

PAPER DETAILS

TITLE: James Griffin's Critical Approach Toward Human Rights in Relation to The Ottoman Practice

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PAGES: 1057-1068

ORIGINAL PDF URL: <https://dergipark.org.tr/tr/download/article-file/3007198>



2023, 12 (2), 1057-1068 | Research Article

James Griffin's Critical Approach Toward Human Rights in Relation to The Ottoman Practice

Ertuğrul GÖKÇEKUYU¹

Abstract

James Griffin's book "On Human Rights" is a critical account of the global leading imposition of human rights experience. Griffin provides a systematic outlook of the universality of human rights on basis of three key concepts: autonomy, liberty and a minimum provision. This article provides an analysis of Griffin's critique and how the Ottoman practice of rights and duties overlaps and differs. According to Griffin Human Rights in the last fifty years has become a standing symbol of the Western global influence in promoting justice, fairness, political freedoms and equities as a human condition to be universally respected and acknowledged as an unalienable fundament. A condition that is formed through revolutions and major wars in the last couple of centuries so vigorous that gave birth to the need to protect the normative agent as is described by James Griffin. Griffin makes a philosophical case for the three concepts of autonomy, liberty and minimum provision. Upon further reading "On Human Rights" one encounters problems of practical nature that Griffin neither offers a clear explanation nor a functional framework for what he believes human rights ought to be. This book does however provide an invigorating debate on the question of how a discourse of rights can be uniquely different in virtue of distinct moral foundations. Griffin merely scrutinizes the arbitrariness of the universal declaration of human rights being based on concepts such as dignity instead of a universal shared moral theory. It is at this point that this paper perceives overlap between Griffins concepts of autonomy, liberty and minimum provision. The Ottoman practice and approach of individuals may not distinctly be labelled as human rights, yet does overlap with Griffin's philosophical account of personhood.

Keywords: Human Rights, Globalization, Ottoman Society, Religion, Society

Gokcekuyu, E. (2023). James Griffin's Critical Approach Toward Human Rights in Relation to The Ottoman Practice . Journal of the Human and Social Science Researches , 12 (2) , 1057-1068 .
<https://doi.org/10.15869/itobiad.1264279>

Date of Submission	13.03.2023
Date of Acceptance	25.06.2023
Date of Publication	26.06.2023
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2023, 12 (2), 1057-1068 | Araştırma Makalesi

James Griffin'in İnsan Haklarına Eleştirel Yaklaşımı ve Osmanlı Uygulaması

Ertuğrul GÖKÇEKUYU¹

Öz

James Griffin'in *İnsan Hakları Üzerine* adlı kitabı, insan hakları deneyiminin küresel ölçekte empoze edilmesinin eleştirel bir açıklamasıdır. Griffin, üç temel kavram olan "özerklik, özgürlük ve asgari bir gelir" temeli üzerinden insan haklarının evrenselliğine dair sistematik fakat eleştirel bir bakış açısı sunar. Bu makale, Griffin'in insan hakları konusunda oluşturduğu eleştirinin Osmanlı hak ve ödevler anlayışı ve uygulamalarıyla ne ölçüde örtüştüğüne bakan söylemsel ve felsefi bir analizdir. Griffin'e göre insan hakları konusu özellikle son elli yıl içerisinde Batı dünyasının küresel etkisinin kalıcı bir sembolü haline gelmiştir. Bu evrensel anlayışa göre insan hakları, doğuştan var olan, devredilemez ve saygı gerektiren bir temel oluşturmuş ve insanlık durumu (*the human condition*) için adaleti, siyasi özgürlükleri ve eşitlikleri teşvik etmektedir. Son birkaç yüzyıl içinde meydana gelmiş olan devrimler, büyük savaşların şiddeti ve dehşeti ile, normatif fail (*normative agent*) olan özneyi koruma ihtiyacını doğurmuştur. Griffin, "özerklik, özgürlük ve asgari bir gelir" olarak tanımladığı bu üç kavram üzerinden felsefi içerikli bir savunma yapmaktadır. Griffin'in "İnsan Hakları Üzerine" isimli kitabında insan haklarının olması gerektiği (*ought to*) şekil ve içerik konusunda felsefi bir içerik sunarken pratik nitelikteki sorunlar hakkında işlevsel bir çerçeve sunamamaktadır. Bununla birlikte bu eser, insan hakları tartışması konusunda alternatif bir ahlaki temelin nasıl farklı olabileceği konusunda canlı bir tartışma da sunmaktadır. Griffin, evrensel ortak ahlaki bir teori yerine insan onuru (*dignity*) gibi kavramlar üzerinden evrensel insan hakları beyannamesinin keyfiliğini eleştirir. Bu makalede, Griffin'in yukarıda bahsedilen özerklik, özgürlük ve asgari gelir kavramları ile Osmanlıların azınlıklara yaklaşımları arasındaki farklılıklar ve benzerlikler karşılaştırılmaktadır. Her ne kadar Osmanlı toplumsal yapısı insan hakları ifadesi olarak doğrudan nitelendirilemese de Griffin'in kişilik (*personhood*) üzerinden başlattığı felsefi tartışma Osmanlı anlayışının bu tartışma ile önemsenecek bir örtüşme içerisinde olduğunu da göstermektedir.

