

# THE OTTOMAN MILLET SYSTEM

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## ABSTRACT

### THE OTTOMAN MILLET SYSTEM

*This paper explores the main tenets of the millet system. Millet is an Arabic word that translated into English as nation. This term was not used only for non-Muslims, but also for any nation. However, in the terminology of the Ottoman historians, it is mostly used to define non-Muslim communities. People were seen in the eyes of State not on the basis of ethnicity or language, but religion. "Religion, language, community, ethnicity, and family made up the socio-cultural fabric of the millet." For the period of the Ottoman, the most important thing was religion and supremacy of family; in other words, the millet system was in favour of "fusion of family and the community."*

**Key words:** Ottoman, Millet, Turk, Ottoman State, Islam

This paper explores the main tenets of the millet system. The Qur'an orders that freedom of religion is one of the main principles of Islam.<sup>1</sup> According to the Islamic Law, Jews and Christians were accepted as people of the book. Islam provides protection for non-Muslims via agreement between the State and the group.<sup>2</sup> In an Islamic State, non-Muslims are protected groups thus

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<sup>1</sup> See general Mohammad Hashim Kamali, "Freedom of Religion in Islam" 21 Cap. U. L. Rev. (1992) at 80.

<sup>2</sup> See Mehmet Akif Aydın, *İslam ve Osmanlı Hukuku Araştırmaları* [Researches on the Islam and Ottoman Law] (İstanbul, İz, 1996) at 230.

Professor Hamidullah notes that after the Prophet, the Second Caliphate Omer, there was a Jew whose land was taken away from him without his consent, and administrators established a Mosque. Omer made the administrators destroy the mosque and returned the land to its owner. Still, today there is "Beyt-ul Yahudi" [Jew House]. See Muhammed Hamidullah, *İslam Anayasa Hukuku* [Constitutional Law of İslam], ed., Vecdi Akyuz, (İstanbul, Beyan, 1995) at 200.

it is a duty of the government to protect their legitimate interests.<sup>3</sup> Millet is an Arabic word<sup>4</sup> that translated into English as nation.<sup>5</sup> This term was not used only for non-Muslims, but also for any nation.<sup>6</sup> However, in the terminology of the Ottoman historians, it is mostly used to define non-Muslim communities.<sup>7</sup> The Ottoman administration system was divided into two as territorial/local (provinces) and religious divisions. People were seen in the eyes of State not on the basis of ethnicity or language, but religion.<sup>8</sup> "Religion, language, community, ethnicity, and family made up the socio-cultural fabric of the millet."<sup>9</sup> For the period of the Ottoman, the most important thing was religion and supremacy of family; in other words, the millet system was in favour of "fusion of family and the community."<sup>10</sup> "Religion supplied to each millet a universal belief system while ethnic and linguistic differences provided for divisions and subdivisions within each one of the two Christian millets."<sup>11</sup>

The "Milletbasi" either a patriarch or rabbi was the representative of his community before the State<sup>12</sup> like a political head. The Religious community was the form of political structure and "the source of identity" for non-Muslim communities.<sup>13</sup> One can assume that it was a segregation or isolation of communities from each other. Berkes notes that the millet system worked

<sup>3</sup> See Muhammad Hamidullah, *Muslim Conduct of State*, Chapter 12, "The Status of Non-Muslims in Islam" available at <http://www.muslim-canada.org/ch12hamid.html> (accessed on August 5, 2008).

<sup>4</sup> See İlber Ortaylı, *Üç Kıtada Osmanlılar* [Ottomans on Three Continents] (Istanbul, Timaş, 2007) at 59. Professor Ortaylı claims that the Ottoman was one of the three greatest empires in the region of the Mediterranean and the latest universal one.

<sup>5</sup> See Kemal H. Karpat, "Millets and Nationality: the Roots of the Incongruity of Nation and State in the Post-Ottoman Era" in *Christians and Jews in the Ottoman Empire: the Functioning of a Pluralist Society*, Volume I, Benjamin Braude & Bernard Lewis, eds. (NY, London, Holmes & Meier, 1982), at 141-170. Professor Karpat is well known the Ottoman historian who taught for many years in Wisconsin University in the USA.

<sup>6</sup> See Benjamin Braude, "Foundation Myths of the Millet System" in Benjamin Braude & Bernard Lewis, id., at 69.

<sup>7</sup> Id.

<sup>8</sup> See Serif Mardin, "Religion and Secularism in Turkey" in *Atatürk: Founder of a Modern State*, Ali Kazancigil & Ergun Özbudun (eds), 2<sup>nd</sup> ed, (London, Hurst & Company, 1997) at 199

<sup>9</sup> See Karpat, *supra* note 5, at 142.

<sup>10</sup> Id.

<sup>11</sup> See Kemal Karpat, *Studies on Ottoman Social and Political History: Selected Articles and Essays* (Leiden, Brill, 2002) at 612.

<sup>12</sup> See Benjamin Braude, "Foundation Myths of the Millet System" in Benjamin Braude & Bernard Lewis, *supra* note 5, at 69.

<sup>13</sup> See Karpat, *supra* note 11, at 17.

without segregating millets (nations) into ghettos or extermination<sup>14</sup>, they lived next to each other. However, “each group had traditions as to titles, grades, recruitment, ceremonies, discipline, but absolute loyalty to the supreme ruler.”<sup>15</sup> The Millet system based on the Zimmi [Dhimmah] tradition that regulates public and personal rules for minorities [religious] who lives under the rule of Islamic lands.<sup>16</sup> In doctrines, many authors continue to perpetuate this mistaken belief; Islam or Ottoman practices provided non-Muslim communities communitarian identity and did not recognize individual autonomy and just followed and dictated orthodox socio-religious orders of the communities.<sup>17</sup>

<sup>14</sup> See Niyazi Berkes, *The Development of Secularism in Turkey*, (NY, Rout ledge, 1998), at 11-2. This book was originally published in Canada in 1963 by McGill University. Niyazi Berkes (1908-1988) was a leftist Turkish intellectual who escaped from Turkey after the 1960 Military Coup d'état and began to reside in Canada. He never came back to live in Turkey. See, Berkes, New Introduction by Feroz Ahmad, at XV-XXXIII.

