guardian in Üsküdar Court Records Vol.355 12/B2

C. TURKISH SUMMARY / TÜRKÇE ÖZET

Çocukluk modern dünyada hala kafa karıştırıcıdır zira çocukluğa atfettiğimiz anlamlar sosyal ve kültürel geçmişimizle bağlantılıdır. Tarihsel süreçte anlamı değişen bir kavram olarak çocukluk, sosyal ve yasal yapılar tarafından çocuk hakları, ebeveyn sorumlulukları ve çocukluk sınırları açısından inşa edilmiştir. Dolayısıyla, bu kavramı anlamak için yasal yapılar çocukluk kavramının nasıl şekillendiğine dair daha geniş bir bakış açısı sağlayacaktır. Bu bağlamda, bu tezin çerçevesini şekillendiren temel soru, erken modern Osmanlı toplumunda, özellikle çocuk bakımı açısından hukukun uygulanması yoluyla çocukluk kavramının nasıl inşa edildiğidir.

Aile tarihinin bir parçası olarak başlayan çocukluk tarih yazımı, sadece çocukluk kavramına odaklanan çalışmalarla sosyal tarih için bir araştırma konusu haline geldi. Erken modern Avrupa çocukluk tarih yazımı, esas olarak toplumsal yapı içerisindeki çocukluk kavramının varlığını sorgulamaktadır. İlk çalışmalardan bu yana, çocukluk tarihi literatürü kavramın varlığını, çocukların sosyal konumunu, çocuk yetiştirme, çocuk hakları ve ebeveyn sorumlulukları açısından başkalarıyla ilişkilerini tartışmıştır. Bu literatür birçok ampirik ve teorik araştırma türü ile büyürken, erken modern zamanlarda çocukluk kavramının varlığı sorunu Osmanlı çocukluk tarihi açısından da önemini korumaktadır.

Bu tez çocuk bakımının sosyo-hukuki bir analizi olarak yürütülmekte ve erken modern Osmanlı çocukluk tarihini kavramsal tartışmanın içerisinde konumlandırmayı hedeflemektedir. Buradaki amacım, 18. Yüzyılın başlarında Osmanlı Üsküdar'ı bağlamında, çocuk bakımı üzerinden çocukluğun sosyo-hukuki konumunu Şer'iyye Sicilleri ve Osmanlı Şeyhülislamları fetvalarını ele alarak inceleyen bir analiz sunmaktır. Bu araştırma, sosyal ve yasal yapıların çocukların ihtiyaçlarını nasıl şekillendirdiğini tartışarak çocukluk kavramı ekseninde bulguları değerlendirmektedir. Erken modern Osmanlı toplumunda çocukluk kavramını tanılamanın yanında, bu tez iki ana hedef etrafında yürütülmüştür: (1) Çocuk velayeti ve çocuk bakımı açısından ergenliğe ulaşana kadar çocuk bakımının sosyo-hukuki analizi ve (2) 18. yüzyılın başlarında Osmanlı Üsküdar'ında çocuk vesayetinin önemi

açısından çocukluktan yetişkinliğe geçişin sosyo-hukuki analizi. Genel olarak bu tez, erken modern Osmanlı toplumunda çocuk bakımının sosyal ve yasal etkilerle zaman içinde nasıl dönüştürülüp şekillendiğine odaklanarak çocukluk kavramını bulmaya çalışmaktadır.

Bu tezde, asıl odak noktası, ergenliğe kadar mahkemede konu olmaksızın her iki ebeveyniyle birlikte yaşayan çocuklar değil, ebeveynleri boşandığı, öldüğü veya kaybolduğu için çocuk bakımı veya çocuk velayetiyle ilgili davalara konu olan çocuklar üzerinedir. Dolayısıyla, bu tezin en önemli amacı, çocuk bakımının, çocuk velayeti, nafaka ve vesayet açısından aile ilişkileri bağlamında sosyo-hukuki analizidir. Bu tez kapsamında bu sosyo-hukuki analizin iki boyutu vardır: (a) Çocukların ebeveynleri, kardeşleri ve akrabalarıyla ilişkileri ve (b) toplumda çocuk bakımının önemi. 18. Yüzyılın başlarında Üsküdar Şer'iyye mahkemesinde çocuklarla ilgili davaların karar alma süreci bağlamında çocuklar ve diğerleri arasında sosyal bağların kurulması tartışılmaktadır. Özetle, bu araştırma erken modern Osmanlı toplumunda çocukların sosyal konumuna ilişkin aile kurumunun inşasını ve aile bağları içinde bireyselliğin inşasını ele almaktadır.