Anahtar Kelimeler: İnsan Hakları, Küreselleşme, Osmanlı Toplumu, Din, Toplum

Gokcekuyu, E. (2023) James Griffin'in İnsan Haklarına Eleştirel Yaklaşımı ve Osmanlı Uygulaması . İnsan ve Toplum Bilimleri Araştırmaları Dergisi , 12 (2) , 1057-1068 . <https://doi.org/10.15869/itobiad.1264279>

Geliş Tarihi	13.03.2023
Kabul Tarihi	25.06.2023
Yayın Tarihi	26.06.2023
*Bu CC BY-NC lisansı altında açık erişimli bir makedir.	

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Introduction

The quite well-known series of violent and an oppressive events during the Middle and Modern Ages in the West led to ideas of freedom, property ownership, equality and justice (Block, 2003, p. 31). To say the least the monarchs, the Church and other power elites (Heywood, 2014) were intertwined in countless conflicts and turf-wars during the European revolutionary history (Skocpol & Theda, 1979, p. 11). While European nations were in formations there were already colonial efforts which during the last century definitely effected the definitional understanding and shaping of the modern human rights and freedoms of individuals (Fernandez & Fernandez, 2017) as recognized today. The concept of human rights is all the more relevant today when various challenges such as the climate crises, radicalisation, civil wars, proxy-wars (Berman & Lake, 2019) have arisen and have consequently lead to waves of refugee crises (Canatan et al., 2017) that seep into debates of infringement of human liberties, welfare and human autonomy. As an example the world is witnessing increasing numbers of individuals who leave their home-countries to start a new life in Western countries (Greussing & Boomgaarden, 2017). Millions of Syrian refugees in the last decade have escaped fear, war and death to Türkiye and many have attempted to travel further into West, getting stuck on various Greek island (Cabot, 2019). As a consequence, new global challenges create new humanitarian crisis for minority lives.

Considering the UN declaration the right to seek asylum, the right to live an honourable life are not met (Assembly, 1948). On the Western side of the globe there are also new political ideas and deep political shifts as in terms of new radical political movements* where the Welfare State, constitutional law and the representative democracy, morality and ethical conduct have come under great pressures (Rawls, 2004, p. 51). In this respect the existence of a universal human rights declaration without a moral foundation and the support of a society does not guarantee the upholding of human rights (Griffin, 2009). It is in this respect relevant to look into the Ottoman practice and system that has had a moral religious foundation based on social justice (Nöldeke et al., 2013, p. 521). The aim of this study is to explore James Griffin's theoretical framework and human rights practices in the Ottoman Empire from a discourse analysis perspective. By examining Griffin's ideas on human rights, particularly regarding autonomy, welfare, and liberty, we can assess their applicability and relevance in understanding the historical practices of the Ottoman Empire. This examination will shed light on the extent to which the Ottoman Empire's moral religious foundation influenced the recognition and protection of human rights within its society. By bridging the theoretical and practical aspects, I aim to contribute to the understanding of human rights within different cultural and historical contexts.