<sup>15</sup> Id, at 12.

<sup>16</sup> See Kamran Hashemi, “The Right of Minorities to Identity and the Challenge of Non-Discrimination: A Study on the Effects of Traditional Muslims Dhimmah on Current State Practices” 13 *Int. J. Min. & Gr. R.* (2006) at 2.

<sup>17</sup> Such as one of the authors see Abdulaziz Sachedina, *Guidance or Governance? A Muslim Conception of “Two-Cities”*, 68 *Geo. Wash. L. Rev.* (1999-2000) at 1093. Or see Marc Baer, “The Double Bind of Race and Religion: The Conversion of the Donme to Turkish Secular Nationalism” *Soc. of Comp. Stud. of Soc. and His.* (2004) at 685.

Leo Zaibert rightly critic Will Kymlicka and make balance about the Ottoman Millet system. According to Zaibert, Kymlicka pointed out that the system was not liberal even many groups lived peacefully next to each other, but none of the individual has right to exit from the group thus individual autonomy was not respected. The system did not recognize any individual freedom of conscience. Therefore, he calls it as a federation of theocracies [See Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (NY, Oxford, 1995) at 152 and 157].

Zaibert claims that “I do not mean to suggest that the Ottoman Millet system was liberal in content; but it is closer to being that than to being liberal –in-form. See Leo Zaibert, *Punishment and Retribution*, (Aldershot, AshgateP, 2006)

The *Millet System* also;<sup>18</sup> “allowed the subject Christian peoples [and the other nations] to retain their separate identities and cultures, rooted in their respective churches. Indeed the monophysite churches with Syrian, Armenian and Coptic adherents, as well as the Nestorians, survived mainly in the Muslim lands, while vanishing in the more intolerant Christian West. Along with the Jews expelled from England [actually Jews were coming into the Ottoman land since around 1390], France, Spain, and Portugal, a variety of heterodox Christians including Protestants, Unitarians, and Russian Molokans received refuge in the Ottoman Empire.”

Non-Muslim minorities enjoyed nearly unfettered self-government within their religious communities, also operating their own schools.<sup>19</sup> During the Ottoman era, many Vezirs (State ministers) or Grand Vezirs (Prime Ministers) were appointed non-Muslims or other Muslim races who were not Turks.<sup>20</sup> In the *Millet System*, nations “were treated like corporate bodies and allowed their own internal structures and hierarchies; indeed the Ottoman State encouraged this by dealing exclusively [most of the time, but not all the time] with their head figures rather than the individual members.”<sup>21</sup> In other words, it is a

<sup>18</sup> See Hugh Poulton, *Top Hat, Grey Wolf and Crescent: Turkish Nationalism and the Turkish Republic* (London, Hurst & Company, 1997) at 49. See more about the Ottoman Millet System, Youssef Courbage & Philippe Fargues, *Christians and Jews under Islam* (London, New York, I. B. Tauris Publishers, 1997) especially look at the chapter Five: From Multinational Empire to Secular Republic: the Lost of Christianity of Turkey, Ali Guler, *Osmanli Devletinde Azinliklar* [Minorities in the Ottoman] (Istanbul, Turan Publishing, 1997), Onder Kaya, *Tanzimat'tan Lozan'a Azinliklar* [Minorities from Tanzimat to Lausanne] (Istanbul, Yeditepe Publishing, 2004), Yavuz Ercan, *Osmanli Yonetiminde Gayrimuslimler* [Non-Muslims Under the Ottoman Administration] (Ankara, Turhan Publishing House, 2001). Professor Ercan notes that according to Islamic law or the Ottoman law; Zimmi (non-Muslims) cannot ring their bells, they cannot carry guns, they cannot ride horses, they have to bury their deaths secretly, and they cannot build their houses higher than Muslim houses. At 9. It is a very classic example of Turkish academia about the Ottoman history, even without showing any reference. However, once again, there is a lot of proof against for those kinds of arguments from the Ottoman archives that mainly located in Istanbul.

<sup>19</sup> See Edward Mead Earle, “The New Constitution of Turkey”, 40 *Pol. Sc. Q.*, (1925) at 77.

<sup>20</sup> See Poulton, *supra note* 18, at 44. See more L. Carl Brown (ed.) *Imperial Legacy: the Ottoman Imprint on the Balkans and the Middle East* (New York, CUP, 1996). See Also Justin McCarthy, *Muslims and Minorities: the Population of Ottoman Anatolia and the End of the Ottoman Empire* (NY, NYUP, 1983). See also Justin McCarthy, *Death and Exile: the Ethnic Cleansing of Ottoman Muslims, 1821-1922* (Princeton, NJ Darwin P, 1995), and *The Ottoman Peoples and of Empire (Historical Endings)* (London: Arnold; NY: Oxford, 2001).

<sup>21</sup> See Poulton, *supra note* 18, at 48.

system that establishes the coexistence of religions<sup>22</sup> and allows different communities to live side by side in harmony. However, Abdullahi A. An-Naim notes that:

*"Non-Muslim minorities within an Islamic State do not enjoy rights equal to those of Muslim majority. Some apologist Muslim writers have tended to misrepresent Sharia, the historical religious law of the Muslims, in order to minimize the seriousness of discrimination against non-Muslims. Such an approach is futile not only because current public opinion is unwilling to tolerate any degree or form of discrimination on grounds of religion or belief. On a practical level, although most of the constitutions of modern Muslim states guarantee against religious discrimination, most of these constitutions also authorize the application of Sharia. As such, these constitutions sanction discrimination against religious minorities."*<sup>23</sup>

It is argued here that the Ottoman State already made this reconciliation many centuries ago.<sup>24</sup> Actually, Ottoman Turks began to capture universal human rights standards at their classical age (14th Century-19th Century). In sum, in the Ottoman Era, personal rights and freedoms were very important; their legal basis was provided by the Qur'an. Even in the early 16th century before medical surgery was popular, patients had to sign a paper waiving their rights to the courts before any medical operations were performed and jobs in the Public service sector, under the Ottomans, were equal for Muslims and non-Muslims.<sup>25</sup> Many Christians and Jews had the position of Sadrazam, or Prime Minister of the Ottoman State.<sup>26</sup> It is believed that the norms like "your brothers in religion" or "your equals in creation" served as a main principle for civil

<sup>22</sup> *Id.*, at 16.

