The Concept of "Meşrutiyet" in the Context of the Secularization of Legal and Political Knowledge in the Ottoman Empire (1860-1911)

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Declaration of Originality

The intellectual content of this dissertation, which has been written by me and for which I take full responsibility, is my own, original work, and it has not been previously or concurrently submitted elsewhere for any other examination or degree of higher education. The sources of all paraphrased and quoted materials, concepts, and ideas are fully cited, and the admissible contributions and assistance of others with respect to the conception of the work as well as to linguistic expression are explicitly acknowledged herein.

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Abstract

"The Concept of 'Meşrutiyet' in the Context of the Secularization of Legal and Political Knowledge in Ottoman Empire (1860-1911)"

Erdal Kurğan, Doctoral Candidate at the Atatürk Institute
for Modern Turkish History at Boğaziçi University, 2022

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This study examines how politics and law became secularized around the concept of the Meşrutiyet in the Ottoman Empire, focusing on how the constitutional debates were held between 1860-1911. This work is made by analyzing the written texts in which the concept the Meşrutiyet was discussed through using the Critical Discourse Analysis method. For this reason, our discourse analysis, starting from the texts of New Ottomans such as Namık Kemal and Ali Suavi, etc., includes the texts written during the reign of Abdülhamid II and the discussions on Kanun-u Esasi in 1908 and later. What draws attention in all these texts is the efforts of the actors demanding the Meşrutiyet regime to legitimize the Constitutional regime by predominantly referring it to Islam. By referring to traditional/classical Ottoman legal-political concepts such as Siyaset, Siyaset-i Şer'iyye, Şura, Meşveret, it has been claimed that the constitutional regime is actually nothing different from the traditional Ottoman politics-law practice. However, the historical process and cultural aura of the constitutional monarchy practice and the traditional/classical Ottoman legal-political practice are both ontologically and epistemically different from each other. This difference was ignored and analogies are made between different concepts/practices and it is assumed that they were the same. However, these analogical approaches transform the traditional/classical Ottoman legal and political thought in the field of practical politics-law and cause it to be secularized.

104,000 words

Özet

Osmanlı'da Siyasi ve Hukuki Bilginin Sekülerleşmesi Bağlamında 'Meşrutiyet' Kavramı (1860-1911)

Erdal Kurğan, Doktora Adayı, 2022
Boğaziçi Üniversitesi Atatürk İlkeleri ve İnkılap Tarihi Enstitüsü

Prof. Dr. Nadir Özbek ve Prof. Dr. Nurullah Ardıç, Tez Danışmanları

Bu çalışma, 1860-1911 tarihleri arasında Meşrutiyet tartışmalarının nasıl yapıldığına odaklanarak, Osmanlı'da siyaset ve hukukun Meşrutiyet kavramı etrafında nasıl sekülerleştiğini incelemektedir. Bu inceleme Meşrutiyet kavramının tartışıldığı yazınsal metinleri Eleştirel Söylem Analizi metodunu kullanarak analiz ederek yapılmıştır. Bu nedenle Namık Kemal, Ali Suavi vb. Yeni Osmanlıların metinlerin başlayarak yaptığımız söylem analizi, II. Abdülhamid döneminde yazılan metinleri, 1908 ve sonrasında Kanun-u Esasi üzerine yapılan tartışmaları da içermektedir. Tüm bu metinlerde dikkat çeken şey, Meşrutiyet rejimini talep eden aktörlerin ağırlıklı olarak İslam'a referans vererek Meşrutiyet rejimini meşrulaştırma çabalarıdır. Siyaset, Siyaset-i Şer'iyye, Şura, Meşveret vb. geleneksel/klasik Osmanlı siyaset-hukuk kavramlarına atıf yapılarak meşrutiyet rejiminin aslında geleneksel Osmanlı siyaset-hukuk pratiğinden farklı bir şey olmadığı iddia edilmiştir. Oysa anayasal monarşi pratiğinin ortaya çıktığı tarihsel süreç ve kültürel aura ile geleneksel/klasik Osmanlı siyaset-hukuk pratiği birbirinden hem ontolojik hem de epistemik olarak farklıdır. Bu farklılık göz ardı edilmekte ve farklı kavramlar/pratikler arasında analoji kurularak onların aynı olduğu var sayılmaktadır. Ancak bu analojik yaklaşımlar, pratik siyaset-hukuk alanında geleneksel/klasik Osmanlı siyaset-hukuk düşüncesini dönüştürmekte ve sekülerleşmesine neden olmaktadır. Böylece geleneksel Osmanlı hukukunun üzerine bina edildiği millet-i hâkime-millet-i mahkûme ayrımı ortadan kaldırılmakta, hukukun temel meşruiyet zemini olarak şeriat dışlanmaktadır.

104.000 kelime

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- French – Novice

To the Lord of *the Logos* and *the Nomos*, who has the first word and will have the last...

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Abbreviations and Acronyms

BOA	Başbakanlık Osmalı Arşivi
DİA	Türkiye Diyanet Vakfı İslam Ansiklopedisi
MM	Meclis-i Mebusan
MM, X, y/z	Meclis-i Mebusan, X. Term, y. gathering, z. convening
vol.	Volume
Y. EE.	Yıldız Esas Evrakı

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Başkalarının aşkıyla başlıyor hayatımız
ve devam ediyor başkalarının hınçlarıyla
düşmanı gösteriyorlar, ona saldırıyoruz
siz gidin artık
düşman dağıldı dedikleri bir anda
anlaşılıyor
baştan beri bütün yenik düşenlerle
aynı kışlaktaymışız
incecik yas dumanı herkese ulaşıyor
sevinç günlerine hürya doluştuğumuzda
tek başınayız.

– İsmet Özel, *Bir Yusuf Masalı* -sebeb-i telif-

Yırtarak açtığımız zarflarda
büyük tecimevlerinde, büyük çarşılarda
pokerde-sinemada-genelevlerde
ne bir suçlu çağrışımı ne karabasan
yalnız o herkesler
o herkesler kendine akarak boğulan

– İ. Ö., Partizan

1

Introduction

After the declaration of the Meşrutiyet for the second time in 1908, people all over Istanbul celebrated it. Speeches about the Meşrutiyet are given everywhere. Here is a dialogue that took place on a dock in Istanbul:
" 'Tell us what constitution [Meşrutiyet] *means?' the porter had shouted.*
'Constitution is such a great thing that those who do not know it are donkeys,' answered the speaker.
'We are donkeys,' roared the porters.
'Your fathers also did not know it. Say that you are the sons of donkeys,' added Dr. Riza Tewfik.
'We are the sons of donkeys,' roared the porters again."

– Halide Edip, *Memoirs of Halide Edip*[1]

1 Halide Edip Adıvar, *Memoirs of Halide Edip*, (London: John Murray, 1926), 260

The concept of 'Meşrutiyet' has been the most popular concept available in the legal and political discourse of the late 19th century Ottoman intellectual and political world. However, much of the literature on the concept has ignored the change the concept had gone through theoretically and focused on the 'Meşrutiyet' as an event instead. As a result, the studies on the event could not go beyond the narration of it and have missed the theoretical / epistemological transformation of the legal and political knowledge. This dissertation will investigate the concept of 'Meşrutiyet' in the context of the secularization of legal and political knowledge in the late 19th and early 20th centuries (1876-1911) with the aim of filling the gap the previous literature has left. The dissertation will explain why the aforementioned legal theoretical framework has gone through such a change while looking at how the theoretical transformation did occur in the first place. It will show that the actors –mainly the ulema and political actors-, too, with their epistemological assumptions were subject to the change/transformation.

Law and politics exist as the two central institutions of social change. While the legitimacy of politics rests on the law, the politics makes the law. In this context, the transformation of law entails the transformation of both the knowledge of the law and its actors. The makers of law that are both the providers of epistemological knowledge and the political legitimators occupy the central place in our discussion. I don't deny the role of non-specialized people here, rather I focus on the institutional aspects of the transformation.

The relationship that the non-Western world establishes with the West has cause often structural/institutional transformation. The physical, financial, and political/diplomatic power, to which supporters of the modernization paradigm refer, has become desirable in the non-Western world while the perception that such technics[2] would also strengthen them has emerged. However, this relationship (or transfer of knowledge/technics) that is not a simple transfer of technics has brought

[2] It should be remembered here that 'type of the government' and 'the legitimacy' also belong to the technic.

about structural/institutional transformation. However, the process that has gained legitimacy with nationalism eventually ends with the secular modern state. This fate has prevailed in the non-western world despite all the resistance and challenges, just like the struggles in Japan[3], the Middle East, Latin America, or Africa. Even though all the different traditions in these geographies have developed different struggle practices against modern western civilizations, they have been eventually defeated by the modern secular nation-state, which is a western form of social organization. To sum up, it is known that the non-Western world's relationship with the West (or in contrary terms, West's colonial relationship with them) has created structures imitating the West in terms of politics, economics and law, and they established structures resembling it; and their main character is that they are 'secular'. In other words, it would not be possible to understand the recent ages without the concept of secularization.[4] Debates around modernization of Ottoman Empire (and the late Ottoman History) in law and politics can be read with this approach. The transfer of these secular legal-political institutions to Ottoman political thought through making analogical approaches with concepts of classical Ottoman political thought led to the secularization of the Ottoman legal-political institutions.

The problem of the transition from empire to the secular nation-state was experienced mainly in the late 19th and early 20th centuries. It gets even more complicated when it comes to the Ottoman Empire; the moves initiated by the Ottoman elites (by both legal and political elites) are read as "revolutionary modernization moves" by some historians. As I will discuss below, this approach, which defends the modernization paradigm, reads the change in the Ottoman Empire only as a result of external dynamics. In addition to this, a second approach to the aforementioned problem reads the problem as a complex legal and political process formed by the internal dynamics and pressures of the time as well. In any

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3 Harry Harootunian, *Overcome by Modernity: History, Culture, and Community in Interwar Japan* (New Jersey: Princeton University Press, 2002)

4 Carl Schmitt, *Political Theology -Four Chapters on the Concept of Sovereignty-*, trans. George Schwab, (Chicago: The University of Chicago Press, 2006), 2

case, the common feature of each two approach is that the legal transformations did trigger the political transformations and they caused deep-rooted changes afterwards. It can be claimed that the emergence of "Meşrutiyet" and its lifetime adventure show us the adventure of the secularization of legal and political knowledge in late 19th and early 20th century Ottoman Empire too. While the first-hand legitimating epistemological resources were religious (I mean it was legitimized by the Ulema and adapted to the Sharia), it was derailed from its religious track and legitimated by the non-Sharia establishment. Then, how did this transition occur? My main research question, therefore, is how and why did the debates and political struggles around the concept of "Meşrutiyet" result in the secularization of the legal and political knowledge? In addition, these are my specific questions: By using which discourses, the elites involved in these debates have tried to legitimize their positions? With which strategies were the discourses produced, and by which actors were these strategies used? Have the socio-political positions of the actors (being ulema, intellectual, or deputy, etc.) been effective on the discourses produced? Have the same discursive strategies been used by opposed actors, or have opposed actors always used different discursive strategies? Can it be said that there is a variation between discursive strategies over time? I will seek the answers to all these questions by making a Critical Discourse Analysis of the texts discussing the constitutional regime. Now, I will move on to the literature review section where I discuss how the Meşrutiyet was examined in Ottoman historiography.

§ 1.1 Historiography of the Meşrutiyet

This dissertation will focus on both epistemological transformation of legal/politic and history of political thought. In this context, when examined literature of the history of thought in the republican period, a few studies come to the forefront. We can claim that there are mainly two approaches in this context in the literature that examine the Meşrutiyet.

The first approach regards the proclamation of Meşrutiyet and institutional reforms as a radical disengagement and a 'revolution' that lead

to the modern state. This approach, which can be called as Modernist approach accepts the Ottoman empire as a traditional state, follows the modernization paradigm. It accepts that non-modern societies will abandon their traditional structures over time and become modernized over linear time like Western societies. In this context, it accepts 'modernization' as an absolute destiny and considers the modernization experience of the West necessary for the Ottoman Empire as well. The 'Modernization Paradigm' presents Western-Europe's experience of modernization as secular forces (or 'progressive' forces) overpowering religious (or reactionary) forces. Those who defend the 'Modernization Paradigm' in Ottoman historiography assume a similar process for the modernization experience of the Ottoman Empire. Such as, especially revolution debates on second Meşrutiyet period[5] ignore religion that prepared the Meşrutiyet and made it acceptable by rhetorical contributions of the ulema.[6] Regarding Meşrutiyet as a preparatory process yielding the republic and a radical disengagement from the traditional/Islamic past, this group of literature positions the Islamist 'oppression' regime of Abdulhamit II, as a counterpart. If we want to start with the argument of Abdulhamit's regime combining Islamism and oppression, Meşrutiyet can be presented as salvation from religious authority. In fact, as Kara

5 Aykut Kansu, *The Revolution of 1908 in Turkey*, (Leiden: Brill, 1997); Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma*, (Istanbul: Yenigün Matbaası Tunaya, 1960[2002]), Tarık Zafer Tunaya, *Devrim Hareketleri İçinde Atatürk ve Atatürkçülük* (Istanbul: Turhan, 1981); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 1 – İkinci Meşrutiyet Dönemi*, 2. Baskı, (İstanbul: Hürriyet Vakfı Yayınları, 1986); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 2 – Mütareke Dönemi* (İstanbul: Hürriyet Vakfı Yayınları, 1988); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 3 – İttihat ve Terakki* (İstanbul: Hürriyet Vakfı Yayınları, 1989); Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961)

6 İsmail Kara, "Ulema-Siyaset ilişkilerine dair önemli bir metin: Muhalefet yapmak/Muhalefete katılmak", *Dîvan: Disiplinlerarası Çalışmalar Dergisi*, vol. 4 (İstanbul, 1998); İsmail Kara, "Ulemâ-Siyaset ilişkilerine dair metinler-II: Ey ulemâ! Bizim gibi konuş!", *Dîvan: Disiplinlerarası Çalışmalar Dergisi*, vol. 7 (İstanbul, 1999)

argues[7] spreading of idea of constitutionalism from political elites to a wide social base has occurred with the help of ulema.[8] Studies by this attitude can be classified as modernist and tend to evaluate social movement about Meşrutiyet by dichotomy of 'progressivist-reactionist'. This approach is deficient not only for being teleological but also for evaluating figures in one dimension and taking historical groups as homogeneous. Because, as we will see in the next chapters, the group of actors who defend the meşrutiyet contains ulema, religious intellectuals, and also secular intellectuals. This approach is teleological because as a consequence of deterministic reading of the history made by the 'Modernization Paradigm' it assumes the secular republican era as a historical fact that must emerge in history. It evaluates history in a determinist way claims/assumes that all historical events (modernization and secularization) are absolute.

Being an example of the first approach, Hilmi Ziya Ülken's *Türkiye'de Çağdaş Düşünce Tarihi*[9] focuses on the period of late Ottoman and early Republican era. The main characteristic difference of this book is that it concentrates on the history of thought post-constitutional era, especially the proclamation of the Meşrutiyet for the second time. For some reasons, Ülken examined many movements of thoughts but had not required to mention some critical names who defends the Meşrutiyet. For example, in *Türkiye'de Çağdaş Düşünce Tarihi* he had not mentioned Mustafa Sabri Efendi who was one of the important actors of ulema (former Şeyhülislam) and Islamist supporter of the Meşrutiyet. He did not give a place to Said Nursi and Elmalılı Hamdi Yazır who were active in politics in the constitutional era. On the other hand, Ülken's work –because of its

7 İsmail Kara, *İslamcıların Siyasi Görüşleri 1 –Hilafet ve Meşrutiyet-* (İstanbul: Kitabevi Yayınları, 1997)

8 İsmail Kara, "Ulemâ-Siyaset ilişkilerine dair metinler-II: Ey ulemâ! Bizim gibi konuş!", *Dîvan: Disiplinlerarası Çalışmalar Dergisi*, vol. 7 (İstanbul, 1999)

9 Hilmi Ziya Ülken, *Türkiye'de Çağdaş Düşünce Tarihi* (Istanbul: İş Bankası Yayınları, 2014[1966])

form of an anthology of thought- necessitates primary sources to be evaluated and read deeply.

Niyazi Berkes's work[10] written in the Republic period also follows the first approach. Berkes reads the transition process from the Ottoman to the Republic as a secularization. As he had got contact with witnesses of the Meşrutiyet period, his work is valuable in its own historicalness. Berkes's work resource is strong because he has combined his Ottoman history knowledge with his text proficiency. But in Berkes's work, while modernist teleological reading is remarkable, some points were left out. He gave rise to misunderstanding on several points. In examining the Meşrutiyet, while Berkes evaluated modernization – of course, secularization- as inevitable, he has seen not only social movements but also political/legal elites as homogeneous. This type of review has ignored discrepancy and struggle between groups (or social movements) and struggle. Additionally, although Berkes has just made a general evaluation, he has not explained enough the secularization of political knowledge that is possible with the secularization of legal knowledge.

Robert Devereux's book[11] focuses on the Ottoman Constitutional experience. Devereux's approach is a very generic example of the modernization paradigm. In other words, Devereux reads the constitutional experience as a transition from traditional society to modern society and generally ignores the struggle between the Ottoman elites, namely the internal actors. In other words, he sees the declaration of the Constitutional Monarchy as a situation that took place with the pressures of the Modern Europe. As a matter of fact, it accepts the patterns of modernist historiography as given and repeats the modernization paradigm. Concerning this, he ignores all the modernization policies of Abdulhamid II and escapes to the ease of reading as a simple 'despot'. This prevents us from

10 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964])

11 *The First Ottoman Constitutional Period -A Study of the Midhat Constitution and Parliament-* (Baltimore: Johns Hopkins, 1963)

understanding the struggle among the actors of the 'Meşrutiyet' debates sufficiently.

As same as Niyazi Berkes and Robert Devereux, Tarık Zafer Tunaya follows modernization paradigm. Tarık Zafer Tunaya's works[12], firstly we must mention he understands announcement of Meşrutiyet and frame of institutional transformation as a revolution which is a radical disengagement and a way to modern state. Tunaya's similarity[13] with Berkes attracts the attention. Because his thesis is coherent with the historical thesis of Kemalist paradigm as well. The writer evaluates the groups that are struggling as one single entity and tends to consider all the social movements that are struggling around Meşrutiyet in dichotomy of 'progressivist- reactionist'. For this reason, aside from being teleological, it is necessary to say that he has evaluated the actors one-dimensional and has seen historical groups as homogeny.

Aykut Kansu's work is another example of the first approach's study. According to Kansu[14], the definition of 'Second Constitutionalism' -in order to define Meşrutiyet in 1908- that is accepted in Turkish historiography is far from reflecting the scope of the political transformations experienced in 1908. Since in 1908, there was a political regime change that transcends the 'constitutional' framework. The absolutist monarchy and the bureaucracy that served it were for the first time excluded from the political process. Aykut Kansu argues that with these aspects, 1908 was a more important 'real' turning point than 1923 for Turkey. And he describes the transformations done in political life of the Empire as a

12 Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma*, (Istanbul: Yenigün Matbaası Tunaya, 1960[2002]); Tarık Zafer Tunaya, *Devrim Hareketleri İçinde Atatürk ve Atatürkçülük* (Istanbul: Turhan, 1981); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 1 – İkinci Meşrutiyet Dönemi*, 2. Baskı, (İstanbul: Hürriyet Vakfı Yayınları, 1986); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 2 – Mütareke Dönemi* (İstanbul: Hürriyet Vakfı Yayınları, 1988); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 3 – İttihat ve Terakki* (İstanbul: Hürriyet Vakfı Yayınları, 1989)

13 Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma* (Istanbul: Yenigün Matbaası, 1960[2002])

14 Aykut Kansu, *The Revolution of 1908 in Turkey*, (Leiden: Brill, 1997)

rupture from traditional politics of the Ottoman; however, it is different from Kemalist approaches. In this context, the Meşrutiyet is defined as a rupture.

Nader Sohrabi, in his book on constitutional movements[15], where he defines revolutions in the Ottoman Empire and Iran, thinks about universal diffusion of institutions and ideas, their regional and local reworking, and the long-run outcomes of adaptation to local requirements. He states the revolutions, despite having differing social structures of the societies where they happened, shared the same objectives and demands. Moreover, the suddenness and simultaneity of their appearance point to a commonality that transcended the localities. This approach is important because it can provide a new perspective on evaluating the outcomes of the Meşrutiyet.

The first approach is repeated by some historian who consider Meşrutiyet -political issues occurred before and after it- as a result of intellectual despotism starting with Tanzimat and imposed by Tanzimat *pashas* (Babıali). This approach is mainly based on İlber Ortaylı's works[16] and employed by not only historians but also some political scientists. Cemil Oktay[17] finds a similarity between the Republic and late-Ottoman pashas and claims that there is a similarity on the relations between the ruling elite and the public.

In addition to the above considerations, Halil İnalcık's works[18] also can be examined in this context. If the relationship of the Constitutional Monarchy with Law and Politics is remembered, we should mention the works of Halil İnalcık and Barkan. Even İnalcık's works and Ö. Lütfi Barkan's Ottoman legal studies[19] point out that the potential for change in

15 Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (New York:Cambridge University Press, 2011)

16 İlber Ortaylı, *İmparatorluğun En Uzun Yüzyılı* (Istanbul: Hil, 1983)

17 Cemil Oktay, "Hum Zamirinin Serencamı: Kanun-ı Esasi İlanına Muhalefet Üzerine Bir Deneme" in C. Oktay, *Hum Zamirinin Serencamı* (İstanbul: Bağlam, 1991)

18 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000)

19 Ömer Lütfi Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğu'nda Zirai Ekonominin Hukuki ve Mali Esasları: Kanunlar* (tıpkıbasım), (İstanbul: İ.Ü. İktisat Fak. 2001)

the analysis of Ottoman law is largely 'secular', with the aim of proving that the legal and political change/transformation capacity of the early Ottoman State is based on the pillars of Turkish origin rather than on Islamic elements.[20] However, this approach is deficient due to making judgments without examining ordinary people's daily life, the power struggle among ruling elites -especially in debates about Meşrutiyet -, and what fiqh stands for in social order in a Muslim country. Besides, followers of this approach mentioned above do not have theoretical knowledge about this issue sufficiently, theoretical frame of fiqh (as text and practice), and also, they do not sufficiently comprehend its legislative, political, and social occurrences. What led me to this judgment is there is almost no theoretical basis about it in these studies.

The second approach, which is analytical approach and also will be followed in this dissertation study, doesn't evaluate the Meşrutiyet's constitutional events and the subsequent events only as a process of external pressures, or as a result of international politics, or as a process, which is planned primarily by the local political elites. In addition to the effects of international reel politics, the Meşrutiyet and the events after it will be interpreted as a process involving the struggle between internal dynamics, that is, the partial effect of both the ruling elite and the ordinary subject. In the Dissertation, therefore, some assumptions about the Ottoman legal understanding of the first approach will be questioned and the second perspective will be tried to be provided. For instance, the views of the historians –i.e. İnalcık, Barkan, Köprülü, etc.- who thinks that the Ottoman law was bicephalous and the 'kanuns' was produced by the will of the sultans as a Turkish tradition in outside of the Shariah will be criticized. Thus, the approaches of the previous historians mentioned in the teleological approach during the Republican period, which imply that secularism is not far from the Turks, will be evaluated with primary sources.

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20 Boğaç Ergene, 'Qanun and Sharia', in *The Ashgate Research Companion to Islamic Law*, ed. Rudolph Peters and Peri Bearman (New York: Dorset Press, 2014)

Şükrü Hanioğlu's work filled a gap that on the center of the first approach; in examining the powers that trigger proclamation of the Meşrutiyet, he evaluates the internal dynamics as strong as the external dynamics.[21] This work focuses on the political life of the era that I study on. Hanioğlu preferred to work on more generic and more narrative studies and in the referenced work[22], he tries to analyze dynamics of social mechanism upon Jonturks. He does not limit his work with a couple conflicts and cause-effect relations, he tries to construct a 'multidirectional system of the relations'. To achieve this purpose, he examines the relation between mentality and events, which is not easily visible.

Şerif Mardin's book examples the second approach to the historiography of the Meşrutiyet. Analysing history of (political) thought, especially post-80's works, in Turkish academia, one can easily see Şerif Mardin's influence. The reason behind this is that he did not follow the Orthodox-Marxist approach, which was the popular and dominant approach of his time, he stayed out of the *infrastructure-superstructure* dichotomy.[23] So, he could produce original thoughts on Meşrutiyet and its effects, while staying out of Kemalist arguments and teleology.

İsmail Kara's[24] and Mümtazer Türköne's[25] works also should be placed in the second approach. They both analyze the same era as an intellectual movement in the manner of Islamism and come up with similar results. Türköne mainly tries to find a local pattern for Islamism or make Ottoman Turks mastermind of Islamism, while Kara writes in a broader and deeper manner. Kara especially keeps track of political transformation very well and shows how Meşrutiyet debates were led by Abdulhamit II's opponent ulema.

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21 Şükrü Hanioğlu, *Bir Siyasal Örgüt Olarak Osmanlı İttihat ve Terakki Cemiyeti ve Jön Türklük (1889–1902),* (İstanbul: İletişim, 1985)

22 Ibid.

23 Şerif Mardin, *Jön Türklerin Siyasi Fikirleri 1895–1908* (İstanbul: İletişim, 1983)

24 İsmail Kara, *İslamcıların Siyasi Görüşleri 1 –Hilafet ve Meşrutiyet-* (İstanbul: Kitabevi Yayınları, 1997)

25 Mümtaz'er Türköne, *Siyasi İdeoloji Olarak islamcılığın Doğuşu*, 2. Baskı (İstanbul: İletişim Yayınları, 1994)

Roderic H. Davison's book focuses on political reforms between 1856 and 1876.[26] Davison states that the Reforms were not made specifically for westernization, but they were not far from the influence of the west. However, since he limited his work to the First Constitutional Period declared in 1876, he could not draw a comprehensive layout of the legal-political transformations of the late Ottoman Empire.

Among the recent studies, some of them evaluate the period with new perspectives without repeating the first approach's mistakes. For example, Aylin Koçunyan's work exemplifies this[27]. Koçunyan focuses on how the Ottoman Constitutional Monarchy experience emerged by using the new approaches of 'diplomatic history'. By examining the contribution of non-Muslim Ottoman elites—especially bureaucrats and diplomats—in constitutional debates or regulations, she focuses on the 1839 Tanzimat Edict, the 1856 Islahat Edict, and then the First Constitutional Era in 1876. The difference that distinguishes Koçunyan's work from other books is that it is not limited to Ottoman or British official documents as a source. In addition to French official documents, it also refers what kind of contributions non-Muslim Ottoman subjects made to the practice of constitutionalism. In her work, Koçunyan emphasizes that, contrary to what Devereux assumes, the European powers are not interested in whether or not the Ottoman Empire was governed by a constitutional monarchy, and says that the experience of constitutionalism is shaped by the struggle of both internal and external actors.

Like Aylin Koçunyan, Banu Turnaoğlu underlines the influence of the New Ottomans in her text, in which she deals with the archeology of the idea of Republicanism that made Republican Turkey possible.[28] In her book, while describing which concept set republicanism is politically built around, she presents a long historical narrative consistently within

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26 Roderic H. Davison, *Reform in The Ottoman Empire, 1856-1876*, (New Jersey: Princeton University Press, 1963)

27 Aylin Koçunyan, *Negotiating the Ottoman Constitution, 1839-1876* (Leuven: Peeters, 2018)

28 Banu Turnaoğlu, *The Formation of Turkish Republicanism* (New Jersey: Princeton University Press, 2017)

itself. In addition, her work titled 'Despotism (İstibdad) in Ottoman Political Thought'[29], which examines how New Ottomans differentiated from traditional Ottoman political concepts is one of the texts that contribute to the literature. New Ottomans' definition of the concept of istibdad as despotism or tyranny actually means that the concept has been changed from its pre-modern meaning. In Turnaoğlu's texts, this adventure is read as a sign of how the idea of Republicanism took root.

Besides the texts of Aylin Koçunyan or Banu Turnaoğlu, new analytical studies have also been carried out. In his comprehensive study[30], Marinos Sariyannis examines the Ottoman political thought tradition from the classical period to the early 19th century. This work, which is evaluated within the New Conceptual History school, moves from an analytical perspective that cannot be defined as modernist or teleological. It is very significant that he evaluates the traditional Islamic disciplines (and the literature related to these disciplines) within Ottoman political thought such as *Ahlak*, *Adab*, *Kelam*, etc., which are not perceived within the scope of 'the political' by the modern political theory. His thematic analysis of the basic concepts of Ottoman political thought, 'adalet', 'meşveret', 'nizam-ı alem', 'kanun-u-kadim' etc., places Sariyannis in an important place in the current literature. However, Sariannis does not adequately examine specific conceptual transformations in the historical context because he focuses on a very broad time. Due to this flaw, it becomes very difficult to follow in this book, for example, the political polemics created by the debates around the concept of the Meşrutiyet and the semantic transformation they caused.

In a similar way, Alp Eren Topal's study in which he examines the semantic and political transformation of four concepts which are 'Islâh',

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29 Banu Turnaoğlu, 'Despotism (İstibdad) in Ottoman Political Thought', in *History of Political Thought*, vol. XLI, No. 1, Spring 2020, pp-16-42

30 With a chapter by E. Ekin Tuşalp Atiyas, *A History of Ottoman Political Thought up to the Early Nineteenth Century*, (Leiden and Boston: Brill, 2019). Actually, this book is an expanded edition of -with a chapter by Ekin Tuşalp Atiyas- *Ottoman Political Thought up to the Tanzimat: A Concise History* (Rethymno, 2015).

'Tecdîd', 'Tanzimat' and 'Progress' that related to the reform in the Ottoman Empire is one of them.[31] In his work, Topal emphasizes that, in contrary to the modernist approach, the concepts were not used in the Ottoman Empire by the pressure of the West or imported from the West, and that the Ottomans transformed the concepts with their own internal dynamics. His aim is revealing 'the agency of the non-Western actors in making their own meaning'.[32] According to him, conceptual history admits historians to consider interaction across cultural and linguistic boundaries without referring to 'import', 'transfer', or 'imitation'.[33] Thus, Topal utilizes the methodological approaches of Reinhart Koselleck's conceptual history and contextualism of Cambridge School.

Topal's emphasis on the transformation of the content of concepts with its own internal dynamics of indigenous thought is very important and useful but he largely ignores external dynamics, the impact of European institutions and ideas on the Ottoman actors and dynamics. Thus, he rejects any reference to the west in the secularization of ottoman politics and law as teleological and orientalist.[34] Topal reduces any explanation that allows for external impact to the modernist approach criticizes above. Therefore, he ignores the nuance between the modernist approach and the analytical approach.

Similar to Topal's study, Einar Wigen's book[35] focuses on how the European political literature's concepts, empire, civilization, citizenship, and democracy, were translated in Ottoman political literature. In his study, Wigen examines how the translation of foreign concepts into Ottoman Turkish played a role in the transformation of the state. For this

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31 Unpublished PhD dissertation, *From Decline to Progress: Ottoman Concepts of Reform 1600-1876*, (Ankara, 2017)

32 Alp Eren Topal and Einar Wigen, 'Ottoman Conceptual History -Challenges and Prospects-', *Contributions to the History of Concepts*, vol. 14, i. 1, (Summer 2019), 96

33 Particularly see Alp Eren Topal, 'Against Influence: Ziya Gökalp in Context and Tradition', *Journal of Islamic Studies* 28, no. 3 (2017), 283–310

34 Ibid, 105

35 Einar Wigen, *State of Translation: Turkey in Interlingual Relations* (Ann Arbor: Univesity of Michigan Press, 2018)

reason, Wigen considers only the rhetoric of statesmen, through which he follows the transformations of these concepts.[36] However, his overemphasis on the language makes him ignore the actual political developments and contextual factors.

In the light of what I have said so far, I must say that I am theoretically building my dissertation on the second perspective, the analytical approach. In this context, the contribution of my dissertation to the literature can be summarized in two parts empirical and methodological. First, the Meşrutiyet was previously studied only as a political 'event', but its conceptual evaluation was not examined; therefore, that my dissertation contributes to the literature as a conceptual analysis of the Meşrutiyet. Locating the Meşrutiyet in the center of my thesis is my first empirical contribution to the literature. Throughout the dissertation, I have studied too many unexamined empirical primary texts in the context of the conceptual study at issue. Therefore, as a second empirical contribution, I have reviewed several primary texts on the Meşrutiyet that have been written at different times but have not been sufficiently evaluated in the literature. On the other hand, a discourse analysis of the aforementioned texts has not yet been made around the concept of the Meşrutiyet. Analyzing the discourses built and used around the concept of the Meşrutiyet in my dissertation and putting them in the context of secularization is my main methodological contribution in this dissertation.

However, throughout the thesis, I only looked at the concept of Constitutional Monarchy; therefore, I did not focus on all the legal and political transformations that became more prominent with the Tanzimat process. Because I have studied an relatively long historical period, I have limited the scope of the dissertation only to the concept of the Meşrutiyet. So, I did not mention other structural and institutional transformations (eg Mecelle debates, Nizamiye courts, etc.).

Discussing the Meşrutiyet also means discussing the law and politics in the Ottoman Empire. To demonstrate and understand new conditions that result from debates about the Meşrutiyet, I have to examine works

36 Ibid, 12

on law-politics relations in Ottoman. In academic studies, position of law in Ottomans is generally analyzed by dilemma/distinction of 'kanun' and shariah. Orientalist writers basically believe that shariah had very few clear rules about public law and also public law was built by rulers in a secular field. For instance, Joseph Schacht's work[37] is first to discuss this approach. Schacht claims that Islamic law, fiqh literature in other words, was built mainly while rulers were dominant and, in a way, not to be a threat to power domain of political authority. Some contemporary writers also follow Schacht's path. Sami Zubaida's work mainly repeats Schacht's references and essential ideas.[38] Uriel Heyd projects the same ideational approach to his work on Ottoman law[39], he claims that Ottoman law was basically bipolar. Halil İnalcık[40] and Ömer Lütfi Barkan[41] also makes this distinction that occurs by shariah-kanun dichotomy. However, in this dissertation, - considering the effects of the recent contributions in the literature as well- relation of law and politics in Ottoman will be examined.

We will see that the Shari'ah-Kanun relation is partially independent, but mostly compatible/similar to each other, and not independent of each other, even in a level where the Shari'ah is dominated by the Kanun. It is not possible to say that borders of relation between sharia and politics are clear, as a matter of fact, we can say that this relation occurs in a blurry field[42]. However, it is possible to achieve clarity in this blurred relationship by examining recent studies and classical/traditional fiqh literature not only theoretically/textually, but also by anthropological

37 Joseph Schacht, *An Introduction to Islamic Law* (London: Oxford University Press, 1991[1964])

38 Sami Zubaida, *Law and Power in the Islamic World* (London: I. B. Tauris & Co Ltd. , 2003)

39 Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973)

40 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000)

41 Ömer Lütfi Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğu'nda Zirai Ekonominin Hukuki ve Mali Esasları: Kanunlar* (tıpkıbasım), (İstanbul: İ.Ü. İktisat Fak. 2001)

42 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 29; Muhterem Midilli, *Klasik Osmanlı Ceza Hukukunda Şeriat-Kanun Ayrımı* (İstanbul: Klasik Yay., 2019)

studies, as Hallaq[43] says, i.e. how these texts are understood and applied in everyday life.

§ 1.2 Ulema, Fiqh and the Meşrutiyet

First and above all, when the discussion around the concept (Meşrutiyet) first emerged, it was opposed not only by the Sultan / dynasty but also subject and the Ulema who had the influence on the tebaa most.[44] The position of Ulema is important, because there will be a change of attitude in the Ulema circles at the time of Abdulhamit II. On the other hand, it became clear that the supporters of the "Meşrutiyet" needed the support of Ulema against the defamation campaign planned by Abdulhamit II and the palace circles.[45] The legitimacy of the opposition depended on the illegitimating of the regime of Abdulhamit II. This legitimacy and its acceptance without vocal criticism from tebaa was closely related with the religious content of it. In other words, incorporation of Ulema to the opposition was seen as an important part of the social legitimacy.[46] Additionally, the leaders of the organized oppositions were intellectually heterogeneous and predominantly conservatives have influence on this social legitimacy too.[47] However, while the incorporation of Ulema into the opposition was empowering the legitimacy of opposition, it was undermining the epistemic superiority of the Ulema at the same time.

The primary source of legal and political legitimacy of the Ottoman Ulema arises from their sole position as the carriers of Islamic

43 Wael B. Hallaq, *An Introduction to Islamic Law*, (Cambridge University Press, 2009)

44 Christoph K. Neumann, *Araç Tarih Amaç Tanzimat*, çev. Meltem Asım (İstanbul: Tarih Vakfı Yayınları, 2000)

45 İsmail Kara, "Ulema-Siyaset ilişkilerine dair önemli bir metin: Muhalefet yapmak/Muhalefete katılmak", *Dîvan: Disiplinlerarası Çalışmalar Dergisi*, vol. 4 (İstanbul, 1998)

46 Ibid.

47 Şükrü Hanioğlu, *Bir Siyasal Örgüt Olarak Osmanlı İttihat ve Terakki Cemiyeti ve Jön Türklük (1889–1902),* (İstanbul: İletişim, 1985)

knowledge.[48] Needless to say, the knowledge produced institutionally in madrasas was not secular. The support it gave to the opposition arose from this knowledge to the detriment of rupturing the knowledge from its main sources or establishing weak analogies. Especially, the concept "istibdat" which was one of the most important political concepts Hamidian regime used for its legitimacy construction, turned into a propaganda tool outside of its traditional meaning by paving the way to the epistemological fracture. Ulema who supported the "Meşrutiyet" did not break away with the meaning system they were living in. In fact, they didn't use the concept in Abdulhamit II's overthrowing fetwa, the reason for that was the lack of negative meaning of the concept in the classical Islamic political thought.[49] Similarly, the term "meşveret" by way of weak analogies was reduced to the "meclis" and its traditional legal context was excluded from its *ehlu'l hall ve'l akd* framework.[50] If we remember that the discourse continually constructs the relationship between knowledge and power, when the knowledge that gave the power and legitimacy changed at the beginning of the process, more precisely, when the knowledge which gave legitimacy legally and politically became secular, the knowledge of Ulema kept away from constituting power.

The Ulema who sees the lack of the conditions (which were connected to each other as *örfi* and *şer'i*) as the legitimacy requirements for the ruler, implied that the regime of 'istibdat' was not abiding by them and hence was illegitimate. In fact, in the practice of 'meşveret' which is opposite to the "istibdat" in the classical Ottoman political thought and Islamic state administration, the ruler has the power to accept or ignore the opinions of the consultants by taking the sole responsibility of his

48 Amit Bein, *Ottoman Ulema, Turkish Republic: Agents of Change and Guardians of Tradition* (Stanford Junior University Press, 2011)

49 Banu Turnaoğlu, 'Despotism (İstibdad) in Ottoman Political Thought', in *History of Political Thought*, vol. XLI, No. 1, Spring 2020, pp-21-22; İlber Ortaylı, 'Osmanlı Devleti ve Meşrutiyet', in *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi* (İstanbul: İletişim Yay., 1985), 953

50 Cemil Oktay, "Hum Zamirinin Serencamı: Kanun-ı Esasi İlanına Muhalefet Üzerine Bir Deneme" in C. Oktay, *Hum Zamirinin Serencamı* (İstanbul: Bağlam, 1991)

actions. The practice which was common in many classical siyasetname and siyaset-i şer'iyye literature was neglected implicitly for the sake of defending the "Meşrutiyet" in 19th century.

Another dimension related with this problem emerged in the context of "Caliphate" discussions. The Caliphate comes to the fore not only for the tebaa of Ottoman state, but also for the entire Muslims. The institution of Caliphate which takes its legitimacy from religious texts, did begin to be redefined with Meşrutiyet discussions. The core motivation in the redefinition process was limiting the power. Leading names of Islamists from the ulema, such as Şeyhulislam Mustafa Sabri, Elmalılı Hamdi Yazır -former Antalya deputy and who is the scholar that Republic state gave him the duty to write a Qur'anic commentary-, and Said-i (Kürdi) Nursi have brought the boundaries of power of the Caliph with the analogy from literature of 'social contract'.[51] The question of what should determine the limits of the Caliph-sultan's power has been the primary issue. The first answer, without doubt, became the 'Islam/Islamic Law/Sharia'. However, the epistemic bases of Sharia law were exposed to serious fractures in the time period this dissertation examines. While the Ulema who wanted the 'Meşrutiyet' but opposed the secularization positioned in one side, the modernists who defended the secular point of view in an Islamic rhetoric positioned in another side. The common point of both attitudes was to secularize the Islamic discourse.[52] To give an example, the analogy established with the 'constitutional system' through the concept of 'Hükümet-i Meşruta' provided considerable convenience in the rooting of modern state form during late Ottoman era. However, this analogy or analogists obscure the difference between paradigmatic Islamic governance and paradigmatic modern secular state.[53]

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51 İsmail Kara, *İslamcıların Siyasi Görüşleri 1 –Hilafet ve Meşrutiyet-* (İstanbul: Kitabevi Yayınları, 1997)

52 Nurullah Ardıç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernization in the Early 20th Century* (Routledge, 2012)

53 Wael Hallaq, *The Impossible State –Islam, Politics and Modernity's Moral Predicament* (New York: Columbia University Press, 2013)

I don't imply that the Ulema were homogeneous and unanimous on many issues while discussing the above points. Just as each and every epistemic community, also the Ulema have different viewpoints. Those who argue that Caliphate and its extensional institutionalities were not constructed in rational base were not few. Beyond viewing the Caliphate as mere representative / deputy, the Ulema who believed that it was necessary for the implementation of some ibadat, gave the ruling authority to the Caliph by taking the religious and worldly authority from the sacred texts (Quran and Sunnah). The mission of Ulema, here, is to open a space for politics to be performed by the Caliph by interpreting the Quran and Sunnah with the Ijma, Qiyas, Ijtihad, Fatwa, and Judgements.[54] But the process that begin with Meşrutiyet debate had gone into another phase at the turn of the century. Therewithal, it is necessary to keep in mind that legal tradition is represented by ulema –aspirant of Meşrutiyet- had seen Ottoman Empire as an undeveloped country. As discussed above, despotism had set back state and Muslims and had blocked the thought. Right here, ijtihad making possible transformation of legal episteme via fiqh and its own disciplines became main topic.[55]

Fiqh occupies a central position in being understood and presented as a worldview of Islam and practicing this worldview via daily political life.[56] Before encountering modernity, fiqh had been able to resolve the problems occurring in itself while it has been continuing to evolve in its own historical process. However, in the era that modernity has been dominant in all manners and started to change perception of world, and the methods of sensing and solving problems completely, fiqh could not succeed to stay away from this change/transformation. In other words, this transformation was built especially on fiqh. It is quite popular in this era to read the problems occurred by social reality of historicity as the crisis

54 İsmail Kara, ''İslâm'da Ruhbanlık Yoktur' Söylemi Etrafında Dinî Otorite ve Ulemâ Üzerine Birkaç Not', *M. Ü. İlahiyat Fak. Dergisi*, s. 21 (İstanbul, 2001)

55 Özgür Kavak, *Modern İslam Hukuk Düşüncesi: Reşid Rıza Örneği* (Istanbul: Klasik, 2011)

56 Wael Hallaq, *The Impossible State –Islam, Politics and Modernity's Moral Predicament* (New York: Columbia University Press, 2013)

of fiqh, by ignoring that fiqh has been separated from its authenticity.[57] Indeed, the reality is quite different: the systemic (and epistemic) difference between the social reality that was built on, and made livable by fiqh and social reality built upon the modern law has been presented as crisis. So, even though there is no degeneration in basic principles and values of fiqh, the opinion that artificial problems produced by modernity's historical and socio-political arguments are caused by fiqh has been widespread. In other words, fiqh has been tried to be understood and evaluated by criteria of a worldview and paradigm that fiqh does not belong to. This attitude caused fiqh to be downgraded to simply Islamic Law, from being 'one's knowledge of things behalf and against him'. 'Codification' activities, of course, play a crucial role in this process.[58]

Codification activities starting before Meşrutiyet and then ongoing stand for a transition period in perceptual diffraction about fiqh, in modern period. Transition from a traditional social-judicial reality to a positive social-judicial reality is made possible by means of legalization activities. This legalization activities led Islam's own pluralist judicial reality (ijtihad and madahib –plural of madhhab-) to be monolithic. This classical attitude offered too much liberty for Muslims in social reality of daily life and with legalization activities, accepted just a unique opinion as legitimate and swept away any other opinions out of area of judicial reality. This is another basic point in which bureaucratic institutionalization of modern law and classical fiqh mainly differentiate. An effort to understand the theoretical bases of this differentiation inevitably takes us to the classical notions of fiqh.

Legalization source of social-political life that Islam builds and offers is built on two main bases: Qur'an and Sunnah. In other words, as

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57 Sami Erdem, 'Fıkıh Tarihi: Osmanlı Hukuk Düşüncesinde Modern Yorumlar İçin Yeni Bir Referans Çerçevesi', *Türkiye Araştırmaları Literatür Dergisi,* vol. 3, issue 5, (2005), 85-105; Sami Erdem, '*Mecelle* Tadil Tartışmaları Bağlanımda II. Meşrutiyetten Cumhuriyet'e Din, Hukuk ve Modernleşme' in *100. Yılında II. Meşrutiyet: Gelenek ve Değişim Ekseninde Türk Modernleşmesi Uluslararası Sempozyumu Bildiriler,* Zekeriya Kurşun et al. (İstanbul: Kültür ve Turizm Bakanlığı, 2009) 249-261

58 Özgür Kavak, *Modern İslam Hukuk Düşüncesi: Reşid Rıza Örneği* (Istanbul: Klasik, 2011)

practices and social life appearance of Qur'an, Sunnah is translation of Qur'an into real life or daily life and daily practices. Orders and bans in Qur'an becomes livable by Sunnah, the theoretical framework becomes visible. In this manner, as main principles ordering social life, 'Ahkam' (unchangeable/universal), judgement verses, have central position. These judgments are certain, definite, and constant in both literally and semantically. All social-political/cultural/military/commercial activities of Muslims locate within this framework. Ahkam verses are accepted in all around the Islamic world and believing in them is still a distinguishing factor of being Islam/Muslim. On the other hand, in both Qur'an and Sunnah, there are some judgments with no clear and certain meaning, they are open and need interpretation and called as 'Mutashabih' (interpretable/changeable.)

Interpretation is needed to draw judgment from mutashabih verses since some concepts have several meaning and interpretation and because of metaphoric use of language, etc..[59] In this point, ijtihad steps in. In lexical meaning, ijtihad means making effort to solve an onerous, hard, and troublesome problem. In terminological meaning, it is 'Faqih's effort to get a suppositional [knowledge] about a sharia judgment. One making this effort is called 'mujtahid'. Defining ijtihad as effort to get suppositional knowledge about sharia judgment is consistent with classical fiqh literature.[60]

Limit of ijtihad is a topic frequently ignored in ijtihad discussions of modern time or contemporary disputes. In which fields, till where can ijtihad (interpretation) be done? As Kavak says[61], most authors writing about this topic confuse ijtihad with an unlimited freedom of thought, refer to ijtihad in all cases/problems that people face, or tend to understand ijtihad in this way, without referring what classical understanding suggests on it.

In classical period, mujtahid's, faqih's (expert in fiqh) aim was to form a juridical norm for every new case that they face or to decide in which

59 Wael B. Hallaq, *An Introduction to Islamic Law*, (Cambridge University Press, 2009)

60 Yunus Apaydın, 'İctihad', *DİA*, vol. XX (İstanbul: Türkiye Diyanet Vakfı Yay., 2005)

61 Özgür Kavak, *Modern İslam Hukuk Düşüncesi: Reşid Rıza Örneği* (Istanbul: Klasik, 2011)

available norms it fits into. In this manner, Sharia defines five main norms (despite some nuances): Fard (obliged to be done), Haram (obliged to avoid), Sunnah (rewarded if done but no sanction if not), Mustahabb, Mubah (free to do or not to do), and Makruh (disliked, though it is not forbidden). All of these norms are meant to order individual's practices and build his/her life in a proper way. Expectations of these norms are different than modern law's two main functions, control and discipline, because the purpose of law in Islam is to enable Muslims to live in peace with first themselves and then within the society. Law defines what is right and entails the execution of what is defined as right. That is the point where the difference with modern state –which normalized after Meşrutiyet- appears: Modern state allows or forbids some acts. Violation of forbidden acts is severely punished. But state never intervenes what individuals do in their 'private life'. In contrast with, Islamic law intervenes all human actions (all practices). It evaluates these practices in a wide range from laws to morals without distinguishing law and morals. Actually, Arabic language, which is *lingua franca* of Islamic Law, does not have distinctive concepts to make law-morals distinction possible.[62] So, according to sharia, all actions of Muslim are evaluated within these five categories. Making law-morals distinction, actually, is new re-organizing process that constructs new 'subjects' of society.[63]

The relationship of modern state with citizen by law –which normalized for Ottomans after Meşrutiyet- is ontologically different than the relationship of Islam Fiqh with Muslim. 'Citizen' obeys modern law in only public space as an outer obligation to have judicial reality legalized by state, it is enough for being a good/virtuous citizen and citizen-law distinction is always produced by state. On the other hand, being loyal to fiqh for a Muslim is equivalent to their ontological compliances, to getting into the world of values that shape their characteristics. Being a Muslim is graded as much as this theoretically accepted world of values is being interiorized and practiced. So, fiqh itself is a matter of Muslim's inwardness.

62 Wael B. Hallaq, *An Introduction to Islamic Law*, (Cambridge University Press, 2009), 19-20

63 Talal Asad, *Formations of the Secular* (California: Stanford University Press, 2003)

Instead of Fiqh-Muslim distinction, 'existence of Muslim in Fiqh' is the situation.

At this point it should be remembered as same as Talal Asad's opinion that "the secularization of law [...] is not only limiting and reforming the sharia but, in general, reformulation of Islamic tradition in nineteenth century."[64]

Drawing ijtihad away from its classical meaning and leaving Muslim to modern law actually mean to reveal 'citizen' in a new world of values. Modern begins not at the end of it, but the beginning of it. In this context, Meşrutiyet is a significant point that refers the transformation of the political and legal discourse.

In summary, we can say that Fiqh and its transformation is worth to discuss because both legal knowledge of ulema is constructed by fiqh and fiqh is founder of politics of Islamic state.

§ 1.3 Methodology of the Dissertation

Conceptual changes have analysis fresh perspectives. The changes that the concepts have undergone in the historical process appear in the meanings of the concepts. In this context, the German school of conceptual history (*Begriffsgeschichte*) led by Reinhart Koselleck, maintains that the semantic content of social and political concepts' change relies on social and political change simultaneously.[65] When it comes to conceptual changes, Koselleck also adds that the semantic change of the concept and the social-political change does not have to be synchronized. Thus, the synchronous co-existence of conservative approaches that resist change and revolutionary approaches that prioritize or impose change is possible. In this context, Koselleck criticizes the American History of Ideas school, especially Arthur Oncken Lovejoy's approache, for treating concepts ahistorical and not subject to change.

64 Ibid.

65 Reinhart Koselleck, "Linguistic Change and History of Events", *Journal of Modern History* 61 (1989), 649-666

Similar to Koselleck's critical perspective, Cambridge School, especially Quentin Skinner and his successors, proposes a historical and dynamic understanding of conceptual history. This approach also called the new conceptual history, maintains furthermore that concepts cannot be understood only by staying connected to the historical context, that is, by confining concepts to only one meaning at a historical moment, but concepts are dynamic constructions that change over time with social change in different cultural contexts. Accordingly, it is necessary to search for the meanings of the concepts in the period in which they were used, in political struggles and polemics. Therefore, contrary to what Lovejoy assumed, since concepts are not *unit-idea*s, they are not abstract and timeless.[66] However, Skinner and other New Conceptual History scholars differ from Koselleck in that they examine concepts by synchronically comparing the texts written in the same period, as well as through diachronic analysis, unlike Koselleck's emphasis on the latter only. Thus, they argue that it would be more analytical to reveal how polemics and socio-political argumentations contribute to the semantic change of concepts both synchronically and diachronically.

From this point of view, which I share, studying *concepts* in history is no different from studying social history; and of course, all history is also related to 'society' and 'language'.[67] Therefore, the examination of the meaning represented by the concept of the Meşrutiyet in the historical process and its transformation (that is, its secularization), in a sense, is a legal-political study in terms of history of Ottoman political thought.

On the other hand, we can observe the history as undefined and uninvented. It is constructed by society and language. It is a priority of historical time that the tension between society and its change, the linguistic unfolding and operation of change, is always re-creating itself. Every history is fed by this tension, this antagonism.[68] The social change of the

66 Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory,* 8:1 (1969), 3-53

67 Reinhart Koselleck, *Kavramlar Tarihi -Politik ve Sosyal Dilin Semantiği ve Pragmatiği Üzerine Araştırmalar-* çev. Atilla Dirim (İstanbul: İletişim Yay., 2009), 11-13

68 Ibid, 13-14

Ottoman legal-political thought ended up by debates on the concept of the Meşrutiyet contains this tension. However, the first approach to the historiography of the Meşrutiyet does not consider this dimension of history. As a consequence of this overlook, it fails to offer a convenient explanation for the legal-political change of Ottoman political thought.

Political realities of the present are partly a product of the sociocultural traditions, institutional structures, or political culture of the past. The decisions, attitudes, and positions taken by today's political actors in their own historicities, that is, in their current histories, are realized within the framework of the concrete network of sociopolitical relations. Therefore, an attempt to establish an abstract continuity to historicize political events and decisions can actually lead to the error of making events *ahistorical* or *suprahistorical*.[69]

On the other hand, hegemonic struggles of the politics assert that historical circumstances of the present are absolute phenomenon. The winners of the struggle taking place in the sphere of the politics claim that their victories are in fact a product of a natural course of the history. More precisely, their political legitimacy is based on this discourse. But, if the victorious actors who built the discourse of 'the Present' were defeated in the struggle for political hegemony, we would be reading a different historical 'truth' now. And that 'truth' would be different from what it is now, but it would again be claimed to point to an '*absolute' telos*. Thus, the claim of a great/powerful and absolute continuity in the history would have been built through the aforementioned discourse. However, it is a historical fact that each of these political *teloses* is the product of the power struggle fought by different actors. For this reason, they are historical. So, we can say that the struggle between actors and the historical actuality of the struggle are important while examining sociopolitical

69 Nadir Özbek, "İstisna Hali": "Devletsiz", "Abdülhamidsiz" Osmanlı-Türkiye Tarihi Yazmanın İmkânları, *Toplumsal Tarih*, i. 301 (İstanbul, 2019), 50

situations. This is essential for a consistent and meaningful reading/examination of sociopolitical history.[70]

Historicizing the struggle between the actors in its own actuality is important for two reasons: First, it is possible to see the cultural-historical traditions that contribute to the intellectual insights of actors and shape them in a sense - from past to present. The discourses that concrete people use in expressing themselves, the epistemological arguments, etc. which are referred to and put forward for constructing such discourses, are used to claim the present as an absolute historical condition. However, the actuality of the moment of the struggle is not an abstract and ongoing spirit or *geist*, but rather concrete and political; nor, of course, is it independent of power relations.[71]

Secondly, the political-legal organization that we call 'the state' is not a trans-personal and abstract entity, but an organization that becomes concrete in the decisions of actors. The hierarchical structure that built by the state and the social-political-economic relations network derived from it constitute the state apparatus. Defining the state as a continuum that beyond the field of interindividual struggles and independent of the society, reveals the possibility of reading each decision/administrative practice enacted on behalf of the state as transpersonal.[72] This point is especially true for the modern state. As it is well-known, political theories constructing on the social contract theory claim that the understanding of the decisions of the State is supra-individual and the State is third side of the social contract in the modern political philosophy. Therefore, the

70 Peter Bratsis, 'Unthinking the State: Reification, Ideology, and the State', *Paradigm Lost: State Theory Reconsidered*, ed. Stanley Aronowitz and Peter Bratsis (Minneapolis: University of Minnesota Press, 2002), 257-58

71 Nadir Özbek, "İstisna Hali": "Devletsiz", "Abdülhamidsiz" Osmanlı-Türkiye Tarihi Yazmanın İmkânları, Toplumsal Tarih, i. 301 (İstanbul, 2019), 50

72 Peter Bratsis, 'Unthinking the State: Reification, Ideology, and the State', *Paradigm Lost: State Theory Reconsidered*, ed. Stanley Aronowitz and Peter Bratsis (Minneapolis: University of Minnesota Press, 2002), 249-51

State is neutral and universal.[73] It should be, however, noted that being the 3rd side of the social contract is fictitious for the state, and as a consequence, the state is understood as a transhistorical entity; it does not have any social reality beyond being the first cause. On the contrary, decisions and practices put into force on behalf of the state are highly concrete and historical. Therefore, the definition of the state as continuing power that sustains continuity of the sovereignty makes it ahistorical in this context. However, as an object of political-historical analysis, the state is not independent of concrete actors and history. This is true for both the modern state and the experiences of the state, which bring about political organizations such as the pre-modern empire.[74]

These points should be taken into consideration when examining the late-Ottoman period. However, these points are overlooked in many studies examining this period. Especially, in some studies that I have categorized as the first approach in methodology, decisions of statesmen or actors at different levels of bureaucracy are measured isolated from their historicity. Thus, the decisions taken by the actors are taken to a position independent of history or conditioned to a teleological absolute end.[75]

In light of what I have mentioned above, while I benefit from New Conceptual History in some aspects, my overall methodological approaches in this dissertation will be the Interpretive method (Using Concepts to Interpret History) and Discourse Analyses. According to Theda Skocpol, the most frequently used methods in historical studies are

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73 Thomas Hobbes, *Leviathan -or The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil-* (MacMillan Publishing Company, 1962); Jean-Jacques Rousseau, *The Social Contract*, (Penguin, 2006); John Locke, *Second Treatise of Government* (Indianapolis: Hackett Publishing Company, 1980)

74 Michael Mann, *The Sources of Social Power. Vol I: A History of Power from the Beginning to A.D. 1760* (Cambridge: Cambridge University Press, 1986); Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press, 1978)

75 Such as Sina Akşin, *Jön Türkler ve İttihat ve Terrakki* (Ankara: İmge Yay., 2017), 13-14; Aykut Kansu, *The Revolution of 1908 in Turkey*, (Leiden: Brill, 1997); Feroz Ahmad, *The Young Turks: The Committee of Union and Progress in Turkish Politics, 1908–1914* (Oxford: Clarendon Press, 1969)

divided into 3: i. Theory-Based (Applying a General Model to History); ii. Interpretive (Using Concepts to Interpret History), and iii. Comparative-Historical Analysis (Analyzing Causal Regularities in History).[76]

In studies where *Applying a General Model to History* method is executed, a single theory is used to explain all historical-social events. This method has some drawbacks in the study of social and historical events. First of all, before examining the historical events, the model is accepted as given. In this case, considering only the historical facts that conform the theory, it may cause to ignore the other facts that are against it. In other words, it may not be possible to explain historical events/facts in all aspects. Researches that are applying this method can be accused of fitting the historical presentations to a theory that has been accepted in advance.[77] So, the factual situations that are not fitting in with the theory are ignored. This often leads to a teleological reading, especially in historical theories. For example, those who examine the 19th-century Ottoman history with reference to the modernization paradigm accept the Eurocentric modernization processes as absolute and impose this on Ottoman history.[78] This method is incapable of explaining which positional attitudes that many different actors take for which interests.

The purpose of those using the Analyzing Causal Regularities in History method is to focus on developing a sufficient clarification for a well-defined result or pattern in history. Researchers applying the method assume that there will be causal regularities in history, albeit limited. They try to create a theoretical framework and pattern by comparing different samples/places with comparative historical studies. Instead of explaining historical facts with an accepted general model, they try to discover

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76 Theda Skocpol, 'Emerging Agendas and Recurrent Strategies in Historical Sociology', in *Vision and Method in Historical Sociology* (Cambridge University Press, 1995), 367-368

77 Ibid, 366

78 Such as Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]); Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961)

generalizable explanations of historical events by asking 'why'.[79] Charles Tilly's *The Vendee*, Barrington Moore's *Social Origins of Dictatorship and Democracy*, and Theda Skocpol's *States and Social Revolutions* can be considered as exemplars of this field. Especially the last two try to explain in a comparative way what kind of differences similar dynamics cause in different geographies/cultures.

On the other hand, studies using the 'Using Concepts to Interpret History' method examine examples around a concept and try to explain and interpret deeply such a situation. Firstly, around the question of 'what happened?', cautious consideration is paid to 'the culturally embedded intentions of individual or group actors in the given historical settings under investigation. "Second[ly], both the topic chosen for historical study and the variety of arguments developed about it should be culturally or politically 'significant' in the present; that is, significant to the audiences, always larger than specialized academic audiences, addressed by the published works of interpretive historical [scholars]".[80] Because they emphasize the particularity of every historical case, they do not resort to a general theoretical model. They sometimes use comparison in their work, but their purpose is not to find a general pattern but to reveal the particularities of historical events.

My method in this dissertation will be Using Concepts to Interpret History. I will examine how the debates around the concept of Meşrutiyet between 1860-1911 in the Ottoman Empire made legal and political secularism possible. However, while practicing this interpretive method, I will make use of another methodological tool: Critical Discourse Analysis. Because the debates within the context of the Meşrutiyet are not a pure struggle of ideas/knowledge, but a struggle of discourses associated with concrete socio-political interests.

The basic materials that will be analyzed are the texts that cover the Meşrutiyet debates. We have to pay attention to the difference between

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79 Theda Skocpol, 'Emerging Agendas and Recurrent Strategies in Historical Sociology', in *Vision and Method in Historical Sociology*, (Cambridge University Press, 1995), 374-376

80 Ibid, 368

the text and the discourse. So, what are the text and the discourse? This question has been asked for the discourse analysis since the very beginning. In the colloquial speech the 'text' is a 'written" one while the 'discourse' is the 'told'.[81] Basing on the definition of De Beaugrande&Dressler[82], I define the text as a 'communicational event' having certain criteria. In this respect, the pure 'text analysis' defines the form of analysis which is isolated and decontextualized and have a single focus on semantic meaning. In this form of analysis, which purely approaches to the text, the context and social practice/construction are ignored. On one hand, it pushes the text out of history and fixes the meaning at a single point, and on the other hand it excludes the human relationship and what is related to human. Thus, the meaning of the text is examined irrespective of the world of the actor who created the text; and both the relationship among actors and the relationship among the structural/cultural/economic institutions are ignored. While evaluating the texts about the Meşrutiyet, this relationship is overlooked. The historicity of the actors, the power relations between the actors, and their positions should be taken into account when evaluating the texts they wrote. Discourse analysis offers many possibilities to demonstrate this relationship.

