THEORETICAL APORIA OF ISLAMIC LIBERALISM: THE CASE OF LOCKEAN LIBERALISM

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ABSTRACT

THEORETICAL APORIA OF ISLAMIC LIBERALISM: THE CASE OF LOCKEAN LIBERALISM

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Even though the historical background of discussions on "Islamic liberalism" dates back to colonisation of Muslim-majority countries between 19th and 20th centuries, these debates have become much more visible both in academia and media in the post-Arab spring period. In this period, proponents of "Islamic liberalism" have predominantly taken Lockean liberalism as a model and they have even equated former with the latter. This thesis thereby critically evaluates the theoretical and conceptual framework of "Islamic liberalism" through analyzing Locke's political theory and political theology. From the comparative political theory and comparative political theology perspectives, Locke's natural law theory and his understanding of liberal rights are compared with the premises of "Islamic liberalism" in order to assess whether it is a consistent term or not and whether it is a form of Lockean liberalism or not. This study therefore aims to contribute the endeavours for comprehending the liberalism's relation to religions in a broad sense and to Islam in a narrow sense.

Keywords: Islamic liberalism, Lockean liberalism, Christianity, Islam, comparative political theory and comparative political theology.

ÖZ

İSLAMİ LİBERALİZMİN TEORİK ÇIKMAZI: LOCKEÇU LİBERALİZM ÖRNEĞİ

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Her ne kadar "İslami liberalizm" tartışmalarının tarihi arka planı Müslüman çoğunluğa sahip ülkelerin 19. ve 20. yüzyıllarda sömürgeleştirilmelerine kadar dayansa da bu tartışmalar Arap baharı sonrasındaki süreç içerisinde akademide ve medyada çok daha görünür hale gelmiştir. Bu süreçte "İslami liberalizm" savunucuları büyük bir çoğunlukla Lockeçu liberalizmi model almışlar ve hatta her ikisini eşdeğer görmüşlerdir. Böylece bu tez, Locke'un siyaset teorisini ve siyasal teolojisini inceleyerek "İslami liberalizmin" teorik ve kavramsal çerçevesini eleştirel bir biçimde ele almaktadır. Karşılaştırmalı siyaset teorisi ve karşılaştırmalı siyasal teoloji bakış açılarından hareketle, "İslami liberalizmin" tutarlı bir terim olup olmadığını ve "İslami liberalizmin" Lockeçu liberalizmin bir türevi olup olmadığını değerlendirmek amacıyla Locke'un doğal hukuk teorisi ve liberal haklar anlayışı "İslami liberalizmin" öncülleriyle karşılaştırılmaktadır. Dolayısıyla bu çalışma liberalizmin geniş anlamda dinlere, özel anlamda İslam'a olan bağıntısını kavrama çabalarına katkı sunmayı amaçlamaktadır.

Anahtar Kelimeler: İslami liberalizm, Lockeçu liberalizm, Hristiyanlık, İslam, karşılaştırmalı siyaset teorisi ve karşılaştırmalı siyasal teoloji.

To Özlem, Melissa, and Milan Deniz

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This thesis is an outcome of a long journey in which I have witnessed that patience and decisiveness are the most significant essentials; therefore, I am more than thankful to my mother, Gül Canbegi, who taught me overcoming difficulties and trusted me until the last day in her life. I am also supremely grateful to Canbegi and Yılmaz families for their continuous support during all phases of my life including the research period of the thesis.

I am sure that every journey becomes memorable with the contributions of friends. I thereby extend my heartfelt thanks to my all friends who enormously helped me in developing the ideas in this thesis.

Last but not least, words fall short of expressing my appreciation to my companion in life, Özlem, for her endless motivation, patience, and love. She is the person who had to take care of our beloved children, Melissa and Milan Deniz, almost by herself. She never gave up and never let me give up. Obviously, without her tremendous support and the smile on our children's faces, this thesis would not have been completed. Needless to say, this thesis is a creation of hard working and labour; nevertheless, I am the sole responsible for all its shortcomings and flaws.

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION

In the course of political history, discussions on the relation between liberalism and Islam intensified immediately after two significant milestones. The first wave that initiated these debates was the colonisation of Muslim-majority countries between 19th and 20th centuries. In this period, in terms of the relation between liberalism and Islam, Muslim intellectual circles were separated into three groups due to the disagreements on religion and state relations, political legitimacy, and fundamental rights of subjects. While the first group advocated Islam's supremacy over Western political ideologies including liberalism, the second group blamed Islam for the ongoing predicament in their countries and argued the adoption of liberalism; and, the third group was formed by the intellectuals who struggled to reconcile liberalism and Islam. These preferences of one over another and the efforts for their reconciliation were sprang not only from the internal motives such as depressed socio-economic situation of Muslim-majority countries where widespread ignorance, industrial backwardness, and despotism were prevalent but also from the external factors such the Western invasion which was not only realized by military intervention but also though cultural, and intellectual domination. Towards the end of the 20th century, this intellectual accumulation paved the way for scholarly works that scrutinized the relation between liberalism and Islam. These academic studies, for the first time, advanced the terms "Islamic liberalism" and "liberal Islam" which were not constructed on a conceptual framework but a denomination of antecedent's attempts to integrate liberalism and Islam. In other words, what is meant by these terms was, basically, adoption of

liberalism would be the only saviour for the Muslim-majority countries in order to remediate their numerous problems.

In the 21st century, the second wave of debates began throughout the events of September 11, the invasion of Afghanistan and Iraq, the emergence of transnational extremism of al-Qaeda, armed rebellions during the Arab Spring, the re-emergence of extremism in the form of Islamic State (ISIS), and the attacks on *Charlie Hebdo*. These events brought a different political agenda into the forefront. According to this agenda, in order to curb the negative effects of Islamist extremism both in the West and Muslim-majority countries, "Islamic liberalism" should be promoted as a moderate type and as an antidote. Another item in the agenda was concerning to the political regimes in the post-Arab spring period. Here, once again, the prescribed model was "Islamic liberalism." Therefore, contrary to the intellectuals of the first wave, the scholars of the second wave had a term to discuss that is "Islamic liberalism," which they inherited from their predecessors' legacy. However, except this difference, all the conditions were the same with (or the 21st century version of) the circumstances in the first wave; that is Muslim-majority countries were generally under the socio-economic crisis accompanied by technological backwardness, unqualified education, and corrupted authoritarianism. Particularly after the post-Arab spring epoch, promoters of the "Islamic liberalism," again without theorizing the concept in detail, began to equate Lockean liberalism with the former. In other words, they argued that if one theorizes an "Islamic liberalism," it will inevitably be a version of Lockean liberalism.

In this vein, hypothesis on the Lockean version of "Islamic liberalism" includes three premises. First, Islam is in concordance with liberalism. Second, "Islamic liberalism" connotes more than only a juxtaposition of Islam and liberalism. Third, the conceptual structure of "Islamic liberalism" is in compliance with Lockean liberalism. In the relevant literature, it is obvious that the proponents of "Islamic liberalism" do not provide academia with a study regarding their hypothesis and

they do not even discuss the validity of their premises. These deficiencies do not only create a void in the literature but also lead dissenters of the concept to be labelled as fundamentalists, extremists, or even terrorists. The discriminatory wall built around "Islamic liberalism," thus, resulted in as the approval of the concept without questioning so that this eventually created an illusion which was for making Muslims believe that they have no other option than "Islamic liberalism."

1.1 Setting the Scene

To begin with the first wave, even though Young Ottomans, Sayyid Ahmad Khan, and Chiragh Ali of India equated their political language with liberalism, Asaf Ali Asghar Fyzee, for the first time, coined the terms "Islamic liberalism" or "liberal Islam" in his *A Modern Approach to Islam*. However, he did not provide a conceptual framework for these terms that he used as a general future desire which included being free from the "stable pattern of religion" and "looking hopefully at the future" (Fyzee, 1963, p. 104). Until Leonard Binder's prominent book titled *Islamic Liberalism: a Critique of Development Ideologies* was published in 1988, there has been no serious attempt to handle the relation between Islam and liberalism. Nevertheless, Binder did not lay any conceptual ground for "Islamic liberalism" and what he offered his readers was proposing "Islamic liberalism" as a transitional stage for political liberalism; he writes that "without a vigorous Islamic liberalism, political liberalism will not succeed in the Middle East, despite the emergence of bourgeois states" (Binder, 1988, p. 19). Another scholar, Charles Kurzman used the term "liberal Islam" which, to him, "may sound like a contradiction in terms" (Kurzman, 1998, p. 3). In his *Liberal Islam: a Sourcebook*, even though he argued that "liberal Islam" is a future-oriented revivalist initiative that complies with Western liberalism, he makes "no claims as to the correctness of liberal interpretation of Islam" (Kurzman, 1998, p. 4).

The uncertainty of the first wave scholars about "Islamic liberalism" gave way to more assertive argumentations on the relation between liberalism and Islam during the second wave. For instance, Albert Hourani's *Arabic Thought in the Liberal Age*, Oliver Roy's *Secularism Confronts Islam*, Safdar Ahmed's *Reform and Modernity in Islam*, Khaled Abou El Fadl's *Islam and the Challenge of Democracy*, Abdolkarim Soroush's *Reason, Freedom, and Democracy in Islam*, Hamid Dabashi's *Islamic Liberation Theology*, Katerina Dalacoura's *Islam, Liberalism and Human Rights*, Talal Asad's *Formations of the Secular: Christianity, Islam, Modernity*, Mohammed Arkoun's *Islam: To reform or to subvert?*, Nader Hashemi's *Islam, Secularism, and Liberal Democracy*, Caroline Cox and John Marks's *'The 'West', Islam and Islamism: Is Ideological Islam Compatible with Liberal Democracy*, Andrew F. March's *Political Islam: Theory* and his *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*, Tariq Ramadan's *Radical Reform: Islamic Ethics and Liberation* and his *The Quest for Meaning: Developing a Philosophy of Pluralism*, Patricia Crone's *God's Rule: Government and Islam*, Joseph A. Massad's *Islam in Liberalism*, Faisal Devji and Zaheer Kazmi's *Islam after Liberalism*, Charles Taylor's *A Secular Age*, Yeşim Arat's *Rethinking Islam and Liberal Democracy*, Mustafa Akyol's *Islam without Extremes: A Muslim Case for* Liberty, Hamid Hadji Haidar's *Liberalism and Islam: Practical Reconciliation between the Liberal State and Shiite Muslims*, Bassam Tibi's *Islam's Predicament with Modernity: Religious Reform and Cultural Change* and his *Islamism and Islam*, Aaron Tyler's *Islam, the West, and Tolerance: Conceiving Coexistence*, Mostapha Benhenda's *Liberal Democracy and Political Islam: The Search for Common Ground*, Amina Wadud's *Inside the Gender Jihad: Women's Reform in Islam*, Nasr Abu Zayd's *Reformation of Islamic Thought: A Critical Historical Analysis*, Abdelwahab El-Affendi's *What Is Liberal Islam? The Elusive Reformation* provide insights on the relation between liberalism and Islam. However, these significant and renowned works, from which I have substantially benefited, do not suggest a conceptual framework through which the readers can comprehend what makes "Islamic liberalism" or "liberal Islam" different from Islam and what diversifies them from liberalism.

Despite the lack of a concrete conceptual framework, "Islamic liberalism" became more visible in the literature during the second wave and in addition to the above-mentioned treatises, a new branch emerged within this wave. Through articles in the journals and newspapers, intellectuals of this branch argued that "Islamic liberalism" is (or at least should be) a version of Lockean liberalism. For instance, Joy Samad's *John Locke and Muslim Liberalism*, Mustafa Akyol's *Islam Needs its John Locke* and his *Reforms in Islamic World: ala Luther or ala Locke* and also his *The Islamic World Doesn't Need a Reformation: Why a Muslim John Locke Would be Much More Useful than a Muslim Martin Luther*, Muqtedar Khan's *Syed Qutb: John Locke of the Islamic World*, and Nader Hashemi's *The Relevance of John Locke to Social Change in the Muslim World: A Comparison with Iran* are among those that interconnect Lockean liberalism with Islam and "Islamic liberalism." In broad terms, the main argument of these works can be reduced to a single hypothesis: "Islamic liberalism" is analogous to or a form of Lockean liberalism. Another version of this hypothesis is that Islam can generate a Lockean liberalism. Since these works draw an analogy between "Islamic liberalism" and Lockean liberalism, the specifications of the latter are also of significance. Therefore, what is meant by Lockean liberalism, or in other words, what makes Locke as the pioneer of liberalism should be evaluated.

If one has to summarize Locke's political philosophy, which was labelled as a liberal theory after him, in one sentence, this would probably be the following excerpt: "that law teaches all mankind…that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions" (Locke, 1980, p. 9). In essence, this excerpt involves his natural rights theory that includes right to life, right to liberty, and right to private property. In a broader sense, right to resistance and right to religious freedom can also be added to this spectrum since right to liberty also refers to the these rights in terms of their contents. One can also deduce the consent of governed, the social contract between ruler and ruled, and the political legitimacy of sovereign from right to resistance. Similarly, right to religious freedom and right to resistance are directly related with the separation

of powers and tolerance. Therefore, Locke's natural rights understanding, in broad terms, incorporate almost every aspect of his political philosophy through which his followers declared him as the founding father of liberalism. This means that Locke's natural rights understanding is the most central concept in his philosophy. However, Locke, so to say, did not concoct these rights for no reason at all; on the contrary, he derived these rights from the natural law tradition before him. For instance, Christopher Wolfe (2006, p. 2) writes in *Natural Law Liberalism* that "natural law and liberalism were, after all, originally 'married,' in the classical liberal political philosophy of John Locke." Similarly, Frank van Dun (2001, p. 1) aptly argues in *Natural Law, Liberalism and Christianity* that "the high tide of the Christian orthodoxy and classical liberalism belongs to the era when natural law was the fundamental concept of all serious thought about the human world." As he points out, not only natural law tradition but also Christianity shaped what is called as Lockean liberalism.

To turn back to the hypothesis of "Islamic liberalism" proponents, which is "Islamic liberalism" is congruent with (or a version of) Lockean liberalism, this hypothesis, includes another two premises in terms of Lockean liberalism. First, there exists an Islamic natural law tradition which paves the way for "Islamic liberalism." Second, Islam and its foundations facilitate the production of Lockean natural rights. However, this hypothesis and all its premises have not been tested yet even by the above-mentioned academic works. Therefore, at conceptual level, the consistency of this hypothesis and reliability of its premises should be investigated. This investigation will be conducted by this thesis. In this sense, the main purpose of this thesis is to examine whether "Islamic liberalism" is conceptually coherent and whether Lockean liberalism can be evaluated as its proto-type.

1.2 Research Questions

In total, equating "Islamic liberalism" with Lockean liberalism inherently involves five premises. As mentioned above, this hypothesis primarily preaccepts the harmony between liberalism and Islam. As a second premise, this harmony amounts to a concept which is more meaningful than the pure collocation of Islam and liberalism. Third, when conceptually constructed, "Islamic liberalism" is in conformity with or a version of Lockean liberalism. Fourth, Islamic natural law does not only exist but also produces "Islamic liberalism." Fifth, Islam is in agreement with and even embodies Lockean natural rights. In order to test the validity of these premises, this thesis, in line with its purpose, will try to find an answer to the main research question which consists of a set of contingencies that are as follows: Is "Islamic liberalism" a contradiction in terms? If it is an inconsistent phrase, can this contradiction nevertheless generate a conceptually coherent term? If it can generate a coherent term, is this concept harmonious with Lockean liberalism?

Regarding the main research question of the thesis, five sub-questions will also be scrutinized. First, how natural right tradition in the West has evolved and how did it influence Lockean liberalism? Second, does Islam have a natural law tradition and if there is an Islamic natural law understanding is it in compliance with its Western counterpart? Third, what is the position of Islam in terms of Locke's natural rights, specifically, right to resistance, right to private property, and right to religious freedom and how does Islam formulate the relation between God and humans in terms of these rights? Is it different from Christianity? Fourth, how "Islamic liberalism" is conceptually constructed and does it have natural law and theological foundations? In other words, what does make "Islamic liberalism" Islamic and liberal? Fifth, what is the perspective of Islam to the Lockean liberalism's fundamental constituents such as the relation between reason and faith, social contract, political legitimacy, and tolerance? In other words, is Islam

available to adjust itself in terms of Lockean liberalism and how can this adaptation become possible?

The main research question and the sub-questions, as a matter of course, are examined in a unity; therefore, while the main research question is functioned as a north star throughout the thesis, sub-questions are generally investigated in specific chapters. In addition to these research questions, this thesis employs some minor questions which are directly related to the main research question as follows: How does Christian covenant theology influence Locke in terms of his social contract theory? Does Islam have a covenant theology? Can it produce a social contract theory? How does the ontological authority of reason shape Lockean liberalism? How do Islam and "Islamic liberalism" handle the problem of reason and faith?

1.3 Methodology

This thesis is a qualitative research and in order to find the answers to the above-mentioned questions, it embraces comparative method within political theory. Since the hypothesis and premises of the promoters of "Islamic liberalism" set Lockean liberalism as an example or ideal, two *comparanda* automatically emerge: while Lockean liberalism is the first *comperandum*, "Islamic liberalism" (or sometimes Islam) becomes the second *comperandum.* In essence, comparative political theory has been regarded as a sub-field of political science which dominantly examines Western texts and concepts. However, today, geographical restrictions around political thought become more attenuated than ever before. As Andrew F. March (2009, p. 532) writes, "one can observe an increase in taught courses, research centres, and other collaborative projects that aim at some form or another of comparison or dialogue between Western and non-Western perspectives."

In this vein, there are a variety of academic works that use comparative method as a political theory tool for making comparisons between Western and non-Western philosophies, theories, and concepts. For instance, Roxanne L. Euben's *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism-A Work of Comparative Political Theory* and her *Premodern, Antimodern or Postmodern? Islamic and Western Critiques of Modernity*, Brooke A. Ackerly's *Is Liberalism the only Way toward Democracy? Confucianism and Democracy*, Farah Godrej's *Nonviolence and Gandhi's Truth: A Method for Moral and Political Arbitration*, Erich Kofmel's *Comparative Political Theology*, Daniel J. Kapust and Helen M. Kinsella's *Comparative Political Theory in Time and Place*, Huri Islamoglu's *Constituting Modernity: Private Property in the East and West*, Jin Y. Park's *Comparative Political Theory and Cross-Cultural Philosophy*, Jaan Islam's *Contrasting Political Theory in the East and West: Ibn Khaldun versus Hobbes and Locke*, Mishal Fahm al-Sulami's *West and Islam: Western Liberal Democracy versus the System of Shura*, Gerald Larson and Eliot Deutsch's *Interpreting across Boundaries: New Essays in Comparative Philosophy*, Anthony Parel and Ronald C. Keith's *Comparative Political Philosophy: Studies Under the Upas* Tree, Fred Dallmayr's *Border Crossings: Toward a Comparative Political Theory* and his *Beyond Monologue: For a Comparative Political Theory* are among the significant works that widely utilize comparative political theory as a methodology.

These academic efforts also do not confine themselves to a certain set of philosophic ideas; as obvious, non-Western philosophies of Confucius, ibn Khaldūn, and Gandhi can also be investigated as the subjects of political theory through comparative methodology. As March (2009, p. 537), aptly writes "comparison must be, in the first place, a method, not just an expedient term vaguely suggesting the focus of one's research interests (e.g., non-Western texts) or substantive concerns and commitments (e.g., critiquing Western hegemony)." Similarly, Roxanne L. Euben (1999, p. 9) argues that "the project of comparative political theory introduces non-Western perspectives into familiar debates about

the problems of living together, thus ensuring that 'political theory' is about human and not merely Western dilemmas." Finally, as Fred Dallmayr (1997, p. 422) points out, "Western practitioner[s] of political theory/philosophy relinquish the role of universal teacher (buttressed by Western hegemony) and be content with that of fellow student in a cultural learning experience."

Utilizing comparative political theory also embodies some risks concerning the scientific value of an academic effort. First, if a researcher is conditioned to find commonalities between *comparanda* and forces his arguments to neglect the differences, this conditioning will eventually lead researcher to lose his or her objectivity. Therefore, results of such a study will inevitably become problematical. Second, if a researcher ignores the temporospatial reality behind the political theories of *comparanda*, the result will unavoidably be anachronistic and cannot transcend the borders of juxtaposition of different ideas, philosophies, and theories. Third, if a researcher contemplates his or her work through labelling *comparanda* as superior or inferior, this comparison will not yield to scientific outcomes and can only serve as a justificatory means for the superior *comparandum* of the researcher.

In this sense, this thesis, through considering these risks, is not conditioned to find commonalities between "Islamic liberalism" and Lockean liberalism; therefore it does not ignore dissimilarities between them. Additionally, this thesis does not overlook the socio-economic and political conditions and historical facts that pave the way for the institution of Lockean liberalism and "Islamic liberalism." Last, this thesis does not regard producing liberalism as a superiority and being unable to lead to liberalism as an inferiority or vice versa. Therefore, this thesis does not fall into the trap of Orientalism which sees the Islamic culture, concepts, and values as secondary when compared to its Western counterparts. On the other hand, this thesis does not also fall into the trap of Occidentalism which sees Western values, philosophic legacy, and culture as inferior and hostile against its Islamic counterparts.

1.4 Outline and Structure of the Thesis

Against the hypothesis and premises of "Islamic liberalism" proponents who argue that it is logically consistent and a form of (and in compliance with) Lockean liberalism, this thesis argues that if their hypothesis and premises are correct "Islamic liberalism" has to reveal something other than Islam and liberalism. In other words, "Islamic liberalism" should be analyzed in terms of its relation to Islam and its connection with liberalism. Since Lockean liberalism is chosen as an example or as a model by those promoters; then, this thesis argues that its premises and constituents should also be in compliance with of Lockean liberalism. To put it differently, since "Islamic liberalism" is a derivation from Islam and liberalism, Islam should be able to produce or should be harmonious with the constituents of Lockean liberalism. As mentioned above, Lockean liberalism is a type of derivation from Western natural law tradition and Christian theology. In this vein, if "Islamic liberalism" is a version of Lockean liberalism, it should also be derivable from Islamic natural law theory and Islamic theology. Therefore, this thesis's hypothesis is as follows: if "Islamic liberalism" is logically coherent and if it is a version of Lockean liberalism then it should be supported by Islamic natural law understanding and Islam should be in compliance with Locke's natural rights. In line with the main research question and the methodology, this thesis compares Lockean liberalism with "Islamic liberalism," and when appropriate, with Islam. To make this comparison efficiently, first *comparandum*, Lockean liberalism is examined and then to what extent "Islamic liberalism" and Islam conform to the framework of Lockean liberalism is investigated.

This thesis is consisted of six main chapters including introduction and conclusion. The first chapter is introduction. The second chapter scrutinizes the historical development of Lockean liberalism's one of the main constituents which is the natural law tradition. When analyzing the natural law tradition, this thesis gives priority to development of right to resistance, right to private property, and right to religious freedom within this tradition. Therefore, the legacy inherited by Locke in

terms of these rights is examined. Since natural law tradition is intertwined with the relation between reason and faith, this chapter also inspects the development of the latter. To reveal the historical stages more clearly, this chapter is separated into six subchapters in which the Greco-Roman era, the early age of Christianity, Aquinas's term, the Reformation period, the early modern epoch, and the secularization phase are researched.

In this chapter, it is argued that natural law concept has reproduced itself through transcending temporospatial boundaries during more than two thousand years; thus, what Locke contributed to political philosophy including natural rights, consent of the governed, limited government, and tolerance are rooted in the accumulation of natural law teaching in the Western philosophy from the age of Sophocles to Pufendorf. In this vein, it is advanced in this chapter that Lockean liberalism is an outcome of this philosophical continuity, theological multiplicity, and multifaceted social and economic structure in the Western tradition. Last, this chapter reveals that despite philosophical polarizations, the speculations on the relation between reason and faith have survived; and, Christianity did not determine a single way of approach to this relation.

The third chapter specifically focuses on Locke's political philosophy and his political theology whose characteristics make him called as the father of liberalism. In addition, this chapter aims to interrogate the relation between Christianity and Lockean liberalism; therefore it provides a basis for understanding the effect of religion that is the Christianity. In this framework, this chapter employs two subchapters; while the first one examines the interplay between natural law and religion in Lockean liberalism, the second one analyzes the influence of natural law that shapes Locke's perspective to right to resistance, right to private property, and right to religious freedom. Thus, this chapter also presents how Locke's arguments are rooted in religious assumptions and natural law teaching; additionally, how he utilizes empiricist, voluntarist, and rationalist perspectives to natural law. With this chapter, analysis of the first *comparandum* is

completed and next chapters focus on the second *comparandum* which is "Islamic liberalism" or Islam.

The fourth chapter aims to analyse the relation between reason and faith in Islam and it also investigates what is called as Islamic natural law. This chapter has four subchapters. The first subchapter researched the legacy of Greek rationalism and its influence on Muslim scholars. Then, through analyzing the debates among *Mu'tazilites* and *Ash'arītes* about the interplay between reason and faith, it questions whether Islamic theology allows for the ontological authority of reason as it is allowed by Christian theology. The second subchapter interrogates whether an Islamic natural law tradition exists or not. Here, the classification of Anver Emon, who is an advocate of Islamic natural law, is employed and criticized. The third subchapter compares the relation between God and humans through inspecting the covenant theologies in Christianity and Islam; by this means, the birth of Lockean social contract theory becomes clearer. Fourth subchapter finally examines the restrictions of an Islamic tool called *ijtihād* [renewed interpretation] which has been utilized as an apparatus for reasoning.

In this framework, this chapter reveals that even though Christian and Muslim theologians and philosophers commonly inherited the legacy of Greek rationalism, they have followed different trajectories throughout the time. The main differentiation was on the ontological authority of reason; while it has survived in Christianity, it has been forbidden by Muslim theologians and authorities immediately after *Ash'arī* school became ascendant in 10th century. This chapter also presents how reason and faith was perceived as antagonistic concepts within this period and how textual fundamentalism about Islamic resources has become prevalent. Since reason was limited and because it was defeated by *Sharī'a* norms, secularization (and even existence) of Islamic natural law could not be possible. Another aspect of this chapter is that it expresses why Islamic covenant theology does not produce a contract theory while Christianity manages to generate from itself. Here, the relation between God and humans and the role of reason are

employed as an explanation. Finally, in this chapter, the exclusion of individuals in the process of reasoning through *ijtihād* is identified as a symptom of the defeat of reason. Therefore, with this chapter, this thesis builds the premises of second *comparandum* that are Islamic natural law, relation between reason and faith, relation between God and humans, covenant theology, and limitations put on reasoning in terms of Islam.

The fifth chapter refers to "Islamic liberalism" and it investigates respectively through two subchapters that whether this term is logically consistent and whether Islam is congruent with Locke's right to resistance, right to private property, and right to religious freedom. This chapter also argues that "Islamic liberalism" does not have a conceptual or theoretical framework and it is generally used for labelling liberal Muslims' ideas. It also has an inherent inconsistency since while Islam connotes submission-oriented theocentric meaning, liberalism implies freedom-oriented anthropocentric meaning. In this chapter, Kantian dialectic and Hegelian triad are utilized in order to test whether this antinomy can create a new "Islamic liberalism." The inharmoniousness between Islam and liberalism leads this chapter to coin the terms "*Sharī'a*-oriented Islamic liberalism" and "secularism-dominated Islamic liberalism." Even though these terms involve "Islamic liberalism" as a phrase, they do not mean the accuracy of "Islamic liberalism"; on the contrary, these terms are coined to show how Islam and liberalism are not intertwined sufficiently. Finally, since "Islamic liberalism" does not have a conceptual basis, Islam's perspective to right to resistance, right to private property, and right to religious freedom are researched. In this vein, it is argued that there are significant differences between the perspectives of Islam and Lockean liberalism to these natural rights.

The sixth chapter is the conclusion and it gives critical remarks on this research including a summary of the answers of main research question, subquestions, and minor questions; it also provides insights about how this thesis can be used by

scholars who endeavour to carry on an academic research about comparative politics and political theory.

CHAPTER 2

NATURAL LAW TRADITION: THE SEEDS OF LIBERALISM

The first step in answering my main research question, which is whether John Locke's natural law liberalism can be a proto-type for "Islamic liberalism," is to analyze the historical development of natural law doctrine. Locke, who has been regarded as one of the pioneers of liberalism, grounds his political theory heavily on the fundamentals of natural law doctrine and this is why Christopher Wolfe (2006, p. 2) writes in *Natural Law Liberalism* that "natural law and liberalism were, after all, originally 'married,' in the classical liberal political philosophy of John Locke." This marriage produced a set of natural rights including right to resistance against tyranny, right to private property, and right to religious freedom. In others words, when Locke's burgeoning theory of liberalism is crystallized (or reduced), what we have is a blend of these three rights that are produced primarily from natural law doctrine and secondarily from the interplay between theology and ontological authority of reason.

In essence, it was not Locke who first discussed resistance, property ownership or religious tolerance; however, it was Locke who first derived a coherent understanding of natural rights from the discussions that had been held before him. The main contributors of this derivation process were reasoning, theology, and admittedly natural law tradition. To understand Locke's nascent liberalism, this chapter will trace the historical roots of natural law doctrine through investigating what philosophic contributions had been made before Locke in terms of these three natural rights and how they have influenced him.

In this chapter, the philosophic roots of Locke's right to resistance, right to property, and right to religious freedom will be traced back to natural law tradition. From Sophocles to Pufendorf, the intellectual differentiation and development of these rights will be investigated. To make the distinctive features of fractionations more obvious, some historical categorizations will be applied; therefore, this chapter includes six main periods of natural law tradition before Locke: the Greco-Roman epoch, the early age of Christianity, Aquinas's era, the Reformation period, the early modern age, and the secularization phase. In all these six subchapters, the main question will be how the philosophical and theoretical debates in the natural law tradition have affected the evolution of right to resistance, right to private property, and right to religious freedom that constitute what is called in the literature as Locke's natural law liberalism. To lay the groundwork for the subsequent chapters in which an analogy will be made between Locke's natural law liberalism and "Islamic liberalism," this chapter will also investigate a secondary question regarding the relation between reason and faith in terms of their compatibility or discrepancy.

2.1 Natural Law in the Greco-Roman Philosophy

The idea of natural law, as a form of absolute justice through which individuals can evaluate and criticize the positive laws of their society, does not truly originate with Cicero and Stoics; on the contrary, it can be found even before Plato and Aristotle and can be traced back to Sophocles and his *Antigone* in which the tragedy's eponymous heroine disobeys the proclamation of Creon, the king of Thebes who forbids burying her brother's corpse. The dialogue between them and rationale behind her disobedience are as follows:

Creon:	But as for you, tell me succinctly, not at length: You knew a proclamation had forbidden this?
Antigone:	I knew. How could I not? It was a public fact.
Creon:	And yet you had the daring to transgress these laws?
Antigone:	It was not Zeus who made this proclamation;

> Nor was it justice dwelling with the gods below
> Who set in place such laws as these for humankind;
> Nor did I think your proclamations had such strength
> That, mortal as you are, you could outrun those laws
> That are the gods', unwritten and unshakable.
> Their laws are not for now or yesterday, but live
> Forever; no one knows when first they came to light.
>
> (Sophocles, 2012, p. 38)

These verses imply that if an act is compatible with the laws of gods, which are unrecorded and immovable, is just even though it is prohibited by positive law. Through referring to similar verses of the tragedy, Aristotle, in *On Rhetoric*, distinguishes specific law from common law and accordingly concludes that the latter comprises of common principles of just and unjust which are in nature. Elsewhere in the same book, he classifies law as written and unwritten and maintains that fairness never changes nor does the common law but written laws frequently change. Based on his classifications of law, he deems Antigone's act, burying her brother in violation of the law of Creon, as just since it is congruent with common and unwritten law (Aristotle, 2007, pp. 97-102). However, Burns (2002, p. 555) argues that Aristotle's approach to Antigone was misinterpreted by his later readers who ascribed natural law to him. Similarly, Wolfe (2006, p. 155) in *Natural Law Liberalism*, points out that Aristotle does not speak of natural law and his evaluation of Antigone is simply a discussion of forensic oratory in which rhetorician makes an argument against the positive law.

Another aspect of the discussion on whether Aristotle is a natural lawyer or not pertains to his book titled *Nicomachean Ethics.* There he makes a distinction between legal justice and natural justice which are two forms of political justice. To him, natural justice has the same force everywhere and does not change with respect to people's thinking (Aristotle, 2014, pp. 87-90). This suggestion prima facie supports the arguments which regard Aristotle as an *iusnaturalist;* however, some scholars argue that this is not the case. For instance, Vega (2010, p. 1) aptly notes that thesis on Aristotle's *iusnaturalism* should be left, or at least, corrected. Assessing the excerpt in *Nicomachean Ethics* where Aristotle draws a distinction

between “two forms of political justice, *physikon dikaion* [natural justice] and *nomikon dikaion* [legal justice]” as a conceptual dualism between positive law and natural law is not accurate. To him, both natural justice and legal justice should be evaluated as parts of Aristotle’s conception of positive law since positive law is based on practical reason which is opposed to theological and metaphysical natural law view.

Leo Strauss (1953, p. 156), in *Natural Right and History*, contends that employing the concept of natural law in a discussion on Aristotle’s political and ethical thought is a fault; thus, he prefers the term natural right as the translation for *physikon dikaion* which is introduced by Aristotle in *Nicomachean Ethics*. Furthermore, he elaborates on Aristotle’s usage of natural right and concludes that Aristotle refers to natural right only in one page of the *Nicomachean Ethics* in which the excerpt is ambiguous and not elucidated by an example of what is by nature right. In this vein, d’Entrèves (1970, p. 45), Simon (1992, p. 27), and Hochstrasser (2004, p. 50) jointly emphasise that Aristotle offers an inadequate account of natural law without carrying its development far enough; for this reason, Murphy (2006, p. 1) regards Aristotle as proto-natural law philosopher. A conspicuous exception to this consensus is Vega’s innovative reconstruction of Aristotle’s legal thought. He proffers that Aristotle is neither a natural lawyer nor a positivist but his notion of law plays an intermediary role between the principles of morality and the political structure of the state (Vega, 2010, p. 21). If this is the case, then why Aristotle has been regarded as the pioneer of natural law by some scholars? Wolfe (2006, p. 153) replies this question through reminding that Aristotle was one of the opponents of the Sophists who advocated that law is built on *nomos* [convention] and assailed the idea of *physis* [nature] as the determinant of right. In other words, since Aristotle, as an anti-Sophist, essentially rejects the division between *nomos* and *physis*, he, therefore, has been treated as a natural lawyer (Johnson, 1938, p. 352).

When natural law is defined as an absolute law which is not a product of any *nomos*, but is discernible by the exercise of reason (Chloros, 1958, p. 609), it is the Stoics who precisely specify an organized natural law concept consistent with that definition (Hüning, 2002, p. 140). The Stoic tradition incorporates a universal law, a law of *cosmopolis* [the city of Zeus] not that of *polis* [city], which is identical with *logos* [universal reason] and also identical with Zeus (Wolfe, 2006, p. 156). As Radin (1950, p. 231) clarifies, according to the Stoicism, universal reason originates from Zeus who is not the robust Olympian, but a transcendental deity. The ontological authority of reason obviously has the upper hand in this tradition. For instance, the founder of Stoicism, Zeno of Citium, states that life according to nature means life according to right reason (Owens, as cited in Wolfe, 2006, p. 156). Chrysippus, the third head of Stoic Academy, conceives god and reason on a single plane; thus, acknowledges that divine power resides in reason, and in the soul and mind of the universe (Cicero, 1967, p. 41). Similarly, to Epictetus (2004, p. 27), a late Stoic, nature is rational and planned by divine authority; and to Marcus Aurelius (2006, p. 32), a Stoic philosopher and Roman emperor, what is rational is natural and what is natural is rational in the universe which is structured by god. Last, if we are to include him in this tradition, Cicero (1999, p. 111) writes in *De Legibus* that "law is the highest reason, rooted in nature, which commands things that must be done and prohibits the opposite. When this same reason is secured and established in the human mind, it is law." It is obvious that all the Stoics agree on that *anima mundi* [soul of the universe], which is identified with god, commands the universe, while *logos spermatikos* [seminal reason] goes for inanimate matter. As Milbank (2006, p. 421) summarizes, the Stoic conception of natural law "aspired to a universal ethic, based on reason, transcending all political boundaries and towards a universal and ontological peace."

Scholars have generally traced natural law back to the Stoics because of merely one text in which Cicero ascribes natural law to Zeno of Citium even though authenticity of the text is not verified with autonomous confirmation; therefore, to some scholars, as Fortin (1982, p. 610), the origin of the natural law doctrine is

vague. Regardless, the philosophical legacy of Stoicism is more apparent in the works of Cicero than anywhere else, in which Stoic characters engage in dialogue and expand on the Stoic doctrines, particularly on natural law. Categorically, Cicero is an academic sceptic not a Stoic but through adopting an eclectic approach to Platonism, Aristotelianism, and Stoicism, he opens up debates and makes Greek philosophers and interlocutors advocate themselves in his books; by this means, he provides thorough knowledge on the Stoics and natural law (Alonso, 2013, p. 28). When Ciceronian legal philosophy is discussed, the question is whether he embraces natural law understanding. Cicero, as a jurist and an orator, conceives that natural law provides an orator with the arguments that enable him to contrast civil law with non-judicial principles. To him, implementing this strategy, that is, basing arguments on natural law, is useful when an orator struggles to influence his audience that a certain act, despite being illegal, is nevertheless right (Alonso, 2013, p. 30). In addition to his pragmatic attitude towards natural law, Cicero's contribution to the concept cannot be denied. For instance, in *De Re Publica,* Cicero, through quoting Lactantius, presents the definition of natural law which is worth including here in its entirety:

> True law is right reason, consonant with nature, spread through all people. It is constant and eternal; it summons to duty by its orders, it deters from crime by its prohibitions. Its orders and prohibitions to good people are never given in vain; but it does not move the wicked by these orders or prohibitions. It is wrong to pass laws obviating this law; it is not permitted to abrogate any of it; it cannot be totally repealed. We cannot be released from this law by the senate or the people, and it needs no exegete or interpreter like Sextus Aelius. There will not be one law at Rome and another at Athens, one now and another later; but all nations at all times will be bound by this one eternal and unchangeable law, and the god will be the one common master and general of all people. He is the author, expounder, and mover of this law; and the person who does not obey it will be in exile from himself. Insofar as he scorns his nature as a human being, by this very fact he will pay the greatest penalty, even if he escapes all the other things that are generally recognized as punishments (Cicero, 1999, pp. 71-72).

In *De Legibus*, Cicero (1999, p. 113) also summarizes his approach as follows: "Reason forms the first bond between human and god. And those who share reason also share right reason; and since that is law, we humans must be

considered to be closely allied to gods by law." These definitions contain a momentous approach to natural law that it is defined as a universal common law which is timeless, ubiquitous, and constant. Accordingly, the universal society, as Cicero mentions, is a consensus between all people and it is one of the distinctive features of Stoics. Universality, in this context, is also evident in Marcus Aurelius (2006, pp. 24-25): "If mind is common to us all, then we have reason also in common…then, this common city, we take our very mind, our reason, our law."

Wolin (2004, pp. 74-75), in *Politics and Vision*, states that the Stoic model of a universal society based on natural law was correlative to Rome when that society had become so scattered by domestic strife and enlarged by imperial conquests that it had lost the crucial functions of a political community. Strauss (1953, p. 15) also mentions that the natural law teaching was a reaction to a specific temporal state and to a specific society. Similarly, d'Entrèves (1970, p. 32), in *Natural Law*, acknowledges that *ius gentium* was a practical solution for Roman jurists to overcome the tension arising from emergent intercourse with foreign peoples. In Ciceronian terminology, *ius gentium* has been introduced to all nations via their *naturalis ratio* and *ius civile* is a collection of norms which are not valid for whole humanity but only valid within the specific boundaries of *civitas.* Finally, *ius naturale* is universal, endless, and absolute norms; people possess them inherently; and they were embedded by god in the minds of humanity. What makes this division complicated is that Cicero sometimes identifies *ius gentium* with *ius naturale* in *De Officiis* (2003, p. 108): "The same thing is established not only in…the law of nations, but also in the laws of individual peoples, through which the political community of individual cities is maintained." This complication of the two concepts is productive since it makes natural law less abstract than that of Stoics and it provides an internal consistency to cosmopolitan project based on universal society (Fassò, as cited in Alonso, 2013).

Then, what are the rules of natural law in a universal society according to Cicero? In *De Officiis* (2003, p. 9), he asserts that "of justice, the first office is that no man

should harm another unless he has been provoked by injustice; the next that one should treat common goods as common and private ones as one's own." Therefore, to Cicero, *ius naturale* is built on justice as a virtue, which he considers as the primary principle of an ethical community shaped by mutual love of its components, not on legal coercion (Hüning, 2002, p. 140). Such an understanding of natural law also means that Cicero contributes to the Stoic concept of natural law through adding a concern for the political common good (Levering, 2008, p. 73).

The writings of Cicero have influenced not only philosophers and jurists but also theologians. For instance, Lactantius, one of the Fathers of the Church, also was referred to as the Christian Cicero by the Renaissance humanists, interpreted a part of *De Re Publica* which also received annotations from other Fathers of the Church, as Augustine of Hippo who, after reading Cicero's *Hortensius*, wrote in *Confessions*: "But this book altered my affections, and turned my prayers to Thyself O Lord; and made me have other purposes and desires. Every vain hope at once became worthless to me" (2005, p. 34).

2.2 Natural Law in the Age of Early Christianity

Intrinsically, it was not difficult to accept the notion of natural law for Christians since the natural law teaching of Stoics, which was quoted by Lactantius and transcribed by Augustine, was so compatible with the sayings of Paul the Apostle in Romans 2:13-15 which is the *locus classicus* of the discussions on natural law throughout the history of Christian thinking:

> For it is not those who hear the law who are righteous in God's sight, but it is those who obey the law who will be declared righteous. Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law. They show that the requirements of the law are written on their hearts, their consciences also

> bearing witness, and their thoughts sometimes accusing them and at other times even defending them (New International Version).

Through utilizing the components of the Stoic natural law doctrine, Lactantius, Ambrose, and Augustine grounded their arguments on this verse in Scripture, particularly the phrase which is "law written on their hearts," intended to enhance the Christian belief. As d'Entrèves (1970, p. 39) points out, Christian theologians developed the concepts of *lex naturalis in corde scripta* [natural law written in the heart] and of *innata vis* [native force] to achieve the knowledge of it. In this context, Lactantius (as cited in Carlyle & Carlyle, 1903, p. 104) states that "if the principle means that man, who is born to virtue, is to follow his own nature, it is a good principle." In the same way, Ambrose (as cited in Carlyle & Carlyle, 1903, p. 105) writes that "the Mosaic law was given because men had failed to obey the natural law. Law is twofold, natural and written. The natural law is in man's heart; the written laws in tables." He also emphasises that "it is the Apostle who teaches us that the natural law is in our hearts" (Ambrose, as cited in Carlyle & Carlyle, 1903, p. 105). Similarly, he maintains the same argument with different terms and points out that "the law of God has taught us what to believe, which the laws of men cannot teach us. They can exact a different conduct from those who fear them. But faith they cannot inspire" (Ambrose, as cited in d'Entrèves, 1970, p. 86).

Among the Christian theologians, Augustine, as a pivotal character, stands at the intersection of classical civilization and medieval Christianity. Dyson (2005, pp. 181-182) summarizes Augustine's role in this transition as follows: "In drawing upon the language and ideas of the pagan philosophical heritage, and in scrutinizing those ideas in the light of the Christian revelation, Augustine has effectively refashioned them into a Christian philosophy of politics." Augustine mainly identifies natural law with the law given by God to Adam, which is, in his understanding, universal and primordial law of mankind (d'Entrèves, 1970, p. 39). Therefore, Augustine does not directly discuss natural law; however, he does speak of eternal law and temporal law through utilizing the terms like law of nature and law of conscience interchangeably. To him, temporal law is unstable,

whereas eternal law, which is called *summa ratio* [the highest reason], is immutable and forever ought to be obeyed. Therefore, when temporal law is not derived from eternal law, which is identified closely with reason, it becomes unjust and unlawful. As Wolfe (2006, p. 159) points out, he contributes to the development of natural law despite the fact that he does not draw distinction between divine law and natural law. To him, universal law of nature is rationally accessible to men according as Paul the Apostle declares in Romans 1:20: "For since the creation of the world God's invisible qualities—his eternal power and divine nature—have been clearly seen, being understood from what has been made, so that people are without excuse." In *De Trinitate,* Augustine explains the interplay between the universal law and human conscience with an analogy as follows: "Every just law is transcribed and transferred to the heart of the man…as it were impressed upon it, just as the image from the ring passes over into the wax, and yet does not leave the ring" (2003, p. 160).

Augustine's arguments on universal law, eternal law, or natural law present that he considers the harmony between faith and reason (or religion and philosophy) as a *terminus a quo*. To him, philosophy is the pursuit of wisdom which can be attained through faith; thus, a right philosopher is a lover of God. Augustine, like Plato, asserts that the tyrannical and philosophical souls are not identified with their intellectual capacities since both can be intelligent; but they are identified with their character of love. The tyrant loves himself, while the philosopher loves wisdom, and to Augustine, wisdom is equivalent to God. He, therefore, repudiates the claim of Tertullian, who regards reason and revelation (or philosophy and religion) as irreconcilable and rhetorically asks: "What has Athens to do with Jerusalem? Or what has the Academy in common with the Church?" Augustine, contrary to Tertullian's view, concedes philosophy and religion as compatible terms. He criticises pagan philosophers for their prioritization of reason over faith; and contrarily, he prioritizes faith and distinguishes *sapient* [wisdom] from *scienta* [knowing] and mentions that knowledge without faith leads to arrogance and conceit. He clearly points out that *nisi credideritis, non intelligetis* [unless you

believe, you will not understand] (Fornieri, 2009, pp. 78-80). His approach to faith, which is superior to reason, reminds of the verse in Scripture: "Now about food sacrificed to idols: We know that 'we all possess knowledge.' But knowledge puffs up while love builds up" (1 Corinthians 8:1).

In accordance with his understanding of faith and reason, Augustine conceives Plato as a philosopher who concurs with the Christian understanding of God as reason or wisdom. He states his position in *De Civitate Dei*: "If, then, Plato defined the wise man as one who imitates, knows, loves this God…why discuss with the other philosophers? It is evident that none come nearer to us than the Platonists" (2000, p. 248). Augustine also touches upon the philosophy of Plotinus and Porphyry, the neo-Platonists, to whom philosophy is a route to divine life and who regard evil as the absence of good. Evil, to Augustine, is the consequence of free will; therefore, he also maintains that reason, despite being vitiated by wicked will, still can detect God's eternal law. In *De Libero Arbitrio*, he considers will as man's faculty to obey or disregard the eternal law and argues that a retribution or compensation according to the eternal law would be unjust if man had no free will; that is the reason why God gave the man free will (2010, p. 32). He also emphasises in *De Gratio* that human will was corrupted by the original sin; thus, to him, "the grace of God, through which human will is not taken away, but rather changed from an evil to a good will, and given assistance once it is good" (2010, p. 176).

Augustine's perception of eternal law emanates from the Neo-platonic dichotomy between the earthly and eternal life; furthermore, it represents a continuity of an understanding epitomized by one of the Fathers of the Church, Isidore of Seville: "All laws are either divine or human. Divine laws are based on nature, human laws on custom. The reason why these are at variance is that different nations adopt different laws (d'Entrèves, 1970, p. 39). Based on this dichotomy, Augustine (2000, p. 477) develops the notion of two cities through systematizing the verse in the Bible: "My kingdom is not of this world" (John 18:36). These two cities are

the city of God—also called *civitas Dei* [the heavenly city] where *amor Dei* [the love of God] reigns—and the city of man—also called *civitas terrena* [the earthly city] where *amor sui* [the love of self] prevails. As a matter of fact, Augustine's division between two cities was a result of the *Realpolitik* of his epoch. As Deutsch (2009a, p. xxiii) points out, Augustine's political philosophy was an outcome of the fall of Rome that enables us to classify him as a political realist. The historical development of Christianity in Rome is the key to comprehend his realism. In 380, Emperor Theodosius promulgated Christianity as the official religion of the empire, and in 410, Rome was sacked by Visigoths. In this circumstance, Augustine's *magnum opus*, *De Civitate Dei* [the City of God] was an apology of Christianity against those who contended that Christianity galvanized the fall of Rome. To him, Rome's love was a form of anarchic love, as he calls the *libido dominandi*, the desire for power; therefore, Rome was rotten before the introduction of Christianity (Fornieri, 2009, pp. 92-93). He discusses that the reason behind this corruption was worshipping of brutal and ferocious gods since the "true justice exists only in that republic whose founder and ruler is Christ" (Augustine, 2000, p. 63).

Actually categorization of cities was not initiated by Augustine, as mentioned earlier; the Stoics also discussed the division between human city and universal city (Deane, 1973, p. 419). What makes Augustine's division of *civitas Dei* and *civitas terrena* different was that the intersection of antithetical symbolism of two cities comprises the political order (Wolin, 2004, p. 110). Another different feature of this division is about the establishment of Christian Empire. To Eusebius, a Christian historian and polemicist, Christian Emperor Theodosius's reign and his promulgation of Christianity as the official religion of the state was a turning point that symbolises a transition from *pax Romana* to *pax Christiana*. Contrary to him, Augustine holds that Christians may reign as emperors; however, a perfect Christian Empire cannot be realized in this world (Fornieri, 2009, p. 89). Furthermore, the concept of Christian Empire is an inconsistent notion since it erroneously assumes that a heavenly excellence can be reached on earth.

Augustine (2000, p. 441), in this context, writes that "the earthly city lives after the flesh, the heavenly city after the spirit" through referring to the Romans 8:13: "For if you live according to the flesh, you will die; but if by the Spirit you put to death the misdeeds of the body, you will live." It is clear that Augustine rejects the definition of *populous* [a people] put by Cicero in *De Re Publica* where he defines it as "an assemblage of some size associated with one another through *consensus iuris* [agreement on law or justice] and community of interest" (1999, p. 18). To Augustine, only one state represents true justice and thus satisfies Cicero's definition: the city of God which is founded and ruled by Christ and which will never exist in this world.

Augustine's separation of eternal law from temporal law reverberates on his conception of authority which he characterises as spiritual and temporal. Then, he maintains that Christians are obliged to obey the temporal authorities so long as they do not force Christians to act against conscience (Fornieri, 2009, p. 100). His position is in accordance with Jesus's teaching: "Give back to Caesar what is Caesar's, and to God what is God's" (Matthew 22:21). In this vein, Augustine acknowledges that Christians are bound to serve in the army and fight wars since God utilizes war to discipline wrongdoer and to test the honest. To him, just war is based on the concepts of *jus ad bellum* [right reasons for going to war] and *jus in bello* [right actions in waging war] and writes: "The natural order of the universe which seeks peace among humans must allow the king the power to enter into a war. [W]hen war is undertaken in accord with the will of God, it must be just to wage it" (Augustine, as cited in Fornieri, 2009, p. 100).

To Augustine (2000, p. 694), since eternal law is binding for all men equally and all men were created equal by God, all types of domination of man over another—such as slavery—are against *naturalis ordo* [the natural order]. In his usage, domination has a different connotation. He comments on Genesis 46:32, "the men are shepherds; they tend livestock, and they have brought along their flocks and herds and everything they own," and suggests that the natural order requires

women serve men and children their parents. The essence of this servitude is just since the weaker in reason serve the stronger. In this sense, to Augustine, those who have higher status in terms of reason entitle to be served. Then, is this type of domination or servitude not in contradiction with the principle that men were created equally? To him, it is not; the domination of man over man is unjust contrary to domination over women and children. As Augustine (2000, p. 694) writes that "by nature, as God first created us, no one is the slave either of man or of sin." Therefore, he concludes through referring to the mentioned verse that as rational beings, men were created to dominate the irrational animals; this domination is not man over man, but man over the cattle. Another question comes forth is why God permits man to enslave another man. Actually, *De Civitas Dei* deals with this problem, which is, as he refers, the domestic slavery, in details. There he writes that the reason behind God's acquiescence on Christians being enslaved by enemy is justice even though enslavement is injustice. He clearly notes that enslavement is God's just punishment for the sins of the enslaved. In this framework, an inequality in reason naturally exits between women and men and children and parents, not between men and men. Provided that man is a domestic slave of another man, this is injustice and God allows this injustice as a punishment for the sins of the enslaved (Chambers, 2013, pp. 15-16).

His division of divine law and temporal law is also apparent in his arguments on private ownership which is not sanctioned by the divine law but is directed by temporal law, or in other words, the source of the legitimacy of private possession is not God but the emperors. He writes:

> Look, there are the villas. By what right do you protect those villas? By divine or human right? Let them reply: "Divine right we have in the Scriptures; human right in the laws of the king." On what basis does anyone possess what he possesses? Is it not by human right? By divine right, "the earth and its fullness belong to the Lord" (Psalm 24:1). God made the poor and the rich from the one clay, and the one earth supports both the poor and the rich. Nevertheless, by human right one says, "This villa is mine; this house is mine; this servant is mine." Thus, by human right, by the right of the emperors. Why? Because God

> has distributed these same human rights through the emperors and kings of the world (Augustine, as cited in Dougherty, 2003, pp. 481-482).

To sum, the age of early Christianity was a transition period from pagan natural law philosophy to Thomistic doctrine of natural law. One of the prolific theologians of this age, Augustine, had set the scene for subsequent Christian natural lawyers who discussed his arguments; moreover, some of them, like Thomas Aquinas, renovated the doctrine and made enormous contribution to natural law teaching.

2.3 Thomistic Doctrine of Natural Law

Thomas Aquinas, a prominent Christian theologian, builds his doctrine of natural law through drawing on the tradition before him that includes the teachings of Aristotle, the Stoics, Roman lawyers, Augustine, and Scripture (Wolfe, 2006, p. 159). Plant writes in *Politics, Theology and History* that it would not be an exaggeration to claim that the Christian conception of natural law owes most to Aquinas (2003, p. 147). His understanding was predominantly shaped by Aristotle's philosophy and Augustine's theology. Thus, it is not surprising that he is commonly labelled as the godfather of Aristotle (Torrell, 1996, p. 238). The Philosopher, as Aquinas refers to him, influenced Aquinas particularly when he went to Paris to study theology under Albert the Great, one of the pioneers of the Aristotelian revival (Deutsch, 2009b, p. 106). The blend of Aristotelian philosophy and Christian teachings, as Murphy (2006, p. 1) states, makes Aquinas into a paradigmatic natural law theorist since his understanding of political, legal, and moral themes becomes the reference point through which subsequent natural law theorists are categorized.

Aquinas considers world as a rational order and was created by divine will. Therefore, the world is subject to the teleological principle, a principle which he borrows from Aristotle that establishes divine creation within the context of

purposes and particular natures. According to the teleology of creation, world's order is an outcome of a divine plan that makes world function in accordance with the laws of nature; humans can only reach their full potential and realize their ends through conforming to the moral and political inclinations of their nature. As Donnelly (1980, p. 521) states, realization of these ends, or *telos*, is good and it restrains the evil. In this vein, Aristotle and Aquinas both share the supreme role of reason and latter's approach to role of reason in natural law reveals that he regards reason and faith as compatible in the process of searching the truth (Deutsch, 2009b, p. 106). Not surprisingly, Pope John Paul II (1998) writes in his encyclical letter *Fides et Ratio* [Faith and Reason] that "in his [Aquinas's] thinking, the demands of reason and the power of faith found the most elevated synthesis ever attained by human thought." In other words, to Aquinas, divine revelation and human reason are congruent, or rather; reason of philosophy and faith of religion complements each other. Hereunder, Aquinas defines his understanding of natural law, which is an integration of Aristotelian teleology and biblical theology, in *Summa Theologica* as follows:

> It is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence…and this participation of the eternal law in the rational creature is called the natural law…[T]he light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law (Aquinas, 1947, I-II, Q. 91, art. 2).

To Aquinas (1947, I-II, Q. 90, art. 4), law is a regulation of reason for the common good and promulgated by humans who care for their common good. As Donnelly (1980, p. 520) argues, Aquinas's definition of law includes a set of necessities which are "the law must be promulgated," "only the ruler can make law," and "laws must aim at the common good." In this sense, Aquinas writes of the link between human nature, the common good and the requisite of government. To him, political condition is a natural state. His evidence that reveals the logic behind

this idea is welded in the mutual dependence of humanity (Deutsch, 2009b, p. 108). Since humans do not have idiosyncratic natural defence structures, they have to trust in their reason that obliges them to cooperate with their congeners by means of speech and language. He, then, infers that the reason is a tool that is used to shape human actions in harmony with their ends (Aquinas, 1947, I-II, Q. 91, art. 2). As he mentions in *De Regimine Principum* [On the Government of Rulers], since *naturale animal sociale et politicum* [humans are social and political animals by nature]—a derivative of Aristotle's *zoon politikon*—a sturdy cooperation can guarantee their survival and reaching ends which are salvation or eternal communication with God (1997, pp. 61-63). As an outcome of this cooperation, a principle of political rule emerges.

This also means that humans are political by nature and live under the rule that is responsible for establishing the common good and preventing the disorder emanating from the conflicts in human interests. The essence of these incompatible interests is the original sin and the selfish inclinations which are irrational and opposed to the common interest. Contrary to Augustine, Aquinas repudiates that the original sin corrupted the human nature; he does speak of that the original sin paves the way for human weaknesses and imperfection in realizing the dictates of natural reason, not in obtaining the knowledge of them (d'Entrèves, 1970, p. 45). The role of government is, therefore, to foster peace and to provide common good despite the existence of deficiencies and frailties of humans. Here, the question is about who should rule the community. To Aquinas, some men are superior by intellect and have the aptitude to rule, while the others have the capacity to follow an authority and need guidance. This is a natural order since God created people with different natural skills. The differentiation in the abilities among people endow men an obligation or function to rule or be ruled. In all cases, political authority is obtained from God and rulers, who should be magnanimous and prudent, should also follow reason and divine law (Deutsch, 2009b, p. 108).

It is obvious that there are also diverse kinds of laws, given that there are diverse types of reasons. To Aquinas (1947, I-II, Q. 91), natural law is a type of law among others such as eternal law, human law, and divine law. Eternal law is comprised of divine reason and wisdom; it binds all the creation; it is forever valid and not promulgated by humans but the source of all law in the world. Therefore, the appraisal of all actions including political and moral depends on whether these actions comply with the eternal law from which all laws proceed (Aquinas, 1947, I-II, Q. 93, art. 3). While eternal law includes non-rational creatures, natural law is "the rational creature's participation in the eternal law" (Aquinas, 1947, I-II, Q. 91, art. 2). Such participation produces general principles, universal rules, and everlasting standards for all actions in politics and ethics. Natural tendencies of humans give hints about the content of the natural law. For instance, natural tendencies such as protecting life and health are among the natural law and they can also be grasped by reason. Human law is a derivation of natural law. What makes human law legitimate is its conformity with natural law. Laws which are promulgated by humans contrary to the natural law and right reason are not legitimate, thus, not binding. Last, despite being valuable, natural law and human law are not sufficient to lead human actions; they must be supplemented by the divine law. The divine law is derived from eternal law and can be found in the revelation from God who is the divine lawmaker. These laws are inscribed in the Bible, such as the Decalogue [Ten Commandments] and the Sermon on the Mount, whose role is to remedy the deficiencies of human reason which is limited by imperfection and weakness (Aquinas, 1947, I-II, Q. 91, art. 4). To him, Christians should respect the laws and authority of infidels since "divine law which is the law of grace, does not do away with human law which is the law of natural reason" (Aquinas, 1947, II-II, Q. 10, art. 10). Therefore, "unbelief, in itself, is not inconsistent with dominion, since dominion is a device of *iure gentium* [the law of nations] which is a human law" (Aquinas, 1947, II-II, Q. 12, art. 2).

Then, what is the scope of natural law according to Aquinas? Basically, he points out a single first principle of natural law as follows:

> The first principle in the practical reason is one founded on the notion of good, viz. that good is that which all things seek after. Hence this is the first precept of law that good is to be done and pursued, and evil is to be avoided. All other precepts of the natural law are based upon this; so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided (Aquinas, 1947, I-II, Q. 94, art. 2).

Aquinas considers that this first principle is self-evident (1947, I-II, Q. 94, art. 2) and naturally known (1947, I-II, Q. 91, art. 3). To him, natural inclinations in man are in accordance with the natural law and humans can grasp the first principle of natural law through *synderesis* which can be defined as a disposition or special power that helps humans to comprehend the morals and natural law (Aquinas, 1947, I, Q. 79, art. 12). As Poole (2013, p. 40) remarks, Thomistic natural law is not an outcome of *ordo naturalis* [the natural order in the metaphysical form] but of *ordinatio rationis* [the reason]. Even though all these moral inclinations are congruent with natural law, thus, with reason, some moral acts may not be included in the natural law due to their secondary feature. These acts are not immediate inclinations of man but the results of the inquiry of reason that makes them conducive to *beatitudo* (Aquinas, 1947, I-II, Q. 94, art. 3), which is literally blessedness, or as Swinburne (2005, p. 184) suggests, a deep well-being that provides happiness. Aquinas regards the first principles of practical reason as the same for and knowable by all human beings; however, the secondary principles or the results of inquiry of reason may be different at some cases (particularly when it is vitiated by passion or bad habit) even though they are same for the majority of cases. In this vein, first principles of practical reason cannot be obliterated from the heart of man, while the secondary principles can be obliterated either by evil persuasions or immoral customs (Aquinas, 1947, I-II, Q. 94, art. 6).

Aquinas also argues the issue of change in the natural law and acknowledges that the first principles are immutable while the secondary principles (derivations of reason) can change by elimination in some cases. When it comes to adding to natural law, he writes that "nothing hinders the natural law from being changed, since many things, for the benefit of human life, have been added over and above

the natural law, both by the divine law and by human laws" (Aquinas, 1947, I-II, Q. 94, art. 5). This quotation makes Aquinas's classification of laws complicated since as mentioned earlier the human law is supposed to be derived from natural law. Then, how can it be possible to add natural law by human laws? Aquinas solves this problem and presents an alternative approach to the connection between natural law and human law:

> A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: e.g., that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law because nature did not give him clothes, but art invented them. In this sense, 'the possession of all things in common and universal freedom' are said to be of the natural law because, to wit, the distinctions of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition (Aquinas, 1947, I-II, Q. 94, art. 5).

What is expected from natural law is to restrain the abuses of power by the ruler since human laws which are against or in conflict with natural law is an act of violence (Aquinas, 1947, I-II, Q. 93, art. 3). Actually, Aquinas recognizes that human laws are not made but discovered by the ruler's *synderesis*; therefore, ruler legislates according as the common good which is in compliance with the principle "good is to be done and evil is to be avoided." However, a tyrant may codify unjust laws, as Donnelly (1980, pp. 525-526) argues, in line with his own private interest and impose them by force which means transgressing the borders of the natural law. Then, what is Aquinas's position in this circumstance? To him, if a human law "at any point deflects from the law of nature, it is no longer a law but a perversion of law" (Aquinas, 1947, I-II, Q. 95, art. 2). Furthermore, he defines the tyrant as "one alone who brings about an unjust government by seeking individual profit from the government, and not the good of the multitude subject to that rector, is called a tyrant" and asserts that a legitimate revolution is possible against a tyrant (Aquinas, 1997, pp. 63-64). He also writes: "Man is bound to obey secular princes in so far as this is required by order of justice. [I]f the prince's authority is

not just but usurped, or if he commands what is unjust, his subjects are not bound to obey him" (Aquinas, 1947, II-II, Q. 104, art. 6).

Then, what are these exceptional special cases that constrain people from disobedience? According to Aquinas, deposing a tyrant requires some preconditions. For instance, if the tyrant is not too wicked, then the best option is not to topple him. He also warns that if the dissenters fail, the tyrant is likely to become more evil and if they succeed, the society will separate into factions, and moreover, the victorious leader may turn into a new tyrant through receiving the support of the masses. To Aquinas, even though the natural law ensures moral background and justifies civil resistance against an intolerable tyrant, he favours non-resistance to protect the unity of the society over pursuing the ordinances of justice involved in the natural law. Then, it is possible to assert that Aquinas sacrifices the priority of natural law over human law through negating its binding force in case of a potential anarchy. As Donnelly (1980, p. 528) precisely points out, according to Aquinas, "any government at all is better than none." He also writes concerning whether Aquinas's natural law endows right to resistance: "The key to understanding his views is to recognize that natural law does not give rise to rights in the sense of 'right to,' but only states what is right in the sense of 'right that'" (Donnelly, 1980, p. 532). In this sense, Aquinas's emphasis is on natural law, not on natural rights; the focus of his teaching is the responsibility of the ruler, not the rights of man (d'Entrèves, 1970, p. 48).