<sup>23</sup> See Abdullahi A. An-Naim, "Religious Minorities under Islamic Law and the Limits of Cultural Relativism" 9 Hum. R. Q. (1987) at 1. Moreover, An-Naim argues that Muslims should not discriminate non-Muslims because of Islamic cultural norms and Muslims should reconcile Shariah with fundamental human rights. At 18.

See more Javaid Rehman, "Accommodating Religious Identities in an Islamic State: International Law, Freedom of Religion, and the Rights of Religious Minorities" 7 Int. J. Min. & Gr. Rts. (2000) 139-166.

<sup>24</sup> In doctrine there is an essay collection of a book that consists 58 articles, however, none of them talks about the Ottoman experience. Most of the authors claim that there is no tolerance for non-Muslims in Islam. What I believe this book is heavily written under 9/11 influences. See *The Myth of Islamic Tolerance: How Islamic Law Treats Non-Muslims*, Robert Spencer, ed. (Prometheus Books, Amherst & NY, 2005)

<sup>25</sup> See general Ahmet Akgunduz, *Belgeler Gerçekleri Konusuyor 1 [Documents Tell the Truths I]* (Istanbul, Nil, 1989)

<sup>26</sup> See Ortaylı, *supra* note 4, at 59-68.

society.<sup>27</sup> Sharing highest political positions with non-Muslim citizens was a great discovery at that time. This was another remarkable experience that shows that Ottoman practices were not involved in discriminative policies. However, many nationalistic authors claim that the collapse of the Ottoman Empire was due to Christian and Jews involvement in politics within the Ottoman states. Objectively, Prince Said Halim Pasa disagreed with this criticism, he believed that the Ottoman Justice and Administrative System broke down because of the lack of progression with the times and that this was the reason the State lost its power.<sup>28</sup> In practice Ottoman States protected non-Muslim personal rights, but in the Sultan Mehmet II, Fatih (1432-1481) era, the Sultan began declaring laws to provide more safeguards for non-Muslims.<sup>29</sup> However, "the Ottoman Sultans did not introduce the millet system into their empire only on the capture of Constantinople, but were already applying its principles to the non-Muslim communities under their rule."<sup>30</sup> After the conquest of Istanbul in 1454, Sultan Mehmed II (Fatih) declared a ferman [Sultan's Decree] to the Patriarchate Gennadios containing many rights and privileges. With this decree, the Patriarchate became the highest authority over the Orthodox Churches and Fatih's aim was to encourage the Patriarchate to stay away from political affairs and also the prevention of any possible alliance of eastern and western churches.<sup>31</sup> It should be noted that in 1452 with the force of the Byzantine Emperor Constantine Paleologos, the Greek Orthodox church came under the rule of Vatican, thus Sultan Fatih was a hero who saved and gave them their freedom back. Moreover, Fatih granted the patriarch the title of Ottoman Pasha

<sup>27</sup> See Sachedina, *supra* note 17, at 1097.

<sup>28</sup> See general Said Halim Pasa, *Buhranlarimiz ve Son Eserleri* [Our Crisis and His Last Written Works], ed., M. Ertugrul Duzdag (Istanbul, Iz, 1991). Said Halim Pasa one of the latest Ottoman Sadr-i Azams [Prime Minister].

<sup>29</sup> See Ahmet Akgunduz & Said Ozturk, *700. Yilinda Bilinmeyen Osmanli* [Unknown Ottoman on the 700<sup>th</sup> Anniversary] (Istanbul, Osmanli, 1999) at 434.

<sup>30</sup> From H. A. R. Gibb & Harold Bowen, *Islamic Society and the West*, (Oxford, OUP, 1957), Volume I, Part II, at 214. See Kevork B. Bardakjian, "The Rise of Armenian Patriarchate of Constantinople" in Benjamin Braude & Bernard Lewis, *supra* note 5, at 91. Moreover, the State was enforcing the Patriarchate punishments with his orders. See Erol Ozbilgen, *Butun Yonleriyle Osmanli: Adab-i Osmaniyye* [All Aspects of Ottomans: Rules of Ottoman] (Istanbul, Iz, 2007) at 419. Ozbilgen notes that religious communities' courts verdicts enforced by State officers.

See more Richard Glogg, "The Greek Millet in the Ottoman Empire" in Benjamin Braude & Bernard Lewis, *supra* note 5, at 185-207.

<sup>31</sup> See Elcin Macar, *Cumhuriyet Doneminde Istanbul Rum Patrikhanesi* [Istanbul Greek Patriarchate during the Republic Era] (Istanbul, Iletisim, 2003) at 29.

[General]. The Janissary corps [Devsirme Military Personals] and an attachment of guards are also granted to him. As well as this he had founded a jail inside the Patriarchate building within which Ottoman State law was not practiced, the Patriarchate was law.<sup>32</sup> Fatih also provided this kind of privileges and rights to Armenian and Jewish communities. They became all representative of Armenian and Jewish communities around the world not just religious also politics.<sup>33</sup> It is evident that politics controlled religion during the Ottoman era.