Bu tezin sınırlarını çizerken, kaynaklar ve metodolojik yaklaşımlar açısından mekansal ve zamansal kapsamına işaret etmek gerekir. Kullanmış olduğum kaynaklar üzerinden çizilen zamansal çerçeve, 18. yüzyılın başları olarak, 1706 ile 1739 arasındaki döneme odaklanıyor. Bununla beraber, Üsküdar, mahkeme kayıtlarıyla bu tezin mekânsal kapsamını temsil etmektedir. 18. Yüzyıl Osmanlı Üsküdar'ı, İmparatorluğun başkentine yakın, ağırlıklı olarak Müslüman bir şehir olarak, Türkçe konuşan Müslüman cemaatinin sosyal yaşamına dair bir resim çizmemize yardımcı olmaktadır. Bu nedenle bu tezde ağırlıklı olarak Müslüman nüfusla ilgili vakaları ele alıyorum.

Bu tezin çerçevesi düşünüldüğünde bu kaynakların nasıl kullanılacağı sorusu ortaya çıkmaktadır. Bu çalışmada, bağlam temelli bir analiz yaklaşımı ile toplumun çocukluk ve çocuk bakımı kavramlarını anlamak için nitel analiz yöntemini kullanmaktayım. Amacım, söz konusu vakalara kendi bağlamları içinde bakmak ve onları 18. Yüzyıl Osmanlı tarihinin daha geniş perspektifinde incelemek için bu yöntemi kullanmak

oldu. Bununla beraber, kullandığım belgelerin dili ve açıklamalarını dikkate alarak, mahkeme kayıtları ve fetva metinlerinin söylem analizini sunmaktayım.

Kaynakları üretme metodolojim, araştırmamın kapsamı 18. Yüzyılın başlarında sınırlı olduğu için, 1706 ile 1739 yılları arasında kaydedilen Üsküdar Şer'iyye sicillerinden rastgele kayıtların seçilmesine dayanmaktadır. Belirli bir sicile odaklanmamakla birlikte, Üsküdar mahkemesinde 1706 ile 1739 yılları arasında kaydedilen 7 farklı Şer'iyye sicilinden alınan çeşitli dava ve hüccet kayıtlarını kullanıyorum. 331 (1704/5), 336 (1707/8), 345 (1712/3), 355 (1714/1715), 383 (1729/1732), 395 (1737/8), 396 (1738/9) Üsküdar Şer'iyye Sicilleri bu tezde birincil kaynak olarak kullanılmaktadır. Bu tezde, Üsküdar mahkemesi kayıtlarından davaları çevirirken, hali hazırda çevirisi yapılmış kayıtlardan bazı örnekler de kullanıyorum. Bu kayıtlardaki dava ve hüccetler rastgele seçilmiş ve değişkenlik göstermekte olsalar da çocuklarla ilgili bu kayıtlar çoğunlukla nafaka ödemesine karar verilmesi, vasi atanması ve değiştirilmesi, çocuğun velayetinin / hidanesinin kimde kalacağının belirlenmesi üzerinedir. Ayrıca boşanma, veraset davaları da mahkemede yer alan çocuklar hakkında önemli bulgular sunmaktadır.