The right to private property is another example that reveals the connection between Aquinas's natural law doctrine and his approach to rights of man. Briefly stated, Aquinas's understanding of private property is in contradiction with the right to property in modern political thought (Westberg, 1994, p. 14). In this vein, Aquinas conceives the use of property within the context of natural law, while private ownership is directly about the human law. This differentiation, which relies on the Aristotelian classification of use and possession of the property, virtually arises from his theological conception of creation: the ownership comes

from God not on the private basis but on the common ground. Since the possession is common to Aquinas, desperate people may take the belongings of others to maintain their life in case of emergency:

> If the need be so manifest and urgent that it is evident that the present need must be remedied by whatever means be at hand (for instance, when a person is in some imminent danger, and there is no other possible remedy), then it is lawful for a man to take care of his own need by means of another's property, by taking it openly or secretly; nor is this properly speaking theft or robbery (Aquinas, 1947, II-II, Q. 66, art. 7).

To Westberg (1994, p. 18), common property in Aquinas's argument does not imply that he promotes a kind of communistic ownership. Aquinas indeed writes of the benefits of ownership of private property since it provides peace and order; thus, he proposes that "quarrels arise more frequently where there is no division of the things possessed" (Aquinas, 1947, II-II, Q. 66, art. 2). However, he obviously puts emphasis on the use of goods in common. As briefly expressed by Chroust and Affeldt (1950, p. 181), Aquinas justifies, but never absolutely sanctions the existence of private property because it is useful to realization of the common good. In connection with this, Aquinas warns that wealth is not the just cause of a war; just cause involves preserving people from an attack (a defensive war), giving rights back to the victims of other nations, and reconstructing a just order (Deutsch, 2009b, p. 138).

Last, what *corpus thomisticum* provides us about the natural law has inspired Catholicism. The influence of Thomistic natural law doctrine was dominant not only in 1879 when Pope Leo XIII published his encyclical *Aeterni Patris* to spread Thomistic teaching throughout the Catholic world (Colish, 1975, p. 434), but it was also prevailing in 2004 when Pope John Paul II presented *Compendium of the Social Doctrine of the Church* that virtually summarizes Thomistic natural law doctrine:

> The natural law is nothing other than the light of intellect infused within us by God. Thanks to this, we know what must be done and what must be avoided.

> This light or this law has been given by God to creation. It consists in the participation in his eternal law, which is identified with God himself. This law is called "natural" because the reason that promulgates it is proper to human nature. It is universal; it extends to all people insofar as it is established by reason. In its principal precepts, the divine and natural law is presented in the Decalogue and indicates the primary and essential norms regulating moral life. Its central focus is the act of aspiring and submitting to God, the source and judge of everything that is good, and also the act of seeing others as equal to oneself. The natural law expresses the dignity of the person and lays the foundations of the person's fundamental duties (Pontifical Council for Justice and Peace, 2006).

Briefly, Thomistic doctrine of natural law is a point of reference in Catholic interpretation of natural law. Another point of reference in the history of Christianity concerning natural law is the Reformation period.

2.4 Natural Law in the Reformation Period

The unity of the Western Christendom fractured in the early 16th century by the Reformation movement that paved the way for significant changes in the secular and ecclesiastical institutions. Historically, it has been considered that the Reformation begins with the nailing of Martin Luther's Ninety-five Theses on the door of church in Wittenberg Castle. In building his natural law approach, Luther did not produce a new doctrine *ex nihilo*; on the contrary, he made use of the intellectual tradition accumulated in Christianity (Monahan, 1994, p. 187). This tradition was generally shaped by the interplay between human nature and the effects of original sin. As mentioned before, early Christian theologians recognized that human nature or human reason had corrupted due to the fall; this acknowledgement was dominant in Christian theology for centuries. Another dominant component of Christian theology was the superiority of ecclesiastical authority over the secular one. Jean-Jacques Rousseau (1994, p. 160), in *The Social Contract*, argues that there was no division between the political and religious before the Christianity but when Jesus introduces the kingdom of the other world, the theological separated from the political, thus, demolished the

unity of the pagan state. This separation reverberates on Augustine's distinction between the city of God and the city of man. Augustine did not only confine himself to distinguish spiritual and secular, but also conceded the superiority of the former to the latter. This medieval thought evoked church to utilize the political arm and posed the idea of supreme papal primacy. As declared in 1302 by Pope Boniface VIII's papal bull, *Unam Sanctam*, the main idea was so simple that body subordinates the soul, the Pope governs the soul, political rulers govern the body, and therefore, the Pope's authority surpasses the authority of secular rulers (Hancock, 2009, p. 145).

In the late 13th century, with the revival of Aristotelianism, an idea which maintained that human reason is capable of understanding God's plan on world, gained momentum. In this vein, Aquinas followed the Philosopher's footsteps and perceived the coordination between faith and reason in an optimistic manner. This type of Aristotelian scholasticism had dominated not only the university centres in Paris and Oxford but also the intellectual and theological circles until 14th century when a new wave of philosophical and theological challenge appeared. Proponents of this challenge labelled the advocates of the Aristotelian scholasticism as *via antiqua* while entitled themselves as *via moderna*. The prominent representative of *via moderna* in that era was English Franciscan William of Ockham, who is known for his insistence that secular authority must be separated from the ecclesiastical power (Spellman, 1998, p. 48). Some other followers of this wave were Robert Holcot, Gregory of Rimini, Pierre d'Ailly, Jean Gerson, and Gabriel Biel who jointly maintained that the relation between reason and faith presents a dichotomy, or rather, a contradiction. Furthermore, they resisted the prevalent recognition in the Middle Ages which held that nature is inferior to grace. Among them, Gabriel Biel, who taught only a generation before Luther at University of Tubingen, was a transition link between *via moderna* and Lutheranism. Therefore, what Luther inherited from *via moderna* was a reaction to Aristotelian revivalism which attached importance to the role of reason *vis-à-vis* that of faith in knowledge of nature and God (Monahan, 1994, pp. 191-192).

John T. McNeill (1946, p. 168), the Reformation historian, asserts in his prominent article titled "Natural Law in the Teaching of the Reformers" that there is not a genuine cessation between the Reformers and their precursors on natural law. Except Ulrich (Huldreich) Zwingli, the Reformers did not attack the conceptions of natural law and did not criticize the Scholastics' approach; on the contrary, they infused the knowledge of natural law into their followers. The continuity of natural law tradition in the Reformation period is also maintained by d'Entrèves (1970, p. 70) who writes that Protestantism did not cause an entire rupture within the tradition. However, to him, Reformers' theology did not overrate the Thomistic understanding of natural law which holds the dignity of human nature; on the contrary, they suggested a return to Augustine's interpretation. Moots (2010, p. 117) also points out that there is "a long-standing but mistaken belief that Reformed Protestants are prejudiced against natural law." In this vein, McNeill (1946, p. 172) repudiates the claims of some scholars who propose that natural law teaching did not play a part in the Reformation theology. He writes that "we cannot avoid the judgment that Luther habitually relied upon the doctrine of natural law as a resource on which to draw in each moment of political decision." To support his argument, he reminds of Luther's treatise titled *Lectures on Romans* in which Luther comments on Romans 2:15: "They show that the requirements of the law are written on their hearts, their consciences also bearing witness." He, then, writes the characteristics of law which are mentioned in the verse: "It is a law without law, without measure, without end, without limit, but extended above and beyond everything the law prescribes or can prescribe" (Luther, 2006, p. 52).

In his *Weimarer Ausgabe*, Luther regards the Decalogue as the outline of natural law which is located in the conscience. He writes that "if God had never given the Law by Moses, yet the mind of man naturally has this knowledge that God is to be worshipped and our neighbour to be loved" (Luther, as cited in McNeill 1946, p. 168). In other words, he regards the Decalogue as a part of natural law, not that of the Law of Moses. In his treatise, *How Christians Should Regard Moses,* Luther (1989, p. 142) writes that "I keep the commandments which Moses has given, not

because Moses gave commandment, but because they have been implanted in me by nature, and Moses agrees exactly with nature." He also acknowledges that since natural law was valid before Moses and even among all the Gentiles, there is no distinction between the Gentiles and Jews when the Ten Commandments are considered. While Luther embraces the Decalogue as a part of natural law, he, in addition, assumes that Christ adds some instructions to its content. For instance, in *On Commerce and Usury*, he offers three laws for Christians to lead their transactions and writes that "lending is not lending unless it be done without charge and without advantage to the lender…Second, this is contrary to natural law, which the Lord also announces in Luke 6:31 and Matthew 7:12" (Luther, 2015, p. 199). He, then, infers that these verses are the parts of natural law which is declared by Christ. In *Temporal Authority: To What Extent It Should Be Obeyed*, his approach to the contents of natural law leads him to write that "when you ignore love and natural law you will never hit upon the solution that pleases God, though you have devoured all the law books and jurists" (Luther, 1989, p. 702).

Luther's approach to natural law is so evident in *Admonition to Peace* in which he argues that "there is the natural law of all the world, which says that no one may be judge in his own cause or take his own revenge" (as cited in McNeill, 1946, p. 169). He also cites Deuteronomy 32:35, "vengeance is mine, and recompense," and utilizes this verse as evidence that Scripture is in harmony with natural law. Luther's main purpose in selecting this verse is to criticize the Peasants Uprising (1524-1525) during which peasants called upon divine law to claim their agrarian rights and abolition of serfdom. To Luther, peasants who participated in the uprising made themselves their own judges and avenged themselves. He, then, writes that their disposition is "contrary not only to the Christian law and the Gospel, but also to natural law and all equity," since he considers that "the common, divine and natural law which even the heathen, Turks and Jews have to keep if there is to be any peace or order in the world" (Luther, as cited in McNeill, 1946, p. 169). Within this framework, Scripture and natural law are not antithetical to each other in Luther's perception.

Luther is also aware of the sinfulness of humans as he discusses in *Commentary on Galatians*; what makes his arguments on natural law different from that of Aquinas is that natural law is given by God as a perfect and immutable set of rules but human reason cannot comprehend it exclusively because it was defiled by sin. He likewise notes that "law of nature is the basis of human law but human reason is so corrupt and blind that it fails to understand the knowledge native to it" (Luther, as cited in McNeill, 1946, p. 169). Seemingly contradictory to these statements, he comments on Exodus 18 and writes that concerning the mundane matters of ruling, heathens are superior to Christians since they are taught by reason without teachings of Scripture that murder and theft must be penalized. He, thus, refers to Plato, Aristotle, Cicero, and some other Greco-Roman philosophers as the "apostles, prophets, theologians, and preachers for worldly government" who were sent by God to the pagans (Luther, as cited in McNeill, 1946, p. 170). Similarly, he argues in *Temporal Authority* that the prince should implement the rules decisively and control them as he does the sword, and use his own reason to judge since "reason may be the highest law and the master of all administration of law" (Luther, 1989, p. 693). Finally he writes that "good and just decision must not and cannot be pronounced out of books, but must come from a free mind, as though there were no books" (Luther, 1989, p. 702).

Both of these views prima facie seem contradictory to his principle of *sola scriptura* when this principle is understood as human reason is inadequate to appreciate natural law. However, in Lutheran terminology, *sola scriptura* means that the Bible is the supreme authority in human practice. It is *norma normans non normata* [norm of norms that cannot be normed]; the sole channel to truth. Even though, other ways of truth, including reason, are helpful, they hierarchically rank below the genuine source of truth, the Bible (Skinner, 2004, p. 146). Thus, it is true that Luther bases his theology in faith (Milbank, 2006, p. 135) and regards reason as an impaired organ by the original sin; yet his political teaching is open to the power of reason which is now restricted to the merely secular realm. Luther's perception of reason that pertains to secular realm, which is isolated from all

philosophical and ecclesiastical claims, had some significant political implications in the Reformation period. He, for instance, constrains the scope of ecclesiastical authority through declaring the priesthood of all believers (Hancock, 2009, p. 150). In *Open Letter to the Christian Nobility of the German Nation*, he invites secular rulers to take over responsibility to reform church by divesting its worldly powers. The justification behind this invitation is that all Christians are spiritually equal and all of them are priests (Hancock, 2009, p. 152). In this context, he writes in *The Three Walls of the Romanists* that "it is pure invention that pope, bishops, priests, and monks are to be called the 'spiritual estate'; princes, lords, artisans, and farmers the 'temporal estate.' That is, indeed, a fine bit of lying and hypocrisy" (Luther, as cited in Hancock, 2009, p. 153). Accordingly, as Thornhill (2013, p. 205) points out in "Natural Law, State Formation and the Foundations of Social Theory," Luther criticizes those who allege that divinely imposed legal order is noticeable by human reason; on the contrary, he confines reason to the realm of secular authority.

Luther's comprehension and employment of *natürlich Recht* considerably change during his lifetime; while he utilizes natural law as an expostulation against rebellion in his early ages and criticizes emperors through writing that "though they are usually the greatest fools and the worst knaves on earth…they are God's jailers and hangmen and his divine wrath needs them to punish the wicked and preserve outward peace" (Luther, as cited in McNeill, 1946, p. 171), he later, particularly after the Diet of Augsburg in 1530, considers that a tyrannical emperor may be resisted. In this vein, he signed a memorandum with his friends including Philip Melanchthon. This memorandum declared that natural right of resistance is just when a tyrannical ruler opposes the Bible. Here, the duty to lead such a resistance is of princes who are in charge of protecting their subjects against an unjust emperor. Needless to say, Luther, via this memorandum, does not grant approval to personal scheme for rebellion since he acknowledges that natural law and the Bible empower merely certain authorities to resist. Even though he mentions the responsibility for passive obedience in his early treatises, he later lays

private law entitlement down as a condition to resist force with force (Dunn, 1996, p. 46). Melanchthon also retains this principle. Through referring to Luther, Evangelical jurists postulated that princes are not only responsible for providing the division between worldly and sacral matters but also for exercising judicial power in mundane and sacral disagreements. These postulations gained momentum particularly after the Peace of Augsburg in 1555. This neo-Episcopal system invested princes with the power of *cuius region, eius religio* [whose realm, his religion] that authorized them to declare their legislative authority both on spiritual and temporal matters. According to Evangelical jurists, this authorization, which transformed into a re-theocratization of princedoms' legal orders, is legitimized by the commandments of the natural law ordained by God (Thornhill, 2013, p. 205). As a consequence of these developments, "there is no doubt that the main influence of Lutheran political theory in early modern Europe lay in the direction of encouraging and legitimating the emergence of unified and absolutist monarchies" (Skinner, 2004, p. 113). Thus, it is not surprising that the "divine right of kings" is a typical product of the Reformation period (d'Entrèves, 1970, p. 71).

Luther also writes on private property and the concept of just war. About the former, he argues that a Christian should take care of his own body; to make this happen he may labour, acquire and preserve property. Furthermore, he can serve the weaker members of the Christian society who are in need. Here, the significant point is, to Luther, right to hold property is a civil regulation which should not be confused with the obligation to aid the poor: "In the case of need, love (not just legal right) removes the boundary line between mine and yours; when my neighbour is in need my property is no longer mine (in a moral sense) but is set aside for the service of the neighbour" (Luther, as cited in Raath, 2009, p. 61). Therefore, Luther asserts that civil laws are essential to run the issues of ownership and property. To him, if civil laws were weakened and merely love applied, everyone would live at others' expense; and as a consequence, no one could live because of others. As to right to property, Luther (1989, p. 701), in *On Temporal*

Authority, also expresses the possible situations in which a Christian and an unbeliever may confront. These situations can be illegitimate seizure of private property and resolving monetary debts. In order to overcome these confrontations and solve the problems emanating from them, Luther urges his followers to benefit from the law of love and particularly the natural law because when love produces no visible result, natural law is to be the real guide since natural law is "with which all reason is filled" (Luther, 1989, p. 702). Because he regards natural law as a universal set of rules, he states that when neither of the sides of such a confrontation is Christian "then you may have them call in some other judge, and tell the obstinate one that they are acting contrary to God and natural law" (Luther, 1989, p. 701).

As mentioned above, Luther also speculates on the concept of just war. He was not only familiar with the works of Augustine, Aquinas, and the 12th century canonist Gratian on the just war, but also had a sound grasp of the verses in Scripture. Concerning the latter, for instance, 1 Peter 2:13-14 reads that "submit yourselves for the Lord's sake to every human authority…who are sent by him to punish those who do wrong and to commend those who do right." It is also said in Romans 13:4 that "for the one in authority is God's servant for your good. But if you do wrong, be afraid, for rulers do not bear the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrongdoer." Furthermore, in Matthew 5:43-45, it is written that "you have heard that it was said, 'love your neighbour and hate your enemy.' But I tell you, love your enemies and pray for those who persecute you." Similarly, in Romans 12:17-19, the Apostle Paul writes that "do not repay anyone evil for evil…Do not take revenge, my dear friends, but leave room for God's wrath, for it is written: 'It is mine to avenge; I will repay,' says the Lord." Last, Romans 13:1-2 presents that "let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, whoever rebels against the authority is rebelling against what God has instituted."

Luther utilized the last verse when he condemned the resistance against the Ottoman invaders in 1518. In the *Explanations of the Ninety-five Theses*, he writes that "to fight against the Turk, the same as resisting God, who visits our sin upon us with this rod" (Luther, as cited in Corey, 2011, p. 307). However, shortly afterwards, Ottoman Turks captured Belgrade in 1520 and after defeating Hungary in 1526 swept across the Europe. Then, some fundamental questions emerged concerning these developments: Should Christians resist Ottomans or resign themselves to suffer? What should count as a just war? And, did Luther change his position? To understand his position, his distinction between two kingdoms, the kingdom of God and the kingdom of world, is of importance. Even though both kingdoms are established by God, they are created for different purposes. First, to Luther, all men are classified as those who are Christians and just, and those who are unchristian and unjust. Through referring 1 Timothy 1:9, "we also know that the law is made not for the righteous but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreligious, for those who kill their fathers or mothers, for murderers," Luther proposes that true Christians necessitate no law, no war, and even no authority since they are controlled by the Holy Spirit. However, the unchristian need law, since they require teaching and force to retain themselves from the evil manners. Therefore, Christians should obey the secular authority to set an example even though they do not need it; the law and the sword must be observed as a service to the unchristian (Corey, 2011, p. 310). To express more clearly, to Luther (as cited in Corey, 2011, p. 315), "no war is just unless one has such a good reason for fighting and such a good conscience that he can say, 'my neighbour compels and forces me to fight, though I would rather avoid it.'" Thus, this can be called *pflichtmäßiger Schutz und Notwehr* [not only a war but a dutiful protection and self-defence]. However, this kind of self-defence should not be fought in the name of Christendom. Accordingly, Luther writes in *On War against the Turk* that the war led by Emperor Charles V as a reaction to Turkish attack could be justifiable, if it were not combated under a Christian banner; on the contrary, it would be legitimate if it were fought under a temporal banner. In this sense, Luther (as cited in Corey, 2011, p. 317-318) exhorts that "if I were a soldier

and saw a priest's banner in the field, or a banner of the cross, I should run as though the devil were chasing me."

During the Reformation period, some prominent humanists as Melanchthon, who had been influenced by Luther's theological legacy at Wittenberg, converted to the Reformed religion (Monahan, 1994, p. 194). As Thornhill (2013, p. 205) argues, "Melanchthon adjusted Lutheran views on law, and he devised a theory of natural law that defined the secular prince as the appointed custodian of natural law, possessing specific authority to translate divine law into positive edicts." Melanchthon generally utilizes the scholastic division of law into divine, human, and natural in *Loci Communes*. There he defines natural law as "a judgment common to all and suited to the formation of morals. To it, all men assent together. Thus God has engraved it upon everyone's mind." (Melanchthon, 2014, p. 61). His perception of natural law obviously bears the traces of Cicero's natural law paradigm. He also states in *Apology of the Augsburg Confession* that "the natural law agrees with the Law of Moses or Ten Commandments, in all men's hearts innate and written" (Melanchthon, as cited in McNeill, 1946, p. 174). The essence of his approach to natural law is evident in *On the Distinction between the Gospel and Philosophy*. There he writes: "The Decalogue and the law of nature agree, because philosophy…is the law of nature itself. But the Decalogue gives clearer precepts regarding the motions of the heart towards God" (Melanchthon, 1999, p. 25). He furthermore argues in *Commentary on Romans* that "whatever violates the natural law is a violation of the divine law and truly a mortal sin" (Melanchthon, 1992, p. 84).

To justify his natural law perspective, Melanchthon compares *principia speculativa* [physical, geometric, and mathematical principles] with *principia practica* [contracts which are to be adhered or adultery is to be avoided]. He, then, reaches to a conclusion that men consider the former principles as certain while do not acknowledge the latter with a similar confidence. To him, the reason behind men's aversion to *principia practica* is the fall that dims the aptitude of men to

distinguish what ought to be done. Yet, as Romans 1:18, "the wrath of God is being revealed from heaven against all the godlessness and wickedness of people, who suppress the truth by their wickedness," and Romans 2:15, "they show that the requirements of the law are written on their hearts, their consciences also bearing witness, and their thoughts sometimes accusing them and at other times even defending them" point out, reason can assent to *principia practica* as the everlasting verdicts of God just as it assents to *principia speculativa.* Moreover, *principia practica* constitutes *ius naturae* which includes the Decalogue in its core; accordingly, *ius positivum* is a determination of *ius naturae* that cannot challenge against the latter. However, he argues, as Aquinas does, that the inferior principles of natural law (or the secondary principles in Aquinas's terminology) can be changed (Melanchthon, as cited in McNeill, 1946, p. 175). To summarize his approach to natural law, it can be suggested that "Melanchthon is to be understood as a 'restorer of scholastic jurisprudence' and as representing 'the later return of Lutheran theology to a natural law theory rooted in Thomistic Aristotelianism'" (Wieacker, as cited in Ballor, 2018, p. 37).

Another prominent Reformer, Zwingli, conceives natural law different from others in terms of theology of faith. His admiration to pagan philosophers, who, to Zwingli, are within the realm of grace and faith, leads him to desire to be in the heaven with them. Zwingli (as cited in McNeill, 1946, p. 176) regards salvation as a result of destiny and is not subject to baptism or the acquaintance of Scripture; therefore, he writes that "who does not admire the faith of that most holy man Seneca?" In *Sermonis De Providentia Dei Anamnema*, he accepts that the philosophies of Plato and Pythagoras bear the components of divine mind. To him, these philosophers were "men who did not venture to profess the religion of the true God, yet had it in them." McNeill also argues through referring to Zwingli's *Opera* that Zwingli would favour Socrates or Seneca to a faithless pope, or a king who would shelter such a pope, since "though they knew not the true Deity, yet they busied themselves with serving him in purity of heart, [were] holier than all the petty Dominicans and Franciscans who ever lived." In terms of natural law,

Zwingli believes that the illumined pagan obtains the knowledge of natural law from the Spirit of God (McNeill, 1946, p. 176).

Zwingli's natural law reading is much like that of Augustine, not that of Luther. He comments on Romans 2:15 as "if a heathen show that the law is written in his heart…Paul presupposes that he who does the works of the law does them in consequence of faith" (Zwingli, as cited in McNeill, 1946, p. 176). In *Sixty-seven Articles*, Zwingli (1901) argues between the articles 37 and 42 that all Christians should obey the temporal powers in so far as its wielder do not command contrary to God; therefore, their laws should be in accordance with the divine will. However, if they transgress the laws of Christ, they can be toppled in the name of God. In *De Provedentia*, Zwingli (as cited in McNeill, 1946, p. 178) succinctly expresses that "law is the constant will of God"; therefore, he limits the scope of *Gesetz der Natur* [law of nature] and subordinates it to the will of God. Zwingli's descendant, Heinrich Bullinger, in *Decades*, similar to his predecessor's perspective on natural law, states that despite being an unwritten law, natural law is inscribed in man; thus, has the same function with the written law has. This function is about teaching men to distinguish the good from the evil. The commencement of this law is not the contaminated nature of men but God himself, who writes this law in men's heart with his finger, anchors in men's nature, and situated in men a rule to know justice, goodness, and equity (as cited in McNeill, 1946, p. 178).

The last Reformer whose arguments in terms of natural law will be examined here is John Calvin. Different from Luther, Calvin produced a wide-ranging treatise, *Institutes of the Christian Religion,* which is named as the great Protestant Summa; in other words, it is a Protestant apologia to the leading synthesizer of medieval Catholicism, Aquinas (Hancock, 2009, p. 163). Even though some scholars as Lang reject that natural law partakes in Calvin's legal theory; as McNeill (1946, p. 179) mentions, some others as Doumergue and Gloede acknowledge that natural law plays a role in his theology. Yet, it is a fact that Calvin, despite being a law

student, did not leave an organized treatise on natural law. Even though he does not represent a far-reaching change from the previous theologians (Pryor, 2006, p. 234), the reason why he is included in this section is his interest on secular law. In essence, Calvin, like Augustine, considers that man's reason was corrupted due to the fall; nevertheless it can differentiate the good from the evil. In his magnum opus, *Institutes of the Christian Religion*, he writes that "for their seeds have, without teacher or lawgiver, been implanted in all men" (Calvin, 2006, p. 272). Even though Calvin points out the role of reason, his emphasis on conscience as the organ of natural law represents a differentiation within the traditional natural law reading. He writes that "natural law is the apprehension of the conscience which distinguishes sufficiently between just and unjust" (Calvin, 2006, p. 282). As Chenevière writes, "Calvin broke the bonds which attached the knowledge of the natural law to reason and rested it upon conscience—an interior voice which has no need of reason" (as cited in McNeill, 1946, p. 180).

Calvin clearly summarizes his approach to *lex naturae* [natural law] and argues that the law of God, which is also called moral law, is nothing else than a declaration of natural law. As *lex illa interior* [an inward law], natural law is impressed by God in the minds of men and is the scope of all laws. Then, he writes that "there is nothing more common than for a man to be sufficiently instructed in a right standard of conduct by natural law" (Calvin, 2006, p. 281). In this vein, Calvin (as cited in McNeill, 1946, p. 182) suggests that the Decalogue, which is the respected witness to natural law, "convey[s] more certain testimony of that which is too obscure in the natural law here and impress it on our understanding and memory." Therefore, McNeill (1946, p. 182) writes that "the realm of mundane affairs is subordinate to the realm of the supernatural. [N]atural law is not secondary but controlling…[I]t is not earthly but divine in origin, engraved by God on all men's hearts" according to Calvin. Similarly, Pryor (2006, p. 251) writes that "natural law functions for Calvin as a tacit platform for common action in a civic polity but functions explicitly as a tool by which God restrains a descent into bestiality-God's bridle, as it were."

To conclude, Thornhill (2013, pp. 205-206) rightly summarizes the function of natural law in the Reformation period that deserves to be cited here in its entirety:

> In Augustinian spirit, the early Reformation had denounced all natural law as a pernicious vestige of Pelagian theocracy. In contrast, the later Reformation transferred the custodianship of natural law [even under a neo-theocratic mask] from the church to the positive jurisdiction of the princely state, and it allowed the secular state at once to rebel against the natural law of the papacy and to perceive itself and its own laws as irrevocably authorized under natural law. The Reformation, in consequence, was a period of European history in which natural law provided the crucial theoretical underpinning for the emergence of modern society as a society possessing relatively independent and increasingly *positivized* legal and political functions.

2.5 Natural Law in the Early Modern Era

As previously explained, the natural law understandings of the magisterial Reformers are generally in consonance with the Thomistic doctrine of natural law. When the main argument of Aquinas's natural law teaching is analyzed, its prominent features—such as natural law is based on divine providence, men's reason, conscience, or heart (despite being corrupted by sin) can grasp the fundamental principles of natural law through which they can ascertain justice in the world—are not so different from the views of Luther or Calvin (Raath, 2007, p. 420). What can be considered as a rupture or deviance within the tradition is the inclusion of the idea of covenant in the natural law doctrine. In the early years of the 16th century, theologians among the Reformers, like Bullinger, represent the first generation of this inclusion. Throughout the century, Zachary Ursinus in *Heidelberg Catechism*, Caspar Oleveanus in *De Substantia*, Robert Rollock in *Tractatus De Vocatione Efficai*, William Ames in *Medulla Theologica*, John Cameron in *De Triplici Dei Cum Homine Foedere Theses*, John Ball in *A Treatise of the Covenant of Grace*, Edward Leigh in *A Treatise of Divine Promises*, and Francis Turretin in *Institutes of Elenctic Theology* utilized the concept of *creation covenant* comprehensively (Raath, 2015, pp. 5-6). However, Scottish Presbyterian priest Samuel Rutherford adopted a different approach; through equating divine

law with natural law, he predicated natural law and the boundaries of political power on a covenant of creation between God and man. His *Lex, Rex*, which was written as a refutation to the theses of English and Scottish royalist writers, particularly that of John Maxwell, is generally regarded as a compendium of covenantal natural law doctrine.

In *Lex, Rex*, Rutherford (2009, p. 6) argues that the government is established by God and performed by men; therefore, he considers the monarchy as a derivative from God whereas its authoritative organization comprises of the people. In other words, political power comes "mediately" from God, originating from God by the meditation of the consent of people; thus, they transfer their power to the ruler. To Rutherford (2009, p. 222), as apparent in Cicero's *De Legibus*, the natural law principle, *salus populi suprema lex esto* [let the good (or safety) of the people be the supreme (or highest) law] has a mediatory function between the rulers' appointment and people's consent. He writes that "the question is, whether the kingly office itself come[s] from God. I conceive it is, and floweth from the people…God ordained the power. It is from the people only by a virtual emanation" (Rutherford, 2009, p. 12). Furthermore, Rutherford's covenantal natural law doctrine advances not only the consent of people in the establishment of a government, but also expresses the conditions under which people can resist government. To him, rulers are assigned by the people to rule in accordance with the covenant and God's law which means that "the people resigning their power to him for their safety, and for a peaceable and godly life under him, and not to destroy them and tyrannise over them" (Rutherford, 2009, p. 105). Nevertheless, this covenant, which is embedded in nature, invests people with power to resist against an unjust ruler; in other words, God's authorization of a ruler is not in an absolute form and the ruler is not above the law. He briefly notes that "[t]he law, rather than the king, hath the power of life and death" (Rutherford, 2009, p. 187).

In *Covenant of Life Opened, or, A Treatise of the Covenant of Grace*, Rutherford puts forth the concept of God's covenant with nature. According to this covenant,

nature includes a legal principle that all of the creations are inclined to obey God. Humans, through their nature, are aware of this principle since it is inscribed in their heart as the precepts of the Decalogue even before Moses's announcement. These precepts represent the natural law which is also the genuine covenant of creation; and substantially, to comprehend the law of nature fully, Scripture is needed. Rutherford's this type of approach to natural law reminds of Bullinger's aforementioned natural law description. In Rutherford's teaching, another dimension of the law of nature is its purpose that is to preserve the humans. Since humans intrinsically tend to preserve themselves, natural law can be summarized as a law of self-preservation. Then, if a ruler exercises an absolute power in order to restrict the freedom of his subjects or damages his people, and therefore, becomes a tyrant, this would be a transgression of the natural law in terms of the self-preservation principle and the covenant of creation (Rutherford, 2009, p. 110). In addition, covenant principle requires a mutual responsibility to live in a society that eventually reveals the need for a government. Through this perspective, to Rutherford (2009, pp. 99-100), covenant natural precedes the covenant politic. Then, it is possible to assert that Rutherford's natural law doctrine consists of two primary principles which are safety and liberty.

In line with these principles, Rutherford cites 1 Timothy 2:2, "for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness" and writes that government is responsible for ensuring peace in a society; however, when a ruler uses unrestricted arbitrary power, a state of chaos and insecurity would be inevitable (Rutherford, 2009, p. 169). As Raath (2015, p. 7) mentions, Rutherford argues that "because liberty is natural to all people, it cannot be totally surrendered to rulers." When the principle of safety is considered, this principle can be realized not through absolute power, but through limited power which is assisted by secondary magistrates since possessing excessive power is indeed being vulnerable to abuse it because of human sinfulness (Rutherford, 2009, pp. 101-102). Then, Rutherford maintains that "because rulers are rulers *according to* the law, and not as rulers *of* the law, they do not have the

power to interpret and apply the laws of the commonwealth as they please" (Raath, 2015, p. 8). Even though it is written in Romans 13:1 that "let everyone be subject to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God," to Rutherford, abused power cannot be considered as an authority established by God. Therefore, this verse does not prohibit resisting against a king who abuses his power. Moreover, Rutherford cites Scottish reformer John Knox's *History of the Reformation in Scotland* and writes that through the natural right of self-preservation (or self-preservation as a nation), the English and Scottish parliaments are allowed to resist the king's arbitrary will (Rutherford, 2009, p. 266). The king, Rutherford writes, has the "fountain power," which is given by people to the king for their own safety but at the same time they retain their natural authority of self-preservation. In case of tyranny, which is against the fiduciary trust in the king, king becomes accountable to the parliament which represents the people (Rutherford, 2009, pp. 151-153). Here, the significant point is the definition of tyrant in Rutherford's *Lex, Rex*. There he defines a tyrant as "one who would take the proper goods of his subjects as if they were his own." Therefore, it is obvious that Rutherford conceives private property as the basis of community and the root of natural law (Rutherford, 2009, p. 120).

Rutherford's covenantal natural law doctrine influenced Puritans, such as James Stewart of Goodtrees, Lord Advocate of Scotland who justified Restoration Scotland through adapting Rutherford's ideas on resistance by people. Stewart contends that nobody has more right than others to practice civil authority. Since self-preservation is natural (thus, inalienable) right, only people can transfer their political power to those who they consent (Stewart, as cited in McIntyre, 2018, p. 172). Then, the ruler who receives this fiduciary power, a power that is like the power of tutor "created of the people that he might defend them from injuries and oppressions [has] no more power than of a tutor, public servant, or watchman" (Stewart, as cited in Raath, 2015, p. 9). While Stewart's covenantal natural law bears the traces of Rutherford, some of his arguments are remarkably different

from him. For instance, Stewart maintains in his book *Jus Populi Vindicatum* [The People's Right to Defend Themselves and Their Covenanted Religion Vindicated] that in order to assign a person as a ruler, a genuine compact between the ruler and the ruled, either implicit or explicit, is needed. Moreover, since mutual compacts include some details or conditions which underlie them, there also must be conditions for such a compact on sovereignty. Then, this condition is that if the ruler ignores or transgresses his obligations, people have a right to discipline him (Stewart, as cited in McIntyre, 2018, pp. 167-168). Last, he writes in *Naphtali* (co-authored by James Sterling) that "whatever form of government is set up by the people under God, the people remain ultimately superior to the supreme power" (Stewart & Stirling, as cited in Raath, 2015, p. 9). Alexander Shields was also under the influence of Rutherford's covenantal natural law doctrine and Stewart's and Knox's writings. In his *A Hind Let Loose,* Shields writes that "the compact between the ruler and the people is transacted in the ruler's admission to the government; the ruler's power is a trust for which he is accountable to the people" (Shields, as cited in Raath, 2015, p. 9).

Rutherford did not only influence Stewart and Shields but also Locke as Hudson (1965, p. 113) properly writes:

> Where did Locke derive his political ideas? With regard to his general political principles one need not look far…Even a conservative Presbyterian like Samuel Rutherford, in Lex Rex…invoked almost every argument that was later used by Locke, including an appeal to the law of nature, the ultimate sovereignty of the people, the origin of government in a contract between the governor and the governed, and the right of resistance when that contract is broken.

Furthermore, Richards (2002-2003, p. 153) mentions that Rutherford and Locke wrote during the period of political turmoil and put themselves at risk. While Rutherford experienced the era when Scottish Covenanter's resisted to Charles I, Locke witnessed the Glorious Whig Revolution of 1688. As a natural result of these incidents, they both addressed the issue of political authority within the context of Biblical knowledge and argued for the legitimacy of resistance against

the government. In addition, they both championed limited government and regarded natural liberty as an element of natural law. Even though it will be discussed in the next chapter, it is suffice for now to mention that certain theological features in Rutherford's treatises, as Tawney (2015, p. 132) writes, reappear in a reshaped form in Locke's *Two Treatises of Government.*

Another writer in the early modern era who influenced Locke's philosophy and his understanding of natural law was Anglican theologian Richard Hooker, the author of *Of the Lawes of Ecclesiastical Polity.* As obvious by its name, Hooker wrote his *magnum opus* as a defence of the Church of England against the reformers like Thomas Cartwright and Walter Travers who were the followers of Calvinism and wished to found Presbyterian Church governance (Kirby, 1999, p. 684). Given his approach to Church of England, he is regarded as the originator of Anglican *via media*, which can be defined as a theological middle ground between Catholicism and Protestantism, by, for instance, W. Sped Hill, Egil Grislis, Lee W. Gibbs, and John Henry Newman; however, his recent readers like Nigel Atkinson, Patrick Collinson, Nicholas Tyacke, and O. O'Donovan perceive the *via media* hypothesis as anachronistic. In this vein, Kirby (1999, p. 683) introduces his significant article in *The Sixteenth Century Journal* through writing that "the starting point in our approach to these questions is the abandonment of the anachronistic hypothesis of the Anglican *via media.*" Then, what was Hooker's position in matters such as ecclesiastical authority and natural law?

First of all, reason behind the actual tension between Hooker and the reformers was on whether worldly authority, namely, the civil magistrates could interfere in religious affairs. The core of this tension was the Elizabethan Religious Settlement that made ecclesiastical power and temporal authority subject to the Queen. Hooker's position was clear; he advocated that England's laws were congruent with God's law and men's reason. While others maintained a strict division of the authorities of the church and society, Hooker claimed that the laws legislated to control the church by the royal pre-eminence were connecting all the constituents

of the society (Allen, 1957, p. 195). In this vein, it would be consistent to assert that Hooker's understanding was political rather than theological since he envisions the authority as a power to enact all laws including the laws concerning the church; and therefore, Hooker's political and jurisprudential approach is based on an integration of reformed Christian theology, command of the sovereign, and natural law doctrine that prioritizes men's reason. In other words, Hooker consolidates authority's laws, human reason and natural law. To him, in order to seek the good, men's reason leads them to partake in the law-governed society; thus, political society is a necessary creation of men. As Aristotle suggests, Hooker writes that man is "naturally induced to seek communion and fellowship" with others (Hooker, 1993, p. 110). Like Augustine, as argued before, Hooker regards political society as a necessity that its command of men and their natural parts of Christian existences are righteous. Then, if men are reasonable members of the society; then, the question is how do men go into the political society?

Before replying, Hooker's hierarchy of law that will enable us to argue this question should be examined. Resembling to 20th century jurist Hans Kelsen's legal theory on hierarchical structure of law, at least reminding of the concept *Grundnorm* in his *Pure Theory of Law*, Hooker ordered laws in a hierarchy that begins with God "hath set down with himself, for himself to do things by" (Hooker, 1993, p. 99). Therefore, natural law and human law are the genuine laws since they are the outcomes of God's, the lawmaker's, will. Since natural law is the law of reason which is "written in men's hearts," men through making use of their capacity to reason and will can legislate for themselves. This means that positive law, which is discerned via reason, is also a part of divine law and law of nature and hierarchically positive law "must be compatible with the theorems of justice supplied by the law of nature" and support the duties defined in the divine law (Skinner, 2004, p. 149). This type of positive law, in Hooker's terminology, is "mixedly human law." However, laws that create a new duty that did not exist before or cancel a duty that exists now are purely man-made and conventional; thus, "merely human law." In Hooker's hierarchy, merely human law is lesser than

mixedly human law (Hooker, 1993, p. 116). Then, what are the effects of his understanding of natural law and classification or hierarchy of law? In essence, Hooker's understanding paves the way for a restoration of the value of political society and attributes men a political nature. Similarly, d'Entrèves (1970, p. 86) argues that natural and rational values, to Hooker, provide a basis for law and justice; thus, he ascribes a positive value to the function of the state.

To turn back the question asked above, that is, "if men are reasonable members of the society; then, the question is how men go into the political society," one could reply within the context of Hooker's teachings: "through consent." To Hooker, in the origin of political society, there exists a social contract, a theory which postulates that government is based on the consent of people. In other words, Hooker conceives, as other followers of the contractarianism do, that men have a capacity to reason and natural inclination to form a society; in that case, all governments are originated with the consent of the governed. In this vein, Hooker (1993, p. 109) summarizes two foundations of societies: "The one, a natural inclination, whereby all men desire sociable life and fellowship, the other an order expressly or secretly agreed upon, touching the manner of their union in living together." Conceiving government as a product of people's consent is virtually equivalent to the claim that the government, as a men-made creation, is by nature not by grace. What is conspicuous about Hooker's consent theory is that he regards the origin of the society as a pre-political state where men are free, equal, and independent. It is also obvious that this description is almost similar to the concept of state of nature in Locke's terminology even though Hooker did not use that phrase.

As it is asked to other theorists who deal with the concepts of state of nature and consent, one may also ask to Hooker that if men are equal, free, and independent in the pre-political state, or, in other words, in the natural society, then what did force them to form the political society? Hooker responds to this question with two reasons: First, the non-existence of a superior authority, in the course of time,

caused an increase in injustice and chaos. Second, without a government, men noticed the impossibility of being full-moral humans. These reasons, to Hooker, showed men the indispensability of entering into a political society and forming a government. Therefore, to provide a common good, which is defined by Hooker (1981, p. 349) as the end whereunto all government was instituted was *bonum publicum* [the universal or common good], men instituted the government. Since men in the pre-political state have a law which is law of nature written in their hearts, and because natural laws "do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do," (Online Library of Liberty, 2011, p. 197) they easily agreed to found a government. Then, it would be consistent to infer from Hooker's understanding of pre-political state that men do not comprise of lawless individuals in a horrendous state, as depicted by Thomas Hobbes in his state of nature, but they have identities and rationality to overcome the problems emanating from their fallen nature. Because of the fallen nature of men, to Hooker, they must rely on the laws of government in order to "direct even nature depraved to a right end" (Online Library of Liberty, 2011, p. 197).

To Hooker, when the government is instituted through consent of people, it should also function through enduring consent. He asserts that this consent can be apparent or implied and can be expressed "by voice sign or act, but also when others do it in their names by right originally at the least derived from them [a]s in parliaments, councils, and the like assemblies." (Online Library of Liberty, 2011, p. 201). In this framework, as it will be extensively examined in the next chapter, Hooker's conceptualisation of express and implied consent corresponds to Locke's formulation of consent. Another point in Hooker's understanding of natural law is about the obligation to law. First, Hooker (1981, p. 399) suggests that those who "use more authority then they ever did receive in form and manner before mentioned [by consent] cannot bind any man to obedience." He goes further and even he considers that the divine and natural law limit the King's power, he writes that "positive laws of the realm have abridged therein and restrained the King's

power" (Hooker, 1981, p. 347). Moreover, he argues that King's power is given to him "by the common law and parliament" (Hooker, 1981, p. 506). Therefore, consent to Hooker, is not only a source of transfer of power from governed to the king but also of limitation of the king's power by parliament. He, then, summarizes his position on obedience to law, particularly king's submission to law, through mentioning that the king is "not only the law of nature and of God but the very national and municipal law" (Hooker, 1993, p. 996). Despite writing excessively on the obedience to law, one can easily notice that Hooker's suggestions do not include the right to resistance in his *Lawes.*

As Kirby (1999, p. 681) notes, even though "Hooker was accused of promoting 'Romishe doctrine' and 'the darkness of school learning' in his attempt to maintain intellectual continuity with the natural law tradition" and even though he was harshly criticised by the anonymous authors of *A Christian Letter of Certaine English Protestantes* through claiming that his teaching challenges *sola scriptura* (Kirby, 1999, p. 685), his formulation of natural law, positive law, limited authority, and his theory of consent were enough for Locke (1980, pp. 8-35) to call him "judicious Hooker" in his *Second Treatise on Government.*

Concerning the early modern period, the last writer that will be discussed here is a French Protestant, Philippe de Mornay (or, Du-Plessis-Mornay) who was also a member of anti-monarchist *monarchomaque* and is generally regarded as a proto-natural right advocate. His book, *Vindiciae, Contra Tyrannos* [Defence of Liberty against Tyrants]—as a matter of fact, this book was published anonymously but has generally been attributed to Mornay—unequivocally influenced Locke who noted in his book catalogue of 1681 that he had a copy of *Vindiciae* (Moots, 2010, p. 118). Skinner (2004, p. 305) writes that Mornay's *Vindiciae* gives the summary of almost all main arguments of Huguenot monarchomachs in 1570s. About its content, Moots (2010, p. 122) argues in *Politics Reformed: The Anglo-American Legacy of Covenant Theology* that *Vindiciae* is so dependent on secular sources that Mornay can be regarded as the most secular writer of the 16th century. Another

significant point about the book is that it was written in a period when a civil covenant argument was on the rise. For instance, some French covenantal political theologians such as Theodore Beza in his *De Jure Magistratuum* and Francis Hotman in his *Francogallia* comprehensively argued the concept of covenant (Moots, 2010, p. 66). To Mornay, Beza, and Hotman, the covenant requires a *mutual obligation* between the ruler and the ruled (Höpfl & Thompson, 1979, p. 929). Mornay (1994, p. 21) in *Vindiciae*, used a characteristic justification of *feodus sive pactum* [theological covenant] as a form of just order. He generally refers to two types of covenant. The first covenant is between the people, the king and God; and, it allows people to resist again the king if he breaches the God's law. The second covenant is between the people and the king; and it compels the king to exercise his power through caring about the interests of the common good. Mornay (1994, p. 130) tells the story behind the second covenant and writes that "the people asked, as a stipulation, whether the king would rule justly and according to the laws? He pledged that he would do so. Finally the people answered that it would obey faithfully so long as he commanded justly." Then, as Höpfl & Thompson (1979, p. 931) express, Mornay regards resistance as not only a right but also a duty. Furthermore, concerning the relationship between the people and the king, Mornay regards the former as more essential than the latter. To him, "no-one is born a king, no-one is a king in himself, and no-one can rule without a people" (Mornay, 1994, p. 71). Mornay (1994, p. 60), as an outcome this relationship, states that "to magistrates: You do not bear the sword in vain." In this context, as Monahan (1994, p. 267) claims, it is obvious that Mornay also rejects the divine right of kings which will later be defended by Francisco Suárez.

It is evident that Mornay proposes a political authority that is limited in order to prevent him from abusing his power. Furthermore, to him, "the king is the living law because the law animates him" (Mornay, 1994, p. 97). However, even though Mornay (1994, p. 68) writes that "we now say that the people constitutes kings, confers kingdoms, and approves the election by its *suffragio* [vote]," he invests the power of resistance not to people but to estates since the consent given for the

crown does not belong to people but belongs to the magistrates. There he writes that "private individuals have no power, fill no magistracy, hold no command or any right of the sword" (Mornay, 1994, p. 60). Moreover, to him, when the king abuses his people's trust to him and particularly when he breaks the law defined in the second covenant, he becomes a tyrant. Then, through implying resistance against such tyrants, he asks: "Should he grow deaf to the groans of the people; should he become dumb at the attack of thieves; will he, in the end, yawn and put his hands in his pockets?" (Mornay, 1994, p. 165). Yet again, the duty to resist is of officers and magistrates. As Monahan (1994, p. 246) expresses, in Mornay's understanding magistrates are "delegates of the people and representative of popular authority: they were servants of the people, not of the rulers; they were responsible to the people who created them and not to the king whom they created."

The reason why Mornay does not support individual initiatives may be, as Höpfl & Thompson (1979, p. 932) point out, the potential hazard of "the beast with many heads" of his time. Then, the question is that if these officers fail to realize their duty what people would do? In this condition, Mornay implies that people have no choice but to leave; he cites David's story and writes that "often harassed with false accusations, and harried by surprise attacks, he takes refuge in the mountain" (Mornay, 1994, p. 56). It is striking that Mornay, quite different from other natural right theorists including Locke—who, as will be argued in the next chapter, does not object to hereditary monarch or does not regard it as incompatible with common consent and natural right—accepts hereditary monarch on the condition that it is being an elected system (Mornay, 1994, pp. 68-73). He argues in this context that the inauguration by people is the precondition of ascending the throne and he compares England, Scotland, Sweden, Spain and Denmark by means of this principle (Mornay, 1994, p. 136). As Glenn A. Moots (2010, p. 123) writes, this precondition of "Mornay's acceptance of hereditary monarchy would strike most moderns as archaic."

As other theologians in his age mention, Mornay also writes about the pre-political condition in which people live. To him, these people were equally free and consented to government to acquire some advantages which were not existent in nature. He clearly argues that men by nature love the liberty and hate the servitude, and naturally they are inclined to command rather than obey; however, when they expect unique and enormous benefit from surrendering themselves to the command of others, they can accept to be governed by another man (Mornay, 1994, p. 92). In line with his usage of the word benefit, he maintains right to property and suggests that property is the foundation of government, an argument which can be noticed in Locke's writings (Mornay, 1994, pp. 111-113). Monahan (1994, pp. 267-268) clearly states that "Mornay thus anticipated Locke's formulation that political society came into existence 'when the concepts of *meum* [what is mine] and *tuum* [what is thine] first entered the world,' and differences began to arise within the body of the people over the question of ownership of material goods." But again, quite different from others, he legitimates the right to resistance on the basis of not religion but of the secular arguments. He writes, in this context, that "for he who attacks the commonwealth or another's frontiers (fines) without any basis in right, is not a prince; nor is he who defends his country with arms a traitor" (Mornay, 1994, p. 150). Thus, it is possible to argue that modern natural right arguments that roughly comprise of natural equality and freedom, government as an outcome of men's consent, property rights as the central part of the consent, right to resist against the tyranny are evident in Mornay's arguments based on his covenantal political theology (Moots, 2010, p. 124). That is why Figgis (1999, p. 103) writes that "the *Vindiciae* is a treatise which is lofty and impressive in tone far beyond the run of political treatises, and breathes of the very spirit of liberty." To Ozment (1980, p. 420), Beza's and Mornay's emphasis on right to resistance is reasonable since they wrote their treatises in the wake of St. Bartholomew's Day Massacre of French Protestants in 1572 that led to at least 3000 deaths of Huguenots (French Protestants) only in Paris. Monahan (1994, p. 264) through referring to Beza's *Du Droit* and Mornay's *Vindiciae* writes that "by adopting the natural law approach that described human

beings as naturally free individuals who form political societies through some form of mutual agreement, Beza and Mornay offered a far more rational theory of politics."

Scottish humanist George Buchanan also developed a theory of right of the people to resist against tyranny in his *Dejure Regni Apud Scotos* [The Right of the Kingdom amongst the Scots]. Different from Mornay, Buchanan ignores the covenant theology and uses the term contract in order to explain the origin of governmental authority. To him, in the pre-political state men lived a solitary life; but then, they founded the government through a contract between the ruler that they chose and the people as a whole. Therefore, again different from Mornay, Buchanan proposes that the right to resist does belong to whole people, not to magistrates as Mornay argues (Skinner, 2004, p. 343). He accordingly writes that the right to topple a tyrant is "not only with the whole body of the people but even with every individual citizen one by one" (Buchanan, as cited in Dunn, 1996, p. 48). Buchanan's individualist position was echoed two decades later by the Spanish Catholic (Jesuit) Juan Mariana in his *De Rege Et Regis Institutione.* Nevertheless, Mornay (1994, p. 44) subjects the king to obey the law, and to him, if *universi* [the king] breaks the covenant and disobey the law, *singuli* [people] can force him to pay the penalty. However, it should be kept in the mind that when Mornay (1994, p. 46) speaks of the right to resistance and people, he generally refers to latter not as a body of citizens but those "who have received authority from the people—the magistrates, clearly, who are inferior to the king and chosen by the people, or constituted in some other way."

2.6 Secularization of Natural Law

Among the late Spanish Jesuit scholastics, Jesuit Thomist Francisco Suárez and Jesuit Luis de Molina represent the Catholic Counter-Reformation in the post-Reformation era. Suárez, after a successful career at the University of Salamanca,

published a book titled *Tractatus De Legibus Et De Legislature* [On the Laws] which is the primary source of his natural law teaching. In addition he also published a second book titled *Defensio Fidei Catholicae Et Apostolicae Adversus Anglicanae Sectae Errores* [Defense of the Catholic and Apostolic Faith] in the same year. These two books, *De Legibus* and *Defensio,* are a clear summary of 16th century Spanish neo-Thomist thinkers' approach including those of Domingo de Soto, Leonard Lessius, Diego de Covarruvias, Francesco de Vitoria, and Luis de Molina. As Hunter & Saunders (2002, p. 2) point out "Thomist natural law doctrines refurbished in the so-called 'second-scholastic' of the sixteenth century by Vitoria, de Soto and Suárez." Suárez's significance in political thought is not only confined with the function of his books but his theoretical position is also prominent. While carrying the medieval conceptual baggage, as Monahan (1994, p. 167) explains, Suárez has also being called "the first modern democrat" (Fichter, as cited in Monahan, 1994, p. 167). Here, the reasons behind this label and his secularization of natural law will be discussed in details.

Suárez (1944, p. 128), in *De Legibus*, defines law as "a common, just and stable precept, which has been sufficiently promulgated." Then, he speaks of several types of law, which are eternal, natural, human, and positive laws, as Aquinas does. To Suárez, the purpose of law is the common good which has two forms. The first form, immediate common good, refers to things that do not belong to a specific person, such as public offices. Second form, mediate common good, comprises of the property of individuals. These properties are indirectly connected to the society since public authority can lay a claim on them particularly when public need necessitates (Suárez, 1944, p. 94). Therefore, the first argument that can be inferred from Suárez's legal approach is that he makes a distinction between public goods and private property which is a prevalent distinction in modern social and economic theory (Monahan, 1994, p. 170). Suárez (1944, p. 106), like other followers of the natural law tradition, acknowledges that the content of human law should be compatible with the natural law: "a law ought to prescribe just things." However, this does not mean that Suárez ignores the

procedure of that law. Actually, he recognizes that law must be valid for both ruler and the ruled but the validity of a law does not require it to be written; therefore, he attaches importance to custom law in *De Legibus*. To him, *consuetudo* [custom] has two different meanings; while it refers to frequent behaviours in general sense, it also has a legal connotation in a narrow sense that continuing reiteration of an action paves the way for an obligation, authorization, or a sanction. Then, when do the frequent behaviours (viz., the first meaning of custom) transform into a legal norm (viz., the second meaning of custom)? To Suárez, frequent behaviours obtains the power of positive law when these behaviours, or custom, exist in the whole members of the society; thus, certain behaviours that are intrinsic to specific individuals cannot transform into law. This also means that the behaviours or acceptances of the king or prince are not sufficient to consider them as part of the law. In this vein, to Suárez, a custom can be regarded as a positive law when the majority of the society assents to it. It is striking that he also incorporates women in the group of people, namely the majority, which is entitled to realize this transformation (Suárez, 1944, pp. 528-529). Thus, women, as a part of the polity, should be counted since distributive justice requires it. At this point, he categorizes the justice into three types which are legal, commutative, and distributive. Legal justice aims at preserving the common good and welfare of the community as a whole; commutative justice functions while lawmakers are entitled to command their own subordinates; last, distributive justice, which is directly related to the role of women in the polity, allocates justice in direct proportion to citizens' positions in the polity (Suárez, 1944, p. 115).

Moreover, there is another condition for a custom to be transformed into positive law. This condition is, to Suárez, *ex consensu communitatis* [the existence of the consent of people] or the nonexistence of an external coercion. In this vein, he compares democracy, aristocracy, and monarchy. Then, he writes that in a democracy, the people do not transfer their right to legislate to any person; therefore, the consent of majority is a *sine qua non.* In aristocracy, people transfer their right to legislate to a senate and majority in a senate can transform a custom

to positive law. Last, in monarchy, the king can transform a custom to positive law through declaring it a law by its *consensus personalis* [personal consent] or by consenting to it tacitly through not prohibiting it (Suárez, 1944, pp. 556-557). To him, in democracy, custom also can annul a written law if people cease to obey the latter. However, after all, to Suárez, natural law put limitations on the legitimacy of positive law. As Dunn (1982, pp. 96-119) contends in *The Political Thought of John Locke*, in Suárez's theory natural law, state of nature has two functions which can also be found in Locke: first to tell people about the circumstance into which they were placed in the world by God, and secondly to envisage the life which would follow if they lived in such communities. Correspondingly, both Suárez and Locke take the condition in the state of nature as a benchmark to evaluate positive law.

Natural law, in Suárez's conception, bears the traces of Aquinas and members of Spanish neo-Thomist school such as Mariana and Vitoria (Monahan, 1994, p. 173). For instance, to Suárez, natural law is *scriptam in mentibus* [written in our minds] by God and its command and prohibitions were made known by him in the Decalogue (Skinner, 2004, pp. 150-151). Similarly, Suárez (as cited in Skinner, 2004, p. 151) insists that "it should not be possible for anyone to neglect the law of nature, since all men from the beginning of creation have in fact been subject to it." To Taitslin (2013, p. 59), Suárez as an intellectualist consider reason as a natural power; thus, natural law is inherent in rational nature of men. Therefore, as d'Entrèves (1970, p. 71) points out, Suárez concedes that natural is not based on the will "of any superior," which means that to him "natural law does not proceed from God as a law-giver, for it is not dependent on God's will, nor does God manifest Himself in it as a sovereign (superior) commanding or forbidding." That is why some scholars regard Suárez, who also influenced Hugo Grotius, as the first secular natural law proponent in the early modern era.

Another difference in Suárez's conception from the others is that natural law has both positive and negative aspects. The positive features of natural law are that it

points out appropriate behaviours for men, reveals the components of human nature, and presents the absolute truths; while the negative one is that even though natural law exists from the first day of humanity, it could not manage to command conformity of all individuals throughout the history. The reason why natural law has such a negative feature is that it entails no obligation but only involves moral recommendations. Therefore, since people are rational, they are free to accept or reject these advices (Suárez, 1944, p. 277). To comprehend Suárez's formulation of natural law on the basis of positive and negative aspects, one should seek for his purpose in this distinction. In essence, his purpose is clear in his examples on two forms of property. To Suárez, the first form of property is a person's ownership of materials or in other words private property while the second form of property is person's ownership over one's own person that is liberty. Then, Suárez argues that natural law in the historical context lays the basis for common ownership; however, ongoing practice applies a system of private property. This is also valid when it comes to the concept of liberty so that the liberty of people in the state of nature led them to establish an absolute monarchy and this freedom turned into a slavery at least for some of them; however, at present times, people are subject to political institutions and positive laws sanctions the slavery only as a social institution. In this vein, Suárez (1944, pp. 209-210) acknowledges that natural law directs people to obey only to its positive features; however, they are not bound by its negative aspects. In other words, as Monahan (1994, p. 175) writes, when the distinction between "the common versus private ownership, and freedom versus slavery he held that moral insistence on the latter over the former in both cases was '*contra communem sententiam* [contrary to common understanding].'" In this context, it can be concluded that Suárez's division of natural law explains and even justifies the characteristics of his society which were repudiated by Christian description of the state of nature. Therefore, Suárez does not only reject the classical Christian understanding of state of nature but also refuses the Christian argument that temporal and spiritual authority come from God. In this vein, cardinals are only channels through which the divine authority is transferred; thus, they do not have a divine power in their own nature. Nevertheless, Suárez (as cited

in Skinner, 2004, p. 180) concedes that "the Pope must be able to wield his indirect temporal power in such a way as to remove a prince, deprive him of his dominion in order to prevent him from harming his subjects, and absolve his subjects from their oaths of allegiance."

Another outcome of his classification of natural law as positive and negative lead him to assert that democracy in which all individuals share power equally, is the most convenient type of polity since it suits best to humans' natural inclination. However, deciding a model of ruling on the basis of equal rights is negative feature of natural law, while the general norm or positive feature that has taken place is monarchy. He writes that "since all men have been formed and procreated from Adam alone, the case for an original subordination to a single ruler seems to be established" (Suárez, as cited in Skinner, 2004, p. 156). Nevertheless, the monarch has no divine right to rule; on the contrary, kingly rule is an outcome of mutual agreement between the ruler and the ruled. When a king turns into a *tyrannus in regimine* [tyrant], this means that he breaks this agreement so that his act legitimizes a possible resistance of the people (Spellman, 1998, p. 84). However, it should be kept in mind that Suárez conceives freedom as a negative aspect of state of nature; thus, it is negotiable and individuals can choose to be slaves. In essence, it seems contradictory to what Locke (1980, p. 17) writes in the *Second Treatise of Government*: "a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases." To Suárez, even though right to freedom is a negative feature of natural law, right to life is a positive aspect. Therefore, it is inalienable and individuals cannot consent to relinquish his right to life to a ruler or anyone (Suárez, as cited in Monahan, 1994, p. 183). To Monahan (1994, p. 182), the reason why Suárez considers freedom as a negotiable negative feature of natural law is that he built his theory in line with the status quo of his era. In this vein, as Simon (1993, pp. 176-177) writes, even though some scholars describes Suárez as a proponent of democracy, the transmission theory that he refers to, namely,

people's alienation of their rights in sovereign's favour, is not distinctly democratic. Last, to Elósegui (2013, p. 173), natural is also the foundation of international law, even there are positive laws: "the laws of nations, which does not derive from a central legislator but from the consent of mankind, or at least the majority of mankind, is so close to natural law that it is easily confused with it." Therefore, Suárez is the first to define a possible international law.

It is widely accepted by the scholars that the Salamanca school, particularly Vitoria and Suárez, influenced Grotius, who is also regarded as a rationalist, modernist and the initiator of the secularization of natural law (Levering, 2008, p. 85; Elósegui, 2013, p. 159; Finnis, 2011, pp. 43-48). These scholars including Carl Friedrich, A. P. d'Entrèves, George Sabine, Ernst Cassirer, Ernst Barker, and Otto Gierke maintain that Grotius considers natural law as a part of men's rationality independently of theological deductions; therefore, to them, Grotius breaks the tie with traditional medieval understanding of natural law that prioritizes divine revelation. In this sense, they perceive Grotius as a secularist (Edwards, 1970, p. 784). For instance, d'Entrèves (1970, p. 71) writes that "Grotius' proposition that natural law would retain its validity even if God did not exist, once again appears as a turning point in the history of thought." He also contends that "Grotius was the founder of the modern theory of natural law" (d'Entrèves, 1970, p. 71). Proponents of the suggestion that is Grotius is a secular natural lawyer generally refer to his writings in *Prolegomena.* There he writes that "the law of nature, again, is unchangeable—even in the sense that it cannot be changed by God" (Grotius, 2005, p. 161). Grotius (2005, pp. 89-90) also writes that "natural law would still hold *etiamsi daremus non esse Deum* [even if we granted that there is no God]. However, to Edwards (1970, p. 787), most of the forenamed scholars fail to notice that Grotius's contention which is natural law is valid even if there is no God is, in fact, a rejection of "pure voluntarism" and "extreme and moderate types of rationalism" for the sake of "median position." Edwards (1970, p. 796) also reminds that Grotius was a pious Christian with a deep belief in God. He writes that "Grotius did not view God with the rationalism of a deist or a pantheist, in the

same vein as a Voltaire or a Spinoza….nor did he thrust God far into the background and seize upon the mechanistic scientism of a Hobbes, a Hume, or a Descartes" Similarly, Simon (1992, p. 35) writes that "Grotius was not an atheist, he was a believing Protestant, but he did not miss a chance to emphasize the autonomy of nature."

Through following the Stoic perceptions on human nature, Grotius (2005, pp. 79-81) argues that the rationality embedded in humans led them to live as cooperative social beings since they are aware of the fact that living in a society is congruent with human nature. In other words, he maintains that societies and states emerged through the implied or expressed consent of humans and law is an outcome of the natural and civil society: "[C]are of maintaining society in a manner conformable to the light of human understanding, is the fountain of right, properly so called" (Grotius, 2005, pp. 85-86). He also categorizes law as natural law and volitional law. To him, natural law is a direct conclusion of human nature and its principles can be known through reason. The other category, volitional law, comprises of human and divine law. He then divides human law into municipal law and law of nations and writes that human law arises from civil authority. Then, he defines divine law as a law emanates from divine will (Grotius, 2005, pp. 164-166). Nevertheless, his oft-quoted passage about the study of law leads to controversy among scholars on his being secular and rationalist or not: "for I profess truly, that as mathematicians consider figures abstracted from bodies, so I, in treating of right, have withdrawn my mind from all particular facts" (Grotius, 2005, p. 132). Yet again, Edwards (1970, p. 805) insistently regards Grotius as not a secularist but accepts that he makes a drastic break with the previous tradition; thus he writes that "Grotius was not a secularist, for, even though he wanted to sever natural law from its traditional medieval association with Christian claims of revelation, he clearly wanted to retain theological premises in his conceptualism."

In his *De Iure Belli ac Pacis* [On the Law of War and Peace], Grotius includes his natural right theory and defines *ius natural* [natural right] as "the rule and dictate

of right reason…according to its suitableness or unsuitableness to a reasonable nature…that such an act is either forbid or commanded by God, the author of nature" (Grotius, 2005, pp. 150-151). Then, what are included in natural rights? Haakonssen (2002, p. 32) writes that only self-preservation can be categorized under *ius natural.* However, Francis Huthchenson (as cited in Haakonssen 2002, p. 32) maintains that the contents of natural right is more than expected: "Grotius deduces the notion of right from these two; first, *initia naturae* [the natural desires], which do not alone constitute right, [second], *convenientia cum natura rationali et sociali* [the eligibility to a rational and social nature]." In this vein, in contrast to Thomas Hobbes, Grotius thinks that nature triggers an ideal order and the function of law is to preserve it rather than form it. Furthermore, *ius* belongs to person's own that includes "life, liberty, body, and everything in nature that is immediately required for one's maintenance; and it is subsequently extended conventionally into *dominium*, or property in things, and contractual relationships" (Haakonssen, 1985, p. 241). Therefore, right to self-preservation, which Haakonssen explains, includes right to life, liberty, property, and contract.