Griffin's Critique: Arbitrariness

The focus of this paper in the book *On Human Rights* is about the conception of a more foundational view of human rights. For Griffin autonomy, liberty and minimal provision are concepts that advocate a moral foundation (Aristoteles, 2020) for the subject who is a *normative agent*. The normative agent possesses the capacity to reason,

* Pegida is a recent example, an anti-islamist movement in Germany that works closely with the populist Geert Wilders in the Netherlands. Geert Wilders is according to the recent polls the largest political party in the Dutch parliament now.

evaluate the past be aware of the present and pursue what one would deem a good life (Kant, 2020b). The normative agent is a functioning agent who is independent in realizing his own interests. As a normative agent the individual can reason and decide what one believes should be valuable or morally weighty. For Griffin the human rights discourse is a worthy project that has immense moral significance, yet has deficiencies in terms of its conceptualization of how rights should be derived.

Griffin's normative agent exists in the present and lives in the developed, civilised world. According to Griffin, this society is an ideal place where indoctrination, brainwashing, domination, and manipulation do not exist. Griffin believes that such negative elements would undermine the normative agent, and therefore the existence of a society that ensures minimum welfare, autonomy and liberties. He perceives type of future society where humanity has evolved further down the road and shed itself from the old habits of primitiveness. Yet such an assumption does not hold in the face of Western societies that once stood symbol for social-democracies and promoted as a societal norm of tolerance for diversity and open society, nowadays advertise intolerance, hate and fear from others. At some point in history similar societal reactions were considered to be backwardness and myopic vision of the Muslims (Naff, 1963, p. 310) due to their moral foundation derived from religion.

There are in literature extensive amounts of criticism concerning religious morality which may be traced back to the Enlightenment project. As argued earlier Naff criticises this *myopic* Islamic view towards Enlightenment and therefore the inability to cope with European advancements. There are obvious reasons for why the Ottoman Empire did not move along with the political and industrial reforms while European countries were transferring into industrial nations (Inalcik et al., 1973). According to Griffin applications of conceptualized rights should find practice to have any kind of functionality or any kind of worth for that matter. The Islamic approach of individual has a great practical value on human rights. Following this argumentation next section looks into what Griffin means by autonomy, welfare and liberty.

Griffin: On Human Rights Autonomy, liberty and welfare

According to Griffin, individuals must be in capacity (MacIntyre, 2007) of reason independently as human beings are naturally equipped with reasoning faculties. Individuals to live a worthy good life respectively are in need of protection. Having human or *moral rights* means that rights must be perceived as protections against suffering of what Griffin calls *personhood*. As Griffin elaborates the three concepts there is still vagueness as the concepts remain too philosophical. The three principles of liberty, welfare and autonomy miss the practical content though there is a chapter called "applications". For Griffin, Kant's *Categorical Imperative* (Kant, 2020a) implies universality as Griffin's discourse reflects simplicity and practicality. Griffin refers to the cultural (ethnocentric) and language aspects as fundamentals for his human rights discourse and he brings the social aspects of this debate together.