Giriş bölümünde tezin ana soruları, metodolojisi ve kaynakları ile tanıtılmasının ardından bu tez üç ana tartışma bölümü ihtiva etmektedir. İlki, yani çocukluk tarihi üzerine olan ikinci bölüm, odaklandığım iki ana başlıktan oluşuyor. Bölümün ilk kısmı, ortaya konan ana eserler aracılığıyla çocukluk tarihçiliğindeki ana argümanları tanıtmaktadır. Bölümün bu kısmı bir literatür incelemesi olarak yapıldığından çocukluk tarihçiliği tanıtılmakta, Orta Doğu ve Osmanlı çocukluğu ile ilgili çalışmalara da yer verilmektedir. Bu literatür taraması yoluyla Osmanlı çocukluğunun, çocukluk tarihindeki ana tartışmalara nasıl dahil edildiğini tartıştım. Literatür tartışmasından sonra, erken modern Osmanlı toplumunda çocukluk kavramı bu bölümün bir sonraki kısmını oluşturmaktadır. Bu ikinci kısım, yaşam döngüsü bağlamında çocukluğu tartışmaktan ve tezin geri kalanındaki tartışmaları anlamaya yardımcı olmak için erken modern Osmanlı toplumundaki çocukluk vakaları için sosyo-hukuki terminolojiyi tanıtmaktan ibarettir.

Osmanlı mahkeme kayıtlarında erkekler *sagir*, kızlar *sagire* olarak tanımlanıyordu. Küçük, genç anlamına gelen bu Arapça kelime, İslam kültürlerinde bebekleri,

çocukları yani ergenlik çağına gelmemiş olan küçükleri tanımlamak için kullanılmıştır. Çocukluk, küçüklük olarak, ergenlik öncesi dönemde zihinsel ve fiziksel olgunluğun olmaması olarak kabul edildi. Çocukluk, çocuğun doğmadan önceki dönem ile çocuğun bu olgunluklara ulaştığı dönem arasında bir dönem olarak tanımlanırken, bu olgunluk kriterleri sosyal ve yasal olarak farklı zaman ve bölgeler bağlamında inşa edilmiştir. Kavramın tanımı çeşitlilik gösterse de çocukluk, erken modern Osmanlı toplumunda bir çaresizlik aşaması, bakıma muhtaç olma ve hayatta kalma ihtiyacı olan bir dönem olarak görülüyordu. Ayrıca çocukluk, çocukların, yetişkinlerin dünyasında "iyi bir erkek ya da kadın" olmaları için bir hazırlık aşaması olarak görülüyordu. Bu anlamda, erken modern Osmanlı toplumunda çocukluğun "gerçek hayata" açılan bir kapı olarak görüldüğü ileri sürülebilir. Bu bakış açısı, çocukların başkalarıyla nasıl iletişim kurduğunu ve çocukların sosyal çevrelerinde nasıl konumlandıklarını da şekillendirmişti.

Bu tezde, çocuk bakımını, çocukların velayeti yani hidanesi, nafaka ödemesi ve yasal vasiliği olarak kavramsallaştırmaktayım. Hidane, Arapça bir kelimedir ve Osmanlı hukuk söyleminde çocuk velayetini tanımlamak için kullanılmıştır. Bu nedenle, bu kavram çocukların fiziksel bakımını temsil ediyordu. Velayet dönemi olan hidane dönemi, doğumdan çocukluğun sonuna kadar çocuğun cinsiyetine göre değişen zihinsel ve bedensel olgunluğa ulaşacağı dönemi içermektedir. Çocuk velayeti olarak hidane, çocuklara yaşamın ilk yıllarında yaşamın temel ihtiyaçlarını yetiştirmek, beslemek ve öğretmek anlamına geliyordu. Olağan koşullarda, çocuğun velayeti, babanın geçerli bir sebep olmaksızın engelleyemeyeceği, annenin elinde tuttuğu bir hak olarak kabul edildi. Nafaka yasal olarak yaşamak için gerekli olan şeyleri kapsayan nafaka ödemesini ifade eder. Nitekim nafaka, "eski eş için nafaka," "çocuk nafakası" veya ihtiyacı olan biri için herhangi bir destek anlamına gelen kapsayıcı bir kelimeydi. Çocuklar için ödenen nafakaya baktığımızda, herhangi bir mülke sahip olmadıkça çocukların kendi geçimlerini sağlayana kadar muhtaç olarak görülmesinden dolayı babaların çocuklarının bakım masraflarını karşılaması kanunen zorunluydu. Bu, çocukların ebeveynleri hala evli olduğu sürece tartışma konusu olmazdı zira babanın ödemesi bekleniyordu. Ancak boşandıktan sonra çocuklarının velayetini alan anneler, çocuklarının nafaka ödemelerini çocuğun babasından talep etmek için izin almak üzere mahkemeye gelirlerdi. Vasi, yasal anlamda kişinin mülkünün yasal temsilcisi veya