During Ottoman times, diversity was far from being the chaos that lay dormant in society as it too often appears to be the case in modern societies. Rather, it was a quite fundamentally absorbed normality throughout the Empire. Tolerance appeared paramount, for instance as in while Sultan Beyazid II (1481-1512) ruled; Ottoman States sent ships to Spain to save Jews from religious persecution.<sup>34</sup> Their descendents remain in modern day Istanbul, evidently at peace while even continuing to carry out their lives without having to change their native tongue from Spanish. Another notable influx of Jewish refugees are those that arrived in Istanbul during World War II as Turkey took in Jews from Germany, giving them immediate citizenship status, as was especially the case with university professors.<sup>35</sup>

Until relatively recently, Islamic societies and Muslim states showed respect for the Bible and Torah-Talmud and never limited the production or

<sup>32</sup> See Adnan Sofuoglu, *Fener Rum Patrikhanesi ve Siyasi Faaliyetleri* [ Fener Greek Patriarchate and Its Political Activities] (Istanbul, Turan, 1996) at 11-15.

<sup>33</sup> *Id.*, at 16-7.

<sup>34</sup> See "Yahudilerin Şükran Yılları" [Jews Thanksgiving Years], 6-12 January Tempo Magazine (1991) at 26-34. See more Bernard Lewis, *Cultures in Conflict: Christians, Muslims, and Jews in the Age of Discovery* (NY & Oxford, OUP, 1995) at 50-1. See general Bernard Lewis, *The Jews of Islam* (London, Melbourne & Henley, Routledge & Keagan Paul, 1984). However, Joseph R. Hacker claims, wrongly, that under the Sultan Beyazid II, "Jews suffered severe restrictions in their religious life."

See Joseph R. Hacker, "Ottoman Policy toward the Jews and Jewish Attitudes toward the Ottomans during the Fifteenth Century" in Benjamin Braude & Bernard Lewis, *supra note 5*, at 124.

See counter arguments Mark A. Epstein, "The Leadership of the Ottoman Jews in the Fifteenth and Sixteenth Centuries" in Benjamin Braude & Bernard Lewis, *supra note 5*, at 101-15.

<sup>35</sup> See general Ernst E. Hirsch, *Anilarım* [My Memories] (Ankara, Tubitak, 1997). He was one of those law professors who emigrated Turkey because of Nazi persecution. His brother also was one of them who taught in the medical faculty.

teaching of them.<sup>36</sup> After the conquest of Istanbul, minorities such as Greeks, Armenians and Jews were allowed to establish a community whose master was called "patriarch."<sup>37</sup> With this community they were absolutely allowed to live freely their own religion, language, tradition and customs. The government completely gave the management of the authority and responsibilities for all education and cultural institutes, churches and hospitals of minorities' community to this patriarch. After the capture of Istanbul, Sultan Fatih declared that none of the State officials were going to involve the affairs of non-Muslim schools in their programs.<sup>38</sup>

Principally, these institutes and schools were opened and supported by rich and charitable people, not by government. In the early days of the Ottomans, non-Muslims provided religious education to their own children in the churches or synagogues.<sup>39</sup> However, according to Islamic law, non-Muslims cannot establish new churches or synagogues only restore the old ones, but the State of Islam can allow them to establish new ones as a State policy.<sup>40</sup>

During the Ottoman era, non-Muslims could be exempt from military service, while others had the option of paying an exemption tax [jizyah].<sup>41</sup> Women, children, and poor were exempted from paying an exemption tax.<sup>42</sup> However, at the same time, Muslims were paying Zekat (each year paying the

<sup>36</sup> See Osman Sekerci, *Islam Ulkelerinde Gayri Muslimlerin Temel Haklari* [Basic Rights of Non-Muslims in Islamic Countries] (Istanbul, Nun, 1996) at 63. Professor Sekerci notes that because of these privileges and rights some non-Muslims in the past abused their rights. Because there are some bad example of fetvas produced by Islamic scholars. Today, we should not follow these steps; we have to work with non-Muslim scientists. There is no any limit in Islamic law. At 65.

<sup>37</sup> See Ercan, *supra* note 18, at 228.

<sup>38</sup> See Sekerci, *supra* note 36, at 65. In another book, Sekerci strongly argues that there should not be any discrimination against non-Muslims because of their beliefs in an Islamic State. See Osman Sekerci, *Insan Haklari Alaninda Temel Belgeler ve Islam* [Basic Human Rights Documents and Islam] (Istanbul, Nun, 1996).

<sup>39</sup> See Ercan, *supra* note 18, at 228. Ercan rightly claims that there are currently insufficient researches about the classical era of the Ottomans and religious education for non-Muslims.

<sup>40</sup> See Ahmed Akgunduz, *Gayr-i Muslimlere Nasil Davrandik* [How we behaved to Non-Muslims] at <http://osmanli.org.tr/yazdirilabilirosmanli.php?id=32> (accessed on July 23, 2008).

<sup>41</sup> Interestingly, non-Muslims of the Ottomans became highest military and State administrative officers with the Devsirme System rather than living under the Dhimmah tradition. As previously stated that State officials were exempted paying taxes. See more I. Metin Kunt, "Transformation of Zimmi into Askeri" in Benjamin Braude & Bernard Lewis, *supra* note 5, at 55.

<sup>42</sup> See Hamidullah, *supra* note 12.



earning of the capital of 1 out of 40). In order to avoid military services, many non-Muslims became more educated and specialized in medicine, literature, translation, or any social and science subjects, thus reaching the highest political administrative jobs in Islamic states.<sup>43</sup> It was decreed [after the 1856 Reforms] to accept one third of students from non-Muslim communities into administrative officers' schools.<sup>44</sup> Non-Muslims are also citizens of the Islamic country therefore they have the right to work in public jobs with the exception of those of head of the State, the commander of the army, the governor or the judge because those jobs represents the sovereignty of the Islam.<sup>45</sup>

<sup>43</sup> See Yusuf Fidan, *İslam'da Yabancılar ve Azinliklar Hukuku* [Minorities and Foreigners in Islamic Law] (Istanbul, Ensar, 2005) at 333.