Griffin's practical side can also be found in the practical approach of the Ottoman approach to life (Gokcekuyu, 2017, p. 633). The Ottoman practice is based on the Islamic teachings and invites the individual to contemplate about life (Inalcik, 1968). The very first verse that is revealed is an invitation to act upon that action to fulfil its destiny in life. So according to Griffin humans are also cultural beings and should be in a liberated and maybe an advanced environment that provides these essential conditions for such

an individual to contemplate and reflect upon life and take autonomous (well-thought and considered) decisions. Griffin also refers to self-decision and self-rule by way of autonomy. He argues that individuals should have the freedom to shape and pursue their own chosen conception of life (Griffin, 2009, p. 149). Griffin also limits this ability to pursue a worthwhile life by the constant obligations of a society one finds oneself in. And the society provides for this by a minimum of education, health and minimum material provision to overcome the lack of key capacities. The principle of autonomy is a primary concept where the basic elementary provisions must be protected to pursue a worthwhile life (Griffin, 2009, p. 26). Of which the latter a choice of the individual itself that requires acknowledgment within a society and limited by that same society that comes in equal terms to everybody (Griffin, 2009, p. 39).

Griffin considers liberty, autonomy and welfare as values and thus should not be considered as just vocabulary in daily usage. So he tries to give these concepts moral and political foundations that eventually are to form the concept of *human rights*. Griffin uses historical cultural context of the ideas of Enlightenment and the reactionary movements from God shaping their own identities and own individuality. In other words, his starting point in historical vocabulary suggests that he does have a deep bonding and conviction with what he proposes as to be a new interpretation of human rights. So according to Griffin, autonomy has its essence in being an individual who is able to go after a life that he sees *worthy* (Griffin, 2009, p. 48). When such a person together with all the other individuals are able to pursue their own separate goals and they protect each other's values just by respecting each other, autonomy is then realised.

Liberty on the other hand refers to having options which are not denied or obstructed by leadership or any peer civilians. In other words, the individual has the freedom to determine for itself what his values are and is therefore able to make well-considered decisions without being intervened by others. For Griffin, this is the minimum requirements for an individual to pursue a worthwhile life. For Griffin there are also enemies of autonomy which are: indoctrination, brain-washing, domination, manipulation, conformity, conventionality, false consciousness and immaturity (Griffin, 2009, p. 151). As theoretical Griffin may be, he is adamant to the point that every culture is in capacity of owning a perception of values, which a society deems worth as human rights. Griffin's *normative agency* is the individual who is present and thus conscious of the self and the options that are available to him. Along this way Griffin deems that all individuals must be able to construct (Gokcekuyu, 2022, p. 466) their own set of values, norms and boundaries under given societal circumstances: that way many independent constructions would exist side by side in a given society. In other words, individuals may not be equal, but they must have equal circumstances in order to be able to exercise their human rights as in autonomy, liberty and welfare.

So just to summarize boldly, human rights are actually whatever a *culture* or community associates these rights in conformity with their own personhood. Griffin does make a distinction and does not consider 'freedom of residence', 'protection against attacks on honour' (Griffin, 2009, p. 196), the right to equal pay for equal work' (Griffin, 2009, p. 187) and 'holidays with pay' as human rights. Griffin closes in on the Islamic perception of the need for minimum welfare which is a fundamental right that makes it possible to exercise one's normative agency. Griffin proposes the possibility of nations or cultures finding a consensus on shared rights that align with moral and religious doctrines, allowing for a more accommodating approach.

Griffin argues that the Western cultural tradition has brought enormous improvements regarding human rights, nevertheless it is another matter when such notions are perceived as imposition on the rest of the world. Griffin does argue that tolerance and compromise are among possible solutions, yet he emphasises respect as a better alternative as respect is an essential element in a unified yet diverse world instead of the universality of human rights. The normative agency according to Griffin has the ability to choose autonomously, and besides such capacity it is essential to exercise such an autonomy, and thus require elementary liberty rights and some welfare rights. These liberty rights is not the right to do whatever one desires to do, but is merely a right to liberty that is basically essential in order to be able exist as a normative agency and exercise those provided protections. These rights that must belong to the reasoned man, is in liberty that also is the foundation of the universal standard. This standard then can be interpreted and filled in with rights such as freedom of expression, of religion, and of assembly. Griffin believes that a social existence inherent due to the human conditions to incapacitate human choices such as it used to be the case once for women lacking true liberty (Griffin, 2009, p. 161). The last category for Griffin that must be existent for human conduct are welfare rights. For Griffin welfare rights must sustain a bare minimum for normative agency to maintain intellectual capacity.