Foucault, after drawing attention to the polysemy of the discourse concept, describes as "a regulated practice that accounts for a number of statements."[83] In Foucault, discourse is not independent of the notions of 'knowledge' and 'power'. The constructive nature of the knowledge aids those who generates/presents/interprets the knowledge to establish an authority over the 'other'. The discourse practices shape the other's intellectual state and practical attitudes. This process is analogous to the production of domination, ideology, and consent that Gramsci has

81 Stefan Titscher, Michael Meyer, Ruth Wodak and Eva Vetter, *Methods of Text and Discourse Analysis: In Search of Meaning* (London: Sage, 2000), 20

82 Robert-Alain de Beaugrande & Wolfgang Dressler, *Introduction To Text Linguistics* (London & New York: Longman, 1981)

83 Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Random House, 1972), 80

described through the notion of 'hegemony'.[84] But the point that separates Foucault from Gramsci is that he sees the power relations, or more correctly the power struggles, in the field of 'knowledge'. The presentation of this information in a certain form basically forms the discourse.

The term 'discourse' has different meanings depending on the context and disciplinary use. While it is defined as ‘the told’ in the colloquial usage, it is also defined as the told/written both in verbal and literary forms.[85] Van Dijk[86] regards discourse as ‘text in context’ as an evidence to be described empirically. Vass put forwards the following eight definitions of the discourse:

"1- (general): speech, conversation, discussion; 2 -discursive presentation of a train of thought by means of a series of statements; 3- series of statements or utterances, chain of statements; 4- form of a chain of statements/expressions; the manner in which they came about (archaeology): scientific, poetic, religious discourse; 5- rule-governed behavior that leads to a chain or similarly interrelated system of statements (=forms of knowledge) (medicine, psychology, etc.) (for instance in the work of Michel Foucault); 6- language as something practised; spoken language (e.g. in the work of Paul Ricoeur); 7- language as a totality, the linguistic universe; and 8- discussion and questioning of validity criteria with the aim of producing consensus among discourse participants (e.g. in the work of Jurgen Habermas)."[87]

Discourse analysis is not just an approach, it is a set of methods in which many different fields and studies are used interdisciplinary. In this context, discourse can be identified as a particular way of talking about

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84 Antonio Gramsci, *Selections from the Prison Notebooks* (London: Lawrence & Wishart, 1971)

85 Norman Fairclough, *Discourse and Social Change* (Cambridge: Polity Press, 1992)

86 van Dijk, Teun A. *Text and Context. Explorations in the Semantics and Pragmatics of Discourse* (London: Longman, 1977)

87 Vass, Elisa, *Diskursanalyse als interdisziplindres Forschungsgebiet* (Universitat Wien: Diplomarbeit, 1992), 9, quoted from Stefan Titscher, Michael Meyer, Ruth Wodak and Eva Vetter, *Methods of Text and Discourse Analysis: In Search of Meaning* (London: Sage, 2000), 25-26

and comprehending the world (or a perspective of the world). This happens through language. For the discourse analysis methods, 'Language' is not only a channel through which information about underlying mental states and conducts or facts about the world are conveyed. Contrarily, it is a 'machine' that causes, and as a result constructs, the social world. This also can be expanded to the construction of social identities and social relations. Thus, it means that alters in discourse are a means by which the social world is altered. Struggles at the discursive level participate in altering, as well as in reproducing the social reality.[88]

Jørgensen and Phillips say that all discourse analytical methods can concur to the following main points:

• Language is not a reflection of a pre-existing reality.

• Language is structured in patterns or discourses – there is not just one general system of meaning as in Saussurian structuralism but a series of systems or discourses, whereby meanings change from discourse to discourse.

• These discursive patterns are maintained and transformed in discursive practices.

• Maintaining and changing the patterns should therefore be investigated through analysis of the specific contexts in which language is in action.[89]

According to Jørgensen and Phillips, there are three basic approaches to discourse analysis: *Ernesto Laclau and Chantal Mouffe's discourse theory*, *critical discourse analysis*, and *discursive psychology*. They basically share the following claim: Our Speaking / Writing styles do not simply reflect our world, identities, and social relationships; that is, language is not a simple passive tool/machine. On the contrary, it actively creates and

88 Marianne Jørgensen and Louise Phillips, *Discourse Analysis as Theory and Method* (London: Sage Publications, 2002), 9

89 Ibid, 12

changes them.[90] For these approaches based on social constructivism, Burr mentions four common points:[91]

The knowledge of the external world is received indirectly, not directly, and the subjectivity of the subject shapes the knowledge. In other words, knowledge is received by the subject as a production of discourse and it constantly transforms.[92]

Knowledge is historical and cultural. Our view and knowledge of the world are 'products of historically situated interchanges among people'.[93]

Knowledge is produced as a result of social processes. In other words, we construct true and 'truth' through social interactions.

There is an inseparable relationship between knowledge and action.[94] In other words, different social actions striving to understand the world produce different truths.[95]

There are also important differences between the three approaches. First of all, they differ in the context of 'the point at which discourse takes center'. In other words, they think differently about whether or not 'discourse' completely constructs social reality. That is, do discourses only construct social reality, or at the same time, through mutual interaction, discourse transforms social reality, while social reality also affects discourse? It is possible to answer this question with a multi-perspectival study. Multi-perspectival work is not only permitted but confidently valued in most forms of discourse analysis. The view is that different

90 Ibid, 1-2

91 Vivien Burr, *An Introduction to Social Constructionism* (London: Sage Publications, 1995), 2-5

92 Ibid, 3; Kenneth J. Gergen, 'The social constructionist movement in modern social psychology', in *American Psychologist*, no: 40(3), (March, 1985), 266–267

93 Kenneth J. Gergen, 'The social constructionist movement in modern social psychology', in *American Psychologist*, no: 40(3), (March, 1985), 267

94 Vivien Burr, *An Introduction to Social Constructionism* (London: Sage Publications, 1995), 5

95 Marianne Jørgensen and Louise Phillips, Discourse Analysis as Theory and Method (London: Sage Publications, 2002), 6

perspectives provide different forms of knowledge about a phenomenon so that, together, they produce a wider understanding.[96]

The poststructuralist approach claims that discourse constructs the social world via transporting the meaning, and that, owing to the basic instability of language, meaning can never be consistently fixed. Ernesto Laclau and Chantal Mouffe's discourse theory follows this idea. According to them no discourse is a closed entity: it is, rather, permanently being transformed through contact with other discourses. Thus, a keyword of their theory is *discursive struggle*. 'Different discourses – each of them representing particular ways of talking about and understanding the social world – are engaged in a constant struggle with one other to achieve hegemony, that is, to fix the meanings of language in their own way'.[97]

Discursive psychology's main focus is psychological conditions but not internal psychological conditions. It is an approach to social psychology which has improved a kind of discourse analysis in order to investigate the ways in which people's identity, thoughts and feelings are formed and transformed through social interactions and to cast light on the role of these processes in social and cultural reproduction and transformation. While Laclau and Mouffe's discourse theory is disposed to view individuals only as subjects of discourse, discursive psychology assumes individuals both as artifacts of discourse and as manufacturers of discourse in specific contexts of interaction.[98]

Laclau and Mouffe's discourse theory mostly tracks Foucault, considering the individual as determined by structures, whereas critical discourse analysis and discursive psychology to a considerable extent are in line with Roland Barthes' catchphrase that people are both 'masters and slaves of language'.[99]

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96 Ibid, 4

97 Ibid, 6-7

98 Marianne Jørgensen and Louise Phillips, Discourse Analysis as Theory and Method (London: Sage Publications, 2002), 7

99 Roland Barthes, 'Inaugural lecture, Collège de France', in S. Sontag (ed.), *A Barthes Reader* (London: Jonathan Cape, 1982)

On the other hand, critical discourse analysis is the analysis of relationships between concrete language use and the wider social and cultural structures.[100] As Fairclough says critical discourse analysis conceptualizes languages as a form of social practice, and attempts to make human beings aware of the reciprocal influences of language and social structure of which they are normally unaware.[101] So, discourse analysis is not just an analysis of writing or speech, but an effort to understand the social practice through which the speech or writing emerges. As Wodak says, Critical Discourse Analysis (CDA) sees discourse - language in use in speech and writing- as a form of 'social practice'. Describing discourse as social practice implies a dialectical relationship between a particular discursive event and stimulation(s), institution(s), and social structure(s) which frame it: the discursive event is shaped by them, but it also shapes them. That is, discourse is socially constituted, as well as socially conditioned - it constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people. It is constitutive both in the sense that it helps sustain and reproduce the social status quo, and in the sense that it contributes to transforming it.[102]

To round up, it is possible to list the basic principles of critical discourse analysis as follows:

"CDA is concerned with social problems. It is not concerned with language or language use per se, but with the linguistic character of social and cultural processes and structures. Accordingly, CDA is essentially interdisciplinary.

• Power-relations have to do with discourse[103], and CDA studies both power in discourse and power over discourse.

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100 Stefan Titscher, Michael Meyer, Ruth Wodak and Eva Vetter, *Methods of Text and Discourse Analysis: In Search of Meaning* (London: Sage, 2000), 149

101 Norman Fairclough, *Language and Power* (London: Longman, 1989)

102 Ruth Wodak, *Disorders of Discourse* (London: Longman, 1996), 15

103 Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Random House, 1972)

• Society and culture are dialectically related to discourse: society and culture are shaped by discourse, and at the same time constitute discourse. Even if small, every single instance of language use reproduces or transforms society and culture, including power relations.
• Language use may be ideological. To determine this, it is necessary to analyse texts to investigate their interpretation, reception and social effects.
• Discourses are historical and can only be understood in relation to their context. Discourses are not only embedded in a particular culture, ideology or history, but are also connected intertextually to other discourses.
• Discourse analysis is interpretative and explanatory. Critical analysis implies a systematic methodology and a relationship between the text and its social conditions, ideologies and power-relations. Interpretations are always dynamic and open to new contexts and new information."[104]

As Van Dijk said, Discourse is critical to understand social power and obedience; because the process of obedience is reproduced with discourse.[105] It is possible to control and direct the mind of others (managing minds) through the world of knowledge established by 'Discourse'. This routing is done via texts and talks. While the 'norm', 'natural', that is 'accepted', are defined in texts and talks, at the same time non-norm and illegal are also defined. So, CDA also wants to focus on the discursive strategies that legitimate control, or otherwise naturalize the social order, and especially relations of inequality.[106] In other words, consent, consensus and legitimation are produced with discursive practices.

In this context, I will use the concept of *discourse* broadly from the Foucauldian perspective. While doing this, I will use Foucault's 'discursive strategy' and Ardıç's 'Meta-strategy and discursive technique' distinctions as a tool. According to Ardıç, "A 'meta-discursive strategy' is the

104 Ruth Wodak, *Disorders of Discourse* (London: Longman, 1996), 17-20

105 Teun A. van Dijk, 'Principles of Critical Discourse Analysis', *Discourse & Society*, vol. 4(2), (London: Sage, 1993), 254

106 Norman L. Fairclough, 'Critical and Descriptive Goals in Discourse Analysis', in Journal of Pragmatics v. 9 (1985)

most general one, which consists of different discursive strategies that in turn contain a number of 'discursive techniques' at the most specific level."[107] Meta-Strategy is the top-strategy that discursive strategies and the discursive techniques emerge from. Meta-strategy produces a thematic framework on which discourse is built. The discursive thematic framework that has been created increases the actuality of discursive strategies among actors and allows them to be used in long chronological processes.

I will use CDA in order to get more intuition into critical role of discourse in the (re)production of inequality and dominance. Unlike other approaches, the goals of the CDA are how power elites enact, sustain, eliminate, condone, or ignore social injustice and inequality.[108] The struggle between different knowledge is actually the struggle of different discourses; this means the struggle of different power actors.

In this study, by using the CDA and Interpretive methods, I will examine the power relations that the actors struggling in the context of Meşrutiyet had produced or want to establish. I will show how the discourse produced/used by the elites defined as 'Fırka-i Mümtaze' in this struggle changed the social reality of the political and the legal field. And I will explain how the discourse they used was transformed and secularized by social reality over time.

§ 1.4 Structure of Dissertation

In this dissertation, I will investigate law-politics relations through the concept of Meşrutiyet in the late 19th century and early 20th century (1860-1911) period for Ottoman Empire; examining this shed light on the formation of secular law and politics in the Ottoman Empire.

Chapter I is organized as an introduction. In there, I explained the literature review of the field and the methodological approaches of the

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107 Nurullah Ardıç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernization in the Early 20th Century* (London: Routledge, 2012), 35

108 Teun A. van Dijk, 'Principles of Critical Discourse Analysis', *Discourse & Society*, vol. 4(2), (London: Sage, 1993), 252

dissertation. I did not limit the literature review only to political history works of the late Ottoman Empire. Additionally, since the concept of Meşrutiyet is also related to the legal order, I have also evaluated the literature examining the relationship between Ottoman ulema, Fiqh, and Politics. Then I ended Chapter I with the presentation of the structure of the dissertation.

Chapter II entails the theoretical framework of the dissertation. It focuses on secularization, the formation of modern secular law-politics, and traditional/classical legitimacy of law-politics in Ottoman political thought. In this chapter, I first discuss what secularism is and how it is understood. Then I will touch on the concept of secularization. And then, I will explain the formation of the modern secular state and the concept of law-legitimacy in the modern state. Having done this, I will examine in detail the processes through which modern secular law-politics emerged. My purpose in doing this is to better understand the form that the Ottoman political-legal thought took in the 20th-century by the concept of Meşrutiyet. I will focus on the relationship of Sharia and Siyasah in Ottoman political thought. Primary resources that I will refer are canonic texts which legitimize Shariah-Kanun relations in Ottoman political thought in the context of law-politics relations, in other words, Fiqh-Kanun relations. These texts are the classical fiqh texts that Ottoman political thought emerged from. However, before that, I will first examine what law-legitimacy matter means in both traditional and modern/secular states.

In this section, I will also explain the legal-political concepts such as the Şura and Meşveret, which are frequently used to legitimize the constitutional order. I will explain how the concept of Şura/Meşveret was understood in the periods when the Constitutional regime was not yet on the agenda, concerning the classical fiqh and political literature. This discussion will allow revealing the difference between the old and new meanings of the concepts that were put forward in discursive practices, which I will explore in the next chapters.

In Chapter III, I will examine the first period when the Constitutional regime began to be discussed, the period from the 1860s to 1876. It is

known that those who defended the Constitutional regime in this period were generally people clustered around the New Ottomans. In Chapter III, I will do critical discourse analysis in the context of texts written by the New Ottomans, namely Namık Kemal, Ali Suavi, and others in the 1860s. This analysis will reveal which meta-strategies, which discursive strategies and techniques are used in general. There are two Meta-strategies: i- Deriving Legitimization from Islam; ii- Legitimization with Reference to the West. And also, eight discursive strategies. Many of these meta-strategy and discursive strategies, whose schema I will present in this chapter, will appear in the following periods.

In Chapter IV, I will examine the period from the official proclamation of 1st Meşrutiyet to 1908. Apart from the swift succession of sultan caliphs at the start of the period, one of the other noteworthy points in this period is that the debates on 'Meşrutiyet' became more complicated. Drawing on the primary sources, I will examine how the Meşrutiyet was received by different actors, that is, by the intellectuals, government officials, and the ulema between 1876-1908. These texts include memorials of debates among Pashas following the dethroning of Sultan Abdulaziz (like M. Celaleddin Pasha's *Mirat-ı Hakikat*), essays of Namık Kemal written (in *İttihad* magazine) before the declaration of Meşrutiyet at mid-1876, the booklet written at the same period titled *Hükümet-i Meşruta* (by Esat Efendi) which is the first 'text of Constitutional Law' according to Tunaya[109], and the arizas about meşrutiyet rule presented to Sultan Abdulhamid. These are *Muhiddin Efendi's ariza* (1896), *Yusuf Paşa's ariza* (1880), and *Ubeydullah Efendi's Layiha* (1898).

In Chapter V, I will focus on ideas revealed by ulema after the proclamation of 2nd Meşrutiyet and try to state how legislative-political epistemology moved from religious reference to a rational or secular one. This chapter deals with legal and political discussions realized between 1908 and 1911. While this period is historically too short, it represents an era of dramatic fracture in the Ottoman-Turkish political thought.

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109 Tarık Zafer Tunaya, 'Osmanlı Anayasacılık Hareketi ve "Hükümet-i Meşruta"', *Boğaziçi Üniversitesi Dergisi: Hümaniter Bilimler*, v. 6 (İstanbul: Boğaziçi Üniversitesi, 1978), 227-229

It a period when the struggle of hegemony was fully staged, and an unexceptional variety of texts emerged at the historical moment of the mentioned events. Many people from the ulema, state officials, and intellectuals have joined this debate, leading to the birth of quite rich literature. In this part, concerning the above, I will examine the legal and political position of the ulema in the Meşrutiyet's regime after 1908. And this examination will be done with reference to the works of many ulema on the Meşrutiyet, such as Mustafa Sabri Efendi, Elmalılı Hamdi Yazır, Zeynelabidin Efendi, Şeyhülislam Musa Kazım, Manastırlı İsmail Hakkı etc. I will compare this to the pre-Meşrutiyet situation and observe the secularization of legal-political discourse. Thus, I will try to show the secularization of the legal-political discourse that the dissertation defends. And I will explain how the discourse they used was transformed and secularized by social reality over time.

2

Theoretical Framework

This study examines how Ottoman law and politics were secularized around the concept and practice of Meşrutiyet between 1860-1911. This chapter is the theoretical framework of the dissertation. Before discussing the concept of Meşrutiyet, what the term secularization means will be clarified. In this context, I will first examine the term secularization in this chapter, which is positioned as a theoretical framework. I'll clarify the points such as what secularity means, what institutional structures it creates, its relation to modernization, its relation to traditional politics and law, etc. Then, in the context of the modern secular state, I will explain which historical process of secular law and politics, in particular, are the product of and what struggles have emerged as a result. The projection of the aforementioned law-creative will in the Ottoman political-legal thought, while different before the constitutional regime, (as I will show in the next 3 chapters), will be the same as the secular legal and political thought after 1908 when the constitutional rule consolidated its institutionalism.

In this chapter, as the last part of the theoretical framework, I will touch upon the basic concepts in traditional Ottoman political thought that are

frequently used to legitimize the Meşrutiyet/Constitutionalist regime. These concepts will not be exactly all concepts of Ottoman political thought; there will only be concepts and practices put forward concerning the Constitutionalist thought. By reminding what these concepts meant before the 19th century, it will be easier to understand which epistemological changes they went through after the declaration of constitutionalism. Thus, with the following chapters, I will explain in what context and how Ottoman politics and legal thought became secularized.

§ 2.1 Secularization Theory

The concept of secularization is derived from the Latin word saeculum, which means 'the temporal world' in Christian theology.[110] The concept of secularism is mostly met with the concept of laicism in continental Catholic countries such as France, Spain, or Austria. On the other hand, secularity is used predominantly in Protestant (or Anglo-Saxon) countries. This distinction is also reflected in everyday life and political language. For example, while the concept of *Secular* is more commonly used in English, *Laique* is preferred in French. The concept of secularization should not be perceived simply as becoming worldly but should be considered on the sociopolitical and cultural meanings implied by the concept. But above all, it should be remembered that the secularization of modern law and politics is primarily a historical experience of the Christian World.[111]

The nuance between the concepts of laicism and secularism is related to public political life. In laicism, in the political context, the political authority becomes independent from the institutional religious authority, and the decisiveness of religion on politics disappears. The decisive authority in the public sphere is political power itself. As institutional religious power, the church (and its clergy) have no right to speak in public

110 Harvey Cox, *The Secular City*, (New York: Macmillan, 1965), 18

111 David Martin, *A General Theory of Secularization* (Oxford: Blackwell, 1978), 2; Charles Taylor, *A Secular Age*, (Cambridge, MA: Harvard University Press, 2007), 594

decision-making bodies. Considered only in this political context, there is no nuance between the concept of laicism and the concept of secularism.

Since the Roman Catholic church was the sole source of legitimacy throughout the Middle Ages, the institution to which every actor seeking political legitimacy was the church. However, both the power struggles between different political actors and the emergence of protestant (Calvinist or Lutheran) religious movements and their struggle against the Catholic Church (and Catholics) have caused very bloody wars in European history. The crisis created by the reformation movement in the Catholic world in the 15th century also affected the determination of institutional religion (Catholicism) on politics. However, it was not easy to separate the church from politics as an institution, and politics and religion would have separated as a result of very bloody struggles. For example, in the 16th century, the French Wars of Religion or the 30-year wars in northern Europe (1618-1648) are among the first examples to be given. These examples are no exception, they are ordinary examples, especially in the context of the struggle between Protestants and Catholics. Even the Westphalia treaty (1648), which caused international politics to disguise as secular, can be read as the politics that wanted to put an end to these sectarian wars, expelling religion from the field of political legitimacy.

On the other hand, before the emergence of the Protestant movement, orthodoxy (or eastern Christianity), which is another Christian sect other than Catholicism, constructed the relationship between politics and religion in favor of politics. The acceptance of the political authority as the only authority that gives legitimacy to the religious authority prevented eastern Christianity (Byzantium) from entering the politics-religion conflict.

In Western Christianity, in the Catholic-Protestant struggle, there has been a constant tension between religious authority and political authority. While Protestantism became more widespread in places where political authority was stronger, the Catholic church was determinant in countries where religious authority was strong. In this context, the existence of Protestantism as local/national churches actually means that religious authority is subject to the domination of political authority. However, as

we mentioned above, the struggle between Catholicism and Protestantism has led to very bloody internal conflicts, although institutional religious experiences are different. The idea of building politics and law independently from the religion is also aimed at ending this civil war environment.

On the other hand, the strengthening of enlightenment philosophy and natural sciences has led to the emergence of a secular legitimacy domain (and secular knowledge) against the determination of religion. The enlightenment, which waged war against the power of the church, limited the power of the church to be far from public decision-making bodies while building the individual. For example, this is clearly expressed in Kant's definition of Enlightenment. But it is not just the intellectual fictions of Kant or a few enlightenment philosophers. Almost all the assumptions of social theory in the context of Modernization consider secularization inevitable in this context. Classical social theory, which defines the period when the church was institutionally determinant in all public activities, as the 'dark age' assumes an existential conflict between politics and religion.

Social theorists, such as Saint Simone[112], Auguste Comte[113], Emile Durkheim[114], Max Weber[115] who assumed that with modernization the religious would be replaced by the scientific one, believed that rationality would replace the religious sphere. Emile Durkheim expresses this very clearly: "If there is one truth that history has settled beyond all question, it is that religion embraces an ever-diminishing part of social life"[116] Social theorists who emphasized modernization assumed that with urbanization (modernization) the dominance of religion would disappear, and

112 Henri Saint-Simon, *Social Organization: The Science of Man and Other Writings* (New York: Harper, trans. Felix Markham, 1964), 81-116.

113 Auguste Comte, *Cours de philosophie positive. 4 vols.*, (Paris: Anthropos, 1969)

114 Emile Durkheim, *The Division of Labor in Society*, (New York: The Free Press, 1947)

115 Max Weber, *The Sociology of Religion*, (Boston, MA: Beacon, 1963)

116 Emile Durkheim, *The Division of Labor in Society*, (New York: The Free Press, 1947), 119

secular ideologies would replace it.[117] In fact, according to Finke and Stark, "From the start the social sciences have taken for granted the decline and eventual disappearance of religion. Perhaps no single social science thesis has come as close to universal acceptance as the belief that modernism dooms faith."[118]

As the natural sciences' capacity to explain the physical world increases and the nature of the relationship between the dissolve of things/beings, the magic of the world begins to deteriorate. Natural sciences, which defend that Newton discovered the laws inherent in nature, started to define the world as a closed-circuit machine, even though Newton's intention was not so. Natural phenomena no longer represent an existence created by god(s) or coordinated by magical/supernatural forces. According to Max Weber, the only absolute truth in the world that is 'disenchanted' is what rationality says. The belief in religion and clergy has been replaced with trust in modern science, and the sociocultural aspects of secularization have thus been completed. In this way, the dominance of religion is excluded in the public sphere, and all public practices are allowed to be carried out in a way that rationality predicts. Here we have to remind the enlightenment philosophy again. Because, Kant argued that modern man can construct 'Logic', 'Ethics', and 'Aesthetics' with rational mind; at the same time, he claimed that the 'Right', 'Good', and 'Beautiful' could be known by reason without needing any religious reference. So, Kant's famous trilogy offers a secular interpretation of existence in this context. Without the need for the guidance of supernatural

117 Ibid; Talcott Parsons, *The Social System* (New York: Free Press, 1951); Robert Bellah, *Beyond Belief: Essays on Religion in a Post-Traditional World* (New York: Harper & Row, 1970); Robert Bellah, *The Broken Covenant: American Civil Religion in Time of Trial* (New York: The Seabury Press, 1975); Mark Gauchet, *The Disenchantment of the World: A Political History of Religion* (Princeton, NJ: Princeton University Press, 1997); Peter Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor Books, 1967)

118 Roger Finke and Rodney Stark, "Religious Economies and Sacred Canopies: Religious Mobilization in American Cities, 1906" *American Sociological Review*, vol. 53, 1988, no. 1, 41–59.

forces, all worldly relationships and existences can be made meaningful through reason. Since metaphysical information cannot be provided, it remains only speculative and can only exist as a personal preference in the private domain of the individual.

On the other hand, there is a different approach to secularism. Contrary to the views above, which assume that religion will lose its importance for the individual and disappear in the struggle between secularism and the religion, it is claimed that religion is more preferred in the modern period. This approach suggests that the individual prefers religion much more in his/her private sphere and preferences.[119] The reason for this is the proliferation of Protestant churches, opposed to the view of Catholicism that universally demands obedience to one church. This is because the individual can continue to the church he wants by carrying out the rational-choice behavior of the *homo economicus* in the religious field, and can change this choice and join another church whenever he wants.[120] However, this participation should not mean that religion is decisive in the public sphere; because rational-choice will still remain in the private sphere. It is stated here that secularism is actually a medallion with two sides: Secularity increases in the sense that rationality is decisive in the public sphere, but religiosity also increases in terms of increasing religious preferences and religious participation in the private sphere.[121] This approach criticizes that the first approach, which assumes

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119 Ibid, pp. 41

120 Roger Finke and Laurece Iannaccone, "Supply-side Explanations for Religious Change" *The Annals of the American Association for Political and Social Science*, vol. 527, no. 1, 1993, 27–39; Roger Finke, "An Unsecular America" in S. Bruce (ed.), *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis* (Oxford: Clarendon Press, 1992); Rodney Stark and Laurence Iannaccone, "Rational Choice Propositions about Religious Movements" *Religion and the Social Order*, vol. 3A, 1993, 241–261; Rodney Stark, and Rodney Finke, *Acts of Faith: Explaining the Human Side of Religion* (Berkeley/Los Angeles, CA: University of California Press, 2000)

121 Talal Asad, "Muslims and European Identity: Can Europe Represent Islam?" in A. Pagden (ed.), *The Idea of Europe: From Antiquity to the European Union* (Cambridge: Cambridge University Press, 2002), 193

that religion will disappear completely with secularization, is not correct at all, by showing contemporary western societies as an example.[122]

It should also be said that the first approach of the secularization paradigm is actually very similar to the modernization paradigm.[123] This paradigm makes the historical experience of the West absolute and says that non-Western world must imitate the West for its modernization.[124] In this sense, as Nurullah Ardıç says, for many modernist historians in Ottoman historiography "Secularism is thus seen by many as a conflict between two distinct forces: modernism vs. tradition, progress vs. reaction, Enlightenment vs. obscurantism."[125]

In this study, I will use secularization as institutional structures, that is, politics and law, as a source of reference, preferring the rational mind rather than the religious. This is a process in which the nation, which is the creator and owner of the concept of secular *sovereignty*, is the rational actor. As the places where this rational reference is embodied, it is necessary to consider the function of national assemblies and constitutional regimes. In order to understand this better, we need to examine the processes through which modern secular politics and law have become secularized.

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122 David Martin, *The Religious and the Secular: Studies in Secularization* (London: Routledge and Kegan Paul, 1969), 28; Jose Casanova, *Public Religions in the Modern World* (Chicago, IL: University of Chicago Press, 1994); Charles Taylor, *A Secular Age*, Cambridge (MA: Harvard University Press, 2007)

123 Salman Sayyid, *Recalling the Caliphate: Decolonisation and World Order* (London: Husrt&Company, 2014), 31-45

124 Talal Asad, *Formations of the Secular* (California: Stanford University Press, 2003), 181-192

125 Nurullah Ardıç, *Islam and the Politics of Secularism The Caliphate and Middle Eastern Modernization in the Early 20th Century* (New York: Routledge, 2012), 15-16

§ 2.2 Formation of the Modern State and Constitutional Secular Administration

In this dissertation, transformation of law and politics will be examined, by focusing on the period of 19th and 20th century. This transformation had changed not only position of elites and their agencies, but at the same time also had influenced daily life of ordinary people and their everyday practices. In other words, this transformation made visibly differences both in the realm of individual and in the realm of social life.

'New condition' that created by this transformation is not only result of relationship of network that local actors perform but also global trends are contributor here. The most remarkable contribution is understanding of new state that arise from the new concept of Politics/Legitimacy/Power. Within this context, it is possible to see Hegel's 'god' walking in history –as he says 'The State is as God walking on Earth'- or the footsteps of GEIST in Western Europe in in this period.[126]

In second part of this chapter, we will examine the adventure of same process in the context of political philosophy and theory of law. Hypothetical bases of the modern state will be examined, from concept of modern sovereignty to concept of citizen/individual, from holy power/king state to secular law/state.

However, the issue of the legitimacy of the state/power will be brought to the attention by touching on the issue of the presentation of the rights in the state-citizen relation to the construction of the modern law - the modern secular law. Thus, the relationship between state-law and power-legitimacy in the modern period, which is aimed here, can be put forward. The reason why we do this is to show what it is in its own authentic history of this issue –constitutional system- that entered to the

126 Here it should be mentioned immediately: I do not appreciate the historical Hegelian sense with a historicist approach. The implication is that the 'state' in Western Europe in the 19th century would come into force all over the world. After entering into the force of this social organization and sovereignty in different geographies, its disruptions are the subject of another discussion.

Ottoman Empire in the framework of the Constitutional debates. Only then will it be possible to fully understand the arguments of the legitimacy of the Ottoman Empire. Because, with a radical transformation, the revolution in Kuhnian sense, paradigmatically change has become a matter.[127] As we have already mentioned above, it is essential to understand this change/transformation.

2.2.1 *From Feudalism to the Modern State: A Brief Introduction*

It is difficult to study the last millennium of Western Europe, which reveals the modern state in three parts in general. While Weber, in *Economy and Society*,[128] do this, there is also those who have taken a different approach and did not consider Standestaat as a specific category or period.[129] However, in any case, the environment that shaped and nurtured the political relationship of the feudal period was the Carolingian Empire.[130] As Poggi said feudal order was established in these lands had evolved standestaat between 12th and 14th centuries and then had evolved absolutism between 16th and 17th centuries. In the post-18th and 19th centuries, the absolutism was dissolved and state of law emerged with some changes that Poggi called 'Rise of civil society'.[131]

Not only the collapse of the Western Roman Empire was the collapse of a system with central government, but also the collapse of a government with local government networks. The disappearance of central and local government scheme brought with the deterioration of safe transportation, communication, and trade networks. For the same period, due to the fact that 'knowledge' is only in the monopoly of the clergy and in this context only the clergy knows Latin has triggered the absence of a

127 Thomas Kuhn, *The Structure of Scientific Revolutions* (University of Chicago Press, 2012)

128 Max Weber, *Economy and Society*, especially in chapter XIII, (1978), 1085.

129 Such as Perry Anderson, *Passages From Antiquity To Feudalism*, (Verso Press, 2013)

130 Marc Bloch, *Feodal Toplum*, Çev. M. Ali Kılıçbay (Ankara: Doğubatı, 2005), 59-76; Jacques le Goff, *Ortaçağ Batı Uygarlığı*, çev. Hanife Güven, uğur Güven (Ankara: Doğubatı 2017), 50-61

131 Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction*, (Stanford University Press, 1978), 17

common language in the wide geographies. In other words, it has become an intense disintegration and difference both politically and economically as well as culturally.

In the end of the 8th century, recovering efforts of the Carolingian Empire from the forgotten Roman regime, on the territory of its own, is to remove fragmentation mentioned above. In this context, it is clear that Frank King Karl, who was crowned by the pope on the Christmas day of c.e. 800 year and declared Roman emperor, moved towards this endeavor. Thus, a continuity bond between the Carolingians and Rome was established, as well as a sacred bond between the sacred church and the Carolingians. While, for Carolingians, this enabled the appointment of 'comites' and 'missi dominici', which had a vertical hierarchy and centered on the central locality, at the same time allowing them to benefit from the widespread organization of the church. But the Christmas gift did not consist of all; another sociopolitical apparatus to be used by Carolingians was *gefolschaft*. These intimate and personal ties that were very common in the 9th and 10th centuries will form an indispensable institutional dimension of Carolingians; it will continue after the demise of the empire and it will affect the administration system of the West for a few more years.[132]

2.2.2 *Being a Source of Legitimacy for Interpersonal Law: Feudalism and Knighthood*

Given the period during which the Carolingians ruled, neither the continuity with Roman nor the congregation with the church is sufficient to provide a strong and sustainable opportunity. This personal bond, which is basically a masculine and military one, strengthens mutual commitment by emphasizing the honor of warrior in itself. *Gefolschaft* has gained a new dimension through acquisition the form of the institutional relationship of Rome to its Germanic or barbarian root, and will be described as a knight from now on. With *Commendantio*, the legacy of Rome, someone who is free will take refuge someone else who is free like himself.

132 Ibid, 19

Relationship between The Lord -protector, the vassal- and the protected, is established loyalty through land to be given a *Beneficium* - that is, a land privilege that will serve to meet its material needs, in its special word *fief*-. The relationship between those who were subject to the *Commendantio* was intended to defend the lord's vassal, and the vassal was supposed to assist the lord and find advice for him. In addition, both will feed each other with love and respect. So, they were accepted friends with each other.[133]

However, in this narrative we have studied only two actors, lords and vassals up to now. Other people apart from these, villagers, serfs, slaves, and so on have not a position in the personal relationships given above. The dissolution of the vertical hierarchy between the Lord and the vassal and the acceptance of the relationship between two equal horizontals did not create any equality in the lives of these 'silent' people above. On the contrary, if the vassal is equal with the lord, it means that there is a new lord over the ordinary people who live in the given fief. In other words, arrangements that equalized the relationship between the parties to the *commendantio* strengthened inversely the vertical hierarchy on the great majority of the population. Idiom of Seigneur (*Seigneurie*) is to indicate the nature of this inequality very nice. The meaning of this expression includes, the right to manage, control and operate the ones that are dependent on the vassal.

The narrative we give briefly above represents a dimension of the matter. In other words, this is the dimension that takes place in the political elites' aspect. But the other dimension that is so important is that feudalism gives birth a new coterie. Feudalism tied a class that came from

133 Marc Bloch, *Feodal Toplum*, Çev. M. Ali Kılıçbay (Ankara: Doğubatı, 2005), 164-167; Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction*, (Stanford University Press, 1978), 20-21; Guiseppe Albertoni, 'Feodalizm', in (ed.), Umberto Eco, *Ortaçağ -Kateraller, Şövalyeler, Şehirler-*, trans. Leyla Tonguç Basmacı, (İstanbul: Alfa Yay., 2017), 181

far away and was nomadic to the land[134], has enabled the processing of land and the management and conservation of its population.[135] Of course, here, the rediscovery of the Roman law and the elaboration of the church law - even in many places by establishing independent courts[136] - and the creation of a debate on the issues of justice were also effective in there. Thus, the limits of the right and fair management, and the mismanagement of the cruel and bad, have begun to grow. We need to add that the right to legitimate resistance, which is a political right/practice to which we will hear a lot during and after the Enlightenment, results from here. But it is not only the feudal age, it is also necessary to wait for the ständestaat to fall behind.

2.2.3 *Ständestaat: Original Organization of State*

The feudal chaos created by the vassal-lord dispute witnessed the emergence of a different political structure from the feudal organization in the 13th century. Far from the fiefs, the field of contentions of the Lord-vassal relationship, an actor different from the peasant/serf was born. What makes fiefs appeal for vassal was that they were rural areas that produced agricultural products. Accordingly, the first ones to deal with the vassal were the peasants who lived in aforementioned lands and spent their lives with agricultural production. However, the new space, in other words the 'towns', which has been concentrated on outside the fief, has added a new political power elite to the relation of lord-vassal settled in the feudal order. As it will be seen below in the middle age in the West, the cities/towns have specific mode of production, merchants, intense population and also it constituted autonomous structures politically at the same time.[137]

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134 Francesco Sorti, 'Şövalyelik Kurumu', in (ed.), Umberto Eco, *Ortaçağ -Kateraller, Şövalyeler, Şehirler-*, trans. Leyla Tonguç Basmacı, (İstanbul: Alfa Yay., 2017), 185-188

135 Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction*, (Stanford University Press, 1978), 32-33

136 Jacques le Goff, *Ortaçağ Batı Uygarlığı*, çev. Hanife Güven, uğur Güven (Ankara: Doğubatı 2017), 98-99

137 Max Weber, *Economy and Society*, (1978), 1212-1220

In order to understand collective togetherness or consciousness in the cities, it is enough to look at the words 'communis' and the terms derived from it in the regions where Latin-based tongues are spoken; because the aforementioned meanings express the intellectual background of the new situation. What is meant by these terms is that they are aware of the fact that they have a common set of interests that individually exceed the strength of one person, and therefore require the unification of other material and spiritual resources with free will.[138]

However, to have newly rising terms revoking the modern state, like 'rights' and 'citizen', had constituted the difference between the Standestaat and the feudality.

But what has changed the position of political actors in the long run is not just the increase in legality/jurisdiction. The other more influential reason is that, as soon as the Standestaat administration system achieved the legitimate place, it supported the rulers' efforts of the feudal lords to restrict their political autonomy and this will lead to the construction of an absolutist state, the last state before the modern state.

2.2.4 *Absolutism: The End of Standestaat and the Feudalism*

For city groups, not to undermine production and trade activities has always been the priority. Without any doubt, what made commercial activities sustainable was the existence of an active political/legal structure saving and applying the rights that those groups whom legal entities are recognized by the law gained through their entity. The rulers, by eliminating the feudal power elites, have received the support of city groups to the extent that they provide this. This support has even gone so far that after the feudal lords were entrusted with the right to fight among themselves, they strongly supported the expansion of the ruling powers of the ruler in order to prevent the threats to the sovereignty of the sovereign, on behalf of that the rulers are the only actors to support the production

138 Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction*, (Stanford University Press, 1978), 38-39

and trade within the country and between countries as well as to protect the interests of these groups.[139]

However, the King/ruler has transcended the traditional meaning that he possesses, and a different political/legal personality has been created as a public person.[140] Nevertheless, in the context of continuity, the king continued to use various advisors when he intervened in the whole administration, as he did before.

The relation of the king to the new counselors is not the same as that of the different parts Standestaat that build the administration of it (King-Standing Council-estates and feudal lords-). The consulting authorities carried out after the Standestaat order does not rely on any acquired right, in fact. Although the consultants are coming from the social groups similar to those of the former ones', ultimately, the position that is granted by a high will, after all is said and done, the above-mentioned position represents the state servants who obey the king without any condition and are as powerful and free as he grants and who do not enable any opposition to him. These powers, which the king received in the 17th century, opened the way for the 18th century to make the state more complicated and partly more rational. Especially with the development of 'public law', the establishment and maintenance of the administrative system has arrived at the point where it partly could even surpass the king.[141]

Previously, it's said that the new city cliques had emerged as a third point of the political power beside the king and the feudal lords. However, Standee councils that weakened in the political adventure evolving into the absolutism, will now be a womb to another actor: Civil Society.[142]

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139 Immanuel Wallerstein, *The Modern World-System IV: Centrist Liberalism Triumphant, 1789–1914* (Berkeley: University of California Press, 2011), 132-150

140 Here we need to remember especially the French kings.

141 H. Jacoby, *The Bureaucratization of the World* (Berkeley, 1974), chp-2

142 Using the term "civil society" as a whole here, but that does not mean that this social group is unified. As Habermas pointed out, there is everyone who can do rational argumentation in the new structure. Particularly see J. Habermas, *The Structural Transformation of the Public Sphere*, (MIT Press, 1989)

The civil society is a social aspect that contributes to the formation of absolutism in the face of the bourgeoisie's political motives. Or vice versa: factors that influence political decision mechanisms via the upper identity of 'public' as the civil society, by radicalizing the bourgeoisie to the absolutism have caused it to create a new political front. The fact that their social identities are welcomed by the concept of "public" rather than bourgeois, more neutral, and more open to participation is due to their involvement in thought, literature and art and of course, we need to add to them the humanist pre-condition at the beginning. The criticisms they have brought to established traditions, as well as emphasis on rationality and secularism were also other distinguishing characteristics. These groups continued their activities away from the intervention of the political community, in private spaces and in authentic/original forms. These private spaces, the scientific associations, from the literary halls and the cafes to the publishing houses, the newspapers and the magazines, the doors were open to every interest, or anyone else that was prone to critical and rational thinking.[143]

The reveal of the public opinion by the civil society through rational criticism means a potential to create an actor free from the passivity defined by the state. The tradition issue, which civil society has been discussing, is undergoing a structural deconstruction along with *rationality*, *freedom,* and *secularity* on the other side. Thus and so, through the civil society, the bourgeoisie is challenging the issue of 'privilege' which has been going on since the feudal period, and is trying to establish publicity as equals that can influence the state.

The fact that the publicity is a source of legitimacy implies that it has become a mass of voters at the same time, showing its progression from the subjecthood. For this, the state does not need to undergo wholesale deconstruction. Because the institutionalization of the state as a single center is the only way to make the public effectiveness (routing and control) possible over the state. On the other hand, to centralize the rational criticism of the civil society and to build a sustainable administration it's

143 Jurgen Habermas, *The Structural Transformation of the Public Sphere*, (MIT Press, 1989)

needed that some individuals, as representatives from the civil society, to negotiate and discuss the administration. The places of this debate will be in the assemblies that historically will be established. The parliaments, in the wake of the debates, will make the appearance of the public's will by making the laws which are abstract and valid all over the country, including the constitutions, applicable in the whole country and by making them in black and white. However, transitions from the *ancine regimes* to the constitutional governance were not self-evident, but they were carried out by the social/communal revolutions. The ideological sources of these revolutions constitute the epistemic sources of the transition from the absolute state to the rule of law. The transition from the constitutional monarchy to the parliamentary system has a political character in one hand, while it is legal on the other hand. The new form/definition of the law and the legality has been coordinated with the politics simultaneously..

§ 2.3 Basic Concepts of Ottoman Political Thought Regarding the Meşrutiyet

In the following pages, I will discuss the concepts of the traditional political thought of Ottomans such as Siyaset, Siyaset-i Şer'iyye, Kanun, Kanun-u Kadim, Şura, Meşveret and so on. Particularly, two key factors have led to the selection of these concepts. First, the above concepts had been the main source of legitimacy in law-making for many years (or even centuries). The second reason is that they allow us to analyze the redistribution of power among different actors in the debates over constitutionalism/Meşrutiyet. As will be seen in the next chapters, the main arguments of those who advocate the legitimacy of the constitutional regime are based on the aforementioned concepts/set of concepts. Thus, how these concepts were understood in the pre-modern period is important. Because, based on its pre-constitutional meanings, it is possible to see what kind of juristic-political change/transformation took place in Ottoman political thought through the discussions of constitutionalism/Meşrutiyet.

The concept of Siyaset-i Şer'iyye refers to the practice of the sultan to make legislative acts on matters where Sharia does not rule directly. This practice takes place in the Ottoman political thought mostly in the literature of politics as the concepts of Kanun or Kanun-u Kadim. On the basis of this, that is, based on the Ottoman's using 'Kanun/Kanun-u Kadim' terms, it is claimed by some historians[144] that this was a direct legislation (*tashri'*) independent of Sharia. The Kanunnames, which are claimed to represent a secular legislative field alongside Sharia, however, were not entirely independent of Sharia (see below).

During the period when the concept of constitutional monarchy and its regime was first presented to the public, these concepts became critical. Because the constitutional regime was defended by asserting that a practice permitted by the Sharia was only placed within the legal framework, not a situation against the Sharia that had been done. Before discussing which discursive strategies and techniques this defense involves, this chapter will examine the set of concepts and practices that this defense uses as the basis of self-legitimacy. My specific focus will be on What these concepts mean in the classical or pre-modern period, which practical basis they form and, how they create a field of legitimacy. Thus, it will be possible to follow difference of the constitutional regime and the epistemic transformation/metamorphosis of its that followed.

The relationship of the areas identified as *Shariah* and *Politics* might be confusing for non-experts. This confusion is understandable in one sense. As anachronism is highly employed, these concepts and the

144 Such as Fuat Köprülü, *İslam ve Türk Hukuk Tarihi Araştırmaları ve Vakıf Müessesesi* (İstanbul: Ötüken, 1983); Ömer Lütfü Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğu'nda Zirai Ekonominin Hukuki ve Mali Esasları: Kanunlar* (tıpkıbasım), (İstanbul: İ.Ü. İktisat Fak. , 2001); Ömer Lütfü Barkan, "Türkiye'de Sultanların Teşriî Sıfat ve Selâhiyetleri ve Kanunnâmeler," *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* v.12, (İstanbul, 1946), 713-33; Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973); Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000); Richard C. Repp, "Qānūn and Sharīca in the Ottoman context," in *Islamic Law: Social and Historical Contexts,* ed. Aziz Al-Azmeh, (London: Routledge, 1988), 124-145; Haim Gerber, "Sharia, Kanun and Custom in the Ottoman Law: The Court Records of 17th Century Bursa," *International Journal of Turkish Studies*, Spring-Summer 2, (1981), 131-47

concomitant practices are tried to be understood with the tools of 'politics' or 'political theory/philosophy' which are the products of modernism. Therefore, while the modern political philosophy, built with a reference to an integral and enclosed mechanical order, is at one side, a political thought which does not have a mechanical and enclosed system but built on dynamic and specific concepts is on the other. In the particular context of Turkey, it is because of a crucial reason that the negative connotation of everything belonging to the *ancient regime* as required by the 'history creation' process of transformation from empire to nation-state. This confusion can be easily understood considering the epistemological efforts for spreading the view that Shariah is equal to dogma and the Ottoman period was rife with oppression, persecution, autocracy, and 'reactionism'. But in any case, it is possible to evaluate the legal notions of Shariah and the Politics on a common ground. In other words, it is possible to address both politics and Shariah through many points such as adoption and construction of law as well as law's becoming of the source of legitimacy. However, this should always be kept in mind: While the construction of politics through direct power does not always allow a pure/independent field of sharia and law, social legitimacy or consent is also not free from the accepted law/Sharia form. As a consequence, it is possible to see varying scenes in different historicity. However, in this thesis, I will refer to the conceptional and theoretical framework of Weber's *Ideal Type* and overcome the historical variances to find some 'patterns' allowing a consistent account.

In this context, 'the Sharia' had been accepted as the defining principle of the Islamic administration paradigm in the pre-modern era.[145] But this paradigmatic status of Sharia does not mean that it guarantees an ideal life. The relationship between the central domain of the paradigm and its supporting/complementary sub-domains represents not only the central support relationship, but also an area where exceptions, irregularities, and violations are embodied. The paradigms that are reflecting

145 Wael B. Hallaq, , *The Impossible State –Islam, Politics and Modernity's Moral Predicament*, (New York: Columbia University Press, 2013), 2-6

the sphere of power relations, include discourses and strategies that contradict each other and compete. Therefore, as Foucault argues, hegemonic discourses also include the dissenting discourses inseparably: Discourses are "tactical elements or blocks operating in a field of force relations; there can exist differently and even contradictory discourses within the same strategy; they can, on the contrary, circulate without changing their form from one strategy to another, opposing strategy."[146] For this reason, in sharia-led societies, just like others, sometimes there were peasants under heavy taxes, criminals, bankruptcy debtors, unhappy, and abused people. Muslim communities from North Africa and Muslim Spain to Java and Semerkand also were affected by misery as same as all other societies. Maybe there were even their corrupt sociopolitical organizations, their own rebels, common thieves, bandits, and sometimes corrupt judges. But moral law (or law as an instrument of morality) consistently and indisputably defined paradigmatic discourses and practices. Then it has regulated daily life through the constant recreation of a particular order.[147]

In this context, the occasional exploitation of the system in Muslim societies -whether it is by administrators/rulers or by jurists- is often recorded in the sources/texts. Because these abuses have been read and recorded as exceeding the norm and violation of the norm. However, as Hallaq shows, the aforementioned recording system was not specific to the whole legal-political process but was often specific to the anomalous situations. For tens of thousands of cases have been recorded/passed with silence about the jurists and rulers who operate the norm, simply by saying them as 'virtuous' and 'righteous'; however, when violations and abuses were observed, this anomaly were written and recorded in the routine records.[148]

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146 Michel Foucault, *The History of Sexuality.* Vol. 1: *An Introduction*. Trans. Robert Hurley (London: Pantheon, 1978), 101-102

147 Wael B. Hallaq, , *The Impossible State –Islam, Politics and Modernity's Moral Predicament*, (New York: Columbia University Press, 2013), 6

148 Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005), 190

In the light of what has been explained above, what we mean when we say traditional/classical Ottoman political/legal thought is not a monolithic and pure theory and practice, but rather a set of different practices of a relatively singular theoretical ground. Thus, only in this way it is possible to make a complete and consistent reading. Otherwise, approaching the matter with a single and uniform theoretical and practical assumption would be nothing but only reproducing the modernist approach described in the previous chapters. In other words, it would be taking the easy way out to evaluate a non-modern society's replacement of its paradigm with the modern Western paradigm by tracing the West -of course by following it very far behind- to be modernized. It is clear that such an approach, which ignores the relations between different actors of the society and does not pay attention to antagonisms between them, is not sufficient enough to understand historical events. In this context, firstly, the agreed general framework of law and justice in classical Ottoman political thought and the different practices and interpretations of this framework (such as, Siyaset, Siyaset-i Şer'iyye etc.) will be given below. Thus, we will have the opportunity to evaluate how the classical Ottoman political thought and practice, accepted as the *ideal type*, took shape in the following period. In other words, we will have the opportunity to compare the possibility and practice of modernization within the conceptual and practical framework, giving legitimacy to the politics in the classical period, with the Western modernization.

So far, we have explained what secularism is and what kind of a process secularization goes through. Then we touched on how the modern secular state emerged. We have examined the idea of national sovereignty, which is the main source of legitimacy of the modern state, and the idea of the national assembly, where this sovereignty is manifested. Up to now, we have touched on the relationship between secularism and the decisiveness of national assemblies in law-making processes. Now, the concept of Politics in Ottoman political thought in pre-modern era will be examined first. In this context, we will examine how the concepts in Ottoman law-politics practice, namely Siyaset, Siyaset-i Şer'iyye, Şura, Meşveret, were understood in the pre-modern period. Then, in relation

to this, we will examine the institutions and actors in the law-making process and the relationship between these actors, by focusing on the relationship between Sharia and Kanun (in other words, Fiqh and Custom). At the end of the chapter, we will explain how a legitimate constitutional regime can be within the boundaries of the concepts of Siyaset, Siyaset-i Şer'iyye, Şura, and Meşveret in Ottoman law-politics practice; that's to say, we will discuss what kind of constitutional regime/Meşrutiyet is possible in terms of Sharia and Kanun.

2.3.1 *The Concept of Politics (Siyaset) in Pre-Modern Ottoman Politics*

The author of *Ahlak-ı Muhsinî*, Hüseyin Vaiz-i Kâşifî, who was highly popular among Ottoman Scholars and whose book was translated many times and became the guide of Ottoman political practice[149], summarizes the unbreakable relationship between Politics and Shariah (or law) in traditional era as follows: *No right exists without a Shariah rule. Shariah and religion cannot be practiced without political enforcement. The Politics (Siyaset) of the rulers reinforces the Shariah and the Shariah upholds the state*[150]. In fact, the claim that there should be no right without Shariah (law) implies Kelsen's argument in the context of modern law that "Every emphasis and demand for justice is inherent in a metaphysical background and is far from universality. Yet, this relativity can only be overcome through the definition of law as a right.". The absence of a legal order that endows and identifies the 'Right' leads to a chaos in political order and does not allow its sustainability. However, if we identify justice following this assumption, the fairness of the political system arises by the facts whether the right is endowed to its owner and consistence exist in the enforcement practice of the legal order.

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149 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 31-32

150 'Şeriat kaidesi olmadan hiçbir hak, merkezinde karar bulamaz. Siyaset zabıtası olmadan da şeriat ve din işi intizama eremez. Meliklerin siyaseti şeriatı takviye, şer'i ahkam ise mülkü terviç eder.' Hüseyin Vâiz-i Kaşifî, *Ahlak-ı Muhsinî*, Süleymaniye Kütüphanesi, Ayasofya, nr. 2830, vr. 119a, quoted in Köksal, 2016.

As in the traditional Islamic political thought, the concept of 'justice' plays a key role in the classical Ottoman political thought. It can even be claimed that the notion of justice is one of the legacies of Ottoman political thought inherited by the Republic of Turkey. Even if the practical application is highly doubtful, the inalienable motto commonly visible in the Republic's judicial palaces that 'Justice is the basis of the State' is a good evidence of that. In this context, we can safely argue that the legitimacy of government in general, and sultan, in particular, is measured by the 'justice' criterion. It would not be possible to evaluate justice by excluding the rights imposed by it.

In the Ottoman political thought, which basically makes the social organization with the *millet system*, the rights are envisaged in the way the *millet system* designates. In this *system*, the *millet-i Islam* and non-Muslims (which includes the elements of *the Greek millet, the Armenian millet, the Jewish millet*) basically represent two different categories of the people: those from different social categories have peculiar rights and legal codes that regulate the relationship among them. However, what builds and maintains the hegemonic structure is the legal system of *the Islam millet*, that is the Shariah (including the örf, customary law). Therefore, the concept of 'justice', which was often used in the legitimacy inquiry against the Ottoman government system or the sultan who is at the top of the government is a concept defined and demarcated by the Shariah.

The notion of justice is not only one of the main references to political legitimacy, but also the name of the traditional circle that connects the entire political organization covering the ruler, *İlmiye (Ulema), Seyfiye (Military), Kalemiye (Civil Officer),* and *Tebaa (Subjects)*. But before discussing justice further, we need to touch upon the basic concepts in the theoretical structure of Ottoman political thought and the basic conditions that determine legitimacy. When the actors and concepts are well understood, it would be possible to comprehend the justice notion in general terms, which is a summary of the political social practice. In this context, we should unveil concepts like *Shariah, Caliphate, Şura (Council)/Meşveret (Consultancy), İstibdat* etc. within the Ottoman political thought, which are referred in all the texts on legitimacy. If this definition

is not made, one should not well understand the debates on legitimacy process, struggles on political power, and the results of construction of hegemony that was demolished and re-constructed. On the other hand, it would be easier to decide the points of intellectual continuity as well as the points of ruptures or differences.

2.3.1.1 Concepts of Ottoman Political Thought: Siyaset, Siyaset-i Şer'iyye, Şura (Council)/Meşveret (Consultancy) and Rey

The Caliphs are involved in the practical field of politics by applying *Şura/Meşveret*. How do the problems are solved in any cases where there is no clear *nass* (the absolute provision brought by Allah and the Prophet)? What is the behavior of the Caliph and *Şura* in this context? The answers of these and similar questions are evaluated and resolved within the framework of the Siyaset-i Şer'iyye in the classical/traditional Ottoman political thought.

SULTAN'S OPPORTUNITY TO PRACTICE POLITICS: SIYASET, SIYASET-I ŞER'IYYE

The issue of whether or not to make law outside of the Shari'ah, whether to make laws that vary according to time and place/geography is in essence directly related to the concept of *Siyaset-i Şer'iyye*. Because the concept of *Siyaset-i Şer'iyye* refers to making regulations and having practices which shall be in favor of the society ruled by the public authority, and not violate the general provisions of the religion.[151] In other words, *Siyaset-i Şer'iyye* refers to making laws not violating the Shariah as well as to ruling and governing in compliance with Shariah.[152] In addition, it can also be said that the ruling is carried out through Shariah.[153]

The concept of '*Siyaset*' (*politics*) was often used as an abbreviation of the concept of *Siyaset-i Şer'iyye* in many classical *fiqh* books as it is related

151 H. Yunus Apaydın, 'Siyâset-i Şer'iyye', *DİA*, vol. 37 (İstanbul: TDV, 2009), 299

152 Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973)

153 Erwin Rosenthal, *Political Thought in Medievel Islam* (Cambridge: Cambridge University Press, 1958), 52

to Shariah.[154] However, when the term politics is used outside the concept of *Siyaset-i Şer'iyye*, it expresses its own independent meaning, referring to the entire set of applications carried out by statesmen in public administration based on their personal experiences, desires and ideas, regardless of whether they conform to Shariah or not. In the literature on political thought formed by traditional/classical *ulama (scholars)*, this definition of absolute politics was evaluated in two categories: i. Fair Politics, ii. Tyrant Politics.

However, the concept of politics had not been limited to this dual categorization but was also used to express the issue of enforcement of penalties over time. In this context, the definition of politics by Babertî, one of the most recent Hanafi scholars who influenced the Ottoman thought, is interesting: '*Siyaset* is the aggravation of the punishment of a criminal offense to eradicate the disorder'.[155] In fact, it is known that this definition in the Ottoman political thought, that is, the execution emphasis on *Siyaset-i Şer'iyye*, was firstly made by Ibn Teymiyye.[156] Following Ibn Teymiyye, the meaning of *Siyaset-i Şer'iyye* shifted from conformity of all elements of the state administration with the Shariah to the prevention of the existing/possible chaos, and the aggravation of the punishments; and to achieve such aim, eventually, the concept was dominantly meant death penalty, which is the most aggravated punishment. We can say that this meaning remained in Ottoman political thought until the 19th century. For example, it can be seen in a military policy manifestation prepared by the order of the Egyptian governor M. Ali Pasha in the 19th century.[157]

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154 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 33

155 Dede Cöngi, *Şer'i Siyaset -es-Siyasetü'ş-Şer'iyye-* trans. Asım Cüneyd Köksal, (İstanbul: İlke Yay., 2019), 73-74

156 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 33

157 'Bir nevi töhmetle giriftar-ı siyaset olan efradın haklarında icrası lazım gelen çille ve ceza bir vechile haddi tecavüz etmemek…' Nureddin Osman, *Siyasetname-i Bahriye*, p.4, İ. Ü. Merkez Kütüphanesi, No: 17692

However, despite the aforementioned contraction, in the broadest sense the *Siyaset-i Şer'iyye* refers to the entire provisions and applications of Constitution, administrative law, international law, international private law, procedural and financial law which appear after the classification of modern law related to state administration; or sections of the *fiqh* that are related to the politics.[158] For this reason, the discipline of *fiqh* and politics have a dynamic relationship with each other. According to Apaydın, who even considered this relationship as obligatory, 'When the *Shariah* law which is systemized highly meticulously by the *fiqh* scholars in line with the will of the rule (*Shariah*) maker embodied in the *nas*, weakened and became superfluous and partly ineffective against the deterioration of the general morality and the rise of the abuses, the head of state was authorized to make additional rules outside the areas of Shariah (especially in the field of public law such as administrative, criminal and tax laws) for the survival and order of the world and interest (*maslahat*) of the ummah. This is related to the fact that the Qur'an and the Sunnah do not include detailed regulations in the area of public law but refer to the general principles, as well as related to the flexibility and dynamism of this area. The understanding underlying this kind of additional regulatory authority, known as Siyaset-i Şer'iyye, is the essence of not contradicting with the Shariah, and this is the point where it gains dynamism.[159]

As can be seen in the relationship between Kanuns, Kanunnames and *Shariah*, the debate on the relation and hierarchy between Siyaset and *fiqh/Shariah* is still continuing. However, it is not an exaggeration to say that this relationship was established mainly with the 'complementariness' concern. Because, since it is not made on the basis of 'particular proofs of Sharia', care has been taken to keep the regulations within the scope of politics separate from the fields that directly regulated by the *Shariah*. This preference for separation, emanating from the

158 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 33

159 H. Yunus Apaydın, 'Siyâset-i Şer'iyye', *DİA*, vol. 37 (İstanbul: TDV, 2009), 300

meticulousness of the *fiqh* scholars, does not justify the qualification of politics as a secular/laic area separate from religion and as an alternative area of law.