koruyucusu anlamına geliyordu. Bir çocuğun yasal ve doğal vasisi kayıt gerektirmeyen olağan koşullarda babaydı. Çocuk vesayetiyle çocuk velayeti yani hidane arasındaki fark, vesayetin yasal temsil, çocuğun malının korunması ve / veya çocuğun yaşamı hakkında karar vermeyi içermesine karşın, velayetin çocukların fiziksel bakımı olmasıdır. Babanın ölümü veya kaybolması durumunda atanan çocuğun vasisi, evlilik, mülk kullanımı veya seyahat gibi konularda çocuğun yaşamına karar verme hakkını elinde tutan yetkili bir role sahipti.

Erken modern Osmanlı toplumunda çocuk bakımı, cinsiyet, din, sosyal ve kültürel dinamikler ve hukuk sisteminin çeşitli boyutları üzerinden inşa edilmiştir. Aile ilişkilerinin sosyal yapısı, ebeveyn-çocuk ilişkisi biçiminde çocukların sosyo-yasal statüsünü şekillendiren önemli ölçüde cinsiyetlendirilmiş normlara dayanıyordu. Temel olarak, çocuk yetiştirme, çocuk sağlığı, çocuk bakımı erken modern zamanlarda kadın kültürünün egemen olduğu özel bir kültür olarak inşa edildi ve anneliği çocuk yetiştirme ve çocukluk için kritik hale getirdi. Buna karşılık, kamusal meseleler ve maddi ihtiyaçlar, çocuklar ve hatta anne üzerindeki otorite olarak sembolize edilen babalığa yüklenen sorumluluklar olarak görülüyordu. Osmanlı toplumunda aile hayatının ataerkil yapısı, ağırlıklı olarak aile ilişkilerini şekillendirdi ve ebeveynler arasında cinsiyete dayalı iş bölümü biçiminde roller olarak inşa edildi. Bu bağlamda ele aldığımızda, çocuk bakımı ve ebeveyn-çocuk ilişkisi Osmanlı aile yapısı hakkında önemli dinamikleri anlamamızı sağlamaktadır.

Bu çerçevede tartışmaya açtığım çocuk bakımı ve çocukluk algısını ebeveyn ve çocuk ilişkisi üzerinden sürdürdüğüm bu tezdeki üçüncü bölümde, aile ilişkileri içinde çocuk bakımının bir tartışması yürütülmektedir. Bu bölüm, çocuk gelişim aşamalarının farkındalığı ile ebeveyn-çocuk ilişkilerine odaklanmaktadır. Erken modern Osmanlı toplumu bağlamında çocuk bakımını anlamak için 18. Yüzyılın başlarındaki Üsküdar mahkemesinin odağıyla iki ana aşamada çocukluk üzerine bir tartışma yürütüyorum. Bu iki aşama: Fetal dönemdeki ilk aşama, fetüsün varlığının bilinci ile ele alınan çocukluk ve çocuk bakımı kavramlarının tartışılmasıyla oluşmaktadır; ikinci aşama, çocuğun doğumdan ergenliğe kadarki velayet dönemi olarak kavramsallaştırılan ana çocukluk dönemi ile ilgilidir. Bu bölümün ana konusu sosyo-hukuki bağlamda çocuk gelişimi ve ihtiyaçları ile ilgili ebeveyn bakımına verilen önemdir. Çocukların sosyal

rollerini şekillendirmek için farklı aşamalardaki gelişimlerinin dikkatle izlendiğini iddia etmek yanlış olmayacaktır. Dolayısıyla, 18. yüzyılın başlarında Üsküdar bağlamında ele aldığımız bu tartışma, erken modern Osmanlı toplumunda çocukların benzersiz doğasını dikkate alarak, çocuk gelişimi konusunda ayrıntılı bir farkındalığa sahip yerleşik bir çocukluk kavramının varlığını göstermektedir. Geçmişte çocukluk kavramının çok az dikkate alındığı düşünülse de çocukluğun gelişimsel özelliği farklı dönem ve koşullarda dikkate alınmaktaydı. Erken modern Osmanlı toplumunda hamilelik, ebeveynlere yeni sorumluluklar getirmekteydi, ancak çocukların sosyo-hukuki konumu, doğumdan sonra daha etkili bir şekilde inşa edilmiş ve kendini göstermişti. Böylelikle sorumluluklar ve yasal tanımlar daha net tanımlanmaktaydı.