On the right to liberty, Grotius separates *libertas personalis* [individual liberty] from *libertas civilis* [political liberty] and argues that people have individual liberty even though when they are not provided with political liberty. Accordingly, he mentions that individual liberty may be valid even in the absolute forms of governments (Haakonssen, 1985, p. 245). On the right to property, Grotius's legacy influenced not only Samuel von Pufendorf and Hobbes, but also Locke. First, he argues that in the original condition of humans, they had right to use things in common; however, when *suum* [the natural ownership] extended via agreement, the concept of private property emerged. These agreements were in two forms; they could be based on explicit allocations or implicit acceptance of things that were seized by someone else. In this sense, while his first form paves the way for an understanding to which private property is based on contract as Pufendorf and Hobbes argues. Since it will be examined in the next chapter, it is suffice to explain here that his second form weakens the arguments on contractual

agreement and regards it as a spontaneous right which is Locke's position at this matter (Haakonssen, 1985, p. 243). As to contractual theory, Grotius is notorious for being a proponent of the indivisible absolute sovereignty based on agreement. He analogously explains his theory as follows: "the eye is the *subjectum proprium* [the special agent] and the body as a whole is the *subjectum commune* [the common agent]." Then, he argues that "the ruler is the special agent for the sovereignty of which the state as a whole is the common agent." This also means that "sovereignty is not a power that rulers have over subjects, but one that they exercise on behalf of the corporate body" (Haakonssen, 1985, p. 244). In this sense, Grotius (2005, pp. 377-378) states that when their rights are breached, people have the rights to resist the sovereign.

To sum, as d'Entrèves (1970, p. 53) writes "along with Bacon and Descartes in the field of philosophy, with Galileo and Newton in the field of experimental science, Grotius has a special place reserved in the field of jurisprudence." He influenced many scholars including Pufendorf who praises Grotius as "*vir incomparabilis* [the incomparable] who dared to go beyond what had been taught in the schools and to draw the theory of the law of nature out of the 'darkness' in which it had lain for centuries." In essence, while Grotius believes that natural law is binding due to the reason alone even if God does not exist, Pufendorf concedes that natural law is binding because of the God's ordinance. Here, the difference between a theological theory and accepting the existence of God should be discerned. d'Entrèves (1970, p. 53) also writes about the natural law doctrine in 17th and 18th century; he advances that "Pufendorf's *De Iure Naturae et Gentium*...has nothing to do with theology. It is a purely rational construction, though it does not refuse to pay homage to some remote notion of God." This is also Locke's position at this junction. As Taylor (2007, p. 126) mentions in his comprehensive and splendid book, *A Secular Age*, all of their principal arguments are same: God created humans as rational and social beings in addition to that God provided them an instinct for self-preservation. In this vein, people must recognize each other's fundamental rights as life, liberty and estate. However, it is also true that "in the

end, Grotius and Pufendorf are nothing more than theorists of voluntary servitude and absolute monarchy" (Kriegel, 2002, p. 22). However, the role of Scripture is so limited in Pufendorf's argument that leads scholars to categorize as a secularist natural lawyer. When Tuck (1987, p. 103) explains Pufendorf's approach, he writes that "the New Testament contained the foundations of the law of nature, but it could not be used as the fundamental text in the study of the law." Hochstrasser (2004, p. 3) also points out that "Pufendorf and his most distinguished follower, Christian Thomasius…have evolved a tortuous path through this intellectual minefield towards…natural law." He, then, concludes that they both "used Stoic ethics to reconcile the voluntarism of Hobbes with a diminished but nevertheless real role for divine positive law." Then, since Stoics' contribution to natural law was discussed earlier, Hobbes's contribution should be evaluated to perceive Pufendorf's teaching.

Hobbes's contribution to natural law theory can be best understood through examining his life story and his interest in science. As biographers write, Hobbes studied Euclidian geometry and physics of Copernicus and Galileo. While the Roman church was condemning the postulations of Copernicus and Galileo for contravening scriptural explanation of motion of the planets and weakening the belief in divine providence, Hobbes visited Galileo in Paris. He was totally convinced that these new methods in physics were the primary principals of knowledge. He then wrote *Elementa Philosophiae* which consists of three parts; *De Corpore*, *De Homine*, and *De Cive* in which he respectively argues materialistic explanations of metaphysics, of man, and responsibilities and rights of citizens. Furthermore, when he turned back to England, he witnessed a blooming religious war (Sutton, 2009, p. 226). In this period, he wrote *The Elements of Law* which is an apologia for the inevitability of an absolute sovereign to provide peace in the society. When the civil war began in 1642 between the Parliament and king, Hobbes went to Paris again. After four years, the war ended with a victory of royalists, he thereupon began to write his *magnum opus, Leviathan, or the Matter, Form, and Power of a Commonwealth, Ecclesiastical*

and Civil which was presented to Charles II when he was defeated by Oliver Cromwell, Lord Protector of the Commonwealth of England. The English monarchy was restored in 1660; however, he and his *Leviathan* suffered oppression from the House of Commons. In his fourth year of death, *De Cive* and *Leviathan* could not escape to be burned by Oxford on grounds of atheism and blasphemy (Sutton, 2009, p. 227).

Hobbes (1996, p. 19) believes that he is the first political philosopher since he identifies the primary conditions of civil peace while all others from Socrates to Cicero failed to achieve it. To him, Aristotle, for instance, proposes the existence of spiritual essences which pave the way for men to fear from the punishment of not civil authorities but of divine power. Hobbes also acknowledges that man is asocial by nature and even the ability to speak is not natural but an acquired characteristic. In this vein, he does not only base these arguments in nature, but also bases his political science in natural law (Sutton, 2009, p. 228). Hobbes is also regarded as the founder of modern natural right doctrine. According to modern natural right doctrine, people institute a government to secure their natural rights. To Hobbes, the fear of death pushed people to use their rationality for taking precautions that enabled their self-preservation. This precaution is constructing a government. Therefore, the duty of government is to enforce laws of nature and to observe natural rights of the people. As explained earlier, Hobbes uses physical sciences, natural philosophy in his terms, to ground his political science. To him, Leviathan or commonwealth is an artificial man that is similar to *automata* [mechanical tools] so that "if physics can make the natural world intelligible, man as part of that creation can also be understood through physics" (Sutton, 2009, p. 228). He considers that if the material world consists of material things and motion, man is also a part of this motion; therefore, man cannot be evaluated through the relation between purpose and end; this means that Hobbes repudiates the teleological understanding of nature of classical political thought. He also rejects the role of reason in classical philosophy. He argues that the role of reason is only to serve the requisites of passions and to satisfy the desires (Sutton, 2009,

p. 231). Therefore, Hobbes acknowledges that men in the pre-political state are inclined to desire for power which makes the state of nature a state of war (Sutton, 2009, p. 238).

In the state of nature, men have equal power by means of faculties of body and mind. Hobbes (1996, p. 82) writes that "the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger with himself." He also describes state of nature in other pages of *Leviathan* and writes that in the state of nature there is "no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short" (Hobbes, 1996, p. 84). This also means that men are equally vulnerable to be killed by other man. This fearful and hazardous situation, that is war of all against all, pushes men to consent equally to form a government which can secure their rights. Like in the case with prisoner's dilemma, men, despite being selfish, establish the commonwealth through reciprocal covenants which are the constituents of contract since they are security-seekers in the meanwhile. It is also obvious that the main foundation of this theory is the self-preservation which is also the primary and inalienable natural right in Hobbes's comprehension. He clearly maintains that "the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life" (Hobbes, 1996, p. 86). Thus, in order to secure this right, people realize to establish a social compact or the state. In this sense, Hobbes introduces a modern contract theory.

The social contract, to Hobbes (1996, p. 89), consists of "the mutual transferring of right," or in his term, the covenant, a unilateral transfer of rights. He describes the covenant as follows:

> This is more than consent, or concord; it is a real unity of them all, in one and the same person, made by the covenant of every man with every man, in such manner, as if every man should say to every man, I authorize and give up my

> right of governing myself, to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner (Hobbes, 1996, p. 114).

Besides he explains the covenant and writes that "for where no covenant hath preceded, there hath no right been transferred, and every man has right to everything; and consequently, no action can be unjust" (Hobbes, 1996, p. 95). What is also unjust is breaking the covenant; in other words, justice and political society is based on contract. Furthermore, Hobbes reveals his legal positivism and argues that the civil authority created by contract is the one that can determine what is just and unjust. Here, he writes that "before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants." (Hobbes, 1996, p. 95). He also explains how this coercive power can compel men: "by the terror of some punishment greater than the benefit they expect by the breach of their covenant" (Hobbes, 1996, pp. 95-96). Since this authority is the sword that protects covenant, which was also absent in the state of nature, it must be fully obeyed by the subjects. In short, it is not surprising that his arguments lead to an apologia for the absolute form of government. Sutton (2009, p. 247) clearly summarizes his approach to absolute sovereignty and writes that "the horrors and terrors of the state of nature justify absolute government because they are far worse than an absolute sovereign. Only under absolute government are peace and commodious living possible."

It should also be noted that to Hobbes the absolute sovereign is not limited by the covenant since the sovereign is not a party of it; the sovereign is only the outcome of the covenant. Then, it is unjust to resist against the sovereign's will. Similarly, the religion should also be subject to the sovereign; that is why Hobbes is included in the secularization of natural law. Moreover, since resisting against the sovereign would pave the way for a civil war and reverse the country into the state of nature, no one, including religious power has right to revolution. Here, it should be noted that to Hobbes one of the root causes of English civil war was the religious claims for power. To prevent the recurrence of such a condition, Hobbes proposes that the

sovereign has both the temporal and spiritual authority. This approach is evident in the picture of *Leviathan*'s book cover. There sovereign holds a sword and a sceptre which symbolizes the worldly power while he sits over a group of religious symbols such as a cathedral, religious court, and bishop's mitre that symbolizes his authority over the religious institutions and implementations. Last, the motto of the book also reveals Hobbes's approach to sovereign: "*Non est potestas Super Terram quae Comparetur ei* [there is nothing, saith he, on earth, to be compared with him]" (Hobbes, 1996, p. 212). As mentioned earlier, Hobbes insists that the sovereign who terminates the chaotic circumstance in the state of nature does not deserve rebellion, but deserves absolute obedience. However, the only exception to this is that if the sovereign ignores his duty to preserve men's lives, jeopardizes their life, and leads to a chaos, then, they can rebel against the sovereign to conclude this chaos that is similar to the state of nature.

Herein, another question that may arise is whether Hobbes considers right to private property as a natural right. To Hobbes, in the state of nature, there are no property rights since everything belongs to everyone; in other words, in the state of nature, there is no separation between the owner and the occupant. However, Hobbes argues that after the establishment of government or authority, sovereign may bestow properties to meet the needs of subjects. Here, Hobbes warns that in any case, accumulation of private property is a danger for the safety of state because it may lead to overgrowth of a city, a region or over-enrichment of a profession. Thus, this condition may demolish the state as well. Similarly, to Hobbes, it should be kept in mind that bestowing property rights to individuals may pave the way for destruction of state which is the real owner of all properties. In this vein, Hobbes's perception of the relation between society and property has long been discussed in the relevant literature. For instance, Macpherson (1990, pp. 49-61) argues that Hobbes postulates three models of society: customary society, simple market society, and possessive market society; he finally regards Hobbes as a proto-possessive individualist. On the contrary, some scholars claim that Hobbes was aware of the class antagonism in the society; nevertheless he attached more

importance to struggle among individuals. In this vein, Ashcraft (2000, p. 250) argues that Hobbes uses the term *faction* to describe economic divisions in a society which pursue their own interests. Therefore, these interests eventually would lead to a civil war. To Hobbes, this is the case for England where merchants and freeholders supported the parliament against the king and led to English civil war. He also states that the failure of this *faction* was not to conceive that the real authority over the marketplace.

To turn back to Pufendorf and test the prevalent argument which claims that he is the theorist of absolute monarchy, one should delve into Pufendorf's natural law teaching. In accordance with the material history of his age, Pufendorf conceives sovereignty as the primary function of the state power. The initial point of Pufendorf's argument is the state of nature which he calls *status*. To him, *status* is analogical to space; while physical materials exists in space, *status* is a moral space in which men exercise their duties and rights (Behme, 2002, p. 44). Here, similar to Grotius, Pufendorf does not base his arguments on sacred foundations; on the contrary, he employs "the methodology of the physical and natural sciences in the study of human relations" (Carr, as cited in Spellman, 1998, p. 142). Moreover, in the *status* all men were equal; thus, Pufendorf rejects the contemporary thinkers' arguments who advocated the concept of natural authority. Robert Filmer's divine right of kings explained in his *Patriarcha* and similar arguments of Jacques-Bénigne Bossuet can be categorized as those that Pufendorf repudiates. In *De Jure Naturae et Gentium* [On the Law of Nature and Nations], Pufendorf (1994, p. 146) argues that beginning with the *status*, human reason "has even in the natural state a common, firm, and uniform measure, namely the nature of things, which very readily avails itself as a guide, at least to the general precepts of living and to the natural law." To him, natural law is an outcome of *socialis*, a state of nature that is a depressed but nonviolent state designed by God (Palladini, 2008, p. 27).

To Pufendorf, since human nature in the *status* does not change, God's divine will also guarantees the infinitude and perpetuity of natural law. In addition, eternity of natural law also provide men the right to self-preservation which is also the essence of social life and states. To him *socialitas*, is a kind of behaviour (but it is not a feature of human nature) that men must have so that they can preserve themselves. Therefore, he does not mean that man is social by nature, but he acknowledges that "man must be sociable" to preserve himself (Palladini, 2008, p. 31). As he also defines in *De Jure*, *socialitas* is a "principle for deducing the natural law is not only true and evident, in our opinion, but also so sufficient and adequate that there is no precept of the natural law regarding other men whose reason is not ultimately derived from it (Pufendorf, 1994, p. 154). Pufendorf (as cited in Behme, 2002, p. 47), then, writes that "everyone situated in a natural state has an equal right and authority to preserve himself and to direct his actions according to his own choice enlightened by sound reason." One of the arguments that can be derived from this sentence is that Pufendorf regards right to rule as an outcome of people's consent since men has an equal authority in the state of nature. This consent of people is also a tool that transforms them from single person to "*persona moralis composite* [a composite moral person] whose will, a single strand woven out of many people's pacts, is considered as the will of all" (Pufendorf, 1994, p. 214). Here, Hobbes's influence on Pufendorf is obvious since his further explanation, which led him to categorize as methodological individualism, is as follows: "Everything is best understood by its constitutive causes, the causes of the social compound residing in men as if but even now sprung out of the earth, and suddenly, like mushrooms, come to full maturity, without all kind of engagement to each other" (Hobbes, as cited in Lukes, 1968, p. 119). In this sense, like Hobbes, Pufendorf (as cited in Palladini, 2008, p. 49) also concedes that "in order to know *civitas* [a composed whole] one needs to dissemble it into its constituent parts." Moreover, both of their approach to state of nature is also similar, "a *mutuus metus*, a state in which the laws of nature do not succeed in guaranteeing the security and, therefore, the survival of man" (Palladini, 2008, p. 50). Then, "for both, it is the state of nature from which one

needs to leave in order to enter civil society" (Pufendorf, as cited in Palladini, 2008, pp. 50-51). However, it should also be noted that Pufendorf (1994, pp. 144-147) criticizes Hobbes, the advocate of the concepts of *homo homini lupus* and *bellum omnium contra omnes*, that the state of nature is not equivalent of state of war.

Since state of nature is not the war of all against all to Pufendorf, he argues that the consent can be obtained under a contract which requires a ruler to provide people's security and obliges ruled to obey; however, this contract binds the ruled both in present and future, while the future ruler is not bound by this contract. Thus, since a future ruler still remains in the state of nature, he incorporates all the right of his subjects. That is why most of the scholars consider him as an advocate of absolute monarchy. Nevertheless, this seems plausible when the post-war condition of the second half of 17th century is considered since again the material history required a political authority to preserve the stability and order (Behme, 2002, pp. 48-50). Even though the right of subjects to resist against the ruler is theoretically possible, Pufendorf acknowledges that "this right could be exercised only passively through flight or emigration" (Behme, 2002, p. 50). Obviously, Pufendorf does not ignore limitations put on a sovereign through contracts; however, these contracts cannot breach indivisibility of the sovereign power.

2.7 Conclusion

The first conclusion of this chapter is that the concept of natural law has been discussed for more than two thousand years. These discussions have not been restricted by temporospatial limitations; on the contrary, they have reproduced themselves almost every historical period of political thought. The accumulation of concepts and philosophies has led to what we call today as the natural law tradition and this tradition has been directly related to religion.

Secondly, this chapter implied that Locke, who sowed the seeds of liberalism, did not put right to resistance, right to private property, and right to religious freedom to his philosophic agenda *ex nihilo*; quite the contrary, he inherited the legacy before him which had been evolved in the course of time from Sophocles to Pufendorf. Therefore, what is called as nascent liberalism is not only a product of Locke's philosophic or intellectual insights but also it is an outcome of intellectual accumulation which has been formed by pagan philosophy, Christianity and its denominational variants, modern thinking, and secularization. As Hancey (1976, pp. 439-440) writes, "the *Essays* abound with references and parallels to Cicero, and many of the arguments presented by Locke can, in fact, be found in the political writings of Aquinas."

Thirdly, the discussions within the natural law tradition have built a *sui generis* glossary. While Locke is generally misvalued as the first author of this glossary, at least as the author of most of its parts, he took over sovereignty of people, limited government, and natural liberty from Rutherford, adapted consent theory from Hooker, derived social contract theory and right to private property from Mornay's civil covenant, shared the state of nature argument with Suárez, discussed divine authority as did by Grotius, Pufendorf, and Hobbes. Therefore, Lockean natural law liberalism is an intermediate form of a very long discussion within the period that initiates with pagan philosophy, develops throughout the proliferation of Christianity and its diversification, and survives in the modern age under the expansion of secularism. This means that Lockean liberalism is not only an accumulation of intellectual labour but also it is an outcome of philosophical continuity, theological diversity, and complex social and economic chemistry in the Western tradition. Therefore, through considering the evolution of natural rights such as right to resistance, right to private property, and right to religious freedom, it is basically true that what we call Lockean liberalism is the product of certain circumstances that have evolved more than two thousand years in the West.

The last conclusion that can be drawn from this chapter is that the interplay between reason and faith—even though it has ups and downs throughout the history—has managed to survive in the Western context. In other words, philosophers who prioritized reason over faith or theologians who preferred faith to reason, or those who maintained the compatibility or incompatibility between reason and faith succeeded to transfer their ideas to the next generations without cessation. In this context, even though Christian denominations have followed different paths in terms of the relation between reason and faith, there has been no single Christian way of understanding so as to restrict or prohibit other approaches. This nonuniformity has paved the way for the conceptual enhancement within the natural law tradition. On the other hand, since the absence of religious imposition on speculating over ontological authority of reason amounts to setting reason free, a secularization of natural law became possible. As expressed in this chapter, what constitutes Lockean liberalism is derived from both the theology of Aquinas and the philosophy of secular natural lawyers such as Mornay, Suárez, Grotius, Pufendorf, and Hobbes. Therefore, in the next chapter, the effect of Christianity and secular philosophy on Locke's natural law liberalism will be examined in detail in order to complete the first component of the comparison between Lockean liberalism and "Islamic liberalism."

CHAPTER 3

THEOLOGICAL PREMISES OF LOCKE'S NATURAL LAW LIBERALISM

As explained in the previous chapter, Locke's natural law liberalism has burgeoned through the contributions of pagan philosophers, Christian theologians, and secular intellectuals; however, the contents of their influence on Locke's political philosophy remained unanswered. Therefore, this chapter will primarily survey the interwoven relation between natural law, Christianity, and Locke's natural rights in order to comprehend what is called as Locke's natural law liberalism. This means that while the previous chapter searched the legacy before Locke, this chapter will solely focus on Locke and his philosophy.

Since the main question of the thesis, which is whether "Islamic liberalism" is theoretically coherent, requires a comparison between Locke's natural law liberalism and "Islamic liberalism," investigating the relevance of Christianity to liberalism is necessary. Even though the difference between Islam and Islamic is controversial, it is obvious that both of them refer to a particular system of faith what is called the religion of Islam. In this context, the interplay between Christianity and Locke's natural law liberalism can be evaluated as a criterion for this comparison; to this end, this chapter will search an answer for a secondary question: To what extent does Locke utilize Christian theology in the process of building his theories on the right to resistance, right to private property, and right to religious freedom?

To provide a theoretical basis for the above-mentioned comparison, the first subchapter will investigate the role of natural law and Christianity in Locke's nascent liberalism. It will also be as a continuation of the previous chapter since it will not only examine the Christian theology embedded in Locke's thought but also will analyze Locke's own perspectives on natural law. Therefore, Locke's contribution to natural law tradition and natural law tradition's contribution to Locke's liberalism will be scrutinized. The second subchapter will focus on Locke's natural rights which are the foundations of his embryonic liberalism. As mentioned earlier, what makes Locke one of the founding fathers of liberalism is his development of natural rights that are limited in this thesis to right to resistance, right to private property, and right to religious freedom; this is why the second subchapter will explore Locke's philosophy on these rights and will analyze the effects of natural law and Christianity on their construction.

3.1 Locke's Liberalism Embedded in Natural Law and Christianity

"Should liberals ground their liberalism in classical natural law? Should those who take their orientation from natural law theory necessarily be liberals?" Wolfe (2006, p. 1) begins his *Natural Law Liberalism* with these questions. He, then, reveals his proposition and writes that even though liberalism and natural law have some tensions and differences, they also have a "rocky relationship" between each other (Wolfe, 2006, p. 2). As an example of these tensions, one can argue that historical roots of natural law trace back to Aquinas, or even more beyond him, to Greco-Roman philosophy; while liberals trace the roots of liberalism to John Stuart Mill, or back to Locke, or even Hobbes. The proponents of the antagonism between natural law and liberalism cite not only the differences between their historical backgrounds, but also their position on "regulating morality"; while natural law theorists defend regulating morality, liberals commonly oppose it. Wolfe (2006, p. 2), after emphasizing these tensions and rapports, he includes Locke in the discussion and writes that "natural law and liberalism were, after all,

originally ‘married,’ in the classical liberal political philosophy of John Locke.” To him, the features of this marriage and the recipe for easing this tension are as follows:

> The principles of natural law philosophy provide a more solid foundation for liberalism and moderate its more problematic tendencies. They secure the strengths of liberalism while mitigating its defects. Above all, they provide a ground for liberalism that rests on a confidence that human beings can and do know the truth about the human good (in its great variety of forms) rather than a skepticism about such knowledge or a despair that human beings can ever agree on it. It grounds liberalism positively in the truth about the human person rather than negatively in various forms of agnosticism, about man as much as God (Wolfe, 2006, p. 3).

Wolfe then examines the development of liberalism and acknowledges that there is an “intellectual crisis” in the contemporary liberalism; in order to overcome this crisis, the best way to follow is to hold “natural law liberalism” which is based on moderation the traditions of natural law and liberalism. He writes, in this context, that “my first task will be to identify key inadequacies of contemporary liberalism, which provides us with an incentive to look more closely at natural law liberalism as an alternative” (Wolfe, 2006, p. 4). However, this chapter does not have a similar objective; on the contrary, it investigates the connection between natural law and liberalism not to provide a future recipe but to understand the historical development of liberalism particularly in Locke’s political philosophy.

When liberalism is regarded as a political philosophy, it refers to 17th century developments that include comprehensive transformations in politics and society which were accompanied by the growth of freedom via enlightenment. These transformations challenged established political, religious, and social authorities and proposed a new limited form of government based on personal freedom. Intrinsically, when personal freedom was referred, it connoted a right to resistance against a political power, a right to private property, and a right to follow a religion. Rights in this category brought along discussions around the terms such as legitimacy of a political authority, the limit of public property, and toleration.

As we discussed in the previous chapter, natural law theorists, from the first day of their introduction of the concept of natural law, have generally made discussions that include a similar terminology. They argued whether the sovereign's power is all-encompassing, whether a resistance is possible, whether having a private property is allowed and legitimate, or whether embracing and struggling for a religion and sect which is different from that of the political authority is acceptable. In the 17th century, social, political, and economic circumstances of Europe, particularly those of England, created a vacuum that attempts to challenge the "old" to replace it with a relatively "new" one. Actually, this "new" proposition was not new enough even it was older than the "old" one because it was rooted in the historical tradition of natural law. Locke, as a pioneer of this "old-new" philosophy utilized the prolific discussions made in the context of more than two-thousand-year-old natural law doctrine. Then, is it plausible to maintain that what Locke did was only a reiteration or interpretation of a long-established tradition? Tarcov (as cited in Wootton, 1993, p. 8) answers this question in the affirmative and writes:

> Practically speaking, we can recognize in his work something like our separation of powers, our belief in representative government, our hostility to all forms of tyranny, our insistence on the rule of law, our faith in toleration, our demand for limited government, and our confidence that the common good is ultimately served by the regulated private acquisition and control of property as well as by the free development and application of science. As for fundamental political principles, it can be safely assumed that every one of us, before we ever heard of Locke, had heard that all men are created equal, that they are endowed with certain inalienable rights, that among them are life, liberty, and the pursuit of happiness, that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed, and that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.

Even though Tarcov has right in his side, he ignores one of the functions of Locke's political philosophy. Dunn (as cited in Wootton, 1993, pp. 9-10), who is aware of this function, rightly argues that "what we could mainly learn from Locke was that the intellectual difficulties, the paradoxes and tensions, with which we had to struggle were ones that had dogged liberalism from its inception." It is true,

as Wootton (1993, p. 11) remarks that the word 'liberalism' did not exist in his vocabulary. However, what he argued in the *Second Treatise* was not widely-accepted views of the age. Even Whigs, Locke's party, were far from his views and their victory after the milk and water revolution of 1688 was not realized since they accept Locke's political principles but because they endorsed struggle against the Catholic tyranny of Louis XI. Then, once again, the role of religion, Christianity, came to the forefront in the rise of liberalism. Frank van Dun (2001, p. 1) draws attention to this point in *Natural Law, Liberalism and Christianity* and writes that "The high tide of the Christian orthodoxy and classical liberalism belongs to the era when natural law was the fundamental concept of all serious thought about the human world."

To comprehend the relation among liberalism, natural law and Christianity, one should investigate the core principles and tendencies of liberalism. As Wolfe (2006, pp. 144-145) explains, there are five principles of liberalism. First, human dignity, which is rooted in equality, is the basic foundation. Second, consent is the *sine qua non* of a political rule. Third, the objective of government is to protect rights including political rights, religious freedom, property rights, freedom of expression and equality before the law. Fourth, a government which aims to realize these rights should be strong, but also limited. Fifth, the rule of law is the basis of political, legal, and social order. In addition to those principles, Wolfe (2006, pp. 146-147) adds five more tendencies in the liberal tradition. To him, liberal tradition tends to be a rationalist, reformist, individualist, and universalistic. Last, it tends to promote a rationalist religion or secularism: "It tends to be skeptical of claims of revelation, or at least of their relevance to political life." Then, liberal tradition is inclined to build boundaries between religions based on revelation and political institutions. Interestingly, what Locke did, as it will be examined in this chapter, is to provide and promote this separation through using Biblical and natural law arguments. Therefore, even though liberalism tends to secularism, Locke's separation of religious and worldly affairs is not rooted in secular arguments but emerges as a necessity prescribed by natural law and the

Bible. Here, some questions, which are directly related with the thesis's main discussions, appear as Plant (2003, pp. 1-2) asks:

> If we assume that liberal societies need to have some kind of moral foundation and be based upon a substantial set of moral beliefs, then how far can or should Christian beliefs contribute to that set of beliefs which would be foundational for liberalism? Indeed, even if it was thought that Christian beliefs were relevant and important in this context, should beliefs on which a liberal society rests owe anything at all to a comprehensive and metaphysical belief system which is not at all universally shared in a liberal and pluralistic society? Is it possible to draw out of Christian beliefs anything very determinate in terms of social, economic or political insights, or is it better to see Christianity as more concerned with issues of private and personal morality and personal salvation?

Plant (2003, p. 3) begins his inquiry through asserting that the challenges against liberalism, which are political nationalism and fundamentalist forms of religions, are "acute challenges." These challenges emerged because "there is a degree of confusion about the sort of moral foundations on which liberal societies are based." There are also cultural criticisms against liberalism based on its moral aspect; for instance, some argue that liberalism, via promoting individualism, undermines the society and collective realm. Then, is it true that liberalism is deprived of any consistent moral foundations? To John Rawls, liberalism should predicate on moral values. He regards liberalism not as a political position but as a *modus vivendi* which is a coping mechanism that enable society to live in a harmony. Then, *modus vivendi* proposes that "if we accept moral skepticism, then there can be no compelling reason to accept any moral or political principle" (Plant, 2003, p. 11). However, Rawls is also aware of the fact that "an endorsement of moral skepticism as a basis for liberalism can put liberalism at a disadvantage in terms of defending itself against forms of politics which claim moral certainty" (Plant, 2003, p. 12). Therefore, Rawls (1999, p. 431) argues that liberalism must have a moral basis and cannot exist as being a coping mechanism. Therefore, its prescription, overlapping consensus, transcends the mere *modus vivendi*. Then, if a moral basis is needed, can Christianity provide a moral basis for liberalism or for the political unity? Rousseau (1994, p. 158), as a response to this

question, argues that Christianity is based on a transcendent God; therefore, unlike pagan religions, it cannot provide a moral basis for political unity. He writes that "the gods of the pagans were not jealous gods; they shared the empire of the world between them." Then, if Christianity cannot be a ground for political unity as Rousseau argues, then, what is its role in a liberal pluralistic society?

Beyond doubt, Hobbes and Locke would have given quite different responses to this question. Even though Hobbes heavily relies on the absolute authority of the sovereign, as Wilkins (2014, p. 84) argues, he is "more liberal than many would suppose. A careful study of his conceptions of human nature, society, and liberty reveals his proto-liberal ideas." Hobbes also proposes a natural law theory; however, apart from others, he argues that his theory is based on logical reasoning, not derived from a moral principle (Wilkins, 2014, p. 85). In this vein, Hobbes's main objective is "to ground a moral principle (neutrality) on non-moral, purely prudential motives" (Larmore, 1996, p. 133). Chabot (1995, p. 401), accordingly, writes that "I accept the claim that there is a distinctive skeptical strain in Hobbes' thought but argue that his skepticism informs his moral vision, rather than depriving him of a conception of morality." Hobbes (1996, p. 27), in this context, argues that "one man calleth wisdom, what another called fear; and one cruelty, what another justice; one prodigality, what another magnanimity; and one gravity, what another stupidity." Therefore, to Hobbes (as cited in Chabot, 1995, p. 401), "we must rely on the sovereign to declare 'a common standard for virtues and vices,' because we cannot rationally justify any of our moral beliefs or communicate them to others." Christianity is also included in these moral beliefs. In Hobbes's teaching, Christianity is a component of his polemical works through which he tries to persuade readers that Christianity should be replaced with a more rational and egocentric outlook. As Dunn (1982, p. 79) writes, "Hobbes's problem is the construction of political society from an ethical vacuum. Locke never faced this problem in the *Two Treatises* because his central premise is precisely the absence of any such vacuum."

To Locke, there is no vacuum with respect to morality since he acknowledges a "theological doctrine in which individuality is the character each man has of being an equal and independent servant of God" (Oakeshott, 1993, p. 58). In *Morality and Politics in Modern Europe*, Oakeshott (1993, p. 58) finalizes the chapter on Locke through writing that "indeed, I believe that to Locke, the Puritan who became the father of European liberalism, this theological conception was more important than anything else." However, Strauss does not compromise with almost all other Lockean scholars in term of this argument; he argues that if the Scripture is the source of law of nature (i.e., morality), Locke, instead of *Two Treatises*, should have written a politics derived from the Scripture. Strauss regards Locke as a Hobbist and acknowledges that Locke's real theories and intentions were hidden under the justification of morality. He writes that "cautious speech is legitimate if unqualified frankness would hinder a noble work one is trying to achieve or expose one to persecution or endanger the public peace" (Strauss, 1953, pp. 208-209). Nevertheless, as Yolton (1958, p. 484) rightly writes, Strauss's "reading of Locke is almost wholly erroneous should be obvious to any reader of Locke." Last, Wolin (2004, p. 267) proposes a middle way in this respect. To him, Locke regarded philosophy as informed by Christian values; however, Locke also maintains that this type of philosophy should surrender its traditional focus on man's soul and destiny, therefore, should investigate the knowledge that would help man to utilize the natural world. Natural world oriented knowledge and philosophy are the inputs that result in Lockean liberalism. As Ashcraft (2010, p. 18) emphasizes "Lockean liberalism is not only compatible with, but—at least in an indirect sense—actually grows out of the progressive developments in natural science." Since natural philosophy was prevalent in 17th century, Locke's philosophy and liberalism was accordingly shaped as an outcome of his age. This development transformed Locke's mind as well and enabled his readers to notice the difference between young and mature Locke. Even though this shift will be obviously discerned in this chapter, it should be noted here that this change reflects Locke's struggle to reshape his theoretical outlook which his followers named as the principles of Lockean liberalism (Ashcraft, 2010, p. 25).

When dealing with the relation between liberalism and religion, is it possible to band all the religious beliefs such as Hinduism, pantheism, animism, Judaism, Christianity, and Islam under the banner of the term religion? Or, in other words, can a religion, other than Protestant Christianity, prove the relation between liberalism and religion? Of course, as Charvet & Kaczynska-Nay (2008, p. 5) write, "there is no reason why the general acceptance of a liberal basic structure should prevent some societies being predominantly Muslim, others Christian, Buddhist, secular or whatever." However, the main issue is whether these religions can generate or at least contribute to the general understanding of liberalism. Even though Islam is used as the component of comparison in the thesis, it should be kept in mind that even "the anti-Christian figures" such as Hume, Kant, and Hegel analyze the concept of religion through basing it on Protestant Christianity (Griffiths, as cited in Wolfe, 2006, p. 219). Therefore, it is suffice here to point out that Protestantism and its natural law interpretation, as did by Locke, provides the congruity between liberalism and religion.

However, to some scholars, this does not mean that liberalism is a direct outcome of specific religion or sect. As Judith Skhlar (1989, p. 24) writes, "liberalism does not in principle have to depend on specific religious or philosophical systems of thought. It does not have to choose among them as long as they do not reject toleration." Liberalism, of course, does not have only one uniform appearance; yet it is "a disputatious family of doctrines, which nevertheless share some core principles" (Charvet & Kaczynska-Nay, 2008, p. 1). While some scholars investigate it within the perspective of free market, *laissez-faire*, some others maintain that state at least function as a promoter of welfare provision. While some liberals prefer family to state as another key element of society, some others argues that right to life brings along right to divorce and abortion. These disputations around liberal principles, which of them are contemporary debates, does not directly exist in Locke's scope of interest. As Wootton (1993, p. 9) writes, "one can portray him as being both for and against the free market, for and against the welfare state, for and against divorce." Ashcraft (2010, p. 10) also

touches upon the same issue; he writes that Locke's liberalism "embodies, on the one hand, a radical moral egalitarianism rooted in the assumptions of theology and philosophy, and, on the other, a conservative defence of social-economic inequality." Then, if there are such ambiguities, is it a failure to extol Locke as the pioneer of liberalism?

Of course, "the word 'liberalism' did not exist in his [Locke's] vocabulary" (Wootton, 1993, p. 11). However, almost all scholars accept that "Locke's ideas…had powerfully moulded Anglo-American liberalism" (Mobley, 1996, p. 6). Dworetz (1990, pp. 135-136) calls Locke's liberalism as "theistic liberalism." He writes that Locke's theistic liberalism is rooted it "religious preoccupations" and "theological commitments" from which Locke derives his arguments. He, therefore, argues that "we need to trace the derivation of Lockean-liberal political ideas from theistic notions and principles." In order to support this thesis, Dworetz (1990, pp. 136-137) advances four evidences. First, he points out that Locke establishes his arguments on reason through comparing it with revelation. Second, Locke grounds his idea of limited government to the nature of God. Third, Locke uses "the politics of St. Paul" in order to justify right and duty to resistance against tyranny. Fourth, Locke's individualism arises from the pursuit of salvation and the realm of religion. Since all of these components of Locke's liberal ideas and their theological backgrounds will be examined in this chapter in detail, it is suffice here to note that these arguments played a significant role in the history of the United States. Becker (as cited in Dworetz, 1990, p. 135) writes that "most Americans had absorbed Locke's works as a kind of political gospel." Moreover, Locke's arguments were so embraced by the religious leaders of New England—the birthplace of America, including Massachusetts, Connecticut, and Atlantic coastline—that "Locke rode into New England on the backs of Moses and the Prophets" (Rossiter, as cited in Dworetz, 1990, p. 135). Locke's theistic liberalism, which also has roots in Christianity, influenced not only the clergy of New England but also the federal foundation of the state. Locke's arguments influenced James Madison who was one of the authors of the Federalist Papers and the United

States Constitution. He also maintains that Locke's ideas also influenced Thomas Paine on natural rights and civil society. Last, without a doubt, Locke's liberalism descended to 19th century classical Utilitarians, who embraced Locke's theories and methods, including Jeremy Bentham and John Stuart Mill.

Ashcraft's (2010, p. 265) final words are worth citing here in its entirety to sum this subchapter:

> Locke's thought expresses the tension within liberalism as a social theory between its universalistic claims to moral and religious equality - liberty, equality and fraternity - and its instrumentalist treatment of human beings as part of the process of capital accumulation. The bifurcation between the radical assertions of moral worth and the indifference to the socioeconomic suffering of the individual that characterizes Locke's political thought reappears as a constant tension within the political theories of liberals since the seventeenth century.

In this context, Lockean liberalism has both theologico-ontological and anthropologic-epistemological aspects (von Leyden, 1981, p. 101). Then, once again, the relation among liberalism, natural law, and Christianity in Locke's political philosophy comes to the forefront.

3.2 Natural Law in Locke's Political Philosophy

The first step in the process of understanding Locke's political philosophy is the historical context in which he wrote his treatises. This historical context can be summarized as the struggle for constitutionalism and the opposition to royal absolutism that eventually led to the execution of Charles I in 1649 when Locke was a student at the Oxford University where he studied of medicine. One of his patients was Anthony Ashley Cooper, first Earl of Shaftesbury, a prominent aristocrat of the age who was the leader of Whig Party and led the parliamentary resistance against the monarchy and to whom Locke served as a private secretary and personal physician in his household (Browning, 2016, p. 196). During the

political crisis of 1681, when Charles II supported his brother Catholic James of Scotland for the succession to the English throne, Locke participated in the active political life by writing his *Two Treatises of Government* (Monahan, 2007, p. 164). In essence, this book is, to Gingell, Little, & Winch (2000, p. 65) "one of the problems of Locke scholarship. The work was published anonymously and in an incomplete form in 1689, and Locke did not own it during his lifetime." Even though these treatises were not published due to the defeat of opposition, Locke managed to publish this book anonymously one year after the Glorious Revolution of 1688 when the parliamentarian suggestion, which is the succession of William of Orange and his wife Mary to the throne, took place.

The Glorious Revolution of 1688 has so significant role both in Locke's life and philosophy that to Walsh (2009, p. 274), "almost everything he did in the remaining 15 years of his life may be seen as an effort to sustain its [Glorious Revolution's] underpinnings." Locke also examined the factors that primarily precipitated the political conflict and then led to the Revolution. To him, religion was "not only a potential source of conflict but, more importantly, as the wellspring of the moral consensus that could alone guarantee political harmony" (Walsh, 2009, p. 274). In *An Essay Concerning Human Understanding* and *A Letter Concerning Toleration*, he mainly discussed the role of religion and morality in political and social life. Moreover, he positioned Christianity at the core of a similar discussion that he held in *On the Reasonableness of Christianity.* One of his main targets was to provide a common basis for different scriptural interpretations and create a "Latitudinarian Christianity," as Walsh (2009, p. 274) writes, through which all the denominational divisions would disappear. His final work, *Notes and Paraphrase of the Epistles of Saint Paul* was in accordance with this purpose.

When Locke's all works are scrutinized, it can be obviously proposed that one of the common central themes in these treatises is the theory of natural law. However, as Hancey (1976, p. 439) suggests, "Locke himself never fully articulated his

theory of natural law. Modern scholars, therefore, begin with a handicap. Nevertheless, one can attempt to 'get a feel' for what Locke had in mind by the term *legis naturae*." In his Essays, which are comprised of eight interrelated essays, he discusses whether *legis naturae* is knowable in the half of them, two of them mention the obligatory function of the law of nature, and finally one of them handles the fundamentals of natural law. Therefore, none of the essays informs the reader about the constituents of natural law. As Dunn (1982, p. 21) writes, "more than any other of Locke's works, with the single exception of the great *Essay Concerning Human Understanding* itself, they present the mind at work and not merely the finished results of such work." To Hancey (1976, p. 440), even though *Treatises* was written two decades later than the *Essays*, it also has no clear reflection of a solution found in Locke's mind. Nevertheless, Strauss (1958, p. 490) summarizes Locke's theory of natural law in terms of his arguments in *Essays* as follows:

> There exists a natural law which owes its obligatory power to the fact that, known by the natural light, that that law is the will of God; the content of the natural law is known by the natural light which indicates what is conformable to a rational nature or to the natural constitution of man, and hence good. As a rational being, man is disposed to contemplate the wisdom and power of God in His works and to honour Him, as a being with a certain natural propensity to enter society; he has duties toward all other men, the law of nature not permitting that men are divided into hostile societies; as driven by an inner instinct to preserve himself, he has duties toward himself. All virtues (religion, obedience to superiors, truthfulness, liberality, chastity and so on), as well as abstention from robbery, theft, inchastity and murder are prescribed by the natural law. Obedience to the natural law leads men to that peak of virtue and happiness to which both the gods call and nature tends.

To briefly summarize Locke's natural law theory in *Essays*, it can be proposed that "there is a *lex naturae*, and it can be known by the light of nature. The light of nature is known…by reason through sense-experience. The senses supply ideas of sensible particulars, reason directs, combines, and forms further ideas" (Lucas, 1956, p. 175). Obviously, one of the features of natural law in the *Essays on the Law of Nature* is the "light of nature." Locke (1997, p. 100) defines it and writes that "this light of nature is neither tradition nor some inward moral principle

written in our minds by nature; there remains nothing by which it can be defined but reason and sense-perception." He also gives information about the function of "light of nature" and writes:

> We have proved above that natural law can be known by the light of nature, which indeed, is our only guide when we were entering the course of this life, and which, amid the various intricacies of duty, avoiding the rough roads of vice on one side and by-ways of error on the other, leads us to height of virtue and felicity whereto the gods invite and nature tends (Locke, 1997, p. 100).

In this framework, conclusions can be derived from this passage include that Locke does not give credit to tradition or other conventional elements to obtain the knowledge of law of nature. However, here it should be noted that the writer of *Essays* and writer of *Treatises* are different from each other on the role of these elements. A mature Locke, on the other hand, argues in *The Reasonableness of Christianity* that majority of people are capable of making political decisions in line with natural law; however, there are some people who "cannot know and therefore must believe." (Locke, 1999b, p. 158). This passage shows that Locke admits Aquinas's perspective on the value of revelation. Locke (1999a, p. 692) accordingly writes in *An Essay Concerning Human Understanding* that "whatever God hath revealed, is certainly true; no doubt can be made of it." He then argues that "it is a revelation, because they firmly believe it, and they believe it, because it is a revelation" (Locke, 1999a, p. 698). Hancey (1976, p. 443) argues that Locke makes a division between "an awareness of natural law" and "knowledge of natural law." To him, "while Locke acknowledges the value of faith and tradition in giving us an awareness of the tenets of natural law, a full understanding or knowledge of natural law can only be gained through the light of nature."

Second conclusion can be drawn from the above-mentioned passage is that, to Locke, reason does not create or form the law of nature; on the contrary, law of nature is prior to reason and reason can discover it. However, Locke also changes this position in his later ages. Locke (1999b, pp. 149-150), in *On the Reasonableness of Christianity,* writes that "human reason, unassisted failed men

in its great and proper business of morality. It never from unquestionable principles, by clear deductions, made out an entire body of the law of nature." Hancey (1976, p. 444) explains the root cause behind this shift and maintains that "the shift away from an exclusive rationalist position may represent a growing disillusionment over the ability of men to come to grips with their world." Schneewind (1994, p. 219) points out that "Locke's doubts about the ability of reason to discover and to teach effectively the laws of nature do not contradict his belief that those laws, once revealed, can be rationally demonstrated." Young Locke's insistence on reason can be explained with the intellectual *Zeitgeist* of his age that the emphasis on rationality was hand in hand with the causality principle which has two axioms: *nihil sine causa* [nothing happens without cause] and "the cause must be more perfect than its most perfect effect." (Arendt, 1998, p. 312). In this line, Locke (1997, p. 102) describes the relation between natural law (the effect) and God as the law-maker (the cause) and writes:

> First, in order that anyone may understand that he is bound by a law, he must know beforehand that there is a lawmaker. Secondly, it is also necessary to know that here is some will on the part of that superior power with respect to the things to be done by us, that is to say, that the lawmaker, whoever he may prove to be, wishes that we do this but leave off that, and demands of us that the conduct of our life should be in accordance with his will.

Obviously, Locke's natural law theory bears the characteristics of his age in terms of the *nihil (fit) sine causa* axiom and the cause and effect hierarchy. Even though, Locke turns back to Aquinas's position on the role of faith in the understanding of natural law, contrary to Aquinas, Locke rejects the changeability of natural law. He, first, define the natural law as "being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature, and for this reason commanding and prohibiting" (Locke, 1997, p. 82). He also points out that "human nature must be changed before this law can be either altered or annulled" (Locke, 1997, p. 125). Then, can a majority of people change the natural law through their consents? Locke (1997, p. 108) replies this question via asking another question as follows: "Into what disgrace, villainy, and

all sorts of shameful things would not the law of nature lead us astray, if we had to go whither most people go?" Obviously, Locke does not give a room to consent in determining and changing the natural law; therefore, the power of the law of nature is for him autonomous of consent. In other words, to Locke, private interests of the individuals cannot be the basis of natural law. He, in this sense, writes that "yet, if the private interest of each person is the basis of that law, the law will inevitably be broken, because it is impossible to have regard for the interests of all at one and the same time" (Locke, 1997, p. 131).

Then, another question is, if consent is not the basis of natural law, can utility be the basis of it? Locke (1997, p. 133) replies: "Utility is not the basis of the law or ground of obligation, but the consequence of obedience to it." Last question is, in that case, what is the essence of natural law to Locke? Hancey (1976, p. 447) presents a clear summary of Locke's approach to natural law and argues that "natural law for Locke…depends neither upon capricious consent of a majority of individuals, nor upon a utility which is ephemeral…It is based upon the will of a divine Sovereign and is concomitant with the very essence of created man." This also means that the law of nature creates an equal obligation for all men. Locke (1997, p. 124) acknowledges that "those precepts of the law of nature, which are absolute…are binding on all men in the world equally, kings as well as subjects."

Lockean argument of the equality before natural law is a controversial issue among scholars. Even though Locke argues that the natural law is binding equally for all men, he also maintains that "those decrees of nature…are binding on men exactly in proportion as either private or public functions demand; the duty of a king is one thing, the duty of a subject is another" (Locke, 1997, p. 124). Hancey (1976, p. 449) discusses in his article that Locke's division among the duties of men is generally regarded by scholars as "Locke [is] a defender of class interest and [is] a spokesman for the rising bourgeoisie." He contends that Lockean natural law theory is not "an attempt to legitimize the rising bourgeoisie through what has come to be called a theory of 'possessive individualism'" (Hancey, 1976, p. 440).

Gingell et al. (2000, p. 67) also writes that "Locke has been accused, rather unconvincingly, of being a simply mouthpiece for the 17th century ruling classes." On the contrary, Marx (2010, p. 616) refers to Locke in *Capital* as a bourgeois apologist who justified the historical advance of capital. Similarly, Macpherson (Macpherson, 1990, p. 221) points out in *The Political Theory of Possessive Individualism* that Locke's arguments legitimize and sustain class interest in favour of the bourgeoisie. As Ashcraft (2010, p. 264) summarizes, to Macpherson, "Locke was an apologist for a capitalist system of exploitation of the worker and the unlimited accumulation of wealth…That is what liberalism is all about." It is suffice here to note that right to property and its relation with Locke's understanding of the class concept will be investigated in the forthcoming subchapter.

To turn back to equality before natural law, the rationale behind Locke's above-mentioned division between public and private is that the duties of the public officials, since they affect the *forum* or common good, are different from that of those whose actions affect merely themselves. Nevertheless, natural law is a guide for both of these types of individuals; Locke (1980, p. 71) points out that "the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, i.e., to the will of God." This passage also implies that there is a hierarchy between the human law and the natural law: human law is subordinate to natural law. Locke mentions that "municipal laws of countries, which are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted" (Locke, 1980, p. 12). And, it seems that Locke places the will of God at the top of this hierarchy.

God's role in Lockean natural law is a contested matter in the literature. For instance, Strauss (1953, p. 221) writes that "Locke deviated considerably from the traditional natural law teaching and followed the lead given by Hobbes" and maintains that the natural law in Locke's perspective is merely a human product.

In his another work, Strauss (1958, p. 490) writes that "he [Locke] deviates from the tradition by denying that the natural law is inscribed in the minds of men and that it can be known from men's natural inclination or from the universal consent of men." On the contrary, Yolton (1958, p. 483) argues that "Locke was seeking to justify a system of morality by grounding the moral law in something objective. The law of nature is a decree of God, not of man's reason." Therefore, Yolton repudiates the claim that Locke's natural law teaching represents a break within the natural law tradition. In line with Strauss, Levering (2008, p. 103) writes that "despite Locke's repeated references to God, therefore, his account of the law of nature or the law of reason joins with Descartes and Hobbes in building everything from the individual human being." Therefore, to Levering, Locke's natural law theory can be regarded as a part of anthropocentric natural law teaching.

As it was mentioned in the previous chapter, the tension between reason and faith continued throughout the tradition of natural law. To Hancey (1976, p. 440), Locke's achievement is to unite or reconcile these rationalist and fideistic positions; he writes that "the law of nature for Locke…can be traced from the Stoics, through the Roman lawyers, the Christian era, the school of *Naturrecht*, and ultimately through 'the judicious' Hooker." He also maintains that, to Locke, "all who would use their God-given faculties of sense-perception and reason could attain knowledge of that law" (Hancey, 1976, p. 441). Similarly, Singh (as cited in Oakley, 1966, p. 94) considers that Locke's approach to natural law is a deviation from the realist-intellectualist tradition and he also argues that "Locke's conception of natural law is continuous with the classical Stoic and Christian position represented by Cicero and St. Thomas and coming down to Richard Hooker." d'Entrèves (1970, p. 17) explains the reason behind this similarity between the philosophers' approaches to natural law; he acknowledges that "if Cicero and Locke agree in their definition of natural law, this is an indication of a more intimate link than mere imitation or repetition." In this vein, Cunha (2013, p. 30) discusses Locke's natural law reading and mentions that "if we read even the

Two Treaties on Civil Government, their rhetoric is more ancient in some sense, e.g. the religious topics, than those of Machiavelli's *The Prince*."

It is obvious that there are some similarities in the perceptions of natural law among the scholars. For instance, Locke utilized the works of Pufendorf, Hooker, and Grotius. Even though, "the judicious Hooker" is highly praised by Locke, Locke does not acknowledge Hooker's natural law theory which, in brief, supposes that natural law can be known via reason since it is written in people's conscience. Therefore, to Hooker, the consensus over some laws proves the divine origin of morality. However, Locke discredits *consensus gentium* as Hooker suggests and he considers natural law more like Grotius does (Schneewind, 1994, p. 209). Then, what is natural law in Locke's mind? First of all, to understand Locke's mind concerning to *legis naturae*, his view of the source of knowledge is of importance. To him, "morality is capable of demonstration, as well as mathematics; since the precise real essence of the things moral words stand for may be perfectly known" (Locke, 1999a, p. 507). Therefore, the law of nature in his mind, since being a moral principle, is capable of demonstration. To defend this opinion, Hancey (1976, p. 441) writes that "Locke's most innovative deviation from the traditional conception of the law of nature was his assertion that the tenets of natural law were capable of demonstration." Essentially, Locke (1997, p. 101) writes that "there is nothing so obscure, so concealed, so removed from any meaning that the mind, capable of everything, could not apprehend it by reflection and reasoning, if it is supported by these faculties." To Locke, like to Grotius and to Hobbes, it is possible to logically demonstrate the natural law.

Locke utilizes the demonstrability of natural law argument also in the *First Treatise* as a tool against Filmer's arguments who champions divine right of kings and writes in *Patriarcha* that "for as kingly power is by the law of God, so it hath no inferior law to limit it" (Filmer, 1680, p. 29). However, Locke argues that "no one can be supposed to have an absolute unlimited power and, at the same time, also be supposed to exist under the obligations imposed upon mankind by the law

of nature" (Ashcraft, 2010, p. 73). Throughout his *First Treatise*, Locke objects to Filmer's main thesis and he uses the natural law arguments to determine the boundaries of positive law; he writes that "the positive laws of men cannot determine that which is itself the foundation of all law and government, and is to receive its rule only from the law of God and nature" (Locke, 2003a, p. 77). Then, he states that Filmer should demonstrate whether natural law determines the type of political authority. He writes that Filmer should resolve the doubts on how political power was "plainly determined by the law of nature or the revealed law of God" (Locke, 2003a, p. 76). Moreover, Filmer's another claim, which is Adam's power transmits through generations via fatherhood, is criticized by Locke as well. He argues that "we need…some appreciation of what rights and duties are attached to fatherhood…and how these can be related to God's will as expressed through the law of nature" (Ashcraft, 2010, p. 71). Locke, therefore, acknowledges that the objectives of natural law do not legitimize the contention of the unlimited power of fathers. To Locke, Filmer's theory is not compatible with God's purpose in having created the humans. God's merely objective is the preservation of humanity; however, Filmer's thesis about the absolute authority of fathers and its transmission through the generations does not support God's objectives; in other words, it undermines the aim of natural law. Briefly, to (Locke, 1980, p. 14): "[H]e who attempts to get another man into his absolute power, does thereby put himself into a state of war with him."

State of war in this passage is the opposite of state of nature in Locke's terminology. In the *Second Treatise*, Locke envisions a pre-political and moral condition where men and women are equally free, independent, and rational. Individuals in the state of nature can discern right from the wrong and good from the bad since they are aware of natural law and its consequences, namely, God-given moral responsibilities. Locke (1980, p. 9) argues that "the state of nature has a law of nature to govern it, which obliges everyone: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent." He also adds the final statement to this argument, which is a renowned phrase:

"No-one ought to harm another in his life, health, liberty or possessions" (Locke, 1980, p. 9). Through referring to this excerpt, Kriegel (2002, p. 24) points out that "natural law for Locke is first and foremost the right to life." Then, what is considered as a right? To d'Entrèves (1970, p. 62), mainstream natural law scholars in the 17th and 18th centuries generally regard natural law as the indispensible premise of natural right. Thus, they do not concede Hobbes's anarchical projection of natural right as opposed to natural law. For instance, he writes that, to Locke, "the natural freedom of man is nothing else than his knowledge of the law of nature." (d'Entrèves, 1970, p. 62). Finnis (2011, p. 228) also provides a comment on the Locke's perception of the concept of right: "Locke uses the term 'a right' and its cognates in a loose and informal manner, but with an overwhelming predominance of the connotations of 'liberty' and 'power', rather than of 'claim-right' or of '*jus*' in its classical sense." In essence, Locke discusses the concept of right within the context of some other concepts such as liberty, safety, property, security, and peace. Following excerpt is only one of the examples of such a discussion:

> "The only way whereby anyone divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it" (Locke, 1980, p. 52).

Even though this passage tells the readers about the driving force behind establishing political order, it tells more about the scope of rights in Locke's mind. Therefore, in this chapter, prominent components of Locke's natural law theory and rights will be investigated here in subchapters: political legitimacy and right to resistance, right to private property, and right to religious freedom.

Then, what is Locke's position against God and Christianity? To understand his position, one should go back his era and investigate the general perspectives on the issue. In the second half of the 17th century, theology based on textual tradition became so implausible that almost every theologian and philosopher repudiated

the textual-oriented claims. In this conjuncture, Luther's and Calvin's humanist or anthropocentric readings of texts became popular over the pre-reformation understanding of Christianity (Wolterstorff, 1994, p. 173). In this context, Locke's philosophy of religion is based on an epistemology that separates the revealed religion, which is Christianity, from the natural religion. This division can also be found in Aquinas's works where "articles of faith" is distinguished from "the preambles of faith" (Wolterstorff, 1994, p. 172). In any case, like Ashcraft (as cited in Wolterstorff, 1994, p. 174) argues, "for a striking feature of Locke's thought is that religious considerations enter into all parts of his thought; Locke's philosophy as a whole bids fair to be called a Christian philosophy." When it comes to relation between the natural law and God, Locke presents both voluntarist and rationalist characteristics in the *Two Treatises*. According to his voluntarist position, natural law is binding since it is an outcome of God's will and welcomed by faith and according to his rationalist position, natural law is binding since it is reasonable. Traditionally, while voluntarism is criticized due to it includes an arbitrary ruling by God; rationalism is criticized due to its limitation put on God's freedom to promulgate a law. Locke maintains that natural law is a reasonable product of God's will; therefore, he struggles to be free from both types of criticisms (Parker, 2004, p. 126).

Another significant point in Locke's natural law theory is the balance between faith (belief) and reason (knowledge). In 176, Locke argues that the "assent or belief is taking some proposition to be true, whereas knowledge is seeing it to be true." Similar to Aquinas, Locke holds that knowledge is established in and originated from experience. However, Locke's empiricism is so different from Aquinas's metaphysical realism that, to Locke, knowledge is composed of a set of ideas which man obtains from sensation and reflection. Therefore, to some scholars, "Locke's theory of natural law is not a continuation of the traditional conceptions of natural law, as espoused by Aquinas, but rather, a radical departure, or even its corruption" (Pennance-Acevedo, 2017, p. 246). Moreover, Locke does not refer to the oft-cited verse, the *locus classicus* of natural law tradition which

mentions that "the law are written on their hearts." On the contrary, as Schneewind (1994, p. 201) writes, "he seemed to be casting doubt on the existence of any justifiable universal morality." Strauss (1953, p. 225) additionally points out that, to Locke, "no moral rules are 'imprinted in our minds' or 'written on [our] hearts' or 'stamped upon [our] minds' or 'implanted.' Since there is…no *synderesis* or conscience…the law of nature becomes known only through demonstration." Nevertheless, Aquinas and Locke both agree that natural law is "derived from God and, thus, that without God it is impossible to ground a universal moral law which human beings are obliged to obey" (Rossiter, as cited in Pennance-Acevedo, 2017, p. 239). Locke (1997, p. 102) in this context, writes that "in order that anyone may understand that he is bound by a law, he must know beforehand that there is a lawmaker, i.e., some superior power to which he is rightly subject."

Another point which Locke has in common with his antecedents is that he embraces faith as a related concept with revelation. Locke (1999a, p. 685) argues that "faith…is the assent to any proposition…upon the credit of the proposer, as coming from God, in some extraordinary way of communication. This was of discovering truths to men, we call revelation." Briefly, to Locke, religion is correlated with belief and knowledge. As Wolterstorff (1994, p. 187) summarizes, Locke "held that a good deal of natural theology can be known by demonstration. What can be demonstrated is that there is an eternal, most powerful, and most knowing being" which to Locke (1999a, p. 614), "whether any one will please to call God, it matters not." He, then, concludes that "from this idea duly considered, will easily be deduced all those other attributes, which we ought to ascribe to this eternal Being" (Locke, 1999a, p. 614). After all, Locke again endeavours to protect the balance; Strauss (1953, p. 223) writes that, to Locke, "the law of nature is indeed given by God, but its being a law does not require that it be known to be given by God, because it is immediately enforced, not by God or by the conscience, but by human beings." He additionally notes that, in Locke's teaching, "the law of nature is a declaration of the will of God. It is 'the voice of God' in

man. It can therefore be called the ‘law of God’ or ‘divine law’ or even the ‘eternal law’; it is ‘the highest law.’” (Strauss, 1953, pp. 202-203).

In essence, Locke distinguishes the sources of moral ideas as the divine law, the civil law, and the law of opinion or reputation. Thus, “by the relation they bear to the first of these, men judge whether their actions are sins, or duties; by the second, whether they be criminal or innocent; and by the third, whether they be virtues or vices” (Locke, 1999a, p. 336). He accordingly defines the divine law as a “law which God has set to the actions of men,—whether promulgated to them by the light of nature, or the voice of revelation” (Locke, 1999a, p. 336). Then, what is the role of reason in this context? As Wolterstorff (1994, p. 184) replies, “over and over Locke says that in the governance of our beliefs we are to let reason be our guide—or in another metaphor, to listen to the voice of reason.” This idea leads scholars to argue that even though Locke repudiates atheism, he also reduces Christianity to a religion of reason. For instance, to Strauss (1953, p. 215), there is a tension between Locke’s natural law and the Biblical teaching. He holds that Locke’s state of nature is an alien concept to the Bible and writes that “the state of nature, as Locke conceives of it, is not identical with either the state of innocence or the state after the Fall.” Strauss, therefore, maintains that some of Locke’s ideas are not coherent with the doctrines in the Bible. To support this claim, Strauss utilizes Locke’s approach to parental rights. On this matter, Locke (1980, p. 37) writes that “the honour due from a child, places in the parents a perpetual right to respect, reverence, support, and compliance too, more or less, as the father's care, cost, and kindness in his education, has been more or less.” Strauss (1953, p. 219) infers from this excerpt that “the categorical imperative ‘honour thy father and thy mother’ becomes the hypothetical imperative ‘honour thy father and thy mother if they have deserved it of you.’” And he concludes that Locke’s “partial natural law” is not identical with the basic teachings of Scripture: “If ‘all the parts’ of the law of nature are made out in the New Testament in a clear and plain manner, it follows that the ‘partial law of nature’ does not belong at all to the law of nature.” Finally he contends that, to Locke, “the law of nature must be known to have been

given by God. But the 'partial law of nature' does not require belief in God." This is also one of the reasons why Strauss considers Locke in an agreement with Hobbes, not with Hooker, on the function of civil society: "the sole judge of which 'transgressions' are, and which are not, deserving of punishment" (Strauss, 1953, p. 218). In brief, Strauss (1953, p. 221) asserts that "Locke deviated considerably from the traditional natural law teaching and followed the lead given by Hobbes."

Contrary to Strauss, Wootton (1993, p. 83) argues that "almost all the principles that we think of as being distinctly Lockean are in fact borrowed by Locke from Tyrrell." By the way, James Tyrrell was an author and Whig political theorist who hosted Locke while he was writing his *Two Treatises.* Tyrrell authored *Bibliotheca Politica*, a defence of natural liberty, and *Patriarcha Non Monarcha*, a criticism of Filmer's divine right theory which is replete with references to Hobbes and Pufendorf. Wootton gives more detail about the resemblance between Locke and Tyrrell. He writes:

> Some of Tyrrell's arguments were far from original: He is deeply in debt to Pufendorf for his theory of natural freedom; part of his resistance theory comes from Hunton; and his theory of a natural right to punish comes from Grotius. Locke had certainly read Grotius for himself. He bought a key work of Pufendorf's in May 1681. He may never have read Hunton. In each case, though, Tyrrell had selected from his sources precisely those elements that Locke was to draw upon. We do not need to think of Locke writing with a large pile of volumes on his desk: all he needed was Tyrrell (Wootton, 1993, p. 83).

In any case, as Zuckert (1975, p. 271) writes, what is known as Locke's natural law theory, a theory par excellence, deserves to be examined in detail since it includes almost all aspects of Locke's political philosophy that is still being investigated. Among these characteristics, the establishment of government, its legitimacy and right to resistance against a government, right to private property and its limitations, and social peace and religious tolerance are to be discussed thoroughly.

3.2.1 Political Legitimacy and Right to Resistance

One of the main characteristics of Locke's natural law teaching is his starting point; the state of nature (Browning, 2016, p. 198). He emphasizes the relation between state of nature and natural law and argues that "the state of nature has a law of nature to govern it, which obliges every one" and "that law teaches all mankind…that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions" (Locke, 1980, p. 9). In *Second Treatise*, Locke describes the state of nature as a pre-political state where individuals are equally free. In his own words, state of nature is a "state all men are naturally in…a state of perfect freedom to order their actions…within the bounds of the law of nature…a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another" (Locke, 1980, p. 8). It is evident that the state of nature described by Locke is so different than that of Hobbes who illustrates it as a war of all against all. Locke (1980, p. 15) through referring to Hobbes's *Leviathan*, writes that "here we have the plain difference between the state of nature and the state of war…[they] are as far distant, as a state of peace… and a state of enmity." To Locke (1980, p. 15), "want of a common judge with authority, puts all men in a state of nature." He, then, continues through asserting that the "force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war." As an outcome of this differentiation, Locke conceives the concepts of consent and compact substantially different from Hobbes. To Locke, in the state of nature, individuals are not free to submit their all rights and they are not allowed to become the slaves of others contrary to what Hobbes argues. In this context, Locke (1980, p. 17) concedes that "for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life."