Because the regulations made through politics should be theoretically not contradictory with the principles of Shariah, it must not directly contradict with the existing special arrangements. Shariah is a moral basis for politics rather than simply being legal, it also determines its moral boundaries. It is more correct to characterize the regulations made through politics as 'rational' rather than 'secular' in terms of both the point of departure and the method within the framework of the higher ideals of *Shariah*. In fact, Tursun Bey's statement[160] that clearly emphasizes the rational foundations of politics and customary law basing on this ground. This activity, which is grounded on reason by expressing as *tavr-ı akıl*, is indeed a jurisprudence (*ijtihad*). However, this is not the Shariah jurisprudence as dealt by the fiqh procedure, but the customary law jurisprudence as put into terminology by Karâfî. It is inevitable that the senior ruler (head of state, provincial governor, governor/minister of justice/*Mezalim*) reer to this jurisprudence to determine what is harmful and what is harmless to people. In this jurisprudence, it is also important to know what the nature of the subject under jurisprudence necessitates. The politics should not be seen as an alternative to the Shariah, but perhaps as a discipline supporting and supplementing the *fiqh*, considering its function to fill the gaps that *fiqh* cannot cover with its peculiar methods and technics, and to solve the problems that *fiqh* cannot solve. The dominance of customary law in the field of politics and application of rational methods other than peculiar methods of *fiqh* breeds a new publication type as *el-ahkâmü's-sultâniyye* (*Sultanic Judgements*) out of the scope of *fiqh* books that include results achieved by widely accepted methods for determining the application of *nas*. For sure, it does not

160 "Yani bu tedbir ol mertebe olmazsa belki mücerret tavr-ı akl üzere nizâm-ı âlem-i zâhir için, meselâ tavr-ı Cengiz Han gibi olursa sebebine izâfe ederler, siyâset-i sultânî ve yasağ-ı pâdişâhî derler ki örfümüzce (urefamızca), ona örf derler" *Tarih-i Ebü'l-Feth*, (İstanbul: İstanbul Fetih Cemiyet, 1977), 12

mean that there is an interpenetration among *el-ahkamü's sultaniye* and branches of *fiqh* literature.[161]

Within this context, it can be said that *Siyaset-i Şer'iyye* takes its legitimacy from its relationship with the *fiqh*, and also shapes some *fiqh* processes. Concerning getting the legitimacy from *Shariah/fiqh*, the *Siyaset-i Şer'iyye* is basically produced with reference to the following conceptual and practical processes of the *fiqh*: *Rey (Judgement), örf (custom), İstihsan (juristic preference) and Mesalih-i Mürsele*.[162]

The *rey* refers to the interpreter scholar's personal view on the subject after a comprehensive assessment, which is not clearly dealt by Shariah. The *rey*, defined as jurisprudence in the legal literature, is not binding for all. In this sense, it only binds the followers of the interpreter offering that particular informed opinion. Whereas, on the condition that it is not against a clear and precise provision of Shariah, the political/legal judgement and the rule of head of the state in a similar field with his personal view after a comprehensive assessment is called '*siyaset*'. That is, the *rey* in the practical process of the *fiqh* is called *Siyaset-i Şer'iyye* when applied in the political and public matters by the head of the state. Contrary to the jurisprudence which is the opinion of the *mujtahid* (*the person who develops jurisprudence*)[163], the *siyaset*, which is the *rey* of the head of state (the ruler) is politically binding and requires punishment if violated.

On the other hand, the *İstihsan*, as a form of jurisprudence, is a theoretical approach used by the Hanafi scholars, which is predominantly the sect of Ottoman *ulama* and reaya (*public*). Considering that the legal structure of the Ottoman empire was built by the Hanafi scholars, it is easy to understand the connection between the concept of *istihsan* and Ottoman political thought. İstihsan appears as non-application of some

161 H. Yunus Apaydın, 'Siyâset-i Şer'iyye', *DİA*, vol. 37 (İstanbul: TDV, 2009), 301

162 Dede Cöngi, *Şer'i Siyaset -es-Siyasetü'ş-Şer'iyye-* trans. Asım Cüneyd Köksal, (İstanbul: İlke Yay., 2019), 51-53

163 Wael B. Hallaq, *Shaia -Theory, Practice, Transformations-* (New York: Cambridge University Press, 2009), 61-63; Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005), 146-153

particular rules of the law based on the fundamental principles like Justice and Truth, and also refers going beyond the established norm in politics for certain situations. Here the fundamental differences between the jurisprudence (ictihad) and *rey* emerges: only the *fiqh* scholar is able to utilize *istihsan* while the 'politics' can be made exclusively by the head of state, the ruler. However, as some researchers have noted in this matter[164], when the political cases made through *istihsan* are examined, the underlying reason of all is *maslahat* (i.e. *public interest*).

The main pillar of the *Siyaset-i Şer'iyye* is the right of the rulers to judge in the areas with their discretion where the Shariah does not have a judgement, and for the public interest, i.e. *maslahat*. In this context, *maslahat* or *ıstıslah* (also known as mesalih-i mürsele in the general context of *fiqh*) is broadly extended to include both the issues of *rey* and *istihsan*, while it is the *fiqh*'s argumentation method in which the *maslahat,* not clearly allowed or prohibited by the *nas,* is taken as the basis. The political practices of the head of the state and, in general, the public authority, which concern almost all of the public, were legitimized by the principle of *ıstıslah* in the classical Ottoman and Islamic political thought (see Karafî, Ibn Qayyim, Dede Köngi, etc.). In fact, this legitimization continues even in *Mecelle* in the mid-19th century: 'Raiyye tasarrufu maslahata menuttur.' (Mecelle, Article 58). In other words, the power to rule on the *teba* (*people*) is legitimate and binding as long as it is in accordance with the *maslahat*.[165]

Concerning the ruler's discretionary power on matters upon which no *nas* exists, the examples from the era of Rashidun Caliphate given by the basic literature are the same as those given for the *ıstıslah* which is a *fiqh* method. Definition of such application and rules as *Siyaset-i Şer'iyye* is related to their conformity with the Shariah and complementarity of the Shariah rules.[166]

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164 Asım Cüneyd Köksal, *Fıkıh Usulünün Mahiyeti ve Gayesi* (İstanbul: İSAM, 2009), 37

165 Armando Salvatore, 'Eccentric Modernity? An Islamic Perspective On The Civilizing Process And The Public Sphere', *European Journal of Social Theory*, 14(1), (London: Sage, 2011), 63

166 Şükrü Özen, 'Istıslah', in *DİA*, vol. XXIII (Ankara: TDV, 2001), 387

As we will discuss particularly in the context of the customary law of the Ottoman legal system, the problematics are tried to be understood by ignoring the '*ıstıslah'* in debates regarding developing new provisions incongruent with Shariah. For example, the much-debated provisions of *siyaseten katl* (execution on political grounds), expropriation or galley oar sentence was generated within the legal system by referring to the *ıstıslah* or public (majority) interest. Cüveyni, one of the most important figures in the classical Islamic political thought, explains the *siyaseten katl* or expropriation to the Imam Malik's theory of *maslahat*. What is more, Al-Ghazali, another important Islamic political scholar, and also a student of Cüveyni, quotes him saying: 'very trustworthy people have recited the statements of Imam Malik: I would allow the killing of one third of the ummah for the survival of two thirds [i.e. the majority].[167] After quoting so, Al-Ghazali states that this is possible for the sake of the *maslahat*. On the other hand, Karafi, a major figure in the Ottoman political thought (and heavily influenced by the Dede Köngi in that respect) approaches hesitantly to such fatwah of Imam Malik and claims that Imam Malik stipulates the capability of jurisprudence/*ijtihad* to behave in accordance with the *maslahat*. The ruler who can make such political decision must be a *mujtahid*. In this context, the Hanbeli scholar Mer'i bin Yusuf el-Kermi living far from the Ottoman geography, mentions the legitimacy and good sides of the Ottoman dynasty by drawing attention to the fact that it acts in line with the view of the ulama who allows the *siyaseten katl* and that one third of the *ummah* can be sacrificed for the survival of the two thirds.[168] Whether decided by a ruler or approved by a *mujtahid* scholar, the details of the public law which are covered by the Shariah, are filled by means of 'siyaset' through theory of *ıstıslah* in the final analysis. The legitimate coverage of the field is based on the

167 İmamü'l-Haremeyn Ebu'l-Meali Cüveynî, *El-Burhan fi Usuli'l-Fıkh*, nşr. Abdulazim ed-Dîb, (Doha: Camiatü'l-Qatar: 1978), 1133 Cited by Asım Cüneyd Köksal, *Fıkıh ve Siyaset – Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016)

168 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 45

principle that the judgement on the matters upon which exists no *nass*, should not contradict the general and clear/absolute rules of Shariah.

Siyaset-i Şer'iyye, due to its relationship with the Shariah, is a legislative (*tefri'*) act as it creates legal norm, while it can be defined as an executive act[169], and it also appear as the aggravation of punishment in some instances. Legislation is important in Ottoman / Islamic legal thought as a matter of defining criminal sanctions. The main decisive point about which actions will require sanction / punishment and which do not is the clear statement of 'nass'. If the points that 'nass' clearly defines and does not want to be exceeded are exceeded, these actions are defined as the ones that require sanctions. However, is it possible to produce norms on issues which nass does not make a declaration about? It is clear that this is possible in light of the above. But, it is necessary to pay attention to the way this possibility is defined and limited. Because, the nuance between the concepts of *tashri''* and *tafri'*, which is sometimes used interchangeably by mistake, is vital. In this context, a very important difference should be expressed here: *Tafri'* as a legislative activity is ontologically different from the concept of *Tashri'* which means to make absolute judgment independently. Legislative activity of the Nass, which is the basic determinant of the Shariah, namely the Qur'an and Sahih Sunnah (especially the words of the Prophet), is called tashri' when it prohibits anything. Therefore, in the fiqh texts, the concept of *Shari'* actually refers to the independent authority (Allah and The Prophet), who reveals and creates the Shariah. For this reason, the absolute provisions directly taken from the Qur'an and Sahih Sunnah are accepted as the rule of Shari' and express the 'shariah' directly. Nobody other than this authority can go to Shari' position by carrying out tashri' activity. The fact that any authority defines itself as Shari' means to replace itself with absolute authority; it is evident that this means to be a partner to the authority of God in the Islamic tradition. On the other hand, the legislative activities carried out by the authorities other than Shari', namely the caliphs/rulers/ulema, based on the interpretation or the concept of maslaha is possible. This

169 Ibid, 49

legislative activity is called tafri'. And all the legislative activities of the rulers/ulama in the history of Islam fall within the scope of tafri' and express this practice.

As stated above, the legislative (*tafri'*) acts of the public authority in the fields not regulated by *nass/sacred obligation* (in other words, *Shariah*) and left for the jurisprudence and the *maslaha of ummah*, without giving reference to a specific or particular Shariah rule and without contradicting with the basic principles of the Shariah, and in line with the basic philosophy and general aims of the Islamic law, can be evaluated within the context of *Siyaset-i Şer'iyye*. In the aforementioned legislative activity (tafri'), new value judgments and higher principles that may cause paradigmatic breaks cannot be established, and the legislation can be in the form of formal rules that complement the structure constituting the main body of the law. Thus, it can be said that the legislations, which are allowed in Muslim states -one should also add the Ottoman practice- throughout history and which are not contrary to *nas*, are the product of *Siyaset-i Şer'iyye*.[170]

On the other hand, the relations of the Ottoman ruling elites, which are divided into the groups *of ehl-i şer' (people of Shariah,* that is the Ulama*)* and *ehl-i örf (people of custom,* that is the Umera*),* can also be interpreted as another appearance of *Siyaset-i Şer'iyye* qua the executive activity. Because while the *ehl-i şer'* is composed of the *qadı*, the executer of the Islamic law, and other Islamic scholars, the *ehl-i örf* is include rulers representing the executive power of state. Considering that *qadıs (judges)* are implementers of the judgements they made, and they could also make judgement in the field (common law) which allowed to be covered by the ruler indicates that *Siyaset-i Şer'iyye* does not assume an area free from *Shariah*; and also, that it is practically an executive activity.

The above-mentioned issue of aggravation of a sentence is also included in the area of the *Siyaset-i Şer'iyye*. Normally, there are conditions

170 Adnan Koşum, 'İslam Hukukunda 'Siyaset-i Şer'iyye' Kavramı', *İslami Araştırmalar Dergisi*, i.3, (İstanbul, 2003), 352-353

for the certitude of the crimes necessitating *hadd* and *qisas*[171] sentence. If all of these conditions are met, it is mandatory to apply the *hadd/qisas*. However, if some of the aforementioned conditions are not present, *qisas/hadd* cannot be applied and the category of the punishment will be changed from *hadd* to *ta'zir*[172]. That is, it is transferred to a field in which the ruler can decide the punishment with its *rey*. The Islamic schools of law differ at this point. The Hanafi school, who shaped the political-legal Ottoman thought, holds that if the crimes punished by *ta'zir* are repeated, even the death sentence can be adjudged. For example, if somebody's

171 In the Qur'an or Sahih Hadiths, that is, in holy texts, the expressions of enforcement, which are explicitly given, are called *hadd*. The judicial facts that only the Qur'an and Sahih Hadiths express with clear terms are the tashri' which means 'to make absolute judgment' in Fiqh as we mentioned above. Ignoring and exceeding these facts requires sanction. These sanctions and the execution of these sanctions are called *hadd*. On the other hand, Qisas is the compensation of the attacks against the "body", which occurs mostly among individuals, on the basis of reciprocity. For example, the punishment for deliberately killing an unjustly innocent person is *qisas*, namely the killing of the murderer. If the act of killing is not precise -that is to say, 'unjustly killing an innocent deliberately'-, the sanction imposed on the killer will not be hadd, it will be the *ta'zir*.

172 In a situation where normally 'Hadd' should be applied as a sanction, there are the conditions required for the crime to be included in the hadd category. In the absence of some of these conditions, the sanction to be applied changes. The name given to this new application, separate from Hadd, is *Ta'zir*. In these cases, which do not meet the necessary conditions of 'Hadd', the sanction of the sanction shall be regulated by the administrator, the caliph / sultan or Emir. In other words, the administrator decides what the mentioned sanction will be. While Shari'ah has clearly determined the judgment of Shari' (i.e., Allah and His Messenger), in terms of 'hadd' and qisas, it left the 'ta'zir' provision to administrator's own decision, his initiative / autonomy. Therefore, if the ruling of an executive other than 'hadd' does not contradict the other provisions of the sharia, that provision is legitimate and accepted within the sharia department. In addition, the ruler / manager who issued the above-mentioned judgment is not considered to have exceeded or disregarded sharia by making new legal sanctions with this action. On the contrary, at the points where sharia does not judge, it obeys the sharia and imposes new judgments. Expands the secondary area of sharia and makes tafri'. In other words, as the provisions that were brought out in the context of the ta'zir are considered to be bound by the shariah law, they (administrators), are assumed in limits of the sharia.

crime of murder is repeated a few times which cannot be punished by *qisas* for some reason, he is then punished by *qisas*. This judgement is famous as '*siyaseten katl*' in the Ottoman political thought. It is even possible to say that this thought had been valid until the last period of the Ottoman Empire. In fact, Ibn Abidin, one of the most famous last-period (19th century) Ottoman *fiqh* scholars, claims that the concepts of '*siyaset*' and '*ta'zir*" are synonyms as they were used interchangeably. It should even be said that some of the Ottoman scholars who lived in the Republican period -such as Ömer Nasuhi Bilmen, who had also been the chief of religious affairs- continued this distinction. According to Bilmen, s*iyaset* refers to *ta'zir* in the narrow sense, and the orders and prohibitions of the ruler, i.e. imposed laws, in the broader sense. What distinguishes the *siyaset* in broad sense from the narrow *ta'zir* is whether the punishment is adjudged due to crime. According to Bilmen, *ta'zir* corresponds to a crime while *siyaset* can be executed without a crime, e.g. exiling a person who did not commit a crime for public interest.[173]

However, it should be emphasized that the last example is not merely an Ottoman practice. Yet there were multiple cases, i.e. practices, in the early years of Islam during the second caliphate Omar. the fact that this practice had been occasionally applied since caliphate Omar weakens the claim by İnalcık etc. that Shariah was present only nominally in the Ottoman Empire and was often ignored or left aside. On the other hand, it also indicates an omittance of the excessively analytic approach to the classical/traditional Ottoman political/legal thought. The lack of a hermeneutic reading, i.e. the weakness in the Hermeneutic context, is another reason of failing to understand the classical/traditional Ottoman political-legal order. Because the difficulty in putting all of the practices in life into the analytic framework often results in ignoring or not understanding the unexpected/unintended nuances.

Sultanic practice within the framework of the siyaset-i şer'iye were also often legitimized with reference to the notion of *şura* or *meşveret*

173 Ömer Nasuhi Bilmen, *Hukuk-ı İslamiyye ve Istılahat-ı Fıkhiyye Kamusu*, vol. II, (İstanbul: Ravza Yay., 2018), 330-331; Muhterem Midilli, *Klasik Osmanlı Ceza Hukukunda Şeriat-Kanun Ayrımı* (İstanbul: Klasik Yay., 2019)

(consultation). We will now look at what it means, how it was practiced before the constitutional period; and we will examine how political actions and law-making are legitimized within the concept of the Şura.

ŞURA (CONSULTATION)

The concept of the Şura and its synonym Meşveret do not have a central place in the traditional Islamic political thought as critical and determinative as the concept of 'justice'. The classical/traditional approach, which defines justice as the basic building block of the state, emphasizes that what is important is not how a ruler comes to power, but what is put into practice. The concept of 'istibdad', which will be mentioned in different parts of this study, that is, policy making without consultation/consultation mechanism, is not directly related to justice in this context. Rather, it is possible to talk about an indirect link. Because of the aforementioned indirect relationship, the debates during and after the second period of Meşrutiyet/Constitutional Monarchy will show that transformations of the traditional forms of politics are not directly but indirectly. The discussions of the Şura and the Meşveret were both in the first period of the Constitutional Monarchy and the 2nd. It needs to be emphasized also because it is the most commonly used concept in the constitutional debates. So, what is the Şura and Meşveret?

An important concept and practice in Islamic political thought, *Şura* or its synonym *meşveret* (in the main *Tacu'l-Arus, sh-w-r* article), means consultation, exchange of views or guidance. Apart from political thought, *Şura* is also applied in the field of *fiqh* theory referring to consultation with experts on the problems within the jurisdiction of the head of state. Many concepts such as *meşveret, muşavere, istişare* and *teşavur*, derived from the same etymological root are used in same sense as *Şura*. According to Fakhreddin al-Râzî, whose works were among the basic resources of the Ottoman madrasahs, the term '*Şura*' is used for 'a matter upon which consensus is achieved', and also for those who express their views (*ehlu'ş Şura*).[174] The concept of *Şura/meşveret*, the meaning of

174 Fahreddin er-Râzî, *Mefâtîhu'l-ğayb*, vol. IX, (Beyrut, 1990), 54

which also covers 'expression of view', is used in the Quran which is the main source of Islamic epistemological paradigm- and, of course, unique authority to make absolute judgement. The term *Şura* and words derived from it are present in the Surat al-Şura (verse 38), Surat Al-Bakara (verse 233), and Surat Al-i Imran (verse 159). In all usages, there is reference to decision-making processes in social issues. Regarding whether this reference was absolute or not, there was a consensus (*ijma*) until the modern period that the reference was not absolute, but it was started to be claimed in the modern late 19th century that the meaning is absolute.

The imperative form of the concept in the Surat Al-i Imran ('Shavir!') asks the Prophet to consult with the believers (*mu'mins*) in decision making on social issues. The meaning of such consultation was much debated during the pre-modern era, and, rather than making a definitive conclusion about its nature, a consensus was achieved on a few interpretations. However, the common point in all these interpretations is not that *istişare (consultation)* is *fardh* (obligatory on religious grounds) for the Prophet or not its non-presence, but is the social solidarity created by the *istişare* as well as the self-confidence emanated from being part of the decision-making process. Considering that the Prophet is a model with his practices to the ummah, *istişare* sets a model to the society.

In addition, it is also aimed to prevent the disputes, that may arise after the decision-making, by including the objections, which are raised to the decisions given by societal participation, to the consensus. In other words, the message given by the Prophet regarding the consultation is the importance attached to the views of the believers (*mu'mins*). However, one should admit that this does not directly lead to a democratic process, because each *istişare* practice of the Prophet is different. In some cases, all the *sahabah* (companions) in the mosque were included in the *istişare*, while in others only a narrow group of competent people (for warfare tactics etc.) were included. In this context, such concepts as *Şura, mesveret, istişare and tesavür* are frequently mentioned in the *hadiths* of the Prophet (pbuh) with their basic meanings.[175] Although it is possible

175 Arent Jan Wensinck, "sh-w-r" article in *el-Muʿcem*, (Leiden, 1987)

to describe the Şura as 'a necessary method of making the right decision in every matter at the personal and social level'[176], we should note that it is not in the category of *fardh*, or absolute obligation.

Apart from the political thought, the concept of *Şura* is widely used in the *fiqh* discipline in the context of legal practices like jurisprudence, *ijtihad*. Although *Şura* is used with meaning of consultation predominantly in terms of public law in fiqh, its clear conceptual definition as a term was not made in the *fiqh*. It can be said that this is mostly related to tracing of the historical application in the public law.[177] The definitions in some of the sources related to the Qur'anic commentary (*tafsir*) of the *ahkam* (*judgement*) verses is primarily for explaining the vocabulary meaning of the phrase; and the matters like type, implication, scope and method of *the Şura*, and if the decisions taken are binding were not discussed (see, for example, Râgıb al-İsfahânî, *al-Müfredât*, "sh-w-r" article).[178]

The claim that *Şura* is obligatory was a marginal view (a rare example is the view of Cessas, a Hanafi scholar, that Şura is *'obligatory'*) in the classical period and not accepted. Because, the Şura practices made since the Prophet period have varied in terms of both the method and place of *the Şura*, as well as the title and amount of the people participated in it. The issue becomes more complex when we add the practices following the Şura – like how a decision was taken in the *the Şura*; always according to the majority view or the discretion is finally left to the ruler? - Because, unlike the modern perception of it, the majority view of those attending *the Şura* was not the final decision both during the era of the Prophet as well as in the following period: the ruler made the decision according to his *rey* by taking into consideration the views voiced during the *Şura* discussions. The view that the head of state should make *istişare* in

176 İbn Ebû Şeybe, *el-Musannef,* vol. V, nşr. Kemâl Yûsuf el-Hût, (Beyrut: 1989), 221, 298; İsmâil b. Muhammed el-Aclûnî, *Keşfü'l-Hafâ*, vol. II, nşr. Ahmed el-Kalâş, (Beyrut: Mektebetü't-türâsi'l-İslâmî, 1934), 242

177 Talip Türcan, 'Şûra', *DİA* vol. 39, (İstanbul: Türkiye Diyanet Vakfı Yay., 2010), 235

178 Râgıb al-İsfahânî, "sh-w-r" article, in *al-Müfredât*; Fahreddin er-Râzî, *Mefâtîhu'l-ğayb*, vol. IX, (Beyrut, 1990), 54-56

application of his authority in the fields of legislation (*tafri'*), execution and judiciary is not *wajib* (obligatory) but *mandub* (recommended) is attributed to *Shafi* and some other judicial scholars. Besides, they agree that somebody who is not accepted to be a *mujtahid* can be chosen as the head of state, he must get an assistance of a mujtahid concerning the issues in the field of *Shariah*[179]. It is understood that the place of *Şura* in the ruling of the state is not well clarified in the classical *fiqh* theory.[180]

While it is debated and varies in the classical fiqh as to what could be a subject of *Şura*, there is a consensus as to what could not be a subject of Şura: the issues on which a clear judgement of Quran and Sunnah exists. Although this absolute *ijma* is the most critical point of the debates on *Şura* in the modern era, it is overlooked[181] Because the new situations arising with modernity and the classical/traditional situations vary considerably. A serious paradox emerges as these new situations are not welcome but condemned by the classical epistemology both politically (liberal democracy), economically (capitalism) and culturally (secularity), and even this condemnation is made with references to classical judgements on which consensus exists. While an absoluteness is attributed to the *Şura* by referring to the tradition of classical judgement tradition and even by radicalizing this classical judgement on the one hand, the situation (the absolute judgement that issues on which a clear judgement exists cannot be a subject of *Şura*) which is accepted as absolute by the classical judgment theory is ignored on the other.

The qualifications of the persons to be consulted regarding the individual affairs vary depending on the type of affair being consulted. If the *istişare* is done to learn the religious judgement on a matter, the person consulted must be a religious scholar and a just (pious and reliable) person. If the consultation is about worldly affairs, the consulted person

179 Muhammed b. Abdülkerîm eş-Şehristânî, *el-Milel ve'n-Nihal* , vol. I, nşr. M. Seyyid Kîlânî, (Kahire, 1961), 160

180 Talip Türcan, 'Şûra', *DİA* vol. 39, (İstanbul: Türkiye Diyanet Vakfı Yay., 2010), 233

181 Ovamir Anjum, *Politics, Law and Community in Islamic Thought: Ibn Taymiyyan Moment*, (New York: Cambridge University Press ,2012), 38

should have a sound reasoning, should be experienced, pious, and should not have a specific purpose or interest in the consulted matter.[182]

There is no specific regulation in the Quran and Sunnah about who will participate in the *Şura* related to the state affairs. The Prophet did not follow a single method in this regard. For some matters he consulted with all the Sahabah who were present in the *masjid*, and for some others he consulted with some leading *sahabah,* primarily Abu Bakr and Omar. In the classical doctrine, there is no clear definition of the participants of the *Şura,* but it can be said that there is a close relationship between this matter and the term *ehlü'l-hal ve'l-akd* which is used as to *who can elect the head of state*. The scopes of this term as well as the closely related term of *ulu'l-emr* are controversial. In this matter, who elects the head of state should also be dealt. In the pre-modern era, Şura was not only a practice for ruling but it had also covered the election method of those who was going rule. The notions of *ehlü'l-hal ve'l-akd* and *ulu'l-emr* are fundamental determinants of the *Şura* for electing the said ruler.

According to İbn Cemâa, the majority of classical ulema (*cumhur*- majority of ulema-) has embraced the view that the *ulu'l emr* consists of rulers and scholars, which is also in conformity with the historical consensus that emerged in the use of power between the two groups. The leaders of the society (*chiefs, notables, landed proprietors, elites*) were added to the class of rulers and scholars, thereby the members of the *ehlü'l-hall ve'l-akd* is decided.[183]

In the classical definition of *Şura*, it is accepted by consensus and in practice that a woman cannot become a member of *Şura* or become a ruler.

On the other hand, the boundaries of the concept of *Şura*, which is literally defined above, have not been precisely defined by the *fiqh*, the producer of the Islamic epistemological paradigm. This is mainly because

182 Ebu'l-Hasen Mâverdî, *Edebü'd-Dünyâ ve'Dîn*, (Beyrut, 1987), 290-291; Ebû Abdullah Muhammed b. Ahmed el-Kurtubî, *el-Câmi' li-Ahkâmi'l-Kur'ân*, vol. IV, nşr. Ebû İshak İbrâhim, (Kahire, 1966), 251

183 Bedreddin İbn Cemâa, *Tahrîrü'l-Ahkâm fî Tedbîri Ehli'l-İslâm,* nşr. Fuâd Abdülmün'im Ahmed, (Doha, 1988), 52-53.

of the concept of *justice* that is a dominant definitive notion in the classical Islamic political thought. However, this does not mean that *fiqh* ignores *Şura* and left the ruling elite unrestricted.

In order to unveil its meaning in the classical/traditional Islamic political thought and to understand practices in the classical age, it is necessary to look at how the verses of the *Şura* were understood in the premodern period and how they were interpreted and recommended by the ulama to put into practice. Because, as we will see in the following chapters, referring to the aforementioned verses, it is claimed that the Constitutionalist/Meşrutiyet regime was a legitimate, even an appointed form of government.

2.3.1.2 The Meaning of Şura in the Pre-Modern Period in Ottoman Society

All the aforementioned theoretical issues were related to how Şura and Meşveret were generally understood in the Islamic tradition in the premodern era. However, in relation to this dissertation one more point should be mentioned: the status and understanding of the mentioned verses in the Ottoman sociopolitical and cultural aura. If this is not done, the political outcome of the discursive conflicts within the concept of constitutionalism/Meşrutiyet will not be understood sufficiently. In this context, we need to examine the reception of the aforementioned verses (Şura verses) in Ottoman society. The main point for such an examination is the popular sermons in which ordinary people have access to Islamic knowledge. In other words, it is the Qur'an's exegesis (Tefsir) that are referenced/preferred used by imams in sermons. In addition to, the exegesis's which were used as the main text in Ottoman madrasas, which are the center of epistemic activity and we have sufficient information about their curricula, are also important. If we examine that how the verses related to the Şura had been understood/explained in both the main works used in the sermons and the basic texts taught in the madrasas, the epistemic difference between the meaning of the Şura concept that it had before the constitutional period and its meaning after the constitutional period can be understood.

During the Ottoman period, the works for understanding/explaining the Qur'an began at an early time. The inter-line translation of the Qur'an, which is in Sivas Ethnography Museum and presumed to have been written in the fourteenth or fifteenth century, is considered the first of them.[184] Molla Fenari's Arabic work *Aynu'l-ayan fî tefsiri Fatihati'l-Kur'an*, Şihabeddin Sivasî's *Uyunu't-Tefasir*, Molla Gürani's *Gayetu'lemani fî tefsiri sebu'l-mesanî*, İbn Kemal's (Kemal Paşazade) *Tefsiru'l-Kur'an*, Ebussuud Efendi's *İrşadu akli's-selim* and İsmail Hakkı Bursevî's work titled *Ruhu'l-Beyan* are counted from the main exegesis works of the Ottoman period.

As for the interpretation of the verses related to the Şura and Meşveret, the meaning attributed to the Şura and Meşveret in almost all of the exegeses are not beyond the theoretical framework that had been mentioned. For example, Semarkandi sees the Müşavere as an important issue that Muslims should do among themselves in worldly affairs. According to him, the decisions taken by consultation will reveal the common mind as well as strengthen the unity among Muslims. However, he emphasizes that Meşveret/consultation will be only among Muslims/believers. (v. I, pp. 432). On the other hand, *Tıbyan Tefsiri* states that in the historical and literal contexts of the verses that deal with Şura only refers to consultation with the companions of the Prophet Muhammad. It is argued that the subject to be consulted was predominantly decision of the war. It also does not comment on a direct political consultation, nor speak of a consultation that everyone can participate in (v. I, pp. 277).

Beyzâvî Tefsiri, which is one of the sources the ulama frequently used and taught in the madrasas, contains a similar interpretation as in *Tibyân Tefsiri* (v. I, pp. 457). Ebussuud, in the context of related verses in his commentary, states that consultation must be only among Muslims. He also makes a statement, pointing out that consultation should only be conducted on 'matters to be consulted'. In addition, comments that generalizes consultation such as 'non-Muslims should be included in the consultation', 'consultation is compulsory' and so on, are not voiced (v. III,

184 Ahmet Topaloğlu, 'Muhammed bin Hamza, *XV. Yüzyıl Başlarında Yapılmış "Satır-Arası" Kur'an Tercümesi*, vol. 1-2 (Istanbul: Kültür Bakanlığı Yayınları, 1976-1978),

pp.1070). Hüseyin Vâiz-i Kâşifî, mentioned above, interpreted that the consultation was about war; and asserts that this verse should be interpreted as such due to the historical, syntactic, and semantic context (pp. 99). Also, İsmail Hakkı Bursevî supports the opinion of Hüseyin Vâiz-i Kâşifî (v. III, pp. 361). Nesefi, who is an important commentator, argues that the consultation will be about the issues that there is not revelation about them and that this consultation will only be made by the Companions of Prophet Muhammed. On the other hand, Ali Es-Semerkandî, another commentator, when talked about the importance of consultation in his exegesis *Bahru'l-Ulum*, he states that the decision of war was consulted between the companions of the Prophet and the Prophet. And he stresses that the other consultation matters are only a consultation among Muslims (v. II, pp. 114-115).

In light of all these, it can be said that the Şura/consultation in the context of Ottoman political thought in the pre-modern period reflects as same as classical Islamic thought. The Ottoman rulers acted in the above-mentioned manner in many political issues such as 'what/which matters will be consulted', 'who can participate to the consultation', 'legal bindingness of the decisions that be taken in the consultation' etc. As it will be seen below, it is not possible to evaluate the 'Şura/meşveret' issue/debates, which was used in the period when the debates of constitutionalism/Meşrutiyet became more frequent without this information.

Through the concept of şura, those who want to establish a constitutional regime since the 19th century assert consultation as a basic constitutional practice (Namık Kemal, Ali Suavi, Mustafa Sabri, Elmalılı Hamdi, Musa Kazım, Hüseyin Cahit, etc. see below Chapters III-V). In this context, the relationship between Sharia and law in the pre-constitutional situation should also be examined, as consultation through the Assembly will also carry out a legislative activity. Because the legitimacy of the law creation process to be exercised by the Meşrutiyet is directly related to the sharia-kanun relationship in the pre-modern period. In other words, if the law-making process of the constitutional regime is theoretically similar to making a 'Kanun' in the sharia-kanun relationship, it can be said that the constitutional regime does not cause a change in the law.

However, in the opposite case, it can be asserted that the law creation process has changed with the constitutional regime.

2.3.2 *Relationship Between Fiqh and Custom (Örf) (Shariah and Kanun)*

References to *Siyaset-i Şer'iyye* and meşveret were efforts to find legitimacy by ultimately suggesting Sharia. Apart from these two there were a practice reminiscent of the process of creating secular law: *Kanun* making. This legal practice, which is written/disseminated collectively as Kanunnames, was expressed as another field of legitimacy for constitutionalism/Meşrutiyet. Even, many historians in the first period of the Republic pointed to the Kanuns claiming that Turks had long been prone to secularism/secular law. This claim will be examined below in the context of the theoretical-practical relationship between the Kanuns and Sharia.

When discussing concepts of law, politics, and state in Muslim world, first of all, it is said that the nature of human being is a social character and there is mutuality between them; it is a necessity of this existent collectivism. Then, it is a vital necessity to have an authority or ruler to protect the community not to go in a chaos and to be more durable.[185] In this context, the definition of politics is detailed through the question of how the ruler or power manages the administration and how the administration is maintained.[186] The answer to this question ends with the assumption that there are basically two kinds of politics, even if different nomenclatures are made. The first is the 'shar'i/ecclesiastical politics' which is directly abided to the rules based on the orders of heavenly, so to speak God's word and the second is the 'rational politics' which is grown in the light of pure human rationality and experiences rather than basing on any divine reference. Although this naming depends on the author, we

185 Ebu'l-Hasan Habib el-Maverdi, *El-Ahkamü's-Sultaniye / İslam'da Devlet ve Hilafet Hukuku*, trans. Ali Şafak, (İstanbul: Bedir Yay., 2021); Ibn Khaldun, *The Muqaddimah*, trans. Franz Rosenthal, (New Jersey: Princeton University Press, 1989)

186 Ebu'l-Hasan Habib el-Maverdi, *El-Ahkamü's-Sultaniye / İslam'da Devlet ve Hilafet Hukuku*, trans. Ali Şafak, (İstanbul: Bedir Yay., 2021)

have the same duality/dual differentiation and its roots at the end. In this context, for example, while Ibn Khaldun makes this double distinction as Rational Politics-Religious Politics (al-siyasa al-aqli- al-siyasa al-dinî), Mawerdi and Turtushî makes as Prophetic Politics-Terminological Politics (Nebevi Siyaset-Istılahi Siyaset)[187], and Hasirî makes as Religious Politics-Sensory Politics (Dinî Siyaset-Hissî Siyaset); although he made the distinction differentiated from his teacher Ibn Taymiyyah, Ibn Qayyim was doing as the Fair Politics-Cruel Politics (Adil Siyaset-Zalim Siyaset).[188] Just as all Muslim political thinkers divide the political into two, another issue to which they have consensus is basically whether the sustainability of the forms of politics by force is basically not reference sources, but rather just. Even though the basic legitimacy as epistemic as they put it in religious politics, people will finally practice the methods of this making of politics. If political practices are not fair, even if the reference is revelation, the state cannot survive and be destroyed. If practical implications are not fair, even if the reference is revelation, the state cannot survive and would be destroyed. On the other hand, as long as it is fair even if it does not receive revelation as a source of legitimacy, the state in which the rational politics is current maintains its existence.

In Ottoman political-legal thought, the relationship between the Shari law and the laws of sultan (Kanun) or customary law is an issue discussed for a long time in this context. The first instance of these distinctions is offered by Fatih-era historian Tursun Bey that there were two types of law system which were totally separated from each other in manner the of sources that they are derived from (İnalcık, 2000:34; Barkan, 2001:xiii-xv).[189] His work *Tarih-i Ebu Feth* which he had written in the 15th century,

187 Ebu Bekir et-Turtuşi, *Siracü'l-Mülûk: Siyaset Ahlâkı ve İlkelerine Dair*, trans. Said Aykut, (İstanbul: İnsan Yay., 1995), 29-30

188 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 80-81

189 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000), 34; Ömer Lütfü Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğu'nda Zirai Ekonominin Hukuki ve Mali Esasları: Kanunlar* (tıpkıbasım), (İstanbul: İ.Ü. İktisat Fak. , 2001), xiii-xv; Ömer Lütfü Barkan, "Türkiye'de Sultanların Teşriî Sıfat ve Selâhiyetleri ve Kanunnâmeler," *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası* v.12, (İstanbul, 1946), 713-33

tries firstly to explain the theoretical framework relationship between Shariah and the custom. He describes politics like his forerunners after summarizing briefly the human being as above mentioned, as a being an asset to the society, and how this sociality can continue. According to him, there have been two kinds of political source: the Shariah and custom. He describes the politics which build only on the human experience and rationality as 'custom' and the other which takes the revelation as its source as 'the Shariah'. As the Shariah is based on divine will, its real maker is God (and his representative, the Prophet), the *Shari'*. Then he describes this law as 'nâmûs' and describes the sources of the heavenly politics, like the Islamic jurisprudence scholars before him did, by taking Allah and the messenger of him as the *Shari'*. On the other hand, he says the customary law was called 'sultanic law' or 'sultanic politics' ('yasağ-ı padişahî' or 'siyaset-i sultanî') or 'the law of Chenghis khan' by referring the ruler.[190] To evaluate Shariah-custom dichotomy of Tursun Bey independently from the ontological and epistemological world that he had raised in and assuming based on this evaluation that there were two separate legal-political system existed would be a hasty attitude. Because, the distinction of Shariah-Custom (Örf) is actually none other than the distinction of religious-rational politics or prophetic-terminological politics. It is one thing to theorize this distinction, and another to claim that the Ottomans had two independent political-legal systems and further that the laws made by sultans exceeded Shariah and sultans were completely independent sovereigns – although this was sometimes the case in practice.

What Tursun Bey wants to say is coming in view clearly, when he is read in comparative terms with the writings of other Ottoman writers: In addition to the provisions of the Shariah in the Ottoman Empire, the laws of the sultans, Kanuns, function as complementary to the Shariah in the areas, which it left empty. For example, when talking about the deteriorating order of the state and a bad practice, Koçi Bey says that this bad

190 Tursun Bey, *Tarih-i Ebü'l-Feth*, (İstanbul: İstanbul Fetih Cemiyet, 1977), 12

practice does not fit the Shariah nor does it fit into the custom.[191] Here, before the Shariah, then the custom/law is made to refer to justice. According to this order, it is possible to say that the Shariah is afore and inclusive than the law. Inclusiveness manifests itself in the 'fiqh' discipline of the Shariah that categorizes and regulates its social actions. The fiqh, which is both legally and politically inclusive, is "for an individual, to know what is in favor of and against to him/her individual". Thus, the Shariah claims theoretically to cover all acts of the individual. While covering some of it directly, it does not give a definite provision about some other (as in the case of public law) but the Shariah only declares the general principles. Thus, in Ottoman political thought the area for the law of sultan, which will complete the space left by the shari'ah, is defined.

This complementarity between Shariah and Kanun is valid as long as the laws do not conflict with the Shariah. "What if there is a conflict, or a possibility of it", asks another Ottoman political thought writer Kâtip Çelebi, and answers: The state governed by the Shariah and the Shar'i politics, which establishes a complementary relationship with it, becomes prosperous and the ruler becomes sovereign. Whoever does not act in this way, leaving the Shariah aside and running the decision-making mechanism only by his personal experience, becomes miserable and will be punished.[192]

It is possible to find many texts and practices that read the Shariah-Custom relation as complementarity. For example, this has been underlined even in the introduction of the Egyptian codex, which approved by Süleyman the Magnificent, that the Shariah is the original/priority of this complementarity. Even in the part written by the Sultan's own mouth, while it is clearly stated that the Sultan took the authority to make the

191 Koçi Bey, *Koçi Bey Risalesi*, (İstanbul: Matbaa-i Ebüzziya, 1303), 115

192 Katip Çelebi, *Takvimu't-tevârîh*, (İstanbul: Müteferrika Matbaası, 1146), 246; İbrahim Müteferrika, *Tarih-i Naima*, in 'Mukaddime (Introduction)' vol. I p. 5

law from the Shariah, a norm of fiqh was taken directly as it was in Arabic.[193]

The general opinion of the Orientalists, who study on Ottoman law, is that the Shariah and the customary law are two independent branches.[194] Same opinion also was argued by the early Republican historians.[195] Ömer L. Barkan stresses that secularism under the administration of the republic was not foreign to Turkish society by stating that this duality weakens partially in favor of Shariah as the madrasa and ulama became stronger in the state administration after the 17th century in the Ottoman Empire.[196] It can be said that the first generation of nationalist Turkish historians adopted this approach in their analysis of Ottoman law with the aim of basing the dynamic political-legal structure of the early Ottoman Empire on the Turkish custom rather than on the Shariah.[197] Their aim (and their ideological assumption) is to prove that secularism, which was adopted in the Republican era, was not actually a form of government unfamiliar to Turks. However, to connect this assumption of Shariah-civil law in the Ottoman history to justify that Turkey is the only Muslim country today which is ruled by a secular law today[198] is not more than a teleological approach.

By assuming a very general principle, İnalcık[199] did not aware of that he assumes some limit for Shariah. Shariah does not set too many

193 Ahmed Akgündüz, *Osmanlı Kanunnameleri*, vol. VI, (İstanbul: Osmanlı Araştırmaları Vakfı Yay., 2006), 86

194 Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973), 181

195 Fuat Köprülü, *İslam ve Türk Hukuk Tarihi Araştırmaları ve Vakıf Müessesesi* (İstanbul: Ötüken, 1983), 3-35; Ömer Lütfü Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğu'nda Zirai Ekonominin Hukuki ve Mali Esasları: Kanunlar* (tıpkıbasım), (İstanbul: İ.Ü. İktisat Fak. , 2001), xiii-xv

196 Ömer Lütfü Barkan, *XV ve XVI. Asırlarda Osmanlı İmparatorluğu'nda Zirai Ekonominin Hukuki ve Mali Esasları: Kanunlar* (tıpkıbasım), (İstanbul: İ.Ü. İktisat Fak. , 2001), xix

197 Boğaç Ergene, 'Qanun and Sharia', in *The Ashgate Research Companion to Islamic Law*, ed. Rudolph Peters and Peri Bearman, (New York: Dorset Press, 2014), 112

198 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000), 45

199 Ibid, 27

provisions in the field of public law. The principles derived from predominantly existing provisions have been understood as the main purpose of the Shariah in the field of public law, and throughout history, all states that were deemed to be governed by the Shariah have applied this practice. Hence, confining the duality of Kanun-Shariah to the Turks or the Ottomans and to proclaim the Kanun(s) as non-Shariah and to imply that it exceeds Shariah, is insufficient to explain with which administration the other Muslim states are governed.

On the other hand, in terms of the Şeriat-Örf distinction, the *Örf-i ma'ruf* (well-known custom, the good custom), *ma'ruf* (being well-known, of good) is directly related to the Shariah. Because "emr-i bil ma'ruf nehyi anil münker" (enjoining the good and forbidding the wrong) and thus to build institutions as *hisbe* (Islamic-Ottoman office for public regularity), etc. are the obligations of Shariah. Therefore, it should not be considered as non-Shariah or beyond Shariah that an institutional construction which is among the duties of the ruler. The existence of this practice in the pre-Islamic period is not enough to define it as out of Islam.

In Islamic legal-political history, it is a general academic approach to initiate the importance of custom with Muslim-Turkish states (e.g. Gibb, Köprülü, Barkan, İnalcık etc.). While İnalcık says that the Turkish rulers always kept their absolute power to themselves by not recognizing a partner or authority over their power[200], Köprülü or Schacht says that 'even the Turkish rulers, who were considered the most observant of the religion of Islam, kept the state authority above everything'.[201] However, argumentative and empirical examples of these general expressions are unfortunately not given. If it is not exemplified by whom and when the state authority is held above everything -also above the Shariah-, it cannot go beyond an enigma and desire. Even during the first period of the Ottoman Empire, it was argued that the innovations made by 'Bayezid I' was the subject of complaint as the overcoming of the Shariah.[202]

200 Ibid, 28

201 Joseph Schacht, *An Introduction to Islamic Law* (London: Oxford University Press, 1991)

202 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000), 31

However, even though the most controversial issue of this period was the transcendence of sharia, the reaction and objection of the ulema prevents this attempt when the changes allowed by the Shariah are in a situation that directly overcomes the boundaries of Sharia. This, in the final analysis, reveals that the change is misinterpreted at the level of common people as transcending Shariah, but in reality, it is not allowed when it is attempted to overcome Shariah.

Authorizing the sultans to make law[203] is not the Shariah's inadequacy here, but recognition of an area to the ruler in the field of public law. Thus, different public practices could be constructed in different contexts. It is possible to read this as the dynamic dimension of the Shariah. However, on the other hand, empowering/empowerment of sultans to make law has to consider the static size of the Shariah. In the matters concerning basic and open principles and dogmas, rulers cannot leave these dogmas aside, at least in theory. Of course, when we say them here, we do not take into the account the extraordinary conditions here. Because verdict that the *nass* put must be performed in accordance with certain conditions, under normal circumstances. For instance, it is essential that 'the conditions of a punitive robbery' exist in order to apply the provision for theft. Otherwise, unless the conditions mentioned exist, the provision of the Shariah shall not be executed by order of the Sultan. At this point, however, the ruler's personal will and conviction can be practiced by a different punishment by considering the public interest or customary law.

It will be a misunderstanding to count it as a violation of Sharia law when the customary law does not always apply the Sharia law. For instance, when there is a robbery and the costumery law does not execute handcutting, it is because that this robbery does not fit in the category of theft which is classified as a crime requires handcutting by the Sharia.

The existence of a political authority completely independent of Shariah implies the situation under the rule of a non-Muslim

203 Ibid, 39

administration.[204] However, in a state established and managed by Muslims, because of the obligation of being a Muslim community (that's to say, the hierarchical chain obedience of ulu'l-emr and so on), it is not possible to say that the state and the administration is far from the Shariah. With the lands of the Islamic State whose social practices are expanding, it brought with it also the fact that people with new/different cultural practices become Muslims. This Islamization, as in the individual plane, gave birth to new problems in public issues that are not present in the present fatwas or in public life have begun to raise. İnalcık states this with the following words: "Over time situations, where the Shariah did not set a rule for the solution, had been emerging. The institution of fatwa was not always enough, especially in public affairs. Provisions given by the Sultan were put into practice, even if they are not seen as compatible with the Shariah since the continuation of the civilian authority is eventually accepted as a compulsory for the good of the Muslims.".[205] He connects this with the political-legal practice of Turks[206] as he states that these rules, as independent subjects of the law, were called 'Kanun' and 'zhewabit' that is, adjoining Shariah and *lex lata* of the state. In the tenth and eleventh centuries, the sultan's practice of law-making, independent of any religious authority, was attributed to Buweyhids. Yet, there are some points ignored: Firstly, it is controversial if this was the case with the Ottoman practice (post-Buweyhids); secondly, the political-legal practices of the Büweyhids were very different from the Ottoman and other Sunni states. Since they were Shiites, the relationship between the imam and political authority was derived from the idea of reviving the hidden imam and awaited Mahdi. In this context, it is incidental that Shiites give to the ruler a partially independent authority before the hidden twelfth imam and coming of the awaited Mahdi and this referred to a practical situation, which is applied only within the Shiite school, not in the Sunni Ottoman political thought.

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204 Ibid, 40

205 Ibid, 41

206 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000)

In addition, it has been emphasized, long before the Turks, that the public law area, which was left empty by the Shariah, should be regulated by the ulama in accordance with the general interests of Muslims. For instance, this subject is very much emphasized in Mawerdi's *al-Ahkam as-Sultaniyyah*, one of the most basic classics of Islamic political thought literature. In fact, considering the benefits of Islam and Muslims (that is, the public) here, the authority of the sultan to set the law is justified by the principle of common good (ıstıslah)[207] we have discussed above and is included in the field of Shariah. In other words, the public regulation in an area that is normally left open by the Shariah is included in the Shariah as a result of the common good principle of the Shariah, and new public regulations considering the public interest are permitted. Therefore, we must remind that this principle does not create a dichotomy like Shariah-Kanun law.[208] This is because the area left empty by the Shariah, except for the general principles on public law, which are obliged to change due to the change of social structure and which contains excessive amount of details, still functions under the control of the Shariah.

On the other hand, defining sultans' powers to make the laws as an independence and state it over and independent from the religious authority requires evaluation of the Kanuns independent from the ulama. However, the empirical reality does not allow this view. It shows that it was not only the ulema (the carriers of the sharia) themselves who produced the sultans' kanuns, but also the latter had to get some kind of justification or confirmation from the ulama for their laws to be legitimate, whether they are sincerely to do or not. In other words, the question remains unanswered that if the sultans were very sensitive to the absolute independence of public authority, then why they felt the need to consult with ulama to apply the laws and sometimes they need to revise them.

It can be argued that the Kanuns do not contain any Shariah principle directly, but only deals with the creation of the public institutions of the empire. However, it is not sufficient to define the Kanun as secular/non-

207 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000), 42

208 Muhterem Midilli, *Klasik Osmanlı Ceza Hukukunda Şeriat-Kanun Ayrımı* (İstanbul: Klasik Yay., 2019)

Shariah, even if it does not emphasize the principles of Shariah or does not give them constant reference. In fact, there is no reason to remind continuously all the principles that the administrative and intellectual elites naturally know.

To sum up, the legality of the political and juridical fields in terms of being attached to the Shariah means that they are not in contradiction with the main principles (nass') that are explicitly expressed. In this respect, the criterion of legitimate (shar'i) in almost all areas organized by customary law in the Ottomans is that it does not directly contradict the explicit provisions of the Shariah.[209] In other words, for a legal norm or a practice of this norm to be legitimate means that it does not directly contradict the explicit provisions of religion, and that is may be in the form of statements by the Qur'an and Sunnah expressing it, explicitly pronouncing its appropriateness, or by not giving any explanation or mentioning its prohibition.[210] Therefore, the establishment of the government, the government staffs, authority and protocol, relations with the sultan, ranks, promotions, salaries and pensions, penalties and etc.[211], the subjects determined by the will of the sultan are viewed by the ulema within the scope of the Shariah.

2.3.3 *Meşrutiyet in the Context of Siyaset, Shariah and Kanun*

Before starting to discuss the concept of Meşrutiyet, one needs to present the context of Ottoman legal-political thought outlined above. For understanding what meşrutiyet concept that denotes a constitutional order and what its practical state means in Shariah-Custom relationship, or to express what it means in the world of meaning organized by fiqh, will allow us better understand the legal-political order built in the following terms by discursive practices.

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209 Asım Cüneyd Köksal, *Fıkıh ve Siyaset –Osmanlılarda Siyaset-i Şer'iyye-* (İstanbul: Klasik, 2016), 114

210 Ali Bardakoğlu, 'Osmanlı Hukuku'nun Şer'iliği Üzerine', in *Osmanlı (Teşkilat),* v.VI, ed. Güler Eren, (Ankara: Yeni Türkiye, 1999), 414

211 Halil İnalcık, *Osmanlı'da Devlet Hukuk Adalet* (İstanbul: Eren Yayınları, 2000), 34

The Shariah, which gave the Sultan the authority to enact laws, also made clear the limits of this power, as discussed above. According to Shariah, no one has the power to make laws in issues that Shariah had clearly made before. However, according to the situation within the boundaries of Shariah, sultan, umara or ulama etc. actors have the right to interpret the law. As the Meşrutiyet is considered as the order of the practice of self-limitation of power, Shariah potentially allows this type of administration so this corresponds in the Ottoman context to imposing self-limitation done by the sultan.

One might also consider the traditional regulations defined by the Ottoman Kanun or the Kanun-u Kadim, in some sense, as practices limiting Sultan's political power.

According to İpşirli, the relationship of the Sultan with the state is defined as the relationship between the heart (sultan) and the body (state)[212]. But this does not mean that the sultan is the absolute ruler; many of the literature on political treatises (siyasetnames) tied obedience to sultan directly to the Shariah. All political practices and attitudes opposing the laws in force are criticized and not accepted as normal by (some) ulema even if the sultan is the executant. Therefore, Pîrî Pasha, the grand vizier of Selim I, criticized some of the sultan's orders that did not comply with the established Kanuns, and advised the sultan not to infringe the boundaries of the Kanun (Kanun-u Kadim) and defined the Kanun as the power that sustained the state.[213] Although it sometimes causes tragic consequences, this represents a case against the narrative that describes the sultans who can do whatever they want. In this respect, the sultan's ruling sphere was not legally in absolute terms, and there were legal references and arguments against the sultan's illegitimacy.

212 Mehmet İpşirli, 'Hasan Kâfî el-Akhisarî ve Devlet Düzenine Ait Eseri', *İÜEF Tarih Enstitüsü Dergisi*, i. 10-11 (İstanbul, 1979-1980), 252

213 Yaşar Yücel, *Osmanlı Devlet Teşkilâtına Dair Kaynaklar* (Ankara: Türk Tarih Kurumu Basımevi, 1988), 30

Although not as constitutional, Sultans' power was shared among certain actors; this area of power that witnessed struggle for power[214] had established a balance mechanism within itself.[215] "Even by the seventeenth century, Hezarfen recorded that it became commonplace to portray the sultan's two principle powers -political and religious- as delegated to two top officials, the grand vizier and the şeyhülislam: The leader (reis) of the religion (din) alone is the şeyhülislam. The leader of the state (devlet) alone is the grand vizier. The leader of both of them is the Sultan.".[216]

One needs to add the military to the two political groups mentioned above, ulama and kalemiye. The Janissaries are -even though for their own class interests- another balancing component within the state or the sultan's political moves. In this context, there are many examples of the intervention by the Janissaries into politics. The Janissary opposition, for instance, effectively worked to influence certain government decisions such as appointments, monetary policy, and decisions of war and peace. In one such action, after the death of Mehmed II, the Janissaries forced Bayezid II (d. 1512) to pledge not to devalue the currency.[217] In the mid-sixteenth century, fiercely criticizing the administration of their commander and the grand vizier Rüstem Pasha (d. 1561), the Janissaries threatened Süleyman the Magnificent, at the height of his power, with

214 Hüseyin Yılmaz, 'Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Modernity', *Osmanlı Araştırmaları / The Journal of Ottoman Studies*, XLV (İstanbul, 2015), 234-236

215 Carter V. Findley, 'Political Culture and the Great Households', in Suraiya N. Faroqhi (ed.), *The Cambridge History of Turkey, Vol. 3: The Later Ottoman Empire 1603-1839* (New York: Cambridge University Press, 2006), 66-67; Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (New York: Cambridge University Press, 2010), 80

216 Hüseyin Yılmaz, 'Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Modernity', *Osmanlı Araştırmaları / The Journal of Ottoman Studies*, XLV (İstanbul, 2015), 238

217 Cemal Kafadar, *Yeniçeri-Esnaf Relations: Solidarity and Conflict* (unpubl. MA thesis), (Montreal: McGill University, 1981), 69

rebellion if he failed to dismiss those officials.[218] As Kafadar stated, the Janissary intervention can even be said to have been the rule, not an exception, in the following centuries when the practical results of the Ottoman history were considered.[219]

It is no coincidence that the Ulama and the Janissaries, the two actors who played a key role in all of the situations in which the Ottoman sultans be deposed, were always on the agenda in Ottoman modernization policies. While the ulama prepared the legal procedure and the legitimacy of the forcible deposition of the sultan, who was the head of political power, the Janissaries represent the physical power in these interventions. Although it is debatable to read these the depositions cases as 'an expression of the democratic spirit implicit in the dual institution of sultanate and caliphate'[220], it is clear that the Sultans somehow could not have absolute power thanks to the agency of different actors. The thesis of absolute power of Ottoman sultans, as Alderson says, emerges when compared to any European monarch of the same era, and it is revealed that the sultans were much more restricted than the European monarchs.[221]

Despite their employment as officials in various institutions of state, the ideal expectation for the ulama, firmly ensconced in Ottoman political thought, was to guide the society, including the government and the Sultan, along the right path, and to prevent wrongdoing. This was the duty of commanding right and forbidding wrong in society, conventionally expressed by the jurists through a tripartite division, charging the ulama to perform the duty by word, the ruler by hand, and the public by heart.[222]

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218 Hüseyin Yılmaz, 'Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Modernity', *Osmanlı Araştırmaları / The Journal of Ottoman Studies*, XLV (İstanbul, 2015), 242

219 Cemal Kafadar, 'Janissaries and Other Riffraff of Ottoman İstanbul: Rebels without a Cause?', *International Journal of Turkish Studies*, 13/1-2 (Madison 2007), 113-134

220 Anthony D. Alderson, *The Structure of the Ottoman Dynasty* (Oxford: Clarendon Press, 1956), 59-76

221 Ibid, 59

222 Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000), 307-334

However, abolishing cruel administration is considered among the actions described as 'good' (right path) as a duty of the ulema.

On the other hand, it would be incomplete to understand Meşrutiyet only as a political limitation. In fact, questions such as 'to whom the limitation is made', 'which rights and within which limits it is made' are important. If these questions are left out of the agenda, and assuming only the limitation, it can be claimed that Meşrutiyet is not necessary. However, the answer to the issue on a more epistemic ground, and the question of which rights would be entitled and which limits would be enforced on political power, would be as the following: The right of administration which God gives (entrusted) to the sultan does not exceed the shar'i (legitimate) limits, and may be subject to certain limitations for public good. However, it should be emphasized that the main issue of limitation power is directly endorsed by God on the ontological domain.

The legal arrangements for limiting political power cannot, in theory, go beyond the boundaries set for the Örf or the Kanun. In other words, the boundaries that the Örf or Kanun is subject to in the creation process must remain constant. Otherwise, it marks a radical difference. While the Shariah or Kanun are the only epistemological arrangements that are legitimized by an ontological (divine) plane, it is necessary to see the constitutional arrangements as a new epistemological field where a different ontological plane gives legitimacy. As will be discussed below, the political-legal meanings of everyday practices go beyond the normativity, and create epistemic spaces suitable for the hegemony of the victorious in the power struggle of different actors. Thus, this plays a role in the transformation of both politics and law.

§ 2.4 Concluding Remarks

This chapter was the theoretical framework of the dissertation. In this context, first of all, what secularization means was explained. After giving the scope of secularization theories, we explained what we mean by secularization throughout the thesis. We have stated that we accept the non-divine/supernatural 'position', which is subjected to be in the process of

law creation and accepted as a source of political legitimacy, as one of the main features of secularism. However, we should add to this that the authority applied in the process of law creation is the rational reason and that the rationality in question manifests itself in constitutional assemblies as the mind of the whole nation.

In this context, we need to say that the secular understanding of law and politics first appeared in the historical experience of the West in the modern period. Therefore, to better understand the secularization of politics and law and understand how secularization emerged as a product of a process, this historical process needs to be examined. While examining the historical process that brought about secularization, we discussed what/who is positioned at 'zero point' as the creator of modern secular law in the second part of this chapter. By doing this, we have had the opportunity to show that the debates between 1860 and 1911 in the context of the Constitutional regime carried the Ottoman legal-politics thought to a secular point (see the last chapter).

In the last part of the chapter, we examined the basic political concepts that were discussed concerning the Constitutional regime and were important in Ottoman law-politics thought. This part examines the basic concepts and structure of political thought in the Ottoman Empire during the pre-modern period (i.e. until the beginning of the Constitutional Monarchy). The most frequently used traditional concepts in the constitutional debates, namely Şura, Meşveret, Siyaset, Siyaset-i Şer'iyye, Örf-Kanun are examined here. We touched on how these political-legal concepts were understood in the pre-Constitutional period and how they were put into practice in traditional/classical Ottoman political thought. While doing this, we will be able to compare the Kanuns (or Kanun-names) made by the sultan-caliph and the relationship between these kanuns and Sharia/Fiqh and compare the legislative activity to be carried out in the Constitutional Order with the past practices. In this context, we discussed that the legislative activity of the law-politics thought before the Constitutional Monarchy was 'tafri' and within which limits the Constitutional administration could be practiced within the traditional/classical sharia-law relationship.

Considering the above-mentioned theoretical framework, in the next chapter, it will be possible to examine the constitutional debates before 1876 and to make a discourse analysis of the debates.

3

Pre-1876 Conception of the Meşrutiyet

This chapter will examine the constitutional debates that took place in the Ottoman public -mainly among intellectuals and former politicians- in the period before the declaration of the first constitutional period (1876) based on a discourse analysis of the relevant written texts. I will investigate the following questions: Which discursive strategies did the actors defending Meşrutiyet use? Was it possible to move away from traditional/classical Ottoman legal-political thought through the discursive strategies used by the actors who defended the Constitutional Monarchy? If, while defending the Constitutionalist regime, the traditional/classical Ottoman thought of law-politics had been distanced from, through which concepts did this happen? In the light of the aforementioned questions, my main argument here is that the New Ottomans used the traditional Ottoman understanding of law-politics as a form, but causing it to change in content. In this chapter, I will first explain and define which meta-strategies and which discursive strategies they used in relation to these meta-strategies, and by what arguments these discursive strategies are justified. Then, I will show that the reasons put forward by the actors who defended the Constitutional Monarchy/Meşrutiyet before 1876 and the political-legal discourse they

established were neither completely taken from Europe, nor entirely derived from the traditional Ottoman political thought. Although they strongly emphasize sharia and traditional Ottoman political thought in terms of form, I will examine which dynamics pushed these actors arguing around the concept of Meşrutiyet to act like this. I will explore how decisive is the struggle between actors in these discussions by applying Critical Discourse Analysis to the texts of the actors.

We discussed above that the state functions through concrete actors. Decisions taken by the concrete actors are also not independent of the personal preferences/decisions/interests of the actors. These points should be taken into consideration when examining the last period of Ottoman history. However, these areas are overlooked in many academic studies examining this period. Decisions of statesmen or actors of different levels of bureaucracy are isolated from their historicity. Thus, the decisions taken by the actors are taken to a position independent of history or conditioned to a teleological absolute end. As we have said in Chapter I, this historiography, which accepts the assumptions of the Modernization paradigm as given, evaluates the Meşrutiyet as independent from historical actors and their struggles.[1] In this chapter, as it has been said, the main issue of Ottoman political thought in the second half of the 19th century will be examined. I will assume that the debates on constitution(alism) (*Meşrutiyet*) are a product of political antagonisms and the concrete power struggles of real actors. Main motivations of these actors struggling for the declaration of the Constitutional Monarchy were not giving to the people their right to directly intervene in politics and law, nor is it to limit the absolute rights of the sultanate, to fully open the way to public liberties. As the discourse analysis will reveal in the following sections, the struggle on Meşrutiyet was mostly a struggle for power.

