



# HUMAN RIGHTS IN THE OTTOMAN REFORM:

FOUNDATIONS, MOTIVATIONS AND FORMATIONS

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Recep Şentürk

Muhammed Said Bilal



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UNIVERSITY

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## LIST OF ABBREVIATIONS

Art.	: article
AÜHFĐ	: Ankara Üniversitesi Hukuk Fakültesi Dergisi
AÜSBFD	: Ankara Üniversitesi Sosyal Bilimler Fakültesi Dergisi
ÇTTAD	: Çağdaş Türkiye Tarihi Araştırmaları Dergisi
d.	: date of death
Diss.	: dissertation
DTCFD	: Dil Tarih Coğrafya Fakültesi Dergisi
DÜHFĐ	: Dicle Üniversitesi Hukuk Fakültesi Dergisi
DÜSBED	: Dicle Üniversitesi Sosyal Bilimler Enstitüsü Dergisi
Ed.	: editor
Eds.	: editors
ff.	: and the following pages
GÜHFĐ	: Gazi Üniversitesi Hukuk Fakültesi Dergisi
h.	: hegira calendar
HÜİFD	: Harran Üniversitesi İlahiyat Fakültesi Dergisi
Ibid	: in the same source
İÜHFĐ	: İstanbul Üniversitesi Hukuk Fakültesi Mecmuası
MÜİFY	: Marmara Üniversitesi İlahiyat Fakültesi Dergisi
No.	: number
OMÜİFD	: Ondokuz Mayıs Üniversitesi İlahiyat Fakültesi Dergisi
OSAV	: Osmanlı Araştırmaları Vakfı
Pg.	: page
pp.	: between pages
SCJO	: Supreme Council of Judicial Ordinances
TBMM	: Türkiye Büyük Millet Meclisi
Trns.	: translator
Vol.	: volume



## PREFACE

What did prompt and guide the late Ottoman constitutional reforms: political expediency or religious legitimacy? In the present literature, the dominant view is that the Western pressures affected the Ottoman constitutional reforms as a compromise for political expediency. Yet there are those who critically analyse this view and argue otherwise. This book also attempts to answer this controversial question through the survey of constitutional documents from that period and the political context that gave rise to them. It reflects the extensive knowledge of a mentor on human rights in Islam and the legal approach of a mentee. The chief objective of this joint research is to explore the logic or the legal reasoning behind the human rights protections in the late Ottoman period as manifested in the constitutional documents.

This book demonstrates the changing theories and the praxis of human rights in Islam using the example of the late Ottoman legal system. Although there is a fast-growing literature

on human rights in Islam, we observe that human rights in the late Ottoman Empire is not a common subject in this literature. Yet, the late Ottoman constitutional reforms have a very significant place in the history of human rights in Islam because during this period the Ottoman state abolished slavery, the *dhimmī* status and the *jizya* tax, while adopting universal citizenship for all Ottoman citizens with equal rights and duties along with the constitutional and the parliamentary system. Today, students of human rights in Islam continue discussing these questions without knowledge of what Ottoman Muslims thought and did about them. This book documents how the Ottoman scholars and rulers dealt with many of the questions Muslims face even today regarding human rights and minority rights in Islam. Yet the present generation of researchers and even the Muslim public have a very limited, if any, knowledge about the changing theory and practice of human rights in this period. We attempt to fill this gap without any claim to be exhaustive.

Ottomans adopted the theory of *‘iṣmah* from classical Islamic law with a universalistic notion of Islamic jurisprudence. Strikingly, the universalistic understanding and practice of Islamic law grounds legal capacity (*al-ahliyyah*) on being human instead of being Muslim or citizen. Ottomans inherited this universalist approach mainly from the writings of the scholars of the Ḥanafī School and followed its practice by the previous states such as the Umayyads and the Abbāsids. In that sense, Ottoman legal reforms during the nineteenth-century provides an intriguing example to demonstrate continuity and change in Islamic law and human rights in Islam in response to modern developments in the world. This is because the theory of *‘iṣmah* mostly depends on Ḥanafī School of Fiqh and the Ottoman legal system was officially operating through this school. The nineteenth-century, on the other hand, was a modern age with the rooted transformations in the Ottoman institutions, administration and legal system in which

modern state sovereignty has begun to appear. Nevertheless, it did not transform into a solely secular system and continued to be based on Islamic principles. This transitional age, therefore, provides us a perfect example to conduct comparative studies between Human Rights Law and Islamic Law.

The Ottoman Empire underwent remarkable constitutional movements in the nineteenth-century. Throughout the century, numerous constitutional documents appeared between 1808 and 1875, which is characterized as “the *Tanzimat* period” in literature. These documents were the very first written official charters that formally guaranteed and declared in writing the fundamental rights of all Ottoman subjects, be they Muslims or non-Muslims. In the previous period, these rights existed in practice and in the Fiqh literature but there was no need to make an official declaration about them to the public following the example of European and American declarations.

The question whether the rights, which these documents guaranteed, were shaped in conformity with classical Islamic jurisprudence or appeared under the influence of western institutions has been controversial in academic circles for a number of decades. Situating the discussion in the context of human rights in Islam and the history of law, in an interdisciplinary approach, we will attempt to unveil the Islamic jurisprudential foundations of the constitutional documents in terms of fundamental rights.

The concept of *’iṣmah* has been utilized to protect and guarantee fundamental rights in Islamic jurisprudence since the very beginning of fiqh. In this book, we will examine the influence of the concept of *’iṣmah* on the human rights protections of the Ottoman Constitutional documents in an attempt to illustrate Islamic jurisprudential foundations for such protections.



The contention of this book is substantiated by the fact that, along with many other variations, the late Ottoman constitutional reforms in the *Tanzimat* era were carried out (i) as a consequence of the metamorphosis of the Empire into a modern state, (ii) were considerably in favour of the bureaucratic class, (iii) were paying regard to the expectations of the Ottoman and the Western public, and most importantly (iv) had been in conformity with Islamic jurisprudence.

We aim to present a well-documented and grounded study to those who are interested in the theory and practice of human rights in Islam, constitutional developments of the Ottoman Empire, and legal transformations in the late Ottoman Empire while carefully preserving religious legitimacy of law. With this book, we aim to contribute to both the theoretical and legal discussions on human rights in Islam and the search for how to implement it in the contemporary world.

We would like to thank all down at the lecturers, colleagues, administrative staff, and librarians of Ibn Haldun University. They highly interested in our project and always gave great advice and support to us for its progress. We are especially grateful to Mr. Savaş C. Tali and his editing team who made great efforts in every phase of the publishing process.

**Recep Şentürk**  
**Muhammed Said Bilal**  
**Istanbul, 2020**

*to our sweet little angel of heaven,  
Ahmed Zubeyr*