In this pre-political state, as Locke asserts, there are some inconvenient features arising from the lack of law enforcement as well. In this vein, to Locke,

individuals agree to institute a political society to overcome these inconveniences. The significant point here is that in the process of establishing the government people do not sacrifice their fundamental natural rights. They perceive the government as legitimate on the condition that it does not transgress these rights. To Locke, as mentioned earlier, the fundamental rights are right to life, health, liberty, and possessions. In the state of nature, in order to secure these rights, individuals consent to form a government which is obliged to enforce natural law. As Browning (2016, p. 199) writes, Locke acknowledges that "the authority of government is limited by its hypothetical conditions of emergence, so that government functions legitimately only if it continues to recognize the law of nature and natural rights." The obligation of government to receive people's consent is not only a condition for the establishment of government but also should continue throughout its life. Therefore, individuals should consent government continually. Locke (1980, p. 78) points out clearly that "for all power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited." As a result of this forfeiture, "the power devolves into the hands of those, who gave it who may place it anew where they shall think best, for their safety and security" (Locke, 1980, p. 78). Thus, Locke (1980, p. 14) argues that "he who attempts to get another man into his absolute power, does thereby put himself into a state of war with him" and this type of attempt legitimizes the right to resistance. He explains the logic behind right to resistance and writes that "whosoever uses force without right…puts himself into a state of war with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and everyone has a right to defend himself, and to resist the aggressor" (Locke, 1980, pp. 116-117).

Obviously, the concepts of trust and consent are so important in Locke's arguments concerning the right to resistance. As Monahan (2007, p. 182) writes, Locke considers that the "origin of any political society lies in the individual consent of a number of humans to come together in a polity. The number of such

individuals is not critical, but the fact that each agrees with all the others is." In this context, Locke (1980, p. 52) writes that "the only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community." He also elaborates on the issue of majority and minority: "When any numbers of men have so consented to make one community or government…and make one body politic, wherein the majority has a right to act and conclude the rest." As Tully (2008, p. 617) argues, Locke stipulates that "each individual does have and should have political power." This means that while each individual has right and must consent to form a government, each individual also has right to revolt against the authority. If, as Locke (1980, p. 117) writes, "it is lawful for the people, in some cases, to resist their king," then, under what conditions should people resist and who can lead such a resistance? As it was discussed in the previous chapter, the medieval theories of political legitimacy restrict right to resistance and bestow it to particular bodies such as magistrates, councils, or princes. Thus, these theories do not give this right to common people. However, Locke removes this constraint and acknowledges that every individual has right to resistance against an authority. In this vein, Locke (1980, p. 124) writes that in order to "continue the legislative in themselves; or erect a new form, or under the old form place it in new hands, as they think good." Therefore, to Locke, right to resistance belongs to everyone. He writes that "all former ties are cancelled, all other rights cease, and everyone has a right to defend himself and to resist the aggressor" (1980, p. 117).

It is evident that Locke does not put limitations on the right to resistance, but rather he expands the scope of this right in terms of having it. However, Locke argues that people may legitimately use the right to resistance only when it is directed to a tyranny (Ashcraft, 1994, p. 230). Then, how does a king become a tyrant and how can people discern this transformation which justifies the resistance? In other words, what does constitute a tyranny? Locke answers these questions through utilizing the arguments of classical and medieval political thought. He writes that it is legitimate to resist "when the governor, however

entitled, makes not the law, but his will, the rule; and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion" (Locke, 1980, p. 101). He also justifies exercising the right to resistance when the political authority is used "not for the good of those who are under it, but for his own private separate advantage" (Locke, 1980, p. 101). He also emphasizes the difference between a king and a tyrant and writes that "one [the former] makes the laws the bounds of his power, and the good of the public, the end of his government; the other [the latter] makes all give way to his own will and appetite" (Locke, 1980, p. 102). Briefly, tyranny is a form of government that is the exact opposite of the common good, since tyranny lets the owners of political power to use it to seek their self-interests.

Locke (1980, p. 103) also provides a second definition of tyranny and he writes:

> Whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another.

According to this second definition, "the exercise of power beyond right" (Locke, 1980, p. 101) and "the use of force without authority" (Locke, 1980, p. 103) legitimize the right to resistance. Here, the key concept is the consent since a tyrant exceeds the boundaries of his power whose limits are determined by the people's consent. In essence, Locke (1980, p. 55) considers that "politic societies all began from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors, and forms of government." This means that "the ruler must be considered as the representative of the commonwealth" (Ashcraft, 1994, p. 229). Therefore, the ruler is "the public person vested with the power of the law" and he is authorized "by the will of the society, declared in its laws; and thus he has no will, no power, but that of the law" (Locke, 1980, p. 79). If the ruler uses his power against "the public will," which means using power against the law,

he divests his power and turns into "a single private person without power," to whom people no longer need to obey (Locke, 1980, p. 79). The significance of the concept of consent, which Locke regards as the basis of legitimate governments, is apparent throughout the *Two Treatises.* Then, why consent is so important in Locke's conception? As Tully (2008, p. 618) rightly explains, "the context in which Locke explicitly places the *Two Treatises* is the practical contests and theoretical debates over political power of his generation." He, then, summarizes the last sixty years before the publication of *Two Treatises* as the struggle between king, parliament, and people, and their theoretical discussion over the concepts such as resistance, legitimacy, and sovereignty. As Spellman (1998, p. 92) mentions, *Two Treatises* can be read in two ways: First, "as a tract for the times written by someone deeply engaged in a struggle of immediate personal import to the author and his associates," and second, "as a more detached set of reflections published in the aftermath of a particular revolution but anchored in reflections about human nature and divine purposes for mankind."

Locke's approach to consent triggers a question that whether he utilizes this concept as a means of legitimizing or delegitimizing the political authorities of his era. For instance, in order to base the sovereignty on consent, Locke (1980, p. 5) writes that "I hope are sufficient to establish the throne of our great restorer, our present King William; to make good his title, in the consent of the people." Then, does this excerpt reflect the material history of his era or a more general principle? Oakeshott (2006, p. 393) handles this question in *Lectures in the History of Political Thought* where he compares Hobbes and Locke; then he argues that while Hobbes reveals a comprehensive approach to the political, Locke, as an ideological thinker, produces rhetorical arguments in line with the existing situation rather than a wide-ranging philosophical inquiry. Dunn (1982, p. 57) also argues that Locke's rationale behind the right to resistance is more theocentric and historical. Dunn's historical perspective on Locke's philosophy "demonstrates the general value of the Cambridge School in explaining political ideas by adopting an historical approach, which relates ideas to circumstances and the intentions of

authors" (Browning, 2016, p. 213). Similarly, Monahan (2007, pp. 167-168) maintains that Locke's concept of right to resistance was a direct outcome of his *livre de circonstance* [a book adapted for the occasion]:

> Locke, in other words, set out to establish two things vis-à-vis the status quo post of William's seizure of the English throne by force: that William had the support of the English people, as he needed to have for any appropriate application of the natural freedom model of polity, and that the English people as individual citizens had full rights to overthrow William's predecessor (even though James II had originally enjoyed legitimacy) and, presumably, to overthrow William as well should he prove himself to be a tyrant.

Locke, in essence, envisions right to resistance also as a responsibility to society and God. He writes that "if he finds that God has made him…cannot subsist without society, can he but conclude that he is obliged and that God requires him to follow those rules which conduce to the preserving of society?" (Locke, 1999b, p. xcv). In addition to this theological reference, Ashcraft (2010, pp. 199-201) explains the rationale behind right to resistance through Locke's division of state of nature and state of war. Locke (1980, p. 104) writes that an individual "by actually putting himself into a state of war with his people…leave them to that defence which belongs to everyone in the state of nature." To Locke, a state of war can be evident in a society as well. He writes a scenario to show how people may turn to state of war. For instance, when a thief ambushes a man, since the thief put himself into a state of war with the man, that man has "a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case, where the mischief may be irreparable" (Locke, 1980, p. 15). To Locke (1980, p. 114) this type of action recreates the state of war within the society: "By force justify their violation of them, are truly and properly rebels…those who set up force again in opposition to the laws, do *rebellare,* that is, bring back again the state of war."

Then, what does happen if the thief in Locke's scenario is substituted with a king or if such a conflict between individuals occurs between the king and the parliament? Firstly, Locke (1980, p. 49) argues that "wherever any two men are,

who have no standing rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still in the state of nature." This means that if the conflict is between the king and the parliament, since there is no authority over these two institutions to be a judge over them and since the government is dissolved in this situation, all people turns back to the state of nature. Only when they establish a new government, they can leave state of nature at that time (Ashcraft, 2010, p. 203). Thus, the logic behind Locke's concept of right to resistance becomes more obvious: when both institutions or the king and the people are in the state of war this means that "in this situation, too, of course, the original form of government is dissolved, and the people have a right to provide for their own defence, as they had in the state of nature" (Ashcraft, 2010, p. 204). Again, to turn back to the material history of his age, it is possible to infer that, to Locke (1980, p. 15), both Charles II and James II put themselves in the state of war with the people and the legislature. Therefore, in this situation, the people have right to resistance against those who abolished the government; thus, created a "want of a common judge." Ashcraft (2010, p. 206) suggests that in Locke's mind, revolutionary action is "dependent upon the…assertion that the people have a right to a freely elected legislature of their choosing, and that any attempt to deny them this right is, *ipso facto*, grounds for revolution."

The legislative power is an important constituent in Locke's idea of "well ordered or constituted commonwealth." He writes that "the legislative power is put into the hands of divers persons, who duly assembled, have…a power to make laws, which when they have done, being separated again, they are themselves subject to the laws, they have made" (Locke, 1980, p. 76). In this context, not only individuals within the society but also the members of the legislative power are subject to law; in other words, no one is above the law. Another significant point in Locke's view of legislative power is that people and legislative authority have a mutual continuous link which is formed by elections and consent. He writes that legislative assembly is "made up of representatives chosen…by the people…This power of choosing must also be exercised by the people, either at certain appointed

seasons, or else when they are summoned to it" (Locke, 1980, p. 80). Then, if this continuous link is broken what should people do? Mainly, Locke argues that "the constitution of the legislative is the first and fundamental act of society establishing how the laws will be made by persons authorized thereunto, by the consent and appointment of the people." But if someone, one way or another, manages to dissolve the legislative or in his words "[w]hen anyone, or more, shall take upon them to make laws, whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey" (Locke, 1980, p. 108). Then, this does not mean that people should stay without a legislative; on the contrary, people as a collective body "may constitute to themselves a new legislative, as they think best, being in full liberty to resist the force of those, who without authority would impose any thing upon them" (Locke, 1980, p. 108). It is clear that Locke, once again, uses the arguments in his definition of tyranny and fundamentals of his approach to right to resistance in order to protect the legislative or, in practice, the English government.

Here, another significant point in Locke's approach to legislative is its structure. Locke acknowledges that inconveniences in the state of nature galvanize people to associate and agree to join in a political community. This is a kind of popular sovereignty which institutes the state. Then, he considers that people assemble to form a particular type of government. As Spellman (1998, p. 100) writes, Locke is not against monarchy but he accepts that any long-lasting form must embrace a representative assembly. He, then, argues that representation in Locke's assembly is directly related to the representatives' statuses of property and wealth since "a simple majority in choosing representatives would open the way to the possible populist redistribution of property by the poor." Therefore, Spellman (1998, p. 101) concludes that "Locke's representative government, then, is an oligarchic structure, one where property-owning elites continue to hold exclusive access to political power."

While Locke writes on the possible scenarios between the legislative and people, he also includes the possible movements of executive power. He, therefore, asks that "what if the executive power, being possessed of the force of the commonwealth, shall make use of that force to hinder the meeting and acting of the legislative, when the original constitution or the public exigencies require it?" (Locke, 1980, p. 80) Locke, then, replies his question and writes that "using force upon the people without authority, and contrary to the trust put in him, that does so, is a state of war with the people, who have a right to reinstate their legislative in the exercise of their power." He, then, writes the epicentre of his argument that "for having erected a legislative, with an intent they should exercise the power of making laws…when they are hindered by any force from what is so necessary to the society…the people have a right to remove it by force." (Locke, 1980, pp. 80-81). In this scenario, since people's authority, the legislative, is destroyed by the executive and "actually introduce[s] a state of war, which is that of force without authority," then, the executive, not the people are "guilty of rebellion" (Locke, 1980, p. 114).

Locke also provides a theological explanation of the right to resistance. He redefines the natural law in a God-oriented form and writes that the law of nature is a "measure God has set to the actions of men, for their mutual security" (Locke, 1980, p. 10). He argues that God created humans as free and equal and men must obey God's will which obliges men to refrain "from doing hurt to one another" and promotes "the preservation of mankind" (Locke, 1980, p. 9). In this vein, to Locke (Locke, 1980, p. 71), everyone's actions must "be conformable to the law of nature, i.e. to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind." Moreover, he writes that "the first and fundamental natural law…is the preservation of the society, and (as far as will consist with the public good) of every person in it" (Locke, 1980, p. 69). In essence, preserving mankind or society necessitates preserving oneself. Then, in the state of nature if a man breaches anyone's right, "every man hath a right to punish the offender, and be executioner of the law of nature" since this is "a

trespass against the whole species" (Locke, 1980, p. 10). When political and religious tension in Locke's era is considered, his arguments become more eloquent. As mentioned earlier, there were two interrelated factors in that period. First, it was a theoretical problem about the relation between the king and parliament; second it was a religious problem about providing the religious homogeny in the state particularly after the Reformation which challenged status quo and the role of government to ensure this uniformity (Monahan, 2007, p. 166). These two problems created two alternative options for Locke and other thinkers of that time: First, to establish and even fortify the superiority of monarch over the parliament, as Filmer argues; or to put limitations on monarchical power as Locke advances. Therefore, by his theory of right to resistance, Locke provides a political-theological solution to a political-theological problem.

To sum, Locke's approach to right to resistance includes four legitimate conditions. These are: "firstly, if a government is failing to enforce the law of nature; secondly, if a government fails to further the common good; thirdly, if a government loses the trust of its people; fourthly, if a government fails to act within the limits of positive law" (Gingell, et al., 2000, p. 69). To Taylor (2007, p. 160), "it is Locke who first uses this theory as a justification of 'revolution,' and as a ground for limited government. Rights can now be seriously pleaded against power." Therefore, Spellman (1998, p. 156) argues that Locke considers that "the first and foremost task of any legitimate government was to preserve and protect the natural rights of individuals, rights derived from the God-mandated natural law and operative even in the state of nature." Then, briefly, Locke tries to prove that the Hobbesian principle, the right of self preservation, can be realized not under the absolute government but requires limited government (Strauss, 1953, p. 231).

3.2.2 Right to Private Property

Locke does not only challenge to Filmer's arguments on the legitimacy of absolute monarchy which is based on divine selection and natural right of fatherhood, but also he writes to undermine another aspect of Filmer's political theory, that is, the justification of usurpation (Ashcraft, 2010, p. 81). As can be understood from *Patriarcha*, Filmer—similar to 17th century royalists—justifies the kings' absolute power over all the properties that exist in his territory. Filmer, thus, criticizes Grotius's approach to property right and contends that Grotius is contradictory in his views which are all humans owned all non-human things in common and then they agreed through contract to own privately what they had previously had in common. What makes these two propositions contradictory, to Filmer, is that while the first view describes a community ordained by God, second view advocates the private property which is against God's ordainment. Filmer also criticizes Grotius due to the historical impossibility of his assumptions. He maintains that it is not historically plausible for all humans to come together and share all the properties that they own in common before. In addition, he questions whether the unanimous consent given by all humans at a specific time is obligatory for subsequent humans who did not participate in the contract concerning the private property. It is, therefore, evident that, to Filmer, private property could be valid and legitimate if it were willed and expressed by God (Dunn, 2003, p. 42). Moreover, according as the material history of that era, Filmer, like all other royalists, regarded property as a grant given by the monarch to some of his privileged subjects as an entitlement. These prerogatives were bestowed as lands; however, these land ownerships were not in the category of rights and could not be claimed against the sovereign.

Locke's *First Treatise* is essentially a reaction to Filmer's arguments not only about the political legitimacy but also on the right to private property. The arguments that Locke utilizes against Filmer to justify resistance to a tyrant who breaks social contract are almost same with the arguments that he uses to

legitimize resistance due to a transgression of property rights (Monahan, 2007, p. 178). The logic is simple: "Governments which exceeded their trust by attempting to destroy or take away the property of the subjects 'put themselves into a state of war with the people,'" thus once again "under these conditions one was obliged to defend the law of nature" (Spellman, 1998, p. 100). Locke (2003a, p. 35) then cites an excerpt from Filmer who proposes that "every man that is born is so far from being free, that by his very birth he becomes a subject of him that begets him." Then, to Filmer, not only things are owned by the father (in religious context it is Adam, in political context it is the king), but also humans. Locke (2003a, p. 11), in response, points out that Filmer asserts that "the father had power to dispose or sell his children." To Locke (2003a, p. 39), Filmer's argument breaches the "main intention of nature," since humans are not properties, while the things are. In essence, Locke's main purpose is to prove that there is not any direct relation between the property and political power. As Walsh (2009, p. 282) argues, the reason why Locke deals with the issue of property is that he witnessed the royal claims on property and regarded them as a "principal threat to liberty," since, to Locke, property is "the nexus through which all of our other rights are exercised." Locke, in this vein, writes that "I have no reason to suppose, that he, who would take away my liberty, would not, when he had me in his power, take away everything else" (Locke, 1980, p. 15).

Locke uses theological arguments to refute Filmer's assumptions as well. For instance, he writes that God is the "sole lord and proprietor of the whole world, man's propriety in the creatures is nothing but that liberty to use them." (Locke, 2003a, p. 28). Then, God gave men "a right to make use of a part of the earth for the support of themselves and families" (Locke, 2003a, p. 26), since "the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions" (Locke, 1980, p. 22). These private possessions are bestowed by God "to the use of the industrious and rational" humans, or in other words, "not to the fancy or covetousness of the quarrelsome and contentious" (Locke, 1980, pp. 21-22). To Ashcraft (2010, p. 85), Locke, in the *First Treatise*,

perceives property as a component of religious realm, that is the relationship between God and human, in the *Second Treatise*, he regards property as a part of human relationships. In the latter, Locke once again uses the state of nature argument to justify right to property, and writes:

> Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state of nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property (Locke, 1980, p. 19).

Two inferences can be made from the excerpt above: First, even though Locke holds that "every man has a property in his own person," this does not mean that man owns himself since to Locke, man is God's property. Second, even though man is God's property, he can own a physical object or a non-human thing as a property through applying his labour to it. As Walsh (Walsh, 2009, p. 283) explains, "the most vivid aspect of his discussion is that labour alone establishes the claim of ownership." However, if the labour is accepted as the mere criterion of acquisition, then, can people accumulate more property than they can use? Can they have unlimited wealth? Can money be regarded as a property? Can a political regime interfere with the accumulation of wealth? Obviously, these questions concerning Locke's approach to private property lead us to his theory of labour that reveals the right to property in detail.

Before elaborating on the discussions about Locke's labour theory of value, his conception of property and natural right should be elaborately investigated. First, Locke's justification of natural right to property is one of his main arguments concerning the government and society. As Macpherson (1990, p. 198) writes, Locke "postulate[s] that men have a natural right to property, a right prior to or independent of the existence of civil society and government." Accordingly Locke (1980, p. 66) writes that "the great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of

their property." In Lockean terminology, the term property is used in a wide sense. For instance, he writes that "man…hath by nature a power…to preserve his property, that is, his life, liberty and estate" (Locke, 1980, p. 46). Similarly, he mentions that "lives, liberties and estates, which I call by the general name, property" (Locke, 1980, p. 66). Last, he clearly indicates the reader what he means by the property and states that "by property I must be understood here, as in other places, to mean that property which men have in their persons as well as goods." (Locke, 1980, p. 90). Last, in the 5th chapter of the *Second Treatise*, which is titled *Of Property*, the usage of the term is generally about the limitations of the authority of government and refers to "a right in land and goods" (Macpherson, 1990, p. 198).

After presenting various definitions of property, Locke has seemingly contradictory about whether right to property is within the scope of natural law. He first writes that "all men are naturally in…a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature" (Locke, 1980, p. 8). This excerpt may be understood as Locke argues that right to property is "within the bounds of law of nature." However, as Macpherson (1990, p. 199) points out, "Locke's astonishing achievement was to base the property right on natural right and natural law, and then to remove all the natural law limits from the property right." Then, what is the rationale behind this "achievement"? How does Locke remove the bounds of natural law concerning the right to property? Locke (1980, p. 18) writes that "men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence." Then, he points out that "yet being given for use of men, there must of necessity be a means to appropriate them some way or other, before they can be of any use, or at all beneficial to any particular men" (Locke, 1980, p. 19).Therefore, to Locke, in order to make use of earth's productions, man must appropriate them; these productions or nourishments "must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the

support of his life" (Locke, 1980, p. 19). Here, Locke describes the rightful way of appropriation; in other words, he defines the concept of right: "Every man has a property in his own person: This nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his" (Locke, 1980, p. 19). As Macpherson (1990, p. 200) expresses, "whatever a man removes out of its natural state, he has mixed his labour with. By mixing his labour with it, he makes it his property." In such a condition, there is no need for any legitimization or the consent of other people to a man's appropriation: "If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him" (Locke, 1980, p. 19). In brief, even right to property is within the limits of natural law, man removes these limitations with his work; thus, through mixing his labour with things in nature, he appropriates them and makes them his own property.

Here, Locke obviously presents another theory, theory of appropriation, which he explains in the *Of Property* that also includes Locke's labour theory of value. To Olivecrona (1974, p. 220), these two theories are expounded in separate parts of this treatise; therefore, these theories refer to different periods of history. For instance, the theory of appropriation is mainly about the first ages of the world when the state of nature was valid. She, then, names this era as "the age of abundance." With regards to "the age of abundance," Locke (1980, p. 23) draws a parallel between the vast land and fertile soil of the first ages and the "in-land, vacant places of America" in his day. However, when the money was introduced and communities were instituted, "the age of abundance" terminated and "the age of scarcity" began. "The age of scarcity" is the period of time when the theory of appropriation loses favour and labour theory of value becomes the focal point.

To begin with the former, Locke maintains that in the first ages of the world, God gave the earth to mankind in common; that is why Locke rejects Filmer's argument that God gave the earth to Adam "and his heirs in succession, exclusive of all the rest of his posterity" (Locke, 1980, p. 18). Here, the main question is how

does Locke's theory of appropriation justify the private property if God gave the earth to mankind in common? Or, in the words of Olivecrona (1974, p. 221): "How could the original communism, instituted by God, have given way to private rights of property?" First, Locke uses the word appropriation in a specific sense. In essence, appropriation in Lockean terminology can be defined as being a part of oneself. He writes that "the fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his, i.e. a part of him." (Locke, 1980, p. 19). Then, to Locke, if a man owns a thing, this means that the thing is a part of him and nobody can claim any right to it. Locke (1980, p. 19) explains how man appropriates and owns a thing as it is the part of him:

> It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

Olivecrona (1974, p. 225) argues that, to Locke, "making a thing one's own means making it part of oneself. Something of oneself is infused into an object. Nobody else can have any right to it." Then, what is the separating line between a property in common and a private property? In other words, when does commonly owned property become a property owned by a person? Locke (1980, p. 19) writes:

> He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask then, when did they begin to be his? When he digested? Or when he eats? Or when he boiled? Or when he brought them home? Or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right.

As obviously mentioned in the passage, Locke maintains that what differentiates a private property from property in common is the labour. Man through annexing his

labour to a thing makes this thing his own property. When the thing is a land, for instance, labour (cultivation in this context) and enclosure are key factors that transform a common property to a private property. In his words, "as much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the common" (Locke, 1980, p. 21). Accordingly, Locke writes that labour "puts the difference of value on everything," and it "makes far the greatest part of the value of things, we enjoy in this world" (Locke, 1980, pp. 25-26). To state briefly, according to Locke (1980, p. 21), "God gave the world to men in common; but since He gave them it for their benefit…it cannot be supposed he meant it should always remain common…He gave it to the use of the industrious and rational." Here, it is evident that what makes industrious man different from others is the labour that he exercises.

Another question here is whether there is a limitation on individual appropriation. Locke obviously puts two limitations: First, a man can appropriate on condition that he "at least where there is enough, and as good, left in common for others" (Locke, 1980, p. 19). Even though Grotius and Pufendorf justify appropriation through the consent of all and a common compact, Locke does not require it; he acknowledges that people do not object to an appropriation if there is as much left for them to appropriate in turn. Second limitation is the spoilage. According to Locke (1980, pp. 20-21), "as much as anyone can make use of to any advantage of life before it spoils…whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil." He also writes that "if he also bartered away plums, that would have rotted in a week…he…destroyed no part of the portion of goods that belonged to others, so long as nothing perished uselessly in his hands" (Locke, 1980, p. 28). Macpherson (1990, p. 201) maintains that there is a third limitation put on man's appropriation which is not explicitly advanced by Locke but is a logical inference of his arguments. This is "the amount a man can procure with his own labour." Even though these limitations seem to restrict right to property, Locke also transcends these limitations as well. For

instance, through referring to the unoccupied lands of America, Locke (1980, p. 23) writes:

> I dare boldly affirm, that the same rule of property, (viz.) that every man should have as much as he could make use of, would hold still in the world, without straitening anybody, since there is land enough in the world to suffice double the inhabitants, had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions, and a right to them.

This means that some of the parts of the world that have enough land to suffice double the inhabitants who have not experienced the introduction of money invalidate the limitations put on appropriation. In other words, vast empty lands and introduction of money are the exceptions that remove these limitations. Locke maintains that since "gold and silver do not spoil; a man may therefore rightfully accumulate unlimited amounts of it" (Macpherson, 1990, p. 204). Thus, one can prevent spoilage via money which is not natural but invented as a medium of exchange and agreed on via consent (Parker, 2004, p. 137). In this vein, Locke (1980, p. 28) writes that "the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of anything uselessly in it." In this context, Locke (1691), in his letter to the parliament titled *Some Considerations of the Consequences of the Lowering of Interest and the Raising the Value of Money* writes that "money therefore, in buying and selling, being perfectly in the same condition with other commodities, and subject to all the same laws of value." Actually, this principle allows for accumulation of not only lands but also money. He, therefore, acknowledges that "a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to anyone" (Locke, 1980, p. 29). Therefore, as Monahan (2007, p. 176) writes, the introduction of money justifies the uneven distribution and ownership of property. Accordingly, to Locke, "the aim of mercantile policy and individual economic enterprise was…the employment of land and money as capital (Macpherson, 1990, p. 205). Therefore, as Monahan (2007, p. 176) points out, "Locke's position here,

common among mercantilists of his day, was that money had more than exchange value; a means to stimulate trade and thereby develop the economy as a whole." Moreover, Locke (1691) also allows the interest and writes that "let us next see how it [money] comes to be of the same nature with land, by yielding a certain yearly income, which we call use, or interest." In any case, to Locke, as Macpherson (1990, p. 208) writes, after the introduction of money, "the spoilage limitation imposed by natural law has been rendered ineffective in respect of the accumulation of land and capital. Locke has justified the specifically capitalist appropriation of land and money."

Then, the introduction of money leads to removal of limitations put by Locke on private property. Macpherson (1990, p. 208) argues that, to Locke, what justifies introduction of money is the consent and this consent is "independent of and prior to the consent to civil society." Therefore, Locke's theory includes two types of consent: First type is the consent in state of nature that is between rational men through which they determine the value of money. This consent is given "out of the bounds of society, and without compact" (Locke, 1980, p. 29). Second type is the consent given to the majority of people to institute the civil society. Since the first type of consent is given in the state of nature before the establishment of civil society, the institutions that are created as an outcome of this consent are still valid after entering the civil society. However, even though first type of consent is morally valid, it is not easy to maintain it in the state of nature; therefore, men moved to the second type of consent (Macpherson, 1990, p. 210). As mentioned above, Locke puts limitations on individual appropriation of private property and one of those limitations is that man, while appropriating, must leave enough and as good for others. Then the question is whether this limitation changes after the introduction of money. Locke, in the third edition of the *Treatises* slightly changes his arguments concerning this limitation and makes a room for appropriation without leaving enough and as good for others. His rationale is as follows:

> To which let me add, that he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind: For the provisions serving to the support of human life, produced by one acre of enclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that encloses land, and has a greater plenty of the conveniences of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind: For his labour now supplies him with provisions out of ten acres, which were but the product of an hundred lying in common (Locke, 1980, pp. 23-24).

Obviously, to Locke, in a country where all land is appropriated and completely utilized, people have better life conditions than others who live in another country where the land is not entirely appropriated and cultivated. He writes that "a king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in England" (Locke, 1980, p. 26). Through this kind of appropriation, "if there is not enough and as good left for others, there is enough and as good living left for others" (Macpherson, 1990, p. 212). Thus, to Locke, in the last instance, as a necessary outcome of the introduction of money, appropriation, beyond the limitation he put before, becomes a positive conduct henceforward. To Macpherson (1990, p. 214), this is not an inconsistency in Locke's theory; Locke acknowledges that after the introduction of money, a man has "a right to more land than leaves enough for others," therefore, "Locke is not contradicting his original assertion of the natural right of all men to the means of subsistence."

Then, it also becomes evident that in Locke's conception of labour, a man can freely sell his labour "for a certain time, the service he undertakes to do, in exchange for wages he is to receive" (Locke, 1980, p. 45). Therefore, the labour sold becomes the property of the buyer. This logic also seems inconsistent with Locke's former arguments that are "every man has a property in his own person. This nobody has any right to but himself" (Locke, 1980, p. 19) and "this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to" (Locke, 1980, p. 20). Contrary to these arguments,

Locke (1980, pp. 19-20) clearly writes that the buyer is the owner of that labour and owns the outcomes of that labour:

> Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of any body. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them.

Then, again, how does Locke formulate his labour theory of value? As Vaughn (1978, p. 311) writes, Locke was a pioneer of labour theories of value in 19th century. He, therefore, influenced not only British Classical School and Karl Marx, but also later scholars who have dealt with political economy. Virtually, there are three types of labour theories of value. First type regards labour as "the source of use-value or utility" and hypothesizes that the exchange value of goods are determined merely through labour. To Vaughn (1978, p. 311), "the idea that labour is solely responsible for this use-value is unusual and probably only found in the writings of Karl Marx." Second type of labour theory of value attaches importance to "the relationship between the relative value of one commodity to another and the quantity of labour which has gone into producing each of them" (Vaughn, 1978, p. 311). This type can be found in Adam Smith's beaver-deer sample. He writes that "if among a nation of hunters, for example, it usually costs twice the labour to kill a beaver which it does to kill a deer, one beaver should naturally exchange for or be worth two deer" (Smith, 2007, p. 41). Last, the third type of labour theory of value has normative characteristics. According to this type of theory, as Vaughn (1978, p. 312) explains, "two goods which take the same amount of labour to produce should exchange for each other, and any pattern of prices that deviates from this norm is unjust," and she asserts that this type of normative labour theory of value can be found in Locke's teachings. Last, she mentions that, to Lock, "since labour creates the value of the output it produces, the labourer is entitled to receive the full value of the output as his just reward" (Vaughn, 1978, p. 318). In this context, Locke writes:

> For it is not barely the plough-man's pains, the reaper's and thresher's toil, and the baker's sweat, is to be counted into the bread we eat; the labour of those who broke the oxen, who digged and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils, which are vast number, requisite to this corn, from being feed to be sown to its being made bread, must all be charged on the account of labour, and received as an effect of that: nature and the earth furnished only the almost worthless materials, as in themselves.

Macpherson (1990, p. 217) points out that Locke attributes the wage-labour relation to state of nature. He regards Locke's argument as consistent and writes that "supporters of capitalist production, of whom Locke was one, were not yet troubled in their consciences about any dehumanizing effects of labour being made into a commodity," then, he mentions that "in the absence of such moral qualms there was no reason for them not to think of the wage relation as natural" (Macpherson, 1990, p. 217). In Macpherson's reading of Locke, as mentioned earlier, property right is brought by men from the state of nature to the civil society. The consent given for private property is not the same with the consent given for establishing the society. He writes that "since the agreement to enter civil society creates no new individual rights…and since the alienation of one's labour for wage is rightful in civil society, it must have been assumed to be a natural right" (Macpherson, 1990, p. 218). Therefore, Locke does not only achieve to divert traditional assumption, which justifies the common use of property, to a new theory that legitimizes an unlimited capitalist appropriation. As a consequence of this perspective, to Macpherson (1990, p. 221), Locke "also justifies, as natural, a class differential in rights and in rationality, and by doing so provides a positive moral basis for capitalist society."

In essence, Locke writes about the class differentials in a society; he regards wage-labourers as a class that "just lives from hand to mouth" (Ashcraft, 2010, p. 261). Macpherson argues that, to Locke, "members of labouring class did not have, could not be expected to have, and were not entitled to have, full membership in political society; they did not and could not live a fully rational life" (Macpherson, 1990, p. 226). In this context, Locke (1999b, p. 179) writes that "the day-

labourers…hearing plain commands is the sure and only course to bring them to obedience and practice. The greatest part cannot know, and therefore they must believe." Actually, his position concerning to labouring class is an outcome of his time. As Macpherson (1990, p. 226) explains, "ever since there had been wage labourers in England their political incapacity had been assumed as a matter of course…but neither the labouring nor the idle poor had been considered capable of political rights." Moreover, the Puritan doctrine, that is treating poverty as an indicator of political disrespect, also reinforced the view of the political inability of the poor (Macpherson, 1990, p. 227). Actually, this was typical of Locke's era "that the labouring class was rightly subject to but without full membership in the state" (Macpherson, 1990, p. 229). Therefore, Locke, as his contemporaries, did take this for granted; and it is obvious that Locke noticed two classes with different rights and different rationality in his society.

As Strauss (1953, p. 246) mentions, "Locke's doctrine of property is directly intelligible today if it is taken as the classic doctrine of "the spirit of capitalism,"" and Locke benefits from the natural law teaching to argue accumulation of wealth and money is just by nature. He began with refuting Filmer's arguments; however, more importantly, he developed a comprehensive explanation of right to private property (Dunn, 1996, p. 54). The capitalist tendency of this explanation led scholars, such as Marx, to evaluate Locke as "a bourgeois apologist for the historical development of capital" (Browning, 2016, p. 208). Macpherson also grants that view. However, some scholars, Tully (1980, p. 169), for instance, argues that Locke is a Leveller rather than an apologist for capital. According to this reading, "far from setting out a market in property, Locke allows for the English Common, whereby the English yeoman is entitled to usufruct, which is the use of as much land as he could make use of" (Browning, 2016, p. 209). In any case, as Plant (2003, p. 209) mentions, it is true that "property is vital to the economic market because market exchange is essentially an exchange of property rights." In this context, as Marx argues "one did not have to postulate the existence of evil employers in order for labour to be exploited; exploitation was inherent in

the system which permitted unequal property ownership" (Vaughn, 1978, p. 320). Then, the question is not whether employers exploit employees but rather why the relationship between employer and employee emerges in the first place. Locke, through justifying this relationship justifies the "capitalist expropriation" as well. Therefore, as Vaughn (1978, p. 323) summarizes, "Marx saw self-ownership in terms of exploitation of workers forced to 'alienate' their labour by selling it as a commodity on the market," and as Marx believes, "the source of exploitation in Locke's system is the unequal distribution of wealth that arose in the state of nature and was perpetuated in civil society" (Vaughn, 1978, p. 320).

3.2.3 Toleration in the Context of Lockean Liberalism

Wolfe (2006, p. 2) writes in the beginning of *Natural Law Liberalism* that "natural law and liberalism were, after all, originally 'married,' in the classical liberal political philosophy of John Locke." This proposition can be underpinned through Locke's arguments that challenge divine authority of rulers and justify resistance against those who transgress the boundaries of natural law. Right to private property that stems from his natural law understanding can also be used as a justificatory means for this proposition. A third component of Locke's liberalism is his defiance against the prevailing idea that the authority of government extends to all human affairs, including religion. Even though the unlimited authority of government was not taken for granted, there was also no attempt to demarcate between public and private since the introduction of Christianity. With the contributions of scholars such as Hobbes and Locke, "liberalism was born with an insistence that certain questions were in principle beyond the scope of government. Most importantly, the political community was not the arbiter or enforcer of religious truth"; and therefore, "religious persecution was one of the chief evils which liberal political philosophy challenged" (Wolfe, 2006, p. 135). In essence, since the unanimity of medieval Christendom was shattered and with the inception of Protestant Reformation, the dispute on the relation between religious and

worldly affairs and the qualifications of the "true" Christianity transformed into a conflict over religion. Locke, thus, witnessed the whole process of this transformation; then, he writes in *A Letter from a Person of Quality* that if the people were oppressed due to their religious beliefs, they can justly resist and take up arms against the oppressor. In this context, since Locke acknowledges that the "political domination is…a product of group domination," he proposes a mutual toleration between all the religious groups (Vernon, 2010, p. xxxi). This doctrine, to Monahan (2007, p. 188), "has become so much an essential part of liberal democratic theory."

The idea to limit the governmental control on religion was also a natural outcome of England's political, social, and economic atmosphere contaminated by religious conflicts (Wolin, 2004, p. 264). As Wootton (1993, p. 26) writes, "if we are going to understand Locke's political philosophy we are going to have to dig beneath the surface of his life." Then, what was the driving force in Locke's life that led him to write *A Letter Concerning Toleration*? First, to Giffin (1967, p. 382), it was Lord Ashley, the first Earl of Shaftesbury, who influenced Locke in terms of toleration when the latter's approach to toleration was rather antagonistic. He "made Locke give systematic attention to the subject and furthered his evolution as a liberal" (Cranston, as cited in Giffin, 1967, p. 382). Second, as Scruton (1982, p. 464) draws attention in his *A Dictionary of Political Thought*, there is a direct relation between the concept of toleration and disapproval. He defines toleration as "the policy of patient forbearance towards that which is not approved." In the same paragraph, he also points out that "there is toleration only where there are also things that are disapproved; if men were perfect, tolerance would be neither necessary nor possible." Then, what was the problem that Locke disapproved? To Spellman (1998, p. 146), "the root of the problem, to his mind, was that clerical leaders, Protestant and Catholic alike, had pressed the erroneous ideas that the path to heaven is singular and narrow." Third, the issue of toleration was a hotly-debated issue in the academic and intellectual circles of Holland in 1680s when Locke lived for five years there between 1683 and 1688. By that time, Holland

was a shelter for refugees who fled from their countries due to intolerance that they had experienced. Locke was also one of them (Yolton, 1993, p. 124). As argued by Vernon (2010, p. viii), Locke's exile in Holland "is very closely connected with the topic of the Letter [Concerning Toleration], for it arose from political circumstances in which the questions of religious toleration, exclusion, and persecution played a large part."

Virtually, *A Letter Concerning Toleration* is a part of series that published in 1689, *A Second Letter Concerning Toleration* in 1690, *A Third Letter Concerning Toleration* in 1692, and *A Fourth Letter for Toleration* was published in 1704 after Locke's death (Monahan, 2007, p. 186). These letters were mainly comprised of evaluations of the *Toleration Act of 1689* which abrogates Catholics' freedom of worship and right to assemble for pray. After the codification of Toleration Act, Locke expressed his comments on the Act to his friend from Holland, Philip Limborch, who also helped Locke to publish *Epistola de Tolerantia*: "No doubt you will have heard before this that Toleration has now at last been established by law in our country. Not perhaps so wide in scope as might be wished for by you and…true Christians" (Yolton, 1993, p. 125). However, this letter was not the first one in which Locke discusses the issue of toleration. For instance, in his letter to Henry Stubbe in 1659, Locke responded to the latter's *An Essay in Defence of the Good Old Cause.* There, Locke (1993, p. 138) addresses the issue of toleration and writes that "the only scruple I have is how the liberty you grant the Papists can consist with the security of the nation (the end of government)"; moreover, he emphasizes that "I cannot see how they can at the same time obey two different authorities carrying on contrary interest." Obviously, here, Locke argues for the exclusion of Catholics for toleration; however, some scholars allege that he changed this position in his later ages and included Catholics under the category of tolerated groups.

Before discussing these allegations, we should determine what are the definition, scope and characteristics of toleration, according to Locke's teaching? The first

sentence in *A Letter Concerning Toleration* ends with Locke's final position: "I esteem that toleration to be the chief characteristical mark of the true church" (Locke, 2003b, p. 215). Then, he gives the reader details about his conception of commonwealth: "The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests" (Locke, 2003b, p. 218). In such a commonwealth, how can be a church defined? He writes: "A church then I take to be a voluntary society of men, joining themselves together of their own accord, in order to the public worshipping of God" (Locke, 2003b, p. 220). Here, Locke goes further and reconciles the definitions of commonwealth and church that enables him to theorize the initial components of his theory of toleration: "right of making its [church's] laws can belong to none but the society itself, or at least, which is the same thing, to those whom the society by common consent has authorized thereunto" (Locke, 2003b, p. 221). Therefore, Locke tries to provide a legitimate basis for the separation of state and church. Finally, Locke explains four characteristics of his understanding of toleration: First, "excommunication neither does nor can deprive the excommunicated person of any of those civil goods that he formerly possessed" (Locke, 2003b, p. 223). Second, "no private person has any right in any manner to prejudice another person in his civil enjoyments, because he is of another church or religion" (Locke, 2003b, p. 224). Third, he comments on the authority of clergy and writes that "since it is ecclesiastical, it ought to be confined within the bounds of the church, nor can it in any manner be extended to civil affairs; because the church itself is a thing absolutely separate and distinct from the commonwealth" (Locke, 2003b, p. 226). Last, "the care of souls does not belong to the magistrate: not a magisterial care, I mean, if I may so call it, which consists in prescribing by laws, and compelling by punishments" (Locke, 2003b, p. 228).

In addition to these characteristics, Locke extends the borders of toleration in a way to exclude Catholics. To Locke, Catholics are subjects of a foreign authority, the pope; therefore, they are not entitled to enjoy civil rights in a national polity. Then, he writes: "that church can have no right to be tolerated by the magistrate,

which is constituted upon such a bottom, that all those who enter into it, do thereby, *ipso facto*, deliver themselves up to the protection and service of another prince" (Locke, 2003b, p. 245). Thus, while Locke envisions intolerance for Catholics, he also maintains toleration for Protestants who, to him, should realize a religious uniformity through banding Lutherans, Anglicans, and Calvinists (Presbyterians, Huguenots) together (Wootton, 1993, p. 39). Shapiro (2003, p. xiv), accordingly, writes that "for Locke, by contrast, freedom of conscience was valuable for the more Lutheran reason that he thought it essential to spiritual salvation." To Locke, difference between Catholicism and Protestantism in terms of toleration arises from his belief that Catholics are not reliable when the national interests are of concern. He acknowledges that Catholics in England "owe a blind obedience to an infallible pope who has the keys of their consciences tied to his girdle, and can, upon occasion, dispense with all their oaths… they have to their prince" (Bourne, as cited in Giffin, 1967, p. 384). However, "to Protestant Nonconformists, on the other hand, Locke would extend toleration, as their opinions are not a danger to the order of the realm" (Giffin, 1967, p. 384).

In essence, in his early ages, Locke was quite favourable to Catholicism; in a letter to John Strachey in December 1665, he writes:

> But, to be serious with you, the Catholic religion is a different thing from what we believe it in England. I have other thoughts of it than when I was in a place filled with prejudices, and things are known only by hearsay. I have not met with any so good-natured people, or so civil, as the catholic priests, and I have received many courtesies from them, which I shall always gratefully acknowledge (Bourne, as cited in Giffin, 1967, p. 381).

Then, it seems that Locke changed his position against Catholics in his later ages. To Dunn, the reason behind this change is political: "Locke came to believe that since people care more about their souls than even their lives, governments' attempts to regulate purely religious worship and opinion were a prescription for disaster" (Tuckness, 2002, p. 289). However, Jeremy Waldron (2002, p. 220), in *God, Locke, and Equality*, argues the issue from a different perspective. He,

primarily, cites Locke's question in *Third Letter for Toleration*: "[W]hy might not Jews, pagans, and Mahometans be admitted to the rights of the commonwealth, as far as papists, independents, and Quakers?" He argues that "this…evidence in favour of Catholicism's inclusion within the breadth of Lockean toleration is very seldom cited by those who have convinced themselves…that…the Roman Catholic religion intolerable." Waldron also refers to the excerpt from Locke which is also mentioned right above: "Church can have no right to be tolerated by the magistrate, which is constituted upon such a bottom, that all those who enter into it, do thereby, *ipso facto*, deliver themselves up to the protection and service of another prince" (Locke, 2003b, p. 245). However, to Waldron, here, what Locke implies is not Catholics but Muslims, or in his words, Mahometans. Actually, Locke describes a similar condition for Muslims:

> It is ridiculous for anyone to profess himself to be a Mahometan only in religion, but in everything else a faithful subject to a Christian magistrate, whilst at the same time he acknowledges himself bound to yield blind obedience to the mufti of Constantinople; who himself is entirely obedient to the Ottoman emperor, and frames the famed oracles of that religion according to his pleasure (Locke, 2003b, pp. 245-246).

Waldron (2002, p. 221), within this context, points out that, to Ashcraft, Locke utilizes a metaphor to explain the intolerance for James II, the last Roman Catholic king of England; while "A Mahometan" symbolizes him, "the mufti of Constantinople" symbolizes the Pope. Even though Waldron is not sure about this metaphor, he is confident that "there is no direct textual support for the exclusion of Catholics." He also remarks that this excerpt does not intend to exclude Muslims for toleration. To underpin his argument, Waldron, once again, refers to Locke's *Letter* (2003b, p. 249): "Nay, if we may openly speak the truth, and as becomes one man to another, neither pagan, nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth, because of his religion." In this context, Waldron (2002, p. 221) acknowledges that "if someone did combine faith in Islam with political allegiance to the mufti of Constantinople, he would put himself beyond the pale of toleration by virtue of the combination, not by virtue of

his Muslim faith." Last, he maintains that this position is also valid for toleration to the Catholics.

Even though Locke's toleration concerning Catholics is of controversial ideas for scholars, nobody denies Locke's exclusion of atheist for toleration. Locke writes:

> Those are not at all to be tolerated who deny the being of God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, though but even in thought, dissolves all. Besides also, those that by their atheism undermine and destroy all religion, can have no pretence of religion whereupon to challenge the privilege of a toleration (Locke, 2003b, p. 246).

Whereas Locke champions the secular formation of the state and acknowledges that some Japanese who refuse to believe the existence of after-life are tolerated (Wootton, 1993, p. 40), he seems so reluctant to tolerate atheists. Then, why does he exclude atheists? First, Locke takes the existence of God granted and regards Christianity as a common morality that shared by citizens. This understanding represents the prototype of a long-established tradition that has been revered for centuries. For instance, Alexis de Tocqueville, who also considers religion (i.e., Christianity) as the keystone of public morality, describes Christian denominations in the United States in his best known work *Democracy in America* as follows:

> There is an innumerable multitude of sects in the United States. All differ in the worship that must be given to the Creator, but all agree on the duties of men toward one another. So each sect worships God in its way, but all sects preach the same morality in the name of God. If it is very useful to a man as an individual that his religion be true, it is not the same for society. Society has nothing either to fear or to hope concerning the other life; and what is most important for society is not so much that all citizens profess the true religion but that they profess a religion. All the sects in the United States are, moreover, within the great Christian unity, and the morality of Christianity is the same everywhere (Tocqueville, 2010, s. 472-473).

In this context, Locke's emphasis on morality to establish a stable society leads him to limit the scope of toleration so as to exclude atheists. To him, atheists cannot appreciate any moral value since they fail to accept divine creator's

existence and do not surrender to his legislations. Schneewind (1994, p. 219) aptly explains Locke's position:

> Locke, I have suggested, was concerned to combat both skeptical doubts about morality and enthusiastic claims to insight into it. Skepticism and enthusiasm both work against the possibility of constructing a decent and stable society. An empiricist naturalism seemed to him the only response that could take care of both these dangers. And only an understanding of morality to which God was essential could win the assent of the vast majority of Europeans.

The importance given by Locke to the acknowledgement of God's existence in order to be tolerated is evident in his writings in the *Reasonableness of Christianity*. There he criticizes two options of belief. First, on antinomianism, he writes that, since it involves believing in predestination, it neglects the significance of salvation. Second, on deism, he argues that it ignores the boundaries of unassisted reason, "disregard of the weakness of human nature, and denial of the need for divine assistance made salvation impossible" (Lucci, 2018, p. 204). However, despite his criticisms and even animadversions against these two beliefs, Locke does not incorporate them into the category of intolerance since antinomians and deists, contrary to atheists, believe in divine creator. Then, believing in God seems as a determinant in Locke's theory of toleration. Strauss, interestingly, does not grant this view. In essence, distinguished Locke scholars mainly agree on the rationale and the extent of Locke's theory of toleration, however, they generally disagree on Locke's most distinctive feature. For instance, John Dunn, who influenced the Cambridge School, gives prominence to Locke's Calvinism in his family history. Therefore, to him, Locke follows a Calvinist way to determine his theological discourse. Richard Ashcraft brings Locke's revolutionary characteristic to the forefront and argues that he shaped English politics under the Restoration. James Tully tries to save Locke from the criticisms that charge him as being a capitalist and bourgeois apologist. Leo Strauss, with his interesting thesis, differs from his colleagues. He regards "Locke as an atheist in the mould of Hobbes and Spinoza who succeeded by his mastery of the art of esoteric writing in concealing his unbelief" (Stoner, 2004, p. 553). This

proposition still remains the following question unanswered: if Locke was an atheist and concealed his unbelief then why he opted for classifying atheism under the category of detrimental ideas that harm society, thus, should not be tolerated? He could have spoken of atheism as a tolerable view; by this way, he could have both kept himself undisclosed and legitimized his ideas in case of a possible disclosure.

Locke's limitation put on atheists and Catholics in terms of toleration is the most prevailing criticism against his arguments. As Tuckness (2002, p. 288) writes, "Locke believed that the state could restrict their religious freedom because he thought their beliefs were politically harmful." Therefore, he argues that Locke's theory of toleration cannot be evaluated as a contemporary alternative: "Any theory of 'toleration' that allows for intolerance towards Atheists and Catholics is not a theory of toleration we should accept" (Tuckness, 2002, p. 288). The intolerance to them, accordingly, does not promote or even hinder religious diversity. In any case, as Lucci (2018, p. 245) argues, Locke's theory of toleration only includes the followers of an organized religion. Therefore, his theory "left those who did not belong to a religious society…in a vague limbo, abstaining from defining their status and from expressly granting them any rights" (Lucci, 2018, p. 246). However, as Giffin (1967, p. 390) points out, even though his theory puts some limitation and has inconsistencies, it "helped provide the theoretical defence of the toleration which would rule the outlook of the approaching age."

3.3 Conclusion

One of the most significant conclusions that can be reached in this chapter is that even though liberalism is intrinsically prone to secularism, Locke's division of sacred and worldly emanates from his reading of natural law and the Scripture. It is, therefore, not surprising that majority of Locke scholars argue that his arguments are so deeply rooted in religious assumptions and theological provisions

that his works are regarded as political gospel and his philosophy is called as a part of Christian philosophy. In other words, to put it basically, it can be argued that what is called as Locke's nascent liberalism was cooperatively produced by Christianity and natural law tradition. In addition to citations from the Scripture in almost all matters of his thought, Locke intensely refers to natural lawyers even though he never proposes a full-fledged natural law theory; however, his way of analysis of the legacy before him and his contributions to the tradition deserve to be called as Locke's natural law theory.

As explained in detail, the essence of Locke's natural law understanding is based neither on consent nor on utility but it depends on the will of the Sovereign; therefore, he directly combines natural law with divine authority; this is why Locke subordinates human law to natural law. In this sense, he rejects Filmer's arguments on divine right of kings through maintaining their incompatibility with natural law and God's order. In essence, Locke's approach to natural law includes empiricist, voluntarist, and rationalist positions. For instance, while he asserts that natural law can be empirically demonstrated, he also argues that natural law is obligatory since it is an outcome of God's voluntary action and since it is rationally reasonable. In this vein, to Locke, natural law is an empirical and rational outcome of God's will.

This chapter also revealed that natural law and Christianity lay the groundwork for the development of natural rights. For instance, when arguing the right to resistance, Locke mentions that a government can only be legitimate when it complies with the natural law. This means that when a government breaches the framework determined by natural law, individuals' resistance to the government will also become legitimate. In addition, since conforming to natural law is designated by God as an obligation, transgressing the natural law amounts to going against God's will; therefore, this situation requires resistance to aggressor. Contrary to the majority of natural lawyers before him, Locke argues that this resistance can also be realized on individual level since everyone has this right.

Similarly, Locke legitimizes private property via theological arguments; in a nutshell, he argues that God, as a proprietor of the universe, entitled men to have private property. Even though he presents a complicated approach to the issue which is whether right to private property is a part of natural law, his limitations put on this right—that is enough and good left for other, spoilage quota, and amount—are directly related to his perspective to natural law. Last, Locke's philosophy also restricts the authority of government so as to make room for religious freedom which means that political authority is not entitled to impose on people about their religious preferences. Interestingly, Locke excludes Catholics (at least until his later ages) and atheists from the religious toleration; since to him, the former is subject to foreign authority that is the pope, while the latter rejects God and dissolves the social bonds.

To sum, this chapter introduced the relation between natural law, Christian theology, and Locke's burgeoning liberalism. Since the first part of the comparison was completed with this chapter, the upcoming chapters will investigate the second part of the comparison which is called "Islamic liberalism." For this investigation, the next chapter will examine the Islamic natural law theory and its implications.

CHAPTER 4

ISLAMIC NATURAL LAW: A RUDIMENTARY QUEST FOR THE ONTOLOGICAL AUTHORITY OF REASON

As previous chapters investigated, the relation between reason and faith and this relation's influence on Christian theology, and finally, the natural law tradition commonly shaped Lockean nascent liberalism. In order to find an answer to the main research question of thesis, which is whether what is called as "Islamic liberalism" is analogous with Locke's liberalism, the constituents and premises of the latter, should be inquired in the former. In other words, the relation between reason and faith in Islamic theology and the trajectory of Islamic natural law should be examined in order the make a healthy comparison with Locke's liberalism; therefore, this chapter will primarily quest the relation between reason and faith in Islamic theology and will interrogate the concept of Islamic natural law.

In the first subchapter, what legacy Islamic theologians inherited from Greek rationalism and the discussions among *Mu'tazilites* and *Ash'arītes* on the scope of reason will be investigated. Here, the question is whether Islamic theology makes room for the ontological authority of reason as it is done by Christian theology which gives birth to Locke's liberalism. The second subchapter will explore whether Islamic natural law exists or not. In this vein, the debates on classification of Islamic natural law which is made by Anver Emon—who earnestly champions the existence of Islamic natural law—will be inspected. The third subchapter is based on the conclusion that we have reached in the second chapter which revealed that one of the sources of Locke's natural law liberalism and his social contract

theory is the covenant theology in Christianity. In this context, this subchapter will compare the relation between the God and humans in Christianity and Islam in terms of their covenant theologies. Finally, the last subchapter will scrutinize the limitations put on an Islamic apparatus called *ijtihād* [renewed interpretation] which has been used as a tool for reasoning in Islam.

In this framework, this chapter will present whether Western legacy which was inherited by Locke and Islamic tradition are analogous in terms of their perspectives on the relation between reason and faith, on the natural law, on the relation between God and humans, on the covenant theology, and on the reasoning in religion. Since these *comparanda* generated Locke's liberalism, this chapter will examine whether their Islamic counterparts can generate an "Islamic liberalism" inspired by Locke.

4.1 Tracing an Antagonism: Reason and Faith in Islamic Tradition

Abrahamic religions are based on revelation, which is mostly defined as a secret revealed by God to humankind through a divine communication established with certain individuals called prophets (Evans, 2005, p. 324). Verses in the Torah, the Bible, and the Qur'ān underpin this definition of revelation. For instance, in Daniel 2:47, the Torah reads that "the king replied to Daniel and said, truly, your God is the God of the gods and the Master of the kings, and He reveals secrets, being that you were able to reveal this secret." Similarly, in Amos 3:7, the Bible reads that "surely the Lord God does nothing, without revealing his secret to his servants the prophets." Last, in Al-Furqan 25:6, the Qur'ān reads that "this Qur'ān has been revealed by the One who knows the secrets of the heavens and the earth." This secret mainly includes information on the laws and morals, characteristics of God, and purpose of creation and life. Because the information acquired from revelation is not built upon evidence, Abrahamic religions have placed a strong emphasis on faith.

If we are to accept that humans are *animal rationale*, then this rationality or being based on reason necessarily leads them to asking questions so as to find out the reality. At the end of the day, perhaps via Socratic questioning, it is inevitable that the secret revealed through faith faces the sound conclusion reached through rational thinking. For instance, even the aforesaid definition of revelation stimulates a series of questions as follows: What is secret? Why is it hidden? Who did hide the secret? If it is God, why and when did God decide to reveal the secret? What did evoke God to reveal it? If God were eventually to reveal the secret, then why did he need to hide it before? Why did God decide to reveal the secret to certain humans who lived in a specific territory? How can we be sure that the humans who learned the secret are telling the truth? Can we test that the learned secret and the hidden secret are the same? Is every allegation on receiving revelation considered to be true? What is the difference between the allegations of true prophets and those of people named as false prophets? How can we prove or disprove their allegations? What criteria should we follow to classify them? Do the characteristics of secret change in time? If yes, then why did God cease to reveal the secret? If no, why does the nature of secret remain unchanged, while humanity is progressively changing? Who is the first human who learned the secret? Is he the first created human? If no, why did God neglect the humans who lived before the first prophet and leave them without knowing the secret? If yes, why did God need to reveal the secret repeatedly in time? Once revealed, does it remain still as a secret? These questions can be multiplied from a sceptical perspective; however, their essence would remain the same: relation of rationality to revelation in a broad sense; or the problem of reason and faith in a narrow sense.

On this basis, philosophers and theologians have long argued whether faith and reason are mutually exclusive or compatible concepts. Even lately, Paul II (1998) promulgated an encyclical entitled *fides et ratio* [faith and reason] that regards these concepts as the two wings on humans which take them to the truth. Similarly, at the Angelus prayer, Benedict XVI (2007) emphasized that “faith presupposes reason and perfects it, and reason, enlightened by faith, finds the

strength to rise to knowledge of God and spiritual realities." However, the interplay between faith and reason has not always been dealt with such a conciliatory manner; in other words, they have been regarded as incompatible concepts with each other as well. Both of these approaches have utilized some of the attitudes of epistemology of religion, such as fideism, rationalism, and empiricism. Fideism, which literally means faith-ism, regards faith as the only resource to reach the truth; and superiority given to faith is accompanied by denigration of reason. In other words, faith does not require a justification or an elucidation from reason; or rather, it is the judge of reason (Penelhum, 1983, p. 1). Contrary to fideism, according to rationalism, reason is the main source of knowledge; thus, reality is based on reason. Because revelation, intuition, and spiritual experience are inherently irrational, non-universal, and uncertain, reason is antagonistic to faith (Edwards P. , 1967, p. 9). In conjunction with rationalism, empiricism accepts sensory experience as the primary source of knowledge; therefore, hypothesis must be tested and must not merely be derived from a priori reasoning, revelation, and intuition (Craig, 1998, p. 75).

Then, what kind of relation between reason and faith has been prevalent in Islamic tradition? How have Muslim scholars generally comprehended this relation? Have they regarded these concepts as compatible with each other or have they prioritized one over the other? To reply these questions, one should investigate the legacy of Greek philosophy since it has influenced not only Christian theologians and Western philosophers but also their Jewish and Muslim counterparts.

4.1.1 A Common Legacy: The Greek Rationalism

The relation between reason and faith has been addressed in many appearances from the age of Pythagoras to the present. Having formulated his famous equation on right triangles, Pythagoras assumes that harmonious structure of geometry is a reflection of the ultimate reality. The rationale behind his dictum, "all is number"

or “God is number,” is that “all things which can be known have number; for it is not possible that without number anything can either be conceived or known” (Heath, 1921, p. 67). By looking at geometry, as Pythagoras did, Plato also maintains the superiority of rational knowledge over perception. He claims that the shape of triangle is universally intelligible so that almost everyone can envision a plane created by connecting three points through his or her mind’s eye. This is how he formulates his well-known theory of *forms* which describes *form* as an essence of reality. To him, this essence can be accessed via reason only. In his terminology, *forms* are “eternal, nonphysical, quintessentially unitary entities, knowledge of which is attainable by abstract and theoretical thought” (Cooper & Hutchinson, 1997, p. xiii). His disciple, Aristotle (2014, p. 218), repudiates the theory of *forms*, particularly the *form* of good, because it does not contain various good things. He alternatively uses *nous* [unmoved mover’s constant rational faculty] to describe the *forms* of everything. Despite the nuances between their epistemologies on reason, Plato and Aristotle can be rated as progenitors of religious apologetics and natural theologians, since they infer existence of gods from reason. What is crucial is that the epistemological rationalism of these three philosophers—in other words, the Greek rationalism—provided a basis for Maimonides, Augustine, and ibn Rushd [Averroes] who applied rational reasoning to theologies of Judaism, Christianity, and Islam, respectively.

Like Greek rationalists, Stoics, successors of Zeno of Citium, maintains that true knowledge and comprehension can only be gained through *logos* [universal reason]. They transcend Socrates’s epistemology which includes that human knowledge cannot go beyond the realm of gods’ knowledge. His last words at his trial exactly points out his understanding: “Now the hour to part has come. I go to die, you go to live. Which of us goes to the better lot is known to no one, except the god” (Cooper & Hutchinson, 1997, p. 36). Contrary to Stoics, Epicureans describe nature from the perspective of atomistic materialism and utilize the concept of *logismos* [ability to reason and calculate] in order not to rationalize divine providence but to contemplate pleasure and pain. To Epicurus, one should

pursue pleasure and avoid pain rationally. His perception of pleasure and pain leads him to allege that the fear of death and divine retribution are the main motives of human anxiety; he accordingly opposes the idea of survival after death. In his *Letter to Menoeceus*, he writes that "so death, the most frightening of bad things, is nothing to us; since when we exist, death is not yet present, and when death is present, then we do not exist" (Epicurus, 1994, p. 29). That approach has been literalized as *non fui, fui; non sum, non curo* [I was not, I was; I am not, I care not]. His stance towards afterlife evoked scholars to maintain that Epicureanism espouses that god exists either as a material object outside the intellect or as an ideal inside the human mind. However, scholars jointly have the opinion that he discredits the traditional Greek view of gods as anthropomorphic entities, and thereupon rejects the general view of his age that gods interfere in worldly affairs (Hutchinson, 1994, pp. ix-x).

Hickson (2013, pp. 6-7) argues that Epicurus's understanding of gods as entities living in the remote parts of space without responding to prayers is directly associated with the problem of evil, which is still a weighty argument against the theses on omnipotent and providential gods. Moreover, the problem of evil questions the relation between reason and faith. Sextus Empiricus (2000, p. 146) records the problem of evil, which is also known as the riddle of Epicurus or the Epicurean trilemma, in his book named *Outlines of Scepticism*:

> If [gods] can provide for all but do not want to, they will be thought to be malign. If they neither want to nor can, they are both malign and weak…[I]f people say that the gods provide for everything, they will say that they are a cause of evil; and if they say that they provide for some things or even for none at all, they will be bound to say either that the gods are malign or that they are weak.

David Hume (2007, p. 74), likewise, addresses the issue in his *Dialogues Concerning Natural Religion*: "Epicurus' old questions are yet unanswered. Is he willing to prevent evil, but not able? Then is he impotent. Is he able, but not willing? Then is he malevolent. Is he both able and willing? Whence then is evil?" Epicurean philosophy is also discussed by Plotinus; a philosopher inspired by

Plato, who is considered to be the founder of Neo-Platonism. Plotinus makes critical use of Epicurean concepts such as pleasure, pain, divine providence, intelligence, and evil in the *Enneads*, a book edited by his student Porphyry. To Plotinus, there exists a transcendent One—a concept he derived from Plato's *Republic* where it is called as the Idea of the Good—that is prior to all existents, beyond all the categories of being and non-being. He draws an analogy between the One and the sun; then, compared *nous* to light of the sun, and the soul to the moon. As the moonlight is an accumulation of light of the sun, the soul is enlightened by the One through the *nous*. Even though the *nous* is not an autonomous entity like the One, it has power to contemplate the One which is its source. He clearly explains his perspective on the One (or as sometimes referred, the Good) as follows:

> The Good is that upon which all beings depend and that 'which all beings desire'; they have it as their principle and are also in need of it. It itself lacks nothing, being sufficient unto itself and in need of nothing. It is also the measure and limit of all beings, giving from itself intellect and substantiality and soul and life and the activity of intellect. And all of these up to the Good are beautiful, but it itself is above beauty and is the transcendent ruler of all that is best, all that is in the intelligible world. Intellect there is not like the intellects we are said to have, intellects that are filled with propositions and are capable of understanding things that are said and of calculative reasoning and so observing what follows, intellects which consequently observe beings that they did not formerly possess, since they were empty before learning them, despite being intellects (Plotinus, 2018, pp. 110-111).