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1 Sina Akşin, *Jön Türkler ve İttihat ve Terrakki* (Ankara: İmge Yay., 2017), 13-14; Aykut Kansu, *The Revolution of 1908 in Turkey*, (Leiden: Brill, 1997); Feroz Ahmad, *The Young Turks: The Committee of Union and Progress in Turkish Politics, 1908–1914* (Oxford: Clarendon Press, 1969); Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma*, (Istanbul: Yenigün Matbaası Tunaya, 1960[2002]); Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961)

Despite main actors of this struggle claim the opposite, they did not think differently from the sultan (and his close circle) about the involvement of large social segments (the people) to the government. Although discursive practices have been suggested to involve in politics and law making or want representation for the masses on the basis of discourse, this power struggle remains for the most part an inter-elite struggle. In this respect, the basic texts that I will apply Critical Discourse Analysis in this section consist of the articles of Namık Kemal on constitutionalism in *Hürriyet* newspaper, Ali Suavi's articles on constitutionalism in the *Muhbir* newspaper, Ziya Paşa's some articles on Meşrutiyet. Before proceeding to my analysis, however, it will be useful to present the historical context that forms the ground for the discursive struggle on the Meşrutiyet.

§ 3.1 Historical Context

The Ottoman military defeats and retreats since the second half of the 18th century brought many social, demographic, political, and economic problems. Particularly with the Treaty of Küçükkaynarca (1774), where some Ottoman lands and population were left legally and politically in the hands of a competing state –Russia-, it revealed a situation that is political-legal as well as economic and social consequences. Such as, Orthodox subjects of the state, especially Greek traders, got exemption from taxes by the patents they received from the Russian embassies; through trade between Europe and Rumelia-Anatolia, they managed, albeit partially, to create their own bourgeoisie.[2] In addition to the commercial relations established with Europe, independent from the Ottoman, the sending of new generations to Europe for the educational activities has enabled the emergence of pre-nationalist movements and national consciousness among the mentioned subjects. However, in the wake of the

[2] Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 132; Biray Kolluoğlu & Meltem Toksöz, ed. *Cities of the Mediterranean from the Ottomans to the Present Day* (London: I.B. Tauris, 2010)

defeats, the unfortunate defeats continued, while on the one hand the lands, which are the sources of income of the state, were lost and on the other hand, the influx of immigrants, which would be economically and politically a burden for the state, has begun.[3]

This socio-political situation, which has been going on since the beginning of the 19th century, caused new political discussions in the Ottoman Empire in the second half of the 19th century. In this respect, the rising nationalist ideas among non-Muslims, the dissatisfaction caused by the ruling actors in domestic politics have brought up the new debates about political forms of government among the educated Ottomans. Thus, the 19th century Ottoman political thought met with a new concept in this historical context: *Meşrutiyet*. This concept has deeply influenced Turkish political thought not only in its historical period but also in different forms of manifestation, and has played a decisive role in the relations between politics and law and justice.

Meşrutiyet, which is constituted around political representation and constitution, is a political practice which has both highly demanding *supporters* and extreme *oppositional others*. On the one hand, it is supported by New Ottomans as a unique opportunity to prevent proto-nationalism within non-Muslim subjects and keep the empire in monolithic status[4]; on the other hand, it is opposed (especially by the two powerful pashas of the Tanzimat, Ali and Fuad Pashas) to the exact opposite position on the grounds that it will increase the nationalist consciousness of the non-Muslim subjects in the empire. In any case, however, it was at the center of all political, legal issues in the second part of the 19th century and at the beginning of the 20th century. Due to this phenomenon, the literature

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3 Enver Ziya Karal, *Osnanlı Tarihi -Birinci Meşrutiyet ve İstibdat Devirleri 1876-1907-*, vol. VIII, (Ankara: Türk Tarih Kurumu), 2011, 487-488

4 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 131-133; . Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285; Namık Kemal, 'Usûl-i Meşveret Hakkında Mektuplar I-VIII', *Hürriyet*, 14 Eylül 1285-23 Teşrinisâni 1285; Young Ottomans etc.

of the Meşrutiyet -especially literature of the second Meşrutiyet period- has a large volume in Ottoman historiography.

The Young Ottomans, who were active during the late-Tanzimat period in the discussion about the notion of the Meşrutiyet and its political-legal order, are at the central point.[5] The New Ottomans are made up of people who claim that the policies of the Sultan and the traditional Sublime Porte bureaucracy (pashas) led the empire to collapse. These people, who were educated from the new schools (not madrasas) established by the state, were neither members of the kalemiye, nor the seyfiye, nor the ilmiye class. What makes them important in Ottoman historiography is that they were a new class expressing their opinion on Ottoman political thought. Defined as new public actors by early Republican historians and later researchers, these people are called 'intellectuals'.[6] The importance of the new Ottomans is that they express their opinions about the Ottoman politics-law, although they are not member of the ulema or the kalemiye, and their struggle to put these ideas into practice. We can say that there is a consensus on the New Ottomans' -especially on N. Kemal, Ziya Pasha, Ali Suavi and others- theoretical debates/arguments among historians.[7] But it is not possible to speak of a similar consensus in the matter of the sources of the theoretical basis which they produce or discuss.

The basic motivation of the New Ottomans and the Young Turks who would succeed them was to prevent the dissolution of the state. This concept of state did not imply the modern state; it was a traditional imperial organization having corporate structure that depended on personal

5 Şerif Mardin, *The Genesis of Young Ottoman Thought: A Study in the Modernization of Turkish Political Ideas* (New York: Syracuse University Press, 2000)

6 Şükrü Hanioğlu, *The Young Turks in Opposition* (New York/Oxford: Oxford University Press, 1995)

7 Şerif Mardin, *The Genesis of Young Ottoman Thought: A Study in the Modernization of Turkish Political Ideas* (New York: Syracuse University Press, 2000); Şükrü Hanioğlu, *The Young Turks in Opposition* (New York/Oxford: Oxford University Press, 1995); Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma*, (Istanbul: Yenigün Matbaası Tunaya, 1960[2002]); Tarık Zafer Tunaya, *Devrim Hareketleri İçinde Atatürk ve Atatürkçülük* (İstanbul: Turhan, 1981)

relations between the ruler(s) and the subjects. The primary result of this motivation is to strengthen the state. The fact that being a powerful state is directly related to the strong relationships between the state and the subjects. On the other hand, the New Ottomans acknowledged that the political and military forces of their rivals (The Western states) are basically the relations between their states and citizens and their technological development. In this context, it is emphasized by many academicians that the ideological and intellectual origins of both the Young Ottomans and the Young Turks were Western/European. For instance, Şerif Mardin states that the aim of all constitutionalist movements, from İttifak-ı Hamiyet to Young Turks, is to follow the political administration style of the West.[8] Similarly, Bernard Lewis claims that the New Ottomans and the Young Turks learned the modern political concepts and institutions, such as constitution, assembly, representation, and so on from their foreign teachers in their schools.[9] This approach represents the dominant reading style for a period, albeit in different tones. The most frequently used academic works on this period, for example Tarık Zafer Tunaya, Kemal Karpat, F. Ahmed, S. Shaw etc. did not go beyond this one-sided historical narrative.[10] However, this approach is insufficient to explain the epistemic acknowledgements of the New Ottomans and the new politics and law ideas they produced. For the concepts and new ideas that the New Ottomans use are neither completely came from (or imitate) the traditional Ottoman political-legal thought nor based on the western theoretical framework entirely. The aforementioned historians' approaches would have been useful if the New Ottomans had abandoned the

8 Şerif Mardin, *The Genesis of Young Ottoman Thought: A Study in the Modernization of Turkish Political Ideas* (New York: Syracuse University Press, 2000), 21

9 Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961), 173

10 Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma*, (Istanbul: Yenigün Matbaası Tunaya, 1960[2002]); Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002); Kemal H. Karpat, *The Politicization of Islam: ReconstructingIdentity, State, Faith, and Community in the Late Ottoman State* (New York: Oxford University Press, 2001)

concepts of traditional Ottoman political-legal thought and instead used the concepts of modern political-legal philosophy. In this case, as the modernization paradigm accepts, we could say that they were directly influenced by the west, showing that they take the western political-legal concepts directly. However, as we will show below, this process did not happen exactly that way. On the one hand, they still emphasize the concepts of traditional Ottoman political thought intensely. On the other hand, there is also the gradual emergence of new different understandings about the content. Therefore, neither a complete epistemological break nor a strong continuity can be mentioned. Evaluating and reading this situation as 'process' is more explanatory in order to examine the intellectual transformations through the concepts.

The admiration of the New Ottomans and the Young Turks towards the West is an undeniable phenomenon. Especially in the political-legal and cultural fields, these admirations are at an extreme level. As Erdem Sönmez says, "… one of the major goals of Young [New] Ottomans and Young Turks was to integrate the Ottoman Empire into what they thought as the Western World. They did not only introduce the political system and institutions of Europe, but also acquainted the Ottoman public with its social and cultural structures."[11] However, it is only a hasty approach to link the aforementioned movements to the west directly from their intellectual origin by means of such data. Because, by subjecting historical facts to a different reading, a new approach in recent decades has been going on a different course. Rifa'at Ali Abou-El-Haj's approach on the late Ottoman historiography is a good example of it. As Abou-El-Haj says that political change in 19th century Ottoman Empire depended as much on internal dynamics from late 16th century on, as it did on external influences. Consequently, 19th century transformations of the Ottoman

11 Erdem Sönmez, "From 'Kanun-ı Kadim' (Ancient Law), to 'Umumun Kuvveti' (Force of People): Historical Context of the Ottoman Constitutionalism", *Middle Eastern Studies*, vol. 52, no: 1 (2016), 116

Empire were a synthesis of two centuries succession of experiments and *ad hoc* results.[12]

To claim that the Ottoman constitutional movements or the new modernization efforts, which started with the New Ottomans and continued with the Young Turks, were built with the institutions fully borrowed from Europe, is nothing more than to reproduce the paradigm of Modernization Theory; and this approach even ignores the Ottoman political thought. Because the intellectual and political controversy in the context of the debates on constitutionalism, in any case, continues to have its reference to traditional Ottoman political thought.

The claim that establishing a constitutional monarchy was made primary in order to reduce the power of the Ottoman sultans[13] is not very much explanatory. Because, as we said above, the power of sultans was not absolute as much as European monarchs' power in general, unlike what the modernist approach assumes. From the late 16th and 17th centuries, the political power has been dispersed in the area of the struggle with the sultan, including the military, the kalemiye and the ulama.[14] In other words, the Ottoman sultans did not have absolute power in the historical milieu where the constitutional limitation struggles were mentioned. That is why we should not confuse the Ottoman Empire, as mentioned above, with absolutist regimes in Europe. So, why did the limitation of the sultan's powers come onto the agenda despite this? Or

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12 Rifa'at Ali Abou-El-Haj, *Formation of the Modern State: The Ottoman Empire Sixteenth to Eighteenth Centuries* (Albany: Suny Press, 1991), 64-72

13 Sina Akşin, *Jön Türkler ve İttihat ve Terrakki* (Ankara: İmge Yay., 2017); Tarık Zafer Tunaya, *Türkiye'de Siyasi Partiler Cilt 3 – İttihat ve Terakki*, (İstanbul: Hürriyet Vakfı Yayınları, 1989)

14 Rifa'at Ali Abou-El-Haj, *Formation of the Modern State: The Ottoman Empire Sixteenth to Eighteenth Centuries* (Albany: Suny Press, 1991); Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (New York: Cambridge University Press, 2010); Hüseyin Yılmaz, 'Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Modernity', *Osmanlı Araştırmaları / The Journal of Ottoman Studies*, XLV (İstanbul, 2015); Erdem Sönmez, "From 'Kanun-ı Kadim' (Ancient Law), to 'Umumun Kuvveti' (Force of People): Historical Context of the Ottoman Constitutionalism", *Middle Eastern Studies*, vol. 52, no: 1 (2016)

what was the new phenomenon that it could find supporters among the Ottoman subjects by the argument of legitimizing the sultan's limitation? The answers of these questions are in the debates on constitutional regime. In order to find satisfactory answers, it is necessary to consult and examine the texts in which the constitutional regime is discussed for the first time.

3.1.1 *Emergence of the Debates on the Meşrutiyet*

The discussion of the idea of Meşrutiyet in the pre-1876 period was predominantly in the context of the texts of the New Ottomans. Declaring positive or negative opinions about the Meşrutiyet, writing popular articles on Meşrutiyet was more popular at the period of Murad V and Abdulhamid II. But this does not mean that the forms of government during the reign of Sultan Abdulaziz, previous sultan of Murad V and Abdulhamid II, had not been discussed. On the contrary, the public debate on the idea of constitutionalism had emerged in this period in the texts of the New Ottomans, N. Kemal, Ziya Pasha, and Ali Suavi. For this reason, our sources for this era will be the texts of the New Ottomans in order to be able to analyze the discourse of the discussion that took place within the framework of the Meşrutiyet concept. Although an opposition against the ideas of the new Ottomans had been developed; however, this opposition had remained predominantly in verbal practices only, or so on. The opposite texts were not reflected much for that period. With this fact, as they are only subject to the periodicals published by the New Ottomans, we know which arguments was used by the opposites of constitutional movement/New Ottomans.

The intellectual attitudes of the New Ottomans are strictly dependent on the questions and reasons raised by those who do not favor the idea of Meşrutiyet/meşveret. Because in the written answers given to these questions, it is possible to see the approaches of the New Ottomans on the idea of Meşrutiyet/meşveret, while at the same time it is possible to trace the arguments of the opponents of the constitutional monarchy or Meşrutiyet/meşveret regime. The discourses of both N. Kemal and Ali Suavi in their writings in this regard are fundamentally the answers to

the questions raised against them. In this context, when the points of questions mark about the Meşrutiyet/meşveret are listed, the elements and strategies of the discourses which is built by the advocate of the Meşrutiyet also emerge (see Appendix A).

According to the defense/responses in the texts written by those who defend the constitutional regime it is possible to list the basic questions/problems of those who develop an ambiguous or opposing attitude to the Meşrutiyet:

a- The Meşrutiyet is in conflict with the Shariah
   i- Contradictory of the Meşruti administration to the religion/Being Bid'ah (innovations that subsequently emerged after the prophet)
   ii- Restriction of the caliphate by Meşruti regime
b- Objections about the identify of those who participated in the Meşveret (Participation of non-Muslim subjects to assembly)
c- The fact that the Sultan would not accept the proclamation of the Meşrutiyet
d- Unsuitability of the public to implement the Meşrutiyet[15]

While answering these questions/problems, texts with rich intellectual substructures were produced by New Ottomans. These texts were also the texts in which discursive strategies appeared in the discussions within the framework of the concept of Meşrutiyet/constitutional regime. In other words, in intellectual debates that started from pre-1876 until 1908, texts in which the constitutional regime was defended or rejected have emerged; and discursive meta-strategies, discursive strategies and discursive techniques created around discussions on the constitutional regime was constituted in these texts.

15 Yusuf Tekin, 'Osmanlı'da Demokrasi Tartışmalarının Miladı Olarak Meşrutiyet Öncesi Tartışma Platformu', *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, vol. LV., i. 3 (Ankara, 2000) 150-152

§ 3.2 Discursive Strategies on Meşrutiyet: Meta-Strategy, Discursive strategy and Discursive technique

Discourse does not convey reality as it is. By masking power relations and power struggles, discourse users present (in other words, 'construct') social reality not as it is but as they want it to be. Borrowing from Nurullah Ardıç[16], I have said in first chapter that Meta-Strategy is the top-strategies that discursive strategies and the discursive techniques used for these strategies emerge from. Meta-strategy produces specific positions and reveals the thematic framework on which discourse is built. The discursive thematic framework that has been created increases the actuality of discursive strategies among actors and allows them to be used in long chronological processes. For example, the meta-strategies used by actors in the intellectual public before 1876, when the constitution was officially announced, also continued to be used after the declaration of the constitutional era. As will be remembered, the constitutional regime that Abdulhamid II interrupted by dissolving the parliament was brought into force again by Abdulhamid II as a result of the 1908 Young Turk Revolution. Throughout this entire historical process, many actors appeared in the political arena and many different positional attitudes and tactics were practiced. Despite all the socio-political changes in the period from pre-1876 to 1918, when the discursive practices of the actors are examined, it is seen that there are many similarities between discursive strategies. When the texts produced in the aforementioned historical period are analyzed within the framework of this dissertation, one of the results we encountered is these similarities. In fact, these similarities are so great that actors, who are completely opposed to each other's political positions and have different imaginations of the future, who think completely differently about what is political and about what should be the way of government, have been able to defend the same discursive strategy with the same argument or discursive technique.

16 Nurullah Ardıç, *Islam and the Politics of Secularism The Caliphate and Middle Eastern Modernization in the Early 20th Century* (New York:Routledge, 2012), 35

What the actors who use the same discursive strategy or the same discursive technique aim with this discourse/technique differs according to their historical moment and positions. Witnessing a discursive strategy or technique, which applied before Pre-76, again in 1908 shows that discursive formations define concepts and strategies for their subjects. According to Ardıç, "like the formation of subjects and enunciative modalities, these concepts do not consist of a set of stable ones in well-defined relations with each other; rather it refers to shifting configurations of changing concepts".[17] In addition, new discursive strategies emerged over time, and actors produced new discursive techniques accordingly. It is possible to see the change and differentiation of emphasis in discourse when the meta-strategies, discursive strategies and techniques that have been discussed in the historical period we have studied are brought together. The differentiation that reveals itself in discourse points to a differentiation in epistemological legitimacy in the final analysis. In other words, changing the source of both ontological and epistemological legitimacy can be understood by following the change in discourses (see Chapter V).

There were many discursive strategies that had been produced by the advocates of constitutionalism. However, it is possible to collect almost all of these under two meta-strategies: i. The legitimation with reference to Islam; ii. Legitimation with reference to Europe. However, there are many discursive strategies and techniques that derive from these two meta-strategies (see Appendix A). As also stated above, discursive strategies, with some exceptions, are largely identical in discussions on the Constitutional regime from pre-76 to after 1908. However, even if the same discursive strategy or technique is used, the practical meaning of discursive strategy or technique varies according to the positional situations of actors who have used them.

In the following pages, discourse analysis of the 1st texts, namely the texts of the New Ottomans, written in the middle of the 1860's, in which the constitutional regime began to be discussed in the Ottoman Empire

17 Ibid, 35

will be performed. To do this, we first need to examine the two meta-strategies mentioned above and the discursive strategies and discursive techniques produced according to them:

I. Legitimization with reference to Islam (Using the legitimating power of Islam)

II. Legitimization with reference to Europe

It is possible to list discursive strategies used depending on these meta-strategies as follows:

3.2.1 *Legitimization with Reference to Islam (Using the Legitimating Power of Islam)*

The first Meta-strategy, which is most frequently used in the constitutional debates from the early 1860s to 1908 and later, is to establish a link between the Meşrutiyet and Islam. In this meta-strategy, to express that the Constitutional regime is legitimate, it is stated that Meşrutiyet is an administration that is accepted as legitimate by Islam or an administration that is ordered to be practiced by Islam.

The frequent reference to Islam is important. Because in the pre-modern era, as in many other Muslim societies, Islam was the main source of legitimacy in Ottoman society as well. It was Islam that formally shaped both political, legal, and moral forms of behavior, and determined the good, the right, and the beautiful in these areas. In some exceptional cases, including the last period of the Ottoman Empire, the fact that the boundaries of Islam were exceeded individually, some non-Islamic practices took place in history should not mean that this was not correct. Because, as mentioned above, the issue mentioned here is that Islam was paradigmatic determinant. Islam, which is paradigmatically decisive, has been the most frequently used source of legitimacy in every period of socio-political and legal regulations. Therefore, this situation also emerged in discussions where the constitutional regime was brought up or defended. The emphasis on the legitimizing power of Islam as a meta-strategy has also created many discursive strategies and discursive techniques that nourish it. In the texts in the period we examined, the

discursive strategies used in legitimizations made with reference to Islam are as follows:

3.2.1.1 Establishing Sharia as the Basis of Constitutional Monarchy/Meşrutiyet

In this discursive strategy, Sharia is defined as the central structure of the Constitutional regime. It is stated that there is no epistemological difference between the sharia -or fiqh- and the Constitutional regime and that the Constitutional regime is nothing but the practice of sharia. Here, it is said that all the legal procedures of the Constitutional regime were taken from the Sharia.

Establishing sharia as the basis of Constitutional Monarchy is done by using different discursive techniques; for example, referring to Siyaset-i Şer'iyye. Siyaset-i Şer'iyye refers to the most frequently used law-making activity of the pre-modern period in Ottoman political thought and practice. This concept and its practice, which is examined in detail above, is brought to the agenda in the constitutional debate and is used discursively in law production even after 1908 (See e.g. İzmirli İsmail Hakkı's arguments in Chapter V). By suggesting that Siyaset-i Şer'iyye and the Constitution were the same, it was possible to claim that the Constitutional regime did not actually conflict with the Sharia and did not exceed the limits set by Shariah; because it was the only way to protect it. By emphasizing that the entire legal system and political power are limited by sharia, it is implied that liberty, which will emerge in a legitimate order, will actually be limited by sharia. Nevertheless, it has been stated that sharia has given Muslims the authority to control (inspect) their administrators, and this right of control/observe can only be achieved in the constitutional regime.

The basic texts discussing the constitutional regime in the second half of the 19th century were the texts of the New Ottomans, as mentioned before. In the texts written by the New Ottomans, namely articles published in *Hürriyet* and *Muhbir* newspapers and in the book of Tunuslu Hayreddin Pasha (*Akvamu'l-Mesalik*), the determinant position of Sharia is constantly emphasized. This emphasis on Islam as a discursive meta-

strategy is made by referring directly to the sharia, in different discursive techniques sometimes referring to the ulama, which is responsible for the law, and sometimes by pointing directly to the sacred texts (verses and hadiths). In this context, the following passage from Ali Suavi is important:

> The Islamic government was initially limited and could not exceed the limit set by the sharia. For example, if anyone ignores any principle, those who know the Sharia, ulama, were protecting and defending the law. The name of this defense was called 'emr-i bi'l-ma'ruf nehy-i ani'l-münker'. Later, this protection came to an end. … When the viziers saw an opposition to the sharia and the hukuk-u Süleymanî, the servant of the sharia, they would first try to intervene and correct it verbally. And if the desired thing is not, they would inform the military leaders [Janissaries]; They would say. 'Our advice did not affect, now you take care of him!', the janissary quarries would rise up immediately and the rebellion could not be relieved unless the work was prevented. ….
>
> In the Law of Sultan Süleyman, it is written, ' While Commanders [Umera] and [Ulema] have done emr-i bilmaruf and nehyi anil-münker ... If the sultan wants to perform something contrary to the benefit of the society and insist on doing that, he must be deposed and then someone else in the Ottoman dynasty will sit on the throne.' …' Ulama and Commanders gave promise this alliance. Ulama and Commanders understood that this was a consultative profession. Then, according to this law, when they see that the Sultan is doing something against the public interest, they were trying to make the Sultan comply with Sharia; if this did not happen, they would inform the military leaders and intervene. …[18]

[18] 'İslam hükümeti evailde mukayyed olup şeriatın tayin ettiği dereceyi tecavüz edemez idi. Mesela biri tecavüz etmek dilerse şeriatı bilenler, ki ulemadır, hukuk-u şer'iyi himaye ve müdafaa ederler idi. Bu müdafaanın ismine emr-i bi'l-ma'ruf nehy-i ani'l-münker tesmiye konulur idi. Sonradan bu himayeye halel geldi. … vüzera, şeriata ve şeriatın hadimi

As it can be seen clearly, Ali Suavi stated that Islamic governments were constitutional from the very beginning of Islamic History and any of Islamic governments did not dare to go beyond Shariah or ignore it throughout Islamic history. Especially in era of the Ottomans, if the Shariah was to be passed over, the Ulama had been saving the binding conditions of the Shariah (in other words, according to New Ottomans constitutional order) (when they deem it necessary for the Maslahah[19] of the ummah), and because of Shariah's influence on society and the military, it would had been able to keep the administration of the state within the Shariah domain. Sharia norms that determine political and social boundaries are given as an example and it is accepted that sharia is actually a constitution. Thus, any statement containing a constitutional request, in other words, can be put forward as a demand to apply the sharia. Additionally, in this discursive technic, the relevance of the guild of the Janissaries is read as a critical turning point in this plane. Thus, the role of the people (subjects/ahali) can be defined in a way by the Janissaries and the sultan's arbitrary administration is controlled by the people.

What Namık Kemal said were not different from what Ali Suavi has said:

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bulunan kanun-u Süleymanî'ye muhalif bir hal gördüklerinde, evvel emirde bir veche şer'i kavlen men'e çalışırlar ve şayet matlubu hasıl olmazlarsa asker ümerasına [Yeniçerilere] keyfiyeti haber verirler; nasihatimiz tesir etmedi, artık siz icabına bakınız derler, evvel vakt ocaklar ayaklanır işin önü alınmadıkça ihtilal teskin olunamaz idi…

…

Sultan Süleyman'ın Kanunnamesinde 'Ümera ve [Ulema] emr-i bilmaruf ve nehyi anilmünker icra etmek için … padişah hilaf-I maslahat bir şeyin icrasını murad edübde ısrar edecek olursa hall olunub hanedaı Osmaniyeden başka biri onun yerine iclas olunur…' deyip ulema ve ümeradan bu ittifak üzere ahd e misak aldı. Bunun bir meşveret meslesi olduğunu anlayan ulema ve ümera daha sonra bu kanun gereği maslahata aykırı bir iş gördüklerinde önce sultanın şer'i sınırlara riayeti için çabalarlar, eğer bu olmazsa da askeri erkana haber verip [müdahale] ederlerdi…' (Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart, 1868, Numara: 27)

[19] We have discussed above the importance of the ummah's maslahat in law making. The concept of 'maslahat' is critical in this context, in the context of legitimate intervention in current political power.

> … The consultative procedure is also suspected of compliance with the sharia. [a result of the practice of the Meşveret] The Assembly of the Ummah Council, which we wanted, was bid'ah, what should we do? … The ferries are as well as bid'ah, Let us not take them and the lemon boats of Greece occupy Crete? Rifles are also bid'ah. Let's not use them, let the enemies occupy Istanbul? There are such bid'ahs in the world that they are not bidat-i hasene (bad bid'ah) but if they are called bidat-i bedia (wonderful bid'ah). Since usul-u Meşveret is decided by the sharia (agreed firm decision), the ummah determines the details in execution after the essential is present. The things done with the ijma of ummah (social consensus) are not bid'ah, on the contrary, It is the essence of religion.[20]

It is stated that, aside from being contrary to the Shariah, the Meşveret's assembly has been ordered by the Sharia. It is very important here that Kemal refers to the concept of bid'ah as a discursive technique. In the following pages, the concept of bid'ah will appear again, where the construction of a new, hybrid political theory will be examined. Again, the concept of bid'ah, which we will dwell on in the pages we examine how the Islamic hierarchy is inverted, deserves to be emphasized here as well. On the one hand, against the dissenting opinion that claims the constitutionalism does not belong to Muslims, New Ottomans asserted that the constitutionalism is a political behavior that Muslims have practiced since the beginning of the Islamic history. On the other hand, by emphasizing the concept of good bid'ah, it is acknowledged indirectly that the

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20 ' … Usul-u meşveretin de şer'e muvafakatında şüphe edi(li)yor. … [Meşveretin pratize edilmesinin neticesinde ortaya çıkacak olan] İstediğimiz Meclis-i Şurayı Ümmet bid'at imiş, ne yapalım? … Vapurlar da bid'at, almayalım da Yunanın limon kayıkları Girit'i mi işgal etsin? Tüfekler de bid'at, kullanmayalım da İstanbul işgal mi edilsin? Dünyada öyle bidatler var ki onlara bidatı hasene değil, bidat-i bedia denilse yeridir. Madem ki şer'an usul-I meşveret mukarrerdir (kararlaştırılmış sağlam karardır), esas mevcut olduktan sonra icraatta olan teferruatını ümmet tayin eder. İcma-ı ümmetle yapılan şeyler bidat değil, usul-i dinden olur.' (Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285)

Council of Meşveret is actually an innovation (bid'ah), albeit a useful one. phenomenon. In the discourse of Kemal, it is 'undoubtedly' that Shariah ordered 'usul-u meşveret'. Another meaning of this is that those who claim that the Sharia is against the constitution, namely constitutionalism, are actually those who do not know the Sharia as well.

This bridge us to the significance of the fiqh again. The Ulama class is the basis of political legitimacy in many periods of Ottoman history, and it is one of the main actors that will bestow legitimacy in this period, when the Meşveret regime was first discussed. The fact that they are the only legitimate source of Islamic interpretations makes the ulama and their interpretation activities important. Fiqh, as the norm producing and interpretation (and also an epistemic) activity of Ulama, is used as a tool in discursive strategy. As the fact that the fiqh is the basic practice of the Shariah, as mentioned above in the Shariah-law relationship section, it is also expressed/ accepted by the New Ottomans. In this context, what Ali Suavi is saying is important: "There is no doubt that the fiqh discipline is an element of sharia. The subject matter of this discipline is renewal (teceddud). With the development and change of time, the solutions brought by fiqh also change. Otherwise, the sharia will lose its vitality and then freeze."[21] By emphasis on fiqh's transforming of the shariah shariah from a static law to a dynamic and living entity, it is to point out that the constitutional regime will not abolish and eliminate the Sharia, but on the contrary, it will bestow life on the sharia.[22]

The practice of Siyaset-i Şer'iyye, examined in the previous chapter, appears here again. Fiqh, which brings dynamism to sharia, is also related to politics. Because it is important to decide on which criteria for the situations in which Sharia does not make any explicit comments. Ali Suavi explains the resolving (or making normative regulations) of the issues that sharia does not make explicit (positively or negatively) by referring to traditional Ottoman political-legal thought. Strategically emphasizing the fiqh strengthens his discourse and ensures the legitimacy of the new

21 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, Numara: 27

22 Ali Suavi, 'Mesâil- i Müteferrika', *Ulûm*, no 12, 723

political-legal regime he demands. 'There is no politics in the things that are not suited to Shariah!', here, he constructs his discursive strategy on the basis of the constitutional regime as nothing other than practice of 'Siyaset-i Şer'iyye'. In fact, it conveys the message that "the classical Ottoman political thought is no other than the constitutional regime." This is produced based on the classical meaning of the concept of siyaset. Considering the Sharia and Fiqh as the synonym of Meşrutiyet is a discursive technique, and this strategy used by Ali Suavi is also implemented by N. Kemal.[23]

The relationship between Islam and the Constitutionalist regime is not only on the agenda with superficial fiqh and the emphasis on Siyaset-i Şer'iyye, more existential relationships are also being established. For example, there is an emphasis on Constitutional Monarchy as the only way for Islam to survive.[24] This discursive technique, in which the constitutionalism is discussed on the existential ground, will be at the forefront of the basic discussions of the early 20th century Ottoman political thought.

The main criticism of opponents asserts the Nizam-ı/Kanun-i Esasi or a constitution could replace the shariah; The view defending the equality of all subjects is challenged to respond to this. According to New Ottomans, while the Shariah has great and immutable provisions, it is not true to take the human actions and ideas/views that are variable as the essence of the law. Namık Kemal says "Why should we make human actions/thoughts, which are certain to change, the basis of law, when there is an unchangeable principle such as Sharia?"[25] Thus, according to him, the foundation of Nizam-ı/Kanun-ı Esasi will be based on the Shariah. In other words, after taking the Shariah into the center and making it constant, the relationship with the global/historical context will be established and a Western constitution will be amended and adapted to the

23 Namık Kemal, 'Usûl-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

24 Namık Kemal, 'Usûl-i Meşveret Hakkında Mektuplar VIII', *Hürriyet*, 23 Teşrinisâni 1285

25 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar II', *Hürriyet*, 21 Eylül 1285

Ottoman Empire.[26] In other words, the assembly will issue a new kanunu'ş-şer' (sharia law) order.[27]

3.2.1.2 Referring to the Traditional Role of the Ulama

It is one of the discursive strategies to bring up the approaches of the people belonging to the Ulema class regarding constitutionalism while the constitutional regime is being discussed. The fact that some of the ulema take a position as supporters of the Meşrutiyet allows the supporters of the Meşrutiyet to claim that those who are against constitutionalism are against the ulama or Islam. Because Ulama plays a key role in the socialization of Islamic knowledge by not only producing Islamic information in a specific/methodological form, but also enabling it to spread in social space. Madrasas, which have a history of hundreds of years, are not only places where Islamic knowledge is produced institutionally; it is also the places where ulama and officials -or 'civil' preachers- who will cultivate society are trained. Social legitimacy makes it necessary to comply with all of the norms that ordinary people accept as 'norm' or which are assumed to be internalized by the general public. The duty of the ulama is not limited to producing norms within the limits of the Shariah; at the same time, ordering good and banning evil are also considered as one of the ultimate duties/responsibilities of the ulama. The latter gives the ulama the opportunity to be involved in/interfere in the field of politics.

The fact that Ulama possess the authority that produces 'norm' or rather interprets the norm makes them the first social group to be used in any socio-political maneuver. For this reason, ulama are one of the main actors in debates on the Meşrutiyet, either positive or negative, supporting, or opposing. Therefore, legitimizing the produced discourse with reference to the ulama is a frequently used practice. In discursive strategies produced with reference to the classical role of the ulama, it is argued that the main task of the ulama is to control/inspect the politics.

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26 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

27 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar II', *Hürriyet*, 21 Eylül 1285; Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

Nonetheless, the criticism of the legitimacy made by those who are not officially included in the circle of the ulama, is coded as the slanders of the 'malicious' people and the discourse is tried to be strengthened by this claim. Ali Suavi asserts that "All religious, erudite, and intelligent people that I have met up to this age were supporters of the Meşrutiyet. As many non-religious people as I have seen, who only care about their own pleasure and self-interest, they were supporters of istabdat [against the Constitutional Monarchy]."[28] Thus, everyone who is against constitutionalism is accused of not being religious and thinking only of their own interests.

Ulama class performs another ministration in addition to engaging in the practice of producing norms in jurisprudence in Ottoman political practice. This task is not just a political or official task, it is also a religious responsibility, namely worship. This task/worship, which is defined as 'Emri bi'l-maruf ve nehyi ani'l-münker/Enjoining good and forbidding wrong', is an individual responsibility for all Muslims, and it also expresses a social obligation to be performed especially for the ulama. Practicing the Constitutional regime is considered equivalent to this duty.

In this context, what is 'the Good' to be done is considered as given (there is no discussion on it), but what is 'Bad' (and of course Wrong) which to be prevented is described: Istibdat is absolute evil and cruelty. Thus, the Constitutional regime is discussively reconstructed as the absolute good, the antidote to this evil. Therefore, the ulama who are not expected to remain silent in the face of evil must prevent that evil. When they fail to do so, they will be like 'speechless devil, who is silent in the face of cruelty'. Ulama was doing this task (with the janissary) in the classical period as leader of *ahali*. The ulama, which examines/monitors the political decisions of the ruling elites, takes the opportunity to directly intervene to politics when possible, namely from the power of surveillance/control. The right/duty to monitor as a discursive strategy is not just a practice used only in the late 19th century. As shown below, even in the early 20th century, this justification will be claimed to defend the

28 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

constitutional regime, and it will be said that the constitutional law does not conflict with sharia.

To command the good and prevent the evil to be associated with the Meşrutiyet[29] is the use of one of the main pillars of Islamic political legitimacy. However, the Qur'an and the context of this order in the Qur'an, according to the Ottoman deputies, are only Muslims. In other words, ordering goodness, prohibiting evil and regulating this ban imply only a process for Muslims. More importantly, New Ottomans did not discuss that who decides what is 'good' or 'bad' here; and it is, actually, directly accepted by Islam. However, this responsibility can only be fulfilled by Muslims, because it is defined as a worship. The fact that one non-Muslim can be a partner in such a worship is theoretically difficult to maintain in the context of epistemic sources of Ottoman political thought.

This situation, which says that the Constitutional Monarchy -highlighted in the passages we received from N. Kemal and Ali Suavi above- does not conflict with the sharia, suggests that this will be -or must be- done in a new form in the new age due to the change in time. With the Constitutional assemblies, the worship/responsibility of 'Enjoining good and forbidding wrong' will be possible again after a long İstibdat regime and both the ulama and the people will be able to perform this religious duty. Referring to the classical role of ulama as a discursive strategy also provides an opportunity to another discursive technique: Participating in the interpretation and norm producing activities of the ulama class.

References to the classical role of the ulama in the context of the Meşrutiyet-Sharia relationship opens the religious sincerity of those who are oppose to the Meşrutiyet regime up for discussion. The most common of the justifications put forward is that the common point of the oppositionists of the Meşrutiyet is that they exploit the regime, namely the *status quo*.[30] The frequent articulation of the said discursive technique allows to shift the discussion from the level of religious references to the field of individual behavior. Thus, legitimacy will be tried to be taken from

29 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

30 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

the individual moral level to new attitudes that transcend traditional/classical religious interpretations. The discussion is removed from the level of religious references, and legitimacy that religious references do not provide is tried to be provided from the individual moral domain. While being a supporter of the constitutional monarchy is characterized by wisdom and politeness, being opposed to it is coded as a religious term of 'impurity', non-sincere, and non-religious. This discursive technique has been developed against the authenticity of the religious justifications put forward by those who are in opposition to the constitutional monarchy or the administration of the constitutional monarchy. Thus, the blame is overcome by the opposite party and the power of discourse builds a social reality by overcoming the entire world of authentic meaning.

On the other hand, the inclusion of the people to do 'Enjoining good and forbidding wrong' with Ulama gains a new dimension by extending the concept of 'Ahali' to include everyone, eliminating the Muslim-non-Muslim distinction. So how was it possible to release or widen these traditional boundaries? The answer to this is closely related to how some practices and concepts are shaped by epistemic intervention.

3.2.1.3 Reference to the Scriptures (Qur'an and Hadiths)

Qur'an and Sunnah are two main sources of Islamic epistemology. It is a practical attitude that has existed from the very beginning of Islamic history to give reference to verses from the Qur'an or Hadiths in order to legitimize every institutional structure that will be constructed socio-politically or change norm. While discussing the legitimacy of the Meşrutiyet regime, this practice was not ignored, and while referring to the classic duties of the ulama, attribution was also made to the sacred texts.[31] However, contrary to the pre-modern era, the meaning of the verse or hadith was not understood as a single and fixed, but, as a discursive strategy, the meaning was conveyed with a new interpretation. Even, in this discursive strategy, it can be seen that in many

31 Nurullah Ardıç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernization in the Early 20th Century* (Routledge, 2012), 98-99

places/texts/discussions, meaning of the sacred texts is given regardless of co-text and context.[32] In addition to this discursive strategy that exceeds the context, many additional expressions, which are sometimes absent in the text and do not fit in the context, have been added to the text. Thus, a meaning that is not found as authentic in sacred texts is made possible to be deduced from the text in accordance with the intention of actor who adds the word to the text.

3.2.1.4 Redefinition of Basic Islamic Concepts

In this discursive strategy, the basic Islamic concepts related to the Meşrutiyet are redefined. The Islamic origin of the concepts both strengthens the discourses of the actors defending the Meşrutiyet and increases their social/religious legitimacy. However, this discursive strategy does not mean the traditional/classical meanings of basic Islamic concepts. Instead, concepts are interpreted and filled their content with modern/western concepts.

Interpretation activity is on the agenda wherever there is text, whenever there is a person trying to understand the text. Speaking of only a literary text here narrows the meaning. In addition to written text, gestures, facial expressions, rituals, everything symbolic, and of course, discourses can be understood as text. In this context, it is possible to consider every effort to understand as an interpretation. However, if there are texts producing social norms, we should talk about the common points or consensus of the interpretations. Otherwise, the activity of interpretation goes to the 'everything goes' point promised by post-modernity, where it is not possible to establish a sustainable social order. Redefinition of Basic Islamic Concepts, one of the discursive strategies used by supporters of Meşrutiyet in the Constitutionalist debates, although it implies a simple interpretation, it opens actually the door of another

32 In order to examine in great detail how the verses of the Qur'an are used to legitimize singular everyday political, economic, and cultural events in the second Meşrutiyet era, particularly see (unpublished PhD dissertation) Suvat Mertoğlu, *Osmanlı'da II. Meşrutiyet Sonrası Modern Tefsir Anlayışı (Sıratı-ı Müstakim/Sebülürreşad Dergisi Örneği 1908-1914)*, Marmara Üniversitesi Sosyal Bilimler Enstitüsü (İstanbul: 2001), 149-171

route/domain epistemologically. Because, through this discursive strategy, the common points or consensus of the interpretations that produce social-political norms are removed and a new ground of reconciliation is revealed. However, in the process of uncovering this new ground, the text that is still the legitimacy of the old -and the concepts built by it- is subjected to a new interpretation. Thus, it can be argued that both the text is not detached from it and therefore a legitimate activity is carried out, while on the other hand it is possible to build a new world of epistemic meaning by redefining the set of concepts practically. For instance, -as discursive techniques- the inclusion of the Ottoman people (reaya and subjects) in the concept of Ummah without discriminating between Muslim and non-Muslims; reducing the concept of Adalet to the concept of equality; explaining the concept of Bey'ah -a political and religious concept- as social contract which is a purely modern political concept; suggestion that the concept of İstibdat and the concept of persecution, which are not directly related to each other, have absolute contrasts; and such as the interpretation of the concept of Ijma with domination and legitimacy.

By these discursive techniques, it is possible to legitimate the Constitutionalist discourse with using the basic concepts of Islamic religion related to politics. On the one hand, Islamic illegitimacy of the current government is emphasized by using concepts Justice, Persecution, Istibdad, Meşveret, Şura, Şeriat, Şura-i Ümmet and so on; moreover, it implies that the advocates of the Constitutional Monarchy are only able to practice these political concepts truly. By disseminating justice-oppression dichotomy into not only individual but also public dimensions, socio-political whole/unity can be made into the object of discourse. For example, the Sultan's or civil servants' inability to enforce fairness or enforce the law properly, or to enforce lawlessness is initially codified as persecution against their own selfness; then it is defined also as a persecution against the people. Here, the Islamic concepts and their practical manifestations gain a new meaning. Islamic concepts are also introduced in a new form.

The performance of the interpretation activity by actors outside the ulama will not be performed by a new institutional structure. The use of

referring to sacred texts as the discursive strategy by those who defend the constitutional regime also allows for other discursive strategies: The redefinition of basic Islamic concepts, the introduction of modern concepts with Islamic terminology, and the emergence of a new / hybrid political theory are made possible by the said external interpretation activity.

In this context, the Constitutional regime is discussed within the framework of the concept of Şura. Here is the verse exemplified on the importance of 'Şura', that is, exchange of opinions: *'... and take counsel with them in the affair. ...'* (Al Imran, 159). It is necessary to emphasize the meaning of this verse used in almost every period. More precisely, apart from the classical/traditional interpretations given above where the concepts of şura/Meşveret are examined in detail, it is necessary to look at the new/modern interpretations in the late 19th century.

The article titled 'Consult with them!' that Namık Kemal wrote, inspired by the 'verse', is one of the most important texts on the subject we are discussing. Verses and hadiths are interpreted by giving meanings that are not in the co-text (i.e. linguistic surroundings) and context of the texts. Especially, the scope of meaning of verse(s) is expanded with this strategy of discourse, and both equality and unity are achieved among all Ottoman subjects. Moreover, the provision of this unity was not simply put forward with an effort to uncover and strengthen the social political union. At the same time, a 'social consensus' is tried to be built as a religious duty that will compel the union's decisions.

The Arabic 'hum' (they [them]) pronoun mentioned in the verses of Şura means only the Prophet's companions and other Muslims, as understood from the co-text and context of the verses. The way that aforementioned verses were understood in pre-modern times was given above, in previous chapter with examples. Those who are understood as 'hum', both in the important commentary tafsir accepted among the ulama, and in popular sermon tafsir written for ordinary people, are Companions in part or all Muslims in general. But non-Muslims are definitely not included in this. Therefore, non-Muslims were not included in this consultation process before the pre-modern period. Also, in the

classical/traditional interpretation, the practice of şura is not a practice that is done with everyone or in every case. It is a political/social practice that is performed with certain people on certain issues, but does not certainly cover the whole society without any discrimination.

However, the discursive framework, especially emerging in the texts of N. Kemal, broadens the discursive strategy by giving new meanings to the interpretation of the sacred texts - and these interpretations are precisely the 'desired' meanings. Thus, while the Islamic concepts remain Islamic as forms with new content meanings, they become 'new' in meaning and allow for a new political thought. As a consequence of the knowledge-power relationship, this activity, which means intervention to knowledge, reveals the actors who demand power. In this context, Ijma[33] and Ummah[34] concepts are the key concepts that are interpreted/intervened.

While the concept of the Ummah is used only to mean all people belonging to the same religion, and in particular to all Muslims who believe in Islam, this is expanded by N. Kemal and Ali Suavi[35]; and all Ottoman subjects are included. Therefore, while incorporating a meaning that was not before into the concept, new social / political actors have emerging in practice. In this context, according to Namık Kemal, reading the consultancy regime or concept of parliament as Bid'ah necessitates also to consider the technological developments that make the West strong, as Bid'ah. However, besides being Bid'ah, those developments are the requirements for us to survive. Thus, we ought to have them. In the context of the legitimacy of this issue, the legitimization of religion, which is main meta-discursive strategy, was put into practice, and it is said that consultancy is the regime which is a religious necessity and how it will be put

33 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

34 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285; Namık Kemal, 'Usûl-i Meşveret Hakkında Mektuplar III', *Hürriyet*, 29 Eylül 1285

35 Ali Suavi, 'Demokrasi: Hükûmet- i Halk, Müsavat', vol. 2, no. 18 (18 May 1870), 1083– 1107. in *Modernist Islam, 1840– 1940: A Sourcebook*, ed. Charles Kurzman (Oxford and New York: Oxford University Press, 2002), 139

into practice (that is, whether it resembles western assemblies) is left to social consensus (ijma of ummah). The strategy of discourse does not remain at this point and goes a step further and creates a new institutionalism for religion as a tactic. The judgments of the ummah cannot be assumed as bid'ah, but a religious obligation as the things that belong to essence of religion.[36] Ijma/consensus is used as the concept of classical jurisprudence expressing binding on Muslims. The 'ummah', who established this treaty and established a religious obligation, is not composed only of Muslims. Because the indication of the council of ummah is composed of not only Muslims but also Armenians, Greeks, Bulgarian, Jewish, etc. are all imperial components.[37] This is where the epistemic break occurs. Because an interpretation that has not been in any period of Islamic history from the very beginning is put forward radically and the distinction between Muslim and non-Muslim is eliminated. However, the intervention, which has an actual and ontological dimension, is the interpretation of any social consensus involving non-Muslims as a binding for Muslims at a point of religious obligation. On the one hand, while the basic religious-legal distinction is ignored, all the Ottoman subjects are included in the 'single ummah' category, and on the other hand, those who are tacit were brought to the authority that can put religious obligations on the *Millet-i Hakime*.

> … It is a fact that if the people of a town gather and accept a judge among themselves to solve the cases that will arise between them, the judgment of this person is not legally legitimate. The judgment belongs to the official judge appointed there by the state. Because the Judiciary (or local government) is the right of the Government. But if the people of a town pay allegiance (bey'ah) to one another to accept him as caliph, that man becomes the sultan or caliph;

36 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar I, *Hürriyet*, 14 Eylül 1285

37 Namık Kemal, 'Mesele-i Müsavat', *Hürriyet*, 18 Cemaziyelevvel 1285 (15 Ekim 1868)

> The judgment of the sultan or caliph before him becomes invalid. Because imamate is the right of the ummah...[38]

According to Namık Kemal, social consensus (ijma) cannot change any actors at the lower levels of the political hierarchy. Theoretically, that actor uses the legitimacy ground of a higher-level actor of the hierarchy. But it is possible to replace the head of all hierarchy, namely the sultanate or the caliphate, with social consensus. For imamet (caliphate), the administration, is the right of the entire ummah. Hence this right, it is therefore obligatory for the Ummah (that is to say all Ottoman subjects, including non-Muslims) to choose the imam/caliph in the administration and to form the government. Since this obligation is not possible with direct participation, choosing the parliamentarians means performing the mentioned duties and exercising their administration right for the Ummah.[39] Even, the allegiance of the sultans from the ummah (bey'ah), and the authorization of officials which is given by the caliph is directly related to the deputation of the ummah.[40] The power of the Ummah is not enough to give power to a person who becomes absolute ruler and can legislate unquestionably. In this context, any individual of the ummah does not have any right neither to persecute himself/herself nor to violate the rights of the ummah.[41] However, using the concept of "persecution" –as expected- not only for the governor's practice on others, but also for his individual situation points out that the instrumentality of religion in social legitimization is not only for the public but also for the ruler.

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38 '... Şeri bir gerçektir ki bir belde ahalisi ictima ile aralarında ortaya çıkacak davaları çözmek için bir kimseyi kendi aralarında hakim olarak Kabul etseler, bu kimsenin verdiği hüküm hukuki olarak meşru değildir. Hüküm yine salatanan tarafından oraya atanan resmi hakime aittir. Çünkü Kaza (yönetim/hüküm), hükümetin hakkıdır. Fakat bir belde ahalisi kendi aralarında bir kimseye saltanat veya hilafet için biat etseler, o zat sultan ya da halife olr; ondan evvelki sultan veya halifenin hiçbir hükmü kalmaz. Çünkü imamet ümmetin hakkıdır. ... ' (Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285)

39 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

40 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

41 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

Taking a new meaning with the interpretation of Ijma indicates that the classical Ottoman political thought has started to differentiate. In this context, reconstructing the legal/political hierarchies of Ottomans is a new discursive strategy. There is an inversion of the hierarchy among the Muslims (the hierarchy between the caliph/the commandment and ordinary Muslims) and the inter-communal (hierarchy in the Millet System).

According to N. Kemal, Constitutional regime does not touch the rights of the sultan, because sultan's right is indulging the will of the Ummah, without limiting the freedom of government. For this reason, as a discursive technique referencing to the Islamic tradition, Namık Kemal said that the title 'sahibi'l-mülk' can be used for the sultan and 'malikü'l-mülk' (real owner of the Authority) only for the God.[42] However, there is a point that is overlooked in the discursive tactic made by removing the meaning of the verse from the context by referring to the verse itself: In Islamic cultural tradition, it is known that no one can speak on property in absolute terms because individuals are only escrow holders. Therefore, while the rhetoric brought to the constitutionality by saying that the right of the sultan will be eliminated, it makes this discursive tactic with reference to religion in order to attract the subject to another point.

The first task of the deputies elected in the Assembly is supervising the government and correcting its mistakes on behalf of the ummah (whole reaya).[43] Giving the Sultan the power to distribute the assembly at any time that he wants, actually, prevents completely removing the assembly by the sultan. According to Kemal, this would be useful for constitutionalism because it would bring the necessity of re-assembling the assembly which was distributed by the sultan.[44]

While the Sultan described the Şura as a deadly poison, aside from being it is killer poison, Şura is defined as the only way to end the atrocities and waste, and not only these but also the procedural duty (*Hürriyet*, 30 Haziran 1285) and heal for social-political diseases of the public.

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42 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

43 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar II, *Hürriyet*, 21 Eylül 1285

44 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar II, *Hürriyet*, 21 Eylül 1285

> Can a country that does not have deputies to inspect its political order and to hold the government accountable make a public order? ... What will be the result of these situations? There is no doubt that if the state does not change its present administration style (Usul-u İstibdat), it will certainly fail. The fact is that the European states have so far kept us in order to protect their commercial interests and save the European Balance from attacks of the Northern savages. .. however, every wise person thinks that as long as this cruel administration of the state is in power, intervention of foreigners cannot be prevented. ... [45]

The use of the concept of *İstibdad* (in the sense of the concept of tyranny) in conjunction with the downswing/collapse of the state creates practical illegitimacy while leaving epistemic legitimacy. In this discursive construction the opposite of the downswing is not preserving the current situation, but it is the claim that turning the collapse into an upswing. On the one hand istibdad that is leading to collapse, on the other hand the liberation from it does not only prevent the collapse but also with the council of ummah or constitution it is converted to upswing. The existence of the administrative oppression is combined with the global context to be accompanied by the rationale for external intervention. This discursive strategy in the context of the cause-effect relationship, in the next step, the unity of discourse is formed by the declension and fragmentation.[46]

Similar to *Redefinition of Basic Islamic Concepts*, this discursive strategy relies on meeting modern political concepts that are not related to the ontological assumptions of Islamic epistemology, while borrowing

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45 Bir memleket ki nizamatını tetkik edecek, vükelasını mesul tutacak mebusanı olmaya, asayişte mi bulunur? ... Bu hallerin neticesi nereye varacak? Şüphe yok ki devlet şimdi bulunduğu usul-i istibdadı değiştirmezse elbette batar. Vakıa düvel-i Garbiye menafi-i ticareti himaye ve Avrupa muvazenesini Şimal vahşilerinin tasallutundan vikaye için bizi şimdiye kadar muhafaza etti. .. fakat şurasını her akil düşünüyor ki devlette bu idare-i zalimane durdukça müdahalat-ı ecnebiyenin önü kesilemeyecektir.' (Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285)

46 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

the set of legitimate (accepted by society) concepts that produce norms. This discursive strategy presents the concept of the Hakimiyet-i Milliye and the national sovereignty as the same concepts. While the meaning of the Millet corresponds to the concept of nation, which is a construction of the modern state, İcma-ı Ümmet, Hürriyet, Terakki, Meşrutiyet etc. concepts are exposed to the same discourse practice.

3.2.1.5 Selective Reading of History

While trying to find legitimizing bases for the Meşrutiyet order, History is one of the most frequently referenced sources. Therefore, both Ottoman history and Islamic history were the primary sources of reference. However, the events (or supposed events) that have been selected or experienced in the history are the ones that have the arguments to create or to allow to establish the Meşrutiyet in any case. Here, elementary examples from the two historical periods are presented. Arguments supporting the Constitutionalist regime are first produced by expressing selective examples from early Islamic history and then from classical Ottoman history. If the matter in history does not offer a direct or indirect support to the Meşrutiyet, the historical event is reinterpreted to approve the Constitutional Monarchy; so, the historical narrative is recreated. The main discursive strategy is presenting all fair administrations in the history of Islam as they were constitutional; the periods that considered for the Ottoman's administration as constitutional are described as the times when the Ottoman state was the strongest. The absence of the Constitutional Monarchy is shown as the justification for the political, military, economic etc. weaknesses in the past/present.

The legitimizing power of history is widely used as a discursive strategy. Political strife between actors is presented as a different situation and the irresistible force of history is called for help in order to construct the discursive reality. Two themes stand out here: i- Referencing Early Islamic history; ii- Referring to Classical Ottoman history.

The examples from classical age of the Ottoman history are highlighted to strengthen the discourse. However, as another strategy of discourse, these prominent historical situations/phenomena are isolated

from the context and made open to interpretation and transformed into operational instruments. Ottoman history is called upon, in fact, to help consultation/the constitutional system that is present in the Ottomans long before Europe, and it is said the Ottomans perform the administration within the framework of this order, is tried to convince the constitution that the Ottoman is not foreign.[47] In fact, this claim can be attributed to religious tradition by claiming that the Ottomans would establish a more powerful constitutional order than the west. Namık Kemal says: "Until the Janissaries were abolished, the Ottoman Empire was governed by the will of the Ummah, that is, indirectly, with a kind of Meşrutiyet."[48] "Until the current istabdad administration, the Ottoman Empire used to consult with the people on important issues and act according to the wishes of the people."[49] Similarly, Ali Suavi says: "[To resolve the crisis within the Empire] Let the state re-enact the fatwas and principles (usul-i meşveret) it has complied with and add them into the constitution."[50]

Similarly, by adducing many examples from the early period of Islamic History (ie, Ali Suavi, N. Kemal), the discourse is tried to be strengthened. The view that Islam gives the duty to supervise all the rulers and that Islamic governance has always been a Meşrutiyet throughout history is provided by giving the views of important figures of Islamic history regarding the Shura. For instance, as Ali Suavi says "The Islamic government has been initially bounded by the shariah and could not exceed the limits set by the sharia."[51]. And also, Namık Kemal adds that "When Islam has emerged, wasn't it a kind of Republic [majority rule]?"[52] In the discursive strategy, the actors conceal themselves and use historical figures / individuals in their power struggles, claiming that the Ottoman Empire was ruled by the constitutional regime from the beginning until the reign

47 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

48 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar I, *Hürriyet*, 14 Eylül 1285

49 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar III, *Hürriyet*, 29 Eylül 1285

50 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

51 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart 1868, numara: 27

52 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar I, *Hürriyet*, 14 Eylül 1285

of the istibdat regime; and claim that the qanoons issued by the previous sultans allowed the constitutional regime.

3.2.1.6 Representing the West both as enemy and source of Emulation

Pre-modern period Ottoman history is the history of relations with the Western world (Europe) like the history of many other non-Western countries. Because with the rise of colonialism and the effectuation of industrial revolution, Europe accumulates the power to establish hegemony on a global scale, while the non-Western world is looking for ways to resist this hegemony. This rising power of Europe is at the forefront of the external dynamic in the discussion of the constitutional regime in the Ottoman state and the demand of this regime. Many non-western countries seeking ways to counter this rising and threatening power think that what makes it strong must be imitated in order to overcome modernity - that is, the modern west.[53] In this context, in the mentioned period, the image of the West is both an existential enemy to fight against and an opponent that must be overcome by imitating. This discursive strategy is used in almost every period, and it shows itself very much in the texts we examine.

3.2.1.7 Devising a Hybrid Political Theory

Considering the strategies of Redefining Basic Islamic Concepts and Giving Modern Concepts with Islamic Terminology, it is possible to say that a new (hybrid) theory of politics has been created. Or, in other words, the classical political concepts of Islam are subjected to a different interpretation - or rather a modern interpretation - and a hybrid (semi-modern - semi-Islamic) political theory emerges as a natural result. Many theoretical concepts of modern political philosophy, especially the forms of government, are blended with classical Islamic concepts and an attempt is being made to build a new political theory. Here, the Discursive strategy points to the existence of a new situation, while conveying the modern in

53 Harry Harootunian, *Overcome by Modernity: History, Culture, and Community in Interwar Japan* (New Jersey: Princeton University Press, 2002)

the expression patterns of the traditional, at the same time, subjects it to a different interpretation. For example, separation of forces, one of the basic theoretical patterns of liberal political philosophy, can find its origins in Islam as a consequence of this discursive technique. Or the discovery of 'social consent' in Islamic jurisprudence may lead to the conclusion that the absolute regime is contrary to human nature by revealing a new political understanding. According to Namık Kemal "… if the people of a town pay homage (bey'ah) to one another to accept him as caliph, that man becomes the sultan or caliph; The judgment of the sultan or caliph before him becomes invalid. Because imamate is the right of the ummah..."[54] "Domination of the people [or national sovereignty] does not mean rejecting allegiance. … The people have the right to establish a republic, just as they have the right to dominate."[55]

Considering a historical linear progression as absolute, it stands out as one of the strategies that foster the discursive strategy that istibdad is actually 'backwardness'. The fact that the absolute well-being of the society is expected in the 'progressive' future also allows the interpretation that the society has the 'right to resist' against such a backwardness like the absolute regime. This discursive strategy, in which we see the traces of liberal political theory in general, plays an important role in the secularization process of law and politics. For instance, equality between Muslims and non-Muslim subjects (Christians and others) highlighted by the concepts, Hürriyet, Müsavat etc. concepts. In fact, this is can be explained as equality of the differences, or sometimes referred to as 'authentic' sameness.

As seen in the texts of the New Ottomans, it is pointed out that before the istibdad (unlike the general opinion, müstebit is not Abdulhamid II, but his uncle, Abdulaziz), Devlet-i Ali had offered all the socially important issue to the ummah, when the limit of the consensus on the general public is passed over, it is claimed that this is the reason that allows to the people (the ummah) of the congregation to resist[56] and it is

54 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', Hürriyet, 30 Temmuz 1285

55 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar I, *Hürriyet*, 14 Eylül 1285

56 Namık Kemal, 'Usûl-i Meşveret Hakkında Mektuplar III', *Hürriyet*, 29 Eylül 1285

suggested that this is the maslahah. it is not in vain that 'the resistance', which is a notion that is not used in the traditional Ottoman political thought, as the limiter practice of political power. It should be said that the strength of the resistance in the Lockean sense made it easier for Namık Kemal to recall that, as eclectically, Rousseau, Machiavelli and Locke had been referring to, or discussing, them. This implies, on the one hand, that the traditional Ottoman administration is not entirely bad, on the other hand it is not entirely unfamiliar to the theory of modern liberal politics, thus allowing for exchanges in politics over similarities.

3.2.1.8 Reconstructing the legal/political hierarchies

This discursive strategy changes the classical Ottoman legal/political hierarchy and proposes a new political-legal hierarchy. In the distinction between 'millet-i hakime' and 'millet-i mahkume', there were Muslims who were 'millet-i hakime' at the top of the hierarchy, while non-Muslims were at the bottom both legally and politically. However, the effort of the Constitutional Monarchy regime to define everyone as equal citizens - or the theoretical structure implying this - ignores this hierarchical situation.

The Caliph is considered to be a normal coping with the election. Normally the Caliph is not only a political leader who has come to terms with the election, but he is also a religious leader.[57] However, the Constitutionalist rhetoric claims -with reference to European the social contract tradition- that the Caliph was actually an official of the people who selected him.