<sup>44</sup> See Ortaylı, *supra* note 4, at 65-6. Because the Ottoman State population consisted one third of non-Muslim communities. It may argue that the Ottoman State policy was to eliminate discrimination from politics. According to the Tahrir Defteris' [Tax Registres] documents, around in the middle of the XVth Century, 40 % of the population was non-Muslim. See Ozbilgen, *supra* note 30, at 414.

The Ottoman State rated five times general population counting in modern sense; in 1831, 1881/82, 1893, 1906/7 and 1914. According to 1831 census, non-Muslim population was 29.67 % in the Ottoman lands. In 1881/82 this rate was 26.61 %. In 1906/7 was 25.74 %. Lastly, in 1914 it was 18.88 %.

See Ali Guler, *Osmanli Devletinde Azinliklar* [Minorities in the Ottoman State] (Istanbul, Turan, 1997) at 128.

<sup>45</sup> See Ahmet Akgunduz & Halil Cin, *Türk Hukuk Tarihi (Özel Hukuk), Cilt II* [Turkish Legal History (Private Law), Volume II] (Istanbul, Osmanlı, 1996) at 332.

Professor Akgunduz proves that from the Ottoman archives which were mainly collected in Istanbul in 1502 the era of Sultan II. Bayezid, the legislation (Kanunname) of Istanbul Municipality orders that every one should respect the rights of animal such as providing proper food and not make horses or donkeys carry heavy staff. He argues that the modern world did same thing with the U. N. Declaration of Animal Rights in 1948, thus how a civilization protect rights of animal, but not human beings. See Ahmet Akgunduz, *Osmanli Devleti nde İnsana ve Hukuka Saygi* [Respecting Human Beings and Law in the Ottoman State] at <http://osmanli.org.tr/yazdirilabilirosmanni.php?id:97> (accessed on July 23, 2008). Professor Akgunduz currently is the rector of Islamic University of Rotterdam, The Netherlands. He is the recognized expert academic (Professor of history of law) uniquely fluent in Arabic and Ottoman and spends most of his own time in the Ottoman archives in Istanbul. Most of Turkish academia knows little Ottoman and also lacks any knowledge of Arabic. Also until recently, due to a secularist belief and Kemalist ideology in Turkey, the academia of Turkey attacked Ottoman history and practices even without researching the archives and interestingly having little knowledge about Islamic law. Akgunduz, for the last twenty years has tried to destroy these stereotypes from Turkish academia. He writes extensively about the legal history of the Ottoman State. For example, Ahmet Akgunduz, *Osmanli Kanunnameleri ve Hukuki Tahlilleri* [Statute Books of the Ottomans and Legal Analysis], total XII Volumes. Professor Akgunduz began to write this series in the early 1990s.

See more about his biography, "Professor Ahmet Akgunduz" available at <http://www.islamicuniversity.nl/en/showpeople.asp?id=20> (accessed on November 15, 2007).

Professor Ortayli correctly claims that this is one of the biggest misinformation about non-Muslims and their military services. As earlier stated non-Muslims had a privilege not to join the military with paying the jizye tax [poll tax]; however, some of non-Muslims did not use this privilege and joined the army. Many of them became commanding officers in the military. During Christmas time and Eastern Time, the Ottoman Naval Forces castled anchor because of non-Muslim soldiers.<sup>46</sup> Having this privilege not to join the army with the payment of poll tax, gave extensive power to non-Muslims to control commerce over the Ottoman lands.<sup>47</sup> It was the successful path to protect non-Muslim communities. In the same period, across Europe Jews or opposition Christians were crying loudly about the freedom of conscience and religion. Clearly, the Ottoman Turks had not discriminated against its non-Muslim citizens. It is arguable that that this was one of the main reasons that kept the empire strong for a long time.

Jews and Christians were also exempted from the jurisdiction of the Imperial courts when the issue at hand came down to religion and personal issues, such as family law, legitimacy, and inheritance...etc.<sup>48</sup> Non-Muslim courts' verdicts were enforced by the State authorities in the same way as Sharia court decisions.<sup>49</sup> We should note that non-Muslims had an optional right to either apply their own religious community court or Sharia court and when they went to Sharia court, the Muslim judge's verdicts were based on Islamic law.<sup>50</sup> Of course, non-Muslim religious leaders were trying to block those people who applied to Sharia court and used sanctions against those who did; still non-Muslim individuals were looking for justice before Sharia courts.<sup>51</sup> Non-Muslims religious leaders' authority in personal law was dependent on the individual's choice; therefore Kenanoglu does not accept this authority/right as a full judicial privilege.<sup>52</sup> In other words, family law for non-Muslim individuals

<sup>46</sup> See Ortayli, *supra* note 4, at 65.

<sup>47</sup> See general Ali Ihsan Bagis, *Osmanli Ticaretinde Gayr-i Muslimler* [Non-Muslims in the Ottoman Commercial Life] (Ankara, Turhan, 1983).

<sup>48</sup> See Aydin, *supra* note 2, at 233.

<sup>49</sup> See Ahmet Bostanci, *Urdun'de Musلمانlara ve Gayri Muslimlere Yonelik Dini Yargi Sistemi* [Religious Judiciary System for Muslim and Non-Muslims in Jordan] 3 *Usul Dergisi* (2005) at 113. Professor Kenanoglu claims that inheritance was divided under the rules of Islamic law. See M. Macit Kenanoglu, *Osmanli Millet Sistemi: Mit ve Gercek* [The Ottoman Millet System: Mythology and Reality] (Istanbul, Klasik, 2004) at 251.

<sup>50</sup> See Kenanoglu, *id.*, at 209.

<sup>51</sup> See general Rossitsa Gradeva, "Orthodox Christians in the Kadi Courts: The Practice of the Sofia Sheriat Court, Seventeenth Century" 4 *Islamic L. & Soc'y* (1997) 37-69.