Similar to Epicurus's case, if all things are eventually caused by the One, then is not the One, as the Good, the cause of evil? Plotinus endeavours to solve this problem through discussing the nature of evil, which, to him, cannot be categorized under the things that exists, nor that are beyond existence. To express more clearly, if evil exists, it exists as a form of non-being or as an image of being. However, through deriving things from the One, he either could not justify the One or explain the evil. Yet it is undeniable that Plotinus's explication of intellect which is an outcome of the Good and his philosophy on the relation between faith and reason, particularly on the characteristics of the One, had an impact on scholars within the theological traditions of Christianity and Islam. Roy Jackson

(2014, p. 14) argues that even though "both Plotinus and Porphyry considered themselves philosophers and rejected Christianity because of what they saw as its reliance on faith rather than reason," they influenced the Christian thought. As mentioned in the second chapter, early Fathers of the Church and later Christian theologians generally maintained and contributed to the discussions held especially by Aristotle, Plato and Plotinus.

For Islam, as Jackson (2014, p. 15) writes, when ʻAmr ibn al-ʻĀṣ (d. 663), an Arab general, entered Alexandria, Muslims faced with a meeting place of Greek philosophy and Jewish, Christian, Persian, and Egyptian traditions. In his words, "put all these religious and philosophical ingredients together in a melting pot and one result is what is called Neo-Platonism." Then, almost two centuries later, the *Bayt al-Ḥikmah* [House of Wisdom]—a public library and translation centre established by ʻAbbāsid Caliph al-Ma'mūn in 830—heavily translated the works of Aristotle, Plato, and Plotinus and contributed to the prominence of the Greek philosophy. Therefore, when Muslim theologians and thinkers began to reveal their own understandings of reason and faith, they reckoned the legacy bequeathed by Greek philosophers. Obviously, scholars and theologians of Christianity and Islam inherited a common historical legacy on faith and reason; however, at the end of the day, they have gained different characteristics. Since the Christian perspective to reason and faith was examined previously, Islamic tradition on these concepts will be discussed here starting from the major contestation between Muʻtazilites and Ashʻarītes.

4.1.2 Muʻtazilites and Ashʻarītes: A Conflict on the Scope of Reason

To understand the trajectory followed by Islamic scholars and theologians concerning the relation between reason and faith, one should go back to medieval Middle East. According to the historical records, the scope of reason was heavily discussed by jurists who lived between the 9th and 14th centuries. These pre-

modern jurists recognized the significance of reason which is a beneficial tool for legal analysis. In essence, the fundamental root of Islamic legal tradition has dominantly been *nusus* [textual authorities] such as Qur'ān and *hadīth* [record of the traditions or sayings of Muhammad]. Therefore, the scope of reason is historically limited by the obligation which is to confirm the established authoritative texts. However, *Mu'tazilites*, who are the early rationalists in Islam, seem to struggle to remove this obligation. *Mu'tazilites* are generally regarded as rationalists and heterodox theologians by the Western readers of Islam; however, some Muslim historians finds *kufr* [unbelief] in their arguments. These arguments are about "*khalq al-Qur'ān* [Qur'ān was created] and *qadar* [humans have free will and the power to act on it]. Martin, Woodward, & Atmaja (2003, p. 10) argue in *Defenders of Reason in Islam: Mu'tazilism from Medieval School to Modern Symbol* that the origin of *Mu'tazili* teaching goes back to al-Ḥasan al-Baṣrī (d. 728), a well-known *shaykh* [teacher of Islamic faith] who wrote "a *risala* [treatise] in response to Caliph 'Abd al-Malik ibn Marwān (reg. 685-705) on the question of human free will versus divine predestination." al-Baṣrī uses source-texts to prove that humans are free to act and they have moral responsibilities for these acts. Being adherents of this approach is named as *Qadariya* [Qadarites] referring through *qadar* which *Mu'tazilites* generally define as "the power or capacity to perform an autonomous action" (Martin et al., 2003, p. 10).

al-Baṣrī's intellectual circle was composed of scholars of his age such as Wāṣil ibn 'Atā' (d. 748) and 'Amr ibn 'Ubayd (d. 762); what they discussed was whether a grave sinner should be regarded as a believer or unbeliever. Actually this debate has some significant historical roots in Islamic tradition. The story begins with when the third caliph, 'Uthmān ibn 'Affān (reg. 644-656) was killed. Then, his successor, the fourth caliph, 'Ali ibn Abi Talib (reg. 656-661) faced with disputes concerning the revenge of his predecessor's murder. While some argued that he should avenge, some others claimed that 'Uthmān had not ruled in accordance with Qur'ān and *hadīth*; therefore, he deserved death. This disagreement led a *fitna* [civil strife] and 'Ali was forced to reconcile with Mu'āwiyah ibn 'Abī Sufyān,

clansman of ‘Uthmān’s Umayyads and governor of Damascus, to arbitrate. Arbiters acknowledged that Mu‘āwiyah was right and *Shi’a* [‘Ali and his adherents] was guilty. A faction in *Shi’a* opposed to ‘Ali for not defending the argument that ‘Uthmān had been killed justly; thus, this faction *kharaju* [seceded] from *Shi’a.* This group is known as *Kharijites* [Seceders]. *Kharijites* accepted that the *imān* [faith] is related with the *mu’min*’s [believer] actions and “a grave sin compromises one’s status as a believer and thus one’s membership in the Muslim *umma* [community]” (Martin et al., 2003, p. 26). Another group, *Murji’ites* argued that only God can decide whether a grave sinner is still a Muslim or not; therefore, they *irja’* [postpone] this issue until the Judgment Day to God’s volition. This debate paved the way for the birth of another group when Wāṣil ibn ‘Atā’ dissented from al-Baṣrī’s circle. In essence, al-Baṣrī was not sure whether a grave sinner is a believer or unbeliever; however, Wāṣil ibn ‘Atā’ argued that a grave sinner is neither a believer nor an unbeliever; he is exactly in *al-manzila bayn al-manzilatayn* [an intermediate position]. Therefore, Wāṣil ibn ‘Atā’ refused al-Baṣrī’s hesitation and *i’tazala* [withdrawn] from his circle, they have been called *Mu‘tazilites* [Those Who Withdraw] (Martin et al., 2003, p. 27).

In the 10th century, *Mu‘tazilites* were criticized by two other schools, *Ash‘arītes* and *Māturīdītes*, which were respectively led by Abū al-Ḥasan al-Ash‘arī (d. 935) and Abū Manṣūr Muḥammad al-Māturīdī (d. 944). These schools challenged the hegemony of *Mu‘tazilites* and have become the orthodox character of Islamic theology. As Martin et al. (2003, p. 10) mention, being effective from the 10th century, “like the four acceptable *madhhabs* [school of legal theory] of *Sunni* jurisprudence—*Hanafi*, *Shafi'i*, *Hanbali* and *Maliki*—the *Ash‘arī* and *Māturīdī kalam* [speculative theology] are generally recognized today as acceptable alternative traditions.” When it comes to the *Mu‘tazilites*, it has not been recognized as a valid school by the *Sunni* majority since 10th century. Then, how did *Mu‘tazilites* lose their public support? In essence, the Caliph al-Ma’mūn (reg. 813-833) of ʿAbbāsids, the founder of the Bayt al-Ḥikmah, accepted the *Mu‘tazili* doctrine of created Qur’ān and declared that every *qadi* [judge] must embrace

Mu'tazili perspective to *Sharī'a* [Islamic legal system or Islamic law]. Scholars, who objected to this declaration including Aḥmad ibn Ḥanbal (d. 855), were imprisoned. However, ibn Ḥanbal's imprisonment triggered public demonstrations and increased the level of public support given to traditionalist view. Then, the next Caliph, Ja'afar al-Mutawakkil was obliged to release him. This incident was followed by increasing intellectual support to ibn Ḥanbal and his traditionalism. Moreover, emergence of *Ash'arī* and *Māturīdī* schools precipitated the rise of traditionalism and decline of *Mu'tazilites* so much so that *Mu'tazili* doctrines have been condemned publicly during Friday prayers for centuries. While the *Sunni* majority has ignored *Mu'tazili* approach totally, *Zaydi* [Fiver] and *Imami* [Twelver] *Shi'a* have remained under *Mu'tazili* teaching (Martin et al., 2003, p. 18). However, what is different today from the past is that "there is also growing interest among moderate and modernist *Sunni* Muslims in certain aspects of what we could call the 'spirit of *Mu'tazili* discourse'" (Martin et al., 2003, p. 10). Since it will be examined later, it is suffice here to state that the proponents of "Islamic Lockean liberalism" mainly reproduce *Mu'tazili* discourse to provide a basis for their theory when they feel the absence of some tools—such as reason and tolerance—in the prevalent *Sunni* Islam.

Then, what is the *Mu'tazili* perspective to reason? First, *Mu'tazili* teaching is built on an atomistic occasionalism and argues that physical reality is comprised of atoms and attributes. Since "God creates the world in each instant by creating atoms and attributes that inhere in the physical substrates that atoms form, creation is thus a continual divine activity" (Martin et al., 2003, p. 11). Therefore, to *Mu'tazilites*, "this constantly created reality behaves according to known patterns of events or 'nature' on which human reasoning about the world is based." Accordingly, *Mu'tazilites* acknowledge that "God only does the good and just and avoids the evil. By holding such a position, though, they implicitly suggested that the concepts like 'good' and 'just' are virtues that are separate and distinct from God's will" (Emon, 2010, p. 13). Therefore, to *Mu'tazilites*, independent of God's will, humans can reason and know what is 'good' and 'just.' In this context,

because Qur'ān is also a creation of God, it can also be well known through reasoning. This is almost the opposite of what traditionalist *Ash'arītes* claim; they argue that "the debate was over what constituted the hermeneutical warrants to interpret those texts, that is, to formulate and control the social and moral ethos of Islamicate society" (Martin et al., 2003, p. 11). Accordingly, *Ash'arītes* do not grant an ontological authority to reason and maintain that Qur'ān and *hadīth* do not need further explanation or exegesis. In the last instance, traditionalists such as al-Ash'arī conclude that *Mu'tazilites* are contrary to Islam due to its "created Qur'ān" doctrine which is, precisely, the basis of ontological authority of reason in *Mu'tazili* school (Martin et al., 2003, pp. 31-32).

In this context, Brown (2015, p. 27) aptly discusses the importance of reason in natural law conceptualization of the Christian Western tradition; then he compares it with Islamic tradition. He writes that "Catholic Christian tradition has always affirmed the goodness of reason. This has not always been true of the Islamic faith, and today the mainstream teaching within the Muslim community rejects this idea." As discussed above, even though *Mu'tazili* theologians and jurists argued that reason has ontological authority in Islam, it was "rather short lived, and it became the rule that one was forbidden to trust in reason" (Brown, 2015, p. 28). The ban imposed on *Mu'tazili* school, as previously mentioned, resulted in *Ash'arī* school's favour. As mentioned earlier, the difference between these schools is that *Mu'tazilites* believe that the Qur'ān is created, and therefore it needs to be interpreted; however, the *Ash'arītes*, like Protestant argument of *sola scriptura*, consider the Qur'ān to be uncreated and it does not require interpretation.

When interpretation of source-texts became widespread, Muslims intrinsically faced with the texts that have contradictions. Then questions arose: How should one decide which texts to follow? Can later revelation *naskh* [abrogate] the previous revelations in case of contradiction? Were all *hadīths* correctly transferred; are they authoritative? Who will solve these contradictions: caliph, *imam*, or *ulema* (*Sharī'a* jurists)? These questions led Muslims to make an effort

to create new theological apparatuses rather than revitalizing the authority of reason again. For instance, they established an *uṣūl al-hadīth* [*hadīth* studies] and classified *hadīths* as *sahih* [sound], *hasan* [good], *da'if* [weak], and *maudu'* [forged]. However, this kind of classification has not remediated the problems concerning the contradictions in the source-texts so far (Spencer, 2002, p. 46). Therefore, these contradictions generally ended up with disregard or decline. As Brown (2015, p. 30) writes, "the ascendant orthodox view has denied the adequacy of reason and the free will of human beings. Islam means submission, and submission means blind obedience." This means that the submission embedded in the core of Islam has hindered the development of reason as an authority in the process of establishing rules.

Therefore, Brown argues that both *Mu'tazilites* and *Ash'arītes* regard reason and faith as antagonistic to each other; while the former prioritize the reason, the latter prioritize the faith. However, he maintains that the traditional Christian perspective is rather different; this perspective is, in his words, "there are no good reasons to distrust reason, but the free gift of faith goes beyond reason and keeps reason from closing down, thus leaving open the frontiers of inquiry" (Brown, 2015, pp. 31-32).

4.1.3 ibn Tufail's Ḥayy: The Defeat of Reason

Proponents of the existence of ontological authority in Islamic tradition widely utilize comparisons to underpin their theses. For instance, Ahmad (2009, p. 8) compares Abū Bakr ibn Tufail (d. 1185) with Locke. He cites Russell's *The "Arabick" Interest of the Natural Philosophers in Seventeenth Century England* in which Russell argues that Locke was influenced by ibn Tufail's *Ḥayy ibn Yaqẓān*. ibn Tufail [Abubacer] is al-Ghazālī's student and the author of a prominent novel, *Ḥayy ibn Yaqẓān* [Alive the Son of Awake]. Actually, ibn Tufail writes in the beginning of this philosophical novel that he was inspired by Alī ibn Sīnā

[Avicenna] (d. 1037). In essence, the original story was translated by Hunayn ibn Ishaq (d. 873) from Greek to Arabic under the title of Salāmān and Absāl.

The story, *Ḥayy ibn Yaqẓān*, goes as follows: Ḥayy, the protagonist, is left by his mother to an ark that is finally washed up onto a shore in an island. He grows there and investigates the world through observing animals and interrogating the life which he lives. Since there is no other human being, he discovers the universe, creation and belief via reasoning that eventually enables him to reach to knowledge of the Almighty. Therefore, through questioning, reasoning, and contemplating, Ḥayy becomes a mature and perfect human being. In the last part of the novel, Ḥayy runs across to Absāl who disembarks from a rowboat. In essence, Absāl goes to this island in order to live alone since he is fed up with the people of town who have not enough religious knowledge and practice. Absāl is a devout person but he is not satisfied with following only the prophet and the holy book; he needs more to understand the nature of revelation and mystery of belief; that is why he left the town. After Ḥayy and Absāl meet, they become friends in a short span of time. Then, Ḥayy learns Absāl's story and offers him to turn back to the town and explain to people the divine truth that he discovers himself in the island. Even though Absāl knows that this would be a useless effort, he accepts Ḥayy's request. The early stages of their lives in the town are better than what Absāl expects. However, when Ḥayy begins to explain to people the reality that he discovers via his reason, they, including Absāl's friend Salāmān, become astonished and find him odd. This astonishment, then, turns to an irritation; people start to do the exact opposite of what Ḥayy says. Actually, they are not baleful people; the problem is that they are not characteristically suitable to understand what Ḥayy explains. Ḥayy, thus, notices that this is a futile struggle and acknowledges that explaining some divine truths is impossible to the people who are used to obey only the explanation of source-texts. Therefore, he comprehends why Qur'ān has a plain, narrative style rather than including elucidations regarding the divine truth. To his final position, God provides revelation to guide them to follow the laws of nature incrementally. At the end of the story, Ḥayy apologizes

to people and says that he is wrong with his previous assertions; then, he turns back to the island with Absāl.

The story is directly related to the discussions in terms of the authority of reason, the function of revelation, and propagation of faith in the medieval age. Russell takes a step further and claims that when Edward Pococke translated *Ḥayy ibn Yaqẓān* into Latin as *Philosophicus Autodidactus*, Locke was influenced by this novel. To show the resemblance, he writes that "the content of the narrative provides a perfect support for the Lockean notion of the mind as *tabula rasa* where ideas are acquired by means of sensory experience and reasoning" (Russell, as cited in Ahmad, 2009, p. 8). Tariq Ramadan argues in *The Quest for Meaning: Developing a Philosophy of Pluralism* that this story reveals the relation between natural law and freedom; he writes:

> The imaginary experience of Ḥayy ibn Yaqẓān or Robinson tends to demonstrate that the law (of instinct, of nature, or even of the social order) comes first, and that it is the law that allows us to determine whether or not there is such a thing as freedom. The natural law and the natural order, like instinct, give birth to the substance of freedom in the same way that the need for a law expresses the aspiration towards order and freedom (Ramadan, 2010, pp. 72-73).

Ahmad (2009, p. 9) refers to Locke's state of nature and relates this with Ḥayy's condition in the island; he also refers to Locke's fundamental rights—right to life, health, liberty, and possessions—and relates these with al-Ghazālī's five main notions that should be preserved which are religion, life, reason, lineage, and property; and then he finally refers to Locke's natural law teaching and relates this with Islamic natural law. He concludes his article as follows:

> Democratic positive law is the old divine right of kings with the majority taking the role of Pharaoh and, therefore, it is a form of *shirk* [idolatry]. The question confronting us in the world today is not the medieval philosophical dispute over whether the laws of nature are axiomatic or God-given. The important question today is put to us by the Qur'ān: Shall we be ruled by Allah or by men? (Ahmad, 2009, p. 14).

Actually, with this final paragraph, he reveals the traditional Islamic approach to natural law. To Ahmad, since natural law is an object of discussion that belongs to medieval era, it has no relativity with this era and with the products of modern age such as liberalism. He also implies that the real issue for Islam is whether to accept man-made law or not. Here, Ahmad does not provide a comparison with Locke in terms of divine law and positive law. As mentioned earlier, Locke writes that "the positive laws of men cannot determine that which is itself the foundation of all law and government, and is to receive its rule only from the law of God and nature" (Locke, 2003a, p. 77). In this passage, it is evident that Locke prioritizes divine law and natural law; accordingly he acknowledges that positive law should refer to God's law and natural law. To state more clearly, Locke does not only mention God's law alone; he also adds natural law as one of the sources of positive law. Then, if one neglects natural law and sets *Sharī'a* as the only component of comparison, will it be possible to infer that Islamic natural law and Locke's natural law are compatible? Brown (2015, p. 23) provides a significant comment which enables one to reply this question correctly:

> Since the Middle Ages the dominant move has been away from a focus on faith and reason as partners in the quest for understanding of the world and our place in it, to a focus on faith alone, with the faith being understood ultimately as following *Sharī'a*, the timeless law derived from the Qur'ān and the *hadīth* and interpreted by the authorities.

Here, another part of the story which is ignored by the adherents of reason in Islam is Ḥayy's final position. It is true that Ḥayy investigates the world and divine order through his reason when he lives in the island; this part of the story is the heart of the matter of those adherents. However, ibn Tufail concludes his story with Ḥayy's defeat against the proponents of source-texts. This was also the defeat of reason against *Sharī'a*. Here, the final part of the story is worth citing with its entirety:

> Whereupon returning to Salāmān and his friends, he [Ḥayy] made excuses for what he had said to them, and desired to be forgiven, and told them that he had come to the same opinion with them, and had adopted their rule of conduct. And he exhorted them to stick firmly to their resolution of keeping within the bounds of law, and the performance of the external rites; and that

> they should not much dive into the things that did not concern them, but that in obscure matters they should give credit and yield their assent readily; and that they should abstain from novel opinions, and from their appetites, and follow the examples of their pious ancestors and forsake novelties…For both he and his friend Absāl knew that this tractable, but defective sort of men, had no other way of salvation; and that if they should be raised above this to the realm of speculation, it would be worse with them, and they would not be able to attain to the degree of the blessed , but would waver and fall headlong, and make a bad end (ibn Tufail, 1929, pp. 175-176).

4.2 Does Islamic Natural Law Exist? Reinvestigating Emon's Classification

As discussed in the previous chapters, natural law, which is generally associated with the West and Christianity, is dominantly based on the ontological authority of reason. Even though the Islamic tradition does not heavily rely on the role of reason in jurisprudence and theology, there have been some attempts among pre-modern Muslim jurists to theorize *Sharī'a* through asserting the ontological authority of reason. Actually, these efforts were similar to those of Aquinas, Grotius, Suárez, and Pufendorf. As Anver M. Emon (2010, p. 10), a renowned scholar who argues the existence of Islamic natural law writes, "the authority of reason is a matter of common concern to legal systems across both time and space." It is true that the natural law based on the authority of reason is not limited by geographical or historical boundaries and it is intrinsically admissible that the relation between natural law and reason can pose various forms of theories. However, what is the most significant point here is that an objective research on these theories should not present eagerness to find commonalities between different geographies and also should avoid falling into the trap of historical anachronisms. Therefore, this subchapter is not conditioned to find or create common grounds between Christian and Islamic natural law teachings; on the contrary, it aims to compare the rationale and outcomes of differences. To make a healthy comparison, the role of reason, which is the major component of all natural law theories regardless of its religious source, will be investigated. Specifically, the questions that will be discussed in this chapter is about whether there is a

natural law tradition in Islamic law, whether reason has an ontological authority in Islamic jurisprudence, and whether reason can be considered as a source of *Sharī'a* norms.

Emon (2005, p. 351), in his article titled "Natural Law and Natural Rights in Islamic Law," replies the first question in the affirmative and writes that "to even begin suggesting that a natural law tradition exists in Islamic law, one has to overcome the hurdles set by those who avowedly deny that such a tradition exists." For instance, prominent Islamic scholar, Patricia Crone (2004, p. 263), in her *God's Rule: Government and Islam*, mentions under the title of *No Natural Law* that "God was the only source of legal/moral obligations; before revelation, humans had lived in *bara'ā aṣliyya* [a state of fundamental non-obligation]." In this context, *qabla wurūd al-shar'* [before revelation or in the absence of source-texts], it can be argued that people were in the Western concept of the state of nature. However, Crone (2004, p. 264) reminds al-Ghazālī's perspective which is "humans could not have an inner moral compass, or any 'law written in their hearts' (Romans 2:15), enabling them to live moral lives on the basis of their own unaided reason." In this context, Crone (2004, p. 264) concludes that "according to this view of things, in short, it was only by divine intervention that humans could escape from their amoral state of nature."

Crone is not the only leading Islamic scholar who acknowledges the nonexistence of natural law in Islamic thought. For instance, George Makdisi (1997, p. 130), in *Ibn 'Aqil: Religion and Culture in Classical Islam*, obviously acknowledges that natural law tradition does not exist in Islam. Actually, both of these scholars propose some concrete arguments to endorse their position. They commonly argue that in Islamic tradition, reason does not present an ontological authority independent of Qur'ānic justifications. Here, the discussion on the second question emerges that is whether reason has an ontological authority in Islamic legal theory. The dominant thesis in Islamic jurisprudence, which is named by Emon (2005, p. 351) as the thesis of "positivists," who prioritize the source-texts and deny the

function of reason in law and theology, holds that in *uṣūl al-fiqh* [Islamic legal theory], if there is no Qur'ānic verse or *hadīth* on a specific matter, one is left in the boundaries of *tawaqquf* [legal suspension]. This means that, in this situation, "there is no epistemically coherent way to determine the divine law on that matter, and consequently no one is in a sufficient epistemic position to attribute to God a ruling of any normative force" (Emon, 2005, p. 351). Here, the discussion on the third question emerges that is whether reason can be considered as a source of *Sharī'a* norms. In this context, it is evident that Islamic jurisprudence has a strict textual fundamentalism; therefore, any inferences made by reasoning do not provide a framework for divine law. Therefore, the arguments proffered by Crone and Makdisi or by some others, who allege that ontological authority of reason does not exist in Islamic law and therefore Islamic legal theory does not produce a natural law tradition *per se,* seem right *prima facie*. In order to reach a concrete analysis, one should investigate these questions further.

Islamic theologians and jurists who argue the ontological authority of reason are classified under the title of hard natural law by Emon. Hard natural law also suggests that humans, via their reasoning, can put limitations on God's will. Thus, voluntarists, who reject the initiatives that attempt to impose restrictions on God's will, criticize hard natural law proponents. Contrary to hard natural lawyers, who are predominantly *Mu'tazilites*, voluntarists prioritize the omnipotence of God and condemn them for making a room for the ontological authority of reason. For instance, Ibn Ḥazm (d. 1063) holds that reason is an instrument to understand and may have an epistemological function; however, it cannot be a basis for developing *Sharī'a* norms. The criticisms of voluntarists, who are mainly *Ash'arītes*, persuaded the majority of Muslims; therefore, "anyone who suggests today that reason has ontological authority as a source of *Sharī'a* norms is deemed unpersuasive for orthodox *Sunni* Muslims" (Emon, 2010, p. 14).

Another type in Emon's terminology is the soft natural law which can be defined as a middle way between hard natural law and voluntarism. The proponents of soft

natural law, such as Abū Ḥāmid al-Ghazālī (d. 1111), mainly suggest that the new tools, *maṣlaḥa* [public interest] and *maqāṣid* [purposes of *Sharī'a*], can be used to control and balance the ontological and epistemological functions of reason. al-Ghazālī strictly denies the role attributed to reason by *Mu'tazilites* and argues that "*Sharī'a* can address all situations" (Emon, 2005, p. 352). Here, what persuades Emon to acknowledge that there exists a natural law tradition in Islam is al-Ghazālī's "soft naturalism."

To sum, according to Emon's classification, there has been three main branches that discuss the issue of ontological authority of reason in the history of Islamic legal theory. First, there are hard natural law theorists who argue that God merely does what is good; therefore, reason has an ontological authority to determine *ḥusn* [the good] and *qubḥ* [the bad] and it can produce norms in *Sharī'a*. Second, there are voluntarists who argue that a thing is good because God wants it to be good. To these theologians and jurists, even though reason can determine the good and the bad, the reasoning on this issue cannot be included in *Sharī'a* norms. Last group, soft natural law theorists, hold that reason can function in the absence of the source-texts; therefore, it may generate *Sharī'a* norms as being an alternative authority. To make comparisons between the natural law arguments in Emon's classification, here, the titles that he invented will be utilized as he determined.

4.2.1 Hard Natural Law

In Islamic theology, God created the world for the benefit and enjoyment of human beings; therefore, hard natural lawyers regard the world as *mubāḥ* [permissible]. To them, all deeds are assumedly permissible unless disproven. Since the world is designed according as the needs of man and because God never creates a thing in vain, they consider "is" of this world is exactly the same with that of the "ought." According to their approach, if God created something or if there exists something, it is because God only does the good. Then, the question is

whether men can understand the rationale behind God's creations through using reason. Hard natural law theorists argue that human beings can investigate the world around them; thus, they can derive or create new norms via their rational inquiries. Then, these derivations can be transferred to the realm of *Sharī'a* since what created by God has its own normative value and good enough to be included in the Islamic law. In this context, hard natural lawyers propose two theses: First, "God only does the good" and second "one could infer legal norms by observing the natural world" (Emon, 2014, p. 150). This position of hard natural law proponents is quite similar to that of Cicero and Stoics who derive natural law from nature (Levering, 2014, p. 190). According to Emon's classification, five main representatives of hard natural law come to the forefront: ibn 'Isḥāq aṣ-Ṣabbāḥ al-Kindī (d. 873), Abū Bakr al-Jaṣṣāṣ (d.981), al-Qāḍī 'Abd al-Jabbār (d.1025), Abū al-Ḥusayn al-Baṣrī (d. 1044), and Abū Walid Mohammad ibn Rushd (d. 1198).

First, al-Kindī, a proponent of *Mu'tazili* doctrine, proposes an understanding of reason which is independent of faith. al-Kindī is also among the Muslim philosophers who were influenced by Neo-Platonic philosophy. He maintains an "ethics based on philosophical insight" (Brown, 2015, p. 28). During the reign of Caliph Ja'afar al-Mutawakkil, who exiled *Mu'tazilites* including al-Kindī, reasoning and interpretation of source-texts were banned. al-Mutawakkil also closed down the *Bayt al-Ḥikmah* and al-Kindī was administered sixty lashes. As the title of Robert R. Reilly's book, *The Closing of the Muslim Mind*, presents, what al-Kindī experienced was a sample of closing a Muslim mind.

Second, al-Jaṣṣāṣ, who is a member of *Mu'tazili* school as well, argues that prior to the revelation, man could still distinguish what is *ḥusn* and what is *qubḥ* through his reason; therefore, if the normative value of action does not change, the category in which this action is included in will be valid after the revelation as well. In this context, he categorizes man's actions as *mubāḥ* [permissible], *wājib* [obligatory] and *maḥẓūr* [prohibited]. Since these categories are extant before the

revelation, they can also be extant after the revelation. This means that reason can contribute to *Sharīʿa* through analyzing man's actions; thus, following source-texts to identify the normative value of an action is redundant. He also notes that some actions' normative value is not subject to change. These are universal and timeless values which are determined by reason and which do not require a scriptural approval. To him, "*imān* [having faith in God], *shukr al-munʿim* [thanking the benefactor] and *inṣāf* [pursuing fairness]" are among this kind of actions (Emon, 2010, p. 47). Rami Koujah, in his article titled "A Critical Review Essay of Anver M. Emon's Islamic Natural Law Theories," explicitly objects to Emon's approach to al-Jaṣṣāṣ. He writes that Emon's reading of al-Jaṣṣāṣ's permissible acts is faulty and to him "what al-Jaṣṣāṣ says, in actuality, is that acts which are permissible are acts that are rationally open to the possibility of being among any one of the three legal norms" (Koujah, 2015, p. 20). To show Emon's misreading of al-Jaṣṣāṣ, Koujah cites an excerpt from al-Jaṣṣāṣ concerning the actions prior to revelation: "what the intellect can sometimes possibly deem permissible, other times prohibited, and other times obligatory depending on the consequences of the action being of benefit or harm to the people" (al-Jaṣṣāṣ, as cited in Koujah, 2015, p. 20). To Koujah, Emon's conclusion on al-Jaṣṣāṣ is beyond the suggestion of the original text. He also points out that "just because there is benefit in nature, and it is permissible to obtain these benefits, it does not suggest that there is a normative basis on which obligation and prohibition can be rationally determined" (Koujah, 2015, p. 21).

Third, al-Qāḍī ʿAbd al-Jabbār (d.1025), a *Muʿtazilite* jurist, uses the concept of permissibility to argue a transformation from "primordial state" to "state of law and order." His argument relies on the term *rizq* [sustenance]. He advances that God bestows man *rizq* to enable him sustain his life. This shows that "at the most primordial level of existence, *rizq* is normatively good and thereby 'permissible' to all" (Emon, 2010, p. 52). To ʿAbd al-Jabbār, all actions of man, such as struggling to gain *rizq*, are the consequence of God's creation. Since *annahu taʿālā lā yafʿalu illā al-ḥasan* [God only does the good], the actions of man are good as well.

Therefore, in his natural law theory, "*rizq* considered in a primordial sense prior to distribution presents the initial state of nature's factual and normative good" (Emon, 2010, p. 53). Therefore, through reason, man can understand God's normative creation at the state of nature and perceive the necessities of subsequent state of law and order.

Fourth, Abū al-Ḥusayn al-Baṣrī (d. 1044), *Mu'tazilite* jurist and disciple of Qāḍī 'Abd al-Jabbār, argues that man's natural reasoning is primary while the knowledge provided by God in the source-texts is secondary. He writes that "we know that [God] does not perform evil…Knowledge of that is part of the knowledge [of God]. These first principles necessarily precede [one's acceptance of] the scripture. The nature of scripture does not provide a method to [arrive at] them" (al-Baṣrī, as cited in Emon, 2010, p. 85). To al-Baṣrī, not only source-texts but also reason can determine the value of man's actions; thus, again, not only source-texts but also reason can set the framework of *Sharī'a*. More importantly, reason also enables man to realize, test, and know *ṣiḥḥat al-shar'* [the authenticity of source-texts]. What reason cannot address are the rules determined by God in terms of obligatory prayers. al-Baṣrī accordingly writes that "it is also known that we do not know through reason whether these religious practices entail a benefit or ward off harm in the hereafter" (al-Baṣrī, as cited in Emon, 2010, p. 85). Here, Emon argues that according to al-Baṣrī, apart from those devotional rituals, the core of religion, which arranges the relation between man, God, and world order, is knowable by reason. Then, reason is the authority that determines the context of this trilateral relation. However, Koujah does not agree with Emon in terms of al-Baṣrī's perspective to reason. He writes that al-Baṣrī does not emphasize that actions can be evaluated through naturalistic reasoning; to him, "what Emon's argument suffers from is that he often makes unsupported assumptions in his reading of al-Baṣrī's text" (Koujah, 2015, p. 26).

Fifth, ibn Rushd (d. 1198), who is introduced by Wild (1996, p. 381) as a neo-*Mu'tazilite*, gives priority to reason over faith and he argues that "faith is for those

of weak intelligence: the real truth is in philosophy" (Brown, 2015, p. 31). To ibn Rushd, there are three types of knowledge: rhetorical, dialectical, and demonstrative; and, only the philosophers can attain the genuine knowledge which is extant in demonstration:

> In general everything in these [texts] which admits of allegorical interpretation can only be understood by demonstration. The duty of the élite here is to apply such interpretation; while the duty of the masses is to take them in their apparent meaning in both respects, i.e., in concept and judgment, since their natural capacity does not allow more than that…Another class is the people of certain interpretation: These are the demonstrative class, by nature and training, i.e., in the art of philosophy. This interpretation ought not to be expressed to the dialectical class, let alone to the masses (ibn Rushd, 1961, pp. 59-64).

4.2.2 Voluntarist Criticism

Voluntarist theologians in Emon's classification were not on the same page with the hard natural law proponents. They mainly argue that *Sharī'a* is an outcome of God's divine will; therefore, nothing, including reason, can determine the context of *Sharī'a*. Even though they do not totally ignore the functions of reason, they also emphasize that reason can function to determine the value of man's actions in terms of being good or bad however the results of reasoning may not be same with the divine rule expressed by *Sharī'a*. The essence of their criticism against hard natural lawyers is as follows: If God only does the good in line with the benefit of human beings, and human reason can comprehend the good which helps man to discern the obligations and prohibitions, then, man can require or force God to remunerate or reprove certain deeds. However, to voluntarists, God is all-powerful and not submissive to humans. In Emon's classification, the voluntarists, whose opinions on reason come into prominence, are: Abū Bakr al-Bāqillānī (d. 1012), Aḥmad ibn Sa'īd ibn Ḥazm (d. 1064), Abū Isḥāq al-Shīrāzī (d. 1083), Abū al-Ma'ālī al-Juwaynī (d. 1085), and 'Alī ibn 'Aqīl (d. 1119).

First, Abū Bakr al-Bāqillānī (d. 1012), early *Ash'arīte* theologian, criticizes hard natural law theorists in terms of the role they attribute to reason. To him, there are two kinds of knowledge in *Sharī'a*. First type of knowledge is about the rules that determine what is prohibited and what is allowed. The authority of these rules is based on divine will, not on reason. Therefore, reason cannot establish these rules. Second type of knowledge is the innate knowledge that stems from reason; however, this knowledge cannot oblige or prohibit certain actions. To al-Bāqillānī, thus, what is obligatory and what is permissible can only be known through source-texts; thus, reason can merely be used to comprehend these rules (Emon, 2010, p. 92).

Second, Aḥmad ibn Sa'īd ibn Ḥazm (d. 1064) advances that the questioning or reasoning acknowledged by hard natural law adherents is *makabirat al-'iyan* [plain pomposity]. He contends that humans are not available to comprehend what God's law is. Therefore, God's law is in *tawaqquf* [pending] and humans cannot add or remove any rule in its context. Therefore to ibn Ḥazm, reason may function to understand and discern the world and God's rule; however, it cannot form a basis for *Sharī'a*. He advances that reason "can empirically describe the genus of things, but it cannot impute to them a normative value on the authority of God. God commands and prohibits, and He does so as He wishes" (ibn Ḥazm, as cited in Emon, 2010, p. 93). Accordingly, he writes:

> Anyone that says that God would do nothing save what is good according to our understanding and would create nothing that our understanding classes as evil, must be told that he has…perversely applied human argument to God. Nothing is good but Allah has made it so, and nothing is evil, but by his doing. Nothing in the world, indeed, is good or bad in its own essence; but what God has called good is good, and the doer is virtuous; and similarly, what God has called evil is evil and the doer is a sinner (ibn Ḥazm, as cited in Reilly, 2010, p. 73).

Third, Abū Isḥāq al-Shīrāzī (d. 1083) argues that *yaf'alu Allah ma yasha' wa yahkumu ma yuridu* [God does as He wishes and rules as He desires] which means that reason cannot put limitations on the divine will and cannot determine the

context of God's will which is revealed through source-texts (Emon, 2005, p. 361). He justifies this position through referring to the verses in the Qur'ān 17:15: "We do not punish until We send a messenger" and Qur'ān 6:131: "Nor would your Lord destroy the nations without just cause and due warning. They shall be rewarded according to their deeds." According to these verses, al-Shīrāzī maintains that questioning through reason to investigate the good and the bad is a futile attempt since God only punishes if His messenger explains what is prohibited. This means that what is good and what is bad are already determined by God and conveyed by the prophets. Therefore, in this framework, human reason cannot determine what is good or bad without the guidance of messengers.

Fourth, Abū al-Maʿālī al-Juwaynī (d. 1085), an *Ashʿarīte-Shāfiʿite* jurist, investigates that whether obligation and prohibition are the outcomes of God's will or the consequences of human's reasoning. He acknowledges that reason helps man to determine what is dangerous and what is beneficial; however, reason cannot be an authority to establish rules which were already established by God. Therefore, reason is only about "*ḥaqq al-ādamiyyīn* [normal capacity of human activity]" and cannot transgress the realm of "*ḥukm Allāh* [God's judgment]." This means to al-Juwaynī that "we cannot make *Sharīʿa* judgments based purely on a rational analysis into harms and benefits since any such conclusion offers no authority to justify divine sanction" (Emon, 2010, p. 104).

Last voluntarist examined in this subchapter is ʿAlī ibn ʿAqīl (d. 1119), a *Ḥanbalī* jurist, maintains that reason can only function in an epistemic way; he argues that "investigating the empirical world may provide insights into the divine will. But reason does not provide the bridge to move from the empirical to the normative, from the 'is' to the 'ought'" (Emon, 2010, p. 99). This means that, to ibn ʿAqīl, man has an epistemic capability to understand the world however his reason has no intrinsic ontological authority to establish *Sharīʿa* laws. Moreover, the epistemic function of reason is also the consequence of "God's creative will" through which He created the reason (Emon, 2010, p. 100).

4.2.3 Soft Natural Law

To Emon, the soft natural law conception symbolizes a middle way between the hard and voluntarist approaches. He argues that it grants reason an ontological authority; however, this authority is not independent of checks and balances. Therefore, to him, the adherents of soft natural law put limitations on the scope and power of reason. These checks and balance are named as *maṣlaḥa* [public interest] and *maqāṣid* [purposes of *Sharī'a*]. In this context, reason can play a role to determine the extent of Islamic law so long as it functions in consonance with the public interest and the objectives of *Sharī'a*. In Emon's works, soft natural law proponents are Abū Ḥāmid al-Ghazālī (d. 1111), Fakhr al-Dīn al-Rāzī (d. 1209), Najm al-Dīn al-Ṭūfī (d. 1316), and Abū Isḥāq al-Shāṭibī (d. 1388).

First, Abū Ḥāmid al-Ghazālī (d. 1111), an *Ash'arīte-Shāfi'ite* jurist, utilizes *maṣlaḥa* to narrow the capacity of reason. Normally, *maṣlaḥa* involves two different connotations: First, it means *jalb manfa'a* [to get benefit from something] and second it refers to *daf' madarra* [to prevent harm]. However, al-Ghazālī attributes a third meaning to the term. According to his understanding, *maṣlaḥa* is a technical term that means *al-muḥāfiẓa ʿalā maqṣūd al-sharʿ* [protection of the aims of divine law] (Emon, 2014, p. 153). Then, the question is: what is the aim of divine law that should be protected? To al-Ghazālī, divine law is for preserving five main notions: *din* [religion], *nafs* [life], *'aql* [reason], *nasl* [lineage], and *mal* [property]. Therefore, he writes in *al-Mustasfa* that "whatever involves the preservation of these five fundamental values is a *maṣlaḥa*, and whatever neglects these fundamental values is corrupt, and so repelling it is a *maṣlaḥa*" (al-Ghazālī, as cited in Emon, 2014, p. 153). He exemplifies the preservation of these values through referring to the Qur'ān. To him, punishing unbelievers is for protecting the religion, punishing murderer is for protecting the life, punishing alcohol consumers is for protecting the reason, punishing adultery is for protecting the lineage and punishing theft is for protecting the property (Emon, 2014, pp. 153-154). He also argues that "it is impossible that any society or any legal system,

which aims for the benefit of creation, would not include prohibitions against neglect of and restraint from these five values" (al-Ghazālī, as cited in Emon, 2010, p. 135). To Levering (2014, p. 192) , these five values resembles to "primary or basic human goods" determined by John Finnis who sets forth "life, procreation and education of children, knowing the truth about God, living in society, reasonableness or virtue, and harmony with the transcendent source" as the fundamental values.

al-Ghazālī also maintains that there are three types of *maṣlaḥa*: First, it is *ḍarūrāt*: an issue with a necessary interest which is central to whole society without any disagreement. Second, it is *ḥājāt*: an issue with social interest but not at the highest level. Third, it is *tazyīnāt*: an issue which only aims at edification. In this context, al-Ghazālī argues that only *ḍarūrāt* can be the basis for *Sharī'a* rules since other two categories do not represent the divine will (Emon, 2010, p. 137). Since to al-Ghazālī, the purpose of *maṣlaḥa* is *al-muḥāfiẓa ʿalā maqṣūd al-sharʿ* [protection of the aims of divine law] he proposes a term to comprehend the purpose of source-texts. This term is *munāsaba* which means to identify the *ʿilla* or *ratio legis* of the rule. In this context, man, through his rational faculties, can grasp the *munāsaba* in *Sharī'a* norms and values (Emon, 2010, pp. 144-145).

al-Ghazālī, therefore, holds that there are three types of knowledge. First, some things can be known by reason without attributing to a tradition, source-texts, or science. Second, some things can be known only by source-texts. And third, some things can be known by both the usage of source-texts and reason; this type of knowledge is *ashraf al-'ulūm* [the most righteous form of knowledge]. Emon (2010, p. 94) acknowledges that this combination of reason and source-texts is significant in al-Ghazālī's natural law understanding. To him, al-Ghazālī argues that even though man cannot create *Sharī'a* norms through utilizing his reason, he can nevertheless speculate on morality. As a consequence of the combination of speculation and norms in source-texts, *ʿilm* [true knowledge] emerges. To sum, Emon (2010, p. 133) maintains that "al-Ghazālī's soft natural law preserves a

commitment to divine omnipotence, repudiates hard natural law, and renders reason ontologically authoritative in *Sharī'a* matters."

Koujah does not approve Emon's deductions from al-Ghazālī's approach to reason. To Koujah (2015, p. 7), "Emon's conclusions are misrepresentative of al-Ghazālī's views on several accounts" because al-Ghazālī argues that God establishes rules for the benefit of humans; therefore, al-Ghazālī never asserts that God creates the world for the benefit of humans as Emon alleges. In this context, Koujah (2015, p. 7) points out that in al-Ghazālī's terminology, "the *maṣlaḥa* to which reason grants normativity is derived from the *maṣlaḥa* in what God has legislated and not the *maṣlaḥa* that is empirically observed in nature." Then, it is not surprising that al-Ghazālī "strictly constrains the scope of natural reasoning to exercise its ontological authority." Similarly, to Imad-ad-Dean Ahmad (2009, p. 7), al-Ghazālī, in *The Incoherence of the Philosophers*, demolishes the epistemological rationalism; Ahmad writes that al-Ghazālī's "main target is the claim that reason is a sufficient guide to knowledge of God…[he] argues that the knowledge of the divine is unattainable by pure logic."

Second soft natural law proponent in Emon's classification is a *Shāfi'ite* jurists Fakhr al-Dīn al-Rāzī (d. 1209). To Emon, al-Rāzī argues that God created the nature for the benefit of the humans. Accordingly, God established rules in order to preserve and maintain humanity's benefits. This preservation requires a need; since *Allah as-Samad* [God is omnipotent and does not need anything], reason, which is used to understand the rationale behind God's legislation, can only be related to human needs. Thus, to al-Rāzī, reason cannot influence God's order and cannot insert nor remove a rule in God's *Sharī'a* since "God 'indeed legislates rules for the benefit of people'" (al-Rāzī, as cited in Emon, 2010, p. 148). Koujah (2015, p. 10) argues that al-Rāzī does not grant ontological authority to reason. He writes that "what al-Rāzī argues is that *maṣlaḥa* for humanity is considered in God's legislation and not in the entirety of His creation." Koujah (2015, p. 10), thus, maintains that to al-Rāzī, "when a *maṣlaḥa* must be considered which is not

addressed by revelation, the jurist knows the appropriate way to respond not based on an ontologically authoritative reasoned inquiry."

Third, Najm al-Dīn al-Ṭūfī (d. 1316), a *Ḥanbalī* jurist, is also under the category of Emon's soft natural law. al-Ṭūfī, like al-Rāzī, argues that God desires the good for humanity and the rules in *Sharī'a* is for maintaining human's benefit and protecting them from harm. He utilizes some verses in the Qur'ān to underpin his approach; such as "God does not want to place hardship upon you, but rather desires to purify you and perfect His bounties for you, so that you may show gratitude" (Qur'ān 5:6) and "strive in the way of God, as He deserves. He has chosen you and has imposed upon you in religious matters no hardship" (Qur'ān 22:78). Therefore, al-Ṭūfī reaches the conclusion which al-Rāzī emphasized before: reason can understand and interpret but cannot produce *Sharī'a* norms and values. To al-Ṭūfī, the sources of *Sharī'a* are *naṣṣ* [source-texts] and *ijmā'* [rules by consensus] and source-texts "must be interpreted in such a way that they do not contravene the presumption of pursuing the good as a matter of *Sharī'a*" (Emon, 2010, p. 162). Koujah (2015, p. 11) also objects to Emon's perspective to al-Ṭūfī. He writes that "if these sources contradict the presumptive state of affairs, i.e., preventing harm and promoting *maṣlaḥa*, Emon writes, al-Ṭūfī then suggests that these sources would need to be reinterpreted." He then states that "in actual fact, this is not what al-Ṭūfī claims in his writing…It is not clear how Emon made this mistake" (Koujah, 2015, p. 11).

The last soft natural law theorist in Emon's classification whose perspective to reason will be investigated here is *Mālikī* jurist, Abū Isḥāq al-Shāṭibī (d. 1388). al-Shāṭibī claims that reason's authority ends when the authority of source-texts begins. He acknowledges that "reason does not operate in a case of investigation except to the extent that *al-naql* [transmitted proofs] allow" (Emon, 2010, p. 167). Therefore, al-Shāṭibī holds that reason may function within the limits determined by source-texts and cannot transgress any boundary set by *naṣṣ*. To Koujah (2015, p. 13), "reason, for al-Shāṭibī, operates under the ambit of the source-texts." He

also notes that al-Shāṭibī "does not write that God acts with the purpose of upholding the interests of humanity. Rather, he writes that God legislates with the purpose of upholding the interests of humanity" (Koujah, 2015, p. 14).

4.2.4 Critiques on Emon's "Islamic Natural Law"

It is obvious that Islamic jurisprudence is mainly dominated by the textual tradition; while these texts were regarded as unquestionable, subsequent tools such as *maṣlaḥa* and *maqāṣid* could not provide reason to become an independent instrument. Even though Muslim jurists did not totally ignore the discussions on reason, they prioritized the question whether reason can be used as an instrument in the absence of source-texts. Therefore, it can be claimed that Islamic jurists and theologians dominantly reject the ontological authority of reason. However, according to those who accept the ontological authority of reason, reason can only function within the limits determined by source-texts. In this context, Koujah (2015, pp. 10-11) writes that Emon is correct, "however, in noting that the soft naturalists limit the scope of natural reasoning. They limit natural reasoning to identifying when a *maṣlaḥa* falls in accordance with the aims of the law when the source-text is silent." Therefore, the dominant approach to God has been, as al-Shīrāzī puts, *yaf'alu Allah ma yasha' wa yahkumu ma yuridu* [God does as He wishes and rules as He desires]. This approach to God and His rules have created an ongoing textual fundamentalism not only in Islamic jurisprudence but also in Islamic understanding of philosophy, politics, and economy. Then the question is that if Islam does not grant an ontological authority to reason and it is dominated by source-texts' sovereignty, how can it produce a natural law tradition?

Ahmad (2009, pp. 2-3), who maintains the existence of natural law tradition in Islam, writes the following excerpt when he tries to justify his presupposition:

> The change in the understanding of natural law in the West is clearer if one compares the empiricism of David Hume against the rationalism of Aristotle, the methodology of Isaac Newton against that of Claudius Ptolemaeus, the historical approach of Toynbee against that of Herodotus, the psychological analyses of Freud against those of Hippocrates, or the governance theories of Locke against those of Plato. Changes in the understanding of *Sharīʿa* may be more difficult for Muslims to acknowledge, despite their undeniable reality. Muslims want to depict the historical debates over *fiqh* [Islamic legal theory] as being centred on minor juridical differences, for example, between Imam Mālik and Imam Shāfiʿī as to where one puts his hands during prayer. The serious fundamental disputes as between the *Muʿtazilites* and the *Ashʿarītes* are condemned to obscurity by branding the *Muʿtazilites* as heretics.

As mentioned earlier, *Muʿtazilites*, who theorize the ontological and epistemological authority of reason, have been marginalized by the dominant *Ashʿarītes* since day one. In this vein, Ahmad's claim for "Islamic natural law" can again only be achieved if one understands natural law as Ahmad does. He writes that "natural law constitutes principles about nature that are logically unavoidable (epistemological rationalism) from the notion that it constitutes principles that are God-given (divinely dictated)" (Ahmad, 2009, p. 1). Thus, if we decontextualize the concept of natural law from its philosophical premises and create a "new natural law" only in the scope of divinely dictated principles, which is not a natural law as most of the scholars understand, then it can be claimed that there has been a natural law tradition in Islamic scholarship.

Similar perspectives to Ahmad's natural law understanding can be seen in Hakim's and Ramadan's works. Abdul Hakim (1953, p. 37) maintains his argument through citing some verses from the Qur'ān such as: "This is the nature of God on which He has formed and moulded the nature of man. The understanding of this nature constitutes right religion; in the laws of God's creation you will find no alteration" (Qur'ān 30:30), "Those who possess knowledge, these clear verses and these obvious signs are inscribed in their breasts and only those dispute them who are unjust (to themselves and to others)" (Qur'ān 29:49) and "He who is destroyed is destroyed in spite of obvious signs and reasons and He who is granted real life is granted it because of evident reasons" (Qur'ān 8:42). Abdul Hakim (1953, pp. 47-

48), in this context, acknowledges that "the Qur'ān laid down the principle that right religion is nothing but natural law rightly understood, but natural law must be formulated into certain definite principles by a man whom God Himself has chosen." It is evident that, to Hakim, the scope and contents of natural law can merely be determined by those who were designated by God. In this context, nobody but prophets can be the agents of natural law. Beyond any doubt, this understanding limits natural law and reason to a specific period of time, specific place, and specific people. It is also obvious that this type of definition is not compatible with a universal, timeless, and reason oriented natural law understanding. Moreover, Abdul Hakim (1953, p. 48) does not regard people as determinative subjects in the process of searching for natural law: "This work cannot be safely left in the hands of tyrants who have attained power by force and fraud, nor is it safe to trust the majorities created by successful electioneering caucuses." Tariq Ramadan, in his *Radical Reform: Islamic Ethics and Liberation*, also argues the existence of natural law in Islam; to him natural order is a sign of natural law. He cites Qur'ān (21:33) that says "the sun and the moon follow courses exactly computed…float along, each in its rounded course." To him, "the intellect is thereby invited to observe and study those elements but also to become aware that some definitive, universal natural laws exist" (Ramadan, 2009, p. 92). However, he does not elaborate further about the relation between natural law and Islam; in addition, he remains silent about what worldly conclusions in terms of political, social, and economical realms can be generated from this type of verses.

Then, if there is not a genuine natural law tradition in Islam, how should we interpret Emon's works that include the allegations on the existence of "Islamic natural law" and ontological authority of reason? Koujah (2015, p. 1) replies this question as follows: "I conclude that Emon's study, ambitious in its goals and important as a first step, presents a strained reading of the texts and struggles to convince the reader of the genuineness of a natural law tradition in Islamic legal theory as he presents it." As mentioned earlier, struggling or pushing to find resemblances between the parties of comparative theory does not yield to objective

outcomes. Here, Muslim theologians and jurists, except from a few thwarted *Mu'tazilites*, do not evidently grant reason an ontological authority in a way to go beyond the realm of source-texts. Koujah (2015, p. 3), accurately points out that "one of the weakest points of Emon's book is that he reaches erroneous conclusions that arise from misreading and misunderstandings of the text." Then, he explains the reason: "These faulty conclusions seem to result from Emon's eagerness to find a commonality between the hard naturalist and soft naturalist theories on…reason's ontological authority." David Warren remarks exactly the same point. He writes that Emon uses continual references to prove his natural law framework; however, his framework does not transcend the classical categorization which is *Mu'tazilite* and *Ash'arīte*: "Whilst these two abstract categories may be unable to fully encapsulate the nuances of each individual's thought, it is arguable that Emon's own categories add little in this regard." (Warren, 2011, p. 496). Then, nothing new leads us to regard *Mu'tazilite* and *Ash'arīte* theologians and jurists as natural lawyers. Moreover, as examined in the previous subchapter, while Emon cites the hard natural law theorists, who are more close than others to natural law concept, he refers only to *Mu'tazilite*s. This means that what Emon does is merely to rename the classical classification and regards some *Mu'tazilite*s as natural lawyers. In this context, even March (2010, p. 678), who was also introduced in the first chapter as one of the most prolific scholars on comparative political theory applied to Islam and the West, writes on Emon's "Islamic natural law" thesis that "there thus appears in the book a tendency at times to force the author's chosen terminology and framework on the source material."

Last, forcing the arguments in order to find commonalities often causes exaggerations. As Koujah (2015, p. 10) writes, "Emon exaggerates the ontological authority that al-Rāzī, al-Qarāfī, and al-Ghazālī gave to reasoned deliberation." Concerning the *maṣlaḥa*, the most widespread argument utilized by the proponents of existence of "Islamic natural law" tradition, it is clear that *maṣlaḥa* does not grant ontological authority to reason even when source-texts are silent and it only

serves to identify the aims of these texts. Except some *Mu'tazilite*s, the vast majority of Muslim theologians and jurists argue that reason without the guidance of source-texts can neither add nor remove a *Sharī'a* rule. Then, Emon's categorization as hard and soft natural law becomes pointless. Koujah (2015, p. 27), in this context, writes that "the dichotomy presents a simplistic and reductionist picture…too often is Emon's book repetitive and offers little insight on the subtleties and nuances of the juristic discourse." Moreover, he advances that "Emon's eagerness to present a novel discussion on Islamic natural law and find a common ground between hard and soft naturalists is lacking in textual support" (Koujah, 2015, p. 26).

To sum, contentions on ontological authority of reason or the existence of Islamic natural law are unable to exceed a few theses of *Mu'tazili* school. Therefore, when the ongoing dominance of *Ash'arītes* over *Mu'tazilites* for centuries is considered, it is evident that these contentions are baseless. As Wael B. Hallaq (2009, p. 502) , scholar of Islamic law, writes in his prominent treatise titled *Sharī'a: Theory, Practice, Transformations*, "*Ash'arīte* legal theology, considerably dominating the *Sunnite* [largest denomination in Islam] scene…held human intellect to be largely incapable of any determination of the rationale behind God's revelation." This shows that *Ash'arītes* regard the function of reason only within the scope of source-texts; thus, their legal positivism, or more precisely, textual fundamentalism, has hindered the rudimentary efforts to develop a natural law based on the ontological authority of reason. This does not mean that ignoring source-texts is a precondition of natural law; as Budziszewski (2010, p. 190) writes, "just as a Christian natural law thinker also tries to be faithful to sacred scripture and apostolic tradition, so of course a Muslim natural law thinker would try to be faithful to the legal prescriptions of the Qur'ān and…*hadīth.*" However, he also writes that "to be sure, it is hard to see how *Sharī'a* can be reconciled with natural law if it is regarded merely as a code, as something fixed, immutable, and dead" (Budziszewski, 2010, p. 191).

Today, in order to eschew from criticisms, contemporary Islamic scholars, who hold the ontological authority of reason in Islam, generally tend to cite Qur'ānic verses that direct Muslims to think. However, accepting reason as an instrument justified by texts is not same with accepting reason as an authoritative source of *Sharī'a* independent of text's justification. To overcome this pressure, some modern reformists, such as Tariq Ramadan, equate reason and texts. He writes in *Western Muslims and the Future of Islam* that "the first space that welcomes human beings in their quest is creation itself. It is a book…and all the elements that form part of it are signs that should remind the human consciousness that there exists that which is 'beyond' them" (Ramadan, 2004, p. 13). However, Ramadan's case, just as others, submits reason to source-texts in the last instance.

4.3 The Relation between God and Humans: Christianity and Islam

In order to investigate whether Islamic natural law tradition exists one should also examine the relation between God and humans both in Christianity and Islam. First, in Christianity, this relation is based on a covenant made between these two parties. This covenant is a kind of intra-family contract in which God is the father and humans are His sons and daughters (Brown, 2015, p. 32). Frank van Dun (2001, p. 6) writes in "Natural Law, Liberalism and Christianity" that "the biblical religion is the religion of the covenant." This means that there is an evident distinction between the two realms which are dominated by God and humans separately and each of these spheres has their own autonomies. The parties of the covenant in the biblical stories are rational and moral agents even though they have different qualities. Therefore, even though they have differences, their relation includes mutual respect which eventually leads to the birth of justice. Covenant between humans and the God also symbolizes the expected order of the world. Humans in the world should imitate covenantal relationship based on equality and mutual respect through providing equality and mutual respect in the world. As van Dun (2001, p. 7) rightly expresses, "it is therefore no coincidence

that in the orthodox interpretation of Christianity natural law is the basis for all speculations about human relations in this world." In this vein, he argues that denial of natural law based on covenant has some adverse consequences such as servitude, inequality, an injustice in the world. He, in this context, acknowledges that "if the proper relationship of the 'I' to the 'Other' is not the symmetrical and reciprocal horizontal relationship of *ius* or covenant, it must be the asymmetrical, hegemonic vertical relationship of command and obedience" (van Dun, 2001, p. 17).

Then, what are these covenants? Glenn A. Moots (2010, p. 22), in *Politics Reformed: The Anglo-American Legacy of Covenant Theology*, points out that the word covenant is originally the translation of the Hebrew word "*berith* which is used more than three hundred times in the Hebrew Bible." If the prelapsarian covenant excluded, the first biblical covenant is the one that God made with Noah. About the Noahide covenant, Moots (2010, p. 23) writes that "God not only denies Himself the right to repeat the destruction of the Flood, He establishes universal justice. This latter point has great political significance because it may overlap with what has been called 'natural law.'" This covenant binds God without the requirement of human loyalty or human action; therefore, this is a unilateral covenant. Locke (2003a, p. 21) also mentions this covenant in his *First Treatise*'s Chapter IV and writes that "Genesis 9:2, where God renewing this charter to Noah and his sons, he gives them dominion over the fowls of the air, and the fishes of the sea, and the terrestrial creatures."

Second biblical covenant is the one that was made between God and Abraham. Here, Abraham's party also includes his descendants who were promised by God to possess the "cities of their enemies":

> The angel of the Lord called to Abraham from heaven a second time and said, "I swear by myself, declares the Lord, that because you have done this and have not withheld your son, your only son, I will surely bless you and make your descendants as numerous as the stars in the sky and as the sand on the

> seashore. Your descendants will take possession of the cities of their enemies, and through your offspring all nations on earth will be blessed, because you have obeyed me (Genesis 22:15-18).

As obvious here, "the social, familial, and political are blended together in the covenantal promise to make Abraham's descendants a powerful nation" (Moots, 2010, p. 24). Third biblical covenant was made between God and Moses at the Mount Sinai. Exodus 19:4-6 explains the details of this covenant:

> 'You yourselves have seen what I did to Egypt, and how I carried you on eagles' wings and brought you to myself. Now if you obey me fully and keep my covenant, then out of all nations you will be my treasured possession. Although the whole earth is mine, you will be for me a kingdom of priests and a holy nation.' These are the words you are to speak to the Israelites.

As Moots (2010, p. 26) writes, "the Sinai covenant confirms the movement from a familial covenant to a national covenant; it includes not only the Ten Commandments but also the case law and civil law that follow." And, when the above-mentioned verse is scrutinized, the Sinai covenant provides the fundamentals of a polity that includes "the division of power, separating prophetic, priestly, and civil functions. What was once familial, social, and political becomes more explicitly and institutionally political" (Moots, 2010, p. 26). Fourth biblical covenant is the one that was made between God and David. Davidic covenant includes promise of land as a perpetual component of the covenant. David also made covenants with tribal leaders. Therefore, here the implication for covenant includes vertical and horizontal relationships:

> All the tribes of Israel came to David at Hebron and said, "We are your own flesh and blood. In the past, while Saul was king over us, you were the one who led Israel on their military campaigns. And the Lord said to you, 'You will shepherd my people Israel, and you will become their ruler.'" When all the elders of Israel had come to King David at Hebron, the king made a covenant with them at Hebron before the Lord, and they anointed David king over Israel (2 Samuel 5:1-3).

Then, as evident in the Davidic covenant, "covenantal politics therefore includes moral and religious reform, which renewed piety before a holy God. It also includes political reform, which held rulers and people accountable to one another" (Moots, 2010, p. 28). Since Christians believe that Jesus is the heir of David's kingship, they embrace all covenants that end with the Davidic covenant. However, as evident in John 18:36, "Jesus said, 'My kingdom is not of this world. If it were, my servants would fight to prevent my arrest by the Jewish leaders. But now my kingdom is from another place.'" If Jesus's kingdom is of hereafter, can Christian covenantalism provide a basis for worldly principles? Reformed Protestants, particularly Bullinger and Calvin, as discussed in the second chapter, dealt with this question and accepted to return to the Old Testament in this case. This return led to re-evaluation of church-state relations, political legitimacy, and resistance against tyranny. In this context, Locke inherited not only the covenantalism but also its Reformed interpretation. Here, the covenant theology in Christianity obviously functions as a prototype for Locke's social contract theory which is one of the pillars of liberal political thought.

The relation between covenantalism and Locke's social contract theory can be best explained through Hegel's triad. According to Hegel's (2010, p. 109) triad, the form of logic has three successive stages: the abstract, the negation, and the concrete universal. The first stage, the abstract, is the moment of fixity that the concepts have stability. Then, the second stage, the negation, is the dialectical moment, in which the concepts are instable and the process of self-sublation—the moment of fixity both negates and preserves itself—emerges. The last stage, the concrete universal, is the unity of the opposition between previous stages. As can be seen, Hegel repudiated *reductio ad absurdum* argumentation, which claims that the contradiction among the premises of an argument definitely conduces to the elimination of premises; on the contrary, he suggested that this contradiction leads to the introduction of a new concept. To this extent, covenantalism basically depends on theological reasoning or dogmatic reasoning referring to the reason learned from exegetical following of the scriptural text (Allen M. , 2016, p. 228).

As for the hypothetical reasoning of social contract theory, it makes assumptions on alternative possible worlds and reconstructs them substantially different from the world of theology, or rather, the world which is created by God. In other words, hypothetical reasoning intrinsically rejects the theological *a priori*; however, the crucial point here is the negation proceeds to the last stage of Hegel's dialectics: the concrete universal or more widely but incorrectly known as the synthesis. Then, if the arguments of covenantalist theological reasoning are considered as the abstract and those of hypothetical reasoning as the negation; then, the concrete universal, a new concept such as social contract, will appear in Hegelian logic. To sum, covenant theology in Christianity does not only serve as an instrument to arrange an equal and mutual relationship between God and humans but also it functions as a component of the synthesis which produces Locke's social contract theory. Therefore, in Hegelian terminology, premises of covenantalism both negate and preserve themselves and finally lead to social contract theory.

Then, can one claim that Islam has a similar trajectory? Bernard G. Weiss (1990, p. 50), in "Covenant and Law in Islam" argues that "covenant was not a subject on which Muslim authors deemed it necessary to write comprehensive and systematic treatises." In this vein, Lumbard (2015, p. 2) writes:

> Given the paucity of scholarship regarding the place of the covenant in the Qur'ān, one cannot even say whether or not this lacuna in scholarship arises from the fact that the concept of covenant is not as central to Islamic theology and self-understanding as it is to Judaism and Christianity, or that it is not as cohesive.