Religious references used to legitimize the regime that they are trying to build are selected in a fragmentary way. In other words, the sacred texts or historical events/situations are taken -as ignoring the integrity of meaning- away from the context. Sometimes, it is tried to emphasize the legitimacy by giving the literal meaning, sometimes the historical context, and sometimes the social context, and the fact that the whole of

57 Nurullah Ardıç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernization in the Early 20th Century* (Routledge, 2012)

the mentioned situations is left to one side and impose a compelling meaning. By doing so, references that do not work for the constitutional monarchy are often ignored. According to Namık Kemal "We do not leave the administration to the deputies by keeping our sultan exempt from everything as in England. Because, according to the sharia, the sultan is the official [memur] who will execute justice."[58]

Ali Suavi reads the constitutional monarchy/ Meşrutiyet[59] (a consultation that is included and practiced by all subjects in equality without any discrimination being either Muslim or non-Muslim) as a necessity of the fiqh by separating it from an authentic reference, context and circumstances from traditional Ottoman political thought.[60] Namık Kemal expresses this as follows: "… will we still not accept the equality of our citizens? Sharia rules the equality of the people. Even, reason and wisdom [also] rule the equality of the people."[61] These words, as we discussed above, deny the hierarchy among the religious communities. While emphasizing the sharia, at the same time, equality is emphasized by denying the hierarchy of the sharia. While making this justification, on the other hand, it is confessed that the constitutional monarchy is actually a new form of administration. Because, while referring to the encompassing boundaries of the fiqh, it is also emphasized that the new facts brought about by the time cannot remain indifferent and it is also emphasized that the fiqh should touch this administration style and take it into the scope. However, this justification contradicts the argument that claims

58 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar I, *Hürriyet*, 14 Eylül 1285

59 In this historical period when the new Ottomans defended the constitutional regime, the name of the regime form was not clear yet. Those who defend the constitution and those who oppose it do not argue in the context of an agreed concept. For example, sometimes the names 'hükümet-i meşruta', sometimes 'nizam-ı esasi', sometimes 'meşveret meclisi' or 'meclis-i meşveret' are used. Even in the same text, different phrases can be used to express the same meaning. Therefore, in the context of the texts discussing the constitutional regime below, the concept of 'Meşrutiyet' (Constitutionalism), was preferred to express the meaning of the constitutional regime in general.

60 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart, 1868, numara: 27

61 Namık Kemal, Usul-ü Meşveret Hakkında Mektuplar VIII, *Hürriyet*, 23 Teşrinisani 1285

that the order of constitutional order also existed in the Ottomans far before.

So far, we have examined discursive strategies that were made by reference to Islam. Along with these strategies, there is another frequently used meta-strategy: Legitimization with reference to Europe. I will examine it now.

3.2.2 *Legitimization with Reference to the West*

Legitimization with reference to Europe figures as one of the 2 meta-discursive strategies in the debates over Meşrutiyet. The Western world, namely Continental Europe and the Anglo-Saxon world, represents an undeniable existence for the non-Western world in the 19th and 20th centuries. In fact, it is more correct to mention a political, economic, military and cultural global western hegemony since the 20th century. It is possible to understand the blessings of modernity as dazzling, enviable and desirable instruments for the non-western world. These blessings of modernity should not be limited only to technological development; intellectual and socio-cultural concepts / institutions, which are the heritage of enlightenment, should also be added.

The Protestant reform movement faced by the Catholic church and the Renaissance movement, which was considered to be the birth of modernity, are not sufficient arguments to explain the global hegemony of the western world on their own. The western world's domination of the non-western world politically, militarily, economically and culturally was only possible thanks to the colonialist expansion and the new possibilities brought by the industrial revolution. Asymmetrical development of military technology compared to previous centuries, along with the wealth of economic colonialism and the efficiency created by the industrial revolution, revealed an irresistible situation for the non-western world. Although we do not make a historicist interpretation, we must admit the fact that the irresistible situation in the non-western world is demonstrating the hegemony of the West on the whole globe. For this reason, the relationship of those outside of the west, that is, the rest, with the modern West had to be predominantly in the military field. The

disadvantages taken in the military field against the West have led to the emergence of quests to overcome it in the non-western world.[62]

Based on the global experience of the 19th and 20th centuries, we can say that the judgment among the Ottoman intellectuals that all the elements that make the West strong will also make the non-Western world strong, is assumed as a general acceptance.

The political developments surrounding of the Constitutional regime among the Ottoman intellectuals brought the West to the center of debates. However, it is evident in the written texts of the period that this debate is often far from being critical. The export of the Constitutional regime to non-West or its importation from non-west indicates that this form of administration is considered as universal. There are contradictions and antagonisms between traditional administration style and modern administration style. What needs to be done to overcome these contradictions is very simple: it needs to be legitimized by its proponents using different arguments. In this context, we can say that by reference to the literary texts in the period we have studied, in addition to meta-strategy of the Legitimation with Reference to Islam, there is another meta-strategy used to legitimize the Constitutional regime: Legitimation with reference to Europe. In the written texts we have studied, it is possible to sort the discursive strategies of the legitimation with reference to Europe as follows: i- Power-centered Perception of European, ii- Advancing a Progressive view of Society, iii- Making Selective Comparisons.

Since all three strategies are used intertwined in the texts, I will evaluate them collectively instead of evaluating them separately. Europe is important because of its political, military, and economic pressure on the Ottoman Empire. However, the fact that Europe is where the constitutional regimes originated, power of ordinary people to participate the political mechanism makes it suitable for use in discursive strategies.

62 Harry Harootunian, *Overcome by Modernity: History, Culture, and Community in Interwar Japan* (New Jersey: Princeton University Press, 2002)

3.2.2.1 Power-centered Perception of European

The concept of 'power' in terms of both the military capacity use and economic development and wealth are the main goal of the states. Considering the historical conditions of the 19th century, in which the Constitutional regime started to be discussed, it is understood why 'power' and being a 'powerful state' are so important for the Ottoman intellectuals. It is emphasized that all powerful states were European during this period (and also concept of power here partially implies not only the practice of using force and material development/wealth within the country, but also colonial expansion). In this context, the general answer to the question of *where Europe gets its power from is 'its government style'*.

It is emphasized that in order for the Ottoman Empire to become a powerful state, it should also be transformed into a constitutional regime. Thus, the Ottoman state will be considered as both strong and credible, which can take its place among the powerful European states. On the other hand, it is claimed that the constitutional regime will strengthen the unity and solidarity among the subjects and this will cause political unity. In other words, the existence of a common assembly in which every nation can represent itself is deemed necessary. Because the absence of a parliament where different nations can defend their rights fuels nationalist separatism, and this also weakens the state.

In historical context, because all advanced and powerful states -which are only European states- are ruled by the constitutional monarchy, the call for the constitutional order is made. The character of the political order is the only determinant; i.e. political, economic, military, cultural, etc. the primary source of all kinds of power are determined by the form of the political order. While all states ruled by the constitutional monarchy are alleged as strong, advanced and powerful in inter-state sphere, all states governed by absolute rule are assumed as weak, economically dependent and culturally backward. Meşrutiyet, which is the only way for the Ottomans to be able to get rid of the back, weak and irregular situation, is also the only tool that will allow the global linking to the Ottomans and to be among the big ones in the interstate relations.

Another discursive technique used to support the claim that the constitutional regime will strengthen the state is produced through non-Muslim subjects. It was a sign of the weakness of the state that after the Treaty of Küçükkaynarca, Russia became the patron of the entire Orthodox subject by making a fait accompli.[63] The gathering of citizens within the Ottoman subjects with the Berats given by different states, different sects demanding patronage of foreign states through religiosity etc. situations are other signs of state weakness. With the declaration of the constitutional assembly, this external intervention/pressure is left unjustified and this assembly strengthens the state both inside and outside.

Namık Kemal says "...then, for the Sublime Porte, to become a state governed by a constitutional monarchy would be both to completely prevent European intervention and to ensure the survival of the state. … Every wise man thinks that as long as this cruel administration [müstebit] continues in the state, the intervention of foreigners will not be stopped."[64]

The discursive strategy 'Perception of Power-Centered Europe' is directly related to another discursive strategy, referencing to the concept the concept of Progress.

3.2.2.2 Advancing a Progressive view of Society

This approach, which considers 'history' as a linear progression from *traditional* to *modern*, is dominant at the beginning of the Constitutionalist regime discussions. Strong states are also the states that have progressed. Development and progress are vital institutional practices for these states. The existence of a legal order, its nature, effectiveness, etc. points play a key role in the development of a country/state. Using this as a discursive technique implies that law is the main factor in the development of a country/state. Success of progressed and developed states like Europe is directly connected to achieving equality among their citizens. With this discursive technique, it is argued that there are different

63 Eric J. Zürcher, *Turkey: A Modern History*, (London: I. B. Tauris, 1993), 40

64 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

legal orders/systems (remember the Ottoman Millet system here) among the citizens and this constitutes an obstacle to progress and develop.

New Ottomans has stated that equality among citizens will be possible with the Şura/Consultation. In other words, in the discourse Consultation presented as the only way to achieve progress. Thus, the concepts of Şura and equality are connected to the concept of progress, claiming that Meşrutiyet leads to progress and İstibdat leads to decline. "Undoubtedly, if the state does not change the current method of tyranny (usul-i istibdat) [if it does not accept the constitutional monarchy], of course, it will fail."[65] In this way, this strategy also allows for the last of discursive strategies.

3.2.2.3 Making Selective Comparisons

The final discursive strategy of the legitimization meta-strategy with reference to the West is the elective comparative strategy. It was mentioned above that the constitutional monarchy was claimed to provide equality between citizens with the practices of şura and parliament. While expressing that equality between citizens will be ensured by the legal order, the process of producing 'citizens' from subjects is pointed out. But there is another thing that appears in the texts that discusses and demands the constitutional regime: the will to power, the demand for government. Actors who want the Meşrutiyet so that all people can participate in political decisions define a privileged group (fırka-i mümtaze). However, this definition does not allow practically all the people to participate in the administration. On the contrary, it means that very few people in the population participate in the administration. The people mentioned will not be anyone other than the educated or the gentry. In other words, the intellectuals that emerged as a new group will constitute the fırka-i mümtaze.

The main theme in the texts defending the constitutional monarchy is that the people/ahali contribute to the consultation by saying about the administration. Thus, theoretically, the administration will be shaped not

65 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

only by the elites but by all Ottoman Muslims and subjects. However, it is also stated that there is no competence to participate in the administration of the people in the same texts and a paradoxical situation is revealed. The emphasis on elites does not attract attention due to the power of the discourse that constructs the social reality and, as a consequence, factual reality remains in the shadow of discourse. The fact that the people cannot be competent in the context of political activeness means that the administration of the Constitutional Monarchy cannot create a radical difference with the current administration that existed before the Constitutional Monarchy.

By ignoring the historical and social context of Europe, it is argued that those who will have a power to say in the constitutional regime should be a privileged group (fırka-i mümtaze), not ordinary 'citizens' who have equality between them. It is again Europe that discursively legitimizes this argument. This elitist approach, which stands out in the aforementioned texts, argues that the same is true for Europe, where ordinary citizens are not included in the government and that no one who is not competent has not come to the government as a deputy or the authority to decide/elect the deputy. Instead of evaluating the Constitutionalist practices in Europe as a whole, discursive strategy is built by selecting limited examples to give legitimacy to power demands for 'fırka-i mümtaze'.

On the other hand, it is claimed that the Ottoman society and the European societies are not different from each other by equalizing the 'natural law paradigm' and the 'sharia' that is not possible to be epistemologically be the same with natural law. By using historical examples in a selective manner, it is stated that the institutions that make Europe stronger have actually Islamic roots. It is even claimed that these institutions were transferred to Europe through Islam, and it was said that there was no problem in taking these institutions from Europe in the 19th century. Because these institutions were essentially the institutions of the Ottoman/Muslims.

Along with this Elective discursive strategy, it is possible to take whatever makes Europe stronger to the Ottomans, and the demand for power

is created; and also, by referencing traditional sources of legitimacy, approaches opposing the Constitutional Monarchy can be overcome.

DISCURSIVE STRATEGIES DEPLOYED

Bringing the power-centered European perception and discussions that take place within the framework of the concept of progress provides using it as a reference in discursive strategy.

> Question: How can our peasants be able to participate an election, and in this context, how can the government's deceiving be prevented?… Does this man (asking the question) think that every peasant of Europe has the power to distinguish the right from superstition, fool from the wisdom, cruel from the justice, and ignorant from the scholar? No, they are also similar to our people; but since their work is regular, their wealth is so high. ….[66]
>
> '… It is not possible for the general public to exercise its right to domination by themselves, nor to exercise their second-degree supervision right by themselves. As a result, unrests come out, lives perish. Therefore, rights of supervision, rights of government enforcement issues will necessarily fall into a special class. What other remedies can be found besides being elected as a member of parliament, the legitimate and beneficial execution of that party/class?[67]

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66 Sual: Bizim köylülerimiz erbab-ı dirayet intihaba nasıl muktedir olabilir ve bu babda hükümetin iğfalatı nasıl menolunur? … Meğer bu zat zanneder mi ki Avrupa'nın her köylüsü hakkı batıldan, ahmağı akilden, zalimi adilden, alimi cahildan tefrike muktedirdir. Hayır, onlar da adeta bizim halka benzer; yalnız işleri muntazam olduğu için servetleri böyle…' (Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar II', *Hürriyet*, 21 Eylül 1285)

67 '… umum ahali hakk-ı hakimiyetini bi'n-nefs icra edemediği gibi ikinci derecede lüzumu terettüb eden hakk-ı nezaretini de bizzat icra edemiyor. Neticesinde fitneler çıkıyor, canlar telef oluyor. Onun için hakk-ı nezaret, icra-yı hükümet gibi bi'z-zarure fırka-i mümtazeye kalacak. O fırkanın meşru ve nafi' surette icra –yı nezaret etmesine tevkilden başka ne çare bulunabilir? (Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 21 Eylül 1285)

It is highly controversial whether all subjects are included in the legislative process. While this process itself has serious problems, both the disregarding major subjects and the pressure of the local powers on the people (subjects) worsen the good consequences of the legislative process. The discourse that has been applied to overcome this problem is that similar problems were related to the people of Europe; however, it is also claimed that they overcome their problems by means of a functioning order/nizam. The repetition of the elections for a certain period of time provides the balance of order and this is not contrary to the shariah.

Combining the legislature power and executive power at one hand makes the owner of that hand an absolute decision-maker; this contradicts with concept of council of ummah –şura-yı ümmet-.[68] "The state is a spiritual person [şahs-ı manevi]. Making the law is its will, enforcing is its action. As long as both of these are in one person, the government cannot escape being 'absolute'. … This is why the council of the ummah is necessary."[69] It is a fact that the idea of the constitutional monarchy and the constitutional regime does not contradict with the shariah obviously. But how would such a management be practiced? Will it be done with the imitation of the parliamentary assemblies in Europe? The answer to these and similar questions is "yes". Unfortunately, it has to be. Because of the harassment of the Janissaries, in a sense, the will of the Ummah has lost the possibility of controlling power. Although they had some misconduct, the Janissaries were in charge of overseeing of the Ummah on the government together with the ulama. However, after this opportunity has been lost, the Ummah will perform his duty through deputies, by working as European assemblies.[70] This discourse, demanding the imitation of parliamentary practices in Europe, is indeed the overwhelming strategy of integration into the historical context rather than creating a structure that is compatible with its internal dynamics and cultural practices like the Janissaries. Because, it is necessary to behave like western/civil societies. Whatever administration techniques they have developed, it is

68 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

69 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

70 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

necessary to take and use these same techniques. Even if that means imitating the West.

Since the Council of Ministers is represented by Ummah's deputies, in a situation where such representation is valid, the non-Muslim people who will take up arms under the claim of oppression cannot convince Europe. Şura-yı Ümmet is codified to justice by defining it from an oppositional-negative perspective[71]; and it is conducted to solve all the vital problems.

Ali Suavi, on the other hand, uses the concept of restrictive regulations or limiting conditions directly from shariah that the constitutional system must be bound to. This attitude, which is the use of religion as a legitimator, emphasizes historical contexts with the emphasis that all civilized states are at the same time restricted states by constitutions.[72] The distinctive qualities of the states that have the constitutional monarchy are not merely being civilized; at the same time fairness, ingenuity, advanced understanding of art, strength, wealth, reputable, and so on, they have all the positive corporate features. On the other hand, non-Western states such as Russia, Iran, or China are unjust, backward, rude, uncovered, inferior, etc. all negative features are also expressed. According to New Ottomans, as Ali Suavi says "All the ingenious, artistic, wealthy, and powerful states of our time are all governed by a constitutional monarchy. Just like the European states… On the other hand, all of the unskillful, powerless, poor, and cruel states are also ruled by absolutism [istibdat]. Like China, Iran, and Russia…"[73] This makes the political administration style more effective than it is. In fact, he says that it is the only necessity to have a strong inter-state power with a strong economy, a strong economy with a strong army, spreading its political administration style to a holistic social, cultural, economic, and technological world.[74] At the same time, he adds, if the two European powers, Britain and France, try to invade China by their skill and ingenuity, China cannot resist by the bushes

71 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

72 Ali Suavi, Usul-ü Meşveret, *Muhbir*, 14 Mart, 1868, numara: 27

73 Ali Suavi, Usul-ü Meşveret, *Muhbir*, 14 Mart, 1868, numara: 27

74 Ibid.

of ships or mats, which are the production of traditional world views. The weakness of the shrub and the mat is compared with the strength of steel in the modern navy, emphasizing directly the inherent weakness of the tradition against modernity. In other words, Nature's weakness against Civilization is implied. It is emphasized that the nature/the natural, that is, the raw, is processed through the reason and passed into the domination of 'the ratio'. It is suggested that being independent from the technique creates an existential weakness. Thus, the discursive strategy here emphasizes being strong as a discursive technique. The argument of this strategy is the glorification of the *Technical*. It points to the domination of nature through intelligence, its fateful weakness against 'the technique'.

§ 3.3 Contradictions That Discursive Strategies Cannot Cover: Will to Power and the Government of the Elites

The strategies, which we have sorted as discursive strategies above, both with reference to the ulama, with historical examples taken from history selectively, and with the practices of reinterpreting sacred texts and traditional concepts, cannot build a holistic and consistent structure. These contradictions are sometimes accepted implicitly by the actors who produce their discursive strategies and techniques.

The answer to the questions raised about the parliament and the Nizam-ı/Kanun-ı Esasi, which is the focus of all debates, reveals how strong the power of the discourse is and how it denies the factual/practical social reality while building discursive social reality. Because this is the hardest part of the problem; and, unfortunately, they do not have the necessary equipment and knowledge to give a constitution that will revive the homeland with the expressions of the constitutional monarchy.[75] Because of their unfamiliarity and partial inexperience, they try to cover the empirical weakness of the discourse, which constructed by them, by producing ad hoc solutions.

75 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

For example, it was suggested that a new kanun-u şer'i (sharia law) will be made within the borders of sharia by putting forward the concepts of 'Siyaset-i Şer'iyye' and 'Ijma'. The 'Ummah', which encompasses not only Muslims but also non-Muslims, would operate this new process of producing the new norms. It was aimed to legitimize this process by using religious references. However, the fact that the same religious reference gives to the believers is ignored as another discursive strategy. However, in the mentioned assessment, it is emphasized that Muslims' religious expense details and decisions concerning their religion will not be a matter of debate.[76] What is subconscious here is that, even though non-Muslims are equal, because of the demographic/political superiority of Muslims they do not/cannot object to Muslims.[77]

On the other hand, in a parliament where all the members are equal, against the argument that the sultanate and the caliphate can be the subject of discussion by the Greeks, the subconscious that we have mentioned above again manifests itself. It is asserted that there will be little Greek population in the demographic totality of all Ottoman elements and -ignoring the fact that other non-Muslim elements can be found with similar demand and the demographic ratio of all non-Muslim subjects is not so low- that no one can dare to that. Namık Kemal says "[If there is a Constitutional Monarchy] Greeks would declare a Republic… Who are the Greeks? If all the Ottoman people gathered together, a microscope would be needed to see the Greeks among them! In addition, even among the Greeks, there are not a hundred thousand people who want a Republic."[78] The practical situation of discourse is expressed as it transcends the notion of domination of the people with similar arguments: "We [believers of Islam, Muslims] are the rulers of the government and we are all members of the government."[79] However, the executive work of the government is entrusted to the Ottoman state within the limits set by the legitimate allegiance, i.e. religion, and the only wish is for the legitimacy of the

76 Namık Kemal, 'Ve Şâvirhüm Fi'l-Emr', *Hürriyet*, 30 Temmuz 1285

77 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

78 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

79 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

Ottoman state. But this Ottoman state loyalty is not an obstacle to the republican regime in the reality constructed by the discourse, and even Islam is again called for help and the first period of Islamic history is reflected in the practice of a republic.

There are questions about the competence of the general public and the ability to choose representatives. While the constitutional status is accepted as a certainty for the situation before the Meşrutiyet, where the Ottoman citizen or rector is not in this competence, the general acceptance is that the administration is the current in the hands of the elites. Although the constitutional societies, according to Ali Suavi, were the only civilized and advanced societies in his time, they were very backward and inadequate when they first declared their constitutional monarchy. In this context, the Ottoman society is more advanced and equipped in the pre-constitutional period, saying that the Ottoman society is more inclined to advance and develop in terms of the future in the Ottoman Empire.[80] All the weak institutionalities of the political administration style will be strengthened by the Meşrutiyet, and the Ottoman society will strengthen its unity and begin civilization with it. In this context, there is a certain faith that civilization is the natural consequence of the Meşrutiyet order. Considering the Meşrutiyet the only factor in the West's strength[81], it can be read as implying that the Ottomans' desire for constitutionalism should not face a religious obstacle.

It is explicit enough how the people are reliable and respected in terms of forming the Republic and the "public opinion": Apart from the undeniable truth that the people will overthrow the Ottoman state, no one is able to put the ideas of the Republic in the Ottoman state into practice.[82] Hence, the emphasis on public opinion actually expresses the task of an elite group to supervise and oversee the government. The form of this task is undoubtedly choosing parliamentarians.[83] This emphasis, which is made as another strategy of discourse, implicitly hides power.

80 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart, 1868, no: 27

81 Ali Suavi, 'Usul-ü Meşveret', *Muhbir*, 14 Mart, 1868, no: 27

82 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

83 Namık Kemal, 'Usul-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

Because the elite class that will oversee the administration is the New Ottomans or the ruling class they are part of. Therefore, to see the voice of the common people here, really cannot go beyond the discursive possibility. Because the main motivations of the actors who produce discursive strategies are not the direct participation of the people in the administration, but being given the power, which the Sultan did not give, to them by the people.

It is claimed without any empirical justification that the adversaries of "Usul-ü meşveret" oppose to constitution because of their personal interests and personal grudges. However, when they are under similar accusation, it is not clear which reasons they will put forward.

§ 3.4 Concluding Remarks

As mentioned above, the most influential opponents of the sultan (and actually ruling elites) during the pre-76 period were the New Ottomans. New Ottomans, who demanded the constitutional regime and believed that this was the only reasonable way for the peace of the Ottoman state, developed many discursive strategies and discursive techniques while voicing these demands. When we look at which practice of discourse, which conceptual framework and historical attribution of each strategies have been done, the following intellectual picture emerges: It is the anthology of political thoughts that are intertwined, sometimes independent, original thoughts, sometimes repetition of traditional Ottoman political thought; and eclectically, both traditional Ottoman political thought and modern political philosophy. Discursive strategies are intertwined like New Ottomans' thoughts. Therefore, when we come up with the conceptual framework of the texts, it is not that easy to make the detached distinction we make in the context of meta-strategies. Consequently, instead of making a separate sub-title for each discursive strategy, it would be more reasonable to analyze the discursive strategies and discursive techniques that are interwoven. However, before moving on, it is useful to recall the reasons of those who opposed the constitutionalism.

As we wrote above, the main arguments and questions of those opposed to the Meşrutiyet were:

a- Meşrutiyet conflicts with the Shariah
   i- Contradictory of the Meşruti regime/administration to the İslam/Being Bid'ah (innovations that subsequently emerged)
   ii- Restriction of the caliphate by the Meşruti regime
b- Objections about the content of those who participated in Meşveret (Participation of non-Muslim subjects to assembly)
c- The fact that the Sultan does not accept the proclamation of Meşrutiyet
d- The lack of the Ottoman public to implement Meşrutiyet

In this chapter, I have generally examined the historical context of the period I am examining, the meta-strategies and discursive strategies used discursively, and the arguments used in the context of these strategies. By using the texts of the advocates of the Constitutional Monarchy/Meşrutiyet, I have examined how discursive strategies are constructed and defended publicly. That's to say, the discourse analysis of those who want and/or oppose the constitutional system has been done, and which discursive meta-strategies were formed and which discursive techniques were fed by them have been analyzed. Which differences in the epistemological dimension caused by the aforementioned discursive struggle had emerged, and which legitimacy grounds were used by the political expression forms that have been revealed. This will help to better understand the transformation of political epistemology and creation of legitimacy for a secular law and politics, which will be examined later in the next chapters. In this respect, the basic texts that I have done Critical Discourse Analysis in this section consist of the articles of Namık Kemal on constitutionalism in *Hürriyet* newspaper and Ali Suavi's articles on constitutionalism in the *Muhbir* newspaper.

The next two chapters will follow the chronological order applying the same method. Chapter IV will present a discourse analysis of the constitution's first declaration and suspension period up to the second declaration in 1908 and then in the subsequent chapter CUP (Committee of Union and Progress) administration period will be examined.

4

Status Quo, Legitimacy, And The Meşrutiyet During The Hamidian Era (1876-1908)

In the previous chapter we made the discourse analysis of Abdulaziz period, and in this chapter, we will make a discourse analysis of post-Abdulaziz period. In this period, Abdulaziz was dismissed and Murat V succeeded him, who was also dismissed and then succeeded by Abdulhamid II. We will limit the period of discourse analysis between the dismissal of Abdulaziz and 1908 when the Meşrutiyet was declared for the second time by Abdulhamid. That is, we will start our analysis right before the declaration of Meşrutiyet in 1876 and cover almost all of the Hamidian period.

Apart from the swift succession of sultan caliphs at the start of the period, one of the other noteworthy points in this period is that the debates on the "Meşrutiyet" got even more complicated. While the number of texts debating the Meşrutiyet as well as its supporters and opponents increased in this period, in other words, the regime debates publicized, the form of the debates on Meşrutiyet rule evolved into a more theoretical setting. For the opponents of Meşrutiyet as well as the supporters became more visible through the press in this period. However, a crucial event of this period was the suspension of the constitution and parliament that Meşrutiyet did not last much after the declaration in December 76 as it (until 1908) in 78.

This chapter addresses the developments in historical context and examines the positional stance of political actors. It will be recalled that discourses of supporters of the Meşrutiyet granted to ordinary people the right to get involved in politics and legislation. Since our goal is to unveil the difference between the factual reality and the reality constructed by the discourse by outlining which positions the actors have taken in which political state, we will begin with discussion on the historical context. To put it more clearly, the aim of providing inter-actor relationship and some of the dialogs is to demonstrate that there is actually no overlap between the discursive reality constructed by the system through its powerful framework and the factual reality experienced in the practical life. Thereby, it would be possible to understand the split between the discourse and practical reality and comprehend the purposes of construction of the discursive strategy. Then, we will indicate which meta-strategies have been used, and this will be followed by an analysis of the discursive strategies as well as discursive techniques that these meta-strategies are consist of. The texts that are subject to discourse analysis include those both sides, which are supporters and opponents of the Meşrutiyet. These texts include memorials of debates among the Pashas following the dethroning of Sultan Abdulaziz (like M. Celaleddin Pasha's *Mirat-ı Hakikat*); essays of Namık Kemal written in *İttihad* magazine before the declaration of meşrutiyet around mid-1876; the booklet written at the same period titled *Hükümet-i Meşruta* (by Esat Efendi) which is the first "text of Constitutional Law" according to Tunaya[1], and the arizas about meşrutiyet rule presented to Sultan Abdulhamid. These arizas are *Muhiddin Efendi's ariza* (1896), *Yusuf Paşa's ariza* (1880) and *Ubeydullah Efendi's ariza* (1898).

1 Tarık Zafer Tunaya, 'Osmanlı Anayasacılık Hareketi ve "Hükümet-i Meşruta"', *Boğaziçi Üniversitesi Dergisi: Hümaniter Bilimler*, v. 6 (İstanbul: Boğaziçi Üniversitesi, 1978), 227-229

§ 4.1 Historical Context

Tanzimat Edict (The Imperial Edict of Gülhane) is an important threshold in the political-legal reform movements of Ottoman Empire in the 19th century. With this Edict, the government declares that it would regenerate many of the legal-political practice of the classical period in a new form and would make new arrangements in the military, tax and legal order.[2] As Mahmud II defeated Anatolian and Rumelian âyans, and then disbanded the Janissary Troops, the Palace would become center of reform movements.[3] However, with the death of Mahmud II, the drive of the reform movement passed from the palace to the Bab-ı Âli. From now on, the power to make the reform movement lasting are at hands of strong pashas of Tanzimat era who are Mustafa Reşit, Fuad, and Ali Pashas.

Mustafa Reşit had already passed away in the last quarter of the century while Fuad Pasha died in 1869 and Ali Pasha died in 1871. While some historians claim that Tanzimat period ended after these deaths[4], others maintain that the institutional zenith of Tanzimat was just after the deaths of these pashas.[5] In any case, the reality is that Tanzimat period and reforms ended with the end of 19th century. However, closing of the

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2 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002); Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]); Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961),

3 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002)

4 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 310; Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961)

5 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 194; François Georgeon, *Sultan Abdülhamid*, trans. Ali Berktay (İstanbul: İletişim Yay., 2017); Eric J. Zürcher, *Turkey: A Modern History*, (London: I. B. Tauris, 1993)

tanzimat period does not mean that reforms have failed, and the empire went socially, politically and legally backwards. Because this post-Tanzimat period is very different from the early 19th century. This difference is especially important in the context of politics and legal practices.

After the death of Âli Pasha in September 1871, the main policy of Sultan Abdulaziz was to become like his father Mahmud II. Starting from this date, Abdulaziz tried to build a structure where the center was the palace as the decision-maker of Ottoman politics while the Sublime Porte is connected to the palace. In order to prevent rise of any power center against Sultan, the tendency to change the bureaucratic positions of the upper ranking pashas started and there was no possibility to serve for a long time as both Grand Vizier and other viziers.[6] The famine experienced in these years and the deprivation caused by the subsequent taxation regime caused dissatisfaction among the people. With this domestic political situation, the turmoil caused by the crises of Bosnia and Herzegovina and Bulgaria spread more dissatisfaction among the Muslim community, and this was exacerbated by the influence of Russia on Grand Vizier Mahmud Nedim Pasha through his consul in Istanbul, Ignatiyef.

Both the turmoil and discontent in domestic politics and the quagmires in foreign policy nourished opposition to the Sultan and an unusual incident in Ottoman history occurred. People started protesting as they heard that Muslims in Bosnia and Herzegovina and Bulgaria were being slaughtered by Christians and claimed that the sultan did nothing to prevent this. In this event, which resembles the activist movements of 'Civil Society' in modern societies, the students of the madrasah (Talebe-i Ulum) participated in the protests and even led them.[7] Talabe-i Ulum, who left their education in the madrasahs and gathered in the large mosques of Payitaht, demanding the dismissal of Mahmut Nedim Pasha

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6 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 194-195: Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat*, haz. İsmet Miroğlu, v. I-II-III (İstanbul: Berekât Yay., 1983), 45-47

7 Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961), 220

cabinet by accusing it of cowardice, as well as the replacement of the şeyhülislam and asking for a cabinet that could improve the situation of Muslims in Thrace. Although Sultan Abdulaziz dismissed şeyhülislam to appease Talabe-i Ulum and replaced him with the pro-reform and moderate Hafız Hayrullah Efendi, it was not sufficient for the protesters and they insisted on the dismissal of Mahmud Nedim Pasha. On May 12, 1876, this request of Talabe-i Ulum was fulfilled, and Mütercim Mehmet Rüştü Pasha was appointed as the Grand Vizier.

However, in the new cabinet, two other actors were appointed: Midhat Pasha and Hüseyin Avni Pasha. While Mithat Pasha was accepted as a successful statesman among many people[8] as a successful practitioner of Tanzimat reforms, especially administrative reforms in Danube, Nis and Baghdad provinces[9], while Hüseyin Avni Pasha was included in the cabinet due to its influence on Military academy. While Mithat Pasha became the state minister, Hüseyin Avni Pasha was appointed as serasker (military chief of staff).

4.1.1 *Coup D'etat, Liberal Sultan and Again New Sultan*

Sultan Abdulaziz continued to pursue the same policy against the new cabinet, which caused the displeasure of the pashas inside the cabinet, and a conflict arose between the sultan and his ministers. However, this conflict is not only as to where the center of state (Palace or Sublime Porte) would be. One can say that especially personal disputes ignited the mentioned conflict.[10]

The Sultan's opponents, who became stronger with the latest arrangement, dethroned Sultan Abdulaziz on 30 May 1876 with a coup in which military academy students played a key role. However, this coup was not only realized with the initiative of the military; and it could not be solely based on the support and the dismissal fetwa of the ulemas and

8 Bekir Sıtkı Baykal, '93 Meşrutiyeti', *Belleten*, v. VI, No: 21-22, (Ankara: T.T.K., 1942), 47

9 Bekir Sıtkı Baykal, '93 Meşrutiyeti', *Belleten*, v. VI, No: 21-22, (Ankara: T.T.K., 1942), 47

10 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 119, 126-127

Şeyhülislam. At the same time, there is a large and sound group that will calm the social base and explain the legitimacy of the sultan's dethronement: Telabe-i Ulum. The madrasah students who organized the protests that shook Istanbul a few weeks ago were now explaining why it was legitimate to dismiss the sultan.[11] However, the plotter of the coup was nobody but Serasker Hüseyin Avni Pasha, Mithat Pasha and Military Academy Commander Süleyman Pasha.[12] More precisely, Hüseyin Avni Pasha, Mithat Pasha plotted the coup with the support of Military Academy, and Rüştü Pasha contributed to it. As it is understood from the witnesses of the period, Mithat Pasha was not initially favor a coup. To him, if Sultan Abdulaziz agreed to declare a constitution, there will be no need for a coup.[13] However, there was neither an indication that the sultan would declare the constitution, nor Hüseyin Avni Pasha had an intention to renounce from the coup. In the end, the coup took place and instead of Sultan Abdulaziz, Şehzade Murad, known for his 'liberal' ideas and membership to the masonic lodge, was enthroned as Murad V.[14]

Sultan V. Murad had a positive image with many decisions he made in his early period. For example, these include the transfer of valuable assets in Yıldız Palace to the treasury so that the budget of that year was balanced, and that although he did not talk about 'making a constitution' directly about his reign, but spoke of the 'will of the people', and his order to transfer some of the big farms and factories belonging to the Hazine-i Hassa (Sultan's Private Treasury) to the Treasury of Finance.[15] However,

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11 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 311

12 Roderic H. Davison, *Reform in the Ottoman Empire, 1856–1876* (N.J.: Princeton University Press. 1963), 327

13 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 206

14 Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961), 222

15 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York:

Mithat Pasha and Suleyman Pasha, who plotted a coup against the former sultan with the aim of declaration of constitution, did not find the sultan's explanations sufficient. In fact, Süleyman Pasha told to Grand Vizier that 'Pasha, Your Holiness, the change of reign was not made in order to preserve the current administration. Everyone made this sacrifice to ensure the future of the nation; those who made it neither had personal grudges against Abdulaziz nor had any special affinity with Sultan Murad."[16] On the other hand, Grand Vizier Mehmet Rüştü Pasha and Serasker Hüseyin Avni Pasha intentionally refrained from raising the constitutional issue and consider the "improvements" that Sultan Murad V would mention in the hatt-ı humayun (imperial rescript) as sufficient. Mithat Pasha wanted to consult this situation with Hüseyin Avni Pasha and other pashas and said: "Let's talk about how the hatt-ı humayun should be!" and expressed his willingness to speak with the pashas. In fact, he was curious about the Suleyman Pasha's views about the hatt draft that he worked on and presented to him. And Suleyman Pasha liked it. Because there was no positive response from pashas other than Süleyman Pasha, and the reasons was not explained.[17] However, when the Grand Vizier, Hüseyin Avni Pasha and several other pashas said, "Our sultan does not want to constitute a National Assembly. Our nation's customs and manners don't fit for this. However, in order to eliminate the existing insecurity, state should be strengthened with strong laws and the financial affairs should be ameliorated. This is was our Sultan desires" and the content of the hatt-ı humayun was started to be discussed, Mithat Pasha realized that there were not many people, other than Suleyman Pasha, thinking like him.[18] Thus,

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Cambridge University Press, 2002), 207; Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 119

16 Enver Ziya Karal, *Osmanlı Tarihi vol. 8. -Birinci Meşrutiyet Ve İstibdat Devirleri (1876 - 1907)-* (Ankara: TTK, 2011), 354

17 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 313

18 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 119; Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 313-314

Hüseyin Avni Pasha succeeded in dethroning Abdulaziz as well as fortifying his own sphere of power. But it didn't last long.

The overthrown sultan sent a letter to Murad V, as the chamber in Topkapı Palace was not comfortable (which is the room where Selim III was murdered and Sultan Abdulaziz is also aware of the symbolic meaning of this room) and he was afraid of his family's future.[19] But Mithat Pasha and a few people around him read the letter, and Mithat Pasha responded as if it was the Sultan. In the reply, Sultan Murad consoled his predecessor that he should not be afraid of the situation.[20] Thus, the overthrown sultan was transferred to Çırağan Palace. While the coup had just been made and the overthrown sultan was alive, so that Sultan V. Murad was under stress, and on June 4th Sunday morning, a chaos outburst in Çırağan Palace: The overthrown sultan was found dead in his room, with the scissors given to him to trim his hair and beard, and his wrists were cut.

Hüseyin Avni Pasha, who was the first person that went to Çırağan Palace and investigate the incident, did not allow the incoming doctors to carry out a large medical examination, and said 'This person is not an ordinary person, he is neither Ahmet Ağa nor Mehmet Ağa! I only allow you to examine his hands/arms, I will not let you open all parts of his body and let you do whatever you want on him!".[21] The rumors spread among the public that this death is a deliberate murder, and its purpose is to fortify the Sultan Murad's reign, that is, to prevent the overthrown sultan to get back to power. Abdulaziz's cause of death was still not fully clarified, and the debate on whether it was suicide or murder continued. However, Abdulaziz's death shook the new sultan deeply, and his fear of being killed turned out to be an obsession. Another event which occurred 12

19 Quoted in Enver Ziya Karal, *Osmanlı Tarihi vol. 8. -Birinci Meşrutiyet Ve İstibdat Devirleri (1876 - 1907)-* (Ankara: TTK, 2011), 356

20 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 119-120

21 Enver Ziya Karal, *Osmanlı Tarihi vol. 8. -Birinci Meşrutiyet Ve İstibdat Devirleri (1876 - 1907)-* (Ankara: TTK, 2011), 357

days after this death has completely impact the new sultan, and he could no longer recover from his mental problems at least during his reign.

An attack was organized against the government members, namely Grand Vizier Mehmet Rüştü Pasha, Mithat Pasha, Huseyin Avni Pasha, Ahmet Cevdet Pasha, foreign minister Raşit Pasha and others, convened to discuss the Crete rebellion. One of the brothers-in-law of Sultan Abdulaziz, aide of Şehzade Yusuf Izzeddin, and Kolağası Çerkes Hasan, raided the meeting with gun and wedge and killed Hüseyin Avni Pasha and foreign minister Raşit Pasha and injured several servants. The reason was the dethronement and murder of the Sultan Abdulaziz. This event leads the new sultan to an irreversible path: a constant fear of being killed and never-ending nervous breakdowns.

Mithat Pasha was endeavoring to create draft constitutional texts as he increased the efforts after the death of Hüseyin Avni Pasha. However, he wanted to enthrone a new sultan by convincing the representatives who believed that no political-legal system could be established due to the current state of the sultan. When a general consensus is reached that the most suitable candidate for this was Şehzade Abdulhamid, Mithat Pasha made a meeting with the potential sultan. The first thing he suggested was that he would be a regent of Sultan Murat until he recovers. But Abdulhamid did not accept this. Because, there was no regency in the Ottoman tradition or in Islamic caliphate practice.[22] Şehzade Abdulhamid declared that if his brother Sultan Murad V's illness cannot be treated medically, he would agree to be a sultan.

Şehzade Abdulhamid garnered the support of Mithat Pasha to accede to the throne. They agreed as he accepted that he would declare the Constitution, act according to the ministers' demands, and appoint affinities of Mithat Pasha and other ministers to the palace clerkships after acceding to the throne.[23]

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22 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 316

23 Enver Ziya Karal, *Osmanlı Tarihi vol. 8. -Birinci Meşrutiyet Ve İstibdat Devirleri (1876 - 1907)-* (Ankara: TTK, 2011), 365-366

The grounds of new sultan's accession to the throne was laid as negotiated and decided among Mithat Pasha with the representatives and Şeyhülislam. On August 31, 1876, representatives, ulemas, administrative and other notables of the state convened in Topkapı in Kubbealtı (i.e. Divan-ı Hümayun hall) and explained the new situation. The Grand Vizier Mehmet Rüştü Pasha said in tears that he was very sad about the situation of Sultan Murat V[24] but Mithat Pasha concluded that neither sharia nor the mind would tolerate the disruption of the state affairs stemming from the illness of the Sultan.[25] He then leave the words to Şeyhülislam Hasan Hayrullah Efendi who asked fetwa officer to read the previously prepared fetwa. The fetwa was as follows: *"If the Imam/Caliph of Muslims permanently loses his mind, and becomes devoid of the required power to rule, would he no longer remain as the imam/caliph (would he lose his caliphate responsibility)? Answer: Allah knows best, Yes!"*.[26] With this fatwa, a sultan who would mark the last century of the Ottoman state, either positively or negatively, acceded to the throne: Sultan Abdulhamid II.

§ 4.2 The Birth and Early Death of Meşrutiyet

Just like his elder brother Murad V, Abdulhamid also participated in Sultan Abdulaziz's European trip while he was still a young Şehzade, he had the opportunity to closely see the European civilization, the shape of cities, military, and daily technologies. However, unlike his brother, Abdulhamid was more conservative. Although he closely followed European intellectual life like his brother, he did not define himself as liberal or freemason and did not establish a relationship with the popular political communities of the time. With this feature marking his reign, he can be

24 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 162

25 Enver Ziya Karal, *Osmanlı Tarihi vol. 8. -Birinci Meşrutiyet Ve İstibdat Devirleri (1876 - 1907)-* (Ankara: TTK, 2011), 366

26 Ibid, 366; Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 162

understood as a conservative sultan on the one hand and on the other hand as a modernist sultan on the basis of the judicial, administrative and marginal secular reforms as well as technology that constitute the peak of Tanzimat reforms.[27] But there is another feature of his reign: He tried to manage foreign political turmoil with a 'balancing' policy, which has never stagnated and persisted over the years of his reign.

When he acceded to the throne, he faced a looming war against Russia due to the turmoil in the Balkans. Abdulhamid II, who was in power at a time referred as "Age of Empires" by Eric Hobsbawm, he endeavored to prevent other empires (for example, Britain, Habsburgs) to weaken Ottoman Empire through serious/intense diplomatic maneuvers.[28] When he acceded to throne, the turmoil in the Balkans was out of control as there were serious military and political crises in Bosnia, Herzegovina, Serbia, Montenegro, and Bulgaria. Austria's desire to annex Bosnia and Herzegovina, Russia's attempt to rule over Romania and Bulgaria, the strengthening of anti-Turkish policies and politicians in Britain, meant a serious impasse for the Ottoman Empire.[29]

As we noted in the previous chapter, where we discussed the Constitutional debates around the concepts of council/meşveret to the New Ottomans, the only solution that can prevent foreign intervention was Meşrutiyet where local representation is maintained. Mithat Pasha, who is well known for his relationship with the new Ottomans, found it vital to declare the Meşrutiyet before the international conference to be held in Istanbul. If the Meşrutiyet was declared, neither the conditions to be put forward by Britain nor the situation of Orthodoxes to be excused by Russia would be important. Because, the Ottoman people, as equal citizens, will produce solutions to their own problems with their own representation in the Ottoman parliament and will be able to use their legal rights with the assurance of the constitution without the need for outside

27 François Georgeon, *Sultan Abdülhamid*, trans. Ali Berktay (İstanbul: İletişim Yay., 2017)

28 Eric Hobbsbawm, *The Age of Empire: 1875–1914* (Weidenfeld & Nicolson, 1987)

29 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 164-165

protection. According to Mithat Pasha, there would be no reason for foreign interference with the internal affairs of the Ottoman Empire under the pretext of need to reform.

Resisting this request of Mithat Pasha, Sultan Abdulhamid wanted to move the power center to the Palace like his grandfather Mahmud II.[30] Maybe that is why he did not fulfill the requirement of his agreement with Mithat Pasha[31] and did not appoint the affinities of Mithat Pasha and other ministers to the palace clerks. By appointing people who he believed to be loyal to him, he revealed his intention that he would not share his reign. On the other hand, Mithat Pasha was only given the title of President of Council of State, and he was tried to be prevented from being a focus of power against the sultan. However, the sultan allowed Mithat Pasha to work on a draft constitution and let him open a new era in Ottoman history. Now the Meşrutiyet rule would be negotiated and discussed officially, and a constitution will be declared so that the Ottoman state mechanism would get a new shape.

When the Sultan gave permission to work on the draft constitution in the first week of October, he also stated who should work on this draft. Through those who was included in the commission to discuss the mentioned draft, Mithat Pasha was prevented from drafting constitution according to his own wishes. The most critical name in this commission is Ahmet Cevdet Pasha, who comes from the tradition of ulemas. He was a conservative and known to not get along well with Mithat Pasha. The presence of Cevdet Pasha also indicates that Mithat Pasha could not keep his cabinet power in this commission.[32] The commission was chaired by Mithat Pasha, and consisted a total of 28 people including 16 bureaucrats,

30 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 164

31 Enver Ziya Karal, *Osmanlı Tarihi vol. 8. -Birinci Meşrutiyet Ve İstibdat Devirleri (1876 - 1907)-* (Ankara: TTK, 2011), 365-366

32 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 218

10 ulema, and 2 military members. The members discussed a lot on the draft text created and eventually the draft was approved at the end of October. However, Grand Vizier Mehmet Rüştü Pasha sent the draft back to the commission for revision, arguing that some of the points in the draft meant the violation of the sultan's rights.[33] Thus, the draft was revised further.

Preserving the sultan's traditional rights in the constitutional monarchy is one of the discursive strategies used in all debates in which Meşrutiyet is defended or opposed. This strategy, which we saw in the previous section, was also used in this period. The parliament envisaged by the mentioned draft consists of 120 parliamentarians, consisting of Muslims and non-Muslims. The sultan changed the content of the draft by direct intervention at some issues, for example, the provisions accepting certain minority languages other than Turkish as official languages or giving ministers direct responsibility.[34] He also added a critical article (Article 113, which will be mentioned frequently below), giving the sultan the right to exile anyone proved to 'threaten the security of the state' by a police report. Although the New Ottomans opposed this article, Mithat Pasha accepted it and did not display any opposing attitude. The Sultan appointed Mithat Pasha as Grand Vizier on December 19, 1876 (for the second time), and the Meşruiyet rule was started with the declaration of the first constitution of the Ottoman Empire, Kanun-u Esasi, consisting of 119 articles on December 23.

The foreign representatives who were present at the Istanbul for the Conference were informed that Kanun-u Esasi was declared. At the conference, Mithat Pasha rejected all the items that foreign representatives stipulated. He even did not make some concessions that Sultan Abdulhamid asked to do so, that is he ignored the will of Sultan. But Abdulhamid strengthened his hand since Mithat Pasha had ignored him. The Istanbul

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33 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 203

34 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 219

Conference failed because Mithat Pasha didn't accept the solution proposals of Britain and other states - many of which indeed disregarded Ottoman sovereignty and territorial integrity. To Sultan Abdulhamid, the reason for this failure was Mithat Pasha. Due to this reason, Mithat Pasha was removed from the office and sent to Europe for a long journey, or more correctly to an exile. Mithat Pasha was sidelined through the Article 113 of Kanun-u Esasi which Abdulhamit put and Mithat Pasha did not reject. It should even be said that Mithat Pasha would later be the first person for the article was applied.[35] Mithat Pasha was not the single person sidelined. Many others were also shared this fate who contributed to the dethronement of Abdulaziz and who supported Meşrutiyet.

With the elections held after the declaration of the Meşrutiyet, the first modern-like parliament in the Ottoman Empire, Meclis-i Mebusan (Assembly of Representatives) convened. In this assembly, the representatives gathered and tried to carry out legislative and executive activities following the exile of Mithat Pasha. However, due to the turmoil in the Balkans and the failure of the Istanbul conference, a war broke out (The 1877-78 Turco-Russian War). In this war that ended with a heavy defeat in 1788, sultan tried to control the war directly, unlike his predecessors, and did not make any consultation with the assembly.[36] However, only after the war ended with defeat, it was decided to consult with the parliament what to do against the enemy who reached almost Istanbul. The response of a representative during the meeting, held to consult to the assembly, led to the early death of Meşrutiyet. In a session when the permission was asked from the assembly to let British Navy to the Marmara Sea in case of a possible attack to Istanbul, the Chamberlain of Liner Artisans said: "You are too late to consult us; You should have consulted us when there was an opportunity to prevent disaster. The Assembly does not take any responsibility for this situation and it is not related to it!" This event shows the new level of relationship between the sultan and

35 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 241-242 ; Mithat Cemal Kuntay, *Namık Kemal -Devrinin İnsanları ve Olayları Arasında-*, (İstanbul: Maarif Basımevi, 1956), 65-66, 107

36 François Georgeon, *Sultan Abdülhamid*, trans. Ali Berktay (İstanbul: İletişim Yay., 2017)

his 'subjects'. It was impossible in the pre-modern period that such words could be uttered against the sultan or his will by somebody. On the grounds of this, Sultan Abdulhamid closed the assembly on February 14, 1878, saying that he did his best, but the Ottoman society was not at a level to carry out the Meşrutiyet rule yet and the Meşrutiyet assembly had not been sufficiently efficient. Although the Kanun-u Esasi remained theoretically in force, Meclis-i Mebusan is suspended indefinitely. This means the dissolution of the assembly, which emerged with the Meşrutiyet but could only convene for two terms in the Ottoman history.

§ 4.3 Meşrutiyet under Order of Sultan: 1st Meşrutiyet period and its Discursive strategies

With the enthronement of Abdulhamid, the days when the Meşrutiyet rule was discussed in a narrow social environment and away from the Palace were left behind. Now, the most powerful pashas of the state began to talk about this regime officially, and they started to produce ideas and policies. In fact, the Meşruiyet regime was discussed among the statesman before the start of official debate on the order of the Sultan in the last months of 1876, and the discursive strategies used in the discussions that took place around this regime continued to be used in the Abdulhamid period as a legacy of these discussions. Here, the -pro- or anti-Meşrutiyet- texts whose discursive strategies and techniques will be reviewed were written in different periods. However, this does not constitute an obstacle to understanding the discursive strategies built through the texts. On the contrary, this will provide an opportunity to see the similarity and differentiation of discursive strategies and discursive techniques throughout the historical process.

In this respect, the Meşrutiyet was firstly discussed following the dethronement of Sultan Abdulaziz and during the early days of Murat V's reign. The new sultan did not explicitly mention Meşrutiyet in the enthronement letter, and this disturbed Pashas who dethroned Abdulaziz, especially Mithat and Süleyman Pasha. As a result, it was decided to discuss this issue in a state council to reach a final decision among the

statesman. It is known that Kanun-u Esasi was firstly and clearly discussed officially at this meeting.[37] The debates on Meşrutiyet which New Ottomans had done secretly at a narrow circle, as we discussed in the previous chapter, emerged again in this assembly among the proponents and opponents.

On the 8th of June, among the people who gathered in the Bab-i Fatwa, the Şeyhülislam's office, there were ministers, the military staff and leading ulema. In this meeting, discursive strategies used by those who defended the Meşrutiyet and those who opposed it were closely related to the political agendas of the actors. For instance, Serasker Hüseyin Avni Pasha and Grand Vizier Mehmet Rüştü Pasha did not want the Meşrutiyet rule while Hüseyin Avni Pasha was in favor of a military dictatorship[38], Grand Vizier Mehmet Rüştü Pasha, just like the pashas of the Tanzimat era, wanted a government where Sublime Porte was at the center.[39] The disagreement among pashas was similarly existing among the ulemas. There were those who are definitely against the Meşrutiyet (e.g. fatwa officer Halil Efendi) as well as those who are on the fence (such as Cevdet Pasha).

The second consultation meeting was held in Sublime Porte on 15 July. Although the purpose of this meeting was not to directly discuss Meşrutiyet rule, Mithat Pasha found a support among the ulemas for Meşrutiyet at this meeting and the main argument that officially provided legitimacy to Meşrutiyet was developed in this meeting. By citing verses of the Qur'an and Hadiths, Kazasker Seyfettin Efendi suggested that the method of meşveret was not against Islam, and that this was the government form promoted by Islam.[40] However, the decision taken in this meeting was not to draft a constitution, but to set up a commission for

37 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 314

38 Ibid, 314

39 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 127

40 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 317-318

the rehabilitation of the current state. In this respect, the commission consisting of 5 Muslim and 3 Christian members was assigned the task to prepare a reform program.

After Sultan Abdulhamid II acceded to the throne, he directly opened a gate to the Meşruiyet rule by mentioning a general assembly in his inaugural hatt-ı humayun on September 12. This hatt-ı humayun, which also ordered the gathering of a council to discuss the basis of "General Assembly" (that is, the constitution), ignited many debates. At a period when external pressures politically imposed autonomous structures in the Balkans, about 200 people from ministers, administers, military staff and ulemas were present for the meeting held on September 26. In the meeting, it was strictly decided not to accept the requests of Western states and to convey this decision in a diplomatic language. Mithat Pasha emphasized that Meşrutiyet would be declared for the entire Ottoman territory, while this would relieve the external pressures and cure the Ottoman administrative weaknesses. By using the Islamic legitimacy arguments of Seyfettin Efendi, who had also supported him in the previous parliamentary assembly, Mithat Pasha also managed to get the support of the ulemas, which will make him very strong on the social base. Seyfettin Efendi, who repeated the arguments on July 15, referred the verses '… *wa shawir hum fi'l-amr*' and '*ve te'muru beynekum bi ma'rufin…*' and claimed that Meşrutiyet rule was a religious obligation since Islam definitely ordered meşveret. An objection to this argument from the ulema front (raised by Fetwa Officer Halil Efendi) was ignored and the meeting was concluded.[41]

However, the objections of Halil Efendi was not improper and inconsistent, who previously gave fatwa to the dismissal of Sultan Abdulaziz, and who was an anti-istibdat ulema. Because it is traditionally impossible to deduce a general assembly from the context and co-text of the mentioned verses. Even Berkes, who makes a modernist history reading,

41 Mahmud Celaleddin Paşa, *Mir'ât-ı Hakikat v. I-II-III*, haz. İsmet Miroğlu, (İstanbul: Berekât Yay., 1983), 175-176

admits this.[42] However, Mithat Pasha and like-minded people, who were strong on a discursive and political basis, were dominant in the meeting, and Abdulhamid ordered the commission on 8 October to start working on drafting Kanun-u Esasi (or general assembly). We can now examine on what order the commission started to work and analyze the discursive strategies and techniques of those who support the commission and parliament and those who oppose them. It should not be forgotten that these discursive strategies and techniques were reproduced many times by different actors and in different forms until 1908.

DISCURSIVE STRATEGIES DEPLOYED

When the texts of the era are reviewed, two basic meta-strategies are at the front: i- legitimization reference to Islam, ii- legitimization by referring to the Europe (see Appendix A). Recalling that these two meta-strategies were present in the texts reviewed in the previous chapter, we cannot argue that there are radical differences in terms of meta-strategies. However, the situation is different in terms of discursive strategies and discursive techniques used to complement these meta-strategies; new arguments and techniques are applied. i- Establishing sharia as the basis of Constitutional Monarchy / Meşrutiyet, ii- Emphasizing the protection of the traditional rights of the Sultan-Caliph, iii- Reference to the Classical role of the Ulama, iv- Undermining the credibility of opponents and Using denigrating adjectives for them, v- Reference to the Disruption of the Congregational Hierarchy, vi- Referring to the Traditional/Authentic Meaning of Political Concepts/Practices, vii-

4.3.2 *Establishing sharia as the basis of Constitutional Monarchy / Meşrutiyet*

This discursive strategy was often deployed by pro-Meşrutiyet actors to respond to anti-Meşrutiyet arguments. In this period, the main opposition points of the opponents are that Meclis-i Umumî is opposed to the

42 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]), 321

sharia, infringes the caliphate and the caliph's rights, and intends the nation's survival. N. Kemal, after stating that this issue could not cause mentioned problems without being practiced, even theoretically, for the period he wrote his articles, brings the issue to the concept of parliament.

> It is clear that since a parliament can perform a thousand different duties, stating that an institution whose duties and powers have not been clarified, solely as being a parliament, will be in a structure that opposes the sharia and infringes the rights of the caliph; is like determining the details of something of unknown nature; which is also impossible.'[43]

Although Kemal tries to prove that the parliament is not opposed to the sharia here and uses the discursive techniques for this, what he accepts between the lines is that there may exist a parliament that is an opponent to 'sharia' and exceeds the rights and powers of the caliph. However, the way of constructing his discourse presents this possibility as if it does not exist, and the point emphasized by N. Kemal as an actor is presented as absolute truth. Even if it is a possibility, even if the opponents are after their own interests, he denies that the reasons they put forward may be correct.

In explaining the report of Meclis-i Umumi, N. Kemal claims that the representatives in the assembly were responsible for their actions, and poses the following question to the opponents: Is this responsibility against Sharia? Aren't the representatives those who should be afraid of this article? Shouldn't the representatives be bothered by this article because they could no longer establish the istibdat like viziers used to do? In other words, these questions he used as a rhetorical technique imply that opposition wanted government officials to be 'independent of responsibility as in the ancient regime; but this indicates that their past was not clean.

The Meşrutiyet rule/regime while being discussed among the statesman, also became part of daily debates among the ordinary people and

43 Namık Kemal, 'Meclis-i Umumî II', *İttihad*, 13 Teşrinievvel 1292, nu: 77

the issue gained higher visibility in the press. The press articles during when Abdulhamid was a prince says '*With the exception of Ottoman Empire and Russia, today, the Meşrutiyet government has become the general rule in European and American civilized nations*' (*Vakit*, 7 June 1876). The booklet, *Hüküme-i Meşruta*[44] (Constitutional Government, by Esat Efendi) was published in the second half 1876 before the declaration of Kanun-u Esasi.[45] The author was defending the Meşrutiyet rule and donated the income of the booklet to the Society of Hediye-i Askeriye.[46] Recalling that the mentioned Society of Hediye-i Askeriye and Society of Asakir-i Millye was founded by the supporters and relatives of Mithat Pasha[47], one can understand the political front of the text as well as its position in the political struggle.

According to Tarık Zafer Tunaya, *Hükümet-i Meşruta* was the first constitutional law book. This text also indicates the literature change in Ottoman Political Thought. It did not follow the tradition of writing/presenting Siyasetname and was the first constitutional law book which was different from the *siyasetname* genre.[48] The text is based on questions and answers. All of the questions create arguments against the anti-Meşrutiyet views. The answers of the author include both his meta-discursive strategy as well as discursive strategies and discursive techniques.

Esat Efendi makes an introduction to the *Hükümet-i Meşruta* by asking what this form of government is. His answer is quite comprehensively

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44 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293])

45 The writer, Esat Efendi, was a teacher and also a author in the newspapers *Basiret*, *Hayal* and *İstikbal* was an authoring teacher at Mekteb-i İdadi-i Şahane and a clerk at the Maritime Trade Council when he authored at *Hüküme-i Meşruta* (Mithat Cemal Kuntay, *Namık Kemal -Devrinin İnsanları ve Olayları Arasında-*, (İstanbul: Maarif Basımevi, 1956).

46 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 1

47 Mithat Cemal Kuntay, *Namık Kemal -Devrinin İnsanları ve Olayları Arasında-*, (İstanbul: Maarif Basımevi, 1956), 58

48 Tarık Zafer Tunaya, 'Osmanlı Anayasacılık Hareketi ve "Hükümet-i Meşruta"', *Boğaziçi Üniversitesi Dergisi: Hümaniter Bilimler*, v. 6 (İstanbul: Boğaziçi Üniversitesi, 1978), 228-229

vague: *'It is the government whose actions are limited by sharia law.'*.[49] Beginning with this answer, the fundamental discursive strategy referred throughout the text is clear: Claiming that the Meşrutiyet is a form of government which is limited by Islamic law. Right opposite of this government form exists Hükümet-i Mutlaka (Absolutist government) which is against sharia. The main difference among these two is whether all government actions are limited by law or not. "Laws" are important in the opposition constructed as a discursive technique, but they are not fundamental determinants. Because laws can also enact in non-Meşrutiyet rules.

> 'General activities of the Hükümet-i Mutlaka are not bounded by/dependent on law. For instance, no matter how much the ruler is intelligent and benign, he cannot manage all public affairs. He must appoint some officers. The general behaviors of the officers are not under order, each of them acts independently and by their own will. Then, that the government is skillful and benign is not sufficient for a good government. There would be no order in such government. Even if there is an order, it would slump following the death of ruler. Hükümet-i Meşruta is not so. All the officers act in accordance with laws. Change of persons does not change the order.[50]

As a discursive strategy, by claiming that there might be good government in non-Meşrutiyet rules, it is pointed out that caliph-sultans were not bad in the pre-Meşrutiyet rule, but the public affairs are not well managed as the order is dependent on a person. However, here, the Meşrutiyet was for the first time defended with such consistent and profound argumentation. It is argued that the existence of laws alone is not enough to execute justice; along with the laws there should be an executive government that will enforce them. The Meşrutiyet rule is against arbitrariness -where arbitrariness implies not only abuse, but also

49 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 1

50 Ibid, 1

arbitrariness of those who provide justice- so that it can represent a rational order. Hence, even if the officers are good people, we cannot mention a 'political and legal order" because of different practices. This arbitrariness can be overcome by the Meşrutiyet rule which is based on laws; that is, Meşrutiyet is not desired just for enacting the law. In other words, the laws may be existing in absolute government and this could be a fair government; however, this is not sustainable.[51]

Also, in this period, the discursive strategy over the government includes selective examples from history. The Ottoman government

> ... is essentially an Islamic government which is limited/dependent on by sharia. That is why it is Meşrutiyet government. However, it has become an absolute government as it has not been respecting sharia law for some time. In our tradition, even the missions of the sultans were restricted by sharia. That is, it is a sharia rule that general acts of sultans are limited by the public interest.'.[52]

With this reference to history as a discursive technique, he again claims by referring Islam that absolutist government is an astray from Islamic government principles and it emerged due to ignorance of sharia.