Çocukların gelişimi farklı yaşlara göre değerlendirildiğinden, hassas çocukluk yıllarında farklı dönemlerde çocuklara yönelik farklı tutumlar görebiliriz. İlk bakışta çocuklar, tercihen biyolojik anneleri veya anneanneleri tarafından anne bakımına muhtaç olarak görülüyordu. Annenin velayeti, çocuğun cinsiyetine dayanıyordu. Çocuk yetiştirmenin amaçlarından biri de onları cinsiyetlendirilmiş topluma hazırlamak olduğu için kızların "kadınlığı" öğrenmeleri için kardeşlerinden daha uzun süre anneleriyle birlikte kalmaları bekleniyordu; ayrıca, erkek çocuklarının babaları tarafından erken yaşta annelerinin gözetiminden alınarak "erkeklik" ve sosyal yaşam hakkında bilgi edinmeleri bekleniyordu. Bununla beraber, çocuk gelişimi konusundaki farkındalık, cinsiyet rollerini öğrenmek veya anneleri tarafından beslenmekle sınırlı değildi. Çocukluğun, erken modern Osmanlı toplumunda Müslüman erkek kimliğinin önceliğinin hâkim olduğu yetişkin dünyasına hazırlık süreci olduğunu biliyoruz. Bu nedenle çocuklar yetiştirilirken ebeveynleri ve toplum tarafından ihmal edilmemiştir çünkü zihinsel, fiziksel ve sosyal yeteneklerinin geliştiği farklı aşamalar sosyo-hukuki konumlarını şekillendirmiştir. Bu bağlamda, din gibi toplumun farklı dinamiklerini öğretmek için çocukların zihinsel kapasitelerinin gelişimi ciddi bir şekilde takibe alınmıştı.

Bununla beraber, çocuk nafakası ciddiye alınan bir konuydu. 18. Yüzyılın başında Üsküdar'da maddi kaynakları olmayan çocukların herhangi bir maddi destekten yoksun bırakılmasına izin verilmezdi. Bu tür bir çocukluk algısı, çocukları muhtaç ve bağımlı olarak görülmesinden kaynaklanmaktaydı; bu, imparatorluğun başka

yerlerinde olduğu gibi 18. yüzyılın başlarında Osmanlı Üsküdar'da da ebeveynler, akrabalar ve hatta toplum için sorumluluklar yaratmıştı. Çocukların bu kırılgan sosyo-hukuki konumu, yardım almadan yaşama şansları olmadığı için her durumda onları korumayı gerekli kılıyordu.

Çocuk velayeti ve nafaka ile ilgili mahkeme davalarındaki karar ve ifadelerin incelenmesiyle çocuğun yüksek yararının korunmasına yönelik verilen ebeveyn sorumlulukları ve yasal uygulamaların çocukların gelişim aşamalarına ilişkin farkındalığına dayandığını görmekteyiz. Bu bakış açısının da erken modern Osmanlı toplumunda çocukluk duygusunun şekillendirdiğini anlamaktayız. Bu nedenle, doğumdan ergenliğe kadar çocukluğun kendine özgü karakterine ilişkin sosyo-yasal bir farkındalık, sadece ebeveyn rollerini değil, aynı zamanda çocukların toplumla ilişkisini de belirlemişti. Çocukluğun ebeveynlik uygulamalarını nasıl etkilediğine baktığımda ise aile kurumunun ebeveyn-çocuk ilişkileri yoluyla oluşumuna ilişkin bir tartışma başlattım.