Tariq Jaffer (2017, p. 120), as above-mentioned scholars, argues that "there is no doubt that the Qur'ān contains the seeds of covenant theology." However, he also admits that "the seed of the Qur'ānic idea of covenant did not ever develop into a fully-fledged theory." Jaffer, then, concludes that "although Muslim traditionists and *Sunni* theologians acknowledged the covenant as a fundamental premise of the Qur'ān…they did not deem the idea worthy of extensive elaboration." Then, is

there any clue for "the seeds of covenant theology" in the Qur'ān as Jaffer proposes? If yes, why it has not been deemed valuable for further examination?

For the first question, the Arabic equivalents of the word covenant, *'ahd* and *mīthāq* can be excessively found in the Qur'ān; however, it is significant to keep in the mind that these words are heavy loaded terms in terms of the lexicology. First, the dominant meanings of *ahd* and *mīthāq* in the Qur'ān refer to a promise or an oath in interpersonal relationships. For instance, Qur'ān 8:56 reads that "the ones with whom you made a covenant but then they break their covenant every time, and they do not fear Allah." Here, the covenant is related to the oaths given by people to the prophet. Second, *ahd* and *mīthāq* are used to describe the promise of humans given to God: "And why do you not believe in Allah while the Messenger invites you to believe in your Lord and He has taken your covenant, if you should [truly] be believers?" (Qur'ān 57:8). Third, these terms are used exactly like in the Bible to give details about the promises given by "the children of Israel" to God. For instance, "We took the covenant of the Children of Israel and sent them messengers, every time, there came to them a messenger with what they themselves desired not" (Qur'ān 5:70). Fourth, *ahd* and *mīthāq* are used to explain the promises given by prophets to God:

> "Behold! Allah took the covenant of the prophets, saying: "I give you a Book and Wisdom; then comes to you a messenger, confirming what is with you; do you believe in him and render him help." Allah said: "Do you agree, and take this my covenant as binding on you?" They said: "We agree." He said: "Then bear witness, and I am with you among the witnesses" (Qur'ān 3:81).

This type of covenant is also called as the prophetic covenant which concludes with Islam when Muhammad was charged as the final prophet. Finally, *ahd* and *mīthāq* are used to refer God's promise to His believers: "O Children of Israel! Call to mind the (special) favour which I bestowed upon you, and fulfil your covenant with Me as I fulfil My covenant with you, and fear none but Me" (Qur'ān 2:40). In this context, it is obvious that Jaffer is right with his claim that

"the seeds of covenant theology" exist in the Qur'ān. Then, the second question is of importance: why have Muslims neglected "the seeds of covenant theology"?

To Rosalind Ward Gwynne (2004, p. 4), the author of *Logic, Rhetoric and Legal Reasoning in the Qur'ān: God's Arguments*, one of the reasons behind the silence of Muslim scholars about covenant theology is the reaction of *Sunni* theologians to *Mu'tazilites*. As explained before, *Mu'tazilites* attached particular importance to the authority of reason. They also utilized some verses in the Qur'ān which can be considered as "the seeds of covenant theology"; however, majority of theologians and jurists, who were *Ash'arīte* and *Sunni* in general, opposed to *Mu'tazilites* in a broad spectrum, including covenant theology. Another reason why "the seeds of covenant theology" in Islam has remained rudimentary is the structure of the religion that determines the relation between God and humans. Mark Robert Anderson, in *The Qur'ān in Context: A Christian Exploration,* maintains that the Qur'ān attaches highest significance to God's transcendence. To underpin this, he cites verses from the Qur'ān such as "He is the One who originates creation and will do it again—this is even easier for Him. He is above all comparison in the heavens and earth; He has the power to decide" (Qur'ān 30:27), "Say, 'He is God the One, God the eternal. He begot no one nor was He begotten. No one is comparable to Him'" (Qur'ān 112:1-4) and "[God is] the Glorious Lord of the Throne, He does whatever He will" (Qur'ān 85:15-16). Then, Anderson (2016, p. 63) writes that "the Qur'ān asserts [God's] untrammelled glory and utter inapproachability, making its creator-creature distinction as sharp as possible." In addition, he regards this creator-creature distinction as a form of "an absolute master-servant distinction" which "excludes the very possibility of God's being humble" and "involves attitudes of reverent fear of God, humility, subservience, and grateful dependence" (Anderson, 2016, p. 84). He, thus, compares Christianity with Islam in terms of the relationship between God and humans and writes that "lacking the voluntary condescension of divine approach so intrinsic to biblical theology, God's inaccessibility in the Qur'ān leads us not actually to love but only to fear him" (Anderson, 2016, p. 64). In this context, covenant in Christian

theology is a kind of intra-family contract in which God is the father and humans are His sons and daughters. However, in Islam, the relationship between God and humans are "more of a master-slave relationship than a familial one" (Brown, 2015, p. 32). Therefore, the duty in Islam is more about submission than about understanding. van Dun also points out the difference between Christianity and Islam on the relation between God and humans. To him, what constitutes a covenant is the symmetrical relationship between God and humans and an asymmetrical relationship cannot produce a covenant: "If the proper relationship of the 'I' to the 'Other' is not the symmetrical and reciprocal horizontal relationship of *ius* or covenant, it must be the asymmetrical, hegemonic vertical relationship of command and obedience" (van Dun, 2001, p. 17). Then, it is possible to infer that "the asymmetrical, hegemonic vertical relationship of command and obedience" in Islam hinders it to generate a covenant theology since most of the above-mentioned Qur'ānic verses on covenant include the promises of humans to God.

Here, another difference between Christianity and Islam comes to the forefront. Islamic duties and rules prescribed by God are everlasting and unchanging but for Christianity, God is involved in time. In this context, Jacques Jomier (1964, p. 92), in the *The Bible and the Qur'an*, writes that "there is in the Bible whole religious aspect that has no equivalent in the Qur'ān, the historical aspect properly so-called, that of the progressive revelation of God's love for His people." Since the commands determined in the Islamic source-texts are timeless, the obligation of a Muslim is only to follow God's will which was declared by the revelation. Then, it is now more understandable that why al-Ghazālī writes: "No obligations flow from reason but from *Sharī'a*" (Reilly, 2010, p. 69). In this context, the obligation should be, as Brown (2015, p. 33) points out, "*bila kayfa wala tashih* [without inquiring how and without making comparison]. This type of obligation without interrogation is prevalent in *Ḥanbalī* and *Ash'arī* schools. ibn Ḥanbal—who was imprisoned by *Mu'tazili* promoter Caliph al-Ma'mūn and who also influenced Taqī ad-Dīn Ahmad ibn Taymīyah (d. 1328), a medieval Muslim theologian and

reformer, the Wahhābīyah, an 18th century *tajdīd* [religious revival] and *islāh* [reform] movement, and the Salafīyah, early 20th century reform movement founded in Egypt by Jamāl al-Dīn al-Afghānī and Muḥammad ʻAbduh—writes that "*qiyas* [analogical reasoning] in religion is worthless, and *ra'y* [personal opinion] is the same and worse. The upholders of *ra'y* and *qiyas* in religion are heretical and in error" (ibn Ḥanbal, as cited in Reilly, 2010, p. 47). In this context, *Ḥanbalī* and particularly *Ashʻarī* school, which Brown (2015, p. 33) defines as "the standard in most contemporary Islamic thought," has effaced the authority of reason within centuries. Therefore, *Ashʻarītes'* occasionalism, an idea which holds that every act stems from God alone and nothing can cause an act, has been one of the biggest obstacles in front of the reason. This means that there can be no genuine freedom to comprehend the moral and material universe and there can be no other way except from textual fundamentalism. Reilly (2010, p. 74) accordingly writes:

> Since nothing is good or proper in itself, this was the only alternative—a kind of complete legal positivism, rooted in scriptural texts and the reports of Muhammad's sayings and doings. Instead of engaging in moral philosophy, one had to discern the *isnad*, or chain of transmission, to authenticate a saying of Muhammad in the *hadīth* that might apply to a certain situation for moral guidance—in case there was not a clear directive from the Qur'ān itself.

Then, once again, the issue is related with the ontological authority of reason. Bassam Tibi (b.1944), a renowned scholar on political Islam, analyzes the relation between the role of reason and Islamic knowledge. He shares some modern outcomes of this relation in *Islam's Predicament with Modernity: Religious Reform and Cultural Change* as follows:

> René Descartes established modern knowledge on the grounds of conjecture and doubt, guided by the principle '*cogito ergo sum*' [I think, therefore I am]. In contrast to what is described as an authentic 'Islamic knowledge' based on faith, this modern Cartesian epistemology dismisses any claim of knowledge to be absolute, regardless of whether it is based on belief or on ideology. The basic pillar of modern knowledge is its recognition of the primacy of reason and the related subjection of all matters, including religion, to critical reflection…If the Islamic world fails to engage in *Building a Knowledge*

> *Society* (this is the title of the second UNDP [The United Nations Development Programme] report of 2003) in order to come to terms with modern knowledge in the sense outlined, then it will never be able to move forward (Tibi, 2009, p. 65).

4.4 Restrictions of an Islamic Reform Apparatus: *Ijtihād*

Muslim scholars were not totally unaware of the negative side which Tibi describes above and some of them took initiative for developing new apparatuses to rearrange the relation between reason and faith. Using reason for solving historical, judicial, religious, and political problems paved the way for the development of the concept, *ijtihād* [renewed interpretation]. Ramadan (2009, p. 361) defines *ijtihād* as "literally, effort" that has the same etymological root with *jihād.* Its terminological meaning in Ramadan's glossary is "the effort made by a jurist, either by extracting a law or a ruling from scriptural sources that are not explicit or by formulating a specific legal opinion in the absence of texts of reference." Muslim scholars has made an effort and utilized *ijtihād* for centuries; however, questions about "whether, how, and to what extent Muslims, through their reason, can perform *ijtihād*" remained contentious (Emon, 2010, p. 12). Discussions about *ijtihād* in Islamic law have been prevalent for many years and reached a peak particularly in the 20th century when Muslims inclined to reform Islam and their societies. While these reformers will also be investigated, for the sake of the scope of this chapter, the relation between reason and *ijtihād* and restrictions of the latter will be the primary focus.

M. Hashim Kamali (2005, p. 315), in *Principles of Islamic Jurisprudence*, writes that *ijtihād* is the most significant source of Islamic law next to Qur'ān and *hadīth*. To him, the principal difference between *ijtihād* and these source-texts "lies in the fact that *ijtihād* is a continuous process of development whereas divine revelation and prophetic legislation discontinued upon the demise of the Prophet." In this context, to Kamali, *ijtihād* is an apparatus to interpret and understand the

revelation through reason. He, therefore, argues in the same page that "the essential unity of the *Sharī'a* lies in the degree of harmony that is achieved between revelation and reason. *Ijtihād* is the principal instrument of maintaining this harmony" (Kamali, 2005, p. 315). Also Ramadan (2009, p. 22) writes that all Muslim scholars, who have emphasized the need for reform, have referred to *ijtihād*. While he equates reform with *ijtihād*, he also notes that *ijtihād* composes of "a critical reading of texts when they were open to interpretation, when the texts were silent about a particular situation, or when the context imperatively needed to be taken into account in the implementation of texts." In this context, Ramadan (2009, p. 23), then, lists the specifications of *mujtahid* [the performer of *ijtihād*] which are having master level knowledge in *'ulūm* [sciences], including *qawā'id* [rules of texts], *nahw* [grammar], *ma'nā* [semantics], *a*nd *sarf* [morphology]. Similarly, Kamali (2005, pp. 322-324) writes that a *mujtahid* must know the nuances of Arabic language, Qur'ān and *hadīth, asbab al-nuzul* [the occasions of revelation], *tafasir* [related commentaries], *ijma' and qiyas*, *maṣlaḥa*, *maṣāliḥ* [considerations of public interest], *maqāṣid*, and *mantiq* [logic]. Considering these vast sources of knowledge, it is evident that *ijtihād* is not devised for every human being who has ability to reason. In essence, Ramadan (2009, p. 23) writes this explicitly: "*Ijtihād* has never been considered a free interpretation of texts, open to the critical elaboration of individuals with no knowledge of Islamic sciences nor of the conventions and norms that text specialists and their procedures are bound to follow." In this context, *ijtihād* is not only restricted by the authority of source-texts but it is also limited by the features of *mujtahid* that prevent every believer from participating in *ijtihād* making process.

Scholars generally utilize *maqāṣid* and *ijma'* to legitimize *ijtihād*. For instance, Jasser Auda (2007, p. 8), in the *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, writes that "fusion of the scripts and contemporary needs for reform gives *maqāṣid* special significance. I view *maqāṣid* as one of today's most important intellectual means and methodologies for Islamic reform." What he understands from *maqāṣid* is "a 'multi-dimensional' structure, in which levels of

necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represent valid viewpoints and classifications" (Auda, 2007, p. 8). However, he also notes that "the traditional *maqāṣid* classification did not include the most universal and basic values, such as justice and freedom" (Auda, 2007, p. 4). For *ijma'*, it is significant to note here that its function is not same with the "role of ballot box" in the Western tradition. As Kamali (2005, p. 17) writes:

> Although the consensus or *ijma'* of the community, or of its learned members, is a recognised source of law in Islam, in the final analysis, *ijma'* is subservient to divine revelation and can never overrule the explicit injunctions of the Qur'ān and *sunnah*. The role of the ballot box and the sovereignty of the people are thus seen in a different light in Islamic law to that of Western jurisprudence.

George F. Hourani writes in *Reason and Tradition in Islamic Ethics* that consensus or *ijma'* is being accepted by all Muslim jurists. However, their consensus has not been about the inevitability of *ijtihād* but has been about *taqlīd* [imitating, blind reliance and following the texts of one's own school]. To them, *taqlīd* must be used as an instrument to abstain from future *ijtihād.* He writes that "the underlying assumption was that the standard decisions of the schools in detail were themselves now authorized by consensus and could not be overridden" (Hourani, 1985, p. 199). In essence, this consensus paved the way for a stagnant understanding in the majority of Islamic denominations. In his words, "in *Sunnite* Islam the doctrine of consensus and the almost complete closing of the gate of *ijtihād* produced an unusually static law, within the spheres where it operated" (Hourani, 1985, p. 199). This inclination, which is to accept that the gates of *ijtihād* were closed, has continued from 9th to 19th century with a few exceptions. Ironically, the most prominent exception, who challenged *taqlīd*, was not a *Mu'tazili* but a *Ḥanbalī* scholar: ibn Taymīyah. While he opposed "blind reliance" on the contemporary *'ulāmā'* [scholars], he proposed to imitate *al-salaf al-ṣāliḥ* [the righteous predecessors]. Here, the relation between *taqlīd* and *ijtihād* comes to the forefront. In essence, there is not a complete antagonism between these concepts; on the contrary, they have a causal link. Martin et al. (2003, p. 21) write

that "*taqlīd*…is appropriate once one has established through…*ijtihād*. In this sense, *ijtihād* is the foundation of *taqlīd* and implies it, and *taqlīd* relies on the informative function of *ijtihād*." Therefore, ibn Taymīyah's arguments were on the both sides of *taqlīd* and *ijtihād* since he argued the *taqlīd* of the righteous predecessors' *ijtihād.* Since 14th century, ibn Taymīyah's position has functioned as a litmus paper for Islamists and Islamic modernists; while the former has based their arguments on ibn Taymīyah's teaching in the last instance, the latter has preferred to follow the *Mu'tazili* school.

In this vein, the founders of 19th and 20th century Islamic modernism, Jamāl al-Dīn al-Afghānī (d. 1897), Muḥammad 'Abduh (d.1905) and Rashīd Riḍā (d. 1935) did not only mention the significance of *Mu'tazili* rationalism but they also utilized ibn Taymīyah's discourse of *ijtihād* and based their arguments on reason to renew and interpret *Sharī'a* in line with the historical realities and necessities of their ages (Martin et al., 2003, p. 19). However, their efforts have generally been marginalized. For instance, al-Afghānī defended the authority of reason in Islam and capability of Islam "to reform and adapt to modern civilization" (Zayd, 2006, p. 26). In this vein, he wrote *Réponse à Renan* [Response to Renan] to refute the arguments of Ernest Renan (d. 1892), a French historian of religion and expert of Semitic languages, who argued the incompatibility between Islam and philosophy in his doctoral thesis titled *Averroès et l'Averroïsme* [Averroes and Averroism]. There Renan advanced that "whatever is labelled Islamic science or Islamic philosophy is merely a translation from the Greek. Islam, like all religious dogmas based on revelation, is hostile to reason and freethinking" (Zayd, 2006, p. 23). In the last instance, al-Afghānī's Islamic apologia could not protect him from being exiled and labelled as a heretic. The level of marginalization that he experienced is evident in the following poem which he wrote under sentence of exile in Kābul:

> The English people believe me a *Rūs* [Russian]
> The Muslims think me a *Mājūs* [Zoroastrian]
> The *Sunnis* think me a *Rāfiḍī* [Shi'i]
> And the *Shi'is* think me a *Nāṣibī* [enemy of 'Ali]

> Some of the Friends of the Four Companions have believed me a *Wahhābī*
> Some of the virtuous Imamates have imagined me a *Bābī* [Babism]
> The theists have imagined me a *Mādī* [materialist]
> The learned have considered me an unknowing ignoramus
> And the believers have thought me an unbelieving sinner
> (al-Afghānī, as cited in Keddie, 1976, p. 100).

As Nazih Ayubi (1991, p. 44) writes in *Political Islam: Religion and Politics in the Arab World*, al-Afghānī and his disciple ʻAbduh were not regarded as true Muslims and labelled as atheists or agnostics by some people. ʻAbduh, like his teacher al-Afghānī, argued the congruity between the reason and Islam. Masud (2009, p. 244) maintains that ʻAbduh gave authority to human reason and he regarded natural law as the rules that every human being must obey. However, the authority of reason in ʻAbduh's teaching has a limited capacity. Masud (2009, p. 245) points out this issue and writes that "'Abduh, nevertheless, believed that the laws of nature are created by God and He can cause them to deviate from the routine when He wishes." Hourani (1985, p. 210) alleges that ʻAbduh "understood Islam as a revealed religion, which at the same time encouraged full use of reason within the natural order and pursuit of the public interest as the primary end of action." Hussein Omar (2017, p. 26), in the "Arabic Thought in the Liberal Cage," refers to Hourani's allegation and argues that even though Hourani describes "'Abduh school of thought" as a proponent of *ijtihād* and opponent of traditionalists' *taqlīd*, ʻAbduh's critics utilized his *ijtihād* and reached almost the opposite results. Omar exemplifies this situation through referring to Talaat Harb (d. 1941), an Egyptian economist who published a book on the necessity of veil, widely benefited from "pro-veiling *fatwās* [nonbinding legal opinions] attributed to ʻAbduh, who had previously been seen as the paradigmatic critic of the veil" (Omar, 2017, p. 27). Even though Martin et al. (2003, p. 13) allege that ʻAbduh incorporated the components of rationalism and traditionalism, according to ʻAbduh's disciple, Rashīd Riḍā, ʻAbduh's main objective was "to liberate thought from the shackles of traditionalism, *taqlīd*, the following of past authorities without reflection, out of reverence for the past" (Hourani, 1985, p. 210).

However, as Hourani (1985, pp. 212-213) acknowledges, he could not manage to realize this liberation:

> In sum, ‘Abduh dealt prudently with the Qur’ānic proofs, but appears to have been floundering in face of the standard tradition. As an honest scholar, equipped only with the classical apparatus of historical criticism, he did not have the means to challenge its authenticity. All he could do was to reinterpret it in a sense that would render it harmless to his modernist understanding of Islam, but in doing so he could not stand up to the objections of even the old-fashioned philology.

To Ayubi, another reason for failure of Islamic modernism or reformist thought is Islamic reformers’ misinterpretation of liberal philosophy. He cites Kamal ‘Abd al-Latif and writes as follows:

> Islam has undoubtedly had a ‘renaissance’ of sorts, initiated by the schools of al-Afghānī and ‘Abduh. Even so, this renaissance was never complete and to this day remains fragile in the extreme. Kamal ‘Abd al-Latif would in fact argue that the ‘Islamic reformers’ had not really accepted modernism as an integrated philosophical outlook (related to concepts such as liberty, individualism, social contract, etc.), but that they borrowed eclectically as it suited them, always extracting the ‘modern’ concepts out of their (European) intellectual and social context, and trying to subsume them instead under familiar Islamic concepts believed to be analogous to them. Thus the Islamic reformers had read and interpreted the liberal philosophy and the phenomenon of the State only according to their own idiom, informed by the vocabulary of *al-siyasa al-shar’iyya* (religious politics) (Ayubi, 1991, p. 44).

Contemporary scholars are also aware of the significance of *ijtihād.* For instance, Muhammed Iqbal (d. 1938), an Indian scholar who is known as the spiritual father of Pakistan, writes in *The Reconstruction of Religious Thought in Islam* that *ijtihād* is a natural apparatus of Islamic jurisprudence for renewal and renovation. He also argues the usefulness of *ijma‘* in the contemporary era:

> The transfer of the power of *ijtihād* from individual representatives of schools to a Muslim legislative assembly which, in view of the growth of opposing sects, is the only possible form *ijma‘* can take in modem times, will secure contributions to legal discussion from laymen who happen to possess a keen insight into affairs. In this way alone can we stir into activity the dormant spirit of life in our legal system, and give it an evolutionary outlook (Iqbal, 2012, p. 138).

In this vein, Safdar Ahmed (2013, p. 146) in *Reformation and Modernity in Islam*, argues that "whilst modern Islamists and contemporary historiographers are quick to demonstrate Iqbal's 'fundamentalist' leanings, he certainly gave more credence to Islam's liberal-minded reformulation in light of modern knowledge." It is surely beyond doubt that what Ahmed calls "liberal-minded reformulation" is directly related to the concepts *ijtihād* and *ijma'*. Similar to Iqbal, Kemal A. Faruki, a Pakistani Islamist and modernist, in *Islamic Jurisprudence* points out the need for a new perspective to *ijtihād* and *ijma'*:

> Consequently, we must acknowledge, without hesitation, the correctness of a past *ijma'* of the community within its given time-space context, i.e., presence, and yet, at the same time, we are fully entitled, indeed obliged, to exert fresh *ijtihād* and come to fresh *ijma'* rulings on the same problems, when necessary, within the changed presence, or time-space context, of the living community (Faruki, as cited in Hourani, 1985, p. 213).

Abdolkarim Soroush (b. 1945), Iranian Islamic reformer, also attaches importance to *ijtihād.* He first separates religion and religious knowledge into two spheres and regards religious knowledge as an outcome of human knowledge. To him, while human knowledge evolves, understanding of religion also evolves. Therefore, in order to maintain this distinction, he argues that *ijtihād* is needed to realize incessant reform and renewal. Finally, Soroush makes a three-dimensional connection between *ijtihād*, reason, and democracy in his *Reason, Freedom, and Democracy in Islam* as follows:

> An autocratic God legitimizes an autocratic government and vice versa. We may conclude that the appeal to religious conviction cannot and should not arrest the renewal of religious understanding or innovative adjudication [*ijtihād*] in religion. Such renewal requires extra religious data. Therefore, democratic religious regimes need not wash their hands of religiosity nor turn their backs on God's approval. In order to remain religious, they, of course, need to establish religion as the guide and arbiter of their problems and conflicts. But, in order to remain democratic, they need dynamically to absorb an adjudicative understanding of religion, in accordance with the dictates of collective 'reason' (Soroush, 2000, p. 128).

Additionally, Joseph A. Massad, in *Islam in Liberalism*, cites an excerpt from Nader Fergany (b. 1944), an Egyptian sociologist, who emphasizes the need for perpetual *ijtihād* to fulfil an Arabic renaissance as follows:

> To establish…a renaissance in the Arab homeland demands opening the way to [new] jurisprudential opinions [*ijtihād*] in order to establish the bases for coherence between…[a contemporary] human development in its comprehensive sense and the overall goals of Islamic *Sharī'a*, bypassing much of the jurisprudential opinions that prevailed during the age of decadence [in reference to the period of Ottoman rule], and which maintained oppression and despotism, left behind retardation and delay, and left the nation undefended before its enemies (Fergany, as cited in Massad, 2015, p. 198).

Then, at first appearance, it can be claimed that *ijtihād* has provided some Muslim scholars a significant tool to transcend the boundaries around reason. However, has it cured the problems around Muslim communities? Ramadan (2009, p. 30) aptly asks why "after constantly referring to *ijtihād*,…Muslims…still find it difficult to overcome the successive crises they go through and to provide something more than partial answers." Actually, towards the end of his book, he provides as answer to this question while arguing that "thinkers who are so ready to promote *ijtihād* and social and political reform literally come to a deadlock when the issue of women in Muslim-majority countries and in other Muslim communities is brought up. This seems to be forbidden territory" (Ramadan, (2009, p. 227). In this vein, one can infer that *ijtihād*, as an arbitrary apparatus, has not been used to transcend the traditional and cultural limits of a Muslim society. Moreover, the obligatory requirements to be able to perform *ijtihād* have further limited its scope of activity. To sum, as Ramadan argues, what is needed is not an *ijtihād* concerning the Islamic legal theory but an *ijtihād* that enables "critical autonomous reasoning" which can be performed not only by accepted *mujtahids* but by every believer:

> As we have seen, the problem lies, I think, further along than the current issues related to *fiqh*. Neither does the problem lie in the need for *ijtihād*. What is at stake is the very nature of the exercise of critical autonomous reasoning, and we must imperatively ask ourselves about its object, its

> latitude, and the qualification of the women and men who can, and must, perform it today (Ramadan, 2009, p. 82).

4.5 Conclusion

The first conclusion of this chapter is that even though Greek rationalism was inherited by Christian and Muslim scholars, the trajectories that these religions followed have become dissimilar in the course of time. As a result of this difference, while the ontological authority of reason has survived in Christianity, it has been renounced by the dominant *Ash'arī* school in Islamic theology since 10th century; in other words, while the former regard the reason and faith as compatible concepts in general, Islam dominantly held this relation through an antagonistic perspective. This renunciation and antagonism did not only terminate *Mu'tazilite* school's efforts in favour of reason in Islam but also legitimized an extreme version of *sola scriptura* and led the dominance of textual fundamentalism; thus, even today, *Mu'tazilite* rationalism is still deemed as theologically invalid by the *Sunni* majority. Lack of interpretation of source-texts and faith-oriented exegeses have limited the scope of reason, reasoning, and rational thinking in Islam. Then, even though a natural law understanding had existed in Islamic tradition as some scholars like Emon argues, the emancipation of reason would not have been realized; in other words, natural law would not have been secularized due to the limited authority of reason as against faith. Therefore, as shown in the previous chapters, while it is admissible that Aquinas's theology and secular natural lawyers' philosophy paved the way for Lockean natural law liberalism, as revealed in this chapter, it is also admissible that the fideistic hegemony and a marginal quest for natural law in Islam would not have led to a version of Locke's liberalism. As clearly stated in ibn Tufail's *Ḥayy*, which, to some scholars, influenced Locke, reason loses against *Sharī'a* norms.

The second conclusion of this chapter is that Anver Emon, who has the leading treatises on Islamic natural law, forces to create an ontological authority of reason

in his Islamic natural law classification. His classification of Islamic natural law as hard, soft, and voluntarism does not transcend the basic *Mu'tazilite-Ash'arīte* dualism; even worse, his classification inherently accepts that, to Islamic theologians, reason can only function within the scope delineated by source-texts. Then how can a confined reason create a natural law tradition remains unanswered in his works. In this sense, as Koujah (2015, p. 1) argues, Emon "struggles to convince the reader of the genuineness of a natural law tradition in Islamic legal theory as he presents it." Then, what Emon presents as Islamic natural law is merely the theology of *Mu'tazili* school which was embargoed more than a thousand years in Islamic tradition and as a result of *Mu'tazili* school's defeat, *Ash'arī* school's textual fundamentalism has prevented the rudimentary struggles to create an Islamic natural law theory predicated on the ontological authority of reason.

Thirdly, the course of covenant theology in Christianity is considerably different than that of in Islam. While in Christianity, the relationship between God and humans is based on a covenant which was made between two equal parties of a family as father and His sons and daughters, this relation in Islam represents a more asymmetrical and hegemonic style that resembles more like a master-slave connection based on command and obedience. In this framework, the covenant theology in Christianity was able to produce a social contract theory; in other words, in Hegelian terminology, through self-sublation, premises of covenant theology both negate and perverse themselves and consequently pave the way for a concrete social contract theory. Even though Islam has the seeds of covenant theology, it could not produce a same outcome. Obviously, the reason behind this absence was simple: the lack of rational agents; that is the tendency which does not regard humans as rational agents who have their own autonomies and who can make a covenant with God. Again, while Christian covenant theology formed a proto-type for a social contract, Islamic theologians have oppressed the covenant theology which was mainly advanced by *Mu'tazilite* school.

Last, some Islamic scholars, who have been aware of the negative relation between reason and faith in Islamic theology, have cogitated new concepts like *ijtihād* [renewed interpretation]; however, its practicability has been limited over time so that critical reasoning has been regarded as the prerogative of some selected scholars rather than an individualistic activity. The exclusion of individuals in the process of renewed interpretation, as a matter of course, has led to exclusion of the concept of individual. Despite these rooted impossibilities, some scholars argue the theoretical consistency of "Islamic liberalism." Therefore, the next chapter will investigate their theories and will evaluate whether these theories are consistent with Locke's liberalism.

CHAPTER 5

"ISLAMIC LIBERALISM" VERSUS LOCKEAN LIBERALISM

Until this chapter, what makes Lockean liberalism specific was examined and it became evident that Locke widely utilized both natural law tradition before him and the premises of Christian theology. Previous chapters also revealed the deficiency of Islamic natural law tradition and lack of ontological authority of reason in Islamic theology. Then, if one struggles to establish a theory of "Islamic liberalism" as analogous to Locke's liberalism, he or she will be deprived of the latter's fundamental constituents. However, today some scholars bring forward the concept of "Islamic liberalism." Then, whether they have managed to theorize a consistent theory of liberalism; or in other words, what is their conceptual framework and how does it differ from that of Locke's should be handled. In this vein, this chapter will basically and primarily explore what is meant by "Islamic liberalism."

Secondly, it was proven in the previous chapters that Lockean liberalism is not only predicated on natural law doctrine and the idea of secularism, but also it is based on the premises of Christian theology as shown in the third chapter. In that chapter, it was also expressed that the basic tenets of Lockean natural law liberalism is embedded in Christian theology; therefore, Locke's right to resistance, right to private property, and right to religious freedom were also the theoretical outcomes of Christian theology. Then, one question still remained unanswered which is whether "Islamic liberalism" theorize and include the above-mentioned rights. If not, whether Islamic premises are available to produce these rights should be examined. Therefore, while in the first subchapter, the allegations

on “Islamic liberalism” will be analyzed, in the second subchapter, its—or, if it does not provide a comparable theory, then, Islam’s—approach to Locke’s natural rights will be investigated.

5.1 Is “Islamic Liberalism” Islamic and Liberal Enough?

What do scholars mean by Islamic liberalism? More precisely, what do progenitors and proponents of the concept imply? Or, why do adversaries object to the concept? First, at the very basic level, the constituents of the concept, Islam and liberalism, etymologically have contradictory connotations; while the etymological root of liberalism is derived from Latin word *liber* [free] and *liberalis* [of or constituting liberal arts, of freedom, of a freedman] and implies a freedom-oriented anthropocentric meaning, Islam’s etymological root is *istaslama* [submission, surrender] which implies a submission-oriented theocentric meaning. Therefore, *prima facie*, Islamic liberalism seems as a rational antinomy in Kantian terminology when its constituents’ premises are considered. However, as Kant (2015, p. 87) writes in the *Critique of Practical Reason*, the antinomy of pure reason, which becomes obvious in its dialectic, “is in fact the most beneficial error into which human reason could ever have fallen, inasmuch as it finally drives us to search for the key to escape from this labyrinth.” Furthermore, even Islam and liberalism are acknowledged as incompatible terms, they may generate a concrete concept in terms of Hegel’s (2010, p. 109) triad which was discussed previously. Lastly, if the contradictory relation between the constituents of Islamic liberalism is accepted, then the question is whether Islamic liberalism is an essentially contested concept due to Walter Bryce Gallie’s terminology. Gallie (1955, pp. 171-172) defines an essentially contested concept through determining its characteristics as follows:

> In order to count as essentially contested, a concept must possess the four following characteristics: (I) it must be appraisive in the sense that it signifies or accredits some kind of valued achievement. (II) This achievement must be

> of an internally complex character, for all that its worth is attributed to it as a whole. (III) Any explanation of its worth must therefore include reference to the respective contributions of its various parts or features…(IV) The accredited achievement must be of a kind that admits of considerable modification in the light of changing circumstances; and such modification cannot be prescribed or predicted in advance.

In this context, when evaluating the concept Islamic liberalism, the incongruity between its constituents may pave the way for a new concept in Kantian and Hegelian approach or Islamic liberalism may be evaluated as an essentially contested concept. However, for the latter, as obvious in Gallie's definition, the concept (i.e., "Islamic liberalism") should pose considerable achievement. Then, it is significant to examine the scholars' perspectives to Islamic liberalism in order to understand whether its contradictory constituents lead to a concrete consistent concept and whether Islamic liberalism fulfils achievement as an essentially contested concept.

Here, it should also be noted that the focus of this subchapter is not liberals who live or lived in Muslim-majority countries; on the contrary, it deals with those who contributed or contribute to the theoretical formulation of Islamic liberalism or liberal Islam. For instance, Young Ottomans, such as Nâmik Kemal (d. 1888), Ziyâ Pasha (d.1880), and İbrahim Şinasi (d. 1871), who summarized their Tanzimat project as "the sovereignty of the nation, the separation of powers, the responsibility of officials, personal freedom, equality, freedom of thought, freedom of the press, freedom of association, enjoyment of property, sanctity of the home" (Lewis, 1968, p. 143) are included in our scope. Even though Young Ottomans did not propose the term Islamic liberalism or liberal Islam, they equated their "political language of Islam with that of modern liberalism" and "reopened the gates of *ijtihād* as a rational interpretation" (Black, 2011, pp. 287-288). Accordingly, Erik Jan Zürcher (2017, p. 64), a Dutch Turkologist, writes in his prominent book titled *Turkey: a Modern History* that Young Ottomans "identified closely with the state they wanted to save through liberal reforms." In this context, another Young Ottoman, Mustafa Fazıl Pasha (d. 1875) wrote a letter to Sultan of

the Ottoman Empire Abdül-Aziz (reg. 1861-1876) that "religion rules over the spirit and promises other-worldly benefits to us." He also acknowledged that "but that which determines…the laws of the nation is not religion. If religion…descends into interference with worldly affairs, it becomes a destroyer of all as well as of its own self" (Berkes, 1998, pp. 208-209). Apart from Young Ottomans, there are also some other scholars who did not use the words Islamic liberalism or liberal Islam but contributed to its birth. For instance, Sayyid Ahmad Khan (d.1898) and Chiragh Ali (d. 1895) of India "asserted as a matter of principle the distinction between the ethical essentials of Islam, and those parts of the *Sharī'a* which are temporary expedients produced by historical circumstances" (Black, 2011, p. 288). Then, it is evident that there were substantial attempts that had laid the groundwork for the emergence of the term Islamic liberalism before it was coined.

To turn back to the concept Islamic liberalism, it is remarkable that what is called as Islamic liberalism in academia differs greatly by the focus of the constituents of concept. While some scholars evaluate the concept from an Islamic perspective, some others opt for a more secular standpoint. Therefore, for the sake of the argumentation, we have a *Sharī'a*-oriented Islamic liberalism when *Sharī'a* is the central component and we have a secularism-dominated Islamic liberalism when *Sharī'a* loses its supremacy.

5.1.1 *Sharī'a*-oriented Islamic liberalism

Before delving into this subtitle, the terminological development of Islamic liberalism or liberal Islam should be examined since it gives hints about what we meant by *Sharī'a*-oriented Islamic liberalism. Liberal Islam, as a term, was coined by Asaf Ali Asghar Fyzee (d. 1981) who was an Indian jurist and Islamic scholar of modern *Ismā'īlī* studies. Fyzee acknowledges that Islam is in need of a modern approach which separates religion and law; however, the *Sharī'a* is a predicament

that incorporates these realms. Therefore, Fyzee advances that "in every age the Qur'ān has to be interpreted afresh and understood anew" (Moosa, 2003, p. 120). In this vein, he insists in *A Modern Approach to Islam* that through "not obeying to the dogmas of Islam as interpreted by the *imams* [leaders] of authority, he does not become a non-believer, but only a non-conformist, since he will continue to believe in God and His Prophet" (Ziadeh, 1965, p. 238). Moreover, as Ziadeh (1965, p. 238) explains, Fyzee "calls for a newer, 'protestant' Islam that would conform to the conditions of life in the 20th century; and if a name were to be given to it, then he would call it 'liberal Islam.'" In Fyzee's own words:

> If the complete fabric of the *Sharī'a* is examined in…critical manner, it is obvious that in addition to the orthodox and stable pattern of religion, a newer 'protestant' Islam will be born in conformity with conditions of life in the 20th century, cutting away the dead wood of the past and looking hopefully at the future. We need not bother about nomenclature, but if some name has to be given to it, let us call liberal Islam (Fyzee, 1963, p. 104).

Even though Fyzee named the concept as liberal Islam, the Western intellectual circles met with Islamic liberalism in 1988 via Leonard Binder's prominent book titled *Islamic Liberalism: a Critique of Development Ideologies*. As Binder (1988, p. 19) introduces, "the central focus of this book is on the relationship of Islamic liberalism to political liberalism." At the same page, he offers Islamic liberalism as an obligatory transitional stage to political liberalism in the Middle East. There, he acknowledges that "at the present time, secularism is declining in acceptability and is unlikely to serve as an ideological basis for political liberalism in the Middle East. It [this book] asks whether an Islamic liberalism is possible." The conclusion that he reaches in this book is that "without a vigorous Islamic liberalism, political liberalism will not succeed in the Middle East, despite the emergence of bourgeois states" (Binder, 1988, p. 19). Then, how does Binder define Islamic liberalism? In essence, even though Binder does not provide a comprehensive definition of Islamic liberalism, he gives clues about what he understands from this concept. For instance, he acknowledges that "the idea of a liberal Islamic state is possible and desirable not only because such a liberal, democratic state accords with the

spirit of Islam, but especially because, in matters political, Islam has few specific requirements" (Binder, 1988, p. 243). Evidently, to Binder, Islam does not propose a full-fledged political system and predominantly sets its believers free to choose whatever system they desire. Accordingly, Binder acknowledges that *Sharī'a* is silent in terms of political instructions. He, in this vein, writes that "Islam has few or no political institutional prescriptions and little canonical experience that can be said to be incumbent upon present-day political authorities or constituent powers" (Binder, 1988, p. 243).

To Binder, since Islam does not promote nor prohibit a specific political system, he acknowledges that Islam neither encourage nor hamper liberal initiatives. On the other hand, he coins the term "scripturalist liberalism" to describe those who argue that Islamic texts enable Muslims to initiate Islamic liberalism. He defines "scripturalist liberalism" as "the establishment of liberal institutions and even some social welfare policies, not on the basis of the absence of any contradictory Islamic legislation, but rather on the basis of quite specific Islamic legislation" (Binder, 1988, pp. 243-244). He regards "scripturalist liberalism" as intrinsically anomalous since it is not based on political and epistemological principles of liberalism; it is rather utilized as a justificatory means for the validity and universality of source-texts. Therefore, in his understanding, to genuine Islamic liberals, "the language of the Qur'ān is coordinate with the essence of revelation, but the content and meaning of revelation is not essentially verbal" (Binder, 1988, p. 4). Evidently, Binder regards liberalism as congruent with Islam; accordingly, liberalism can justifiably be proffered as an Islamic method since *Sharī'a* does not propose a specific political system. Thus, he calls those who argue that Islamic liberalism can be a valid term only if it remains in the boundaries of *Sharī'a* as "scripturalist liberals." This perspective to Islamic liberalism is what we called a *Sharī'a*-oriented Islamic liberalism because it derives its legitimacy from the compatibility with *Sharī'a*. In this context, Binder regards Islamic liberals as those who transcend the boundaries set by source-texts. However, above all else, what Binder tells us about Islamic liberalism is not a form of liberalism but a

precondition of political liberalism in the Islamic Middle East. Thus, if one gathers Binder's presuppositions in this book entirely, he will obtain the following paragraph that reveals what Islamic liberalism is for Binder:

> The rejection of liberalism in the Middle East or elsewhere is not a matter of moral or political indifference. Political liberalism can exist only where and when its social and intellectual prerequisites exist. These preconditions already exist in some parts of the Islamic Middle East. By engaging in rational discourse with those whose consciousness has been shaped by Islamic culture it is possible to enhance the prospects for political liberalism in that region and others where it is not indigenous (Binder, 1988, p. 2).

Another scholar who puts forward liberal Islam for the consideration of Western intellectual circles is Charles Kurzman. The first sentence in his edited book, *Liberal Islam: a Sourcebook*, is as follows: "Liberal Islam may sound like a contradiction in terms" (Kurzman, 1998, p. 3). To Kurzman, "the term liberal has negative connotations in parts of the Islamic world, where it is associated with foreign domination, unfettered capitalism, hypocritical paeans to rights, and hostility to Islam"; however, he mentions that he utilizes the word liberal Islam only as a heuristic device. Therefore, he confesses that he makes "no claims as to the correctness of liberal interpretation of Islam" (Kurzman, 1998, p. 4). Dissimilar to Binder, Kurzman considers that liberal Islam has a Qur'ānic and *Sharī'a*-based dimension. He writes that "the similarity of liberal Islam and Western liberalism does not imply that liberal Muslims are stale and reassuring imitators of Western philosophy. Many of their writings are firmly rooted in Qur'ānic exegesis" (Kurzman, 1998, p. 5). In this context, Kurzman asserts that Islamic liberalism is not emancipation from the source-texts; on the contrary, it is established over the traditional Islamic debates. Thus, what Kurzman argues is exactly the same with what Binder calls as "scripturalist liberalism" or what we have put as *Sharī'a*-oriented Islamic liberalism.

Kurzman's (1998, p. 5) intention to edit this book is "to contribute to this intellectual project [Islamic liberalism] by making the texts of major liberal

Islamic thinkers available in English in a single anthology." In an attempt to exhibit liberal Islam's difference, he coins the words "customary Islam" and "revivalist Islam." To him, "customary Islam" is generally based on past linkages and local traditions and it includes the great majority of Muslims in almost every time and place. "Revivalist Islam," another category in Kurzman's terminology, is "also known variously as Islamism, fundamentalism, or Wahhabism. This tradition attacks the customary interpretation as being insufficiently attentive to the letter of Islamic doctrine" (Kurzman, 1998, p. 5). Finally, about the third category, liberal Islam, Kurzman (1998, p. 6) writes the following paragraph:

> Many analyses of Islamic debates stop with these two traditions, the customary and the revivalist, and ignore a third major tradition that is the focus of this volume. *Liberal Islam,* like revivalist Islam, defines itself in contrast to the customary tradition and calls upon the precedent of the early period of Islam in order to delegitimate present-day practices. Yet liberal Islam calls upon the past in the name of modernity, while revivalists might be said to call upon modernity (for example, electronic technologies) in the name of the past. There are various versions of Islamic liberalism, but one common element is the critique of both the customary and revivalist traditions for what liberals sometimes term "backwardness," which in their view has prevented the Islamic world from enjoying the fruits of modernity: economic progress, democracy, legal rights, and so on. Instead, the liberal tradition argues that Islam, properly understood, is compatible with—or even a precursor to—Western liberalism.

Then, Kurzman obviously argues that liberal Islam is a future-oriented revivalist initiative which is compatible with Western liberalism. Since he seeks the roots of liberal Islam in the revivalist movements, he introduces Shah Waliullah Dehlawi (d. 1762), the most prominent Muslim theologian of 18th century India, as the progenitor of liberal Islam. Kurzman (1998, p. 7) writes that "like other revivalists, Waliullah perceived Islam to be in danger, sought to revitalize the Islamic community through a combination of theological renovation and socio-political organization." Waliullah essentially argues that Islamic law should be adjusted in accordance with the needs and requirements of the era, people, and place. He reveals his idea of temporospatial adaptation when discussing the scenario in which local custom is not compatible with orthodox Islamic principles. He

advances that "it is not considered desirable to replace it [local custom] by a different one [Islamic law] which is absolutely unknown to them [the local people]…The basic purpose is that these reforms should be introduced in such a way that [the local people's] faculty of reasoning is satisfied and does not repel them" (Kurzman, 1998, p. 7). Interestingly, the relation between the local custom and reasoning is almost the same with ibn Tufail's book in which townsmen's religious standpoint and Ḥayy's reasoning are contradictory. Kurzman (1998, p. 7), in this context, writes that human reasoning is quite significant to Waliullah who mentions that "time has come that the religious law of Islam should be brought into the open fully dressed in reason and argument." Fazlur Rahman (d. 1988), who is renowned liberal reformer of Islam and whose teachings will be handled in this subchapter, writes on Waliullah's perspective to transcending the omnitemporality of Islamic law and bringing it into conformity with the needs of age as follows:

> So far as the law is concerned, Waliullah did not stop at the medieval Muslim schools of law but went back to its original sources, the Qur'ān and the apostolic tradition and recommended *ijtihād*—exercise of independent judgment as opposed to the imitative following of medieval authorities…The fundamental religious and moral fountains of mankind are the same in all times and climes, he holds, but have to adjust themselves to and reexpress themselves in terms of the genius of a particular age and of a particular people…Islam, being a universal religion, had to find a vehicle of flesh and blood whereby to propagate itself and was bound to be colored by that vehicle—the Arab tradition and way of life. But in different cultures, this vehicle will obviously undergo a change (Rahman, 1956, p. 45).

Even though Waliullah attaches importance to the role of reason in religious law, he also argues that the traditional method of Islamic training is more reliable than the modern forms of knowledge. He writes that "if I had been convinced that the good of this age depended upon the free circulation of mathematics, astronomy, architecture, technology and engineering, I would have devoted my energies to their spread" (Kurzman, 1998, p. 7). In addition, Waliullah considers the scholars of traditional Islamic training as the only components who are able to exercise *ijtihād*. Then, Kurzman (1998, p. 7) writes that "Waliullah appeared to suggest that

only he was competent to practice *ijtihād* and that all other Muslims must practice *taqlīd* (imitation) and follow his teachings." Therefore, Kurzman regards these statements as a proclamation of Messianism since "Waliullah wrote that God appeared to him in a dream and appointed him leader of the world and reviver of Islam." In his *Reformation of Islamic Thought*, Nasr Abu Zayd (2006, p. 17) explains this with "Sufi's well-established distinction between *Sharī'a* and *ḥaqīqa* [mystical truth], whereby the first is considered historical and limited in time and space, while the latter is the truth attained by spiritual exercise leading to the vision of reality." Then, it is not surprising that Waliullah, as Ḥayy, proclaims himself as the one who has a grasp of reality or *ḥaqīqa* by means of reasoning and spirituality. However, this does not mean that Waliullah disregards *Sharī'a*. On the contrary, as Ḥayy concedes, Waliullah does not regard reason as an independent authority which is used for questioning the source-texts; rather he is committed to the traditional understanding which accepts that only those who are trained with Islamic sources can evaluate and reason the source-texts. Moreover, he sees himself as the only one who can transcend the omnitemporality of *Sharī'a*. This means that even though Kurzman regards Waliullah as the progenitor of liberal Islam who values reason greatly, in essence, he restrains the scope of reason and its substantial role for all believers except himself. When Waliullah's ideas are weighed in terms of his perspective to "original sources," as Fazlur Rahman writes, and if one has to classify him, he should inevitably be categorized under *Sharī'a*-oriented Islamic liberalism.

Similarly, Aqā Sayyed Mohmmad Bāqer Behbahānī (d. 1790), a Shi'i scholar who is included in Kurzman's anthology as an Islamic liberal, emphasizes the significance of *ijtihād*; however, he also restricts the exercise of *ijtihād* and this restriction evolves into *marja'i taqlīd* [source of imitation] doctrine which means that each era every believer should obey a single religious scholar (Kurzman, 1998, p. 8). When Waliullah's and Behbahānī's perspectives to the relation between *taqlīd* and *ijtihād* are considered, it is impossible to disagree with Tibi

who harshly criticizes Binder's and Kurzman's above-mentioned books in his *Political Islam, World Politics and Europe*. He writes as follows:

> Despite deep respect for Binder's scholarship I have, however, had a hard time swallowing the chapter in his book on the intellectual father of Islamic fundamentalism Sayyid Quṭb (labelled as a 'religious aesthetic') being incorporated as a part of deliberations on Islamic liberalism (sic!). An even worse case is the anthology of Charles Kurzman, in which leading fundamentalists are presented as 'liberals' (Tibi, 2014, p. 300).

According to Tibi, those who maintain what we call *Sharī'a*-oriented Islamic liberalism, in essence, cannot be considered as true Islamic liberals. Since we coined this term for argumentation, we can explicitly agree with Tibi who righteously advances that *Sharī'a*-oriented Islamic liberals, including Sayyid Quṭb (d. 1966) whose ideas will be examined in this chapter, are closer to fundamentalism rather than Islamic liberalism because they make no room for secularism. Even though the history of secularism in Muslim-majority countries is part of another debate, due to the limitation of thesis's scope, the analysis on secularism is to be initiated from the change of balance between *taqlīd* and *ijtihād*.

5.1.2 Secularism-dominated Islamic liberalism

As mentioned earlier, in the 19th and early 20th centuries, there were some scholars who began to argue that *ijtihād* should be separated from *taqlīd*. For instance, al-Afghānī writes that if a person believes in something without reasoning and performs *taqlīd* of his ancestors "his mind inevitably desists from intellectual movement, and little by little stupidity and imbecility overcome him—until his mind becomes completely idle and he becomes unable to perceive his own good and evil" (Keddie, 1972, p. 178). Similarly, Albert Hourani (2013, p. 140) argues in *Arabic Thought in the Liberal Age* that according to 'Abduh in order to thwart excesses and corruption in religion and to prove that religion and science are compatible, man should "liberate thought from the shackles of *taqlīd*" and weigh

the primary sources of religious knowledge in the scales of his reason. In this context, Sayyid Ahmad Khan (d. 1898), Indian Islamic reformist, writes that "*taqlīd* is not incumbent [on the believer]. Every person is entitled to *ijtihād* in those matters concerning which there is no explicitly revealed text in Qur'ān and *sunnah* [the practice of the Prophet]" (Kurzman, 1998, p. 8). Moreover, Khan asserts in *Treatise on the Principles of Exegesis* that traditional Muslim scholars do not address modern conditions adequately; however, he argues that one should interpret the Qur'ān through considering the knowledge and contingencies of the era (Ahmed, 2013, p. 201).

Reducing *ijtihād* on personal level and interpreting source-texts through considering the necessities of the age paved the way for fledgling ideas towards secularism. In this context, 19th century Muslims, who went to France and witnessed the political, social, cultural, and economic conditions of the state, sowed the seeds of such secular ideas. For instance, Rāfiʿ al-Ṭahṭāwī (d. 1873), Egyptian writer, was impressed by French democracy when he was living in Paris. Actually, he was the responsible *imam* to the first Egyptian assignment to France sent for acquiring modern education. In essence, al-Ṭahṭāwī was already open to secularism before his visit to France, as Zayd (2006, p. 24) writes, "he was very much inspired by his teacher, Shaykh Hasan al-Attar, who was rector of al-Azhar from 1830-1834 and who had tried to introduce secular sciences to the curriculum of Egypt's oldest Islamic educational institution." When he turned back to Egypt, he argued that borrowing cultural elements from the West did not contradict to Islamic law. Therefore he pioneered a new intellectual awakening period which enabled scholars to reconsider tradition and the requirements of the age. Hourani (2013, p. 75) summarizes al-Ṭahṭāwī's contribution as follows:

> The 'door of *ijtihād* ' had been closed, according to the traditional saying, and it was for a later generation than his to push it open, but he took the first step in that direction. There was not much difference, he suggested, between the principles of Islamic law and those principles of 'natural law' on which the codes of modern Europe were based. This suggestion implied that Islamic law could be reinterpreted in the direction of conformity with modern needs,

> and he suggested a principle which could be used to justify this: that it is legitimate for a believer, in certain circumstances, to accept an interpretation of the law drawn from a legal code other than his own. Taken up by later writers, this suggestion was made use of in the creation of a modern and uniform system of Islamic law in Egypt and elsewhere.

Tibi (2012, p. 111) writes in *Islamism and Islam* that al-Ṭahṭāwī's followers "were not only liberal but also secular. Convinced that democracy and *Sharī'a* are not compatible, they abandoned *Sharī'a* altogether." In the 20th century, the legacy that al-Ṭahṭāwī had left behind can be observed in the writings of Fazlur Rahman (d. 1988), significant figure in liberal Islam tradition, who remarks the urgent need for harmony between the requirements of the age and the way believers comprehend Islam. Rahman's one of the most renowned arguments is to discern normative Islam from historical Islam. He asserts that a liberal Islam can only be fulfilled when it is liberated from the Arabic historical context and tradition. In *Islam and Modernity: Transformation of an Intellectual Tradition*, he writes that "Qur'ān should be studied in its total and specific background…not just studying it verse by verse or passage by passage with an isolated occasion of revelation" (Rahman, 1982, p. 145). Therefore, he suggests Muslims to re-evaluate Islam in its historical context in order to tackle the obstacles emerging from the historical dogmatism. With this idea, Rahman repudiates the approaches of fundamentalists such as Wahhabis, neofundementalists such as Muslim Brotherhood, and classical modernists who argue that Muslims should follow original sources and practice *ijtihād* on these texts. Therefore, Rahman's school of thought can be named as neo-modernism. In essence, his neo-modernism and historicism are directly related with what Ahmed (2013, p. 200) calls as the "hermeneutical turn." To him, this "hermeneutical turn" can also be named as "progressive Islam." Rahman (1982, p. 4) explains the requirement of adopting a new hermeneutical method as follows:

> The pressure exerted by modern ideas and forces of social change, together with the colonial interregnum in Muslim lands, has brought about a situation in which the adoption of certain key Western ideas and institutions is resolutely defended by some Muslims and often justified through the Qur'ān, the wholesale rejection of modernity is vehemently advocated by others, and the production of 'apologetic' literature that substitutes self glorification for

> reform is virtually endless. Against this background the evolving of some adequate hermeneutical method seems imperative.

Ahmed (2013, p. 201) writes that almost since 1960s the proponents of "progressive Islam" "have sought to address an impasse in hermeneutical thinking brought about by a lack of contextualization vis-à-vis the Qur'ān and selective disaggregation, and recombination of Islam's legal and theological traditions." Rahman, in Ahmed's classification, is among those who propose a hermeneutical turn. To Rahman, exegetical reading of the Qur'ān prevents Muslims from comprehending its universal worldview. To him, *tafsir* [commentary] can only reveal the literal and lexicographical meanings of the verses; however, it can add little to the grasping its multifaceted doctrinal harmony. In this context, Rahman (2009, p. 37) argues in *Major Themes of the Qur'ān* that the message of Qur'ān can only be correctly understood through distinguishing between its historical and normative content. Here, what Rahman implies "normative Islam" is that the universal moral doctrines and principles in the Qur'ān and the life of the Prophet and what he means by "historical Islam" is that the formulations of these doctrines and principles in a specific historical context. Therefore, while "normative Islam" can be adapted to any time and place, "historical Islam" only refers to the given knowledge which is an outcome of "a specific political and cultural milieu" (Ahmed, 2013, p. 205). Through historicizing the Islamic principles, Rahman proposes a new form or a new type of *ijtihād* which includes independent rational analysis of source-texts. It can be argued that this form of *ijtihād* in Rahman's thesis enables reason to function as an ontological authority.

Here, it is important to note that to Rahman (1982, p. 3), the adoption of Greek philosophy without deriving them from the Qur'ānic verses and equating them with the principles in the source-texts was a failure and this failure paved the way for the *Ash'arīte* opposition and then for the oppression to philosophical thinking and reasoning. As Oliver Roy (2007, p. 43) writes in *Secularism Confronts Islam*, "fundamentalists think of this period [when the rationalist *Mu'tazili* school was dominant] as the one when Islam was corrupted by Greek philosophy. It is, thus,

interesting to notice that an Islamic liberal, such as Rahman, and fundamentalists are at the same page about the relation between the Greek philosophy and Islam. In this vein, reason, in Rahman's *ijtihād*, is responsible for determining the historical context of the verses and *sha'n al-nuzul* [causes of revelation]. In other words, if a Muslim understands why a specific verse in the Qur'ān revealed at the very moment and at the very place, he or she can better understand God's intention or commandment (Rahman, 1982, p. 143). Moreover to Rahman, "the true content of the Qur'ān, which is the 'moral law' of Islam, was not revealed exclusively through words, but through an organic combination of words, feelings and ideas" (Ahmed, 2013, p. 206). This means that the Qur'ān is not a mechanical text manual but a living source which put into practice by Muhammad who built a new moral, social and political order. Accordingly, in his book titled *Islam*, Rahman (1979, p. 33) advances that "the Qur'ān is entirely the word of God and, in an ordinary sense, also entirely the word of Muhammad." Zayd also agrees with Rahman about the significance of context:

> The understanding of the first Muslim generation and the generations to follow are by no means final or absolute. The specific linguistic encoding dynamics of the Qur'ānic text always allows an endless process of decoding. In this process the contextual socio-cultural meaning should not be ignored or simplified, because this level of meaning is so vital to indicate the direction of the particular significance of the text. Knowing the direction of meaning facilitates moving from 'meaning' to 'significance' in the present socio-cultural context (Zayd, 2003, pp. 38-39).

Then, what Zayd points out is aptly summarized by Ahmed (2013, p. 207) who writes that "only when the Qur'ān's 'linguistic encoding' within a specific social and historical context is understood will the interpreter be able to outline its universal principles, for the purposes of present understanding."

Similar to Rahman, Khaled Abou El Fadl (b. 1963), a prominent scholar in the fields of Islamic law and human rights, maintains in *Islam and the Challenge of Democracy* that the genuine content of the divine law is intrinsically different from the temporospatial comprehension of it. He writes that if one assumes that God's

law is also the law of the state, then he or she must accept that in case of a failure of the state's law, this would mean the failure of God's law. Since God's law does not fail, then one must accept that *Sharī'a* law is not the final form of the God's will and it can be reshaped by human understanding and interpretation (Fadl, 2004, p. 34). Similarly, Amina Wadud (b. 1952), who is known as the first American woman-*imam* for Friday prayers and one of the progenitors of Islamic feminism, emphasizes the significance of historical context. She argues that *tafasir* [traditional Qur'ānic commentaries] were entirely written by men and they interpreted the Qur'ānic verses and other source-texts from the male perspective. Therefore, Wadud acknowledges that the Qur'ānic verses should be evaluated in the historical context within which they were revealed. This type of evolution she calls in *Qur'ān and Woman* is "a female inclusive reading of the Qur'ān" (Wadud, 1999, p. 2).

Soroush can also be classified under Ahmed's "progressive Islam." As mentioned in the previous chapter, Soroush distinguishes religion and religious knowledge and while the former is "sacred, heavenly, and eternal," the latter is "born and entirely human" (Soroush, 2000, p. 31). In this context, human understanding of religion is open to criticism and re-evaluation. He remarks the need for a theory which is also open to "the process through which religion is understood and the manner in which this understanding undergoes change" (Soroush, 2000, p. 34). This type of theory, to Soroush, can only be established where the society has intellectual pluralism that is directly related with the democratic secularism. Therefore, if, in a society, an institution or a person monopolizes the religious knowledge, such as the Velāyat-e Faqīh [Rule of the Jurist], Iran's top religious office, this society cannot be considered as a *jama'a-ye madani-ye dini* [religious civil society] (Ahmed, 2013, p. 213). In other words, since the practice of reason is independent from any interpretation of religious authorities, as Ahmed (2013, p. 214) writes; only "reason-based secular model of governance" can yield a religious civil society. Here, Soroush emphasizes the significance of secular space which enables religious society to preserve the plurality of human reasoning. Therefore,

Soroush's secularism does not include emancipation of reason from the religious dogmas; on the contrary, his understanding of secularism requires religion to "retreat into the secular sphere (and takes its place in civil society) to protect it from the co-opting effects of political power" (Ahmed, 2013, p. 215). Hamid Dabashi (2008, pp. 159-160) writes in his prominent *Islamic Liberation Theology* that Soroush's project is "to dissociate 'Islam itself' from the factual evidence of an Islamic revolution predicated on an Islamic ideology;" however, as he emphasizes, "the principal problem with Soroush's project and that of his reform-minded colleagues…is that they are theorizing a 'democratic Islam' at a time when Shi'ism is in power" (Dabashi, 2008, p. 160). Therefore, Soroush's Islamic liberalism (or progressivism as Ahmed calls it) is restricted by denominational specifications and does not provide an inclusionary universal perspective. Nevertheless, his alternative reading of Islam leads him to be regarded as "the Martin Luther of the Islamic world" (Dabashi, 2008, p. 212).

Katerina Dalacoura (2007, p. 1), in the introduction of her *Islam, Liberalism and Human Rights* asks a significant question which is directly related with Soroush's approach to Islamic liberalism and secularism: "Is Islamic liberalism viable and can it provide an alternative framework to secularism for the respect of rights?" She emphasizes the Enlightenment belief that "a society can be liberal only if it is a secular society" (Dalacoura, 2007, p. 11). To her, the Enlightenment regards human freedom over Christian faith and even though religion is not detrimental to freedom, it should be confined within the private realm. In this context, both this world and the hereafter can be protected. Then, we should ask whether Islam is viable to be restricted to the private life of believers. Wolfe (2006, p. 235) provides a consistent analysis about this question and argues the difference between "private religious practice" and "public worship and proselytism." To him, this distinction elicits support from those who consider religion as a personal aspect of life; however, those who comprehend religion as a part of proselytism do not subscribe to this differentiation. Then, what could happen if proselytism infiltrates

politics? Talal Asad (2003, p. 182) replies this question in *Formations of the Secular: Christianity, Islam, Modernity* as follows:

> When religion becomes an integral part of modern politics, it is not indifferent to debates about how the economy should be run, or which scientific projects should be publicly funded, or what the broader aims of a national education system should be. The legitimate entry of religion into these debates results in the creation of modern 'hybrids': the principle of structural differentiation—according to which religion, economy, education, and science are located in autonomous social spaces—no longer holds.

In this context, those who cite the Qur'ānic verse 16:125—**"**invite to the way of your Lord with wisdom and good instruction, and argue with them in a way that is best"— generally tend to equate Islam with what is called *da'wa* or *tabligh* [aiming to proselytize among non-Muslims] and they are substantially reluctant to confine Islam within the realm of private life. Susanne Olsson discusses this issue in her article titled "Proselytizing Islam-Problematizing Salafism" within contemporary Swedish context and in terms of Salafi groups. Undoubtedly, her article reveals the difficulty to separate private and public realms when proselytizing in Islam is taken into account (Olsson, 2014, p. 172). In this vein, Soroush does not provide an explanation regarding this aspect of Islam. Even though, like Fyzee, he regards Islamic liberalism as a transitional stage to secularism, he does not offer a justification on the tension between Islam and secularism with respect to proselytism.

Here, another proponent of progressive (or liberal in a sense) Islam is Mohammed Arkoun (d. 2010) who is among the most influential secular scholars in Islamic studies. He uses the concept "Islamic logocentrism" in order to describe what we have called in this thesis as the textual fundamentalism. He defines "Islamic logocentricism" as an inclination to establish all knowledge into the framework of religious texts, presumptions, exegeses, and cultural, social, and political perspectives (Arkoun, 2006, ch. III). He derives this term from Aristotle's *logos* and argues that Greek rationalism influenced Jewish, Christian, and Muslim thought. As a reaction to the tension between reason and faith, an Islamic

understanding emerged which bound religion to the source-texts (Ahmed, 2013, p. 217). However, this restriction is useful since texts give an idea about how the religious knowledge constructed. In other words, as Ahmed (2013, p. 218) writes, to Arkoun, maybe "there is no knowledge (secular or religious) which is not constituted by the language which that knowledge constructs." In this vein, Arkoun evaluates texts via Derridean deconstruction which argues that "there is nothing outside of the text" (Derrida, 1997, p. 158). When it comes to the reason, Arkoun coins the term "emerging reason" to describe the human reasoning which is imperfect and fallible. Through "emerging reason," Muslims can construct the religion which means that, as Wadud (2006, p. 6) writes, "Islam is no longer the goal, but a process." Ahmed (2013, p. 220) calls this as "deontological religion" and regards it as a reformist agenda that includes reconstruction of Islamic premises within the realm of political theory, social criticism and ethics. To sum, Tibi (1998, p. 150) describes Arkoun as follows:

> A liberal Muslim thinker, Mohammad Arkoun…made the point that every religion, Islam not excluded, is subject to rethinking, that is, to the lessons and forces of history. Needless to say, the response by the representatives of political Islam has been mostly hostile.