Human Rights and the Ottoman Practice

To begin the Ottoman practice was fundamentally based on Islamic creeds and teachings (Inalcik et al., 1973, p. 261). It is therefore essential to view the Islamic jurisprudence which essentially is a divine base. According to the Islamic jurisprudence all essence and meaning of life that is worthwhile is a combination of the worldly and the hereafter (Kamali, 1991). Islam not only has teachings for spiritual matters as the foundations of belief, but also the practical economic, political and societal life (El-Gamal, 2000). The societal life in Islam has alternated between individualistic but also collective social ways of life. This generally depended on how a community had developed throughout history as well as educated and whether such a society was a morally civilized one. Civilized here is in the sense of moral and educational advancements. The Ottoman society based on Islamic principles respected the choices of its subjects and the way of life that was chosen to be in line with the society (Hanley, 2016, p. 283). Yet there were also challenging spaces to societal life as there are in the Western countries such as the life of minorities. While the Western nations were being transformed around dramatic events such the French revolution in 1789 consolidating the foundation of human rights, the Ottoman empire was content with the religious interpretation of minority rights from religious perspectives.

Such was the practice during the golden age of the Islamic tradition that is taken to be exemplary. During the Prophetic period social values had come into existence gradually (*tedrijiah*) evolving into a ordered existence that was essentially considered as to be worthwhile ('Tedrîc', 2022). It is an essential difference between the Western way of reformations and the Islamic societies that individuals as well as the society were not transformed by *revolutions*, but by adopting values of higher morals that influenced ethical conduct and behaviour (Uyanik, 2016). These moral values were considered to be supreme codes that would bear the rights of people and these values were the protectors of the society. So far Griffin and the Islamic narrative can find overlap, yet one breaking point with the Islamic tradition happens when Griffin perceives the right to death as a human right (Griffin, 2009, p. 212). Even in the Western understanding

euthanasia has been a major discussion for terminally ill patients with practical and moral implications in legislation (Cohen et al., 2014). Another point where Griffin and Islam part their ways is homosexuality and marriage between same sexes (El Menyawi, 2011). The Islamic communities that live by Islamic creeds do not accept same sex marriage as a fundamental right.

Human rights in Islam from the Sunni school are based on four sources: the Qur'an, the sayings of the Prophet, consensus (*Ijma*) and individual reasoning (*Qiyas*) (Khadduri, 1979, p. 213). Obviously this paper will not dwell into the Islamic jurisprudence in any depth for obvious reasons, but one development during the Ottoman period was the codification of practical applications concerning matters of individuals, minorities and society as in the *qanun-i asasi* 1876 (the constitution) (Hanley, 2016, p. 278). This development in the nineteenth century was meant to codify centuries old existing rights and freedoms into one legislation, as a reaction to the dramatic changes in Europe at that moment as matter of modernization act. Accordingly, the following rights as human rights during the Ottoman period were brought into practice by the *Hanafi* School. According to this school there are six basic values for humanity that must be protected for the barest level of life by individuals or the State. The protection of (Berween, 2002):

- Life,
- Securing food,
- Clothing and shelter,
- Education,
- The right to earn a living,
- Start a family

These six values are essential for *sustenance* and are meant to form a minimum provision just like Griffin states for the continuation of life. According to 'Izz ibn Abdul-Salam, the preference is given to necessities over needs (Malik, 2015, p. 4) when dealing with people's rights and treat them equally by giving the poorer preference over the less poor and the urgent need preference over the lesser need. According to Islam, this thinking demonstrates how human needs are to be arranged from a theoretical perspective as there is always a competition to acquire resources and how these resources are adapted to circumstances of a society and thus should be prioritized according to importance and urgency (Mayer, 2018).