Bulgulardan yola çıkarak 18. Yüzyılın başlarında Üsküdar'da çocuk bakımı sorumluluklarının sadece kanunla değil, kanunla yönlendirilen yolda bireysel kararlarla da ilerletildiği bir toplumsal inşa sürecinden söz edebilmekteyiz. Ebeveynlerin çocuk bakımı konusundaki bireysel kararları, kanunun sağladığı ekonomik fırsatlardan yararlanmak yerine hem çocuklarının yüksek yararını hem de ebeveyn olarak sosyal prestijlerini koruyacak şekilde şekillenmiştir. Böylelikle ebeveyn rolleri, bazen kadınların yasal otoriteleri ve babaları ikna ederek, bazen de erkeklerin çocuklarının annelerinin taleplerini kabul etmesiyle ebeveynlerin ekstra çocuk bakımı sorumlulukları almaları şeklinde gerçekleştirilmiştir. Çocukların refahı ve ebeveyn rollerinin önemi üzerindeki sosyo-yasal vurgu, ebeveynler arasında bireysel tercihlere dayalı anlaşmalar yoluyla yasal kuralların uygulanmasını şekillendiren hatta yasayı esnetebilen bir faktör haline geldiğini söyleyebiliriz. Bu bağlamda çocuk bakımı, bir yandan kişilerarası anlaşmalarda yararlı bir pazarlık aracı olmaktayken, diğer yandan sosyo-yasal kimliklerin pekiştirilmesinde önemli uygulamalar olarak ortaya çıkmıştır. Bu bağlamda, bu bölümdeki tartışmalar, çocuk bakımı üzerinden annelik ve babalık rolleri tarafından bireysel kimliklerin nasıl yeniden yapılandırıldığını gösterdi. Bu bulgular ışığında görmekteyiz ki 18. Yüzyılın

başlarında Üsküdar'ın sosyo-hukuki bağlamında, ebeveyn kimliklerinin inşasında çocuk bakımına ilişkin hukuki kurallar etkili olmaktaydı.

Çocuk bakımı ve ebeveyn ilişkileri açısından ele alınmasının yanında, çocukluğun nasıl bittiğini ve yetişkinliğin nasıl başladığını anlamak kavramı anlamamız açısından büyük önem taşımaktadır. Tezin son ana bölümü olan dördüncü bölümde, geçiş dönemini dikkate alarak ergenlik sorununu ve çocukluk ile yetişkinlik arasındaki farkı tartışmaktayım. Bu bölüm üç ana tartışmadan oluşmaktadır. İlki, temelde ergenlik ve çocukların yetişkin yaşama geçişinin sosyo-yasal analizidir. İkinci olarak, çocuk vesayetiyle ilgili bölümde, 18. Yüzyılın başlarında Üsküdar'da hem vasiliğin hukuki dayanağını hem de çocukların vasiliğinin kimlere hangi motivasyonlarla verildiğini tartışmaya açmaktayım. Son olarak, esasen bütünleştirici bir tartışma olarak, ergenliğe ulaştıklarında çocukların vasileriyle olan ilişkisi bağlamında, 18. Yüzyılın başlarında Üsküdar'ın sosyo-hukuki bağlamında vasilerin çocukların hayatlarına ilişkin aldıkları kararların ergenlik çağına geldiklerinde bu çocuklar tarafından nasıl algılandığını mahkeme kayıtlarına dayanarak tartışmaktayım.

Osmanlı toplumunun sosyo-hukuki bağlamında bir çocuk ile bir yetişkin arasındaki en önemli ayrım, kendi yaşamları ve bedenleri hakkında karar verme kabiliyetine sahip olma anlamındaki erginliğe ulaşmaktı. Modern dünyada yetişkinlikle ilgili değer verdiğimiz şey hala rıza çağı olduğu için, çocukların yaşamları hakkındaki sosyal ve politik tartışmalar için hala kritik bir noktadır. Osmanlı toplumunda ergenliğe ulaşmak, özellikle bir çocuğun kendi evliliği, malları ve dolayısıyla kendi bedeni hakkında karar verme hakkına sahip olması açısından kritik bir faktör gibi görünüyor. Zihinsel yeteneğin gelişmesinden önce, çocuğun evliliği ve mülkiyeti ile ilgili kararlar babaları veya vasileri tarafından veriliyordu. Bu nedenle vasilik aslında çocukların sosyal ve yasal konumları açısından çok önemli bir yer tutmaktaydı.