Another Islamic liberal, Muhammad Ahmad Khalafallah (d. 1991) argues that all aspects of government such as economic, social, political, and administrative functions are determined not by the Qur'ān but by people who are delegated by God. As Nazih N. Ayubi (1991, p. 153) mentions in *Political Islam: Religion and Politics in the Arab World*, Khalafallah also distinguishes *al-Islam al-ḥaḍārah* [Islam the culture] from the *al-Islam al-din* [Islam the religion] in order to describe Islamic government. To him, Islamic government can merely be as a form of the former. In this context, he maintains that the caliphate is not a religious authority but a civil system which is an outcome of people's empowerment and which is not a result of God's delegation. Last, he mentions that the *ijtihāds* of predecessor jurists who lived almost a thousand years before are out of context today since the contemporary interests of Muslims have changed over the years. Tibi (2001, p.

134), in this vein, argues in *Islam between Culture and Politics* that this change was noticed by Arab and Turkish nationalist who agreed with the separation of religious power from the secular state authority. They equated the Islamic concept *dār al-Islam* [abode of Islam] with the European concept of nation-state. He, then, writes that "liberal and secular nationalists complied with the consequences of modernity and its globalization. They had no need therefore, of defensive-cultural attitudes" (Tibi, 2001, p. 134). In addition, what Tibi disagrees is considering Europe as *dār al-Islam* for Muslim migrants. He explains his refusal as follows:

> At the outset I, as a liberal Muslim and migrant, acknowledge the primacy of European identity in Europe and view it as normal that Muslims who migrate to Europe need to come to terms with this identity. I have publicly rejected the claim of one of the Muslim religious leaders that Europe for Muslim migrants is *dār al-Islam* (Tibi, 2001, p. 191).

Here, Tibi proposes a new term "Euro-Islam" which includes cultural borrowings from Europe. In essence, these borrowings are not the first of its kind. For instance, as Tibi (2001, p. 107) writes, "Muslim philosophers like Avicenna and Averroes had no problems with cultural borrowings from Greek legacy." Euro-Islam, therefore, includes cultural borrowings from Europe including secularism. He explains what he means by "Euro-Islam" as follows:

> What exactly would such a concept comprise? In Euro-Islam I address the effort of devising a liberal variety of Islam acceptable both to Muslim migrants and to European societies, thus an Islam that can accommodate the ideas of Europe, ideas including secularism and individual citizenship along the lines of a modern secular democracy. Yet I reiterate that Euro-Islam is the very same religion of Islam as exists anywhere. In the case of Europe, however, it is culturally adjusted to the civic culture of modernity (Tibi, 2014, p. 206).

The last scholar who will be mentioned here under the category of secularism-dominated Islamic liberalism is Nader Hashemi (b. 1966). Hashemi (2009, p. 20), in his renowned book titled *Islam, Secularism, and Liberal Democracy*, acknowledges that liberalism requires secularism even though Muslims regard secularism as an anathema to Islam. He mentions that "based on recent historical

experience, it [secularism] is widely viewed as an ideology of repression (especially in the Arab world) rather than as a prerequisite for a just political order." Here, al-Sulami (2003, p. 81) agrees with Hashemi's point. He writes in *The West and Islam* that "Christianity insisted on maintaining a sharp distinction between the things belonging to Caesar and the things belonging to God. In contrast, Islam was considered as a comprehensive phenomenon, making no distinction between sacred and secular." However, Hashemi (2009, p. 20) argues that Muslim societies should develop an "indigenous theory of Islamic secularism." Then he asks: "How can a version of secularism be socially constructed to assist the process of democratization and liberalization in the Muslim world?" His formulation goes as follows:

> I have argued that political development does not require the privatization or marginalization of religion from the public sphere, but in order for religious groups to make a lasting contribution to democratic consolidation, a reinterpretation of religious ideas with respect to individual rights and the moral bases of legitimate political authority is needed. In short, the contribution religious groups can make to the development of democracy is often a function of their ability to undertake some form of doctrinal reformulation in this direction (Hashemi, 2009, p. 173).

Kaminski argues in *The Contemporary Islamic Governed State* that Hashemi's proposition does not yield to liberalism. He writes that "undertaking some form of doctrinal reformulation" means "abandoning certain elements that are understood as constitutive of the Islamic religious value system itself" (Kaminski, 2017, p. 76). Moreover, if Muslims abandon these elements, he mentions, the result would not be a liberal Islam:

> Even if we assume somehow this can be done, I do not think a few doctrinal changes—or the abrogation of a few *āyāt* of the Qur'ān that are unsavoury to the liberal palate—are enough to make a society grounded in Islamic values compatible with liberal democracy. Stylistic changes to certain specific religious practices and beliefs are only the tip of the iceberg when considering the deep incompatibilities between Islam and liberalism (Kaminski, 2017, p. 76).

To sum, when compared with *Sharī'a*-oriented Islamic liberalism which was analyzed in the previous subchapter, the proponents of secularism-dominated Islamic liberalism seem quite further from fundamentalism. Moreover, their project, which they call Islamic liberalism, liberal Islam or progressive Islam, is not dominated by *Sharī'a*, accepts secularism as an important objective, removes the boundaries around reason, enables personal *ijtihād*, maintains historicity of the Qur'ānic verses, annihilates the omnitemporality of Islamic rules, and comprehends Islam as a process not as a codified set of rules. However, it is ambiguous that whether secularism-dominated Islamic liberalism is Islamic. In other words, one can argue, as Kaminski writes, that this type of project belongs something other than Islam and one can also maintain that disentangling Islamic characteristics from a project would prevent it from being labelled as Islamic. Then, the conflict between adversaries and proponents of secularism-dominated Islamic liberalism should be evaluated.

5.1.3 The conflict on Secularism-dominated Islamic liberalism

In any case, as Blancke (2018, p. 276) writes, "Islam is a religion of the book." Similarly, Ebrahim Moosa, a leading scholar of contemporary Muslim thought, points out the dominance of source-texts. He writes that "some contemporary readings of the Qur'an are predisposed to text fundamentalism, a feature evident among modernists, fundamentalists, and neo-traditionalists" (Moosa, 2003, p. 123). Blancke (2018, p. 276) also notes that the liberal views are based on unconventional reading of source-texts and those who are liberal Muslims, which he calls a marginal group, "need to be careful at times, as they run the risk of being branded as apostates, thus facing harassment, or worse." For instance, Fadl (2004, p. 52) writes that Mohammad Taqi Mesbah-Yazdi, a conservative ideologue, summed up his sermon at Tehran University as follows: "If someone tells you he has a new interpretation of Islam, sock him in the mouth." Cox & Marks (2003, p. x) remind their readers of a fact in their *The 'West', Islam and Islamism: Is*

Ideological Islam Compatible with Liberal Democracy that "there is a tendency among some Muslim leaders to accuse any critic of Islam of 'Islamophobia.' This attitude makes no distinction between legitimate criticism of Islam and sheer prejudice." Tibi (2012, p. 12), in this context, argues that "the accusation of Islamophobia serves as a weapon against all who do not embrace Islamist propaganda, including liberal Muslims."

Obviously, proponents of Islamic liberalism or liberal Islam or those who are sometimes called as progressive Muslims, regardless of how they are named, are substantially at odds with Salafis, fundamentalists, and Islamic modernists (Islamists). To better analyze their differences, one should explore these categories and their approaches to Islam. For instance, Salafism, as March (2015, p. 104) defines in *Political Islam: Theory*, "is…an unyielding focus on purifying Muslim belief and practice from any imaginable form of idolatry and an obsession with mastering the words and deeds of the Prophet Muhammad." He also notes that Salafis include the "extreme quietists" who justify obedience to tyranny that reminds of the Hobbesian doctrine of obedience to sovereign. Fadl argues in *Reasoning with God: Reclaiming the Shari'ah in the Modern Age* that Salafism emerged as a proponent of liberal renaissance in the Islam which has always been open to the effect of power dynamics and political interests. When the wave of nationalism challenged Salafism, Salafis like Rashīd Riḍā, "consistently transformed Islam into a politically reactive force engaged in a mundane struggle for identity and self-determination" (2014, p. 254). To Zayd (2006, p. 46), Riḍā's Salafi discourse was transformed to a political movement named *Jamā'at al-Ikhwān al-Muslimīn* [Muslim Brotherhood], by Ḥasan al-Bannā' (d.1948). At the same page, he also writes that "modern political Islamist movements, which are usually labelled as fundamentalist in Western public discourse, are all offshoots of the Muslim Brotherhood." The aim of this movement was to establish an Islamic society in Egypt and set an example to other Muslim-majority countries. This was also a reaction to Westernization of Egypt; therefore, its agenda includes re-establishment of the caliphate and making the Qur'ān its constitution.

When it comes to the fundamentalism, it covers a range of different perspectives. For instance, to Zayd (2006, p. 47), Sayyid Quṭb is the theoretician of militant fundamentalism who argues that "all philosophies, social sciences and political systems of the world are nothing more than different modes of paganism, *jāhilīyah*, whereas sovereignty is in the hands of man rather than God." Roy (2007, p. 42) mentions another category, modern fundamentalism, and writes that "modern fundamentalists, such as Tariq Ramadan, accused of dual language precisely because they translate this fundamentalism into modern discourse." Dalacoura (2007, p. 4) provides a comparison between Islamic liberals and Islamic fundamentalists as follows:

> The former [Islamic liberals] believe that Islam and human rights can be reconciled, and give equal value to both. The latter [Islamic fundamentalists] are preoccupied with safeguarding the purity of the religion as they understand it and struggle to make its precepts the foundation of social, political and private life, even if that implies a disrespect for rights (although they will not accept that it does).

Here, the last category, Islamism, should be examined in details. To Tibi, the difference between Islam and Islamism is about the concept of sovereignty. He writes that Islamism prioritizes the *hakimiyyat* Allah [God's rule] while "liberal-civil Islam" is congruent with democracy (Tibi, 2012, p. 219). He then argues that Islamism threatens the open society while Islam does not. He exemplifies these threats in the introduction of the same book. He writes that "in its jihad against 'enemies of Islam,' Islamism seeks to excommunicate even liberal Muslims from the *umma*—the worldwide Muslim community" (Tibi, 2012, p. vii). To him, while Islamists excommunicate whomsoever they want to, they have also invented the word Islamophobia to protect themselves against the criticisms. Then, what is Islamism? Again, Tibi defines the concept as follows:

> The agenda of Islamism is to mobilize the Islamic *umma* in order to establish the totalitarian order called *nizam Islami*. Jihadist violence is only a means toward this end. But given the cultural and religious diversity within Islamic civilization, including the difference between *Sunni* and *Shi'ite* Muslims, this order could never comprise the single entity that Islamists envision. This

> entity exists in the minds of the Islamists, who, in an echo of "clash of civilizations" rhetoric, imagine an Islamic collectivity acting as a monolith that rules the world (Tibi, 2012, p. 223).

March also remarks the difference between Islamism and Islamic liberalism. He argues that some Islamists may reject the premodern orthodox methods of Islam and may prioritize its political message; however, "this kind of 'interpretive modernism' does not necessarily signal a moral or political liberalism" (March, 2015, p. 104). Therefore, he warns in "Genealogies of Sovereignty in Islamic Political Theology" that "it is important to resist the temptation to see Islamist political thinkers and actors as either democrats or theocrats, as either "liberal Islamists"…or "radical Islamists" (March, 2013, pp. 315-316). Tibi also points out the same mistake. He writes that "Islamism is wrongly viewed as a liberation theology, as an anti-globalism—and even worse—as liberal Islam" (Tibi, 2009, p. 312).

When comparing Islam with Islamism, Tibi, who introduces himself as a liberal Muslim, generally tends to characterize Islam in line with his understanding and uses the words "liberal Islam," "civil Islam," or "enlightened Islam" to refer the former. For instance, he acknowledges that "a liberal civil Islam supports this secular option. Enlightened Islam has a tradition of Islamic humanism. Islamism, by contrast, insists on religionized politics and dismisses enlightenment as an "imported solution" (Tibi, 2012, p. 239). To him, Islamism is a totalitarian ideology and an adversary of enlightenment (Tibi, 2012, p. 224). Moreover, according to Tibi, the mission of Islamic liberals has been the same with those of Islamic rationalists against the *fiqh* orthodoxy which nowadays has been represented by Islamism: "As in the past, when Islamic rationalist philosophers—from al-Farabi to ibn Rushd—stood against the *fiqh* orthodoxy, liberal Muslims today stand against Islamism" (Tibi, 2012, p. 225). Tibi also notes that liberal Muslims are the most welcoming Muslims to the Western values and culture while Islamism advocates their incompatibility. Following excerpt aptly summarizes Tibi's perspective to liberal Islam and Islamism:

> Islamism is not what Islamic civilization needs today in its current state of crisis. Instead, we need to subscribe to a civil and liberal Islam with a secular perspective. In so doing, we non-Islamist Muslims not only approve pluralism but also seek a place for Islam in the diversity of cultures and religions that makes up the modern world (Tibi, 2012, p. viii).

Contemporary Islamism can be mainly traced back to two religious movements: *Jamā'at al-Ikhwān al-Muslimīn* and *Jamā'at-i-Islami* which were respectively founded in Egypt by Ḥasan al-Bannā' in 1928 and in Pakistan by Abū al-Aʿlā Maududi (d. 1979) in 1941 (Roy, 2007, p. 63). To Tibi, their legacy has been transferred to today's Islamism by Sayyid Quṭb, Yūsuf al-Qaraḍāwī (b. 1926), and Tariq Ramadan (b.1962). For the sake of the thesis's scope, it is suffice for now to note that Tibi uses democracy as a litmus paper to evaluate these authorities' approaches to liberalism and Islam. Tibi (1998, p. 187) cites Maududi's *Islam and Modern Civilization* where he bluntly writes that "there can be no reconciliation between Islam and democracy. Where this system (of democracy) exists we consider Islam to be absent. When Islam comes to power there is no place for this system." Quṭb also agrees with this idea; he writes in his well-known book titled *Milestones* that "democracy in the West has become infertile… It is essential for mankind to have new leadership. The leadership of mankind by Western men is now on the decline…[T]he turn of Islam and the Muslim community has arrived" (Quṭb, 2006, pp. 23-24). al-Qaraḍāwī (as cited in Tibi, 1998, p. 187), similarly, argues that "democratic liberalism came into the life of Muslims through the impact of colonialism. It has been the most dangerous [influence] in the colonial legacy." He also writes that "what looms behind this thought [liberal democratic thought] is the wicked colonial notion that religion is to be separated from politics and from the state" (Tibi, 2012, p. 96).

After analyzing Islamists, in almost every book he has written, Tibi warns the academia as follows:

> Yet instead of enlightening people about the distinction between Islamism and Islam, many scholars are doing the opposite. Major Islamists like al-Qaraḍāwī and Ghannouchi are introduced to Western audiences as voices of

> ‘liberal Islam.’ This does a great disser vice to true civil and liberal Islam. If academic freedom means anything, one has to be permitted to identify Islamism as a totalitarian movement, and to support this assertion with the relevant arguments, without being defamed as ‘bashing Islam.’ This happens equally in the United States and in Europe, where such arguments risk being labelled Islamophobic (Tibi, 2012, p. 217).

Last, for the contemporary discussions, Tariq Ramadan’s position is of significance not only because he is a renowned figure and the grandson of Ḥasan al-Bannā’ but also he is a prolific writer on Islamism, Islamic reform, and liberal Islam. First, Ramadan (2009, p. 282) writes that “liberal thought becomes dogmatic and cleverly stifles critical and *democratic* debate.” Then, he defines what he means by “dogmatic liberal thought,” which is, in his words, “unfortunately a very real creation of our time, an intellectual hybrid that promotes its political ideology to the rank of a universal philosophical (and almost religious) theorem.” In another book, Ramadan names Islamic liberalism as “liberal or rationalist reformism.” His perspective to liberal Islam is evident in the following excerpt that is worth citing in its entirety:

> Essentially born out of the influence of Western thought during the colonial period, the reformist school, presenting itself as *liberal* or *rationalist*, has supported the application in the Muslim world of the social and political system that resulted from the process of secularization in Europe. The liberals were the defenders of Mustafa Kemal Ataturk’s secularization project in Turkey, for example, and of the complete separation of the religious arena from the ordering of public and political life. In the West, supporters of liberal reformism preach the integration/assimilation of Muslims, from whom they expect a complete adaptation to the Western way of life. They do not insist on the daily practice of religion and hold essentially only to its spiritual dimension, lived on an individual and private basis, or else the maintenance of an attachment to the culture of origin. The majority of liberals are opposed to any display of distinctive clothing that might be synonymous with seclusion or even fundamentalism. With social evolution in mind, they believe that the Qur’ān and the *sunnah* cannot be the point of reference when it comes to norms of behaviour and that it is applied reason that must now set the criteria for social conduct. Thus, the term *liberal* is here used in the same sense the word has acquired meaning in the West, which elevates reason and is based on the primacy of the individual (Ramadan, 2004, pp. 27-28).

Obviously, Ramadan and Tibi have conflicting perspectives to liberal Islam. For instance, Ramadan argues in the above-mentioned excerpt that proponents of

Islamic liberalism maintain the assimilation of Muslims by the West, while Tibi (2014, p. 186) argues that when he has to choose between Europeanization of Islam and the Islamization of Europe, he writes that "I say yes to a European Islam in Europe and reject all Islamization." Then, what Tibi argues is not assimilation of Muslims but eradication of Islamists. Second, Ramadan (2004, p. 233) writes that "the liberal reformists are a minority in the Muslim world" and "they find much sympathy in the West and are often presented as the only true democrats in the Muslim countries." Tibi thinks exactly the opposite of what Ramadan advances; he writes as follows:

> Liberal Muslims are not, as the journal *Foreign Affairs* characterizes us, "a small slice." To describe us this way, with the implication that we may therefore be ignored, is not only a factual error but a tactical one, as this assumption tends to alienate precisely the non-Islamist secular Muslims who are most friendly to the West (Tibi, 2012, p. viii).

Therefore, Tibi, does not only reject Ramadan's label for liberal Islam as minority, but also complains from the negligence of the West. Third, while Ramadan (2004, p. 233) argues that "some reformists labelled 'liberals' do not hesitate to support dictatorial regimes, as in Syria and Tunisia, or 'eradicators' (a wing of the ruling military junta) in Algeria," Tibi regards Ramadan as an inheritor of jihadism. He writes as follows:

> Tariq Ramadan, the grandson of Ḥasan al-Bannā', the founder of the Muslim Brotherhood and of jihadism—will receive a boost in their transmission of 'the Muslim mission in Europe.' This grandson of Ḥasan al-Bannā' constructs a line of an 'Islamic renewal' that started in the nineteenth century with al-Afghānī and was continued by his own grandfather. As a liberal Muslim and as a student of Islam over four decades, I cannot support this reading of history and continue to view al-Bannā' as the founder of jihadist political Islam. I restrict myself to stating that my Euro-Islam is not the Euro-Islam of Tariq Ramadan and emphasize my firm belief in Islam as a most flexible faith and cultural system. There is no essential Islam, and Islam is always what people make of it (Tibi, 2014, pp. 186-187).

Zayd (2006, p. 92), in this context, criticizes Ramadan's perspective to Islam. He asks whether "Ramadan indeed, as some would like to call him, 'a Muslim Martin

Luther'" or not. He, then compares Ramadan's claim to return and reread the Islamic texts with that of Luther and argues that "while Luther's rereading liberated Christian scripture from the Church's monopoly and opened an avenue for its translation into all European languages, Ramadan's rereading apparently does not go beyond long-established norms.

To sum, from Fyzee to Ramadan, scholars have generally tended to examine Islamic liberalism either in a *Sharī'a*-oriented way or secularism-dominated way. However, none of them have discussed Islamic liberalism through questioning its conformity with liberalism. Even those who equate Locke's liberalism with Islamic liberalism do not provide details about what makes Islamic liberalism as a version of liberalism. At the very basic level, it is evident that Islamic liberalism has been used as a concept to describe an objective of some scholars to spread liberalism as an ideology in Muslim-majority countries. As can be understood from their arguments, the equation in their mind is so simple that liberalism in the Western context plus Muslim society in Islamic context equals to Islamic liberalism. Obviously, this type of juxtaposition of different concepts unfortunately has not yielded to a concrete term which has a consistent content in terms of Gallie's criteria. Thus, it can be argued that since Islamic liberalism has not achieved to point out a specific concept, one cannot maintain its essential contestability. Moreover, it also does not provide a sublation in Hegelian terms. Hegel's description of sublation resembles the formation of the compound which is composed of elements with different specifications. For instance, if they properly engage in a chemical reaction, hydrogen and oxygen forms the water molecules. When they form water molecules, they lose some of their specifications. For instance, while hydrogen is flammable and oxygen is oxidizer [combustion supporter], what they form is an extinguisher. In addition, even though one cannot notice the constituents a glass of water, it is scientifically known that it composes of hydrogen and oxygen atoms.

Thus, even if we accept that Islam and liberalism are antithetical, what they form (i.e., "Islamic liberalism") is not a new compound. It has no specifications that differs itself from its constituents. What we have is either a more Islamic liberal Islam or more secular liberal Islam. Therefore, if we regard Islamic liberalism as a liquid in a glass, one can easily notice the Islamic elements and secular elements in this mixture. Sometimes in this mixture Islamic elements are dominant and sometimes the secular elements are prevalent. When one reads the proponents of Islamic liberalism, he would definitely taste whether this mixture is flavoured by Islamic or secular arguments. However, in a compound, one cannot distinguish its constituents' concentration. For instance, no one can claim that this water is more hydrogen-dominated or more oxygen-oriented. Intrinsically, water composed of two hydrogen atoms and one oxygen atom. This is the natural outcome of a natural reaction. Then, as we see that Islamic liberalism can have various forms such as *Sharī'a*-dominated or secularism-oriented, then we can argue that Islamic liberalism is not a natural outcome of a natural reaction. However, what we call liberalism is a natural outcome of a natural reaction of the elements such as natural law tradition, Christian theology, anthropocentric humanism, and secularism. In this context, even though Islam and liberalism have many opposite characteristics, Islamic liberalism is not also a concept in terms of Kantian antinomies since it does not help us to search for the key to escape from the labyrinth. On the contrary, it complicates the way we understand Islam and liberalism separately. Then, if it does not fit Kant's, Hegel's, Gallie's terminology, what is or what is not Islamic liberalism? It is, literally, juxtaposition or mixture of disconnected terms and it is, obviously, neither concrete concept nor compound.

Last, it is also significant to note that we still in need of explanations from the proponents of Islamic liberalism about what makes Islamic liberalism as a version of liberalism. Since, scholars such as Hashemi, Khan, Akyol, and Samad argue that Lockean liberalism is a model for Islamic liberalism, we will finally check whether Islamic premises can generate Lockean liberalism or not. To test this, since the proponents of "Islamic liberalism" do not provide a concrete theory, we

will try to find the basic tenets of Lockean liberalism—as we mentioned in previous chapters—among the Islamic premises.

5.2 Islamic Premises on the Basic Tenets of Lockean Liberalism

As shown in the previous chapters, Lockean liberalism is not only based on natural law tradition and secularism, but also it is predicated on Christian theology. Chapter-III clearly revealed that Lockean liberalism is heavily embedded in biblical teachings and denominational explanations. In addition, that chapter also demonstrated the role of Christianity in the process of Locke's building his natural rights including right to resistance, right to private property, and right to religious freedom. To answer the main research question of the thesis, which is whether "Islamic liberalism" is theoretically coherent and whether it can be a form of Lockean liberalism, one should seek the traces of Islamic premises on these rights since "Islamic liberalism," per se, does not propose a framework for this comparison. In this sense, here we will analyze the Islamic principles on right to resistance, right to private property, and right to religious freedom; therefore, we will investigate whether Islamic source-texts and its exegeses are analogous with the scope of these rights as determined by Locke.

5.2.1 Political Legitimacy and Right to Resistance

What does make a political power just and legitimate in Islam? What is the source of political legitimacy? Does Islam provide people with the right to resistance against their rulers? When is it legitimate to resist? What is the perspective of Islam to the concepts political legitimacy and right to resistance? To reply these questions, we should examine the three faces of Islam as explained by Cox & Marks (2003, p. 5). First form of Islam is "Islam as identity" which is described as accepting "a nominal Muslim identity but without committing himself or herself to

specifically Muslim beliefs and practices." Second face of Islam is "Islam as a faith" that refers to prioritizing the etymological meaning of Islam, therefore, it denotes "submission or self-surrender to Allah as revealed through the message and life of his Prophet." Third appearance of Islam is "Islam as political ideology" that refers to "the beliefs and practices of those Muslims who seek to establish an Islamic state in order to enforce obedience to the Islamic law or *Sharī'a*." In this framework, those who regard Islam as a political ideology have some certain attitudes towards the relation between Islam and politics. Some scholars, who mainly study on this relation, generally argue that Islam and politics are inseparable. They exemplify Muhammad's era and acknowledge that he was not only a prophet and a spiritual leader but also he was a ruler and a political power holder. For instance, Jackson (2015, p. 25) writes that "Muhammad was a religious, political, and military leader who founded a new form of community, an *umma* that was both spiritual and worldly in nature." Similarly, Sirelkhatim (2015, p. 1) writes that "Islam is not merely a religion; it expands beyond that to include almost everything. Politics and Islam have always had a fickle relationship, yet a somewhat more stable one in the past." Cox & Marks (2003, p. 31) agree with this argument as follows:

> Islam does not make the distinction between the secular and the sacred exemplified in the Biblical text: 'Render unto God the things that are God's and to Caesar the things that are Caesar's.' The comprehensive control by religion of virtually every aspect of human life, individual and collective, enshrines the essence of totalitarianism and totalitarian control which is inherently incompatible with the concept of individual freedom which lies at the heart of liberal democracy.

As Bowering (2015, p. 4) mentions in his edited book *Islamic Political Thought: An Introduction*, "the foundations of Islam neither allow for distinctions between spiritual and temporal, ecclesiastical and civil, or religious and secular categories, nor envisage the same duality of authority accepted in Western political thought as standard." Crone (2004, p. 13) also acknowledges that "thanks to the environment in which it originated, Islam was thus embodied in a political organization almost from the start: the *umma* was a congregation and a state rolled together." This

strong relation between Islam and politics leads to a differentiation between the concepts of *umma* and nation. Hallaq (2013, p. 49) explains this difference as follows:

> Islamic governance (that which stands parallel to what we call "state" today) rests on moral, legal, political, and metaphysical foundations that are dramatically different from those sustaining the modern [liberal] state. In Islam, it is the community (*umma*) that displaces the nation of the modern nation state. The community is both abstract and concrete, but either case it is governed by the same moral rules.

In this vein, scholars mainly argue that the era of *Al-Khulafa-ur-Rashidun* [the Rightly-Guided Caliphs] was also the period when political and religious roles were intertwined. *al-khilāfa* [the caliphate], in essence, refers to "Muslim sovereigns who claimed authority over all Muslims" which "soon developed into a form of hereditary monarchy, although it lacked fixed rules on the order of succession and based its legitimacy on claims of political succession to Muhammad" (Kadi & Shahin, 2015, p. 37). These scholars' reading of early history of Islam reveals that "political power is only just and legitimate if it operates on *Sharī'a* [divine law] and serves the cause of Islam" (Akbarzadeh & Saeed, 2003, p. 2). Even though Islam does not prescribe a certain political system—as ibn Yusuf al-Juwayni (d. 1085) points out, "there is no point trying to find a text in the Qur'ān that addresses the details of the *imamate*" (Shahin, 2015, p. 70)—authoritative Islamic resources give hints about what is enviable and what is undesirable. For instance, while the oft-quoted *hadīths* such as "there is no duty of obedience in sin" and "do not obey a creature against the creator" used for justifying *Shi'a* and *Kharijites* rebellions, some Muslim jurists generally point out to the Qur'ānic verse that reads "obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day" (4:59).

For the latter, 10th century *Ḥanbalī* jurist, ibn Battah (d. 997) argues that "you must abstain and refrain from sedition. You must not rise in arms against *imams*,

even if they be unjust." He also exemplifies the saying of the second Caliph 'Umar ibn al-Khaṭṭāb: "If the ruler oppresses you, be patient; if he dispossesses you, be patient" (Lewis, 1988, pp. 99-100). Muhammad ibn Habib al-Māwardī (d. 1058), an Islamic jurist, who is well-known with his works on the relation between religion and caliphate, ruminated over how Muslims should approach to the political authority of their age, that is Seljuqs), who ruled some parts of the Middle East from the 11th to 14th centuries and whose commitment to Islam was seen as incredulous. al-Māwardī wrote the following passage as a response to the question whether Muslims should obey Seljuq rulers: "Listen to them and obey them in everything that is comfortable to the truth. If they are good it will be to your benefit and theirs; and if they do evil it will be to your benefit but harmful to them" (Lambton, 1981, p. 86).

Like al-Māwardī, al-Ghazālī also attaches importance to the existence of an *imam* who is obeyed; therefore, he argues that "if there is no imam, marriages and other legal processes are not valid, law ceases to exist, and so the community ceases to exist. Any ruler is better than chaos, no matter what the origin of his power" (Hourani A. , 2013, p. 14). In this context, al-Ghazālī reaches a conclusion that "necessity makes lawful what is forbidden" (Akbarzadeh & Saeed, 2003, p. 3). To him, Islamic model of governance is unachievable; therefore, in order to prevent social and political chaos, Muslims should remain in the scope of possibility. He advances that Muslims should acknowledge the existing power instead of anarchy. Even though al-Ghazālī acknowledges the duty of obedience to unjust sovereigns, he additionally maintains that "the devout Muslim should avoid the court and company of the unjust ruler, and should rebuke him: by words if he can safely do so, by silence if words might encourage rebellion" (Hourani A. , 2013, p. 6). ibn Taymīyah is also on the same page with al-Ghazālī. He refers to a saying of 'Ali, the fourth caliph, which is "sixty years with an unjust ruler are better than one night without a ruler." Accordingly, he writes that "it is obvious that the [affairs of the] people cannot be in a sound state except with rulers, and even if somebody from among unjust kings becomes ruler, this would be better than there being

none" (Enayat, 1982, p. 12). According to him, obedience is a duty of Muslims to the rulers who do not aggressively work against Islam and who protects Muslims. Since such type of rulers is regarded as legitimate, Muslims should not resist and pave the way for mayhem. In other words, being devout or not, and implementing *Sharī'a* or not are not the criteria of obedience. Then, what are the criteria of obedience?

To ibn Khaldūn (d. 1406), a leading Arab historian and the author of renowned *the Muqaddimah* [Prolegomena], *'asabiyya* [the solidarity of tribes] is the main criterion that provides authority and obedience; moreover, what had created the caliphate as an authority was also *'asabiyya.* He argues that "political power should be wielded by those who share in the dominant *'asabiyya*, for only they are capable of performing the functions of government" (Hourani A. , 2013, p. 24). Here, it is important to note that Muslim jurists have traditionally utilized some terms to denote political authority such as *amr*, *imāra*, *wilāya*, *khilāfa*, *imāma*, *dawla*, *mulk*, *hukm*, *tadbīr*, *siyāsa*, and *sultān.* What ibn Khaldūn argues is that "*khilāfa*, *imāma*, *ri'āsa*, and *sultān* to mean the same thing: the succession to the political authority of the Prophet" (Shahin, 2015, p. 68). In this context, this succession was first realized through *'asabiyya* by Umayyads (reg. 661-750) and 'Abbāsids (reg. 750-1258). In his era, ibn Khaldūn was convinced that the latest '*asabiyya* belongs to Turkish in the eastern Islamic world which means that the political authority of the Prophet should be exercised by Turkish *sultāns*. ibn 'Abd al-Wahhāb (d.1791), founder of the Wahhabi movement, does not agree with ibn Khaldūn on Turkish '*asabiyya*; he argues that what Turkish *sultāns* preserved was not the true Islam and therefore Ottoman *sultāns*—who also held the title of caliph from Selim I (reg. 1512-1520), who was presented as the leader of Islamic world by the *sharif* of Mecca after his victory against Mamlūk armies in 1516-1517 to Abdülmecit II, the last caliph of Ottoman Dynasty, who held the title between 1922 and 1924—were not the true leaders of the *umma.* In this vein, ibn 'Abd al-Wahhāb maintains about the caliphate that "the Arabs are worthier of it than the Turks" (Hourani A. , 2013, p. 38).

In any case, the dominant perspectives which are obedience and quietism have long held by the Muslim thinkers. Lewis (1988, p. 91) maintains that the Qur'ānic verse (4:59) which reads "obey Allah and obey the Messenger and those in authority among you" gives a twofold message: "To the ruler, authoritarian, to the subject, quietist…and the primary and essential duty owed by the subject to the ruler is obedience." ibn Jamā'ah (d. 1416), a Syrian jurist, summarizes these perspectives with his oft-quoted passage as follows:

> At a time when there is no *imam* and an unqualified person seeks the *imamate* and compels the people by force and by his armies, without any *bay'a* or succession, then his *bay'a* is validly contracted and obedience to him is obligatory, so as to maintain the unity of the Muslims and preserve agreement among them. This is still true, even if he is barbarous or vicious, according to the best opinion. When the *imamate* is thus contracted by force and violence to one, and then another arises who overcomes the first by his power and his armies, then the first is deposed and the second becomes *imam*, for the welfare of the Muslims and the preservation of their unity, as we have stated (Lewis, 1988, p. 102).

With the advent of secularism in the Muslim-majority countries, the intellectual agreement to maintain this type of status quo has changed. First wave of the change was pioneered by Islamists such as al-Bannā', Quṭb, and Maududi who considered political system as illegitimate and unjust. In this context, al-Bannā', the founder of Muslim Brotherhood, determined his organization's "fundamental law" as "antiforeign, anti-Zionist, anticommunist, and antisectarian" and sought for a political change (Bowering, 2015, p. 21). His organization's credo was known as "Allah is our objective; the messenger is our leader; Qur'ān is our law; jihad is our way; dying in the way of Allah is our highest hope" (Cox & Marks, 2003, p. 52). Quṭb, who was imprisoned by the President of Egypt, Gamal Abdel Nasser (served 1954 to 1970) declared Nasser's Egypt as *jāhilīyya* [the age of ignorance] and contemplated a political revolution via jihad. He writes in his prominent *Milestones* the following excerpt which shows his formulation that equates worldly authority with God's rule and which proposes to mobilize Muslims against man-made governments:

> The establishing of the dominion of Allah Almighty on earth, the abolishing of the dominion of man, the taking away of sovereignty from the usurper to revert it to Allah Almighty, and the bringing about of the enforcement of the Divine Law (*Sharī'a*) and the abolition of man-made laws cannot be achieved only through preaching. Those who have usurped the authority of Allah Almighty and are oppressing Allah's creatures are not going to give up their power merely through preaching; if it had been so, the task of establishing Allah's religion in the world would have been very easy for the Prophets of Allah. This is contrary to the evidence from the history of the Prophets and the story of the struggle of the true religion, spread over generations (Quṭb, 2006, p. 68).

Maududi, the founder of *Jamā'at-i-Islami*, put forward the idea of Islamic state which transcends the national boundaries (Bowering, 2015, p. 22). In his *Jihad in Islam*, he coins the term *ḥizbullāh* [the party of God], an Islamic system that will gain victory over all human systems:

> The party of God is a group established by Allah himself to take the truth of Islam in one hand and to take the sword in the other hand and destroy the kingdoms of evil and the kingdoms of evil and the kingdoms of mankind and to replace them with the Islamic system. This group is going to destroy the false gods and make Allah the only God (Gabriel, 2015, p. 78).

In essence, one cannot observe an Islamic theory of sovereignty as it exists in the Western political theory (Alijla & Hamed, 2015, p. 135). However, as Alijla & Hamed (2015, p. 137) analyze, there are three groups of Muslim scholars who debate the sovereignty in terms of the Qur'ān, *hadīth* and *ijtihāds:* the first group differentiates between authority and sovereignty; they argue that "where sovereignty is only for God and the authority to rule is delegated to the *umma*, the nation, to exercise its authority within the limit of sovereignty." Therefore, these scholars base their arguments to the Qur'ānic verse 4:59: "[O]bey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day." This perspective was held by Quṭb and Maududi. They commonly argue that man cannot exercise sovereignty of God in the world and sovereignty rests only with God. If man and society usurp this right of God, they will return to *jāhilīyah*. Scholars in the second group hold that sovereignty and the source of

authority belong to the *umma*. *Umma*, within the framework of *Sharī'a* and with the help of *shūrā* [consultation], exercises to authority in the world. For instance, al-Duri, advances that "the nation is the highest authority in the state. The ruler and the consultation committees must consider the national decision in all matter" (Alijla & Hamed, 2015, p. 138). Last, the third group is the unification of the former groups; they maintain that there are two different sovereignties that respectively belong to God and *umma*. While the former is represented by *Sharī'a*, the latter is represented by consultation.

The source-texts also give idea about what is allowed in terms of resistance to authority in Islam. However, as Fadl argues in *Rebellion and Violence in Islamic Law*, there are two verses in this context which seem contradictory as to the rationale behind resistance. First, Qur'ānic verse 49: 9-10 reads:

> And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly. The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy.

Fadl (2001, p. 5) writes that this verse is known as *baghy* [rebellion] verse. He explains that the word *baghy*'s etymological root is *baghā* and it refers to "to desire or seek something; to fornicate or cause corruption; or to envy or commit injustice." The negative connotations of this word reveal the general approach to resistance and rebellion. Moreover, "it is important to note that the verse addresses a conflict between two seemingly equal parties" (Fadl, 2001, p. 38) and in the early history of Islam this type of resistance appeared with the involvement of significant and esteemed Islamic figures who resisted against the political authority of their ages. As Fadl (2001, p. 19) notes, "Ā'ishah bint Abī Bakr (d. 678), Ṭalḥa b. 'Ubayd Allāh (d. 656), and al-Zubayr ibn al-'Awwām (d. 656) rebelled against 'Ali (d. 661) and Al-Ḥusayn ibn 'Alī (d. 680) and others rebelled against the Umayyads." In this context, Fadl (2001, p. 19) acknowledges that "if

one were to hold that all rebellions against unjust rulers are a sin, these theological and legal precedents either had to be explained away or distinguished." The second verse in Fadl's categorization is known as the *hiraba* verse which is as follows:

> Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment, except for those who return [repenting] before you apprehend them. And know that Allah is Forgiving and Merciful (Qur'ān 5:33-34).

This verse seems quite deterrent as to performing resistance. In this vein, Rahman, as the dominant scholarship acknowledge, considers that "Muslim jurists rationalized any political reality that might have confronted them, and forbade any rebellions against an established ruler" (Fadl, 2001, p. 13). Here, it should also be discussed whether the lack of social contract culture in the history of Islam has a role regarding this forbidden act. In other words, we should ask whether a social contract perspective exists in Islam which may provide a conceptual framework for right to resistance against the authority or tyranny. Ilyas Ahmad (1944, p. 82), in *The Social Contract and the Islamic State*, argues that the social and political condition of pre-Islamite Madīnah was almost the same with what Locke depicts as the state of nature. He writes that Madīnah lacked "a settled known law," "a known and indifferent judge with authority," "the supreme power to maintain order." To Ahmad (1944, p. 84), this condition resembles to Locke's state of nature and he maintains further that acceptance of Islam by the people of Madīnah was a social contract which helped them to quit uncertainty and insecurity. In addition, he argues that what is known as the Charter of Madīnah (622) constituted an *umma* upon the principles of social contract. Moreover, he alleges that following agreements of warring parties in the early years of Islam were also social contracts.

Even though Ahmad regards becoming Muslim as a conclusion of social contract, he does not elaborate on the obligations of contracting parties who were the

Prophet as the ruler and new Muslims as the ruled. He evidently equates social contract with either acceptance of Islam or mutual agreements between Muslims and nonbelievers. Therefore, the arguments that he uses to underpin his allegation that Islam has a social contract history can be corrected as Islam has a contract history since it does not provide a mutual agreement between the ruler and the ruled in terms of obedience and resistance, it does not determine the rights of the contracting parties, and it does not provide a philosophical background. Akhavi discusses the issue from a different perspective. He writes that contract theories prioritize natural law and natural rights; therefore, they regard individuals as free and rational agents. Via social contract, the society and sovereign state can be theoretically created and reciprocal obligations and mutual benefits can be established. In this context, he maintains that such a social contract theory does not exist in Islam:

> Because mainstream *Ash'arīte Sunni* Islam views God as continuously intervening in the operation of the universe and insists on the human being's 'acquisition' of his or her actions from such a God, it did not generate a theory of social contract (Akhavi, 2003, p. 23).

He then elaborates on the discussion about whether covenant theologies can produce a social contract and writes that some contemporary Egyptian scholars including Khalafallah, Tariq al-Bishri and Fahmi Huwaydi allege that the covenant verses provide a basis for social contract theory. He maintains the inconsistency as follows:

> Yet, despite their efforts to materialize such a theory in early Islam, they have not shown how believers did or could consciously decide to associate with one another to form a moral community that would be the guardian of their individual interests (Akhavi, 2003, p. 42).

In this context, what is argued as "the social contract in Islam" does not grant power to people. Since the ultimate authority is confined to the ruler—who is either God himself or someone who is appointed by God—the source of its legitimacy is purely based on faith and religious justifications. In this vein, a

probable resistance against political authority is dominantly perceived as a resistance against divine power. Therefore, with the absence of people's right to resistance, the rise of authoritarian tendencies in the political history of Islam seems understandable. As Fish (2002, p. 37) writes, "at the present time, however, the evidence shows that Muslim countries are markedly more authoritarian than non-Muslim societies." To sum, the prevalent perspective to political legitimacy in Islam is status quo based. Moreover, according to some Islamist arguments, even though they provide basis for resistance, their ultimate goal is not fulfilling people's self-government but establishing God's sovereignty. Since governance is not based on the social contract, worldly limitations put on rulers' authority are not determined and secular obligations or benefits of ruled are not specified. Therefore, right to resistance described by Islamists is not based on anthropocentric individualism but it is based on theocentric authoritarianism. In this sense, what Locke provides his readers in terms of right to resistance and sources of political legitimacy are different from what prevalent Islamic understanding provides its followers. Perhaps the reason behind this incongruity is, as Huntington (1996, p. 71) suggests in *The Clash of Civilizations and the Remaking of World Order*, "a sense of individualism and a tradition of rights and liberties" which are indigenous to Western civilization and which are the outcomes of long-established natural law and social contract traditions.

5.2.2 Right to Private Property and its Limitations

In order to grasp Islam's outlook to private property, the most significant limitation which should be kept in mind is that God is the only owner of wealth and individuals are merely trustees and keepers. In this context, the Qur'ānic verse 57:7 clearly declares that "Believe in Allah and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward." Similarly, Qur'ān 6:165 reads that "and it is He who has made you successors upon the earth and has raised some of

you above others in degrees [of rank] that He may try you through what He has given you." Then, while Qur'ān does not prohibit private ownership, the ownership, in the last instance, belongs to God. Habachy also points out the same matter; he argues that even though Islam bestows Muslims right to private property as modern Western legal systems do, it does this not on the secular basis but on the religious grounds. In Islam, he writes that "private ownership and individual rights are gifts from God, and creative labour, inheritance, contract, and other lawful means of acquiring property or of entitlement to rights are only channels of God's bounty and goodness to man" (Habachy, 1962, p. 452). As mentioned earlier, *al-māl* [property] has been regarded as a component of *maṣlaḥa* which is under the protection of *Sharī'a*; in this vein, some jurists, such as al-Ghazālī (as cited in Bashir, 1999, p. 72) writes that "the very objective of the *Sharī'a* is to promote the welfare of the people which lies on safeguarding their faith, their life, their intellect, their posterity and their property." This argument seems parallel to a *hadīth* which states that "Muslims' blood, property and dignity are protected against each other" (Islam, 1999, p. 362). ibn Taymīyah also emphasizes that "the first duty of the state is scrupulously to respect private property" (Habachy, 1962, p. 453).

Then, what is considered as a property in Islam? In his article titled "the Concept of Property in Islamic Legal Thought," Muhammad Wohidul Islam (1999, p. 363) defines *al-māl* as "a thing which is naturally desired by man, and can be stored for the time of necessity." He describes its certain characteristics as follows:

> In order for a thing to qualify as *al-māl* it has to be, in the words of the *Mejelle* [the civil code of the Ottoman Caliphate] (art. 126), naturally desired by man. In other words, in modern terminology, it must have commercial value; it must be capable of being owned and possessed; it must be capable of being stored; it must be beneficial in the eyes of the *Sharī'a*; the ownership of the thing must be assignable and transferable (Islam, 1999, p. 365).

Obviously, in Islam, right to private property is regulated by *Sharī'a* norms and these norms put some limitations on the right to private property through

prohibiting *ribā* [usury], *israf* [extravagant spending], *kanz* [hoarding], *gharar* [speculation], and through obliging Muslims to pay *zakat* [alms]. These limitations have two main objectives: reinstating *al-ʿadl* [socioeconomic justice] and advancing *al-ʾiḥsān* [mutual benevolence] (Bashir, 1999, p. 71). For instance, for usury, Qur'ānic verse 2:275 reads that "Allah has permitted trade and has forbidden interest. But whoever returns to [dealing in interest or usury]—those are the companions of the Fire; they will abide eternally therein." For extravagant spending, it declares: "And give the relative his right, and [also] the poor and the traveller, and do not spend wastefully. Indeed, the wasteful are brothers of the devils" (Qur'ān 17:26-27). For hoarding, the Qur'ānic verse 9:35 announces that the hoarded wealth and its owner will be in the hellfire: "The Day when it will be heated in the fire of Hell and seared therewith will be their foreheads, their flanks, and their backs, [it will be said], 'This is what you hoarded for yourselves, so taste what you used to hoard.'" For speculation, it states that "do not consume one another's wealth unjustly but only [in lawful] business by mutual consent" (Qur'ān 4:29). For the obligation of paying alms, the Qur'ān 9:103 reads that "Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah's blessings] upon them. Indeed, your invocations are reassurance for them." To Habachy (1962, p. 453), these boundaries around the property are also *ḥudūd-Alla*h [the rights of God], that is why when the property rules are breached harsh punishments come to the fore. He writes that "highway robbery and theft are two of them. The penalty for the first is death. A thief is punished for the first offense by amputation of the right hand; for the second offense, the left leg is cut off."

Evidently, these limitations are valid when a Muslim has a property. Then, how can one acquire the property? What are the rules determined for private ownership? To Bashir (1999, p. 73), there are five ways to obtain ownership: "physical and mental work," "landed property," "mining and minerals," "inheritance and bequest," "trade and commerce." In these categories, the most significant one is the work effort. He writes that "the Islamic concept of ownership

rights is commensurate with work effort. Work, in all its forms, is considered to be a perfectly legitimate vehicle for acquiring property in so far as it is in conformity with certain moral requisites" (Bashir, 1999, p. 73). Then, does Islam permit its believers for limitless enrichment through their working efforts? This question is also identical with the following question: What is the difference between liberal capitalist economy and Islamic economy? Ökte (2010, p. 182) summarizes this difference as follows:

> The prevailing economic systems neglect the moral dimension of human existence and feature aggressive opportunism, dishonesty, and mistrust. For example, corruption and cheating remain terrible problems of our economic lives. They altogether form a vicious circle and cannot be eliminated completely. The main reason of this vicious circle is the selfishness inspired by Western individualism. Capitalist systems seek social efficiency through actions motivated by self-interest, and because of this they are occupied by unemployment, pollution, and uncontrolled poverty; and regulations to correct the shortcomings of capitalism are usually ineffective because those who implement them are governed by the wrong values. However, Islamic economics insists that in a society whose members are endowed with Islamic values, the flaws of capitalism will be absent. Islamic economics emphasizes the encouragement of communal, non-individualistic values and fighting against selfishness. This is one of the distinguishing aspects of Islamic economics for it views communal values as critical to an economic system's operation.

Then, it can be argued that while capitalism is prone to selfishness and ultimate individualism, Islam has more communal values that curb the enrichment beyond control. Therefore, the rich must donate at least the fortieth of his wealth via the *zakat* procedure. In this vein, Muwaffaq al-Din Ibn Qudama (d. 1223), the *Hanbali* jurist, writes that "if someone refuses to pay the zakat…and the *imam* is able to collect it from him, he does so and punishes him…with *ta'zir* [a corporal punishment]" (Habachy, 1962, p. 454). Mariam (1998, p. 288) explains the rationale behind these limitations put on right to private property. To her, "claiming absolute authority and ownership as well as rights with one's property is akin to claiming equality of status with the Creator. And that is completely shunned in Islam." In the last instance, as Qur'ān 2:284 reads, "to Allah belongs whatever is in the heavens and whatever is in the earth." She, thus, claims at the

same page that "unequal distribution of wealth as well as accumulation of it by the small segment of the Muslim *umma* is entirely prohibited." Here, the source of such prohibitions is not the state but the religion. For instance, in case of bounties of war, Qur'ān 8:1 states that "they ask you, [O Muhammad], about the bounties [of war]. Say, 'the [decision concerning] bounties is for Allah and the Messenger.'" This means that these lands or properties acquired after conquests can only be shared through God's and the Prophet's rule. It is, then, not surprising that Qur'ān 8:41 explains how the spoils of war should be shared by Muslims: "And know that anything you obtain of war booty—then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller."

Maxime Rodinson (1973, p. 14) writes in his renowned *Islam and Capitalism* that it is a futile effort to search Islamic resources in order to find condemnation or approval of capitalism. He also admits that the Qur'ān is not against the right to private property and the Prophet encourages believers to search for trade and profit. For instance, in a *hadīth*, the Prophet says that "'the merchant who is sincere and trustworthy will (at the Judgement Day) be among the prophets, the just and the martyrs' or 'the trustworthy merchant will sit in the shade of God's throne at the Day of Judgement'" (Rodinson, 1973, p. 16). It is obvious that Muhammad promotes trade and seeking for profit and within the Islamic tradition trade has been regarded as the most supreme way of subsistence. Again a *hadīth* expresses the superiority of trade as follows:

> If you profit by doing what is permitted, this deed is a jihad and, if you use it for the family and kindred, this will be *sadaqa* [a pious work of charity], and, truly, a *dirham* [drachma, silver coin] lawfully gained from trade is worth more than ten *dirhams* gained in any other way (Rodinson, 1973, pp. 16-17).

In this context, Facchini (2007, p. 13) writes that "the heart of the conflict between Islam and the Western model of secularised development does not lie in property law but in family law and criminal law." On the contrary, Sait & Lim (2006, p. 11)

argue that Western capitalist property rights are unfettered while right to private property in Islam is constrained. For instance, in terms of the ownership of land Islam forbids disproportionate utilization and hoarding of land. Therefore, Güner (2005, p. 4) writes that "Islam is against those who accumulate property for the purpose of greed or oppression as well as those who gain through unlawful business practices." Land ownership is therefore directly related to how the owner uses it; as one of the *hadīths* states that "he who has land should cultivate it. If he will not or cannot, he should give it free to a Muslim brother and rent it to him" (Sait & Lim, 2006, p. 12). Then, it is obvious that while producing money from money without labour through *ribā* is prohibited in Islam, creating money without labour from a mere land ownership is allowed. However, this is also bounded by Islamic redistribution rules as follows:

> Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveller, those who ask [for help], and for freeing slaves; [and who] establishes prayer and gives zakah; [those who] fulfil their promise when they promise; and [those who] are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous (Qur'ān 2:177).

To sum, a general explanation for the Islamic perspective to property right is, as can be found in Timur Kuran's *The Long Divergence: How Islamic Law Held Back the Middle East* that "the Qur'ān endorses private property, encourages commerce, and supports personal enrichment. Some of its verses characterize profit as Allah's bounty to humanity. Others allow the believer to combine piety with profit seeking" (Kuran, 2011, p. 45). In other words, "though in Islam the ownership of property is not denied, Islam allows individual the right to own property, but this right is not absolute. Because God is the Supreme Owner, man and society are His vicegerents" (Iqbal N. , 2000, p. 652).

5.2.3 Religious Toleration and Islam

As mentioned earlier, tolerance or toleration is "a multi-faceted concept comprising moral, psychological, social, legal, political and religious dimensions" (Shah-Kazemi, 2012, p. 14). What we mean by this concept is "a resigned acceptance of difference for the sake of peace…a passive, relaxed, benignly indifferent to difference…a principled recognition that the 'others' have rights… a willingness to listen and learn" (Walzer, 1997, pp. 10-11). In this subchapter, the perspective of Islamic source-texts to toleration will be evaluated and discussed. To begin with, the Islamic perspective to religious toleration is a complicated matter especially when the Qur'ānic verses are compared (Barkey, 2005, p. 7). For instance, one can easily present the following verse as an evidence for the nonexistence of toleration in Islam: "O you, who have believed, do not take the Jews and the Christians as allies. They are [in fact] allies of one another. And whoever is an ally to them among you - then indeed, he is [one] of them. Indeed, Allah guides not the wrongdoing people" (Qur'ān 5:51). Conversely, while the following verse is regarded, one can also advance the existence of religious toleration in Islam:

> Indeed, those who believed and those who were Jews or Christians or Sabeans [before Prophet Muhammad] - those [among them] who believed in Allah and the Last Day and did righteousness - will have their reward with their Lord, and no fear will there be concerning them, nor will they grieve (Qur'ān 2:62).

Even though the Qur'ānic verses are open to various kinds of interpretation, the fundamental approach to religious toleration can also be grasped through the exegeses, *hadīths*, and the historical background of the concept. In this context, Rahman (2009, p. 115) comments on the latter verse and argues that its logic is based on "universal goodness, with belief in one God and the Last Day." However, Muslim commentators also interpret this verse as "those who believe" refers to Muslims only and the others explained in the verse are those who had lived before

Muhammad introduced Islam. To Rahman, Qur'ān certainly envisions a pluralistic society and he exemplifies this with the following verse:

> And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ (Qur'ān 5:48).

Therefore, to Rahman (117), what Qur'ān prioritizes is the goodness of individuals who form the society. For instance, he argues that the Qur'ānic verse 5:82 which reads that "and you will find the nearest of them in affection to the believers those who say, 'We are Christians.' That is because among them are priests and monks and because they are not arrogant" is an example of Qur'ān's mild and tender attitude toward Christians. However, it should be emphasized here that the full version of this verse, which does not have such mildness towards Jews, is as follows:

> You will surely find the most intense of the people in animosity toward the believers [to be] the Jews and those who associate others with Allah; and you will find the nearest of them in affection to the believers those who say, 'We are Christians.' That is because among them are priests and monks and because they are not arrogant.

As Rahman notes, another verse also invites Christians to build a common ground with Islam: "Say, 'O People of the Scripture, come to a word that is equitable between us and you - that we will not worship except Allah and not associate anything with Him and not take one another as lords instead of Allah'" (Qur'ān 3:64).

Contrary to what Rahman argues, Paydar (as cited in Soroush, 2000, p. 138) maintains that "if a school of thought or a religion regards itself as the cradle of the

truth and approaches other ideas and religions as manifestations of apostasy, idolatry, and delusion, it leaves no room for a democratic government." In this context, we can also detect some Qur'ānic verses that call Christians as idolaters, infidels, and disbelievers. For instance, "they have certainly disbelieved who say that Allah is Christ, the son of Mary. Say, 'then who could prevent Allah at all if He had intended to destroy Christ, the son of Mary, or his mother or everyone on the earth?'" (Qur'ān 5:17) or similarly "they have certainly disbelieved who say, 'Allah is the third of three.' And there is no god except one God. And if they do not desist from what they are saying, there will surely afflict the disbelievers among them a painful punishment" (Qur'ān 5:73). In the following verses, Qur'ān warns Christians and explains the result if they continue to believe what they believe: "Cursed were those who disbelieved among the Children of Israel by the tongue of David and of Jesus, the son of Mary. That was because they disobeyed and [habitually] transgressed" (Qur'ān 5:78).

Contrary to these verses, Soroush (2000, p. 140) does not embrace a verse-based perspective to the concept of tolerance (as also in all matters regarding liberalism); this is why he prefers to regard tolerance not as "abandoning faith, certitude, and free will, or equating truth with falsehood." Similarly, in *Tolerance and Coersion in Islam*, Yohanan Friedmann (2003, p. 5) urges Muslims as follows:

> A contemporary Muslim may stress the tolerant elements in Islam, present them as reflecting his own faith and urge his coreligionists to adopt his liberal convictions. For instance, he could adopt the broadest interpretation of Qur'ān 2:256 ("No compulsion is there in religion…")…The real predicament facing modern Muslims with liberal convictions is not the existence of stern laws against apostasy in medieval Muslim books of law, but rather the fact that accusations of apostasy and demands to punish it are heard time and again from radical elements in the contemporary Islamic world.

Then, the real problem here is that what should be done if these exalted books lay burden on its followers to struggle against its nonbelievers. In essence, it is a general attitude of Muslim scholars to mention the Qur'ānic verse 2:256 that is

also cited by Friedmann, "there shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in *Taghut* and believes in Allah has grasped the most trustworthy handhold with no break in it." Similarly, the verse 109:6 reads that "for you is your religion, and for me is my religion" which addresses to the Meccan polytheists. However, Qur'ān 9:5 also addresses the polytheist but in a quite different way:

> And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful.

It is agreed that the latter verse abrogated the former one which frees polytheists for what they prefer to believe (Friedmann, 2003, p. 91). When this situation is evaluated with the Qur'ānic verse 8:39 which reads that "and fight them until there is no *fitnah* and [until] the religion, all of it, is for Allah," it becomes more difficult to maintain the existence of religious tolerance in Islam in Walzerian terms: "a resigned acceptance of difference for the sake of peace." As Friedmann (2003, p. 97) reminds, "the crucial word *fitna* is difficult and the commentators most usually explain it as 'infidelity' or 'polytheism' (*kufr, shirk*)." Then, it seems that when Christianity is regarded as infidelity (as mentioned above) and when polytheists are targeted as enemies to be killed, then how can one reconcile Islam and religious tolerance? Here, once again, the argument of historicism and *asbāb al-nuzūl* [occasions of revelation] comes to the forefront in the agenda of Islamic liberals. In this vein, as mentioned before, these scholars acknowledge that these verses were sent in line with the political and cultural structure of 7th century Al-Ḥijāz region that included Mecca and Madīnah where Muhammad lived majority of his life. They argue that since these verses are preconditioned with the necessities of that age, they lost their viability and validity in the modern era. For instance, Fadl (2014, p. 301) argues that when Qur'ān is contextually read, its intrinsic ethic of tolerance reveals. Some others argue that Jews and Christians—which are called *dhimmis* or *ahl al-kitāb,* people of the Book—can peacefully live

on a territory governed by Islamic rule if they concede to pay *jizyah* or *kharāj* [poll or protection tax] (Tyler, 2008, p. 119). This argument stems from the Qur'ānic verse 9:29 which reads as follows:

> Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture—[fight] until they give the *jizyah* willingly while they are humbled.

Then, when Jews or Christians agree to pay the *jizyah* or *kharāj*, they become free from being forced to embrace Islam. As Friedmann (2003, p. 104) writes, if they pay these taxes even though they refuse Islam, "God will take care of their punishment in the hereafter, but no religious coercion is practiced against them on earth."

Here, another important point is the Qur'ān's perspective to *ridda* [apostasy]. In the Islamic literature, *murtaddūn* [apostates] refers to people who had been Muslims before but abandoned their faith afterwards. Then, what is prescribed in *Sharī'a* for *murtaddūn*? Abū Yūsuf, one of the significant Islamic jurists, states that a Muslim man, who is normally allowed to marry up to four women, can marry the fifth wife when the other four wives apostatized since apostasy is like a death. ibn Taymīyah writes that "the apostate is more crude in his infidelity than an original unbeliever" (Friedmann, 2003, p. 123). Moreover, an apostate cannot save himself through getting *amān* [safe-conduct] or cannot be regarded as *dhimmi* since according to widely accepted Bukhari's *Sahih*, a *hadīth*, which is known as *man badalla* "whoever changes his religion, kill him" (Friedmann, 2003, p. 136). In essence, the Qur'ān does not clearly state that an apostate should be killed; at this matter, the majority of Islamic scholars generally refer to Qur'ān 4:137 which reads that "indeed, those who have believed then disbelieved, then believed, then disbelieved, and then increased in disbelief - never will Allah forgive them, nor will He guide them to a way." Here, some commentators and pioneers of Islamic tradition argue that since Allah will not forgive apostates, then this means that

their lives are meaningless, therefore, they should be killed. Based on this verse, Friedmann (2003, p. 144) writes that "'Alī ibn Abī Ṭālib and ʿUmar ibn al-Khaṭṭāb who thought that a person who apostatizes and repents more than three times should be killed without being asked to repent." Conversely, some scholars such as Kamali (2019, p. 144) argue that an apostate can only be killed if he "boycott[s] the community and challenge[s] its legitimate leadership."

In any case, diverse approaches to the source-texts and different historical implementations of tolerance or intolerance prove that reconciling Islam and toleration cannot be initiated without contextual reading. As Aaron Tyler's following excerpt in *Islam, the West, and Tolerance* advances, these contradistinctions in the texts and tradition dishearten the initiatives to promote a pluralist society based on mutual tolerance:

> While one may glean from some Qur'ānic passages, such as 'there is no compulsion in religion' or 'to you your religion and to me my religion,' that Islam advocates a fair degree of tolerance, passages such as 'take not the Jews and Christians for friends…He among you who takes them for friends is one of them,' seem to discourage contemporary efforts toward coexistence (Tyler, 2008, p. 108).

5.3 Conclusion

First of all, this chapter revealed that "Islamic liberalism," in the relevant literature, is generally referred to a set of liberal ideas of Muslims who usually live in Muslim-majority countries. Basically, when a Muslim scholar speculates or writes on liberalism, this intellectual attempt is labelled as "Islamic liberalism" by some other scholars. However, what this chapter examined is not related with this label; on the contrary, it aimed to analyze the conceptual framework of the concept. In this vein, this chapter investigated that "Islamic liberalism," per se, comprises of two contrasting concepts; while Islam has a submission-oriented theocentric meaning, liberalism has a freedom-oriented anthropocentric meaning.

Moreover, it was demonstrated that the conflict between these terms does not produce a rational antinomy in terms of Kantian dialectic nor leads to a concrete concept in terms of Hegelian triad since it does not refer to a new concept which is freed from its constituents' connotations. This is why "Islamic liberalism" was classified in this chapter as "*Sharī'a*-oriented Islamic liberalism" when *Sharī'a* dominates the definition of the term and "secularism-dominated Islamic liberalism" when secular values gain the supremacy. This classification also exposes the lack of a consistent theorization of "Islamic liberalism." It is shown that this deficiency was utilized by some scholars to suggest "Islamic liberalism" as a transition stage to political liberalism in Muslim-majority countries without providing it with a theoretical basis. Furthermore, the proponents of neither "*Sharī'a*-oriented Islamic liberalism" nor "secularism-dominated Islamic liberalism" discuss the conformity of their "Islamic liberalism" with the theory of liberalism. What is worse is that majority of these proponents' *terminus a quo* is to export liberalism to Muslim-majority countries. To formulate their project, they basically suggest that liberalism in the Western context plus a Muslim-majority country equals to "Islamic liberalism." This is why "Islamic liberalism" does not propose a theoretical ground and seems like the juxtaposition of Islam and liberalism.

As mentioned earlier, what is called Lockean liberalism is a natural outcome of a natural reaction of the elements including natural law tradition, Christian theology, anthropocentric humanism, and secularism. Therefore, even though we can sometimes detect these elements in the compound that is the Lockean liberalism we cannot logically suggest one of the constituents' dominancy. However, one can easily notice that "Islamic liberalism" is not a natural outcome of a natural reaction; this is why we coined the terms "*Sharī'a*-oriented Islamic liberalism" and "secularism-dominated Islamic liberalism."

Secondly, in this chapter, since "Islamic liberalism" does not present a conceptual framework, Islamic premises on the basic tenets of Lockean liberalism was

searched. On the first *comparandum*, which is political legitimacy and right to resistance, this chapter presented that the dominant perspective among the Muslim scholars is obedience and quietism. With the advent of secularism in the Muslim-majority countries, an idea of resistance came to the agenda on the antiforeigner, anti-Zionist, anticommunist, and anti-sectarian basis. This type of resistance was generally understood as the resistance against non-Muslim rulers. However, since the ruler in Islam is either God or someone He appoints, resistance against Muslim rulers is generally perceived as a resistance against God's will. Furthermore since there is no social contract understanding in Islam, the ultimate aim of a probable resistance is not establishing people's self-governance but fulfilling God's sovereignty. Finally, right to resistance in Islam is not predicated on anthropocentric individualism but it is based on theocentric authoritarianism. Therefore, this type of resistance is not only different from but also contrary to Locke's right to resistance.

Thirdly, this chapter investigated the right to private property in Islamic premises and explored that even though Qur'ān does not hinder private property ownership, the real owner of properties is God; in other words, individuals can own property only as keepers and trustees. This is why transgressing the rules determined for property ownership is penalized with hard corporal punishments. Additionally, this chapter put forth that Islam does not support individualism and individual enrichment beyond limitations. While Islam promotes trade and seeking for profit, property owners must also pay alms every year since God, as the supreme owner, determines the way in which this property will be used in the last instance. In this sense, right to private property in Islam is not based on natural law or social contract as argued by Locke who also removes the limitations on this right put by natural law and Christianity as discussed previously.