<sup>52</sup> See Kenanoglu, *supra* note 49, at 211.

was based upon their own choice; either Islamic law or their own religious rule.<sup>53</sup> However, if one of the parties was Muslim or if it involved a criminal case, non-Muslims had to go to Sharia court.<sup>54</sup>

Available literature agreed without any dispute that the Ottoman State provided authority/privilege to non-Muslim religious leaders to deal with their community marriage/divorce cases.<sup>55</sup> The Ottoman State issued many decrees declaring that Muslim religious clerks cannot validate non-Muslim marriages.<sup>56</sup> On that issue, many times, non-Muslim religious leaders applied to the State authorities having validate power of marriage contracts, the reason was to prevent their own community marriages from the outside interference.<sup>57</sup> In the Ottoman archives there are records of Greek religious leaders applying to the Ottoman Sultan to give warning to Armenian religious leaders not to validate inter Greek-Armenian marriages.<sup>58</sup>

In the case of divorce, non-Muslim women went to the Sharia courts, in order to get financial benefits according to Islamic law that their own religious rules did not provide.<sup>59</sup> Also, where according to their own religion they cannot get divorced from their partners, they went to the Sharia court. Many Catholics took advantage of this possibility.<sup>60</sup> It is evident that as non-Muslims if both sides agree they can take the case before the Patriarchal or Rabbinical court, otherwise, the case went before the Sharia court. Moreover, if one of the sides preferred to take the case before its own religious court as a non-Muslim, the State Authorities may allow it.<sup>61</sup>

However, in the aftermath of the 1718 Treaty of Passarovitz,

<sup>53</sup> See Ahmed Akgunduz, "The First Model for the EU: Ottoman State – 1" From Conference: Islam in Europe or Islam of Europe?, European Parliament, 11 December 2002 at <http://www.osmanli.org.tr/en/yazi.php?id=134&bolu=30> (accessed on July 25, 2008).

<sup>54</sup> See Kenanoglu, *supra* note 49, at 210.

<sup>55</sup> At 245.

<sup>56</sup> At 246.

<sup>57</sup> At 247. In the Ottoman Turkish State practices, over and over the Sultans issued and declared decrees in order to protect and enlarged non-Muslim citizen's rights in the country. See examples Murat Bebiroglu, *Osmanli Devleti'nde Gayrimuslim Nizamnameleri [Non-Muslim Decrees in the Ottoman State]* (Istanbul, Akademi, 2008).

<sup>58</sup> At 247.

<sup>59</sup> See Gradeva, *supra* note 51, at 55-57.

<sup>60</sup> See Abdurrahman Kurt, *Bursa Sicillerine Gore Osmanli Ailesi (1839-1876) [According to Bursa Court Archives: The Ottoman Family (1839-1876)]* (Bursa, UUY, 1988) at 135.

<sup>61</sup> See Kenanoglu, *supra* note 49, at 216.

*"The Ottoman Turks began to look outside, more particularly to the West, for new inspiration...the apparent mutuality of French and Turkish interests determined where the Turkish statesmen would look for inspiration. It is worth noting that France continued to represent the West in Turkish eyes until the present century in spite of her disappointing performance in later eras and the practical ascendancy of Britain in the nineteenth century."*<sup>62</sup>

With the 1839 *Tanzimat Declaration* and 1856 *Islahat Declaration*,<sup>63</sup> the *Millet System* took another turn. The 1839 *Declaration* (Administrative Reforms) provided that aims of laws would be to protect lives, security of property, and decency. Before the law Muslims and non-Muslims are equal. Every citizen is equal concerning taxation and military service. This document also brought new criminal law conceptions to the Turkish legal system.<sup>64</sup> In addition, the Sultan would also follow these rules. It appears that the French Human Rights Declaration affected this declaration so that Turkish law then began to follow European steps. The 1856 *Islahat Declaration* (Development Reforms) provided more rights to non-Muslims than it did to Muslims. Non-Muslims did not have to do military service but they had to pay the same tax equivalent as did the Muslims.<sup>65</sup> Muslims had to go to the military and it was for more than five years of service. The document declared increased rights for non-Muslims, due to European State pressure.<sup>66</sup> Akgunduz claims that the Ottoman State provided these rights to non-Muslims before the preparation of these documents (1839 and 1856); these documents provided hard copy of the declared rights.<sup>67</sup> Moreover, he claims that rather than following the European practices without question, the Ottoman should have regulated the practices of non-Muslims of that era in ways that were necessary to protect their interests. Therefore following the European footsteps did not help the reformation of the system, it caused its collapse.<sup>68</sup> The Reforming Decree of 1856 tried to reform

<sup>62</sup> See Berkes, *supra* note 14, at 25-6.

<sup>63</sup> See Burhan Kuzu, *Ulkemizde Kisi Ozgurlugu ve Guvenligi [Freedom and Security of Individuals in Turkey]* (Istanbul, Filiz, 1997) at 60.

See Bulent Tanor, *Osmanli-Turk Anayasal Gelismeleri [The Ottoman Turk Constitutional Developments]* (Istanbul, Alfa, 1992) at 67.

<sup>64</sup> See Kuzu, *id.*

<sup>65</sup> *Id.*

<sup>66</sup> See general Tanor, *supra* note 63.

<sup>67</sup> See Ahmet Akgunduz, *Tarihi Acidan Azinliklara Taninan Haklar ve Biz II [From the Historical Perspective: Rights Provided to non-Muslims and We, no: 2]* at <http://osmanli.org.tr/yazdirilabilirosmanli.php?id=31> (accessed on July 23, 2008).