Bu bölümde teorik bir tartışmanın yanı sıra, bu tür durumlarda çocukların sosyo-hukuki durumlarını ebeveynleri veya vasileri arasındaki ilişkiler üzerinden tartıştım. Ebeveyn kimlikleri sosyal, kültürel ve dini bağlamlarda şekillenirken, çocukların yasal bağımsızlığına ilişkin farkındalık, sorumlulukların ve sınırlamaların şekillenmesinde merkezi bir rol oynadı. Çocukların ebeveynleri veya yasal vasileri, çocuk hakları ve sosyo-yasal statüler dikkate alınarak yasal otorite tarafından kontrol ediliyordu. Bu

nedenle, çocuklarla ilgili yasal kurallar, ebeveynlerin çocuklarına yönelik davranışlarını bile sınırlayabilmekteydi. Bu da bize gösteriyor ki, 18. yüzyılın başlarında Üsküdar'da dönemsel değişkenlik ve kırılganlıkları dikkate alınarak korunmalarına yaptırım uygulandığı anlayışına rağmen çocukluk ve ergenlik kavramının yasal bir konumu vardı.

Bir bakıma ergenliğin yasal olarak tanınmasının farklı şekillerde tanımlandığını biliyoruz. Ergenlik dönemi, bir bireyin karar verme hakkının yasalarca tanınmaya başlandığı zamandı. Dolayısıyla bu hakka sahip olmak, vasilerinin verdikleri kararları geriye dönük sorgulama hakkını da beraberinde getirdi. Örneğin, detaylandırılması gerekiyorsa, evlilik veya boşanma anlaşmaları ergenliğe ulaştıktan sonra kişinin kendi kararıyla yapılması gerekse bile, vasiler tarafından çocuklar için düzenlenebilmekteydi. Ayrıca, vasiler çocukların mülklerinin tasarruf hakkına sahiplerdi. Burada önemli olan nokta, bu çocukların ergenlik dönemine girdikten sonra yapılan evliliklerin iptali için veya mülklerinin zarar uğradığını düşündüklerinde vasilerine karşı dava açabilmekteydi. Bu şekilde aslında erken modern Osmanlı hukuk sistemi, sadece çocukların vasilerine yetkilerinde belirli sorumluluklar ve sınırlamalar getirmekle kalmamış, aynı zamanda çocukların yasal haklarını korumak için vasileri gözetim altında tutmuştur. Bir çocuğun mülkünü kontrol etmek, yalnızca yasal makamlar tarafından gözlemlenmeyen, aynı zamanda çocuğun başka bir akrabası veya ergenliğe ulaşan çocuk tarafından da sorgulanan sosyo-hukuki bir konuydu. Bir çocuğun vasisinin değiştirilmesi, vasinin "yetersizliği" veya "sosyal itibarı" nedeniyle çocuğun velayetini tutan kişi tarafından talep edilebilir. Nitekim, bir vasi atama kriterlerine bakılarak bir vasinin neden değiştirileceğinin nedenleri anlaşılabilir. Hâkim, reşit olmayan bir çocuğa vasi atamak için bazı sosyal kriterleri değerlendirmekteydi: Sosyal açıdan "prestijli", "dürüst", "güvenilir", "dindar" olmalı ve çocuğun haklarını korumak ve düzenlemek için vesayet görevini yerine getirebilme yetisine sahip olmalıydı. Bu bulgular ışığında hukuki otoritenin çocuğun haklarına ve korunmasına verdiği önemi görebilmekteyiz.