From the Islamic teachings three categories of people can be distinguished:

(a) **Muslims living in an Islamic State:** These were subjects and the State regulated norms and values according to the Islamic way of life. Muslims were free people and were considered equal in judicial, political and economic sense. As we know that Muslim women were also able business women in the time of the Prophet.

(b) **Dhimmis in an Islamic State:** These were also subjects, but were people of other religions (Müftügil, 2011, p. 28). Especially people of the book and other religions were considered as dhimmis and they were all equal in judicial and economic sense. Islam perceived rulers on behalf of their constituents. A non-Muslim ruler would not be apt to rule over a majority of Muslim community. Otherwise, the Ottoman practice was that

when the majority of a community consisted of non-Muslims it was better to have a non-Muslim ruler.

(c) **Muste'men living in an Islamic State:** These were people who were given special trade privileges (Müftügil, 2011, p. 28). These people used to receive special contracts (*ahd'name*) that gave permission to be in an Islamic city temporarily. These were usually diplomatic relations and presented economic and military alliances in the beneficial interest of the Islamic State.

As for the six values in Islam the first one which is *life*, must include food, clothing, shelter, transportation, health etc. In other words, one needs a physical self, such as a healthy body that will lead to a purposeful life (Khadduri, 1979). The human soul is held high in Islam and harming an innocent soul is thus a grave sin. The Ottomans put this notion of equality into practice in their daily lives. As capitulations (*trade privileges*) started to become more known (Ari, 2004), the *muste'men* (privileged traders or ambassadors in an Islamic territory) were treated accordingly to their own religious customs, culture within the Muslim society (Ari, 2003). The Ottomans applied the principle of equality not in terms of religion but in terms of rights that every individual enjoyed within the Muslim society. So, people were different in terms of religions, which didn't mean that they were treated alien, but were respected due to the existing differences, acknowledged and yet were equally treated in terms of rights before the Islamic court. The society was to show the same respect that was accordingly stated. This meant obviously that these people could acquire property, trade property, own property and pay taxes for the protection of these rights.

The second value *religion*, has always been a basic right in Islam. The freedom to practice religion to be one's choice was deemed a priority and it was a right that there was none compulsion or obstruction in choosing one's religion or any obstruction in practicing it (Aral, 2017). Religion in Islamic tradition was a guarantee for individual guidance, individual peace, his tranquillity, his comfort and eventually his purpose in life. Religion, as Griffin argues provides the extensive morals to uphold truth, justice, and all the virtues. The *intellect or reason*, is divided into two areas in Islam. Basic and the fundamental reason, which every individual ought to possess. There is then the specialist, whose reason supersedes the reasoning and the intellect of the laymen. The more these people of the science are, the more (any) society is advanced and more it becomes individualistic, meaning autonomous. But unfortunately, in general terms there are only a so many in any given society who possess knowledge, morals and self-denying personalities.

The fourth value which is *family Life and Offspring*, is perceived in Islam as an essential guarantee of the personhood humanity and high morals that are means of propagating the human race. As such, the propagation of the human race is more of a basic value and purpose in life than merely satisfying merely carnal desires. The family is the basic unity of a society and is formed by marriage. The fifth value *wealth and property* is obviously a fundamental human value and can be interpreted as a stock or flow (Bashir, 1999). In other words, one can talk about a piece of property that generates income. Then the last value, *level above* means that comfort and luxury is a complementary level and complement the necessities. These conveniences comprise all activities and things that are not vital to preserving the five basic values but are needed to remove difficulties or impediments in life. These refer to the strengthening or expanding the

preservation of the essential level. Having a car is such an example. Not having it would make life more difficult.