The ariza submitted to Sultan Abdulhamid II by Hocazade Şeyh Muhiddin Efendi, who was a representative of Cemiyet-i İslamiye and graduated from the Fatih Sahn-ı Seman Madrasa in 1896, was an important text.[53] The ariza, which well gives the agenda of state affairs of the period, argues from an important point in the historical route of the Meşrutiyet debates. The ariza, which both emphasizes the ulema tradition and calls for the Meşrutiyet rule, was voluntarily written by Muhiddin Efendi — i.e. not solicited- and was offered to the sultan.

In this ariza, since the Constitutional regime is accepted as the basic form of the administration requested by the shari'ah, the suspension of

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51 Ibid, 2

52 Ibid, 2

53 Muhiddin Efendi, *Ariza*, Başbakanlık Osmanlı Arşivi, Yıldız Tasnifi, Kısım 23, Karton 71, zarf 12. (İstanbul, 1896)

the Meşrutiyet is described as the suspension of the Shari'ah and the rising of all evil in the society.

> Anatolian villagers forgot their religion and duties from their misery and ignorance. ...All the current officers, junior or senior, never stop to generate various tricks and deceptions to rob the people. While the Caliphate center [Istanbul] people should be a model for the vicinity, they are looking for salvation in the profession of hypocrisy, like espionage, which is damned by sharia and reason. If you had cared about a new method for the education, ... and executed a method that helps the reconstruction of madrasahs once built for the sharia sciences but have been destructed over time, and enrich the Islamic madrasahs... by adding natural sciences (and mathematics), geography and history courses to the madrasah syllabuses that contribute to the sustenance of students; if you have not banned the free press, or at least let it free as it used to be during your enthronement, which well watches and inspects any evil; ... referring to the hadith, if you have not had the wrong conviction that you should govern the state affairs by yourself and closed down assembly of ummah which has the official name of the Meclis-i Mebusan, consisting a few hundred patriot scholars, artists and those allowed to state their views- which you have already stated in your [first] address that there was historically no other way to get rid of persecution and istibdat- due to the personal interests of those you paid attention but by sacrificing the wellbeing of Islam ummah and the survival of state; the Islam ummah would have found the route towards civilization and welfare for eighteen years from your enthronement. As you have not done so, all officers from the governors to the policemen, tried to rob the people and destroy families.'.[54]

By this sentences, Muhiddin Efendi claims to show the right path to the sultan, asserting that the current management style is not Islamically

54 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 2

legitimate. When this is evaluated with references to the self-interested people around the sultan -as we will discuss below-, the discourse becomes more understandable and discursive techniques complement each other, thus the strategy of discourse reveals a consistent narrative/claim: those who seek personal interest are clustered in the center of power while social decay is deteriorating because of the espionage, which causes hypocrite and forbidden by sharia. But it is possible to understand what led this decay by referring to the recommended solution: Leaving the Islamic sciences outdated, namely the absence of modern mathematics, geography and history courses in the curriculum, the absence of freedom of the press, consultation — especially consultation with the ulema. The corruption of political and legal order has risen by replacing the Meşrutiyet rule with istibdat. The wrongdoing of the civil servants towards the public is also due to the lack of Meşrutiyet and Parliament.[55] Meşrutiyet and Parliament are presented as the only way to control public officers and state administrators, and no other legislations and control mechanisms are mentioned.

Another text (layiha) presented to the Sultan about Constitutional Monarchy / Kanun-u Esasi is the text written by Muhammed Ubeydullah Efendi from the ulema.[56] This text, which was presented to the Sultan in August of 1898, on the one hand discusses the Constitutional Monarchy through parliamentary method, on the other hand, presents various arguments about the students in madrasahs and schools and produces discursive strategies to reject the Committee of Union and Progress. As an anti-constitutional ulema, However, it does this by standing in a position opposite to the above actors. While the above actors put forward sharia as the basis of constitutionalism, Ubeydullah Efendi, on the contrary, argues that constitutionalism is an anti-shari'ah regime. Like the other actors (supporters of Meşrutiyet) we discussed above, he refers to sharia. Ubeydullah Efendi uses the following statements while explaining why he wrote the text:

55 Ibid,. 2

56 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898)

> ...The students who were educated in the schools wanted to be a burden only to the state treasury by not entering any of the ways of finance, and that those who could not achieve these goals escaped to foreign countries and started fuss, such as the demand for Meşrutiyet and Chamber of Deputies... [57]

This statement about the Chamber of Deputies was written to avoid this. Ubeydullah Efendi, evaluates the demand for constitutionalism with the word "fuss" at the very beginning of the text, which shows that he wants to create a negative perception about constitutionalism in the discourse. It is also significant that he characterizes ideas about the Constitutional Monarchy as lowly/ bad or incomplete.

Ubeydullah Efendi states that in order to solve all the defects and injustices of the state or administration, first of all, it is necessary to refer to the sharia in terms of procedures and principles. He puts forward rational reasoning as the second source to be used with Shariah and finally sees the historical experience as a solution.[58] With this ranking, it also tells what the sources of legitimacy are. In addition, imitating Europe and importing a method from there to solve the problems will not yield to the right result. However, first of all, the point that draws attention here is that someone who is known to support the sultan and oppose the constitutionalism admits that there are problems in the state.

Ubeydullah Efendi, who evaluated the Constitutional Monarchy and Kanun-u Esasi in the context of debates on the parliament, says that:

> The parliamentary procedure does not agree with Sharia. It does not agree with reason either. Nor does it agree with experience.
>
> It does not agree with Sharia, because the Ottoman sultanate also has the supreme Islamic caliphate. A state that enjoys the Islamic caliphate should only be an Islamic State. Therefore, if the Parliament is opened, since the non-Muslim peoples who are in the country of our sultan can enter the parliament as a member,

57 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 1

58 Ibid, 1

> the supreme sultanate of the [Sultan] ceases to be Islamic and becomes the irreligious government of a people consisting of various connoisseurs, which is what the so-called (Young Turks) wanted. In fact, the French word on another issue (L'Etat n'a pas de la religion - The State has no religion) has been in the language of the aforementioned treachers. … This is what Europeans want.[59]

The parliamentary procedure is not a correct method according to the trio of (1st) *Shariah*, (2nd) *Reason* and (3rd) *Experience* put forward to solve the problems. In this trio, on which Ubeydullah Efendi built his discursive strategy, although they are interrelated, the sharia is positioned above the other two elements that came after it. Therefore, in the answer to whether a solution is possible or not, the phrase 'permitting' (*cevaz verme*) which mean the consent of Sharia were preferred. However, it is reminded that the Ottoman sultanate also made the Islamic caliphate valid, and that the state holding the position of caliphate should be the absolute Islamic state.

While it is stated that the slogan 'The state has no religion' is supported by the Young Turks, it applies to the concept of 'treacherous / hazele' for the Young Turks, to imply that they left their homeland and escaped from the war. On the other hand, to say that Europe supports the understanding of the state without religion actually means that the opposition of Young Turks is supported by Europe or that the Young Turks blindly imitate Europe. Because, according to Ubeydullah Efendi, Europe knows that the main resistance point of the Ottoman sultanate is the connection of Islam, so it wants the power to be taken by a complex / heterogeneous assembly from the hands of Muslims (sultanate / caliphate). The aim of removing the Ottoman dynasty from the caliphate is to eliminate its importance and reputation among other Muslims in this way. The re-declaration of the Constitutional Monarchy and the reopening of the parliament will break the power of the caliphate and will lead to the absolute collapse of the state.

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59 Ibid, 1-2

"It is by no means permissible to consider such an obvious danger even through experience."[60]

4.3.3 *Emphasizing the protection of the traditional rights of the Sultan-Caliph*

As we mentioned in the Chapter II where the theoretical framework is given, the sultan-caliph has some unique rights in the traditional/classical Ottoman political-legal thought. When the constitutional regime comes to the agenda, these rights are also discussed and, as a discursive strategy, constant emphasis is placed on the protection of these rights. The emphasis placed on these rights during this period is important. Because, as we will show in the next chapter, taking these rights from the sultan-caliph and giving them to another authority (parliament) will be one of the secularization points of Ottoman political-legal thought.

In the article titled 'Meclis-i Umumî -III' (General Assembly - III), N. Kemal further embodies the references he made to the sharia and explains the meşrutiyet bill expected to be announced clause by clause respectively. The first clause reads:

> The Ottoman State is composed of the provinces and regions and the states that have a special status, and the way of administration within its borders is based on and depends on the sharia provisions from a sharia fundamental.[61]

Stating that the constitution is directly based on sharia and that its borders are again linked to sharia, this article signifies that the claims of the opposition were groundless. It also reiterates that the sultan-caliph was obliged to protect religion in the context of caliphate and reign, that the state was the entire head of the state and militarily, and therefore he has "impunity".[62]

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60 Ibid, 2

61 Namık Kemal, 'Meclis-i Umumî -III', *İttihad*, 14 Teşrinievvel 1292, nu: 78

62 Namık Kemal, 'Meclis-i Umumî -III', *İttihad*, 14 Teşrinievvel 1292, nu: 78

When explaining this article, Namık Kemal asks those who oppose the report and the assembly:

> Should the Islamic caliph not protect religion according to Sharia?" According to Sharia, is all military and civil leadership given to somebody other than sultans? Is the immunity of the Islamic caliph not recommended by sharia? Who is the main authority in foreign relations, not the Emirülmümin [Leader of the believers], according to Sharia? … Everybody, even the opponents agree that [issues like internal order of the Assembly of Representatives] are among the non-essential subjects dependent on the order of Sultan according to the sharia.[63]

What is noteworthy here is that Kemal accepted the immunity of the sultan-caliph and said that he was the only political and military leader. Also, he claimed that sultan-caliph could use title of 'Emirülmümin' and to apply his (non-essential) legislative power and also that the assembly would not be a barrier against them, on the contrary, the sultan ordered the formation of an assembly on the basis of all these rights and all these points give the following message: Nothing new was created, all legal and political practices are carried out in the way that Sharia wants it to be. So, there is no need for fear.

It is also necessary to dwell on the term of 'Emirülmüminin'. His use of this concept as a discursive technique is that the caliph-sultan would definitely be in an Islamic line and a parliamentary practice will be carried out within the borders of the sharia. However, it should be reminded that the meaning of 'Emirülmüminin' means ‘the leader of all believers’, that is, the leader of all Muslims. The religious and political authority/responsibility in the relationship between this leadership and the believers belongs to the leaders. Besides, in the context of the solution of social situations/issues, this partial hierarchical relationship between Emirulmüminin and the believers exists in the decision-making mechanisms of the government. It is very important to repeat them in the words of N.

63 Namık Kemal, ‘Meclis-i Umumî -III’, *İttihad*, 14 Teşrinievvel 1292, nu: 78

Kemal. Because as it can be seen when we examine the next period, this partial hierarchy would be eliminated and tried to be reduced through the arguments used in discursive strategies and techniques.

N. Kemal continues his explanation as regards the article 15 which states that resignation, investigation or dismissal and replacement of representatives are dependent on the Sultan's will in the final instance. Then, he asks:

> Is there any evil in this arrangement that violates Sharia and the rights of the sultan? As long as the acceptance of the resignation and the replacement depends on the will of the sultan, what important aspect of the existing procedure would be violated so far?[64]

This is a proper question. Because, as clearly stated in the article, the sultan is the last and only authority at the point of acceptance of representatives. In support of this idea, Kemal asks another question: *'Are they not among the non-essential subjects dependent on sultan's orders? What do the evil people want in the name of (no-never) Sharia?* And immediately, he gives examples of the opposite situation from the Abdulaziz period when there were no meclis-i umumi. Discursively, thus while implying that the ancient regime demanded by the opponents was not Islamic, he claims that the order he defends is truly Islamic. In this way, it is no different from the traditional Ottoman political thought. The only difference from the past is that this right of the sultan is now embodied and recorded on a written document. However, as we will examine in the next chapter, after 1908 there will be radical changes at this point. The right of Sharia and the sultan will be given directly to parliament.

Similarly, For Namık Kemal what Esat Efendi said about the assembly in the Meşrutiyet rule and the relations with the sultan were also nothing new for the Ottoman political practices. His answer as what would happen if the sultan exceeds the border drawn by sharia is very clear even if

64 Namık Kemal, 'Meclis-i Umumî -III', *İttihad*, 14 Teşrinievvel 1292, nu: 78

it is unprecedented in Ottoman History[65]: By the power vested by Sharia, either the sultan himself is reformed or the Muslims will reform (dethrone) him.[66] If the sultan violates his limits, the *menaay-ı müslimin* would stop him. If this is evaluated with the above answer, we can see that Ottoman government is not an absolute monarchy, or at least there had not been permanent absolutist regime throughout its history. So, the Ottoman sultans (i.e. caliphs) were not the absolute rulers who held all the power and authority, and there has been a government bound by different laws, good or bad. It is possible to mention about balance of power or conflict/rivalry among the palace-ulema-military. Depending on different times and different rulers, the actors/centers of power of this conflict establish hegemony on each other. The center of power that established hegemony continues its power in the given period, considering other power centers, but not completely eliminating them.

This treatise deals with the question of the rights of the Sultan-Caliph. It discusses the sultan's authorities/rights in the context of political sharia and answers questions in this matter. We have already seen in the previous chapter that many legal issues not clearly covered by sharia such as officer appointment, dismissal, wages etc. are left to the ruler. Esat Efendi dealt with the issue by referring to the practice of political sharia.

> Question: ... It is understood that the assembly would even interfere with appointments. This is not allowed in sharia as it violates hukuk-u imamet (right of the ruler).
>
> Answer: The responsibility of the assembly is to notify and warn in case of wrongdoing in the administration. It would never involve in the appointments of officers. Dismissal and appointment of all officers are exclusively made by the sultan, his excellency.[67]

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65 Mithat Cemal Kuntay, *Namık Kemal -Devrinin İnsanları ve Olayları Arasında-*, (İstanbul: Maarif Basımevi, 1956), 59

66 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 2-3

67 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 6

Expressing as a discursive strategy that the rights of the sultan will be reserved, Esat Efendi says that the task of the parliament is to provide supervision and to notify the sultan of the wrongdoings and the reasons of it. Even the appointments of the officers shall be made by sultan according to the honorable sharia, and his such rights will be reserved. What the parliament will do is only the detection of officers who abused their duties and notifying the sultan about the situation. That is, a mixed assembly would not carry out officer appointments or etc., which would violate the sharia.[68]

This issue is also discussed in a petition written in 1880, years after Esat Efendi's text and after suspension of the constitution. Yusuf Paşa, who was once an ambassodor at Saint Petersburg, submitted his thoughts to the sultan via an ariza/petition on the reopening of Chamber of Deputies (Meclis-i Mebusan) and Meşrutiyet. Being a critic of the Meşrutiyet, the strategies coming out of Yusuf Pasha's ariza[69], bears the traces of practical politics. Accorcing to him, "There is no possibility to deny that appealing to Kanuni Esasi is absurd while knowing that it was not welcome at the beginning and the at the end by the Frankish and it is barely enacted even on our subjects.".[70] Yusuf Paşa was against the reestablishment of constitution by some political motives. He even denies blocking Europe's intervention in domestic affairs as an excuse for the constitutional regime, which the supporters of constitutionalism use as a discursive strategy, and expresses that Europeans did not even want the first experience of constitutionalism.

The main theme that draws attention in the "ariza" of Yusuf Pasha is the rights of the Sultan-Caliph and the relationship between the deputies

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68 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 7

69 Yusuf Paşa, *Ariza*, (Başbakanlık Osmanlı Arşivi Yıldız Esas Evrakı 1489), (İstanbul, 1880), quoted by Yücel Özkaya, 'Birinci Kanuni Esasi ve Meşrutiyet Hakkında Ortaya Konulan Görüşler ve Parlamento Usulü Hakkında bir Layiha', *Ankara Üniversitesi Dil ve Tarih-Coğrafya Fakültesi Dergisi [DTCF Dergisi]*, vol. XXXI, issue 1-2 (Ankara: Ankara Üniversitesi, 1987), 399

70 Yusuf Paşa, *Ariza*, BOA Y. EE. 1489 (İstanbul, 1880), 1

who will come to the parliament and the Sultan. He thinks that *'... if the Chamber of Deputies is to be opened, at the end of the negotiations of the MPs, it will be possible to touch the law of the supreme sultan"*.[71] It is claimed that the re-enactment of the Kanun-i Esasi will occure a power center (the parliament) alternative to the power of Sultan. Yet, in an interesting manner, Yusuf Pasha is claiming that the declaration of the Kanun-i Esasi is not required by the European states (and Russia), but what needs to be done is to eliminate the complaints of non-Muslim subjects by fulfilling the terms of the Berlin Treaty.

> In order not to be obliged to deal with us constantly with the agitation of the European people, it is necessary to take measures to eliminate the complaints of Christians who share the same sect with them, in other words, the improvement of the civil and legal administration should be achieved.[72]

The interesting point in Pasha's discourse is that the idea of constitutionalism is read as a political move that will harm the survival of the state.[73] The underlying reason is that the pasha spoke about Europe with reference to Petersburg's political agenda.

We know that the idea and practice of constitutionalism in the historical period mentioned in Tsarist Russia is not considered reasonable. Because the main argument in the opposition against the Tsar is that the Tsar is despot, and refuses to accept a mechanism like constitutionalism, etc. The effect of the idea of a constitutionalism that could be valid in the Ottoman Empire on the Russian public opinion will not be simple. For this reason, Tsarist Russia was against the Ottoman constitutionalism.

4.3.4 *Reference to the Classical role of the Ulama*

Muhiddin Efendi, in his 'ariza' he presented to the sultan, had claimed that the state and society were in a very bad situation. The cure of the

71 Yusuf Paşa, *Ariza*, (İstanbul, 1880), 1-2

72 Yusuf Paşa, *Ariza*, (İstanbul, 1880), 2

73 Yusuf Paşa, *Ariza*, (İstanbul, 1880), 2

aforementioned evils is essentially the Meşrutiyet rule, and more specifically the improvement of the madrasahs and free press. According to him, these two points are used to indicate a mechanism that prevents corruption and constantly controls government officials. Some of the patriotic officers would grow in madrasahs, while the other part grown from madrasahs would supervise the officers as ulema, and the free press would share the whole process with the people in a sincere manner.

The emphasis on the press shows that there is a new situation and class that was not present in the classical period. The prominence of the press along with the ulema which had been a legitimate actor in traditional or classical sense, suggests that the so-called "intellectuals" was emerging as a modern phenomenon. Practices such as speaking on the government and trying to limit the sultan with the ulema, -or deemed necessary for the mentioned limitation activity-, the ulema as the actor who built the ground for social legitimacy was longer alone. Emphasizing press freedom as a discursive strategy gives an idea about the transformation process of Ottoman society. It is possible to refer this new class, which is supposed to be assigned the task of giving information to public, as a change in the practice of 'emri bilmaruf ve nehyianil münker' in the traditional Ottoman society. Because, apart from the Islamic knowledge produced in madrasahs, which is the epistemic field of ulema, a new type of knowledge begins to become a partner in affecting public opinion. As we will show in the next chapter, this new knowledge and the intellectual, who is the 'producer' actor of this knowledge, will soon be in the position of giving legitimacy, and the ulema will be eliminated from the public politico-legal debates. In other words, secular knowledge/actor will be the only authority that gives legitimacy in the field of politics and law. However, in theoritical domain, this will be possible after 1908 (see next chapter).

In this text written in the mid-1890s, the use of Islam as a reference to legitimize discourse was carried out, by some discursive techniques, based on madrasah and ulema:

> The ulema has the right to oversee the rulers. ... Kings and sultans that do not act in conformity with ulema's recommendations

> would fail to rule the state and perish. ... The ulema would define the sultan's path. Sultan rules the people on this path. He cannot involve in detail with his personal views. The sultans, who does not respect the ideas of ulema, deviate towards persecution and istibdat so that the people become tired of their intolerable act and start rebellion.[74]

This reference to ulema as a discursive strategy comes from the view that ulema is the guide of all people, including the sultan. While the sultan rules the people, the ulema leads both people and the sultan. But this does not mean that the sultan is completely dependent on the ulema in all his affairs. Because leaders/rulers have partial freedom as long as they remain within the framework of the general principles/rules. They endeavor to solidify the strategic position of the ulema by merging the obedience to ulema with obedience of subjects. But, defining the problems which may arise ot of failure to respect to the ulema as persecution and 'istibdat' means the disregard of socio-political and literal contexts of these mentioned concepts. Besides, reminding that the people have a limit of tolerance is actual threatening the sultan.

On the other hand, this huge role attached to the ulema continues by reminding that the public is dependent on the ulema, and the open threat to the sultan remains:

> Do not think that the way the state has followed since your enthronement is not known by the ulema.[75]
>
> Even preachers in mosques do not speak about sharia. ...Is there any point in continuing to falsify the Shari books... and ban them? ...Have you ever heard of Sharia books banned by any sultan since Asr-ı Saadet (The Era of Prophet)? ...If any sect among Muslims rebels against the persecution, you know, which party do the other Muslims help according to sharia. ...Other Muslims must help financially and physically to Muslims who act against caliph,

74 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 2

75 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 2

until [caliph] renounces persecution. This is the sharia view of the issue.[76]

He provides practical arguments to prove that ulema did not lose supervision authority over the sultans and expresses that these are 'recorded' by ulema. Benefiting from classical Ottoman period was one of the discursive techniques of the era. Referring the classical role of the ulema, which was another strategy, was supported by giving examples from history. Giving the example of Şeyhülislam Zenbilli Ali Efendi, he recalls that ulema first warns the sultans to stay within the limits of sharia, but if the sultans disregard the warnings, they give fatwa to dismiss the sultan.[77] "One day, Zenbilli Ali Efendi, the Şeyhülislam of your great ancestors, grabbed the bridle of the sultan's horse, and said, 'Look! If you insist on an issue that is against the Sharia and justice, I will issue a fatwa for you to be dethronement.' You must know this." In this way, he connects the issue to assembly and Meşrutiyet. Similarly, in his discourse, he does not even refrain from giving the example of Abdulaziz's dismissal after the ulema's fatwa: *'Was not the deceased Abdulaziz dismissed due to his opposition to the formation of such an assembly?'.*[78]

The expression of rebellion against the sultan in the discourse was not aimless. Because during when the text was written, people had information about the Committee of Union and Progress (CUP). The Committee was mostly known among opponents and administrative elites, while they were defined as 'rebels' by the government. It is noteworthy that Muhiddin Efendi presents arguments to theoretically support the rebels, and even qualifies them as 'servants of the nation'.[79] The message he wants to give to the sultan is that the people will be on the side of the rebels, which is a religious obligation for them, in case of a rebellion.

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76 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 3-4

77 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 1

78 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 5-6

79 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 5

In addition, his statement that censoring religious books by the censorship committee which was put into force by the sultan is a deviation from Islamic History and an astray towards the path of heresy, makes the rhetoric the basis of fundamental legitimacy. Because tampering with the religious books is tampering with the religion. This extensively marginal attitude, never seen before in the history, would render the sultan wicked that would never be forgotten in the future.[80] Meşrutiyet is of utmost necessity to eliminate such a wicked tampering. Muhiddin Efendi, who defines the twenty years of Abdülhamid II's reign as an istibdat, stated that the survivability of the state and the reign would only be possible with Freedom and Equality.[81] He matches the istibdat with oppression and contrast them with freedom and equality and sees it as a must if the sultan wishes to be remembered as a 'benign' person. And expressing more clearly, he interprets the existence of Islamic government to the formation of Meşrutiyet rule.[82]

In the above sections, we have often stated that ulema is an important actor due to sharia provisions and its epistemological activity. Muhiddin Efendi also suggests this and claims that the ulema could not even fulfill the duty of 'emri bi'l-maruf ve nehyi ani'l-münker' and they could not apply sharia rules.[83] Indeed, the message is clear: The government without Meşrutiyet is illegal and not Islamic. Therefore, declaration of Meşrutiyet for the implementation of religious rules is a religious obligation/responsibility.

The intense emphasis on the ulema does not mean that all the ulema had the same view. Because the ulema which was a strategical actor in the discourse of Muhiddin Efendi, is the one that supports Meşrutiyet and the assembly. As a matter of fact,

> Islamic ulema has never objected against the meşveret method'.
> Rather, they were the leading actors in the adoption of Kanun-u

80 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 3

81 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 3-4

82 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 3-5

83 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 5-6

> Esasi. ... Do not pay attention to the ulema who stay silent to the persecution of rulers and leaders and embellish their activities, and who are lost in the worldly pleasures. Such ulema are called 'harmful ulema [ulema-i su'i]' in sharia terms. They are threatened by sharia. What I mean that appraisal of existing administration [istibdad] by some self-interested people who sneaked around you and pretended to be a ulema and pious does not calm dawn the enthusiasm in the minds. ...They have no single value and influence for the Muslims.[84]

Suggesting that the Meşrutiyet rule was built directly by the ulema, Muhiddin Efendi, in his discursive strategy, calls his opponents as self-interested and hypocrite people, even if they are ulema. To him, being close to the sultan is not appropriate for the ulema. They need to supervise the sultan and stay away from the benefits of the royal authority. However, the author of these statements, Muhiddin Efendi considers closeness to Committee of Union and Progress as appropriate and even preferred, which was another center (or seeker) of power. The use of titles like liar, self-seeker and opportunistic for the ulema around the sultan was to express that they are not legitimate. Because they have no comment on the persecution which they know. When they see the persecution, the obligation of the ulema is to demand justice, that is Meşrutiyet/method of meşveret. Thus, he tries to eliminate the legitimacy of ulema around sultan by defining them as 'ulema-i sui' (wicked ulema).

4.3.5 *Undermining the opponents' moral and political legitimacy*

The process that puts Abdulhamid on the throne represents a new dawn in Ottoman political thought. It is the sign of this dawn that the thought of Meşrutiyet was brought to the agenda among the Ottoman ruling elites and that it did not set aside from the agenda again. In the first period of the Meşrutiyet debate, analyzed in the previous chapter, minority

84 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 5-6

supporters of Meşrutiyet became 'eligible' at the beginning of this period, and this time, those who opposed the Meşrutiyet were dismissed and became opponents. Meclis-i Umumi discussions, political actor N. Kemal's serial writings, and evaluations titled 'Meclis-i Umumî' in the newspaper named *İttihad*, which came to the agenda after the day when Sultan Abdulhamid commanded the examination of the Meşrutiyet regime, present typical examples of evaluating opponents from an 'eligible' and managing perspective. New discursive techniques, such as attributing negative and morally degenerative attributes to the opponents, are used in this period by him. The discursive strategies and techniques he use become a reflection of the power rhetoric used against him not in the long past but 10-15 years ago, and as an incorrigible supporter of liberty, he even supports the deportation of the opponents without judgment. This rhetoric that we have mentioned will not only be limited to the past, but the same accusations will be made for Kemal shortly after Kemal's writings. But this time, it was nobody other than N. Kemal, who was in opposition and exposed to the attack.

N. Kemal states that the period through which the Ottoman state has been passes is critical and existential, and states that the opponents - which he believes were a very small group- think of their personal interests while Devlet-i Aliye is in the effort for conserving its general law and experiencing economic depression. As a discursive technique, dissidents are defined as people pursuing self-interest and not thinking survival of the state. In fact, by going a little further, it is tried to overcome the opposition by suggesting that the opponents are associated with foreign countries (and rebellions).

> One would not wish to have people who would be low enough to seek their own interests in the destruction of the nation, although they were born in this homeland and grew up with the blessings of this homeland. But the stranger thing is that, aside from the appearance of ten or twelve people among sons of the homeland, they try to provoke people with mischief.
>
> Rumour has it that their purpose is to … oppose the Meclis-i Umumi, which is looked forward by the nation, with arms at hand.

> If these trouble-makers complain about the agreement, … why do not object to the consequences of bad governance and istibdat that have ruled for ...years?
>
> If their purpose is opposition to reforms to be put into force, we say to them: Here, the order of istibdat you desire is able to do all kinds of unquestioned and unanswered treatments about you.'[85]
>
> Meclis-i Umumi, which is not just another form of institutions called meşveret in the Arab States, the Council in the Tatars, and the Divan in the Devlet-i Aliye, and is the executive body for the religious consultation per se, will save the state from istibdat, protect the freedom and rights of the individuals, serve the progress of the country, allow for the control of public finance, and supervise the enforcement of justice, in summary, it will save the fall faced by the state inside and outside, and prevent the separation of Bulgaria, Bosnia and Herzegovina. Would even our most violent enemies openly resist such a measure?'[86]

Dissenters are characterized as a small 'organization', implying that they have no social counterpart. Considering the historical moment in which the discussions took place, using the term 'organization' for the dissidents, helps to remind the people of the 'separatist organizations' in the Balkans, thus this maneuver implies that the dissidents are agents/enemies.

> One of the heirlooms who was the head of the mischief in this organization was the Gürcü Şerif Efendi, that during the time of Sultan Abdulaziz Khan, he rose with the power of Mahmut Nedim Pasha. There was no betrayal / trap that he would not do and no mischief that he would not attempt to in order to reach higher positions. Muhittin Efendi, who was his friend and as a Şehzade teacher during the time of Sultan Abdulaziz Khan, used to see all

85 Namık Kemal, 'Meclis-i Umumî', *İttihad*, 11 Teşrinievvel 1292, nu: 75

86 Namık Kemal, 'Meclis-i Umumî', *İttihad*, 11 Teşrinievvel 1292, nu: 75

kinds of prosperity natural for himself in case of the continuation of the mentioned period or coming of the similar.'[87]

Speaking of the presence of a sixty-five-year-old *hoca* in the community, Kemal then said that if the sensations were true, this elderly hoca married a 17-year-old young girl recently and was able to supply 1000 Paul gold[88] within two days for his young wife.[89] In that period, it is obvious that it is difficult to supply the mentioned amount in such a short time. What Kemal wants to do with this as his discursive strategy is to marginalize the internal opposition and define it as a movement having an outside root. In the discursive technique used for this, the opponents are indirectly associated with Russia, which was the main enemy in the international political struggle in the period. However, since this technique does not have any factual evidence, it acts on 'received sensations' and sees no harm.

Another discursive technique used by Namık Kemal is to describe the opponents of the Constitutional Monarchy as 'ignorant'. This ignorance of the opponents also causes them to use religion for their personal interests. In this context, according to Kemal, it is unthinkable for those who belong to the ulama class to be opponents of the Constitutional Monarchy. Kemal, who continues his criticism over the opposition ulema, says that although there are two Kazaskers among the mentioned opponents, they neither understand the nature of the Meclis-i Umumi, nor can they compare whether the articles written in that parliament comply with the sharia or not and nor do they have such an agenda. Their unique agendas and concerns are their personal interests.[90] As a discursive strategy, on the one hand, the emphasis is placed on the immoral actions of the people coming from the ulema class (sometimes by adding sensations), while on the other hand, the insufficient religious practices of the mentioned

87 Namık Kemal, 'Meclis-i Umumî', *İttihad*, 11 Teşrinievvel 1292, nu: 75

88 Russian gold coin, issued in the time of Russian tsar Paul I and referred by his name (Kuntay, p.112).

89 Namık Kemal, 'Meclis-i Umumî', *İttihad*, 11 Teşrinievvel 1292, nu: 75

90 Namık Kemal, 'Meclis-i Umumî', *İttihad*, 11 Teşrinievvel 1292, nu: 75

individuals is implied. The purpose of doing this is to reveal a distinction between the religious arguments used by the opponents in their stance against and the sincerity of the opponents. Thus, the issue can be shifted to the personal area without much discussion of the reasons put forward by the opponents.

After the constitutional debates were connected to the personal situations and interests of the opponents, Namık Kemal states that the opponents are 'a group comprised of a couple of people in this nation low and disgusting enough to benefit from the wounds of this nation, like the wound worms who know the decay of a body for their own life capital'.[91] That is to say, those who oppose the legitimate and reasonable parliament actually have these actions and ideas as their personal interests will be damaged. The end of the article contains very clear statements: 'Those who are against the "Meclis-i Umumî" are traitors; and if they are not traitors, they do not know what it means to be the organized parliament.'[92]

As the discussions on the Meclis-i Umumi (General Assembly) get longer, the opponents are defined as the tools of foreign powers as a discursive technique. In the historical context of the period, these foreign powers were mainly Russia and Britain. In this respect, Kemal opens his discursive strategy thoroughly and examines what betrayal is based on.

> At a time when Russia's assault, the turmoil in Bosnia and Herzegovina has come out, and Britain has come to the Mediterranean with its navy, what is it not to put Istanbul in disarray on behalf of the opposition, putting the survival of the country in danger? Well, what should we call who put the survival of the homeland other than a traitor?

he says.[93]

Kemal, who constantly emphasizes the devotion to the Caliphate and the sultanate in response to the religious references of the opponents,

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91 Namık Kemal, 'Meclis-i Umumî I', *İttihad*, 12 Teşrinievvel 1292, nu: 76

92 Namık Kemal, 'Meclis-i Umumî I', *İttihad*, 12 Teşrinievvel 1292, nu: 76

93 Namık Kemal, 'Meclis-i Umumî - II', *İttihad*, 13 Teşrinievvel 1292, nu: 77

says that after Abdulaziz was deposed from throne, istibdat was defeated by hand in hand with all the Ottoman people, and that Sultan Abdulhamid saved the great Islamic caliphate from bad conditions by abolishing the istibdat in a way that befits his honorable predecessors.[94] Again, as a discursive technique, he defines the grounds that oppositionists put forward, such as Meclis-i Umumî's opposition to the sharia, limiting the caliphate, and attacking the state and the nation's survival, as defamatory slanders.

Namık Kemal, while comparing Abdulaziz era vs Abdulhamid era, says that in the former one, although the rulers were able to do what they want due to the pressure of the istibdat, the fear and the heedlessness of the people; in the second one he claims that a *legitimate caliphate* period has begun with the *allegiance* of the entire nation. He goes even further, stating that Abdulhamid has come in a consensus that has been given to very few people as the Caliphate of Islam, that is, the favor of the whole nation. His emphasis that the concept of allegiance is the basis of legitimate caliphate makes it more Islamic against the opponents of the Meclis-i Umumi, in other words, meşrutiyet, and thus weakens the opposing group's hand by using the discursive strategy used by the opponents. Against them, continuing in the same passage, he adds:

> … a minority of misers comprising of fifteen to twenty people being against a resolution [meşrutiyet administration] of the government's will, which is the equivalent of the demands of a nation of about forty million [Ottomans], even if it is the ignorance that prompted them to act, ignorance is treated just like treason and draws the hatred of the nation. … the effect of betrayal is many times more than ignorance in their actions due to their personal grudges.[95]

As a discursive strategy, the identification of the opponents with negative adjectives as pursuing personal interests, immoral, traitor, fool,

94 Namık Kemal, 'Meclis-i Umumî I', *İttihad*, 12 Teşrinievvel 1292, nu: 76

95 Namık Kemal, 'Meclis-i Umumî - II', *İttihad*, 13 Teşrinievvel 1292, nu: 77

mischief, ignorant, hypocrite, etc. is used to give to the public the following message: The opponents' problem is not whether the Meşrutiyet regime is truly Islamic; their main purpose is their personal interests being undamaged, and their unfair ways of earning and their incompetent posts to continue. Because their identification as ignorant is to say that they lack the accumulation of distinguishing between what is compliant with sharia and what is contrary to sharia. Religious negative adjectives used by N. Kemal in describing the opponents (*immoral, mischief, ignorant, hypocrite* etc.) are to express that he speaks of legitimate Islamic ground, and that the opponents are far from this legitimacy. He even adds that the aforementioned persons apparently advocate Islam, but in fact they are debauching self-seekers.

By using the numerical comparison, Kemal says that there is an asymmetric positioning, almost all the Ottomans are on the one hand, and a handful of mischief impostors who pursue their own interests are on the other hand, and he claims that the opponents are very few. However, on the other hand, it is also concerned that this fifteen-twenty person of mischief against forty million may entice the people. This question also necessarily comes to mind here: What if these opponents are more than fifteen or twenty people? It is difficult to answer this question today. However, building the discursive strategies and techniques on the claims of a very few people creates the possibility that the mentioned few people are not so few.

Deployment of this strategy is not confined to Namık Kemal. Esat Efendi and Muhiddin Efendi, who wrote chronologically after Namık Kemal, also refer to the strategy of 'Undermining the opponents' moral and political legitimacy.' Esat Efendi has also claims against opponents that they are serving to the enemies and they lead adversaries among the Ottoman communities. Years after Esat Efendi, Muhiddin Efendi presented the ariza to Sultan Abdulhamid II in 1896, and in this ariza he directly defined the opponents of constitutionalism grouped around the sultan as the enemies of the sultan. Thus, while implying that those who want constitutionalism are actually those who want the good of the sultan, he

implies that the opponents of the Meşrutiyet are self-interested/self-seeker, not supporters of the caliph.

> Some guys who doesn't care about his religion, and who doesn't like his nation and fellows gathered around you. And you have been encircled by self-interested people. ... You are deceived by their arguments... You are putting your reign at risk by allowing these guys which you thought to be loyal to you, to rise in the state administration. These hypocrites give a positive view on you but they charge the responsibility of all malice events on you. And the people believe in [them]. Because the sultan bears the responsibility of all evil.[96]

The criticism directed to the ruling elites clustered in the immediate vicinity of the sultan, suggests that the opponents of the Meşrutiyet were these people. This claim, which suggests that opposition acts for their own interests, continued to exist in all periods of the Meşrutiyet debate. The fact that the sultan is surrounded by self-interested people is an obstacle to reporting the sultan of the real situation in society. Those who do not highlight the status of the people, i.e. the truth, to the sultan, are against meşveret and parliament because it is against their own interests. As an argument in which the strategy of discourse is strengthened by himself, the sultan is warned sincerely: The rise of these self-interested people in state administration creates discontent among the people, and this group is the main/real danger for the sultan's authority; not the Meşruti regime. For those who constantly say pleasant things to sultan and do not inform him of worsening of the state, charge all the evil on Sultan behind his back. Muhiddin Efendi calls these opponents as 'münafık', the religious concept of 'hypocrite', and offer sultan recipes for salvation.

96 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 1

4.3.6 *Reconstructing the Legal/Political Hierarchies*

This strategy focuses on two themes. The first is the emphasis on the inter-congregational hierarchy, and the other is the emphasis on the inter-individual hierarchy. One of the basic theoretical frameworks used by opponents of the constitutional monarchy with reference to fiqh is the hierarchy between congregations/communities. This theoretical distinction between Muslim and Non-Muslim, that is, the distinction between 'millet-i hakime' and 'millet-i mahkume', will disappear with the Meşrutiyet and this will change the social structure built by fiqh.

In this context, the strongest arguments of the opponents were that Muslims and non-Muslims would be present together for meşveret in the assembly. In this regard, N. Kemal says the following:

> 'Considering that there are so many civil servants from religions [other than Islam] in every branch of the administration and so many members in all [local] parliaments [memleket meclisi], is the objection to the presence of non-muslim subjects in the General Assembly nothing but malice act?'[97]

The councils Namık Kemal refers here were mostly "provincial councils" (*memleket meclisleri*) which were local entities. Whereas in 'provincial councils', representation is based on the system of *millets*, neither decisions are taken on legislation, nor the legal hierarchy between *millet-i hakime* and *millet-i mahkume* is ignored and everyone is considered equal. Contrary to what is assumed from Meclis-i Umumi, the mentioned legal hierarchy was constant and the local tax regime etc. was regulated.[98] However, as N. Kemal was aware of it, he added demographic comparison to his discursive technique -which we have seen a similar one in the previous chapter- and expressed that the decisions taken in the assembly

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97 Namık Kemal, 'Meclis-i Umumî IV', *İttihad*, 16 Teşrinievvel 1292, nu: 79

98 Cengiz Kırlı, "Yolsuzluğun İcadı: 1840 Ceza Kanunu, İktidar ve Bürokrasi," *Tarih ve Toplum Yeni Yaklaşımlar*, no: 4, 2006, pp. 45-119; Halil İnalcık, "Tanzimat'ın Uygulanması ve Sosyal Tepkileri," *Osmanlı İmparatorluğu: Toplum ve Ekonomi* (Eren: İstanbul, 1993), 361-424

were taken by the majority of the representatives while the non-Muslims could never become the majority in the assembly and could never enact a law against Islam. Once again, he says that the issue is a matter of personal interest for the opponents and that they do not act with sincere religious feelings. This discursive technique is also used as one of the techniques examined in the previous chapter.

Opponents suggest another argument in relation to this discursive technique: Without discrimination between Muslims and non-Muslims, a council of meşveret attended by everyone is not politically correct. Because in a country with up to millions of Muslims in its subjects, such as Russia, Muslims were by no means regarded. Similarly, in India and other British colonies, Muslims were not legally equal to an ordinary Englishman. Therefore, it is emphasized that the Ottomans should treat non-Muslim subjects in the same way. N. Kemal's answer is very meaningful in the context of his discursive strategy: *'Urging the Islamic Caliphate to imitate the rule of Russia in the name of Sharia is a delirium which cannot be suggested by the educated idiots other than Şerif Hoca and Muhiddin Efendi.'*[99] Muhiddin Efendi and Şerif Hoca, identified as the head of the opposition, are accused of both being ignorant and being hypocrites as they suggested the sacred Islamic caliphate to imitate the infidels. N. Kemal, referring to Europe as a discursive strategy, does not set the European states as model for the Ottoman sacred Islamic caliphate. The hegemonic structure of discourse practice gives Kemal the power to easily judge the opposition. The reality built by the discourse does not diminish Kemal's justifiability, even if it offers similar proposals to what the opposition has made but increases the injustice of the dissenters.

When he mentions Russia, he repeats the 'foreign force' and Paul's gold arguments and claims that the opposition was Mahdum Nedim Pasha's men and hence they are 'pro-Muscovy'.[100] The assertion that opposition to authority is originated from external forces is a discursive

99 Namık Kemal, 'Meclis-i Umumî IV', *İttihad*, 16 Teşrinievvel 1292, nu: 79

100 Namık Kemal, 'Meclis-i Umumî IV', *İttihad*, 16 Teşrinievvel 1292, nu: 79

strategy that is used in every period, and N.Kemal excessively benefits from this strategy.

Apart from Namık Kemal, Esat Efendi, who also encoded the Meşrutiyet Regime as a legitimate order (nizam-ı meşru), i.e. sharia order, gives the following answer to the question of how to preserve the legitimate regime/order: The activities of the public officers should be under full surveillance so that the legitimate rules are applied.[101] It is of course clear who will be make surveillance/control: Ummah! It is the ummah that watches the ruler/government and is expected to bring it to justice when it is wrong. The mechanism of controlling the power of the nation must be carried out indirectly, not directly. Direct intervention can cause 'mischief/malice act' (that may cause social chaos), so the assembly, which the ummah assigned task with an election, must fulfill this supervision, and notify sultan when there is a deviation. In addition, the task of this assembly is to check whether Sharia provisions and laws are fully enforced along with other social and financial issues.[102]

But are the non-Muslim citizens included in the *ummah* here? Although the answer to this question is not clearly given, according to historical and cultural contexts, the answer to it is hermeneutically negative. However, Esat Efendi emphasizes in the following pages that the task to be practiced by the ummah will be done in parliament and reminds that not only Muslims, but also non-Muslims should come to this assembly. It is obvious that such an assembly will be a mixture. Esat Efendi discusses the issue more clearly with the answer to the following question raised by the opponents:

> 'Question: ... if our government is the Islamic government, then the assembly to form should only include Muslims. ... but this cannot be achieved if the assembly is mixed. Because it is sharia does not allow it.
>
> Answer: The source of doubt on the assembly to be formed is understood. If this parliament were only a council of meşveret

101 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 3

102 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 3

> concerning Islamic issues/affairs, your objection would be quite correct. But it is not.
> Question: Awkward! Is not the council to be formed is an assembly of ummah? Will it not discuss the administration of the state?
> Answer: No'.[103]

Esat Efendi is aware that the Muslim and non-Muslim joint assembly will weaken his Islamic discourse. The way to overcome this weakness was easily found by a discursive technique: He emphasized that the administration of the state will not be consulted in the parliament, the (muslim-non-Muslim) representative will only oversee. At this point, Esat Efendi is separated from other authors who advocate the Meşrutiyet. For example, N. Kemal was including all the subjects in the concept of Assembly of Ummah without discriminating muslims and non-muslims in the eras of Abdulaziz, Murat V and Abdulhamid -even one week before the *Hükümet-i Meşruta* booklet's publication-, Esat Efendi was not following a similar way. However, with the discursive technique he uses, he defines the representatives' sphere of authority and include non-Muslims in the parliament.

> In sum, as it can be even understood from the hatt-ı hümayun, the authority of the assembly is just to declare and sue the mischief in state affairs. This is the right of everyone. It is even defined with the honorable sharia in our tradition. For example, if a claimant who is a Christian is maltreated by an officer, and then he sues it in the court, would the judge say 'you have no right, because you are a Christian'? In Islamic law, a Muslim and non-Muslim are equal before the law. ... We will not accept non-Muslims as patrons over Muslims. ....
>
> As specified in the Qur'an verses, should not the Muslims carry out 'promoting good deeds and preventing evil' (emr-i bilmaruf ve nehyi anilmünker) activities on non-muslims? Do the evils we

103 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 3-4

> have seen so far conform with sharia? Isn't it the responsibility of ulema to say these conditions do not conform with sharia and are harmful for us?[104]

By saying non-Muslims would not be granted patronage, it is expressed that they cannot be the veliyyülemr, i.e. would not become political-legal decision-makers. Relating to this, the duties of the assembly must be mentioned here. The point that preoccupies ulema and the people is whether the non-Muslims can participate in the legislative activity regarding Muslims. However, if the issue is discussed in the axis dealt by Esat Efendi, the mentioned problem can be eliminated, and the mixed assembly may be formed in harmony with sharia. More clearly, non-Muslims' right to participate to assembly could be possible over 'eman fıkhı' (rights granted to non-Muslims) considering that issues other than *tafri'*/legislation (see above, Chapter II) affects all social strata Muslim or non-Muslims. In this way, the problematic as to what does the 'hum' (them) pronoun - a source of long controversy- imply would be settled. As it will be seen in the following pages, the highlight of the Islamic nature of Meşrutiyet rule by the ulema is essentially based on this social partnership. Joint consultations could be held on issues that would not disrupt the Congregational hierarchy and would not enter into legal decision-making processes. So, in matters that concern all segments of society other than tafri', every circle is equal in defending their rights and claiming them in court. It should be noted that this equality is used to emphasize that the Meşrutiyet rule essentially coincides with the concept of justice of Islam. On the other hand, the fact that the ulema are responsible for the 'emr-i bilmaruf nehyi anilmünker' and this responsibility can only be realized through the Meşrutiyet Assembly is another link between the Meşrutiyet and Islam.

However, Esat Efendi says that the hierarchy among the communities would not be removed while all the citizens would be recruited to army. In relation to military service, he develops an argument based on the

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104 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 4

practice while there is no classical or textual inference. As the only important point, he suggests that the military service should be made under command of Muslims.[105]

In the conditions of his period, Esat Efendi interprets the military or diplomatic failures with the absence of parliament. As a discursive strategy, the assembly would keep the Ottoman citizens together. He also claims that the independence of the Serbian and Bulgarian rebellions which ended up with independence were realized due to the absence of the parliament; thus, he repeats the Meşrutiyet argument that the Neo-Ottomans presented to Ali and Fuad Pashas.[106] But on the other hand, it should be borne in mind that regional representation without the construction of a holistic and comprehensive Ottoman nation/identity would facilitate independence.

In Muhiddin Efendi's text, while the emphasis on ulema and examples brought from history reinforce the discourse, he demands a new legal basis for the relationship with non-Muslims. There is no problem in taking non-Muslims into parliament as long as they are subject to the Islamic Government (i.e. the Ottomans). On the contrary, thanks to this parliament, their loyalty to the government and the state increases.[107] Does being subject to the Islamic government means being subject to inter-communal hierarchy? This point is not clear, unfortunately. Because on the one hand, he suggested that the legal and political relations between non-Muslims and Muslims are based in Sharia, and on the other hand, all subjects should be included in the assembly of ummah.[108] However, by saying that *'Muslims and non-Muslims are equal in law'*[109], it is also fact that the equality which was not case in the context of rights was presented as if it was. He also adds that inter-communal hierarchy, i.e. the separation of dominant nation and subordinate nation was misunderstood; the

105 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 7

106 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 8

107 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 7

108 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 9

109 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 10

misinterpretation is presented as a ground for legal persecution of foreigners.[110] The historical situation is accepted as given by leaving the traditional existence and meaning of sharia aside. The general view of the assembly would be the view of ummah while the believers/ummah cannot agree on a wrong/bad view.[111] It is noteworthy that he uses the term 'believers' for the members of the assembly which does not only consist of Muslims.

Considering that 'surveillance' is again emphasized as the main duty of the assembly in here, nothing much changed between the separation of rights among the assembly and sultan. The absolute will that practice the Tafri' activity still belongs to the Sultan. But Muhiddin Efendi also admits that the Meşrutiyet debates does not ultimately mean to carry the people into the assembly and does not aim give them the right to speak. Because the members of the Meclis-i Mebusan would not be *peasants*.[112] Thus, Fırka-i mümtaze appears as another discursive strategy used in each period.

On the contrary to Muhiddin Efendi, another actor from the ulema class, Ubeydullah Efendi emphasizes the traditional hierarchy and behalf of this hierarchy, opposes the Meşrutiyet. While doing this, he uses a discursive technique: reducing the parliamentary system to abolition of the Sultan's authority. He identifies the Parliamentary system as the Constitutional Monarchy, and then he attributes the negativities of the parliamentary system to the Meşrutiyet and argues that those who demand the Meşrutiyet are those who want to abolish the traditional hierarchy. Ubeydullah Efendi, who examines the question of the mixed assembly in detail, provides practical examples to strengthen his discourse. Against those who claim that consultancy (meşveret) is necessary, even if he says that it is not a binding order, he still does not want to leave the concept of consultancy for the use of opponents.

In order to completely take the legitimating power of Islam from the hands of the opponents, he substitutes the concept of consultancy, with

110 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 7

111 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 7

112 Muhiddin Efendi, *Ariza*, (İstanbul, 1896), 12

the concept of usul-i meratibe (method of hierarchy). Thus, while he can more easily express that parliamentary practice is not an Islamic responsibility, but a struggle for power, he can also claim that usul-i meratibe will abolish the traditional hierarchy of Ottoman society.

Ubeydullah Efendi, who evaluates the case of Kanun-u Esasi or the Chamber of Deputies directly in the context of the parliamentary procedure, claims that this procedure is neither in line with sharia, rational nor experience. In fact, what dissidents like the Young Turks demand is sharia etc. It also shows that it is not. 'Although the goal of those who want the Kanun-u Esasi or the parliament are narrated together with their evidence as Shari'a, they are false; In fact, this is not the purpose of the party. Because, even though they say 'we want method of consultancy', what they want is not 'meşveret' (consultancy) but 'meratibe'.[113]

Under this administration, the Sultan will not be able to consult with the MPs gathered to the parliament and say, "How can we do the issue, what is your opinion on this?" Because, for some people who do not know good and evil, and the enemies of the Ottoman Empire such as Christians, he will have to open the secrets of the state, account for his actions one by one, and actions that will take place he will ask: 'We consider it appropriate to do such a thing. Will the esteemed deputies ask permission? "He will have to ask permission for his works. And when he cannot get the majority of the votes in the parliament, he will not be able to do what he wants. Apart from this, the deputies will be able to say to the sultan, "Why did you do this in this way, why did you do it yourself without asking us!".[114] Therefore, that the Caliph reaches the point where non-Muslims can call the Caliph to account for or non-Muslims can hold the caliph accountable in all matters is explained by the concept of void (batıl). While claiming that the traditional hierarchy has disappeared, Ubeydullah Efendi uses a very important concept for the new hierarchical structure: 'Null and void' (*Batıl*). 'Null and void', which is a legal/fiqh term, is used for everything that is illegitimate. He uses a discursive technique that

113 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 3

114 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 3

'Interpreting the modern situation through the terminology of traditional fiqh. Thus, instead of the traditional hierarchy, he defines the hierarchical structure created by the Meşrutiyet as illegitimate. Ubeydullah Efendi, as his personal opinion, regards the caliph falling into such a situation as 'humiliation', which does not fit the attributes of Muslims in the Quran, on the contrary, the concept of 'honor' is used for Muslims in the relationship between Muslims and non-Muslims.

Since the concept of 'izzet/honour' implies a hierarchical superiority, the concept of 'zillet/abasement' means being below the mentioned hierarchy. The fact that the Sultan-Caliph can be held accountable by the non-Muslims endangers his Islam and destroys the Islamic political order and traditional hierarchy. On the other hand, the opposition's demand or acceptance of such a result of constitutionalism can be read as redefining Islamic political epistemology. The issue here is not only that the caliph is accountable. Muslims can hold the caliph to account. The real issue is that non-Muslims came to a position to hold the Caliph to account for every issue. For a person sitting in the position of Caliph, it is clear how radical this indicates in his historical period. In fact, he should not consider the issue only in the context of the Caliph of Muslims. The occurrence of a similar situation in the relationship between the head of the British monarchy and an ordinary Englishman at the same historical moment - it would even be more reasonable to envision this relationship between an Indian, rather than an Englishman, and the King / Queen - points to the same radical situation.

According to Ubeydullah Efendi, leaving the authority to supervise the state affairs and actions to the attorneys who came with the choice of the people destroys the traditional hierarchical order and means to lower the provision from the top down. "To put the commons above the educated-cultivated classs", "to put the word on his feet", etc. With definitions[115], it is in question that competence is devoted to the elites by asserting the traditional commons-the educated-cultivated classs duality. The decision to have elites in power is a common attitude for both groups

115 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 5

who are in favor of constitutionalism and opposed to it. The motor force behind this attitude is none other than the struggle for hegemony, which is one of our basic theses. In other words, although the discursive arguments are different and opposed in the power struggle between actors in the historical moment in which the discussions are taking place, the demanded final point does not change, and the distinction between commons and the educated-cultivated class (havas) is quietly accepted by everyone. Because of this, 'privileged group/class' (fırka-i mümtaze) consists of people who control the administration or deserve to be consulted; it does not consist of ordinary people.

The Commons-The educated/cultivated class duality is not used only for the Muslim- non-Muslim distinction. Even if there is a parliament composed of only Muslims, this is not considered legitimate because of the aforementioned duality.

> … if it is possible to establish a parliament consisting only of Muslims in the country of the supreme sultan, the parliamentary procedure is still not permissible.[116]

For Ubeydullah Efendi, since in the parliamentary procedure the common people, that is those who cannot distinguish between what is good and what is evil, decide who will go to the parliament, this procedure is not correct. This method makes the virtuous a butler and the ignorant a master. Moreover, the majority is required to do a work in the parliamentary procedure; Since it is evident with the experience that attracting the majority to its side is always gained with "imposture", there is no good from such assemblies.

The experience of mankind shows that the majority can be won by imposture or demagogy, and supporters can be found despite the truth. Similar to Aristotle's definition of democracy as the ability of demagogues to deceive the majority of them with rhetoric, Ubeydullah Efendi opposes the parliament. For this reason, he says "The demands of the

116 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 5

Young Turks and those who want the "Kanun-i Esasi" are rejected (merdud) and void."

Unlike the previous opponents of the Meşrutiyet, Ubeydullah Efendi experienced the first period of the Meşrutiyet. Therefore, he constructs his political position within the counterarguments to the Kanun-i Esasi and Meşrutiyet with experiential evidence. He states that the Kanun-i Esasi "has committed to bring Christians even above the government by opening the Parliament" and puts forward the complaints of non-Muslim subjects to the Europeans as the reason for the state to do so. According to Ubeydullah Efendi, the Ottomans, who declared a constitutional monarchy in order not to give an excuse to Europeans looking for an excuse to intervene in the internal affairs of the Ottomans, could not achieve the desired result. Because

> … Europe and especially Britain, who should be more pleased with the announcement of the Kanun-i Esasi than anyone else, did not give up intervention and sanctions against the supreme [Ottoman] government. Apart from being a barrier to the unjust invasion of Russia, no one even made a sound. Even Russia was encouraged by Europe to intervene financially and morally.[117]

Thus, against those who want to get rid of the European intervention by declaring Meşrutiyet and the Kanun-i Esasi as the guarantee of Ottoman sovereignty, Ubeydullah Efendi reminded that this did not produce the expected result. Aside from the fact that the constitutional practice did not have the expected impact on the international arena, was there an expected improvement in domestic policy? Did the people agree with this? According to Ubeydullah Efendi, none of the Muslim and non-Muslim people were satisfied with this. Since Muslims knew that Christians were not persecuted, they were not pleased with this by arguing that the Kanun-i Esasi brought Christians to an authority above the government, an authority which supervises the government, and makes it accountable to Christians/non-Muslims. The complaints of the Christians did not

117 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 6

come from cruelty, but from grudge and hostility. Christians were also not satisfied. If this was not the case, wherever Russia invaded, Christians would not have risen and united with the Russians. If they were theoretically bound to the Kanun-i Esasi or the Constitutional Monarchy, they would not have committed such acts/betrayals. It was for the benefit of the Muslims that the sultan, who saw these truths, closed the assembly.[118] Because the events before and after the declaration of the constitutionalism were against the Muslims.

According to Ubeydullah Efendi, those who supported the Constitutional Monarchy at the expense of eliminating the congregational hierarchy could satisfy neither Muslims nor non-Muslims. The legal regulations that abolished the Muslim/non-Muslim distinction to prevent the West's intervention in the Ottoman internal affairs could neither eliminate the intervention nor make the non-muslim subjects happy.

The emergence of Muslim-non-Muslim equality means that Ottoman state practice began to use modern state institutions. Here, it is seen that the institution of citizenship gradually emerged with the constitutional debates.

4.3.7 *Reinforcing the traditional conception of politics*

Unlike the previous period, it was possible to see the arguments of those who were against constitutionalism more clearly in this period. Against the 'Redefinition of basic Islamic concepts and giving modern concepts with Islamic terminology', which is one of the strategies used by the advocates of the Meşrutiyet, their opponents try to strengthen their discourse by 'Reinforcing the traditional conception of politics.

> Those who want the Chamber of Deputies rely on Shariah to deduct their lawsuits, which consist of depiction and discord. They say that the people of the government were ordered to consult according to the Sharia. This is a depiction. For one thing, the government experts are not ordered to engage in consulting.

118 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 6-7

> Consultation is "mesnun" [ie it is sunnah or custom]. "Mesnun" means that it is permissible to leave first without processing. For a second, it is forbidden in Shari'ah and in the mind, not to take non-Muslim nations, who are clearly and apparently enemies, to the parliament and to give them secret information. Thirdly, the Chamber of Deputies method is not consultcy but method of hierarchy.[119]

It has been stated before that the basic concept used for the meşrutiyet order is *meşveret/* consultancy (or *şura*/council). However, in this context, the definition of consultancy as 'an obligation that must be done' points to a different situation. The consensus, which is included among the commandments (fards) of the Shari'ah, represents advice, not an obligation on traditional / classical epistemological grounds. Ubeydullah Efendi expressed this in his ariza he presented to the sultan.

It is important for Ubeydullah Efendi to distinguish between consultancy and hierarchy/meratibe and to read the current status of the Ottoman parliamentary assembly as a 'hierarchy/meratibe' rather than a consultation method. Because in the epistemological situation established by the classical Islamic ontological ground, the people who can be consulted with them are obvious. And it is theoretically impossible to include non-Muslims in these people. In addition, in the order envisaged by the Meşrutiyet, the caliph of the Muslims (that is, their leader both religiously and politically) is equated with everyone (Muslim or non-muslim) participating in the assembly. The more explicit meaning of this is that the caliph of Muslims - even the 'deputy of the prophet' according to Ubeydullah Efendi - will be regarded as equal to a non-Muslim subject, moreover, the legislature that includes non-Muslims, etc. processes will be able to impose binding provisions on the caliph.

The radical difference here is striking: on the one hand, while there are subjects who are legally regarded as dhimmi and have many social rights different and fewer than Muslim Ottomans, with the parliament and equality given by the constitutionalism, the aforementioned

119 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 2

dhimmis will be authorized to impose restrictions on the caliph. In other words, the caliph, the deputy of the prophet, is placed under the rule of those who belong to another religion. For Ubeydullah Efendi, this is not suitable for sharia, nor for reason and nor for experience.[120]

Ubeydullah Efendi, citing the verses in the Quran as a discursive strategy, refuses to recognize non-Muslims legally dominating Muslims. However, despite this, it is not a consistent behavior for those who want a constitutionalism, a constitutionalism that to include all subjects, to express their wishes with the concept of consent. Because, as explained above, the socio-political processes that will come to life with constitutionalism represent a process that is too complex to be reduced to the pure consultation.

Ubeydullah Efendi, who also elaborates on the issue of consultancy, tells the supporters of the constitutional monarchy that they either do not know the authentic meaning of this issue or they deliberately diverted the issue.

> 'When it comes to the mesnun of [that is, sunnah or custom] in [the State] affairs, it is not a right belonging to the members of the people who will participate in the consultation and who cannot distinguish between the holy and the interests in any way, but the emiru'l-müminin, who is the veliyyu'l-emr of ummah. In fact, it is absolutely not permissible to choose those who will participate in the consultation by the people, as it may cause many mischiefs. Because, since the importance of the important issues subject to consultation cannot be understood by the people and the commoners, attempting to have the people choose a proxy [for consultation] on an issue that they cannot decide would be to give the job to someone other than the people. Does any Shariah allow this?[121]

120 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 2-3

121 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 3-4

It is very clear that here, Ubeydullah Efendi, refers to the classical and traditional Islamic political epistemology, and emphasizes that the people of the council can only be chosen by the emiru'l-müminin/veliyyu'l-emr, that is, the caliph. The caliph decides who will come to the Consultant Council, not someone else; especially non-Muslims. In addition, it is also the case that it lacks the level to distinguish the right and the good, and ignorance is regarded as an obstacle to election.