<sup>68</sup> *Id.*

the millet system and secularize [officially] the empire.<sup>69</sup> With the 1876 Kanun-i Esasi (Constitution), the nation of Islam was erased and the nation of the Ottoman established.<sup>70</sup> Article 7 of the 1876 Constitution (Kanun- Esasi) stated:

*"all subjects of the Empire called Ottomans without distinction, whatever faith they profess; the status of an Ottoman is acquired and lost according to conditions specified by law."<sup>71</sup>*

Those reforms prepared the ground for the foundation of a secular republic.<sup>72</sup> Interestingly, in 1879, the Ottoman State enacted a law to extend State jurisdiction to non-Muslim ecclesiastical courts to fix a uniform procedure without considering religious traditions. Two Greek patriarchs resigned from this duty and in 1890 the Patriarchate Synod closed all churches and suspended all offices for three months thus the State abolish the law.<sup>73</sup>

There were significant changes in the political atmosphere in the 19<sup>th</sup> Century due to the French revolution and rising nationalism and the involvement of Western powers in the Ottoman internal affairs due to the loss of Ottoman State power.<sup>74</sup> With the establishment of Republic of Turkey, the Millet System was abolished and a unified nationalist State was constructed in 1923. In 1918 just before the fall of the Ottoman [1922] 75 percent of the territories had been lost; in 1878, 85 percent of the population were gone.<sup>75</sup>

<sup>69</sup> See Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge, CUP, 1997) at 67.

<sup>70</sup> See Akgunduz, *supra* note 67.

<sup>71</sup> See Nawaf A. Salam, "The Emergence of Citizenship in Islam" 12 Arab L. Q. (1997) at 140.

<sup>72</sup> See Rosella Bottoni, "The Origins of Secularism in Turkey" 9 Ecc LU (2007) at 175.

<sup>73</sup> *Id.*, at 180.

<sup>74</sup> See Evans, *supra* note 69, at 60-1.

<sup>75</sup> See Virginia H. Aksan, "Ottoman to Turk" 61 Int'l J. (2005-2006) at 30. According to the 1844 General Census, the Ottoman State population was 35 million and consisting of 58 % Muslim (20,5 million), 39 % Greek Orthodox [Armenian, Bulgarian and the rest of the Balkans Orthodox included in that number] (13,7 million), 2,5 % Catholic (1 million) and 0,5 % Jews (nearly 200,000).

See Bebiroglu, *supra* note 57, at 20-1.

Greek Orthodox Church was provided more privileges than it had in the Byzantine era. The Greek Ecumenical Patriarch collectively represented of the Greek, Slavic, Albanian, Romanian, and Arab Orthodox that lived in the Ottoman land. Therefore, the Greek millet was in the prominent position in the eyes of the State and affected the Ottoman ruling class policies. Until 1910s the Greek Orthodox hold highest ranking administrative position in the Ottoman capital city and around.

See Irini Sarioglou, *Turkish Policy Towards Greek Education in Istanbul 1923-1974: Secondary Education and Identity* (Athens, ELIA, 2004) at 21-23.

After winning the Independence War against the Allied power, the Republic of Turkey in 1923 signed the Lausanne Treaty. The treaty included articles for the protection of religious minorities that served in the allied powers armies (the U.K., France, Italy, and [Greece]) against Turks.<sup>76</sup> Since its establishment in 1923 the Republic of Turkey has faced minority rights issues. However, until today the parties to the treaty have accused Turkey of violating the Lausanne Treaty. Turkey has never accepted these allegations. Turkey argues that all people residing in the country are citizens, and the republic recognizes only non-Muslims as the minority via the Lausanne treaty. However, the republic does not discriminate against anyone based on religion, ethnicity, and language differences. Furthermore, Turkey claims it is a unified State. In addition, the constructors of the republic and their followers believe that discussing this issue in public will mean enemies are going to attack the unification of Turkey and will try to divide Turkey's land. Still "Turkey is stuck with the 1923 tradition and moreover interprets the Treaty of Lausanne incorrectly/deficiently"<sup>77</sup> to prove its own untenable arguments. In truth, Turkey has adhered to dogmatic taboos that have precluded discussions on the *Turkish Armed Forces*, *Minority Rights*, and *Secularism*. In other words, the Republic established its own taboos such as secular State, phobia of Islam and Islamic culture, Turkish military guardianship of the country.<sup>78</sup> One commentator, who resided in Turkey for three years as a political professor at Koc University in Istanbul, observes that:

<sup>76</sup> See Beirne Stedman, "The Republic of Turkey" 13 Va. L. Reg. n. s. (1927-8) at 737. Stedman notes that "Greek and Armenian partisans and paid propagandists have told terrible tales of the Turks-tales of which we only heard one side, and it is always well to take one-sided tales with a large grain of salt. It has for a long time been the writer's opinion that many of these cruelties were more or less occasioned by the aggravations furnished by non-Muslims." At 735.

<sup>77</sup> See Baskin Oran, "The Minority Report Affair of Turkey" 5 Regent J. Int'l L. (2007) at 74. See more Baskin Oran, *Türkiye'de Azinliklar: Kavramlar, Teori, Lozan, Ic Mevzuat, Ictihat, Uygulama* [Minorities in Turkey: Concepts, Theory, Lausanne, Domestic Law, Jurisprudence, and Practice] (Istanbul: Iletisim, 2005). Edip Yuksel who is a Kurdish Human Rights Activist and fled from Turkey to USA claims that that the Republic secular ideology, controls, manipulates and exploits religious believes and attack them who are not converted to official version. See Edip Yuksel "Cannibal Democracy, Theocratic Secularism: The Turkish Version" 7 Cardozo J. Int'l & Comp. L. (1999) at 467

<sup>78</sup> See Aksan, *supra note 75*, at 30. According to the Lausanne Treaty, non Muslim groups [Greek, Armenian and Jews recognized as non Muslims] cannot own properties for religious aims outside what they had before the establishment of the Republic of Turkey. See Niyazi Oktem, "Religion in Turkey" B.Y.U.L Rev. (2002) at 375-6. See more M. Altug Imamoglu, *Azinlik Vakiflari ve Yabancilarin Tasinmaz Edinimleri* [Non-Muslims' Charities and Obtaining Property of Aliens] (Ankara, YY, 2006).