Conclusion

Compared to Griffin, the Ottoman example is obviously a fit to what he believes a moral foundation should exist. For the Islamic tradition, the teachings and therefore the individual rights are considered universal. These rights can be perceived as rights not just as individual human rights but maybe more categorical as rights of Muslims and/or rights of non-Muslims depending on where such a category or individual physically might be or under which circumstances it may be. Griffin and the Islamic teachings demonstrate an overlap as these points are discussed above. Griffin as well as Islamic principles provide rights in practical terms. As Griffin defines and confines his theoretical framework to mainly three concepts, Islamic principles go beyond and have influence on judicial, political, economic life. The scope however does not prevent us to make a sound comparison between the two. Griffin does not distinguish individuals according to sex or religion and he deems that anybody has these three provisions to exercise their self-chosen options. Islam acknowledges the differences and yet does not pretend that people, men or women are exactly the same, but treats individual equally in terms of rights. I think that Griffin is attempting to make this point but, does not or cannot admit that there are differences and different roles and choices in a society.

Additionally, there are strong parallels between what Griffin describes as values instead of facts and Islamic sources, which are obviously theological values that are attained by the Creator to human beings. Since not every human being is Muslim, Islam has prohibited to coerce its own values on all peoples. When the son of Murad the Second, Fatih Sultan Mehmed conquered Istanbul, he decreed a *firman* (decree) that provided protection of all minority rights. These minorities were granted rights and protection of their life, health, property, religion and education even though they were not Muslim, and thus believed in slightly other values and rights.

Islam not only gave rights to Muslim men, but also to Muslim women. This and the right of death maybe the points where Griffin and Islam differ the most. Islam makes a separation between sameness and equality. Men and women are equal in rights, but they are not the same in their roles they fulfil in respect to relationship they are in: this does not mean they can be excluded or that they are not respected as human beings. Women have the right to conduct business, engage in trade, set up a binding contract, employ or otherwise. For example, where men in a marriage are obliged to work and provide for the family, women may wish to work and decide not to share her earnings with her husband. Men are not allowed to force to share the earnings. Islamic perception of rights is based on respect and ethics: there is no faith without the knowledge and practice of ethical conduct. As respect comes from the understanding of what ethics contain. Ethics is concerned with being able to separate the good from the bad and when necessary, initiate contact for reminding bad conduct in a respectful way. Griffin is right in his elaboration but has let go the religious morals and thus is like a ship without a compass.

The Ottoman State was a multicultural society where race, colour, ethnicity were not the criteria for whether someone had rights or not. All people were considered subjects of the State and could rise to a fulfilling and worthwhile life in social, economic and even up to limited political life. The State provided grand protection and obviously religion

played a key role. A last example would be the *Kolbasi* (security person) in the Ottoman State who would break a wine jug of a non-Muslim in a non-Muslim area would have had to pay for that jug by the Islamic Court. But that same *Kolbasi* would have been right to break a wine jug in a Muslim majority area. In this sense I find Griffin close to a universally deliberated and yet culturally diverse human rights where respect forms the foundation of that diversity. Diversity and ethical knowledge in relation to life and values are the assets to cherish respect for individuals, groups and countries. In this respect Griffin pleading for cultural diversity and tolerating compromise seems the way to go. The opposite would be imposing one's own truth on others.

Peer-Review	Double anonymized - Two External
Ethical Statement	It is declared that scientific and ethical principles have been followed while carrying out and writing this study and that all the sources used have been properly cited.
Plagiarism Checks	Yes - Ithenticate
Conflicts of Interest	The author(s) has no conflict of interest to declare.
Complaints	itobiad@itobiad.com
Grant Support	The author(s) acknowledge that they received no external funding in support of this research.

Değerlendirme	İki Dış Hakem / Çift Taraflı Körlleme
Etik Beyan	Bu çalışmanın hazırlanma sürecinde bilimsel ve etik ilkelere uyulduğu ve yararlanılan tüm çalışmaların kaynakçada belirtildiği beyan olunur.
Benzerlik Taraması	Yapıldı – Ithenticate
Etik Bildirim	itobiad@itobiad.com
Çıkar Çatışması	Çıkar çatışması beyan edilmemiştir.
Finansman	Bu araştırmayı desteklemek için dış fon kullanılmamıştır.

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