Bu bağlamda, çocuklar, çocukluk döneminin yaşamın bir aşaması ve yetişkin yaşamına bir hazırlık dönemi olarak görülmesinden dolayı ve çocukların bir gün kendileri adına konuşacakları dikkate alınmasından dolayı toplumsal ilişkilerden ayrı

tutulmamışlardır. Bu bakış açısı, hukuki uygulamaları çocuğun bağımsız bir birey olarak korunması açısından şekillendirmiştir. Elbette, aile ilişkileri sosyo-hukuki bağlamda değerlendirilmiş ve övülmüştür, ancak yine de bu ilişkilerin çocukların yüksek yararını korumak için sorgulanabileceğini görebilmekteyiz. Kurumsallaşmış bir çocuk koruma sistemi olmasa bile, erken modern Osmanlı toplumunda sosyal kontrol mekanizmasının bir parçası olarak, devlet otoritesini temsil eden yerel yetkililer, vasisi olmayan kimsesiz çocukların durumunu sorunsallaştırmaktaydı. Bu bağlamda, kimsesiz çocukların menfaatlerini koruma sorumluluğunun sadece aile üyelerinin görevleriyle değil, aynı zamanda bir toplum meselesi ve kadı dahil yerel makamlarla ilgili olduğu tartışılmaz bir gerçektir. Bu bölümde tartıştığımız, çocukluğun savunmasızlığına dair farkındalık, çocukluktan yetişkinliğe geçişte uygulanan davalarda kendini göstermiştir. Mülkiyet haklarının korunması ve evlilik veya boşanma gibi çocukların rızası olmadan gerçekleşmiş olabilecek hayati anlaşmaların sorgulanabilirliği bu anlayışı desteklemektedir. Dolayısıyla çocuğun "birey" olarak tanınmasını ve devletin "çocuğun bireysel varlığını" çocuğun yasal hakları aracılığıyla aileden ayrı olarak tanımasını görüyoruz.

Bu tezde, şimdiye kadar tartışmış olduğumuz başlıklar üzerinden erken modern Osmanlı toplumunda çocukluğun dönemsel farklılıklarıyla ve özel bakım ihtiyaçlarıyla birlikte tanımlanmasını ve algılanmasını görmekteyiz. Her ne kadar henüz kaynak ve literatür anlamında Osmanlı çocukluk tarihini anlamak için kapsayıcı bir yoruma sahip olmasak da sahip olduğumuz bu tartışma bize hem Osmanlı toplumunda çocukların nasıl algılandığı hakkında önemli bilgiler sunmaktadır. Çocukluk tarihçiliğinde sorulan çocukluk kavramının varlığı gibi temel soruların cevapları, Osmanlı çocukluk tarihinde hala eksiktir, ayrıca ana konu olarak çocukluk kavramı ve diğer yapılarla ilişkisini ele alan az sayıda çalışma vardır. Bununla birlikte, bu tez, çocuk bakımının sosyo-hukuki analizine ilişkin bulguları ile erken modern Osmanlı toplumunda çocukluk kavramının varlığı konusundaki tartışmaya ilerici bir katkı sağlamaktadır. Çocukluk kavramının ve çocuk bakımı uygulamalarının sosyo-hukuki ortamda tartışılması, çocuklar ile aile, din, cinsiyet gibi sosyal yapılar arasındaki ilişkiler hakkında önemli göstergeler ortaya çıkarmıştır. Sonuç olarak bu tez, çocukluğun anlamı, çocuk gelişimi ve çocukluk sonrası algısı ve çocukların sosyal

dinamiklerle etkileşimi konusundaki bulguları ile Osmanlı çocukluk tarihi literatürüne katkı sağlamaktadır.

Ayrıca Osmanlı çocukluk tarihinde atılması gereken daha birçok adım vardır ve bunlardan önemli bir tanesi de kavramın hukuki kaynakların ötesine geçerek farklı kaynaklara dayalı olarak analiz edilmesidir. Örneğin, çocuğun konu olduğu kişisel anlatılara dayalı bir çalışma, bize tarihte çocuk olmanın günlük deneyimi hakkında çok daha fazla bilgi verecektir. Ayrıca, çocukluk deneyimlerini aile ilişkileri yoluyla, belki de en iyisi ebeveyn-çocuk ilişkileriyle okuyabiliriz. Bu nedenle, bir diğer önemli adım, erken modern Osmanlı ebeveynliği hakkında sorular sormak ve çocukluk deneyimlerini anlamak açısından bunu vurgulamaktır. Ebeveynlik ve çocukluk kavramlarının bir çalışmada birleştirilmesi, Osmanlı aile kurumunun sosyo-tarihsel yapısına kesinlikle ışık tutacaktır.

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