The counselors chosen by the ignorant can cause corruption and defeat. Because the people who do not understand the state affairs cannot distinguish who is competent or not for the solution of the issues they do not understand; and they can replace the wrong people as representatives. This, on the other hand, is contrary to Sharia, since it will be entrusting heavy duties to those who are not merit/competent. Because the *emanet* (administration) should be delivered to the competent person / merit owner.

As soon as the consultation of the ruler with the competent people he trusts on the relevant issues is presented as a consultant practice, the presence of people / consultants from whom the sultan has his opinions on different issues can be read as a direct consultation practice. It cannot even be said that the prophet consulted exactly like that and that the prophet always accepted what the counselors said about the issues, as he states.[122] Because he sometimes accepted and sometimes he refused. Sometimes, he did not consult with anyone, he would implement his own decision. Because it is essential for a person who is veliyyulemr according to sharia to be independent in his own views. In other words, the sultan's consultation with the people he chooses and reaching a decision after the consultation actually means his consultation. However, as in the shari'ah, the result of this consultancy has always been in the form of the sultan's opinion, not the way that those who are here say. Such a practice of consulting is legitimate. Because the Prophet did so. Just as he did not do consultancy on every issue, he sometimes did not do any consultancy and only decided; sometimes he would consult and seek the views of his

122 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 4

friends. However, according to the Shari'ah, the rulership of the ruler who is guardian must be independent. And this condition is more important and stronger than the order recommending consultation. For all these discursive reasons, the Chamber of Deputies method was rejected by the Sharia. According to Ubeydullah Efendi, it is obvious that the greatest danger to the Caliphate is this parliamentary assembly. Likewise, it is obvious that it will be rejected by reason; Since the essence of sharia is reason, the mind will reject what sharia rejects.

Ubeydullah Efendi, who evaluates the constitutional practice as parliamentary method, claims that this form of government harms the political unity of Muslims and tears them apart. As a discursive technique, he brings examples from different countries of his own time. For example, the Muslims in the island of Crete divided into different groups for the general assembly and quarreling with each other. He does not only rely on only the practices occurred on the Ottoman lands but also uses the European experiences.

He even, claims that this form of government brought nothing but evil anywhere, and that the French parliament broke the French unity, and claims that Austria - although all its subjects were Christians, was torn apart - and became unmanageable by the parliament.[123] Normally, showing Europe as an example as a strategy is a method used by the supporters of constitutionalism.

However, Ubeydullah Efendi uses the same strategy for the opposite purpose and says that outside of England, the parliament is not a good political practice. The fact that the same problems do not arise in the UK is that they deal with foreign affairs rather than internal affairs. The fact that there is still the common-the educated-cultivated class (lord) distinction in England and positioning the educated-cultivated class by it at the head of the actual political mechanism protects it from weakness. For him, while these truths are evident, it will cause the Ottoman subjects, consisting of many different social and religious groups, to be divided into different classes and to struggle with each other in a hostile manner;

123 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 7-8

which consequently leads to destruction of the state. The fact that Ubeydullah Efendi showed the constitutionalism as the path leading to destruction against those who see the Constitutionalism as the only way for the survival of the state, shows how dynamic the political ground on which discursive strategies are struggling.

We have said before that many authors use the legitimating power of referencing Europe in their discourses. Similarly, giving examples from Europe, which is one of the discursive strategies used in Ubeydullah Efendi's Layiha, differs at this point. Ubeydullah Efendi, evaluating Europe with a critisizm beyond his age, concludes that dissidents like the Young Turks who demanded the Kanun-i Esasi for the Ottoman Empire wanted this political order of Europe for their personal interests.[124] It tells more theoretical / political things beyond the so-called "strategy of accusing the opponent of pursuing personal gain". He states that the prosperity in the countries ruled by the assembly is only for the ruling elite, and for the lower classes this is a dream like an emerald phoenix. He emphasizes that this order will not bring peace, stability and prosperity to the Ottomans, arguing that there is a terrifying exploitation and oppression beneath the apparent order and prosperity in Europe.[125] He continues by arguing that because of the deep divide between classes and social turmoil, not a single person satisfied with his government can be found in the aforementioned states.

With a discursive technique, he says that albeit to a certain extent, the social and political order exists only in Russia, and this is due to the fact that the word did not fell through the floor in Russia - that is, the common people / ignorant people did not interfere in the government.[126] Indeed, what he claims that a regime without constitution (Russia) is better than constitutional regimes.

Although Ubeydullah Efendi was against the constitutionalism, he did not hesitate to say that Muslims in the Ottoman society were dissatisfied with the administration. While he says that these stem from several

124 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 8

125 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 12

126 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 8-9

points, it is clear that he is saying directly to the government: the continued privileges of foreigners are one of the main reasons of the people's complaints. The continuation of these privileges, which cannot be nulled, brings with it the continuing discontent of the people. Although Ubeydullah Efendi was against the constitutionalism, he did not hesitate to say that the Muslims in the Ottoman society were dissatisfied with the administration. While he says that these stem from several points, it is clear that he is saying directly to the government: the continued privileges of foreigners are one of the main reasons of the people's complaints. The continuation of these privileges, which cannot be nulled, brings with it the continuing discontent of the people. *"It is normal that foreign subjects holding a high position in the government violates the dignity of the government in the eyes of the people".* Although the author is close to the sultan, he says that he is not satisfied with the privileges that the government grants (due to charters) to non-Muslims.[127]

On the other hand, the fact that the people complain about Abdulhamid can be attributed to the change of the status quo that the people used to before and the establishment of the order instead of it. The rationale for this is very familiar: Damaging personal interests. Especially, the government organs built in cities (police, courthouse, police organization, etc.) disrupts the order established by some people and hinders their interests.

Those who are used to not paying taxes, those who are used to being favored in courthouses, etc. surely, they will be uncomfortable with this. Therefore, except for these people who are opposed to the sultan and all the people in the provinces are completely satisfied with the new system and pray for the sultan.

Another factor that feeds the opposition to the Sultan - in fact, the constitutionalism- is that those who study at the schools opened by the sultan are opposed to the sultan. However, this opposition is nothing more than the opposition of the graduates of the school to the sultan / state due to their personal interests.

127 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 10

> Another reason is that those who leave the schools of the Sultan do not want to get in the way of any of the professions and want to become a burden to the state treasury and those who cannot achieve what they want are becoming rebelliousness. First of all, it is their desire to meet their personal expectations that caused the students (mektepliler) to flee to foreign countries and publish publications calling for mischief. In order for those who initiated this work to keep silent, rewards were made for them and this peccable way was made for them.. … [By doing so] these treachers are given the implicit right to be rewarded for their return, that this aspect of the work both causes others to take this path, and in the eyes of the public, it has more bad influence than the publications of that bad mob. It is necessary to give up rewarding in order to silence these malignancies and prevent those who want to take the path of heresy.'[128]

Pointing out that the sultan caused an increase in dissidents with his own actions, the author says that the problem is in the curriculum and pedagogical deficiency in schools. Because the children whom the sultan gave free education and raised as civil servant candidates do not like the sultan, and even hate him. Remembering that these was presented to Sultan, it is understood that these lines are extremely brave and daring. Education in schools could not teach loyalty and respect to the Sultan. Respect cannot be enforced by law-police; Making respect sincerely is the duty of the teachers who educate those students.

Ubeydullah Efendi talks about two fundamental concepts of modern political theory which are "hegemony" and "consent", and says that the sultan Abdulhamid regime had difficulty in constructing these. In other words, he implies that the opponents have no real arguments and that the problem is an educational problem. Failure to teach the love of homeland properly causes young people to look down on their homeland. In this context, he says that the truths are taught one-sided by mentioning

128 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 13

only the good qualities of Europe in schools, and that causes young generations grow up as enemies of their own state.

> However, at the beginning of the work, it is ungrateful not to like your country; to despise your people is meanness. Since condemning and reproaching his government would mean treason, and enmity with his sultan would mean being an enemy of his own dignity and domination, everyone should be informed that these are religiously unacceptable things.[129]

All of the adjectives listed are used to describe opponents who claim that they want constitutionalism with Islamic concerns. Ingratitude, treason, hostility, etc., the demand for constitutionalism is equalized with all negatively inclusive concepts.

It is obvious that those studying at the schools intend to serve in higher positions in the future. Despite the fact that there are not enough civil service positions for most of those who are trained in schools, their refusal to go to the periphery provinces causes them to be unemployed. This also points out that those who claim that they want constitutionalism for the sake of the country are far from tolerating even the smallest trouble. For, if serving the homeland is the basic motivation - which is the claim of those who demanded constitutionalism and rebelled against the state - why is it not accepted as serving in a provincial office? When all the above arguments are put together, it is understood that the Young Turks are the target of the discursive strategy. Because all the practices subject to criticism are the actions of the Young Turks.

Although Ubeydullah Efendi's 'ariza' is against the constitutionalism, he does not refrain, as we have seen, from telling the mistakes of the government. He acknowledges that there are civil, administrative and judicial problems; and but, he claims that there are problems due to the lack of implementation, not the inadequacy of the laws, as those who claim the Kanun-i Esasi. He recommends that the following reforms be made in order to reveal order and justice and put an end to criticism: i. The good

129 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 13

aspects of government actions should be well explained to the Muslim population both before and during the execution; ii. eliminating heterogeneity among non-Muslim subjects and not favoring anyone; iii. The privileges of foreigners should be controlled (reduced or abolished).[130] Yet, reforms must not be imposed by neither Young Turks nor Europeans. If this happens, the ruling of the Sultan begins to be questioned both by his own people and by European and non-Muslim subjects, and the Sultan loses his dignity.

§ 4.4 Concluding Remarks

In this chapter, I made a discourse analysis of the debates around the Constitutional regime/concept between 1876-1908. As I stated in the previous chapter, the actors who wanted the Meşrutiyet in the period before 1876 were in opposition. Discussions at that time were mostly made through illegal publications. The actors leading the discussion were defending the Meşrutiyet away from the Payitaht. However, at the very beginning of the period that we examine in this chapter, discussing the constitutional regime gained an official identity and the sultan himself declared this regime. Therefore, the actors who were in opposition in the previous period and their ideas came to power at the beginning of this period. However, this period of power did not last long, the Constitutional assembly was suspended at the end of this period between the December 1876 and the March 1878. And it was not possible to reconvene the assembly until July 1908. Till 1908, it was considered a crime to openly demand a Meşrutiyet regime within the borders of the Ottoman Empire, and those who defended it were prosecuted or exiled.

Unlike the previous period, the texts of the opponents of constitutionalism gained a widespread popularity in the Ottoman public in this period. Therefore, it is possible to compare the discourses and arguments of the actors who support/demand, and oppose constitutionalism. We have indicated which meta-strategies were used by the mentioned actors.

130 Ubeydullah Efendi, *Layiha*, (İstanbul, 1898), 17

Above, we have also made detailed reviews and analysis of the discursive strategies arising out of them as well as discursive techniques used for these strategies. The texts which are subjected to discourse analysis cover the texts of both sides, those are pro-Meşrutiyet and those opposing to it. These texts include memorials of debates among the Pashas following the dethroning of Sultan Abdulaziz (like M. Celaleddin Pasha's *Mirat-ı Hakikat*), essays of Namık Kemal written (in *İttihad* magazine) before the declaration of meşrutiyet at mid-1876; the booklet written at the same period titled Hükümet-i Meşruta (by Esat Efendi) which is the first "text of Constitutional Law" according to Tunaya[131], and the arizas about meşrutiyet rule presented to Sultan Abdulhamid. These arizas are Muhiddin Efendi's ariza (1896), Yusuf Paşa's ariza (1880) and Ubeydullah Efendi's Layiha (1898).

When we examine these texts, it seems that the prominent discursive strategies are as follows: i- Establishing sharia as the basis of Constitutional Monarchy / Meşrutiyet; ii- Emphasizing the protection of the traditional rights of the Sultan-Caliph; iii- Reference to the Classical role of the Ulama; iv- Undermining the credibility of opponents and Using denigrating adjectives for them; v- Reference to the Disruption of the Congregational Hierarchy; and vi- Referring to the Traditional Meaning of Political Concepts/Practices.

Among these discursive strategies, the ones that are particularly important and directly related to the topics we will discuss in the next chapter are as follows: 'Emphasizing the protection of the traditional rights of the Sultan-Caliph'; 'Reference to the Classical role of the Ulama'; 'Reference to the Disruption of the Congregational Hierarchy' and 'Referring to the Traditional Meaning of Political Concepts/Practices'. Saying that the traditional rights of the caliph will be guaranteed while emphasizing the hierarchy, emphasizing that the hierarchy between the communities - that is the distinction between the Millet-i Hakime and the Millet-i Mahkume will continue- is theoretically/epistemically incompatible with

131 Tarık Zafer Tunaya, 'Osmanlı Anayasacılık Hareketi ve "Hükümet-i Meşruta"', *Boğaziçi Üniversitesi Dergisi: Hümaniter Bilimler*, v. 6 (İstanbul: Boğaziçi Üniversitesi, 1978), 227-229

the secular law and politics. The actors who make the defense with these discursive strategies are not only those who are against the constitutional regime. Pro-Meşrutiyet actors have also expressed their discursive strategies other than 'Referring to the Traditional Meaning of Political Concepts/Practices'. They refer to this in order to express that the Constitutional Monarchy is not a new form of government and that it is not different from the traditional/classical Ottoman political-legal thought. Because of this situation, when we examine it in the next chapter, we will see that many of the actors/groups of the pro-Meşrutiyet, after 1908, will leave the above emphases/guarantees aside and instead turn to secular references. For making a comprehensive examination, we need to have a closer look at the debates of 1908 and beyond, which will be held in the last analytical section of our dissertation, that is the next chapter.

5

Transformation In Politics and Law: Struggle for Hegemony (1908-1911)

This chapter deals with legal and political debates between 1908 and 1911. To argue that the theoretical and institutional practices of Ottoman political and legal thoughts shifted to a more secular ground at the end of this period. While this period is historically quite short, it represents an era of dramatic fracture in the Ottoman-Turkish political thought. Characteristic properties of the period are the declaration of Meşrutiyet for the second time -called a Revolution by some historians in the literature[1]- and counter-revolution by the March 31st incident, the overthrow of the sultan who ruled for 33 years with a coup d'etat and enthronement of a new sultan, amendment of the Kanun-u Esasi so that sultan-caliph loses many of his power and gaining a secular character to Kanun-u Esasi.

1 Aykut Kansu, *The Revolution of 1908 in Turkey*, (Leiden: Brill, 1997); Sina Akşin, *Jön Türkler ve İttihat ve Terrakki* (Ankara: İmge Yay., 2017), 13-14; Bedross Der Matossian, *Shattered Dreams of Revolution : From Liberty to Violence in The Late Ottoman Empire,* (California: Stanford University Press, 2014) 23-47

It a period when the struggle of hegemony was fully staged, and an unexceptional variety of texts emerged at the historical moment of the mentioned events. Many people from ulema, state officials, and intellectuals have joined to this debate, leading to the birth of quite rich literature. Primarily the debates on the amendment of Kanun-u Esasi in 1909 indicates an epistemological rupture from the classical Ottoman political-legal thought and a trend toward the construction of modern secular politics and law.

Discursive strategies in the debates we examine in this chapter are very similar to the previous ones. That is, it is possible to see many of the previously examined discursive strategies and techniques in this period as well. However, new discursive strategies and techniques that indicate secularity started to emerge, too. Especially after the 31 March incident, the debates on the political-legal decisions of the dominant CUP, and the subsequent amendment of the Kanun-u Esasi prevented the sharia-centered political thought and law-making processes and gave the source of legitimacy to the independent parliament, which was secular in itself. Thus, some points of the thesis would be clearer, including how the political-legal secularization in the context of the Meşrutiyet was realized theoretically, which discursive strategies legitimized this process, and how the intellectuals (fırka-i mümtaze) rised as a new actor in place of ulema and sultan. Then, over the reflections of the period's discussions on the texts, I will examine the discursive practices and arguments through which the Meşrutiyet was secularized. In this regard, I will first explain historical context and examine the 1909 Kanun-u Esasi amendment, which is a critical turning point in the transformation of legal mentality, and the March 31st incident. Before I do that, however, it would be useful to look at the historical context.

§ 5.1 Historical Context: Rise and Rule of the CUP

While the istibdat-meşrutiyet debates continued intermittently during the long reign of Sultan Abdulhamid, the modernization goals of the Sultan continued without interruption. The Sultan paid great attention to

the opening and operation of new schools throughout the empire, and he did not oppose the modernization of military schools, infrastructural investments (railways, etc.) and supported modern education (curriculum, pedagogy, method, etc.) activities for military schools. However, traditional madrasah education remained weaker compared to other schools and therefore, an opposition emerged among the religious population against the sultan.[2] The ulema reported the problems of madrasahs and talebe-i ulum (students of madrasa) and offered *ariza*s to the sultan[3].

The main goal of the students attending the non-religious schools - which were partially secular - was to join the civil service when they graduate, and if possible to rise in civil service. This was true both for administrative and military school students. However, the promotion goals of the military-civilian bureaucracy were not possible due to the financial crisis -given the establishment and tax-collection activities of duyun-u umumiye-, the insufficiency of taxes to meet the state expenditures, and the political crisis -especially the one in the Balkans. In addition to these grounds, the non-meritocratic appointments of Sultan, who prioritized loyalty due to his paranoid stance, led to the rise of an excessive number of opponents within the bureaucracy.

The widespread of the opposition does not mean that it was organized and it had a specific program, because it is not possible to talk about an organized "opposition group" other than the Young Turks. One may think that Young Turks were mainly consisting of army officers as it was born within the military schools and the founders were military medical school students. However, it should be kept in mind that, civilian opponents also joined them since they are actually the single organized opposition and it harbored many civilian opponents as well as army personnel.

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2 François Georgeon, *Sultan Abdülhamid*, trans. Ali Berktay (İstanbul: İletişim Yay., 2017)

3 Such as, Muhiddin Efendi's ariza (1896), Yusuf Paşa's ariza (1880), and Ubeydullah Efendi's Layiha (1898)

Young Turks, who made their opposition in an organized way, emulated the Italian Carbonari organization or masonic organizations.[4] The aim was not to allow the exposed members of the organization to be used as part of intelligence in the disclosure of other organization members, and that the organization could continue its underground activities in cells. Organized in cells, the CUP was propagating against the Abdulhamid regime. It was referring the economic and political crisis and trying to convince people that sultan should leave the throne. The failure of the Ottomans to suppress the ongoing turmoil in Macedonia nurtured the disobedience towards the sultan in the 2nd Army (Thrace) and the 3rd Army. Inability to show a clear success against the increasing attacks of separatist rebels since 1907 and the local Christians' inclination to help these rebels[5] increased the discontent among the Ottoman military even more. Official inspectors were appointed to examine the disobedience of soldiers who did not obey their superiors subject to the sultan. However, both the strong organizational structure and the rhetorical power of the CUP resulted in the murder of the inspectors or their participation in the opposition front officers.

The 3rd army commander and his aides were found unsuccessful and dismissed. During the investigation carried out after this dismissal, Kolağası Ahmet Niyazi Bey was revealed to be a member of the CUP. However, Niyazi Bey did not surrender to the Sultan's officers; he took the equipment and funds given to him for military expenses and rebelled together with the soldiers in his commend (3 July 1908). As the ground of his rebellion, which he turned into a guerrilla movement against the officials in the Manastır (Bitola) province, he indicated that the constitution

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4 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002); Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964]); Şükrü Hanioğlu, *The Young Turks in Opposition,* (New York/Oxford: Oxford University Press, 1995); Şükrü Hanioğlu, *Preparation for Revolution: The Young Turks, 1902–1908*, (New York/Oxford: Oxford University Press, 2001)

5 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 321

was not in effect. More precisely, he asked that the people should pay taxes to him, not the state officials; but he would stop his rebellion if the constitution is declared. There were many junior army officers following him. Enver Bey was one of them. Sultan sent one of his highly relied aides, Şemsi Pasha, to crush the rebellion. But he was not succeeded; and killed in Manastır.

While the murder of the sultan's aide was a moral support for the rebels, it meant impotency for the sultan. After this impotency, things got worse: since majority of the troops sent from Anatolia joined the rebels, the Sultan was deemed to be defeated. The people, who did not much like the sultan due to the Macedonian turmoil, made demonstrations by indicating that they were with the army in Manastır, Frozvik, Serez (Serres), Üsküp (Skopje), and other cities and supported the re-declaration of meşrutiyet. The sultan realized that the people, just like the soldiers, were supporting the rebels. Thus, he accepted the defeat and declared the Constitutional Monarchy for the second time (23 July 1908).

In fact, it was not difficult for Sultan Abdulhamid to declare the meşrutiyet, even on a rhetorical basis. Because he was the first to declare the meşrutiyet. But, in order to expand the borders of his rule, he suspended the constitutional assembly indefinitely and continued his reign for about 30 years. However, there was no problem for him to re-declare the meşrutiyet. Because, the people were not mature enough to sustain and keep up with the meşrutiyet when it was firstly declared. The education of the people succeeded in the past thirty years, and they were now able to sustain the meşrutiyet rule in order to protect the empire from the enemies. In addition, theoretically, the constitution was never repealed, only parliament was suspended. Using these theoretical reasons, the Sultan was able to convince most of the people that he was the one who declared the meşrutiyet again. The CUP, on the other hand, did not expect that the sultan would accept the meşrutiyet in such a short time. Thus, it was caught unprepared for this change and, even if reluctantly, agreed to the sultan's stay on the throne. "Then, the Young Turk revolution was successful without a real revolution, without soldiers raiding the

palace, and without bloodshed"[6]. Although the Sultan stayed on the throne for another year, the Abdulhamid period effectively ended and the CUP dominated the government.

Although the CUP was organized underground to overthrow the sultan, it was not able to calculate that the government could change so suddenly, so it faced confusion as a party in the first months about what to do. When it came to power, the naive belief that every problem would be solved with the declaration of the Meşrutiyet was shaken by the facts that many issues, especially the separatist movements in the Balkans, were critical for the empire and the opening of the parliament was not enough to solve these problems. What was shaken was not only the CUP's naive belief in constitutionalism; the autonomy - or independence- expectations of the Armenian and Greek nationalists, who attended the Young Turk congress in Paris and helped the CUP to overthrow the sultan, were also destroyed after the declaration of meşrutiyet[7].

On the other hand, after the re-declaration of the meşrutiyet, the press censorship of the period of istibdat was abolished for a short time. Thus, newspapers and journals started to be published at an unprecedented rate in the Ottoman society. At the same time, the number of political parties & groups exploded and political discussions gained a publicity like never before. In this context, it can be said that, albeit for a short time, the democratic competition in the last period of the Ottoman Empire was practiced in this period[8]. The CUP was also staged to a political struggle within itself. The actors who showed unity in Paris, started to make an apparent struggle for power after limiting the power of sultan and returning to the country. An opposition was borne out of the CUP. Prince Sebahattin, who had previously competed against Ahmed Rıza to become the leader of the Young Turks, then established his own party and started to continue his struggle against the CUP as the Ottoman Ahrar

6 Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 322

7 Ibid, 327-328

8 Ibid, 331

(Liberal) Party. The CUP and Ahrar Party agreed on modernization and westernization. But they were split on the practical process. The main program of CUP was consisting of political reforms, freedom, strengthened national sovereignty and unity. The Ahrar Party, on the other hand, put forward a more liberal political agenda and adopted the principles of decentralization and full equality with the minorities. However, there were also other groups - such as Islamists, although some of them were supporters of the CUP- who were not only against the CUP but also not directly supporting the Ahrar. In the coming period, these groups merged against CUP and started to make politics within Ahrar.

In international politics, the re-declaration of Meşrutiyet did not get the expected support and congratulations; on the contrary, it led a new crisis for CUP. The CUP was using the criticism of Sultan Abdulhamid as a discursive strategy both in the contexts of domestic and international politics; but just in the first months of its rule, it lost more territories than the Abdulhamid had lost since 1882. After the re-declaration of the Constitutional Monarchy, the Ottoman public and the CUP faced an unexpected incident: the annexation of Bosnia-Herzegovina by Austria on October 5, 1908. Bulgaria declared its independence and refused to pay taxes to the sultan. Besides, taking the opportunity that European states left Crete, Greece declared that it annexed the island. The loss of these lands reminds us of the reason for the rebellion initiated by the CUP against Abdulhamid in Macedonia: Sultan was not able to protect the territories of the empire. But after the CUP got the authority of the government, it would have lost even territories in which it has emerged and it was most powerful.

While the new land losses brought the Muslim population closer to Abdulhamid, the minority nationalists, after seeing the CUP response to land losses, convinced that their autonomy or independence were not be possible with the CUP. While the government maintained its ideal of keeping all the Ottoman subjects together, these reasons brought the disagreements within the Ottoman subjects to the surface again and the CUP started to lose support from all segments of the society. But the elections were held smoothly under such conditions. In the parliament, non-

Muslim representatives became deputies in proportion to the demographic ratio of their nations. But this has created a fragmented parliamentary practice, and the hostilities/struggles of the past rose to the surface again in the parliament. For instance, the minority representatives did their best to disrupt the works until their requests are accepted while the Muslim representatives remained indecisive about obeying the CUP or the Sultan and cannot perform an integrated joint action.

The weaknesses of the CUP in foreign policy and the inability to overcome the division in domestic policy strengthened the hands of the opponents of the CUP. Taking advantage of the failure of the CUP in foreign policy and its failure to pass a law from the parliament, Abdulhamid turned a blind eye to activities that would strengthen his own power[9]. Among the Muslim population, those who are against the CUP started to organize the social opposition against CUP now by referring Islam just like CUP did previously. Although this organization was not in a strong and unitary structure, its discursive strategy gained sufficient grounds by referring that Islamic Sharia was ignored by the CUP, that non-Muslims and Muslims were equalized by the enactment of secular laws, and that Muslim women were included in the public sphere without the face-veil led to a social degeneration[10]. These grounds basically show an opposition to the practices of Meşruiyet rule. Emphasizing that Islam is capable of meeting all the socially and politically necessary legal regulations, the opponents argued that they should only obtain technological tools from the West. However, they did not resort to violence (until the March of 31st) in their opposition and just took civilian actions. For example, by saying that they use their freedom of thought and expression, they organized petition campaigns to be sent to the Muslim deputies in the Parliament[11].

On the other hand, the CUP elites was emphasizing that the government should continue the reforms without renouncing modernization

9 Ibid, 334

10 Ibid, 334

11 'İmza Toplanıyor', *Yeni Gazete*, nr. 191, 1 Mart 1909, s. 4; 'Toplanmış İmzalar', *Yeni Gazete*, nr. 192, 2 Mart 1909, s. 3

activities. Besides, the appointments of Kamil Pasha his affinities to Ministries of Defense and Navy, who was not only leading the people i.e. the civilian opposition but also head of the government, caused another crisis. The CUP gave a vote of confidence and forced him to resign to show that it was holding true power.

The dissolution of the Kamil Pasha cabinet has been another reason for opponents of the CUP to oppose the CUP policies. Although the İttihad-ı Muhammedi Association or Volkan Newspaper (and of course Derviş Vahdeti) were the most prominent figures of the organized opposition, the components of the opposition were more than them. For example, the Civil Servants who did not get the promotion they expected or were unemployed because their position was removed were in the opposition ranks. Army personnel, who were not promoted because they were not within the 1st Army and a graduate of military school -e.g. self-educated- and not a member of CUP as well as old officers who were not content with the rapid promotion of young and inexperienced officers were also within the opposition. Apart from these, there was a large opposition group consisting of civil servants, army personnel, tradesmen, clerics and students who, were claiming with conservative motivations that the CUP ignored the caliphate and the shariah, that the secular/laic laws were enacted - while the sharia was -or would- no longer becoming the main determinant. The biggest organized opposition group was the Ahrar Party. Because, although the conservative mass is in the majority and they use Islamic arguments, the liberal Ahrar Party, despite being in favor of modernization, criticized the autocratic and repressive rule of the İTC and sought the political representation of the opponents and tried to guide them.[12]

On April 13, 1909 (March 31 in the Rumi Calendar), some students of madrasahs (talebe-i ulum) gathered in the Hagia Sophia Square to make demonstration, just like their predecessors did against Abdulaziz. With participation of too many officers and conscripts from the 1st Army and

[12] Ali Birinci, '31 Mart Vak'ası'nın Bir Yorumu', *Hürriyet ve İtilâf Fırkası - II. Meşrutiyet Devrinde İttihat ve Terakki'ye Karşı Çıkanlar,* (İstanbul: Dergâh Yay., 1990), 225

the provocation of the agitators, the demonstration turned from protesting into a rebellion. The rebels moved to the Chamber of Deputies at the Sultan Ahmed and surrounded it. The CUP, as in Abdulhamid's declaration of meşrutiyet, was again caught unprepared for such a revolt and all the visible political-military elites of the CUP had to flee Istanbul during to the turmoil. The rebels, who blockaded the parliament, sent their representatives to declare their requests and threatened to fight if their requests were not accepted[13]. Their main requests were as follows: i- Resignation of the government, ii- Exile of the deputies, iii- Full compliance with Shariah and the enactment of the laws in accordance with it, iv- Return of all officers retired by the government and the elimination of the CUP influence/power in the army, v- Dismissal of Ahmet Rıza from the parliament chairmanship and assignment of a 'true Muslim' to that post.

The requests of the rebels were rejected by the representatives in the assembly on the grounds that there was no quorum, and the representatives in the assembly were not authorized for such an agreement. Then, the opponents caused an uproar and murdered two of the representatives. One of them was someone who resembled the chairman of the parliament, Ahmet Rıza, and the other was the one resembled to editor-in-chief of *Tanin* newspaper, Hüseyin Cahit, known for his secular ideas. Seeing that the events were out of control, the grand vizier presented his resignation to the Sultan, which the Sultan Abdulhamid accepted. Subsequently, the sultan, sent his chief clerk to Sultanahmet to meet with the protesting opponents, trying calm the rebellion by pledging to the rebels that the grand vizier was dismissed, a new government would be established and legislation respecting the Islamic law would be made. The effort to suppress the rebellion can be interpreted as Abdulhamit's attempt to re-establish its reign.

On the other hand, CUP decided to crush the rebellion with a military intervention with its strong structure in the 3th Army in Macedonia as its Istanbul organization was weak. It was known that many of the Unionists

13 Elmalılı Muhammed Hamdi Yazır, '31 Mart -Meclis-i Mebusan'da- I', *Beyanü'l-Hak*, i. 30, 2 Cemaziyelevvel 1327 (22 Mayıs 1909)

fled to Balkans and invited the people to revolt against the rebels in Istanbul. They asked a revolt from both Muslim and non-Muslim subjects against the rebels - and of course against the Sultan. Only the Armenians in Adana accepted this call massively; they made pro-CUP demonstrations in the city and declared to defy Sultan's authority. However, the Armenian revolt incited the Muslim population and bloody struggle broke out in the city. The events were taken under control unfortunately only after the massacre of thousands of Armenians and Muslims.

High-ranking Unionist commanders in Macedonia convened under the command of Mahmud Şevket Pasha and decided to intervene in the rebellion in Istanbul to re-establish the order. While the military troops were transferred to Istanbul by trains under the name of the Action Army, it was reported to the Sultan/Istanbul that, theoretically, this army was not affiliated with the CUP, but only came to maintain order. When Hüseyin Hüsnü Pasha, commander of the Army, arrived in Istanbul (Yeşilköy), he was greeted by a delegation consisting of members of the parliament and members of the Ayan council. The delegation joined to the Action Army in here and indirectly declared that it accepted the illegitimacy of the Chamber of Deputies by holding a symbolic session under the name of the General National Assembly. After this session, the Action Army started to occupy Istanbul. Abdulhamid had to admit defeat for the second time by ordering all the soldiers in Istanbul not to resist. However, despite this, violent clashes took place against the Movement Army in different military garrisons and barracks of the city (for example, in Topçu barracks in Taksim as well as in Taşkışla and Üsküdar).

In the evening, the whole city was taken under control and the rebels were suppressed. Mahmut Şevket Pasha declared martial law thereupon, those who resisted against the Action Army were executed and the people were intimidated. In order for the government to continue its work, the officers were sent to the provinces for tax collection. Thus, the army dissolved the government in the name of meşrutiyet and seized the authority[14].

[14] Yusuf Hikmet Bayur, *Türk İnkılabı Tarihi vol. I*, (Ankara, 1940), 267-288, 297-299

On April 27, the representatives convened under the presidency of Said Pasha in the building of the Chamber of Deputies, but they renamed the parliament as "General National Assembly", not Chamber of Deputies. Then, Sultan Abdulhamid was dethroned through a fatwa resting on the grounds that he plotted a revolution against the re-declaration of Meşrutiyet in 1908, he was responsible for the resulting deaths, he stole from state treasury etc… Afterwards, his brother Mehmed Reşad was enthroned[15].

The CUP which lead the re-declaration of the Constitutional Monarchy in 1908 and dethroned the sultan by military intervention against the rebellion in 1909, did not seize the entire power until the beginning of the Balkan wars. Historians characterize this period, i.e. between 1909 and 1912, as a meşruti democratic period during which a liberal and pluralist democracy prevailed[16]. This period also represents a critical threshold in the context of "secularization of law and politics" that this study focuses on. Because, as it can be seen in the debates below, which the discursive strategies of the pre-76 period started to be abandoned in this period and the legitimacy source in the process of law making in the parliament has passed from the Sharia to the secular “national sovereignty". The theoretical ground that sustain this process is the new annexes to the Kanun-u Esasi, more precisely “amendment works”, which we will discuss below.

To sum up, the Young Turks opposition, succeeded in July 1908, is described by many historians as "Revolution" in the literature[17]. Similarly,

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15 Sina Akşin, *31 Mart Olayı*, (Ankara: İmge Kitabevi Yay., 2015)

16 Eric Jan Zürcher, *The Unionist Factor: The Role of the Committee of Union and Progress in the Turkish National Movement, 1905–1926*, (Leiden: E. J. Brill, 1984); Eric Jan Zürcher, *Turkey: A Modern History,* (London: I. B. Tauris, 1993); Stanford J. Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey, Vol. II: Reform, Revolution, and Republic:The Rise of Modern Turkey, 1808-1975* (New York: Cambridge University Press, 2002), 338-344

17 Sina Akşin, *Jön Türkler ve İttihat ve Terrakki* (Ankara: İmge Yay., 2017), 13-14; Aykut Kansu, *The Revolution of 1908 in Turkey*, (Leiden: Brill, 1997); Feroz Ahmad, *The Young Turks: The Committee of Union and Progress in Turkish Politics, 1908–1914* (Oxford: Clarendon Press, 1969); Tarık Zafer Tunaya, *Türkiye'nin Siyasi Hayatında Batılılaşma*,

many historians again tend to teleologically interpret the events of 1908 as the road to the proclamation of the Republic. However, the military uprising in 1908 and the sultan's re-declaration of meşrutiyet, or accepting defeat, was not a revolution itself but means the emergence of a relatively free political atmosphere that allows radical transformations. There was no radical revolution: The sultan continued to hold his power for a year, a "revolutionary practice" like the direct intervention of ordinary people in power was not realized, the sultan partially abandoned his oppressive rule, and the people enjoyed some freedoms. However, this free atmosphere did not last long. The CUP took over the power with a military coup that allowed the CUP elites to impose their own decisions. During the Abdulhamid era, it was the Sultan who established the istibdat; but during the CUP era, it was the CUP elites that applied despotism. Before 1908, the opponents would be exiled and press and intellectuals are censored under the pretext of legal procedures. There was no radical difference in the CUP rule. There is just one difference: The decision-making authority was now the CUP elites, not the Sultan.[18]

§ 5.2 The evolving character of Kanun-u Esasi: The 1909 amendment of Kanun-u Esasi

A few days before the outbreak of the March 31 incident, a very important text is published to be distributed to the representatives in the Chamber of Deputies. This text was a memorandum that reviews the articles of Kanun-u Esasi one by one and presents grounds for drafted amendment[19]. The text consists of arguments of the amendments in the Kanun-

(Istanbul: Yenigün Matbaası Tunaya, 1960[2002]); Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961)

18 Halid Ziya Uşaklıgil's memoirs named *Saray ve Ötesi* (Özgü Publications), illustrates these differences in literary style. Uşaklıgil was the principal clerk of Sultan (Mehmet Reşad V), in the post-Abdulhamid era. He narrates the the relationship between the sultan and CUP elites as through direct testimonies.

19 Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair (Kanun-ı Esasi Encümeni Esbâb-ı Mûcibe Layihası)*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 90-140

u Esasi that are adorned by intense Islamic references. The author of this text was Elmalılı Hamdi Yazır who was a young and dynamic actor within ulema and also a member of the Chamber of Deputies. The amendments made after the 'Amendment of the Kanun-u Esasi' in 1909, which was the ground of this text, reveal the break in the Ottoman political-legal thought.

The Article 113 (see Appendix B) of the Kanun-u Esasi was mentioned in the previous two chapters. By means of this article, the sultan in power was able to exile his opponents through to a legal proceeding. Therefore, it was not difficult to predict that this article would be repealed in 1908 if the meşrutiyet is re-established. However, the scope of the amendment activity was not that narrow. The amendment achieved to introduce many legal-political arrangements such as the rights of the sultan, the status and powers of the Chamber of Notables (Meclis-i Ayan), the responsibility of the representatives and making the Assembly the center of power. The amendment process was staged to intense debates on the issues such as the Assembly proceedings, the authorities representing the public power, that is, the design of the relationship among the government, Chamber of Notables and the Chamber of Deputies, and the power share among them. It should be noted that these discussions are a struggle for power and hegemony among actors.

The idea of amending the Kanun-ı Esasi became part of the public agenda only after the 2nd Meşrutiyet. The only exception to this is Article 113, which is seen as an obvious difference in the Kanun-u Esasi, as mentioned above. In this respect, the event that brought the amendment of Kanun-u Esasi into agenda is the Sultan's appointment of Ministers of Defense and Navy in the Said Pasha Cabinet by himself just in the early days of 2nd Meşrutiyet. In connection with this issue, the ambiguities of the Kanun-u Esasi (Article 27) concerning the formation of the government and the problem of interpretation brought the issue of amendment to the

public agenda.[20] The article 116 of the Kanun-u Esasi[21] which specifies its amendment procedure was widely discussed in the Ottoman public opinion such as public debate platforms and newspapers.

In order to seize power, the CUP which made the Sultan to reopen the parliament had to weaken the power centers that were not in their hands in the Meşrutiyet rule that it was caught unprepared for. The CUP's absolute majority in the Assembly was not sufficient to establish its hegemony due to legal and political procedures. For this reason, they developed legal-political maneuvers to gather the non-parliamentary powers, i.e. the powers of Government and the Chamber of Notables in the the Chamber of Deputies, in a legitimate way. The Assembly of Representative's control of other power centers amounts to the CUP's capture of Chamber of Notables which is providing counterbalance against the government as well as the balance between the government and assembly. In this respect, the CUP's policy to make the Chamber of Deputies the locus of power was debated over the two matters about Kanun-u Esasi's amendment: i-

20 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 87. This section of the dissertation is very similar to Ali Adem Yörük's work. Yörük mostly included the thoughts of the 2nd Meşrutiyet era's jurists on the issue that he researched and wrote with great effort. However, he does not evaluate the Constitutional Monarchy over a longer period of time and from the perspective of non-jurist thinkers. As this is the case, it does not focus on how the idea of the Constitutional Monarchy and the legal-political secularization developed. Unlike Ali Adem Yörük, I am trying to do that in this study.

21 Article 116 is: 'Kanun-ı Esasi'nin mevâdd-ı müntericesinden bazılarının icâb-ı hal ü vakte göre tağyir ve tadiline lüzum-ı sahih ve kat'î göründüğü halde zikr-i âti şerâit ile tadili caiz olabilir. Şöyle ki: Ya Hey'et-i Vükelâ veya Hey'et-i A'yân veya Hey'et-i Mebusan tarafından işbu tadile dair bir teklif vukû bulduğu halde evvelâ Meclis-i Mebusan'da azayı mürettebenin sülüsân-ı ekseriyetiyle kabul olunur ve kabul Meclis-i A'yân'ın kezalik sülüsân-ı ekseriyetiyle tasdik edildikten sonra irade-i seniyye dahi o merkezde sudûr eder ise tadilat-ı meşrûha düsturulamel olur. Ve Kanun-ı Esasi'nin tadili teklif olunan maddesi ber-vech-i meşrûh müzakerât-ı lâzımesinin icrasıyla irade-i seniyyesinin sudûruna kadar hüküm ve kuvvetini kaybetmeksizin mer'iyyü'l-icra tutulur'

Responsibility of the representatives; ii- structure and functioning of Chamber of Notables[22].

As shown before, the main defining difference of the Meşrutiyet rule is that it puts an end to "arbitrariness" and establishes a certain order and defines the accountabilities of officials and places it in a legal framework. It is understandable that the Meşrutiyet movements make an emphasize on “accountability” as they define *istibdat* as a regime in which the government is formed by an unaccountable cabinet or administrators. However, when the discussions on the structure of the Chamber of Notables is evaluated, it will be seen that the goal was not only the accountability of representatives, but also the weakening of the Chamber of Notables against the Chamber of Deputies thereby increasing the control over the government. In the Political Program of the CUP, which formalized its views on the amendment, the two prominent points regarding the amendment of the Kanun-u Esasi were as follows: The absolute accountability of the cabinet against the Chamber of Deputies; deeming the cabinet resigned when it loses the majority in the parliament; election of two third of Chamber of Notables by people and one third by Sultan, not for livelong but for a limited time, and not exceeding one third of the number of assembly members[23]. With the declaration of political programs by non-Muslim societies and committees along with CUP, it became a widely shared view to weaken the Chamber of Notables against the Chamber of Deputies[24].

The theoretical ground of the accountability of representatives in the cabinet was the principle of sovereignty of nation. This principle, which we will discuss below, implies recognizing no authority outside/above

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22 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 90

23 Tarık Zafer Tunaya, T*ürkiye'de Siyasi Partiler Cilt 1 – İkinci Meşrutiyet Dönemi*, (İstanbul: Hürriyet Vakfı Yayınları, 1986), 65-67

24 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 92

the parliament. Of course, in this case, the group who practically has the majority of the parliament would naturally form the government.

It should be added that the amendment of the Kanun-u Esasi was not voiced only by the CUP or by the parliamentarians in the Chamber of Deputies. Those who wished the amendment often referred the statement of Abdulhamid II: "Let there be no doubt that the ground of law of the state and the country is first Allah, then the nation, and then the nation's Chamber of Deputies"[25], which he made during a feast in Yıldız Palace to which the representatives were invited[26]. Following these statements and the inauguration of the Chamber of Deputies (18 December 1908), a suitable ground was formed for taking concrete steps to amend the Kanun-ı Esasi. The official process was started with proposals given by Istanbul representative Alber Vitali Feraci as well as two other representatives.

The amendment proposal was within the scope of Article 116 of the Kanun-ı Esasi. To Vital Feraci "This is an amendment proposal for some of the articles of Kanun-ı Esasi which is a right of Chamber of Deputies' members. The proposal is directly examined in here, then forwarded to Chamber of Notables... we will make this law, this is our right... this is a right, we will do it." Noting that there was no dispute on this issue, he wanted the approval of this proposal and sending it to the committee. After debates on the council that the bill would be sent, the amendment of the Kanun-u Esasi was approved unanimously[27].

On the day when it was unanimously decided to amend the Kanun-ı Esasi (12 January 1909), six people from each branch of the Chamber of Deputies were separated and a thirty-person Kanun-ı Esasi Amendment

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25 'Ziyafet-i Hazret-i Padişahî', *Tanin*, nr. 152, 1 Kânun-ı sâni 1909, pp. 1

26 Hüseyin Cahit, 'Nutk-ı Hümayun ve Hakimiyet-i Milliye', *Tanin*, nr. 152, 1 Kânun-ı sani 1909, pp. 1; Hüseyin Cahit Yalçın, 'Sultan Hamid'in İlk ve Son Ziyafeti', *Yakın Tarihimiz, II*, pp. 46-47; Hüseyin Cahit, 'Yıldız Ziyafeti ve Tesiratı', *Tanin*, nr. 155, 6 Kânun-ı sâni 1909, pp. 1. And also see Hüseyin Cahit, 'Vükelâdan İstizah', *Tanin*, nr. 154, 3 Kânun-ı sâni 1909, pp. 1; Hüseyin Cahit, 'Meclis-i Mebusan'da', *Tanin*, nr. 161, 12 Kânun-ı sâni 1909, pp. 1; *Takvim-i Vekâyi*, nr. 91, 1 Kânun-ı sâni 1324, pp. 3

27 MM, I, 1/10, 30 Kânun-ı evvel 1324/12 Ocak 1909: *Meclis-i Mebusan Zabıt Cerideleri, I*, pp.138-140

Committee was established, and it was decided to transfer the Assembly's by-law to the committee.[28] Approximately one-third of the members of the Committee consisted of İlmiye class and one-third were graduates of Faculty of Law[29].

Şefik Bey[30] was elected as the head of the Committee, Hüseyin Cahit[31] was appointed as the reporter, while Ahmed Nesimi[32] and Gümülcineli İsmail[33] were elected as the clerk and it was decided to work in the committee from five in the morning until the general assembly meeting[34]. However, those included in the Committee are not limited to these people. There are other actors such as Hüseyin Cahit, who was a popular figure in public debates and who wanted to be decisive in the amendment process. For instance, Elmalılı Hamdi Yazır and Mustafa Sabri Efendi who were among the leading figures of legal scholars were in this group. These three figures would be much heard during the secular transformation of Kanun- Esasi and Chamber of Deputies. As can be seen below, the struggle between these actors also well represents the struggle between the circles that determine the evolution of Ottoman legal-political thought.

The Committee negotiated all the articles one by one for about a month until its mission is completed on February 25th. The "Preamble" was printed together with the articles proposed a week before the 31 March event and handed over to the Chairmanship of the Chamber of Deputies (4 April 1909). As Yörük underlined, all the activities of the Committee were fulfilled before 31th March and during the term when

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28 MM, I, 1/10, 30 Kânun-ı evvel 1324: *Meclis-i Mebusan Zabıt Cerideleri, I*, pp. 141-147

29 MM, I, 1/23, 22 Kânun-ı sâni 1324: *Meclis-i Mebusan Zabıt Cerideleri, II*, pp. 488

30 Deputy of Karesi, jurist. He would be a member of the Court of Appeal on 23 September 1909.

31 Deputy of İstanbul, journalist, founder and editor-in-chief of pro-CUP newspaper *Tanin*.

32 İstanbul Deputy, a member of Foreign Ministry Consultation Room and former legal advisor of Ottoman public debt administration (Düyun-u Umumiye). He would be Foreign Minister.

33 Deputy of Gümülcine, a jurist.

34 'Tadil-i Kanun-ı Esasi Komisyonu', *Tanin*, nr. 171, 22 Kânun-ı sâni 1909, pp. 3

Abdulhamid II was on the throne[35]. The negotiations of the Committee, the articles that were decided to be amended, their justifications, and the form of şer'i explanations included in the articles and at the beginning of the Bill can only be attributed to the political-legal agenda of pre-31 March era. It would not be correct to consider them as the results of 31th March events and dismissal of Abdulhamid.

The Committee would not make a new Kanun-ı Esasi. The existing articles of the Kanun-ı Esasi would be read one by one, and amended when necessary. When these are completed, an arrangement regarding the classification would also be made if deemed necessary. In this process, "the principle that the commission adopts as a guide in the amendment of the Kanun-ı Esasi is national sovereignty". "There is no single dispute on this matter among the members of commission"[36]. While the Committee did not amend the first two articles of the Kanun-ı Esasi, the remarkable amendment was made in the Article 3 (see Appendix C) regulating the Sultan's rights. Accordingly, an oath obligation is imposed to the newly enthroned sultan: "The Sultan would swear during his enthronement that he would be loyal to the shariah, rules of the Kanun-ı Esasi, the country and the millet in the General Assembly immediately if the assembly is convened, otherwise in the first meeting of the assembly." This article is accepted without objection in the Committee[37]. Similarly, another amendment accepted without objection was on the holiness and unaccountability of Sultan as a person (Article 5). The amendment transferred them from his personality to his post by "transforming his authority/appearance to a more divine, more religious, and more political form" and indicated the accountability of representatives against the unaccountability of sultan[38]. We will not examine all the articles here since the radical changes that the Kanun-u Esasi underwent will be examined with a

35 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 124

36 'Kanun-ı Esasi'nin Tadili', *Tanin*, nr. 183, 3 Şubat 1909, pp. 1

37 MM, I, 1/65, 20 Nisan 1325: *Meclis-i Mebusan Zabıt Cerideleri, III*, 178

38 MM, I, 1/65, 20 Nisan 1325: *Meclis-i Mebusan Zabıt Cerideleri, III*, 178-179

detailed comparison below. Here, we will just provide examples of these articles regulating the right of the sultan to give an idea.

The Committee finished the works on each article on 25 February 1909, and on the same day, handed over the documents to reporter Hüseyin Cahit to write the "preamble report". However, the report was not written within the prescribed period, and meanwhile, Elmalılı Hamdi Yazır, the young figure of the legal scholars, was determined as the new writer of the report. As Adem Yörük said, although the issue of justification of the amendments was important on its own, the replacement of Hüseyin Cahit Bey by Elmalılı Hamdi Efendi gives the impression that social legitimacy was sought after[39]. Considering the Tanin newspaper editorials of Hüseyin Cahit, who is a strict CUP representative and spokesperson, and the views he defended in these articles, which people considers far from sharia, it would be more logical that somebody among the legal scholars do this by putting forward Islamic grounds.

However, the outbreak of 31 March incident before the official declaration of amendments and then its suppression with a military intervention, allowed the CUP to make the legislative activities more easily. The suspicious trial of the CUP opponents among the people during the time of martial law and sentencing them to death penalty or exile can be interpreted as deterring the opposition that may arise during legislative activity within the parliament. Because what happened to the opposition outside the parliament could also be the case for the opposition inside the parliament. One of the basic arrangements that changed the characteristic structure of the Kanun-ı Esasi was realized on 21 August 1909, after lengthy discussions. With this change, which was very important in the context of re-establishing the locus and balance of power, the power of the sultan and the palace was reduced. The right of sovereignty given to the Ottoman dynasty with the Kanun-ı Esasi was made to be based on the sultan's loyalty to the oath he made during enthronement, as we mentioned above. Since the Sultan swore to be loyal to the country and the

39 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 132

nation and to respect the Sharia and Kanun-u Esasi, the parliament had theoretically given himself the right to dethrone the sultan whenever he wanted (Article 3, see Appendix C). The ministers and grand vizier were accountable to the parliament, not to the sultan. This means that all power is held by the parliament, which works on the basis of sovereignty of nation (Hakimiyet-i Milliye).

§ 5.3 Discursive Struggle for Hegemony

The debates on the Meşrutiyet rule had always been revolved around Islam. This is proved by the fact that the most commonly resorted meta-discursive strategy even in 1908 was the conceptual set of Islamic epistemology and Islamic rhetoric.

Referencing Islam as a meta-strategy was a useful method for advocates of Meşrutiyet, as has been much repeated in the sections above. However, the actors using this method was not constituting a homogeneous structure and were not sharing the same intellectual path. It is difficult to say that all of the aforementioned actors had high Islamic concerns and were acting so with religious concerns. Rather, actors who often resorted to this discursive strategy behaved in this way deliberately and with opportunist approaches going beyond pragmatism. The leading figures who deliberately used this method will be examined and evaluated in detail below in the context of their own statements. Thus, we do not go into detail here.

While the discursive strategies and discursive techniques used in 1908 were continuing the discursive strategies and techniques of the 1860s on the one hand, they were also revealing an obvious differentiation on the other. Therefore, in this section, our main distinction in the analysis of discursive meta-strategies and discursive strategies generated after 1908 will be as follows: i- Discursive strategies and techniques that had been conventionally used since the 1860s; ii- Discursive strategies and techniques that allow and create new things.

Strategies commonly used in this and previous eras are as follows (see also Appendix A):

a- Invoking the Sharia as the basis of the Meşrutiyet,
b- Drawing on ulema's prestige
c- Invoking sacred texts & Invoking early Islamic history,

On the other hand, one should list the following for the discursive strategies and techniques that enable and create the new (secular) legal and political thought:

a- Redefining Basic Islamic Concepts,
b- Legitimizing Modern Concepts with Islamic Terminology,
c- Developing A New (Hybrid) Political Theory,
d- Reconstructing the Traditional Legal/Political Hierarchies,
e- Putting forward a Power-Centered Europe Perception,
f- Invoking the Concept of Progress,
g- Selective Comparisons

Apart from these, we need to add here the meta-strategy 'Legitimation by Reference to the West'. While the emphasis on Islamic epistemology diminishes over time - but never ends - discursive strategies and techniques referencing the west show a cumulatively increasing momentum. The quantitative increase of the reference to the West reflects a qualitative rupture after reaching a certain intensity; and 'secular' state practices began to emerge in the historical conditions of the period similar to those in other geographies.

In fact, considering the periodic difference, there is no radical difference between the discursive strategies that we will examine under the first and second headings. The reason for this judgment is that the general meta-strategies are the same in all three investigated periods. But, when the discursive strategies and discursive techniques under the second heading are examined more closely, two points is notable: First, there is a gradual quantitative decrease in the first heading and increase in the second heading; and second the quality of discursive techniques that refer to another paradigmatic field (i.e. secular legitimacy grounds) increases. It becomes clearer in the discursive strategies and techniques examined under the second heading that the struggle for political power between the actors also represents an epistemic struggle. In fact, the discursive strategies used by the actors who were victorious at the end of

this struggle and the evolution of these strategies reveal the change of Ottoman legal-political thought in the late 19th and early 20th centuries. And, as it will be shown below, it is obvious that this was a transformation from an Islamic to a secular position.

Now, in order to see how these legal-political secular practices emerged, we will first look at who produced the discursive strategies and techniques from the 1860s and with which arguments.

5.3.1 *Invoking the Sharia as the basis of the Meşrutiyet*

In 1908 and after, people excitedly expressed in public meetings that the Constitutional Monarchy did not conflict with Islam. The most influential of these are undoubtedly the conversations held in sermons in great mosques. In this respect, Manastırlı İsmail Hakkı draws attention as both one of the most influential preachers of the period and an ardent supporter of constitutionalism. Manastırlı İsmail Hakkı, who preaches in the Hagia Sophia mosque, tries to eliminate the doubts about the piety of the CUP leader Ahmed Rıza in his sermons, who is known to be a secular and positivist person, and always expresses his support to the Meşrutiyet. The reason behind the effort to present Ahmed Rıza as a good Muslim is that he was known to represent the CUP and its leading staff after 1908 in the public opinion. The government style supported by someone with a weak relationship with Islam raises doubts in the public and superficial references to Islam in the context of Meşrutiyet are not satisfactory. Being aware of this, Manastırlı uses a much-resorted discursive strategy:

> Islam and the exalted sharia of Prophet Muhammed (pbuh) is not just conducive to Meşrutiyet, rather they see it as a must and require Meşrutiyet. This is one of the most undoubted realities for those who know sharia texts, life of the Prophet (pbuh), and the government style of Rashidun [first 4 caliphs].[40]

This discursive technique he used does not only prove that there is no contrast between Islam and Meşrutiyet, but he goes further claiming that

[40] Manastırlı İsmail Hakkı, 'İslamiyet ve Meşrutiyet', *Millet*, nr. 12, 16 Ağustos 1908, pp. 1

the absolutely fair/right/legitimate regime in Islam is the Meşrutiyet. Thus, it is aimed to eliminate the critical stance against Ahmed Rıza or the CUP, and the legitimacy/Islamic nature of the government they demand is proved.

Like Manastırlı İsmail Hakkı, Mahmud Esad Seydişehri, a Law Professor, says that "Islam obligates meşrutiyet" and traces a logical path as follows: "Administratively, meşrutiyet is a necessity of nature and conforms with justice... Islam is a religion of nature; whatever is a requirement of clean/correct nature is in conformity with sharia."[41] The discourses generated by Faculty of Law scholars based on their academic adds further legitimacy to the idea of unity and necessity between the meşrutiyet and Islam.

Similarly, Cemaleddin Efendi, who became Şeyhülislam in 1908, develops a notable discourse practice against those who claim that the meşrutiyet is against Islam:

> Some people with grudges in Europe are going so far as to publish the nonsense that Kanun-u Esasi, and the method of consultation are against Islamic Sharia. Now, I am the Şeyhülislam. Here is the honorary Sharia! Islam supports the consultation method since the very beginning. While Europe was unaware of this fact, Muslims were upholding consultation in line with Islamic rules. It is among the duties of our newspapers and our press to inform Europeans of these truths.[42]

This is a discursive technique that suggest that consultancy principle already existed in Islam, and that even Europeans took it from Islamic civilization. However, the use of this argument by the highest official representative of the ulema indicates that the relationship between meşrutiyet and Islam is still not integrated, and that there were still doubts and oppositions. This also shows that the discursive strategy

41 Mahmud Esad, 'Din-i İslam Meşrutiyeti Emreder', *Te'ârüf-i Müslimin*, nr. 15, 9 Eylül 1326, pp. 236-239

42 Ali Kemal, 'Şeyhülislam Efendi Hazretleri Ne Diyorlar?', *İkdam*, nr. 5096, 2 Ağustos 1908, pp. 1

based on reference to the classical role of the ulema continued even in 1908.

When the practices of the legitimization with reference to Islam and legitimization with reference to Europe are compared as meta-discursive strategies, it is seen that reference to Islam gradually weakened after 1908 -although it was used by many people as a discursive strategy.

The relationship between Islam and Meşrutiyet is not always discussed by citing only some examples from Islam/traditional Ottoman political-legal thought or practice. After 1908, the relationship between Islam and Meşrutiyet turned into an existential matter.

> All the Muslims in the world, stretching from the farthest point in the East to the farthest point in the West, should well know that Islam is based on and can rise with Meşrutiyet." One should know that the successive disasters that Islam has faced was caused by the tyranny preventing meşrutiyet. As long as meşrutiyet is violated, the Muslim people will remain servile and captive and live in destitution and misery.[43]

The author of these expressions, Babanzade İsmail Hakkı, was an influential orator who comes from the clerical tradition and is a firm supporter of meşrutiyet. As a discursive strategy, he explicitly links both the existence of the religion of Islam and the existence of all Muslims in the world to whether Muslims are governed by meşrutiyet. Tanin newspaper editor-in-chief Hüseyin Cahit, a close friend of Babanzade İsmail Hakkı and publicly known for with secular views, also applies a similar discourse practice:

> The preservation of the Islam with its all purity and glory would only be possible through meşrutiyet.' That is, meşrutiyet and sharia are inseparable. If the meşrutiyet is damaged, the religion and Sharia would also be in danger. How was that? Every evil thing prohibited by religion was done during the Abdulhamid era. But

[43] Babanzade İsmail Hakkı, *Tanin*, nr. 353, 26 Ağustos 1909, pp. 1

> nobody would know. There was no Freedom of Expression. But today, nothing can be kept secret thanks to the meşrutiyet. Meşrutiyet, thus, functions as the guardian of Islam.[44]

5.3.1.1 Identifying Constitutional regime with Siyaset-i Şer'iyye

As discussed in Chapter II above, the theoretical ground of the Siyaset-i Şer'iyye is within the practical framework of Islamic legal and political thought. In the Ottoman political practice, Siyaset-i Şer'iyye was the much-referred theoretical ground in the law making process such as in the Kanunnames. During the stormy days of 1908 and immediately after, this political-legal practice began to be used again in political debates by some political (as well as religious) actors. The main argument put forward by those who defend the Meşrutiyet rule and Kanun-u Esasi is that the Kanun-u Esasi and the Meşrutiyet rule are actually the practice of Siyaset-i Şer'iyye (see my comment above, p. 257).

The main problematic from the very beginning of the Meşrutiyet debate was the relationship between the Meşrutiyet rule and Islam. The main argument of those who opposed the Meşrutiyet was that the Meşruti rule would generate a new legal-political practice by ignoring the Islamic law and the status of the caliph. According to the opponents of the Meşrutiyet, this new practice, is called bid'ah in Islamic terminology, contradicts the traditional Ottoman/Islamic political and legal thought and practice. The counter argument developed against this argument was that the meşruti rule was actually a contemporary format/interpretation of traditional Ottoman political and legal thought. In other words, according to this position, the claims that the Kanun-u Esasi and the Meşrutiyet rule had not existed before in the Ottoman political-legal tradition do not reflect the truth. Because, Kanun-u Esasi, which was nothing more than a legal arrangement applying Siyaset-i Şer'iyye in practice, was not independent of Shariah.

Berzencizade Ahmed Faiz Efendi, an emeritus professor and a member of the Education Council (Meclis-i Maarif), explains in his treatise *el-*

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[44] Hüseyin Cahit, 'Hırka-i Saadet Ziyareti', *Tanin*, nr. 389, 1 Teşrin-i evvel 1909, pp. 1

Hablü'l-Metîn fî Tatbîki'l-Kânûn-ı Esâsî maa'ş-Şer'i'l-Mübîn (1909) the relationship between Meşrutiyet and fiqh by linking the Constitutional Regime with the 'ta'zir' in Islamic penal law as a discursive technique:

> … As stated in the annotation of *İnaye* named *Hidaye* [both of them are names of the book], the punishment of the murder with a fixed and unclear rule in sharia is aggravated [referring to the tazir punishment, see Chapter II above]. In other words, it consists of making the punishment aggravated and severe in order to prevent evil ... while it is known that those who divide political affairs as just politics and tyrannical politics do not see just politics as contrary to Sharia and consider it legitimate. … The fifth part of the Shari'ah rules cover the laws established for force and politics. … Political rules including orders and prohibitions for tazir, are discerned from the verses of the Quran, the Sunnah and the practices of the Companions. … [These] are within the field of Siyaset-i Şer'iyye that the sultan can act with his own view.[45]

The book of fiqh called *Hidaye* mentioned here is one of the best known and reliable texts of Hanafi fiqh.[46] The reference given to canonical legal texts directly gives legitimacy to this discourse and strongly promotes the argument in the discourse before the public. Thus, reminding the Ottoman law-politics practice mentioned in the previous chapters over the fiqh literature, Berzenci evaluates the laws created by the Siyaset-i Şer'iyye and the Meşruti regime in the same category. This discursive strategy helps him to establish an Islamic legitimacy to the Kanun-u Esasi and Meşrutiyet without leaving any doubt.