*"Turkish nationalism has weighed heaviest on Kurds, Islamist, religious minorities, and the left. A State run Turkish Reformation of Islam fallen in the 1930s; more recent attempts to nationalize Islam have turned the State into a mouthpiece for mainstream Sunni doctrine. The Turkish case suggests that in states with deep societal divisions, the dream of civic nationalism may be a coerced one...Religion has been nationalized."*<sup>79</sup>

During the Republican time, 600 years Ottoman history has been denied and ignored, however, young historians began to question "the myopia of a self-imposed amnesia" of the Republic<sup>80</sup> and looking at the Ottoman archives, especially court verdicts [seriye sicilleri] to explore the facts and truths about their own past. Despite the obvious prejudices that may underscore reluctance by modern academics to make a positive example of an Islamic State, it is difficult to avoid the fact that the State guaranteed the protection of all faiths

<sup>79</sup> See Thomas W. Smith, "Civic Nationalism and Ethno-Cultural Justice in Turkey" 27 Hum. Rts. Q. (2005) at 436-7. In his article, Smith evidently shows that during the Republic era non-Muslims of Turkey were destroyed by the State policy and practices.

<sup>80</sup> See Aksan, *supra note* 75, at 19. Not all young historians do these kind of challenging searches. Some of them still go on without looking into the Ottoman archives but just look at the Orientalist studies or ultra secularist studies who believed that that past is our most hateful enemy. Such include Fatma Muge Gocek, *Rise of the Bourgeoisie, Demise of Empire: Ottoman Westernization and Social Change* (NY, OUP, 1996). Or older ones such as Deniz Kandiyoti Studies, such as "Introduction," "End of Empire: Islam, Nationalism and Women in Turkey" in *Women, Islam and the State* (London, Macmillan, 1991), Deniz Kandiyoti (ed.) without looking at the Ottoman archives or archive studies and mainly using the Western resources presented the idea of Turkish seculars rather than the Turkish nation's views. That is one of the main reasons that the West could not realize what is going on inside of Turkey. See especially in the book, chapter II, by Deniz Kandiyoti, "End of Empire: Islam, Nationalism, and Women in Turkey". These authors try to show the innocence of Turkish secular reforms in statements such as "although was not legally banned, a vigorous propaganda campaign led by Atatürk himself exhorted women to adopt modern styles of dress, and dissenters were dealt with severely." Kandiyoti shows her source at dipnote 1; "Caporal mentions trials and short prison sentences for those spreading counterpropaganda." B. Caporal, *Kemalizm ve Kemalizm Sonrasinda Turk Kadini [Kemalism and after Kemalism Turkish Woman]* (Ankara, TIBY, 1982) p. 649. At 23 and 44.

Kandiyoti dismisses two truths; one is that there was a law *Kilik ve Kiyafet Kanunu* (The Law of Clothing Style) enacted in 1925 that ordered individuals to wear clothing in the Western style and moreover, many dissenters of the reforms were hanged by the *Istiklal Mahkemeleri* [Freedom Courts] that were established and lived in the early years of the Republic to deal with the cases of the dissenters of the Republic.

See Sadik Albayrak, *Devrimler ve Gerici Tepkiler [Revolutions and Reactionary Movements]* (Istanbul, Arastirma Y, 1989,) Tahir-ul Mevlevi, *Matbuat Alesimdeki Hayatim ve Istiklal Mahkemeleri [My Life in the Press Sector and Freedom Courts]*, Atilla Senturk (ed.), (Istanbul, Nehir, 1991), and Ahmet Nedim, *Ankara Istiklal Mahkemesi Zabittari (1926) [Records of the Ankara Freedom Court (1926)]*, (Istanbul, Isaret, 1993).

and continued to uphold all religious privileges perhaps better than any modern political system. The prominent Ottoman scholar Kemal Karpat notes that:

*“the categorical rejection of everything Ottoman became a behavioural characteristic of the Turkish modernist intelligentsia. Any good aspects of that era had to be appropriated and praised as Turkish or else the student expressing such a favourable view of the past would be branded reactionary and anti-Kemalist. The six hundred years of Ottoman history obviously received low priority, but some dedicated scholars still pursued their work.”<sup>81</sup>*

In sum, it is submitted that the “Ottoman society was a mosaic of cultures and religions and provided a peace and harmony among members of society without distinction between Muslim and non-Muslim, race, and colour.”<sup>82</sup> Therefore, this experience should be taken into consideration in order to accommodate religious minorities in the modern world. Finally we should not see our own culture as superior to others and not humiliate them, we should try to understand and not to globalize the others, and otherwise we may not be able to eliminate cultural clashes.<sup>83</sup>

## ÖZET

### OSMANLI MİLLET SİSTEMİ

*Bu makalede “Osmanlı Millet Sistemi”nin ana yapısı ele alınmıştır. Osmanlı tarihi terminolojisinde “millet” kelimesi Müslüman olmayan topluluk veya gruplar için kullanılmıştır. Osmanlı Devleti, vatandaşlarını etnik ya da dil kökenine göre değil, dini inancına göre sınıflandırmıştı. Bu da Müslüman olanlar ve olmayanlar şeklinde ortaya çıkmıştır. Osmanlı döneminde en önemli şey, din ve aileydi.*

*Anahtar Kelimeler:* Osmanlı, Millet, Türk, Osmanlı Devleti, İslam

<sup>81</sup> See Karpat, *supra* note 11, at 5.

<sup>82</sup> Şeç Akgunduz, *supra* note 53.

<sup>83</sup> See Ahmed Akgunduz, “The First Model for the EU: Ottoman State – 2 at <http://www.osmanli.org.tr/en/yazi.php?id=135&bolum=30> (accessed on July 25, 2008).