Last, when it comes to right to religious freedom or tolerance, one can easily find Qur'ānic verses that both support and renounce this concept. Even though majority of Islamic scholars does not accept contextual reading of the verses, in order to

promote a pluralistic society based on mutual tolerance, Islam should solve the contradistinctions among source-texts through contextual reading as some proponents of "Islamic liberalism" suggest. However, it is once again evident that there is not a concrete theorization of right to religious freedom produced by "Islamic liberals" which is analogous with that of Locke's.

CHAPTER 6

CONCLUSION

The primary motivation behind this thesis was to investigate whether "Islamic liberalism" is conceptually consistent and whether this phrase or Islam is compatible with liberalism, and more specifically, with Lockean liberalism. Conducting research on this subject inherently required benefiting from comparative political theory as a method. Therefore, this thesis employed two *comparanda*. The first *comparandum* is Lockean liberalism and the second one is, when possible, "Islamic liberalism."

First, throughout the research, I observed that what is proposed as "Islamic liberalism" does not have a developed conceptual framework; this is why when this phrase did not present a specific constituent for the comparison, Islam was substituted as a second *comparandum*. When Lockean liberalism was examined, the influence of Christianity on Locke's political theology could not be ignored. Therefore, using Islam as a *comparandum* also enabled thesis to respond another question which is whether Islam is compatible with liberalism, or in other words, whether Islam can produce an "Islamic" version of Lockean liberalism. In essence, this thesis also functions as the comparison of different hypotheses and premises regarding "Islamic liberalism" and the relation between liberalism and Islam. Scholars who implicitly or explicitly argue the congruity between Lockean liberalism and Islam (or sometimes "Islamic liberalism") mainly have certain premises such as Islam is compatible with liberalism, "Islamic liberalism" has conceptual framework, and it is almost a version of Lockean liberalism. When analyzed deeply, some other premises were become evident such as Islam has a

natural law tradition and it can generate Lockean natural rights. Therefore, the first step in this inquiry was to investigate what is Lockean liberalism and what makes it distinctive.

As mentioned multiple times above, Lockean liberalism is highly indebted to natural law tradition. Throughout the research, I noticed that Locke's fundamental natural rights, which make him liberal in the eyes of scholars, are not brand new concepts in the Western context. From pagan philosophy to secularization of natural law doctrine, almost every philosopher and theologian contributed to the development of these rights. As a matter of fact, there were some ups and downs in this developmental process; however, what makes natural law understanding fruitful is that it is highly interconnected with the relation between reason and faith. In other words, there is no, so to say, an official Christian way of understanding on this relation and there is no theological prohibition against the ontological authority of reason. Through reason's capacity, burgeoning individualism, and secularization of natural law unavoidably fanned the flames of burgeoning liberalism in Locke's mind. Moreover, as explained above, the material history of Locke's era is also among the determinants.

However, on the side of Islam, particularly with the *Ash'arī* school's dominance, the course of concepts has been quite different. The idea of law or order which is above of God's provision is quite strange to Islam. For instance, if a believer speculates on the world order in terms of socio-economic, interpersonal, and state-subject relations and finds out that there should be a rational way, which is independent of religious norms, to understand them, the first reaction comes inevitably from the religion itself. The reason behind this reaction is pretty simple that Islam is the religion of submission and it has a strong theocentricity; this means that nothing, including reason, can transcend the borders delineated by Islamic resources. In this vein, the contention between *'aql* [reason] and *naql* [transmitted proofs] has been relatively harsh in Islamic tradition. As I explained in detail before, the *Mu'tazili* school was a chance in terms of reasoning in religion

and adapting it to the ongoing needs of the world. However, in a short span of time, the *Ash'arī* school dominated the former and the ascendancy of *naql* to *'aql* was codified almost as a rule of religion. Therefore, even today, following *Mu'tazili* school or regarding reason over faith (or in narrow sense accepting *'aql* as a superior to *naql*) frequently leads to being labelled as heretics by the *Sunni* majority. Apart from the relation between *'aql* and *naql*, I also noticed that Islamic theology is heavily dependent upon the source-texts which I named as textual fundamentalism. In essence, it is natural that believers, theologians, or sometimes philosophers can rely on religious texts and they can thus deduce some principles from these texts. However, in Islam, this issue is a certain extent complicated. For instance, during the analysis of natural law and Locke's political theology, I observed that divine prohibition on usury began to be bended even since the age of Aquinas. Locke also developed some theological comments to make source-texts in compatible with the ongoing circumstances of the world. Again, for example, while source-texts dominantly advice individuals to surrender to authority and follow a peaceful path, Luther and Locke manage to create new norms and rights concerning resistance against tyranny from these source-texts as well. However, on the side of Islam, such exegesis cannot be conducted. Therefore, I argued that the reason why Islam is so prone to textual fundamentalism is its subjugation of *'aql* to *naql*.

Second reason of textual fundamentalism is the barriers before commenting and adapting religion. Here, as examined in depth, *Mu'tazili* school, the school of reasoning, develop an apparatus to realize this adaptation and improvement which is called *ijtihād* [renewed interpretation]. By means of *ijtihād*, people at the individual level can speculate on religious norms, can discuss the certain issues and renew religious contents in accordance with the needs of believers and the age. However, once again, these efforts became futile with the prevalence of *Ash'arī* school. In this sense, today, the majority of Muslims believe that the gates of *ijtihād* were closed and if it is critical to perform *ijtihād*, only certain specific people can do this.

I was also attracted by another reason behind the difference between the trajectories of Christianity and Islam in terms of natural law and reasoning, particularly during conducting the inquiry about covenant theologies. As discussed earlier, understanding of divine in Christianity tends to be anthropocentric; while it is more theocentric in Islam. For instance, God of Christianity shares his authority with humans through promising them that forms the basis of covenant theology. Moreover, this covenants show that the relation between God and humans is more like a relation between father and sons/daughters relation. However, in Islam, even though there are some rudimentary signs of covenants, as investigated earlier, the promising party is humans. Therefore, this relation presents an autocratic characteristics; this is why the relation between God and humans and abidingness of source-texts are certain in Islam. In addition, Christianity has no systematic *Sharī'a*-like rules that attempt to arrange worldly affairs of humans including government, property, or the borders of human behaviours in terms of freedom. However, Islam proposes a set of rules called *Sharī'a* which gives directions about almost the every aspect of daily life. Since Christianity leaves blanks about these aspects, with the help of reasoning and natural law, it can easily generate a political theory based on the need of humans and the necessities of age. In this sense, I argued in the thesis that Islam has no natural law tradition which is comparable with its Western counterpart. It is also interesting that the proponents of "Islamic liberalism" do not attempt to make any compensation about this deficiency. Even though, some Islamic lawyers or scholars who study Islamic law propose some alternatives, such as Emon, in the last instance, they cannot transcend these boundaries set by source-texts. Therefore, their premise which is Islam has a natural law tradition came out as inaccurate.

In this thesis, the meaning and content of what is meant by "Islamic liberalism" was also scrutinized. The first problem that I noticed from the readings is that "Islamic liberalism" is not a homogenous concept; in other words, it is not a compound but a mixture. As I explained previously, water, as a compound, consists of hydrogen and oxygen atoms. Under suitable conditions, such as

laboratory environment, these atoms through a certain proportion create the water molecule. In this chemical reaction, when the nature of those atoms is examined, oxygen plays the role of a combustion supporter while hydrogen behaves as flammable. Then, these almost antagonistic atoms constitute the compound called water, an extinguisher. When a person inspects a glass of water, he or she cannot notice oxygen and hydrogen atoms since what is at hand is almost different from the previous one. Similarly, he or she cannot allege that this water is more oxygen-dominated or hydrogen-oriented since what is called as a water molecule is an optimum result of a reaction between these atoms; neither more nor less. In this framework, Lockean liberalism seems like a compound which is composed of Christian theology and natural law tradition. These units reacts in certain conditions such as the material history of Locke's era, the accumulation of natural law tradition and its secularization, burgeoning individualism, rise of ontological authority of reason, and then, they produce Lockean liberalism as a compound. This outcome, since it is a compound, does not present heterogeneity; in other words, one cannot argue that Lockean liberalism is, for instance, natural law-dominated or Christianity-oriented. On the contrary, it has evolved as a natural outcome of a natural reaction and this reaction produces a new material that is Lockean liberalism.

In this framework, while I analyzed the "Islamic liberalism," I observed that the outcome of this analysis is quite different from that of Lockean liberalism. At first sight, Islam and liberalism seems antagonistic to each other, like oxygen and hydrogen molecules. However, when deeply investigated, this reaction does not create a compound; on the contrary, it produces a mixture. For instance, when a spoon of salt and a spoon of sugar are poured into a glass of water and then mixed, what we have is a mixture. Through tasting, one can easily notice that this is salty or sugary water. Moreover, one also can detect the proportions of the salt and sugar in the mixture and rightly argue that the water is salt-dominated (salty) or sugar-oriented (sugary). In this vein, I discovered during research that the claims and propositions about "Islamic liberalism" are either *Sharī'a*-dominated or

secularism-oriented. In other words, this mixture does not present a brand new outcome. What we have at the end of this experiment is again a glass of water even though it is a little bit salty or sugary. This means that proponents or promoters of "Islamic liberalism" do not lay any conceptual framework to convince readers that "Islamic liberalism" is different from Islam and it is diverged from liberalism. While *Sharī'a*-dominated Islamic liberalism prioritizes *Sharī'a* norms heavily and regard the congruent characteristics of liberalism slightly, secularism-oriented Islamic liberalism prioritizes classical liberal values heavily and embraces the harmonious Islamic features slightly. Then, product is not different from what we before. Again we have Islam and we have liberalism only in different proportions in the "Islamic liberalism" supporters' minds. Last, since Islam has no rooted natural law understanding and since it does not harmonious with natural rights, these constituents also yield to a mixture, instead of a compound.

The last analysis that I conducted in the research was about Islam's perspective to Lockean natural rights which are limited in this thesis to right to resistance, right to private property and right to religious freedom. First, I argued that the resistance against political authority is generally perceived by Islamic scholars as the resistance against the other. In other words, this type of resistance can be acceptable if it is directed against the non-Muslim, foreign, Zionist, communist, and secular governments. When the ruler is Muslim, resistance becomes more difficult to be applied since Islam recurrently advices its followers to obey the authority holder who, in a sense, represents the authority of God. Since such as authority is *Zillullah-i fi'l-âlem* [God's shadow on earth], and it is therefore irresistible, a deeply rooted quietism is hegemonic in Islam. Second, since Islam does not present a social contract understanding—even though some scholars maintain that Charter of Madīnah is a sample of it; I showed how it was not—the eventual purpose of a possible resistance is not establishing the self-governance of the ruled. On the contrary, the struggle behind this resistance is to establish God's authority and sovereignty. In this vein, I concluded that right to resistance in Islam is not based on anthropocentric individualism but it is based on theocentric

authoritarianism. This symptom can be used in further research to analyze the political-theological roots of authoritarianism in the Muslim-majority countries. These symptoms, then, showed that the perspectives of Lockean liberalism and Islam to right to resistance are quite different from each other. To sum in a sentence, while Lockean liberalism seeks legitimacy among people's consent, Islam seeks legitimacy in God's will. Therefore, while the former bestows every individual with right to resistance, the latter restricts it as far as possible.

Another premise which was tested in the last part of the thesis is right to private property. It is obvious that natural law teaching, Christianity, and Islam recognize right to private property; however, they also put some limitations on it. Here, what was revealed in this thesis is that even though Locke also limits the scope of private property; in the last instance, his approach to this right does not include a prohibition towards unlimited enrichment. In other words, Locke's political philosophy and political theology surpass the limitations put by natural law and Christianity. This is also valid for the usury. However, Islam is quite rigid in terms of its source-texts; therefore, no human condition can change its provisions on right to private property. Last premise investigated in the final chapter was right to religious freedom. This premise has problems in both Lockean liberalism and Islam because while Locke does not involve Catholics and atheists in his tolerance project, Islam harshly penalizes those Muslims who abandon their religion. Moreover, since Islam has different source-texts with different implications, some can infer a one-religion-society from these texts while some others can deduce a pluralistic society. Here, to me, the solution is to understand Islamic resources in their contexts. This is also what some liberal Muslim scholars suggest as historicism in Islam. In essence, the contextual reading of Islam is the critical step that makes itself familiar with liberalism; however, through considering the ongoing reactions against historicism and support given to textual fundamentalism, possibility of taking such a step by Muslims seems like a far-fetched project for now.

To turn back to the *terminus quo* of the thesis, which is whether "Islamic liberalism" is conceptually consistent and whether it is compatible with Lockean liberalism, I argued that, simply, it is not. As I explained in the methodology section of the introduction, there is no inferiority or superiority relation between *comparanda*, therefore, this incongruity is quite natural. Here, what is unnatural is proposing "Islamic liberalism" to Muslims, as a redeemer, as an antidote of violent extremism, and as a model for governance in the post-Arab spring era without conceptually analyzing and comparing the concepts. In this vein, I believe that what will save Muslim-majority countries from their predicament is not exporting political agendas nor producing mutant versions of their religion. On the contrary, I consider that what is cure for those countries is coming back to the earth; this means that these countries should begin identifying themselves not with their religion but with their perspectives to human rights, civil rights, social rights, gender equalities, freedom of expression, socio-economic stability, education, technology, political legitimacy, democracy, judicial system, checks and balances, transparency, and accountability. Then, after coming back to earth, religion will necessarily be confined as a matter of inner conscience at the individual level.

As the last word, despite this research is based on comparative political theory, it includes significant insights about the actuality. Therefore, I hope this work will help those who labour over academic studies to conduct further researches on the Middle East, Islam, political theology, and political philosophy.

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APPENDICES

A. CURRICULUM VITAE

PERSONAL INFORMATION

Surname, Name: Canbegi, Halil İbrahim
Nationality: Turkish (T.C.)
Date and Place of Birth: 19 December 1986, Bursa
Marital Status: Married
email: ibrahim.canbegi@metu.edu.tr

EDUCATION

Degree	Institution	Year of Graduation
MS	Gazi University, Political Science	2013
BS	Police Academy, Security Science	2009
High School	Orhaneli Anatolian High School, Bursa	2004

WORK EXPERIENCE

Year	Place	Enrollment
2018-Present	Apple Inc.	Technical Advisor
2015-2017	Global	Researcher
2013-2015	ICTTC	Researcher
2010-2013	Faculty of Security Sciences, PA	Lecturer

FOREIGN LANGUAGES

Advanced English, Intermediate Arabic, Intermediate German

PUBLICATIONS

Canbegi, H. I. (2016). "Google-based Reactions to ISIS's Attacks: A Statistical Analysis." *Global Policy and Strategy Institute Policy Brief* 6: 1-13.

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RESEARCH PROJECTS

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(2016). "The Impact of Syrian Conflict on Security: Refugees and Foreign Fighters." Project prepared for NATO Emerging Security Challenges Division, Science for Peace and Security Programme, May.

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B. TURKISH SUMMARY / TÜRKÇE ÖZET

İSLAMİ LİBERALİZMİN TEORİK ÇIKMAZI: LOCKEÇU LİBERALİZM ÖRNEĞİ

Liberalizm ve İslam arasındaki ilişki üzerine yapılan tartışmaların ilki 19. ve 20. yüzyıllarda Müslüman çoğunluklu ülkelerin sömürgeleştirilmeleri döneminde gerçekleşmiştir. Bu dönemde, Müslüman entelektüeller din ve devlet ilişkisi, yönetilenlerin temel hakları ve siyasi meşruiyet gibi konular üzerinden söz konusu ilişkiyi sorgulamıştır. Bu sorgulama üç farklı grubun oluşumuna yol açmıştır. İlk grup, İslam'ın diğer tüm Batı düşünsel sistemlerine üstün olduğunu ve dolayısıyla toplumsal, siyasi ve ekonomik problemlere çare olarak liberalizmden ziyade İslam'ın tercih edilmesi gerektiğini savunmuşlardır. İkinci grup ise İslam'ın içinde bulundukları toplumun tecrübe ettiği tüm olumsuzlukların sebebi olduğunu iddia etmiş, böylece liberalizmi benimsemenin asıl çare olduğunu öne sürmüşlerdir. Üçüncü grup ise liberalizm ve İslam'ın uzlaştırılması gerektiğini ve bu uzlaşma sonucunda ortaya çıkacak olan sentezin temel sorunların çözümünde en etkili reçete olacağını savunmuşlardır. 20. yüzyılın sonlarına doğru liberalizm ve İslam ilişkisi üzerine yapılan akademik çalışmalar hız kazanmış ve "İslami liberalizm" ve "liberal İslam" terimleri kullanıma sunulmuştur. Bu terimleri akademik olarak ilk kez Asaf Ali Asghar Fyzee'nin *A Modern Approach to Islam* [İslam'a Modern Yaklaşım] adlı kitabında görmek mümkündür. Fyzee (1963, p. 104) "İslami liberalizm" ya da "liberal İslam" hakkında herhangi bir teorik çözümlemede bulunmaz ve bu terimleri daha çok geleneksel İslam anlayışından bağımsız hareket edebilme ve bu bağlamda bir gelecek dizayn edebilme anlamında kullanmıştır. Liberalizm ve İslam arasındaki ilişkiyi ele alan bir diğer isim de Leonard Binder'dır. Binder *Islamic Liberalism: a Critique of Development Ideologies*

[İslami Liberalizm: İlerlemeci İdeolojilerin Eleştirisi] isimli ve 1988 tarihli kitabını yayımladığında Batı entelektüel çevreleri de liberalizm ve İslam ilişkisi üzerine yapılan çalışmalara dâhil olmuşlardır. Ne var ki Binder de "İslami liberalizm" bakımından kavramsal bir çerçeve sunmamış, kullanılan bu kavramın neden İslam ile ya da neden liberalizm ile ilintili olduğuna dair bir tartışma yürütmemiştir. Esasen Binder'in çalışmasını özel kılan unsur "İslami liberalizmi" siyasi liberalizme geçiş için bir basamak olarak ele almış olmasıdır. Bu bakımdan Binder (1988, p. 19) "her ne kadar Orta Doğu'da burjuva devletler ortaya çıkmış olsa da güçlü bir İslami liberalizm olmadan siyasi liberalizm başarıya ulaşamaz" der.

Son olarak Charles Kurzman da "liberal İslam" terimini ele almıştır. Kurzman, *Liberal Islam: a Sourcebook* [Liberal İslam: Kaynak Kitap] isimli eserinde "İslami liberalizmi" Batı tipi liberalizm ile eşdeğer görmüş ve bu terimi gelecek odaklı yenilikçi bir girişim olarak sunmuştur ancak Kurzman bile İslam'ın liberal yorumlanmasının tutarlı olduğunu iddia edememektedir (Kurzman, 1998, p. 4). Bu bağlamda, söz konusu çalışmalar "İslami liberalizme" dair herhangi bir kavramsal çerçeve sunmamakla birlikte daha çok öncüllerinin ileri sürdüğü liberalizm ve İslam entegrasyonunu tekrarlamışlardır. Bu nedenle Kurzman'ın eseri ardılları tarafından kategorik olarak eleştirilmiştir. Öyle ki Bassam Tibi (2014, p. 300) Sayyid Quṭb gibi bazı isimlerin—ki Tibi bu isimleri fundamentalist olarak adlandırır—liberal olarak sunulmasını ve hatta bu isimlerin "İslami liberalizme" öncülük ettikleri iddiasını sert bir biçimde eleştirir. Esasen, Tibi'nin eleştirilerinde haklılık payı mevcuttur. Nitekim ne Quṭb'un ne de takipçilerinin liberalizm konusunda herhangi bir olumlaması söz konusu değildir. Aksine Quṭb, İslam'ın herhangi bir Batı menşeli ideolojik ya da düşünsel tavırdan daha ileri bir sistem ortaya koyduğunu böylece İslam'ın dış etkilere kapalı ve sabit bir düşünsel yapıya sahip olduğunu savunmaktadır. Bu çerçevede Binder'in ve Kurzman'ın eserleri "İslami liberalizm" tartışmalarının önemli köşe taşlarından olsa da teorik yaklaşımları bakımından yetersiz ve öne çıkarılan figürler bakımından da tutarsızdır.

21. yüzyıl liberalizm ve İslam ilişkisini inceleyen çalışmalar açısından farklı dönüm noktalarının yaşandığı bir devirdir. 11 Eylül olayı, Afganistan'ın ve Irak'ın işgali, sınıraşan terör örgütü olarak El-Kaide'nin ortaya çıkışı, Arap baharı sürecinde yaşanan kitlesel direnişler ve el değiştiren iktidarlar, aşırılıkçı terörün yeni bir örneği olarak IŞİD'in etkin hale gelmesi ya da *Charlie Hebdo* saldırıları gibi olaylar liberalizm ve İslam ilişkisinin tartışılma seyrini değiştirmiştir. Öyle ki İslami aşırıcılığın kontrol altına alınabilmesi için Müslüman çoğunluklu ülkelere yeni bir ajanda sunulmuştur. Bu ajanda "İslami liberalizmdir." Bilhassa Arap baharını takip eden süreçte ülkelerindeki otoriter rejimlere son veren kitleler için "İslami liberalizm" adeta bir reçete olarak gündeme getirilmiştir. Bu kavramın teorik çerçevesinin olmayışı ise başka bir modele ihtiyaç duyulduğunu ortaya koymuş ve Lockeçu liberalizm "İslami liberalizmi" tanımlayacak bir örnek olarak sunulmuştur. Bu nedenle söz konusu dönemde "İslami liberalizm" tartışmaları genelde Lockeçu liberalizm örnek verilerek yapılmış ve Locke'un siyaset felsefesindeki bazı noktalar İslam'ın temel unsurlarıyla örtüşür biçimde yorumlanmıştır. Bu yorumlama esasen Lockeçu liberalizm ile İslam'ın bir sentezi olarak "İslami liberalizm" kavramına farklı bir boyut kazandırmıştır.

Lockeçu liberalizmin bir versiyonu olarak sunulan "İslami liberalizmin" üç temel önkabulü mevcuttur. Bunlardan ilki İslam'ın liberalizm ile uyumlu olduğu iddiasıdır. İkincisi, "İslami liberalizm" terimi İslam ve liberalizm kavramlarının yan yana gelmesinden fazlasını ifade eder. Üçüncüsü, "İslami liberalizmin" kavramsal çerçevesi Lockeçu liberalizm ile örtüşür. Ancak bu önkabuller "İslami liberalizm" savunucuları tarafından sorgulanmamış ve bu durum literatürde büyük bir boşluk yaratmıştır. Hatta bu kavramsal temelsizliği eleştirenler yer yer köktenci, aşırılıkçı ya da terörist olarak etiketlenmiştir zira "İslami liberalizm" İslami aşırıcılığa karşı bir panzehir olarak ortaya atılmıştır. Bu bakımdan, "İslami liberalizm" kavramına olumsuz yaklaşımlar teorik değerlendirmelerle çürütülmek yerine ideolojik olarak kategorize edilmektedir. Böylece, Müslümanlar için "İslami liberalizm" adeta alternatifi olmayan zorunlu bir seçim olarak sunulmuştur. Bu seçim, kabul edilişe göre Lockeçu liberalizmin bir sonucudur. Bu

bakımdan Lockeçu liberalizmden kast edilenin ne olduğu ya da Locke'u liberal olarak tanıtan etmenlerin özellikleri incelenmelidir.

Locke'un liberalizmin babası olarak anılmasını sağlayan siyaset felsefesinin özünde "hukuk tüm insanlara eşit olmayı ve özgür olmayı, hiç kimsenin başka bir kişinin hayatına, sağlığına, özgürlüğüne ve mülkiyetine zarar vermemesini öğretir" (Locke, 1980, p. 9) ilkesinin bulunduğu söylenebilir. Diğer bir ifadeyle Locke'un bu öğretisi doğal haklar teorisini de içermektedir. Her ne kadar ilgili literatürde Lockeçu liberalizme farklı yaklaşımlar olsa da Locke'un siyaset teorisinde doğal hukuk ve doğal hakların konumu yadsınamaz durumdadır. Bu bakımdan Lockeçu liberalizm için üç temel hakkın belirleyici olduğunu söylemek mümkündür. Bu haklar, siyasal otoriteye karşı direnme hakkı, mülkiyet hakkı ve dini hürriyet hakkıdır. Yukarıdaki alıntıda yer verilen eşitlik, özgürlük, hayat ve sağlık haklarının dokunulmazlığı yöneten ve yönetilen ilişkisi bakımından ele alındığında siyasi otoriteye karşı direnme hakkı ortaya çıkmaktadır. Nitekim yöneten ve yönetilenler temel haklar bakımından eşit, haklarını kullanma bakımından özgür ve yaşamları bakımından dokunulmaz haklarını birbirlerine karşı iddia edebilir olmalıdırlar. Bu nedenle eşit ve özgür bireylerden oluşan toplumda yönetilenler temel haklarına saldırı hissettiklerinde ve bilhassa bu saldırı yönetenlerden geldiğinde haklarını savunmakta, diğer bir deyişle, siyasi otoriteye karşı direnmekte özgürlerdir. Nitekim yönetenler sosyal sözleşme ile bağlı oldukları yönetilenlere karşı doğal hukukun verdiği hakları korumakla ya da en azından bu hakları ihlal ederek sözleşmeyi bozmamakla yükümlülerdir. Benzer şekilde, özgürlük içeriğinde sadece fiziksel ya da bedeni özgürlükten daha fazlasını ifade ettiğinden dolayı özgürlüğün varlığı dini inanç özgürlüğünü ya da toplum içerisinde bireyin dini inancına saygı duyulmasını da gerektirir. Bu nedenle Locke'un anlatısına göre dini hürriyet hakkı ve hoşgörü, özgürlük ve eşitlik ana kavramlarına bağlı olarak ele alınmalıdır. Son olarak, Locke mülkiyet hakkını doğrudan ifade ederek bunu bireyin doğal ve dokunulmaz haklarından biri olarak nitelemiştir.

Esasen Locke bu haklar teorisini yoktan var etmemiş, aksine tevarüs ettiği doğal hukuk doktrininin bir yansıması olarak ileri sürmüştür. Bu durumu Christopher Wolfe (2006, p. 2), *Natural Law Liberalism* [Doğal Hukuk Liberalizmi] isimli eserinde, "doğal hukuk ve liberalizm Locke'un klasik liberal siyaset felsefesinde bütünleşir" şeklinde ifade etmektedir. Benzer şekilde, Frank van Dun (2001, p. 1), *Natural Law, Liberalism and Christianity* [Doğal Hukuk, Liberalizm ve Hristiyanlık] adlı kitabında, bu birlikteliğe Hristiyanlığın etkisini de ilave eder. Bu bakımdan Locke'un liberal siyaset felsefesinin doğal hukuk anlayışı ve Hristiyanlık öğretisi tarafından şekillendirildiğini söylemek mümkündür. Daha geniş bir bakış açısıyla, Lockeçu liberalizmin Batı siyaset felsefesinde yeşeren doğal hukuk doktrininin tartışmaya açtığı temel haklar kuramlarından, Hristiyanlık bünyesinde yer alan teolojik temellerden ve Locke'un tecrübe ettiği zaman-mekân ilişkisinden ya da diğer bir ifadeyle dönemin maddi tarihinden türemiş olduğu iddia edilebilir. Burada yapılması gereken Locke'un liberal olarak sonradan isimlendirilmesini sağlayan faktörlerden hangisinin daha baskın olduğunu tespit etmek yerine tüm bu faktörlerin bir bileşim halinde Locke'a atfedilen liberalizmi doğurduğunu kabul etmektir. Nitekim Locke'un siyaset felsefesi tek bir düşünsel geleneğin devamı ya da tek bir dinin öğretileri üzerine bina edilmemiş ve yukarıda sayılan öğelerin bir sentezi olarak ortaya çıkmıştır.

"İslami liberalizm" savunucularının Lockeçu liberalizmi bir model olarak belirlediklerinden bahsetmiştik. Bu noktada "İslami liberalizm" ile Lockeçu liberalizm kıyaslandığında bazı öncüllerin ortak olarak bulunması gerektiği ortadadır. Bir başka ifadeyle, "İslami liberalizm" iddiası bu kavramın bir İslami doğal hukuk anlayışını gerektirdiğini ve İslam'ın temel öğretilerinin Locke'un haklar anlayışını destekleyecek bir görünüşte olduğunu zorunlu önkabuller olarak içermelidir. Bu nedenle "İslami liberalizm" kavramı—Lockeçu liberalizm örnekliğinde—iki öncüle sahiptir. Bunlardan ilki İslami bir doğal hukuk anlayışının var olduğu ve İslami doğal hukukun Lockeçu doğal hakları destekleyen ya da en azından bu haklarla çelişmeyen bir yapıda olduğu öncülüdür. İkinci öncül ise İslam'ın bir din olarak Locke'un haklar anlayışını desteklediği ya da dinin

teolojik temellerinin doğal haklar anlayışıyla çelişmediği iddiasıdır. Böylece bu tez söz konusu öncülleri test etmekte ve "İslami liberalizmin" kavramsal tutarlığını sorgulamakta, böylece Lockeçu liberalizm ile "İslami liberalizmi" teorik düzeyde kıyaslamaktadır.

Lockeçu liberalizmin teorik çerçevesini "İslami liberalizm" ile eşleştirmek özünde beş farklı önkabulü de gerektirmektedir. Bunlar: (1) liberalizm ve İslam birbiriyle uyumludur ya da en azından çelişmez. (2) İslam ve liberalizmin bir araya gelmesi sadece iki terimin yan yana getirilmesinden daha fazlasını ifade eder. (3) "İslami liberalizmin" kavramsal çerçevesi—eğer varsa—Lockeçu liberalizm ile örtüşmektedir ya da çelişmemektedir. (4) İslami doğal hukuk anlayışı vardır ve hatta "İslami liberalizmin" oluşumuna öncülük etmektedir. (5) İslam ve Locke'un temel haklar öğretisi birbiriyle karşılıklı uyum halindedir. "İslami liberalizm" kavramına içkin olan bu önkabüller test edilmeye muhtaçtır; ancak literatürde söz konusu öncüller sorgulanmamış ve "İslami liberalizm" hazır ya da verili bir kavram olarak kabul görmüştür. Dolayısıyla, "İslami liberalizm" tezi kavramsal ve teorik olarak analiz edilmemiş, bu kavramla ifade edilenin ne olduğu üzerinde bir mutabakat sağlanamamış ve kavramın düşünsel arka planı neredeyse hiç ele alınmamıştır.

Bu tez literatürdeki söz konusu eksikliği gidermeye aday eleştirel bir içeriğe sahiptir. Diğer bir deyişle, "İslami liberalizm" kavramının teorik arka planının Lockeçu liberalizme göre tutarlı olup olmadığını test eder. Bu test etme sürecinde aşağıdaki araştırma soruları kullanılmıştır: "İslami liberalizm" kavramsal olarak çelişkili midir? Eğer çelişkiliyse, bu çelişki kavramsal olarak tutarlı bir kavrama dönüşebilir mi? Eğer tutarlı bir kavram elde edilebilirse bu kavram Lockeçu liberalizm ile uyumlu mudur? Bu ana araştırma sorularına ek olarak şu yan sorulara da cevap aranmıştır: Batı'da doğal haklar geleneği nasıl gelişti ve bu gelenek Lockeçu liberalizmi nasıl etkiledi? İslam'da benzer bir doğal haklar geleneği var mıdır? Eğer varsa Batı örneklemiyle uyumlu mudur? İslam'ın Locke'un doğal haklar anlayışına yaklaşımı nasıldır? İslam'ın özellikle siyasal

otoriteye karşı direnme hakkına, mülkiyet hakkına, dini hürriyet hakkına ve hoşgörü kavramlarına bakış açısı nasıldır? Bu bakış açısı Lockeçu liberalizm ile kıyaslandığında ortaya nasıl bir tablo çıkmaktadır? İslam, Tanrı ve insanlar arasındaki ilişkiyi yukarıda yer verilen haklar bakımından nasıl kurgular? Bu kurgu Hristiyanlık ile kıyaslandığında farklı ve benzer noktalar nelerdir? "İslami liberalizm" kavramsal olarak nasıl dizayn edilmiştir? Bu kavramsal çerçeve doğal hukuka ve dini öğretilere dayanmakta mıdır? Diğer bir ifadeyle, "İslami liberalizm" yeterince İslami ve yeterince liberal midir? İslam'ın Lockeçu liberalizmin temel yapıtaşları olan akıl ve din ilişkisi, sosyal sözleşme, siyasi meşruiyet ve hoşgörü kavramlarına yaklaşımı nasıldır? Hristiyan sözleşme teolojisi Locke'un sosyal sözleşme teorisini nasıl etkilemiştir? İslam'da sözleşme teolojisi var mıdır? Eğer varsa, bu teoloji sosyal sözleşme anlayışını meydana getirebilir mi? Sonuç olarak, bu ana araştırma sorularına ve yan sorulara tezin hem genelinde hem de bölümler özelinde cevap aranmıştır.

Tezin ortaya koyduğu tüm araştırma soruları nitel araştırma yöntemlerini gerektirmiş ve özel olarak karşılaştırmalı siyaset teorisini ve karşılaştırmalı siyasal teolojiyi zorunlu kılmıştır. Burada temel olarak karşılaştırılan iki öğe Lockeçu liberalizm ve "İslami liberalizm" kavramlarıdır. Ayrıca teolojik kıyaslamada yer yer Hristiyanlık ve İslam arasında da kıyaslamalar yapılmıştır. Örneğin, Hristiyanlık ve İslam'da, Tanrı ve insan arasındaki ilişkinin siyasal etkilerini, bu ilişkinin yöneten ile yönetilenler bağlamında nasıl kurgulandığını, bu kurgunun dünyevi yansımalarını anlamlandırabilmek için karşılaştırmalı siyasal teoloji kullanılmalıdır. Benzer şekilde sözleşme teolojisi bakımından iki dinin kıyaslanması da aynı yöntemi zorunlu kılmaktadır. Bir bütün olarak bakıldığında karşılaştırmalı siyaset metodu araştırmacı bakımından kendi içerisinde bazı riskleri de barındırmaktadır. Öncelikle araştırmacının karşılaştırılan öğeler arasında benzerlikler bulmaya şartlanmış olması ve farklılıkları göz ardı etmesi en büyük risktir. Bu durumdaki bir araştırmacı nesnelliğini kaybedeceğinden araştırma bilimsel olmaktan da o oranda uzaklaşacaktır. İlginçtir ki günümüzdeki akademik çalışmaların genel eğilimi karşılaştırılan öğeler (özellikle bu öğelerin biri "Batı

dünyasına" diğeri "Doğu ya da İslam dünyasına" aitse) arasında bulunan benzerliklerin ön plana çıkarılmasıyla bir sentez yaratma çabasıdır. Bu çaba büyük oranda farklılıkları göz ardı etmekle sonuçlanmakta ve araştırmanın mutant sentezleri meşrulaştırma aracı haline gelmesine neden olmaktadır.

İkinci risk ise araştırmacının siyaset teorilerinin ortaya çıktığı zaman-mekânsal gerçeklikleri göz ardı etmesidir. Böyle bir araştırma anakronizme düşmekten kurtulamayacak ve nihayet yapılan iş karşılaştırmadan ziyade bir yan yana getirmenin ötesine geçemeyecektir. Bu riski tez özelinde ele alacak olursak Lockeçu liberalizmi oluşturan siyasi, toplumsal ve ekonomik şartlar ihmal edilerek ya da incelenmeden yapılacak bir "İslami liberalizm" karşılaştırması gerçeklikten uzak olacaktır. En azından söz konusu şartların Lockeçu liberalizme teorik olarak ne tür katkılar sunduğu değerlendirilmelidir.

Üçüncü risk ise karşılaştırılan öğeler arasında bir üstlük-astlık ilişkisinin kurulmasıdır. Bu ilişki üzerinden yapılan bir karşılaştırma araştırmacının tarafsızlığını yitirmesine ve meşrulaştırma ya da ikna etme çabasına girmesine neden olacaktır. Başlangıçta da ifade edildiği gibi "İslami liberalizm" tartışmaları ilk kuşak içerisinde liberalizm ve İslam arasında bir hiyerarşi mantığıyla ele alınmıştı. Bir kesim İslam'ın liberalizme ya da tüm Batı değerlerine karşı üstün olduğunu öne sürmüş, diğer bir grup ise tam tersini savunmuştu. Bu nedenle ilk dönem karşılaştırmaları akademik değer ifade edebilecek bir araştırma sonucu üretememişlerdi. Bu nedenle Lockeçu liberalizm ile "İslami liberalizm" olarak adlandırılan kavram arasında bir üstlük-astlık değerlendirmesi yapılmamalıdır. Aynı durum siyasal teolojik kıyaslamalar için de geçerlidir. Diğer bir ifadeyle, Hristiyanlık ile İslam'ın kıyaslandığı noktalardaki olumlu ya da olumsuz içerikler bu dinlerin birbirine karşı üstün ya da aşağı olduğu biçiminde yorumlanmamalıdır. Nitekim her ne kadar bu iki din de İbrahimi ya da semavi dinler olsalar da öngördükleri dünyevi ve uhrevi farklılıklar, tarihsel gelişim içerisinde yaşanan ayrışma ve kırılmalar, esnek ve katı noktalar gibi pek çok bakımdan değişik

içeriklere sahip olması normaldir ve bu farklı içerikler bir hiyerarşik ilişki kurmayı gerektirmez.

Burada bahsi geçen riskler de göz önünde bulundurularak tez "İslami liberalizm" ile Lockeçu liberalizm arasında benzerlikler bulmaya şartlanmamıştır ve bu kıyaslamanın ortaya çıkardığı farklılıkları göz ardı etmemektedir. Keza tez Lockeçu liberalizmi ve "İslami liberalizmi" ortaya çıkaran sosyoekonomik, siyasi ve tarihi şartları dikkate almakta ve anakronizmden kaçınmaktadır. Son olarak, bu tez karşılaştırmanın öğeleri olan Lockeçu liberalizm ve "İslami liberalizm" arasında ya da benzer şekilde Hristiyanlık ile İslam arasında bir hiyerarşi kurmamaktadır. Böylece tez İslam'a dair kavram ve öğeleri ikincil gören oryantalizm ya da Batı'ya ait değerleri ikincil ve öteki gören oksidentalizm tuzaklarına düşmekten kaçınmıştır. Bu sayede araştırmanın nesnel kıyaslama öğelerini dikkate aldığı söylenebilir.

Yukarıda ifade edilen araştırma sorularına cevap bulmak amacını taşıyan bu tez giriş ve sonuç bölümleri dâhil olmak üzere toplam altı ana bölümden oluşmaktadır. İlk bölümde giriş yapılmış, tezin arka planı, araştırma soruları, metodoloji ve tezin genel hatları açıklanmıştır. İkinci bölüm, Lockeçu liberalizmin temel unsurlarından olan doğal hukuk geleneğini ele almış ve Locke'un doğal hukuk anlayışını kendi siyaset felsefesini inşa etmede nasıl kullandığını incelemiştir. Bu bölümde Locke'un liberalizmin öncüsü olarak değerlendirilmesine zemin teşkil eden siyasal otoriteye karşı direnme hakkı, mülkiyet hakkı ve dini hürriyet hakkı gibi kavramların doğal hukuk geleneği içerisindeki gelişimi araştırılmıştır. Ayrıca doğal hukuk geleneği içerisinde akıl ve din ilişkisi de ele alınmıştır. Bu gelenek içerisindeki gelişim seyrini daha verimli analiz edebilmek adına bu bölümde doğal hukuk anlayışının Greko-Romen çağında, Hristiyanlığın erken döneminde, Aquinas'ın zamanında, Reform periyodunda, erken modern çağda ve sekülerleşme döneminde nasıl evirildiği zamansal olarak sınıflandırılıp incelenmiştir. Bu bölümde doğal hukuk anlayışının zamansal ve mekânsal sınırları aşarak iki bin yıllık bir geçmişe sahip olduğu ilk ön plana çıkan husus olmuştur. Ayrıca,

Locke'un liberal siyaset felsefesinin önemli unsurları olan doğal haklar, yönetilenlerin rızası, sınırlı iktidar ve hoşgörü gibi kavramların Sofokles'ten Pufendorf'a kadar sürekli tartışıldığı ve bu tartışmaların Batı siyaset felsefesinin temelini oluşturduğu anlaşılmıştır. Son olarak, akıl ve inanç tartışmasında Batı doğal hukuk anlayışının Hristiyanlık ile uyumlu bir biçimde geliştiği ortaya çıkmıştır. Diğer bir ifadeyle, Hristiyanlık içerisinde her ne kadar aklın ontolojik varlığının aksine yorumlar bulunsa da Hristiyanlığın akla karşı net bir yasaklama ya da ontolojik ret mekanizması getirmediğini söylemek mümkündür.

Batı felsefesine içkin olan tartışmalar ışığında, bu tezde, Lockeçu liberalizmin aslında Batı'daki felsefi devamlılığın, teolojik çok boyutluluğun ve çok yönlü sosyal ve ekonomik yapının bir sonucu olarak ortaya çıktığı savunulmuştur. Dolayısıyla Lockeçu liberalizm gelişimi itibariyle tamamen doğal bir sürecin yansımasıdır. Bu bakımdan "İslami liberalizm" kavramının ortaya çıkışının aynı doğallıkta gelişip gelişmediği önemli bir noktadır. Tezin genelinde de tekrarlandığı gibi "İslami liberalizm" tartışmaları 20. yüzyıla kadar Müslüman çoğunluklu ülkelerdeki bir iç muhasebenin yansıması olarak ele alınmıştır. Tartışmayı yürütenler çoğunlukla Müslüman din adamları, düşünürler ya da siyasilerdir. Bu kişiler söz konusu tartışmalarda "İslami liberalizm" kavramını da kullanmazlar. Ne var ki söylemdeki farklılık 11 Eylül süreciyle başlayan ve İslam'a dair tartışmaların yoğunlaştığı süreçte belirgin hale gelmeye başlamıştır. Artık "İslami liberalizm" İslam ve terör bağlamı üzerinden Müslüman çoğunluklu ülkelerdeki entelektüel çevrelere dışarıdan monte edilmiş bir argüman öğesi olarak yaygınlaşmıştır. Bu çerçevede "İslami liberalizm" doğal bir sürecin içten üretilen bir çıktısı olmaktan ziyade dıştan üretilip desteklenen bir kavram olagelmiştir. Lockeçu liberalizm ile karşılaştırıldığında "İslami liberalizm" üretiminin doğal olmadığını söylemek mümkündür.

Son olarak bu bölümde Hristiyanlığın var olan felsefi kutuplaşmaya ve din ile akıl ilişkisi üzerine spekülasyonlara olumlu katkı sunduğu görülmüştür. Diğer bir ifadeyle, Hristiyanlık belirli bir düşünme biçimini teorik olarak dayatmamıştır. Bu

sayede hem felsefi geleneğin sürekliliği sağlanmış hem de düşüncede çeşitliliğin önü açılmıştır. İşte bu zaman-mekân Lockeçu liberalizmin şekillenmesine katkı sunmuştur.

Üçüncü bölüm Locke'un liberalizmin babası olarak adlandırılmasına yol açan siyaset felsefesine ve siyasal teolojisine odaklanmaktadır. Bu bölüm ayrıca Lockeçu liberalizme Hristiyanlığın sunduğu katkıyı de araştırmaktadır. İki alt bölümün ilkinde Lockeçu liberalizmde doğal hukukun ve Hristiyanlığın etkisi incelenmiş, ikincisinde ise Locke'un siyasal otoriteye karşı direnme hakkı, mülkiyet hakkı ve dini hürriyet hakkı kavramlarına bakışı ele alınmıştır. Bu bölümde Locke'un Hristiyanlık öğretilerini esas alan yaklaşımlar sergilediğini, Eski Ahit ve Yeni Ahit referansları üzerinden teorilerini kurguladığını görmek mümkündür. Ancak bu Locke'un bir ilahiyat teorisi ortaya attığı anlamına da gelmez. Nitekim Locke pür fideist bir yaklaşımdan öte akla ve rasyonel sorgulamalara çok daha fazla yer vermektedir. Bu sorgular en çok sosyal sözleşme teorisinde belirgindir. Locke her ne kadar sosyal sözleşme kavramını köken olarak Hristiyanlıktaki sözleşme teolojisine dayandırsa da sosyal sözleşme tamamen rasyonel bir kurgunun ürünüdür. Öyle ki doğa durumu, doğa durumundan çıkış ve sözleşmenin olası ihlaliyle doğa durumuna dönüş gibi süreçler aslında var olmayan ancak rasyonel açıklamalarla insan ve toplum davranışlarını siyasi açıdan anlamlandıran yapay tasarımlardır. Bu nedenle Locke'un liberal olarak adlandırılmasına temel teşkil eden unsurlar salt dini, salt rasyonel ya da salt reel durumun sonuçları olmayıp, tüm bu değişkenlerin ortak çıktısı olarak şekillenmiştir.

Dördüncü bölümde İslam'da akıl ile din ilişkisi ele alınmış ve İslami doğal hukuk incelemesi yapılmıştır. Doğal hukukun gelişimi ve akıl ilişkisi Batı felsefesi ve Hristiyanlık üzerinden incelendiği gibi İslam üzerinden de benzer bir sorgulama yapılmıştır. Bu bölümde dört alt başlık incelenmiştir. İlkinde Grek akılcılığının Müslüman düşünürler üzerindeki etkisi ele alınmıştır. Burada *Mu'tazile* ve *Ash'arī* kamplaşması üzerinden İslam'da din ve akıl ilişkisi incelenmiştir. Bu

incelemelerin amacı İslam'da Hristiyanlıkta olduğu gibi akıl ve din ilişkisinde akla ontolojik bir otorite tanınıp tanınmadığını kavrayabilmektir. Esasen İslam geleneği içerisinde *Mu'tazile* okulunun aklın nakli aşabilecek öğeleri desteklediği görülmektedir. Bu okul, temel metinleri aşabilen dünyevi çıkarımlar yapılabileceğini, daha geniş bir açıdan, insanın temel haklarının akılla belirlenebileceğini, yönetilen ve yönetici ilişkilerinin bireylerin bizzat kendileri tarafından dizayn edilebileceğini, dünyada kendi akılları ölçüsünde bir sistem kurabileceklerini destekler. Ancak *Ash'arī* okulunun *Mu'tazile* anlayışını kısa sürede domine etmesiyle akıl naklin gerisinde bırakılmış olduğu anlaşılmaktadır. Burada son olarak İslam'da aklın ontolojik varlığını öne sürenlerce kullanılan ibn Tufail'in *Ḥayy ibn Yaqẓān* eseri incelenmiştir. Bu eserde her ne kadar hikâyenin ana kahramanı olan *Ḥayy* aklıyla bazı verilere ulaşmış olsa da son tahlilde akıl ve nakil arasında bir tercih yapılması gerektiğinde nakil tercih edilmiştir. Bu son vurgunun pek çok araştırmacı tarafından göz ardı edildiği anlaşılmaktadır.

Bu bölümün ikinci alt bölümünde İslam'da doğal hukuk geleneğinin var olup olmadığı sorgulanmaktadır. Bu amaçla İslami doğal hukuk üzerine ortaya atılmış olan tezlerin en önemlilerinden olan Anver Emon'un sınıflandırması incelenmiş ve bu sınıflandırma eleştirel bir bakış açısıyla analiz edilmiştir. Burada katı doğal hukuk anlayışı, yumuşak doğal hukuk anlayışı ve iradeci eleştiriler incelenmiştir. Emon'un sınıflandırması üzerinden yapılan analiz neticesinde İslam'da doğal hukuk anlayışının gelişmesine olanak tanıyacak biçimde akla ontolojik otorite tanınmadığı ve bu otoriteyi tanıyan *Mu'tazile* ekolünün ana akım İslam anlayışı tarafından marjinalleştirildiği anlaşılmaktadır. Bu yaklaşım, "İslami doğal hukuk" gibi bir terminolojinin gelişmesini engellemiş; böylece İslam'da yoğun bir biçimde temel metinlere bağlılık ön plana çıkmıştır. Akıl ise bu metinleri aşamayacak olan ve sınırlı bir hareket alanına sahip olan bir araçtan ibarettir.

Üçüncü alt bölümde Hristiyanlığa ve İslam'a göre sözleşme teolojisi incelenmiş, Tanrı ve insan arasındaki ilişki sorgulanmıştır. Böylece Lockeçu liberalizmin sosyal sözleşme teorisinin kaynaklandığı dini argümanlar ele alınmış ve bu

argümanlarla İslam'da sosyal sözleşmenin ortaya konup konamayacağı değerlendirilmiştir. Son alt bölümde ise İslami bir araç olan içtihat incelenmiş ve içtihada mani olan sınırlamalar ele alınmıştır. Buradaki amaç yazılı metinlerin akıl yoluyla aşılmasının mümkün olup olmadığını tartışmaktadır. Bu bölümde ortaya çıktığı üzere İslam'da içtihat geliştirmek sadece belirli bir kesime ya da oldukça sınırlayıcı özelliklere sahip az sayıda bireye verilmiş bir olanaktır. Bu nedenle her bireyin kendi anlayışı, aklı ve yetenekleri ölçüsünde İslam'dan çıkarımlar yaparak düşünsel ya da sistematik bir kavramlar bütünü oluşturması mümkün değildir. Genel kabul görmüş olan yaklaşıma göre ancak müçtehit olarak adlandırılan kişiler bu açılımlarda bulunabilirler. Bilhassa *Ash'arī* okulu tarafından iddia edilen ve içtihat kapısının kapandığını savunan anlayışa göre günümüz koşullarında içtihat yapmak da mümkün değildir. Dolayısıyla gelinen son noktada metinlerin temel bağlayıcılığını kabul etmek ve o doğrultuda dünyevi her iş ve eylemi ele almak inanan için tek alternatif haline gelmiştir.

Bu bölümde ifade edildiği üzere her ne kadar Hristiyan ve Müslüman ilahiyatçılar ve filozoflar ortak miras olarak Grek akılcılığını tevarüs etmiş olsalar da zaman içerisinde farklı yollar da takip edilmiştir. İlk ve temel farklılık aklın ontolojik otoritesinin kabul edilip edilmemesi üzerine ortaya çıkmıştır. Hristiyanlık içerisinde aklın ontolojik otoritesi var olmaya devam etmişken, İslam'da bilhassa 10. yüzyıldan sonraki baskın *Ash'arī* ekolünün de etkisiyle aklın naklin yani dini metinlerin arkasında kaldığı anlaşılmaktadır. Böylece İslam ekolleri içerisinde metin fundamentalizmi olarak adlandırılabilecek bir anlayış doğmuştur. Bu nedenle aklın sınırlandırıldığı ölçüde doğal hukukun sekülerleşmesi ve hatta var oluşu olanaksız hale gelmiştir.

Burada diğer önemli husus ise Hristiyan sözleşme teolojisi sosyal sözleşmeyi kolaylıkla teori haline getirilebilirken, İslami sözleşme teolojisinin sosyal sözleşmeye uzak kalmasıdır. Bu farklılığın altında yatan neden Tanrı ve insan arasındaki ilişkinin bu dinlerde ayrı açıklamalarının olmasıdır. Nitekim Hristiyanlıkta Tanrı insanla birlikte sözleşmeye girebilen eşit taraflardan biriyken

İslam'da Tanrı insanların kendisine karşı sorumlu olduğu, sözleşmeden arî bir varlıktır. Son olarak içtihat kavramı üzerinden akıl ile nakil ilişkisi ele alınmış ve içtihat yapmaya ya da diğer bir deyişle çağın ve aklın gereklerini var olan metinleri aşarak kural haline getirmeye kimlerin ehil olduğu sorusu incelenmiştir. Böylece, içtihat öğesine ait en önemli sorunların içtihadı yapabilecek kişilerin sınırlandırılması ve bireysel akılcılığın göz ardı edilmesi olduğu açığa çıkmıştır.

Beşinci bölümde "İslami liberalizm" kavramı iki alt bölümde incelenmiştir. İlkinde İslam'ın Locke'un temel hakları olarak kategorize edilen siyasal otoriteye karşı direnme hakkına, mülkiyet hakkına ve dini hürriyet hakkına İslam'ın bakışı incelenmiş ve diğer bir ifadeyle İslam'ın bu hakları ne ölçüde desteklediği metinler üzerinden analiz edilmiştir. Burada "İslami liberalizmin" aslında kavramsal bir çerçevesinin olmadığı ve genellikle kendisini Müslüman liberal ya da liberal Müslüman olarak tanımlayan kişilerin düşüncelerini anlatmak adına kullandığı bir söz dizimi olduğu ifade edilmektedir. Nitekim İslam teslimiyet odaklı teosentrik bir içeriğe sahipken liberalizm özgürlük odaklı antroposentrik bir anlama işaret etmektedir.

"İslami liberalizm" kavramı her ne kadar içeriğinde çelişkili olsa da bu çelişkinin tutarlı bir birliktelik oluşturup oluşturamayacağı Kant'ın diyalektiği ve Hegel'in üçlemesi ile test edilmiştir. Burada Kant'ın ve Hegel'in olumsuz öncüllerin olumlu bir kavrama dönüşüp dönüşemeyeceği sorgusu kullanılmış, böylece zıtlık olarak görünen etimolojik olarak teslimiyet anlamına gelen ve teosentrik yaklaşımın egemen olduğu İslam ile bireysel özgürlük çağrışımına sahip olan liberalizmin ortak bir kavrama dönüşüp dönüşemeyeceği sorgulanmıştır. Bu teste göre İslam ve liberalizmin bu çelişkili durumu yeni, tutarlı ve bileşenlerini aşan bir kavrama kapı açamamaktadır. Bu nedenle "İslami liberalizme" dair yapılan çalışmalar ya "şeriat-merkezli İslami liberalizm" ya da "laiklik-baskın İslami liberalizm" gibi iki amorf görüntüye sahip olagelmiştir. Burada "şeriat-merkezli İslami liberalizm" ile kastedilen şey şeriat kurallarından ödün vermeden kurgulanmış ve artık liberalizm olarak adlandırılamayacak bir modeli ön plana sunma çabasıdır. Doğal olarak

ortaya çıkan ürün şeriat kurallarıyla liberalizm arasındaki ortak noktalar olarak ele alınabilecek hususları tekrarlamaktan öteye geçmemektedir. Nitekim bu amorf karışım bir sentezden ziyade söyleme dayalı ve kategorik olmayan bir kavrama işaret eder. Neticede ortaya çıkan durum liberalizme ait bir ürün değildir. Benzer şekilde "laiklik-baskın İslami liberalizm" ile kastedilen şey ise şeriata dair öncüllerden vazgeçerek ve İslam'ın temel öncüllerinden feragat ederek liberalizmi önceleyen bir yaklaşımdır. Burada sözü edilen liberalizmin ne kadar İslami olduğu ya da İslam'a ait öğeler barındırdığı şüphelidir. Her iki modeli de incelediğimizde ortaya çıkan sonuç şudur: Bir Müslüman'ın kendisini liberal olarak nitelendirmesi bu nitelemenin "İslami liberalizmi" doğuracağı anlamına gelmez. Nitekim bir Müslüman'ın liberal olduğunu ifade etmesi "İslami liberalizm" kavramının kategorik olarak doğru olduğu anlamına gelecekse bir Budist'in ya da bir Zerdüşt'ün liberal olduğunu söylemesi de "Budist liberalizmi" ya da "Zerdüşt liberalizmi" kavramlarının da kategorik olarak doğru kabul edilmesine yol açmalıdır. Ne var ki her iki örnek de bu tür amorf liberalizmlerin aslında bir liberalizm türü olmaktan uzak olduğunu ortaya koymaktadır.

Bu kapsamda İslam ve liberalizmin kavramsal çerçeve olarak yeterince iç içe geçememesi "İslami liberalizm" ve Lockeçu liberalizm kıyaslamasını da etkilemektedir. Öyle ki bu bölümde "İslami liberalizmin" Lockeçu liberalizmin temel öğretileri olan siyasal otoriteye karşı direnme hakkına, mülkiyet hakkına ve dini hürriyet hakkına bakışını incelemek mümkün olmamıştır. Zira "İslami liberalizm" savunucularının bu değerler üzerinde ve Locke özelinde teorik bir çalışma yapmadığı anlaşılmaktadır. Bu bakımdan, bu bölümde bilfiil İslam'ın bu öğretilere bakış açısı incelenerek takip edecek çalışmalar için bir altyapı hazırlanmıştır. Nihayet altıncı ve son bölümde ise tezin sonucunda ortaya çıkan temel bulgulara, tezin literatüre sunduğu katkıya ve ileride yapılabilecek çalışmalar için yol gösterici öğelere yer verilmiştir.

Daha önce de ifade edildiği gibi tezin amacı "İslami liberalizmin" ne ölçüde tutarlı bir kavram olduğunu ölçmek ve İslam'ın liberalizmle ya da özel olarak Lockeçu

liberalizmle uyumlu olup olmadığını araştırmaktır. Ortaya çıkan farklılık ya da uyumsuzlukların neden kaynaklandığı sorusu ise en önemli noktadır. Örneğin siyasal otoriteye karşı direnme hakkını ele alacak olursak, İslami yaklaşımların genelinde bu direniş sistem içi bir direnişten ziyade sistem dışına karşı yapılan bir direniş olarak ele alınmıştır. Diğer bir deyişle, siyasi otoriteye karşı direnmek bu otoritenin ancak gayri-Müslim, yabancı, Siyonist ya da seküler topluluklardan oluşan bir iktidar olması halinde mümkündür. Eğer iktidar sahipleri Müslümanlardan oluşuyorsa direnişin meşru olma ihtimali oldukça azalmaktadır. Bu çerçevede İslam'ın tavsiyesi Tanrı'nın yeryüzündeki gölgesi ya da *Zillullah-i fi'l-âlem* olarak bilinen iktidar sahibine itaat edilmesidir. Bu itaat anlayışı tarihsel süreçte Müslüman toplumlarda siyasi otoriteye karşı sessizliğin hâkim olmasıyla sonuçlanmıştır.

İslam'ın siyasi otoriteye karşı direniş hakkına yaklaşımının olumsuz olmasının altındaki bir diğer neden ise İslam'ın sosyal sözleşme öngörüsünün bulunmamasıdır. Esasen otoriteye karşı direnişi meşrulaştıran tek husus bu direnişin amacının yönetilenlerin egemenliğini tesis etmek değil aksine Tanrı'nın otorite ve egemenliğini yeniden tesis etmek olmasıdır. Bu bakımdan İslam'a göre siyasi otoriteye direniş hakkı din merkezli otoriteryan bir eğilime sahiptir. Hâlbuki Lockeçu liberalizmde siyasi otoriteye direnişin meşrulaştırıcı gücü bu direnişin insan merkezli bireyselciliğe sahip olmasıdır. Bu bakımdan Müslüman çoğunluklu ülkelerdeki otoriter temayüller sözü edilen hak anlayışı dikkate alınarak incelendiğinde oldukça anlamlı çalışmalar ortaya çıkmış olacaktır. Sonuç olarak, Lockeçu liberalizm ile İslam'ın siyasi otoriteye karşı direnme hakkına yaklaşımları oldukça farklıdır. "İslami liberalizm" savunucuları her ne kadar bu çerçevede benzer bir kavramsal analizde bulunmamış olsalar da burada bahsi geçen çelişkiyi giderecek bir "İslami liberalizm" söylemine sahip olmadıkları da açıktır. Zira Lockeçu liberalizm siyasi meşruiyeti yönetilenlerin rızasında ararken İslam için siyasi meşruiyet Tanrı'nın iradesinin bir parçasıdır.

İkinci inceleme alanı olan mülkiyet hakkı konusunda da oldukça farklı yaklaşımlar olduğunu görmek mümkündür. Öncelikle doğal hukuk öğretisi, Hristiyanlık ve İslam, mülkiyet hakkını prensip olarak tanımaktadır. Ancak bu tanıma bazı sınırlamaların konulmadığı anlamına da gelmez. Örneğin Locke mülkiyet hakkını oldukça önemser ve bazı sınırlamalar koyarak bu hakkı teorileştirir. Ancak son tahlilde Locke sınırsız zenginleşmeye engel olacak bir tedbir koymaz ve bu hakkın önündeki tüm engelleri dolaylı yoldan kaldırmış olur. Bu durum Locke'un faize bakışı için de geçerlidir. Ancak İslam söz konusu olduğunda dini metinlerin ötesine geçmek ya da bu metinlerdeki hükümleri aksiyle yorumlamak mümkün değildir. Bu bakımdan değişen sosyal ya da ekonomik koşullar metinlerdeki belirleyiciliği etkilemez. Örneğin faizin yasaklandığı konusunda, zekâtın zorunluluğu noktasında ya da sadakanın teşvik edildiği hususunda İslami metinlerde çelişkili bir duruma rastlamak mümkün değildir. Metinler bu emir ve yasakları değişen şartlardan bağımsız olarak koymakta ve bu verili sistemin sorgulanmasına müsaade etmemektedir.

Tezde incelenen üçüncü nokta dini özgürlük hakkı ve hoşgörü konusudur. Esasen bu nokta hem Locke'un siyaset felsefesi hem de İslam'ın temel yaklaşımı bakımından problemlidir. Öncelikle Locke'un dini özgürlükler kategorisine Katolikleri ve ateistleri dâhil etmediği bilinmektedir. Benzer şekilde İslam açısından da dini inancı tamamen terk etmek ya da inancın yönünü değiştirerek herhangi başka bir dini benimsemek şiddetle cezalandırılması gereken suçlardandır. Ancak İslam'ın belirleyici metinlerinin içerisinde hoşgörü ve dini çoğulculuğa ait hükümler bulmak da mümkündür. Burada metinlerin içeriğinden ziyade metinlerin hangi kapsamda hüküm haline geldikleri önem arz etmektedir. Her ne kadar bu bakış açısı kendilerini liberal Müslümanlar olarak nitelendirenler için tek çıkar yol olsa da genel eğilim bu tarz bir yaklaşımı tarihselci olarak etiketlemekte ve dışlamaktadır. Nitekim İslam'da tarihselci okumayı reddedenler için metinlerin bağlamından ziyade literal anlamda işaret ettikleri noktalar esas alınmalıdır. Bu farklılık liberal Müslümanlar ile ana akım Sünni İslam arasındaki derin uçurumlardan biridir. "İslami liberalizm" yaklaşımının kavramsal çerçeveye

oturduğu varsayıldığında bile tarihselci yaklaşımın ana akım İslam anlayışı tarafından kabul görmeyeceği kesindir. Nitekim tarihselcilik tüm zaman ve mekânı aştığı iddiasında olan İslami temel metinlerin tam zıddı bir yaklaşıma sahiptir. Bu nedenle liberal Müslümanlar için bu metinleri zaman bağlamından koparıp akılla analiz etmek ve yeni bir sentez ortaya koymak marjinalleştirilmeyle sonuçlanacaktır.

Tezin başlangıç noktasına dönecek olursak, bu tez "İslami liberalizmin" kavramsal olarak tutarsız olduğunu ve ayrıca Lockeçu liberalizm ile kıyaslandığında uyumsuz olduğunu savunmaktadır. Bu iki kıyas öğesi arasında üstlük ya da astlık ilişkisi olmadığı gibi uyuşmazlığın olması da oldukça doğaldır. Burada doğal olmayan önerme aşırılıkçılığa panzehir olarak ya da Arap baharı sonrası bir rejim önerisi olarak "İslami liberalizm" kavramının literatürde adeta bir reçete gibi sunulmasıdır. Bu noktada aşırılıkçılığa panzehir olması beklenen ya da yönetilenlerin çıkarına olan sistem önerisinin siyasi ajanda ithal etmekle ya da dinin temel kabullerini deforme etmekle teorik bir zemine kavuşamayacağı açıktır.

Sonuç olarak, bu tez her ne kadar karşılaştırmalı siyaset teorisi ve karşılaştırmalı siyasal teoloji alanlarını temel almış olsa da aktüaliteye ilişkin önemli bulgulara da ışık tutmaktadır. Nitekim tez, 11 Eylül süreci ve Arap baharı dönemi sonrasında entelektüel çevrelerce konu edilen "İslami liberalizm" tartışmalarına teorik bakımdan bir altyapı getirmektedir. Ayrıca İslam ve Batı siyaset felsefesine içkin kuramlar arasındaki karşılaştırmalı araştırmalara da yöntemi ve içeriği bakımından örnek teşkil etmektedir. Tezin karşılaştırmada ortaklıklardan sentez yaratma kaygısı gütmeden nesnel kalabilmesi tezi diğer karşılaştırmalı çalışmalardan oldukça farklı bir noktada konumlandırmaktadır. Bilhassa İslam'da reform konusunun, İslam ve demokrasi ilişkisinin, İslam'ın bireye bakış açısının gittikçe sorgulandığı günümüzde bu tezin ilgili araştırmalarda referans kabul edilebilecek bir çalışma niteliğinde olduğu düşünülmektedir. Bu nedenle tezin Orta Doğu, İslam ve siyaset ilişkileri üzerine yapılacak olan yeni araştırmalara da katkı sunacağı değerlendirilmektedir.

C. THESIS PERMISSION FORM / TEZ İZİN FORMU

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