Similarly, justification developed for the amendment of Kanun-u Esasi in 1909 clearly assumes that Kanun-u Esasi conforms with the Sharia. *Yeni Gazete*, a newspaper, which was one of the period's public debate area uses the following clear argument as the ground for amendment of

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45 Berzencizade Ahmed Faiz Efendi, *el-Hablü'l-Metîn fî Tatbîki'l-Kânûn-ı Esâsî maa'ş-Şer'i'l-Mübîn* (İstanbul, 1909), 19-22

46 Cengiz Kallek, 'el-Hidaye', *DİA* (İstanbul Diyanet Vakfı Yayınları, 1998), 471

Kanun-u Esasi: "*The cause for the necessity of the Bill [...] has clearly demonstrated that constitutional law was derived directly from sharia judgment.*"[47]

This reference to sharia and law is significant in several aspects. First of all, these statements primarily reject the claim that the political situation before the Kanun-u Esasi was theoretically unlawful. But this rejection must answer the question "If there were already laws, then why Kanun-i Esasi was adopted?" At this point, the epistemic activity and interpretation of the ulema come into play. While the annexes to be made to the Kanun-u Esasi are being discussed, the ulema representatives in the parliament put forward the request for the renewal of some laws based on the Fiqh. Congratulating this initiative, fifty ulema from Kütahya province state the following in their messages to the Chairman of Chamber of Deputies:

> Dear honorable representatives! ... Our laws, which are allowing arbitrary explanations and interpretations, has much harmed the [Ottoman] state. By putting forth all kinds of lawlessness and mischief, people's honor and law were violated. The justice arising out of the rule of law, which is the guarantor of our state's survival, is the divine law. ... we wish you, our masters, an eternal blessing![48]

As can be understood from the text, it was always accepted that there had been laws in the Ottoman Empire; however, it was implied that the theoretical existence of laws was practically not enough to ensure justice. For this reason, it was emphasized that lawlessness was actually the arbitrary interpretation of the laws while the Kanun-u Esasi prevented this by clarifying and rationalizing the rules. In addition, it is a discursively remarkable novelty that the ulema addresses the representatives with glorifying expressions. Considering the traditional position of the ulema in the Ottoman Empire, the address of a ulema group to a mixed Muslim-non-Muslim parliament as 'our masters' gives an idea of how the

47 *Yeni Gazete*, nr. 255, 5 Mayıs 1909, pp. 1

48 *Volkan*, nr. 63, 4 Mart 1909, pp. 4

Chamber of Deputies are seen from the provinces, and shows the positioning of the ulema.

Identifying Kanun-u Esasi with Siyaset-i Şer'iyye is supported by many different discursive techniques. Sometimes it is directly expressed as in the following sentences of Elmalılı Hamdi Yazır:

> The solidification and reinforcement of the control/supervision and intervention rights of jurists or council members, and the demotion or promotion rights of their civil service ranks with universal rules, and extension of detailed codes and proceedings concerning these rules are requirement of Siyaset-i Şer'iyye.[49]

A significant/frequent discursive technique applied in this context is using the concepts of Fiqh and Law or Sharia and Kanun-u Esasi interchangeably, as synonyms. In the debates in press concerning Kanun-u Esasi, the concepts of Fiqh and Law as well as Sharia and Kanun-u Esasi are used as synonymous.[50] The Kanun-u Esasi amendment bill, passed by the Assembly, provides theoretical grounds of the annexes of the Kanun-u Esasi. Drafted by Elmalılı Hamdi Yazır who was among the young authors of Ulema and also a representative, the bill provides justifications that Fiqh can meet their needs and have ever been the source of Ottoman laws; and says:

> The goal of the imposition of laws is... related to a special codification of Qur'an-based applications within frame of justice and equality, and in a manner to meet the true needs. Thus, it is often stated in various articles of Kanun-u Esasi that ... the fiqh jurisprudence is sufficient to meet the social needs .... and is the source of Ottoman laws; ... it would be appropriate to use the law which is

49 Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 92

50 *Sabah*, nr. 6972, 22 Şubat 1909, p. 1; *İkdam*, nr. 5296, 22 Şubat 1909, pp. 1

> the synonym of fiqh as the synonym of fiqh rules concerning [legal] freedom of action in Siyaset-i Şer'iyye...[51]

Thus, the law-making process to be carried out by the parliament is used synonymously with the traditional/classical fiqh and Siyaset-i Şer'iyye practices. The use of this technique in the public sphere is to assert that there is no difference, let alone a contradiction, between the Kanun-u Esasi and Sharia.

On the other hand, the emphasis on the Meşrutiyet and the Kanun-u Esasi over the sharia implies that the right to supervise the rulers given to Muslims by sharia was reinstated with the Meşrutiyet. Again, the following statements used by cleric Elmalılı Hamdi Yazır in an article are important:

> While the Ottoman Government was essentially a legitimate government limited by the Sharia, the contrary situations arisen afterwards, namely the istibdâd that shariah interpreted under the concept of sultanate, were not based on any rights. Indeed, within the framework of Islam's understanding of equality, no class among the nations within the Ottoman people have a legal privilege so that they would be harmed by the Revolution [1908]. Some of the favors that some prominent people have recently received has never represented a right in the eyes of the Ottomans. In this respect, the Revolution does not provide the Ottomans with a new status or a new right [individual right and representation] that they have never enjoyed like the Europeans ... They struggled with solidarity to take the right after a sign, which was actually within the honorable sharia but they were devoid of it in the recent era due to certain problems. The Sultan has also approved it. Thus, all the honor of the Revolution belongs to the Islamic Sharia. We do not have the reasons that the reactionists who emerge in France and England rely on. However, those who want to form the

[51] Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 134

> Meşrutiyet in a way that is contrary to Islamic Sharia are in the position of Europe's reactionaries.[52]

It should be noted that this discourse is both establishing a bond with the past and legitimizing the today. The rights usurped by the istibdat regime are actually returned to their owners with meşrutiyet. It is alleged that the "right/responsibility to control the ruler" given to Muslims by the Sharia was reinstated with meşrutiyet. Another point emphasized here is the implication that the task of controlling the ruler, which is a religious duty, will be carried out by the laws.

Likewise, Elmalılı Hamdi notes in another article: "*Muslims must obey the law so that the rights of non-Muslims would be preserved ...*"[53]. He asserts that the Kanun-u Esasi is revealed from sharia, and obedience to the Kanun-u Esasi is a religious duty. He also states that the rights of non-Muslims can only be protected when the laws of the Meşrutiyet rule is obeyed due to the principle of equality imposed by Islam. This discursive inference is the result of quite coherent reasoning in itself. Because, obedience to Kanun-u Esasi, which is an equivalent of sharia, is obedience to sharia. Considering that the Turkish proverb *'finger cut by sharia does not hurt'*[54] is even agreed by the most nomad tribe as a principle, when the Kanun-u Esasi which specifies the rights of non-Muslims is obeyed, their rights would be protected by sharia itself. The discursive technique is both keeping the sharia on the agenda and fortifying the social legitimacy of Kanun-u Esasi and, by exeption, the meşruti rule.

5.3.1.2 Revision of ulema in political and epistemological aspect: Drawing on the Ulema's prestige for legitimization

We have already noted that the prime productive actor of the Islamic epistemology was the ulema. As we have pointed out when referring to this fact in previous chapters, social legitimacy in any issue is directly

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52 Elmalılı M. Hamdi Yazır, *Meşrutiyetten Cumhuriyete Makaleler,* haz. A. Cüneyd Köksal-Murat Kaya, (İstanbul: Klasik Yay., 2011), 84- 85

53 Ibid, 77-78

54 Ibid, 77

related to the attitude of the ulema. It is impossible to expect widespread social acceptance in an issue which the ulema opposes. A similar situation was valid for the Ottoman society considering that the revision and enactment of the kanunnames were definitely subject to the approval of the representative of the ulema (Nişancı and Şeyhülislam). No actor who opposes the fatwas of the ulema can find a widespread social base; they remain marginal, and moreover, are not accepted as legitimate.

In the 1860s, when the Young Ottomans first published their written works on their demands for Meşrutiyet, there were not many clerics who knew about meşrutiyet rule. For this reason, their general attitude was to oppose the meşrutiyet, to remain silent, or to demand that the sultan be changed and replaced by the wise statesmen. However, both the experiences of the Hamidian period and the military intervention in 1908 lead to the discussion of the Meşrutiyet regime within the ulema. The ulema is a key actor in legitimizing with reference to Islam as the most frequently and commonly used one among meta-strategies mentioned above. Because, as stated before, when the ulema does not have epistemic activity, the efforts to legitimize with reference to Islam would be ineffective and legitimate interpretation activities would be devoid of pro-meşrutiyet religious arguments. The actors who were aware of this fact frequently resorted to legitimization with reference to the classical role of the Ulema as a discursive strategy. For example, Şeyhülislam Sahib Molla practices this strategy in his *Beyanname* by saying that "the scholars who have analytical strength (to do tafri') also have the competence of supervising the government and they have undertaken this mission."[55] This discursive technique suggests that, when the Ottomans were powerful, the ulema could supervise the ruler. However, the ulema weakened overtime and there was nobody left to supervise/control the authority of the despotic sultans. According to Sahib Molla, the Meşrutiyet regime is a legitimate form of government since it allows the performance of this

[55] Şeyhülislam Mehmed Sahib, 'Beyanname', *Sırat-ı Müstakim*, II/51, 1 Şaban 327/13 Ağustos 325, pp. 386

duty/responsibility again. The ulema would completely fulfill its religious/historical duty by taking its place in this new regime.

The aforementioned statements of Şeyhülislam Cemaleddin Efendi that *"Now, I am the Şeyhülislam. Here is the honorary Sharia!* Islam supports the consultation method since the very beginning."[56] clearly show that the ulema were still crucial actor that provides discourses concerning the meşrutiyet. Cemaleddin Efendi, who reminds his post as Şeyhülislam (that is, he represents the ulema) as a discursive technique, implies that his thought is the official - and of course religious - view of the entire religious authority, the Meşihat.

Trying the Meşrutiyet with the ulema's authority was not only done by Cemaleddin Efendi. During the debates in the Chamber of Deputies on the amendment of the Kanun-u Esasi, Damat Ferid Pasha claims that the ideas of the 18th century unbeliever philosophers were taken as basis in the amendment of the Kanun-u Esasi. Arif İsmet objected to this claim and said that it was the task of "*honorable clerics, and especially honorable scholar Hamdi Efendi, who were member of Kanun-ı Esasi Amendment Committee to respond to this claim.*"[57] Actually, Arif İsmet did not expect a response from Elmalılı Hamdi Efendi. What he means here is the legitimacy of the fact that none of the clerics in the parliament, especially Elmalılı Hamdi Efendi, did not make a negative statement about the amendment. In other words, if the Kanun-u Esasi -and its amendment- was derived from the ideas of foreign philosophers, the ulema would by no means have accepted it. The fact that the ulema was the main actor in this amendment activity, let alone showing an opposition to it, is an obvious sign that the Kanun-u Esasi conforms the sharia. Arif İsmet aims to eliminate sharia-based criticism by referring to the position and religious status of the ulema.

On the other hand, those who oppose the existing version of the Kanun-u Esasi - in a sense, the Meşrutiyet- in the process leading up to March 31, express their views in the public sphere without resorting to

56 *İkdam*, nr. 5096, 2 Ağustos 1908, pp. 1

57 Arif İsmet, 'Ferit Paşa Layihası hakkında Mebuslar Ne Diyor?', *Tanin*, nr. 529, 22 Şubat 1910, pp. 1

violence and taking shelter in the concept of 'freedom' for which the Meşrutiyet dethroned the sultan. They make a partially organized opposition and aim to influence the decisions of the Chamber of Deputies through 'collecting signatures'. This practice of public action, which is uncommon throughout Ottoman history, and moreover, is very modern, gives an idea about which opposition techniques the dissidents used in the Ottoman public opinion after 1908. The main wishes of the opponents, whose popular motto was "we want sharia", was that Kanun-u Esasî should give more theoretical references to Islam, and the main determinant in the process of law-making should be the fiqh. Disagreeing with this movement, the editor-in-chief of *Tanin* newspaper, Hüseyin Cahit, says the following about the issue:

> It was heard that these provocations took the form that the basis of the laws to be enacted should be derived from fiqh. While there are so many religious scholars and muftis from all over our country in the Chamber of Deputies, the barber, the grocer, the carder on the street, the junior clerk in the office or the student in the madrasah are doing nothing but exceeding their lines by involving in this matter. Everyone should know their duty. Otherwise there will be regret.[58]

Just like Arif İsmet, Hüseyin Cahit implies that the presence of the ulema in the parliament is sufficient to consider the enacted laws to be in conformity with the sharia. He implies that demanding the implementation of Sharia/Fiqh is not a duty of the ignorant people but the ulema, and does not refrain from threatening those who do not obey it.

Another noteworthy element here is his comments on the madrasah students. Hüseyin Cahit underlined that the *talebe-i ulum, i.e.* the madrasahs students, should not be interested in politics, and they should only focus on their education, whereas he supported the anti-Sultan activities of the same talebe-i ulum who were the prime actor of the political opposition.

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58 Hüseyin Cahit, 'Şeriat İsteriz', *Tanin*, nr. 210, 2 Mart 1909, pp. 1

Against those who criticize or oppose the meşrutiyet rule by referring sharia its changes that: The latest form of an ugly movement that aims "retreat to istibdat and anarchy is the nonsense that emerged under the slogan 'we want sharia'. ... the slogan that "we want sharia" whispered by some secret mouths who by no means mind religion or life after death, ... echoes in the hearts of innocent believers and rises like a thunder'.[59] As a discursive strategy, distinguishing the ulema and ordinary people, who want Sharia and emphasize fiqh, and showing them as separate from each other is a method used by Hüseyin Cahit. As it is understood from his sentences, Hüseyin Cahit argues that opponents of the Meşrutiyet who emphasize Sharia are not truthfully religious. According to him, truthfully religious people should not resort to such methods. As the Sharia is already present, the Ulema supports the Kanun-u Esasi.

Showing the ordinary people who want a greater emphasis on the sharia/fiqh and the ulema -who wishes the same- different from each other, is distinguishing the ordinary people from ulema. This technique, which implies that any Islamic or religious demand can only be expressed by the ulema, is theoretically far from the meaning and practice of the meşrutiyet that involves ordinary people in politics. Therefore, to this approach that puts the social statuses at the center, "ordinary people" refers to the masses to be ruled. For those who apply this discursive technique, the presence of Ulema in the parliament - which actually includes pro-meşrutiyet clerics- proves that the meşrutiyet and the Kanun-u Esasi are in harmony with Islam. Besides, it is now easier to say that those who claim that the Meşrutiyet is against Islam are malicious.

> ... while the fair politics is approved by the Islamic scholars, presence of some laws in the Kanun-u Esasi for the government and people's security cannot be interpreted to be against sharia since they were not openly stated in the sharia. This is just some

[59] Hüseyin Cahit, 'Şeriat İsteriz', *Tanin*, nr. 210, 2 Mart 1909, pp. 1

people's malicious comments and unfair treatment of Kanun-u Esasi.[60]

Former law professor Berzencizade explicitly reminds the *ta'zir* or *law-making* activities without giving their names and deems the Kanun-u Esasi within the boundaries of Sharia. He sees the comments contrary to his own evaluation as malicious. By referring to the fiqh literature, he transforms his personal interpretation into a religious duty/responsibility. This approach shows that the comments that are critical or against the Meşrutiyet are considered by those who support the Meşrutiyet as 'malicious' misreadings, in the lightest terms, and more generally as 'counter-revolutionary' activities.

It is impossible to find the term counter-revolution directly in the texts of the period. However, there was a political conceptualization which fully meets the meaning such that it is still actively used in present Turkish politics: *İrtica (Reaction).*

İrtica is a concept that is frequently used to express those who want to return to the previous period (devr-i sabık), that is, those who are against the Meşrutiyet. İrtica is an umbrella concept that defines those who are against progress and development, and those who have the intention of counter-revolution. By accepting the strengthening of the state as the equivalent of progress, supporters of the Meşrutiyet express that the reactionaries, that is, the opponents of the Meşrutiyet, are people who do not want the strengthening of the state. And they accuse opponents of the Meşrutiyet of being a toy for foreign powers. In addition, it is seen that the CUP uses the concept of irtica only as a political concept and attacks most of its opponents through this concept. This concept, which is useful for purely political struggle without engaging in an intellectual or theoretical discussion, is frequently used by many supporters of the CUP; and this concept was also used as a weapon against political opponents of the CUP. In this context, Babanzade İsmail Hakkı makes good use of the discursive technique that defines the opponents of the

60 Berzencizade Ahmed Faiz Efendi, *el-Hablü'l-Metîn fî Tatbîki'l-Kânûn-ı Esâsî maa'ş-Şer'i'l-Mübîn* (İstanbul, 1909), 35

Constitutional Monarchy as reactionary and shows them as contemptibles. Babanzade İsmail Hakkı notes that Ottoman State was awakened by the French occupation of Egypt. "Some rare people like Selim III have farsightedly realized that the East would not remain forever passively in a state of inertia; it would eventually be collapsed and destroyed. But, however, 'irtica' which showed its wild tooth in all its ugliness, had strangled these ambitions in a bloody way. Since then, 'the struggle between irtica and progress' have continued; ultimately, the 'tumultuous' events of the civilizations have recently did not only turned each corner of the Ottoman State upside-down, but also echoed in Egypt, Iran and India."[61]

At this point, Babanzade İsmail Hakkı deploys discursive technique of identifying Meşrutiyet with civilizational advancement. According to him, the spread of the demand for civilization against reactionism, not only in the Ottoman Empire but also in the whole East (Iran, Egypt, India, etc.), actually means that the demand for the Meşrutiyet also becomes widespread. Regarding this, for weakening the opponents of the Meşrutiyet or Kanun-u Esasi, he claims that the opponents of the Constitutional Monarchy are very few. By this technique, while the opponents are just a few individuals, it is declared that public opinion implicitly accepts the meşrutiyet. While the source of the laws to be made by the Chamber of Deputies was discussed in the parliament, Hüseyin Hilmi Pasha, who was just became the Grand Vizier, said that they would also benefit from the laws of the European states while talking about the government program. Thereupon, Mustafa Asım Efendi, one of the members of the Kanun-ı Esasi Committee, asked Hüseyin Hilmi Pasha to make an explanation whether he would benefit from fiqh in the process of law making, and more importantly whether fiqh would continue to be the basis of the laws.[62] The reason behind the request for explanation is to obtain assurances from the most powerful person that the Sharia (fiqh) would remain be the legal basis of the Ottoman Empire in the future just like in the past. The *Tanin* newspaper, of which Hüseyin Cahit was the chief

61 'İslâmiyet ve Siyasiyât 2', *Tanin*, nr. 353, 26 Ağustos 1909, pp. 1

62 MM, I, 1/30, 4 Şubat 1324: *Meclis-i Mebusan Zabıt Cerideleri, II*, 678

writer, preferred to describe this event in the parliament by using the aforementioned discursive technique: 'Only Mustafa Asım Efendi objected to the speech [made by the Grand Vizier] and he did not like the fact that the speech did not mention the Sharia, while the European laws were referred.'[63]

5.3.1.3 Invoking Holy Texts and History

We have noted above that different discursive techniques were created in reference to the holy texts, which were closely related to the references to the ulema in discursive strategies. The ulema predominantly practiced this discursive strategy, which has many examples in the literature of 1908 and after. One of the most striking of these works is the *Mir'atı-ı Meşrutiyet* (Mirror of Meşrutiyet, 1910), a treatise written by Mehmet İzzet Efendi, which addresses the concepts of 'government', 'equality', 'freedom', 'brotherhood' etc. in the context of the Meşrutiyet. Mehmed İzzet Efendi, a retired mufti of Akçaabat, mentions the following verse of the Qur'an in the context of the people's responsibilities to the government and their obligation to obey it: 'You shall obey Allah and obey the Messenger and those in authority among you (sizden olan ulu'l-emr) (Nisa, 59)'[64]. However, the 'you', who are the addressee in this verse and are ordered to obey, includes only Muslims, not all subjects. But, Mehmet Izzet goes beyond this interpretation and claims that this verse also covers non-Muslims. He legitimizes the meşruti rule by giving a meaning independent of the context. As a practicing actor of the discourse, his position as a former Mufti increases partly the power of his discourse and also closes his interpretation, independent of the context, to a new debate. Because, it was not easy for the people to criticize an interpretation of an Islamic scholar.

Berzencizade Ahmed Faiz Efendi, who is another name from the ulema tradition, also applies a similar discursive strategy.

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63 'Meclis-i Mebusan'da', *Tanin*, nr. 198, 18 Şubat 1909, pp. 2. And also see 'Meclis-i Mebusan', *İkdam*, nr. 5292, 18 Şubat 1909, pp. 1

64 Mehmed İzzet Efendi, *Mir'atı-ı Meşrutiyet* (Trabzon: Meşveret Matbaası, 1910), 27

> The holy verse "*You shall not be like those who fell into factions and differed among themselves*" (Al Imran, 3/105) makes it clear that unity and assembly for glorifying the statements of Lord is legitimate in our nation (millet) just like it is preferred in other nations and people. Ibn Abbas says the following in the explanation of this holy verse: "Allah Almighty ordered the believers to convene, and prohibited discord and disagreement among them and told them that the destruction, ruin and collapse of the past people have arisen from the hostilities, disputes and conflicts that emerge due to religious issues. ...
>
> The hadith-i sharif reported by Abu Hurayra (ra) in Sahih-i Muslim that: "You shall not envy each other. You shall not instigate and heat up the customers. You shall not have ill feelings among each other. You shall not violate a commercial deal to make new deal with another person. O servants of Allah, be brothers!" that is "You shall not envy each other, not increase the price of the goods under sale in order to cause damage, not have ill feeling and not lose the link among each other, and not tell somebody to violate a previously made deal by saying that you would offer a better and cheaper good. O servants of Allah, be brothers!" clearly obligates unity and assembly.[65]

Quoting from the Quran and famous and reliable hadith books makes the text more acceptable. However, according to the context and co-texts of the texts, it is obvious that the 'believer' addressee in Berzencizade's quotations from both the Quran and hadiths is Muslims. In fact, the traditional Ottoman/Islamic interpretations also give this meaning. However, his interpretation within the framework of the understanding of the Meşrutiyet rule that regards all subjects as equal without making any distinction between the community and religion, does not correspond to the authentic meaning of the verses/hadiths. Although in the orders of the verses and hadiths -all 'you' pronouns refer to an intra-Islamic unity-

[65] Berzencizade Ahmed Faiz Efendi, *el-Hablü'l-Metîn fî Tatbîki'l-Kânûn-ı Esâsî maa'ş-Şer'i'l-Mübîn* (İstanbul, 1909), 9-10

indicate an inter-Muslim relationship, Berzencizade aims to spread this to the relationship among Ottoman subjects by using it in a text where he examines the Kanun-u Esasi.

In pro-Meşrutiyet comments, there were not just interpretation of verses/hadiths independent of their contexts. There are also cases that phrases/meanings not present in the verse/hadith were given as if they were present in the original source of text. Kolcalı Abdülaziz Bey presents relevant examples in his treatise called *Kur'ân-ı Kerîm ve Kānûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu (Honorable Qur'an and Kanun-u Esasî: Freedom, Eqaulity, Method of Consultation, Freedom and Its Limit)* which he wrote to show that Kanun-u Esasi fully conforms with the sharia.[66] While translating the verses he uses in his treatise, he interprets in a way that will constitute the practical elements of the meşruti rule, but does not state that the concepts/words that allow his interpretations are not directly in the Qur'an or hadith. For instance, the authentic translation of verse (Hujurat, 13) is as follows: "*O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).*" (Hujurah, 49/13). But he translates it as follows: "*… And your being divided into branches, groups, tribes is for you to know one another. And only those of you who obey natural law, social law, civil law, and religious law are distinguished and valuable in the sight of Allah."*[67] Thus, by taking advantage of the acceptance power of the holy texts, the distinctions such as natural law, civil law, social law and

66 Kolcalı Abdulaziz wrote in *Ikdam* and *Metin* newspapers, and he worked as Arabic teacher and administrator. He was also an influential figure in the Sino-Turkish relations and he wrote some pieces on Islamic history in China. For detailed information, see Tarık Zafer Tunaya, 'Amme Hukukumuz Bakımından İkinci Meşrutiyet'in Siyasi Tefekküründe 'İslamcılık' Cereyanı', *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, XIX/3–4, (İstanbul: İstanbul Üniversitesi, 1954), 665–668

67 Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kanûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908)

religious law are legitimized and obedience to all these laws can be claimed as a religious duty. However, religious law covers the notions of both civil law, criminal law and social law (whatever is meant). The separation of law into religious/sharia and natural (or secular) is a situation that does not exist in traditional/classical Ottoman political-legal philosophy.

Adding a similar interpretation to the hadiths, Kolcalı says the following while giving the translation of a hadith:

> … Because all people are divided into branches from Adam and are diverse; and Adam was created from soil. For this reason, people are at the same level and equal in all law. And they have no virtue or superiority over all others. And only those who abide by the natural, civil, and religious law are distinguished and valuable in the sight of Lord. ... everyone is valued in accordance with their deeds. Neither your deeds are beneficial for me, nor my deeds are beneficial for you.[68]

Thus, Kolcalı Abdulaziz adds new concepts/words to the Hadith text and can more easily claim that the concepts of meşrutiyet or modern law are also legitimate practices in traditional texts.

In addition to referring to the holy texts, taking the meşrutiyet into agenda by invoking 'early Islamic history' with selective examples from the past are among the most-frequently used discursive strategies in 1908 and afterwards. Since the 1860s, both the supporters and opponents of the meşrutiyet had used this discursive strategy with rich techniques. Babanzade İsmail Hakkı stated following in the first of the aforementioned pieces:

> The people could not perform supervision due to ignorance for ages. They could fulfill a duty imposed by Islam. A tyrannical minority has deceived them on this matter. But now, [after 1908, E.K.]

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68 Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kanûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908)

> the religion free from all kind of limit and pressure says "That's enough![69]

Babanzade İsmail Hakkı claims that the duty of controlling the ruler, which was the social obligation of Islam throughout history, was abandoned in the last centuries. Besides, it is noted that Islam gives all people - not only Muslims but all subjects - the right/responsibility to supervise. The operation in 1908 should be welcomed as it allows a political practice supported by Islam which says "That's enough!" to the istibdat. Thanks to this operation, the deception of the people by the tyrants ended, and the socio-political obligations ordered by the religion have now been fulfilled.

Presenting examples from the early Islamic era was frequently used as one of the strong techniques of the discursive strategy to invoke history. In this respect, Islam is claimed to have always obligated Meşrutiyet rule in the history. It is even claimed that democracy was invented by the Muslims in the past. For example, in his article comparing the course of the idea of equality in the East and the West, Babanzade İsmail Hakkı states the following:

> The reason why there is no word in our language corresponding to democracy which is translated insufficiently and mistakenly as 'government of the people' is not that such a government style has never existed in the comprehension of the East; but may be it was assumed to be already present by nature. In the West, such a concept was needed due to the gaps between the social strata which has been existing since the Ancient Greeks. If aristocracy has no meaning and translation in a country, there is no need to look for terms for its opposite social situation. … Since the Eastern, Islamic brilliance could not conceive of anything other than those in the scope of democracy, there has never been an intellectual effort for this term.[70]

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69 Babanzade İsmail Hakkı, 'İslâmiyet ve Siyasiyât', *Tanin*, nr. 352, 25 Ağustos 1909, pp. 1.

70 Babanzade İsmail Hakkı, 'İslâmiyet ve Siyasiyât', *Tanin*, nr. 352, 25 Ağustos 1909, pp. 1.

Claiming that democracy practically always existed in the past of Islam implies that the political processes in the context of the Meşrutiyet rule are not historically alien practices. To imply the same idea, Kolcalı Abdulaziz bey, just like Babanzade, presents from a broader "civilization perspective" that the Meşruti regime is something new for Westerners while it is a practice originally applied by Islam:

> The brilliant blessings of this supreme civilization established by Islam bestowed the world happiness, progress and prosperity with a surprising and marvelous movement. The progressive lights and happiness that shined from the Islamic civilization rose to the firmament. Any group of people who saw these blessings and these lights rushed to it to benefit from the essence of that bright light, to be blessed and enlightened. It became a source of inspiration from Andalusia to Africans and Westerners; from Bukhara, to Kazan and China. From the first half of the 19th century, the Westerners benefited from the scientific knowledge, thought and art they received from the Andalusian Islamic civilization. And they have achieved today's scientific progress and great industry. These evident benefits of the Islamic civilization are … among the great consequences of the fact that this solid building is based on the principles of freedom, equality, and principles, and these principles are reinforced with the sublime wisdom of the Quran's decree. The glorified and honorable Qur'an has built the Islamic civilization on such principles and protected these principles from damages and destruction with many measures ... which requires Kanun-u Esasi ...[71]

Without going back to Asr-ı Saadet, he places the experiences in Andalusia and the scientific development around Bukhara on the basis of the current progress of the West, and intends to explain that a government form that Muslims first practiced in history would also allow

[71] Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kanûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908), 141-142

technological and cultural development. The examples brought from the past in the discourse express that two different geographical regions, the East (Bukhara) and the West (Andalusia), have been civilized by the Muslims and reached their present position. The single way for Muslims to re-build their strong (political-economic-cultural) position in history is to be governed by the Meşrutiyet rule as in the past.

Similarly, Ebül'ulâ Mardin, who is a cleric like Babanzade, a scholar who is known to be an expert in Islamic law located the Meşrutiyet in the first period of Islam.

> ... The consultation method was required in sharia while it was also a method applied in the most blessed era of Islam [asr-ı saadet] to settle difficult issues. ... The honorable Sharia has raised great rule to such a level of perfection that the distinguished principles of Islam constantly prefer it and indicates the method of consultation, while the Islamic caliphate shows the brightest example of Meşrutiyet. … The sharia and history make it clear that these truths do not require the evidence and sign to prove the legitimacy of the consultation.[72]

By referring to the first periods of Islam, Mardin says that the meşruti rule was practiced by Muslims even in that period, and also says that it was ordered in the holy texts. But he does not consider the centuries-old distance, anachronistic comparison, and practical legal processes of meşruti regimes.

The last discursive technique used as part of referencing/invoking early Islamic period is to share the expressions of leading figures in Islamic history. The more famous the person whose expressions is shared, the greater the influence/power of these expressions is. For instance, the following statements which Bercencizade Ahmed Efendi claims to be belonging to caliph Ali: "Consultation leads to the right path. Whoever just lies on his views and does not consult with others would surely be in

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72 Mardinizade Ebül'ulâ, 'Sure-i Şûrâ', *Sırat-ı Müstakim*, i. 1, 14 Ağustos 324, pp. 6-7

danger; precaution and consultation before acting protects you from regret."[73] Quoting caliph Ali, express that consultation was a political practice that must be done among Muslim rulers even in the first period of Islam.

The strategy of referencing/invoking examples from classical period Ottoman history, of which we have exemplified by various quotations in the previous two chapters, is widely used in 1908 and after. As similar arguments are already given, we will not present every example of this strategy here. However, one of these arguments[74] alleging that "the Ottoman Empire was already ruled by the Meşrutiyet" was also used after 1908. It would not be wrong to add the discursive technique that caliphate and Meşrutiyet are not different things. We can give the example of Seydişehri who both defends meşrutiyet and speaks on the government style of Ottoman state as follows: "... When it comes to Ottoman government, it would not be appropriate to call it an absolutist government which was founded on Islam and subject to and limited by sharia."[75] Seydişehri tells that he does not agree with view of those, emerged within opposition in 1908, that defines[76] sultanate regimes after *asr-ı saadet* as absolutist. In the understanding of history built around the concept of istibdat, some Islamist authors who oppose to Abdulhamid define all forms of government after the four caliphs and throughout the entire Islamic history - including, of course, the Ottoman- as istibdat. This judgment is extended to the entire political history of Muslims, regardless of which dynasty it was, whether the rulers behaved justly, whether they attached importance to the consultation in their reign. Despite being a pro-meşrutiyet islamic scholar, Seydişehri denies this view in this matter.

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73 Berzencizade Ahmed Faiz Efendi, *el-Hablü'l-Metîn fî Tatbîki'l-Kânûn-ı Esâsî maa'ş-Şer'i'l-Mübîn* (İstanbul, 1909), 17

74 Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kanûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908), 143

75 *Tercüman-ı Hakikat*, nr. 9835, 14 Ağustos 1908, pp. 3

76 Şehbenderzade Filibeli Ahmed Hilmi, *İslam Tarihi*, haz. Cem Zorlu, (İstanbul: Ağaç Kitabevi Yay., 2009), 357-358

Thus, he tries to change the perception of the public about meşrutiyet by directing it to traditional/classical Ottoman/Islamic history.

There are arguments claim that the Kanuns of the sultans in the past allowed the Meşrutiyet, and it is claimed that the practice in the magnificent periods of the Ottoman Empire offered a similar area of legitimacy. In this context, the reference to history is important in order to emphasize that the institutions in the heyday of the Ottoman Empire were in harmony with the wisdom of reason and sharia but that this was destroyed by istibdat. The statements of Şeyhülislam Sahib Molla concerning political institutions in the heyday of Ottoman history is meaningful as he depicts them as "a government apparently based on religious and rational wisdom."[77]

The previous two chapters examined the roles of concerns and arguments in the demand for Meşrutiyet. It was also mentioned above that main discursive strategies and techniques in the historical periods examined in these chapters, i.e. from 1860s to 1908, began to change in 1908 and after. Now we will examine emergence of this change with a focus on the epistemological changes, led by interventions in 1908 and after, in the characteristic structure of Kanun-u Esasi, which was built within the framework of the Meşrutiyet rule.

5.3.2 *A New Narrative: The Assembly, National Sovereignty (Hakimiyet-i Milliye) and Exigencies of the Time*

In 1908 and later, both in the Chamber of Deputies and in the public opinion through the press, the legal system based on sharia and the traditional Islamic/Ottoman political thought and practice goes into a differentiation that can be examined under three sections. In this differentiation, the center of power, the authority(s) that give legitimacy to this power and the law-making process come to the fore. The changes in these points indicate an epistemic transformation on the one hand and the differentiation in ontological references on the other.

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77 Şeyhülislam Mehmed Sahib, 'Beyanname', *Sırat-ı Müstakim*, II/51, 1 Şaban 327/13 Ağustos 325, pp. 386

5.3.2.1 Chamber of Deputies as the New Center of Power: From Chief of Muslims (Emirü'l-müminîn) to Servant of Muslims (Memuru'l-müminîn)

The central authority of the Sultan-Caliph has been on the agenda since the beginning of the 1860s, and everyone who defended Meşrutiyet first underlined that this authority and its rights would be "absolutely" untouched. The main question that the New Ottomans answered in their texts is "What will be the rights of the sultan/caliph? Will they be curtailed?" The same question remained until the beginning of 1908, and the answer given to this question shared the same fate. In other words, from the 1860s to 1908, all the supporters of the Meşrutiyet stated that the traditional rights of the sultan-caliph would be guaranteed in the meşruti rule. All actors from Namık Kemal and Ali Suavi, to Esat Efendi and Ubeydullah Efendi and even Enver Bey, who became famous as the 'Hero of Freedom / Meşrutiyet' in 1908,[78] rhetorically agreed on this: The traditional religious-political rights of the Sultan will be reserved.

After the reconvening of the Chamber of Deputies in 1908, theoretical discussions about the sultan did not come to the fore immediately. Abdulhamid II claimed that it was him who declared the meşrutiyet; and he re-opened the assembly in 1908 which he needed to suspend in 1878 as the people were not adequate on it. It was not possible until the 31 March Incident to touch Abdulhamid II, who praised his subjects that they reached the competence to be governed under the Meşruti rule. However, given the 31 March incident, the way the event occurred, and the arguments of the rebels (civilians and soldiers) etc. the only reasonable way for the CUP was to weaken the sultan. To this aims, it was necessary to shift the center of power to the Chamber of Deputies. The above-mentioned amendment process of the Kanun-u Esasi was where this struggle came out. The issue of the Chamber of Notables' structure and the accountability of the Government -and of course the ministers- is the indirect reduction of conventional rights of the sultan which could not be touched directly. The CUP rearranged the structure of the Chamber of

[78] Murat Bardakçı, *Enver* (İstanbul: Türkiye İş Bankası Kültür Yayınları, 2018), 442

Notables, the procedure of elections, the term of office, the dismissal procedures, etc.; therefore, the CUP gets the power to form the government and opened the way to reduce the rights of the sultan by remaining loyal to the legal procedure. However, this intervention was not carried out immediately, the issue was tried to be normalized in public opinion by the public debate. The prime actors in this process were the ulema.

The comments of the ulema concerning the sultan-caliph does not directly deal with the caliph, rather, mainly addresses the general form of government. As a discursive technique, it is asserted that the form of government directly affects unity and solidarity among subjects. Moreover, Mehmet İzzet Efendi states that this was already ordered in Qur'an: "The government should ensure that the communities in the territories it rules should love each other so that it leads their unity and solidarity. ... Our book Qur'an always orders us to ensure unity and solidarity and forbids hostility and disagreement."[79] Besides, it was often emphasized by many different actors that the only legitimate regime among the forms of government is the Meşrutiyet. In many cases various forms of governments are omitted; and it was emphasized that there were mainly two forms of government: Absolutism vs. Constitutional Monarchy.

This distinction made by Mehmet İzzet Efendi is similarly made by many ulama who support the Constitutional Monarchy. In this respect, Mustafa Sabri Efendi says the following: "If the government commits itself to the people regarding how it will govern and respect to certain conditions and provisions is called the meşruti rule; and if it is free to perform anything without any conditions and provisions over the people is called the mutlakiyet rule."[80] Likewise, Musa Kazım Efendi, who was the Şeyhülislam in the CUP era, states the following:

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79 Mehmed İzzet Efendi, *Mir'atı-ı Meşrutiyet* (Trabzon: Meşveret Matbaası, 1910), 3

80 Mustafa Sabri Efendi, 'Meşrutiyet Üzerine -Haşim Nahid'e cevap-', *Dinî Müceddidler Yahud 'Türkiye için necat ve i'tila yoları'nda bir rehber',* (13340-1338), pp.78-91 in İsmail Kara, *Türkiye'de İslamcılık Düşüncesi -Metinler/Kişiler-* vol. II, (İstanbul: Risale Yay., 1987), 276-284

> Meşrutiyet means that all government actions are subject to the provisions of the laws; that is, it means doing everything in accordance with the law and not doing anything against the law. Its opposite is the mutlakiyet. Mutlakiyet means that the ruler acts completely according to his own will, and he is not limited by the provisions of the law; he performs whatever he wants, wishes, and desires.[81]

Zeynelabidin Efendi from the naqshbandi tariqa tradition and also a leading figure within the ulema says the following on this matter:

> The government is either 'Hükümet-i mutalaka' or 'Hükümet-i meşruta'. Hükümet-i mutlaka means a free, unconditional, unbound government. This government … makes laws and regulations by itself. It does not consult anyone, does not consult with the people. It does not want to be held accountable to the people.
> …
> Hükümet-i Meşruta, means the government that is not left unattended, on the contrary, it is bound by some conditions and ties by the nation. In other words, it is the government that many conditions were imposed by the nation and made a promise after making a contract with it by saying 'If you rule according to these conditions, we will obey you.[82].

However not all Islamic law scholars agree with this. İskilipli Atıf Efendi divides regimes into four: i- absolutistism, ii- constitutional monarchy, iii-, republic, iv- the perfect caliphate. In the absolutist government, the authority belongs to a dynasty and the ruler changes within the dynasty family through inheritance. The ruler is not subject to any legal restrictions, the legislature is in the hands of the ruler, and he governs according to his arbitrary will. On the other hand, in constitutional

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81 Şeyhülislam Musa Kazım, 'Meşrutiyet', *Mevazi-i Diniye*, (İstanbul: Matbaa-yı Âmire, 1329), 3

82 Mehmet Zeynelabidin Efendi, *İslamiyet ve Meşrutiyet,* (İstanbul: Arşak Garoyan Matbaası, 1327), 2-3

monarchy, the ruler is the older person in the dynasty and he is obliged to respect the laws and the views of the experienced state administrators. Legislative activity is carried out with the unity of the people and the ruler. In the republican, the power does not belong to a dynasty but to a ruler elected by the people for a certain period. In the perfect caliphate, the ruling power does not belong to a dynasty. Any Muslim within the Islam ummah takes over the power by the election of the ummah. The elected ruler remains on the power until his death as far as he does not quit the position of caliph and make mistakes meriting dismissal. All of his movement is limited by sharia; he is not allowed to order or prohibit something arbitrarily. *The caliph has a wide area of authority in government affairs. The caliphate may look like to an absolutist government because he also has power in law-making. However, the obligation of the caliph to remain within the borders of sharia and his possible dismissal by the ehl-i hall ve'l-akd makes the perfect caliphate a constitutional monarchy government.*[83]

The discursive strategy deployed in all the quoted texts above is an effort to establish a new (hybrid) theory of politics. This approach, which divides all the government forms into two, claims that all political practices other than meşrutiyet is a form of absolutist rule. Mustafa Sabri Efendi claims that the government in a meşruti rule must recognize that people can inspect and object the acts of government. To him, there are not only limiting conditions, but the people can also directly involved in the government. Indeed, it is the determinant factor.

The meta-strategy that Legitimization with Reference to the West which intensified after 1908 emphasizes that the Meşruti government would allow the Ottoman state a place within the Western states and make it stronger and respectful.[84] The discourse created with reference to the concept of progress underlines that consultation, that is the

83 İskilipli Mehmet Atıf, *Beyanü'l-Hak*, vol. VI, pp. 2524-25

84 Elmalılı M. Hamdi Yazır, *Meşrutiyetten Cumhuriyete Makaleler,* haz. A. Cüneyd Köksal-Murat Kaya, (İstanbul: Klasik Yay., 2011), 76-77

Meşruti order, is the single way of civic and political progress.[85] This discursive construction in which the qualities of advanced and civic world is used to define the West is frequently seen in that period.

As a new approach in the Ottoman political thought, Mustafa Sabri Efendi claims that absolutist governments violate the nature of mankind and they are not reasonable regimes. A general approach style is created by meeting the concept of 'state of nature' or 'human nature' with the concept of '*fıtrat*', which liberal political philosophers frequently refer to. The concept of *progress*, reminding the time perception of modernity, finds a place in its discourse practice as well in the context of political regimes. Claiming that societies cannot create organic intellectuals that will improve themselves in absolutism regimes, Mustafa Sabri argues that the government must be meşruti in order to grow forward-thinking intellectuals. The argument he uses as a discursive technique is that absolutism is *backwardness*. For progress, government must first be reformed, which would be possible with the meşruti rule. The second phase would be to reform the people; and it is the meşruti rule that would realize this.

What prevents the arbitrary authority of the ruler is to limit it by laws. Against this argument of the supporters of the Meşrutiyet, it can be argued that there had been already laws in the Ottoman Empire before the Meşrutiyet. However, this argument answered by resorting to another discursive technique: The discovery of social consent and popular sovereignty. This technique, which reminds of a politically a new and hybrid theory, does not regard the laws that there had been already laws in the Ottoman Empire as legitimate laws, as they are not consulted to the people in the absolutist rule.[86] Because, the laws which people do not have say during the preparation or amendment stage are not truly laws. Therefore, one cannot argue that a regime ruled by such laws are meşruti;

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85 Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kanûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908), 141

86 Mustafa Sabri Efendi, 'Meşrutiyet Üzerine -Haşim Nahid'e cevap-', *Dinî Müceddidler Yahud 'Türkiye için necat ve i'tila yoları'nda bir rehber',* (13340-1338), pp.78-91 in İsmail Kara, *Türkiye'de İslamcılık Düşüncesi -Metinler/Kişiler-* vol. II, (İstanbul: Risale Yay., 1987), 276

because the ruler reserves the power to make any amendment in the law whenever he wishes. M. Sabri Efendi, who never mentions the classical/traditional Ottoman kanunnames, speaks from a very historical position despite his ulema roots. For example, he does not use the above classification about whether Ottoman laws before the Meşrutiyet were legitimate or not, and does put these laws into discussion.

A new hybrid political theory cannot be away from historical references. M. Sabri Efendi argues that the 'separation of powers', which is one of the basic ideas of modern political philosophy, actually existed in Islam even before it was in the West; and that Muslims practiced it. However, this separation of powers is evaluated in terms of power among sultan-caliph and people without framing it to legislative-executive-judicial trilogy.[87] The sultan-caliph and people have different responsibilities in this separation. The sultan-caliph who does not fulfill the mentioned responsibilities starts oppression. While there is right to rebel/resist against the acts of an oppressive government, such a right would not be legitimate against a meşruti government. The religious obligations on Muslims to say "we heard and obeyed" against the orders of this government shows *"the necessity of government to hold the entire the power over the country".*[88] This new political theory constructed as a discursive strategy is a new understanding in Ottoman political-legal thought. Because the Ottoman political thought does not refer to right to rebel; it actually refers to the religious concept of *bagy* for a sitution against a persecuting authority. In this context, the concept of *baghy (bağy)* is replaced by the right to rebel, which is very similar to liberal political thought. The theoretical similarity is not limited to this; it continues with another theoretical reconstruction which reminds of the social contract, limits the rights of the sultan-caliph and subjects him to various conditions: Biat.

Biat is a contract between the emir/ruler of the believers (emirülmüminin) and believers which declares that the Muslims will submit to

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87 Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 92-93; Babanzade İsmail Hakkı, 'İslâmiyet ve Siyasiyât', *Tanin*, nr. 352, 25 Ağustos 1909, pp. 1

88 Babanzade İsmail Hakkı, 'İslâmiyet ve Siyasiyât 2', *Tanin*, nr. 353, 26 Ağustos 1909, pp. 1

incoming ruler as long as he abides by certain conditions (sharia). Both sides of this contract are Muslims. That is, both the ruler and the one who gives allegience must be Muslim. The legal relationship between the caliph and non-Muslims he rules is established through the zimmet contract, not biat. In other words, the legal ground of the relationship between the Muslims and caliph and between non-Muslims and caliph are different.

With the argumentation made around the concept of biat, both the Islamic concept is redefined and another strategy, i.e. 'Reconstructing the Legal/Political Hierarchies', is applied. The last Şeyhülislam of Ottoman State, Mustafa Sabri Efendi, depicts the relationship between the biat and social contract as follows:

> The Meşrutiyet is a form of government in which people signs a contract with the government while this contract allows the people to hold the government accountable and could defend their rights, even by the weakest member. It is not a government in which the people give whatever the rules asks, justly or unjustly, and is captive and obliged to say "we heard and obeyed" against all its acts. On the contrary, a government official is not different from a worker hired to work for the people; it is rewarded for performing the duties well and punished by the people if it does not.[89]

The resemblance of the relationship between sultan (or caliph) and his subjects as the chief-servant is crucial. Because, as we have seen in the previous two chapters, in the traditional Ottoman/Islamic political-legal thought, the caliph is accepted as the *emirü'l-müminîn*, that is, the leader of all Muslims, which is clearly stated by Namık Kemal. However, in the public debates after 1908, Mustafa Sabri Efendi and the actors below, reduce the role of caliph from the leader of the Muslims to an 'officer' who is assigned a duty by contract.

The aforementioned Zeynelabidin Efendi shares the same view on biat. "It is a requirement of sharia that during the biat the commitment is

[89] Mustafa Sabri, *Beyanü'l-Hak*, vol. II/33, i.766, pp. 1325

made with stipulation and conditional promises. ... If these agreed conditions and the contract are not complied with, the advices and precautions in this matter are not considered, and no opportunity left to to act in accordance with the contract, the commitment made is terminated [biat contract is annuled]. ... Kanun-u Esasi is nothing but a contract between people and the government."[90]

In the *Law of Foundations (Ahkâm-ı Evkaf)* lectures he gave in Mekteb-i Mülkiye in the 1910-1911 season, Elmalılı Hamdi Efendi states the following: "Considering that the Social Contract theory was introduced to Europe in 17th century, it would not be wrong to assert that it was taken from the Islamic theories which laid the foundations of principles such as hakimiyet-i milliye, justice and equality among the French scholars so that it lead to the Great Revolution."[91]

Since the caliph received his custody power from the ummah through biat, he is like ummah's regent. As he is obliged to adapt his actions to sharia through the ministers and viziers, he is also obliged to apply the judgments of ulema and religious scholars in accordance with the conditions of time and enforce their results.[92]

The Shape and determination of appointment of the caliph/imam/leader of Muslims emerges with a contract between the *ummah* and the *imam*, which is called the biat contract. That is why the power of the leader of Muslims taken through a general custody is subject to the conditions of biat. Today, the gist of these conditions is articulated as Kanun-u Esasi'.[93] Kanun-u Esasi is accepted as the gist of the conditions that the caliph should respect according to the contract of Biat. Thus, when the caliphate is reduced to public service, the amendment of the Kanun-u Esasi becomes important. In particular, the amendments in the

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90 Mehmet Zeynelabidin Efendi, *İslamiyet ve Meşrutiyet*, (İstanbul: Arşak Garoyan Matbaası, 1327), 3-14

91 Nazif Öztürk, *Elmalılı M. Hamdi Yazır Gözüyle Vakıflar*, (Ankara: TDV Yay., 1995), 70, 444

92 Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 90-140

93 Elmalılı Hamdi, *Tesisat*, nr. 124, i.2, pp. 1327

rights of the sultan are critical in terms of determining the political and legal position of the caliph.

"We and our children will make biat to our Sultan on condition that he obeys the Kanun-ı Esasi. Our Sultan should also pledge to us that he will rule people within the framework of Kanun-ı Esasi."[94]

In this context, Babanzade İsmail Hakkı's ideas about the sultan during the 1909 amendment process of the Kanun-u Esasi are very clear. With the help of the discussions on the structure of the Chamber of Notables, Babanzade builds his thesis on the use of the rights granted to the Sultan in the Kanun-ı Esasi, in the process of trying to centralize the Parliament. The right of the Sultan to appoint the members of Notables is just like his other rights (article 7) and the 'service of the representatives' by 'Execution with the will of the Sultan' (article 27, see Appendix B). The sultan cannot arbitrarily declare war and appoint the representatives. The sultan cannot use his rights "unless accepted and approved by the General Assembly (Notables and Representatives) which constitutes executive, and even legislative and judiciary." The Grand Vizier choses the ministers and the Sultan approves them as a civil servant. This is the requirement of Meşrutiyet as a form of government. The contrary violates the 'spirit of meşrutiyet'. The unaccountable Sultan's use of his rights 'as he wishes' destructs the essence of the Kanun-ı Esasi which is a kind of 'social contract'.[95] The rights and responsibilities of the sultan to be enthroned after 1909, namely the caliph, are changed. The enthroned sultan-caliph was not only obliged to take an oath that he would abide by the sharia but also to abide by the Kanun-u Esasi.

Considering the rights and powers granted to the caliph-sultan by the First Meşrutiyet, the Kanun-u Esasi introduced in 1876 and the practice of Chamber of Deputies does not fully meet the conditions of *constitutional monarchy*. Because before 1908, the right to legislate was in the final analysis only with the sultan, and the assembly did not theoretically have the power to limit the caliph-sultan or to force him to decide. But

94 Hüseyin Cahit, 'Beyanname', *Tanin*, nr. 57, 13 Eylül 1324, pp. 1.

95 İsmail Hakkı, 'A'yân Meselesi', *İkdam*, nr. 5151, 26 Eylül 1908, pp. 1

the legal rights and powers of the Sultan was now restricted with the 2nd Meşrutiyet. With the help of amendment of Kanun-u Esasi in 1909. With the amendment, the authority of the caliph-sultan to make laws is transfered to the Chamber of Deputies, which is the representative of the people; from now on, it prepares the laws and presents to the sultan. However, in this delicate process, the caliph-sultan did not have much choice; either return the bill to parliament for reconsideration for once or accept it. If the law, which was not accepted by the sultan and sent back to the parliament, is accepted again by the 2/3 majority of the assembly, the caliph-sultan must approve the law and publish it for enforcement. It was exactly this legal mechanism that introduced a new legal world to the Ottoman State. Because it was no longer possible for the sultan to use many of the powers by himself, which the Kanun-u Esasi still grants him.[96] Both theoretically and practically, the sultan was now accountable to the assembly that is supposed to be the representative of the people and was under the hegemony of the assembly during the law-making process. The sultan's enthronement oath to be loyalty to the Kanun-u Esasi under with the witness of the parliament implies that the locus of power in the sovereignty changed. The Decree of the Chamber of Notables dated 05 August 1909 regarding the amendment of the Kanun-ı Esasi clearly states: " . . . While it was not possible to entirely examine the Kanun-ı Esasi, it was deemed necessary to examine its most important and urgent articles mentioned in order strengthen the legitimacy of the government and national sovereignty (hakimiyet-i milliye) ..." This statement shows that constitutional amendments can now be made in the name of meşruti government and national sovereignty.

Considering the amendments, the 2nd Meşrutiyet represents a new legal-political understanding. The main purpose of the 1st Meşrutiyet was to control the civil servants through the representatives elected by the people and to have information about the affairs. This was frequently and clearly repeated in Esat Efendi's booklet. Briefly, the aim was "national

96 Yıldızhan Yayla, 'Osmanlı Devleti'nde Meşrutiyet Kavramı', in *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi* (İstanbul: İletişim Yay., 1985), 951

supervision". The new Meşrutiyet in 1909 goes beyond to sovereignty. From now on, supervision and surveillance alone are not deemed enough. The fact that ruler was on the throne but could not govern was now accepted in the Ottoman State as it was in Western sources.[97] However, it should not be forgotten that political struggles are a power struggle between actors. It was a desired legal-political situation for the CUP that the Parliament got a central position and gained the absolute power with the amendment; that is, the parliamentary system was preferable while the CUP had a parliamentary majority. However, since the struggle was not solely for the constitutional demand, the CUP's loss of the arithmetic majority in the parliament and the growth of opposition to CUP sparked another debate. When the opposition gained strength within the parliament, those who publicly insisted that the Chamber of Deputies should be the center of power demanded the abandonment of the structure based on the absolute supremacy of the Parliament.[98]

The rights of the caliph-sultan regarding the law-making process and other fields represented the rights granted to the ruler by Siyaset-i Şer'iyye. Theoretically, nobody could share these rights of legitimate caliph/ruler. The transfer of these rights, which the Shari'ah entrusted only to the ruling person, to a board or assembly points to a deviation in the tradition of Islamic rules. However, the structural transformation of the Ottoman legal-political order after 1909 does not solely represent a deviation; it also brings a new theoretic-practical order. In this order, the caliph is reduced to a servant with a contract while the assembly is equalized to ehl-i'l-hal ve'l-akd who can legitimize or dismiss the assembly. The Kanun-ı Esasi is explained by the fact that the biat contract includes representation and the certification of the contracts through the registration is transferred from permission to obligation; while the Assembly, which is a requirement of "hakimiyet-i ümmet" is explained by the supervision

97 Yıldızhan Yayla, 'Osmanlı Devleti'nde Meşrutiyet Kavramı', in *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi* (İstanbul: İletişim Yay., 1985), 952

98 Emrullah, 'Küçük Bir Hitâbe', *Tanin*, nr. 1153, 17 Teşrin-i sâni 1911, pp. 3

power of erbab-ı hall ü akd.[99] This is where the Reconstructing the Legal/Political Hierarchies applies as a discursive strategy. In traditional Islamic political thought, the ehl-i'l-hal ve'l-akd, which can only consist of ulema and experienced administrators and are dismissible, is not open even to every Muslim. However, the fact that the assembly is not only composed of Muslims and that a similar practice has not been experienced before show that the traditional hierarchy changed and a new legal-political hierarchy was built.

"There is no doubt that in Islamic theory, the [legitimate] government is the meşruti government. Since the Muslims authorize and appoint their rulers by themselves, the caliph has not right of sovereignty on people, but people have right of sovereignty on the caliph."[100] Mehmed Fehmi, the author of these statements and also lecturer of 'the meaning of Islamic law' in the Mekteb-i Mülkiye in 1909-1910 season, openly states the ultimate point of hierarchy. Arguing that the caliph has no right on people, but people have right on the caliph, he supports Hüseyin Cahit who says "everything is for the sultan and caliph; but sultan and caliph is for the people and country, meşrutiyet and freedom!"[101]

5.3.2.2 From Millet-i Hakime to Hakimiyet-i Milliye: Lost of Community Hierarchy and the Exclusion of Ulema

Muslim-non-Muslim relations constitute a substantial part of the studies on Ottoman studies. When the issue was approached in the context of legal rights and responsibilities, the concept of millet-i hakime shows that Muslims had more legal rights than non-Muslims. Especially by clustering the society in two compartments as *Reaya* (subjects) and *Askeri* (military), by including all ruling segments, namely Islamic scholars, bureaucracy and military to the Askeriye (military) class, and seeing the ruled people (both muslim and non-muslim) under the category of reaya

99 Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 90-140

100 Mehmed Fehmi, *Hikmet-i Hukuk-ı İslamiye*, (İstanbul, Matbaa-i Kütübhane-i Cihan, 1329), 50-51

101 Mehmed Fehmi, 'Din', *Tanin*, nr. 291, 24 Haziran 1909, pp. 1

(subjects), the government mechanism was made operational. It was not much possible to include the non-Muslims in the military class and promote them to administrator positions due to the zimmet contract. Although there were rare exceptions, as a general legal rule, the traditional legal-political structure did not allow non-Muslims to have a decisive power over Muslims. Because, while the caliph-sultan was making the biat contract with the Muslims on the condition of being loyal to sharia, he was making zımmet contract with the non-Muslims on the condition to protect their lives, goods and general safety in return for certain taxes (cizye etc.).

In the 1860's, the Muslim-non-Muslim relations, which the Young Ottomans included in their discourse in the context of the meşrutiyet, started to be defended from a new theoretical perspective. This effort was concentrated on the concept of ummah, which pursues the strategy of both the re-interpretation of basic Islamic concepts and presentation of modern political concepts in the form of classical Islamic concepts. Resembling the homogeneous citizenship in the modern state, this approach regards all Ottoman inhabitants as monolithic and equal without discriminating between Muslims and non-Muslims, and it ignored the difference of biat and zımmet. This epistemic effort, which we discussed above, was defended with certain assumptions. For instance, although Namık Kemal defends that all non-Muslims should be represented in the Assembly as they consists of the Ottoman ummah, he claims that, in the final instance, the non-Muslims cannot propose a bill that harms the rights of Muslims and violates the classical community distinction of Muslims as they are demographically in minority.[102] In other words, he was asserting that non-Muslims in the parliament did not pose a political threat, and that the decisive factor in the legal regulations would be Muslims. From this point of view, it can be assumed that N. Kemal made such an effort to prevent foreign powers from exercising their right of protectorate arising from international agreements by using non-Muslims as an excuse. But the matter is not so naively evaluated in the debates in public

[102] Namık Kemal, 'Usûl-i Meşveret Hakkında Mektuplar I', *Hürriyet*, 14 Eylül 1285

and in the Chamber of Deputies after 1908. The millet-i hakime and millet-i mahkume dichotomy disappears. At the end of this process comes the legal-political regulations that legitimize the secular law-making process and political maneuvers.

One of the most common themes seen after 1908 was the brotherhood. The texts which emphasizes the brotherhood of all Ottoman subjects do not mention the Muslim-non-Muslim division, legally or culturally; all the subjects are unified under the concept of uhuvvet.

> The importance of uhuvvet is accepted by the honorable sharia and Islam. Because the Islamic government did not offend the non-Muslim communities in their lands and violated the brotherhood during its establishment and even when it was strongly and gloriously dominating the world; it pleased them and let them act freely, on the contrary.[103]

Since the sharia orders brotherhood, it is possible to see the entire Ottoman subjects as brothers. "Our main issue is the brotherhood in the Ottoman State. To what extent this brotherhood gains strength, our state and nation will progress and develop at that extent."[104] In this discursive strategy, which appears as a re-definition of basic Islamic concepts, the political concept of istibdat is used in relation to religious bigotry. The brotherhood among people is destroyed by istibdat, i.e. the religious bigotry. Then istibdat must be terminated so that fanaticism would disappear the subject brotherhood would be built.[105] As the istibdat was terminated in 1908, it was now time to solidify brotherhood.

This 'brotherhood among people' which had not been present in Islam or classical Ottoman political thought ignores hierarchy among communities. It was even claiming that Islam, which orders the constitutional rule, similarly orders the famous three main principles of French revolution. 'The Meşruti government obligates working within the principles of

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103 Mehmed İzzet Efendi, *Mir'atı-ı Meşrutiyet* (Trabzon: Meşveret Matbaası, 1910), 27

104 Ibid.

105 Ibid.

liberty, solidarity and equality.'[106] This discursive approach of Mehmet İzzet Efendi, who was one of the representatives of the Ulema tradition, simultaneously continues to use Islam and includes the acceptances of modern political philosophy.

On the other hand, the aforementioned debate on brotherhood allows the concept of Ummah to be used to cover all Ottoman subjects, as N. Kemal did. The *Beyanname* of Şeyhülislam Sahib Molla, published in the journal *Sırat-ı Müstakim*, is remarkable in terms of using the nas (sacred texts) in the legitimization of constitutionalism. It is also important that the post of Şeyhülislam itself interprets the relationship between the Meşrutiyet and Islam in a way to strengthen the existing political system.[107] In the *Beyanname*, he states that choosing a caliph is compulsory upon the ummah, that the caliphate could only be valid with the acceptance of the public, and biat is made if complies with the sharia and laws. It is even said that the Ottoman laws had always been limited by sharia, and the ulema has had power to bring the rulers to the right path if they astray from the sharia.[108] Saying that the divine address in the Quran is directed towards all people, Sahib Molla adds that 'hakimiyet-i ümmet' (sovereignty of the ummah) is compulsory since the duty of emribil maruf ve nehyi anilmünker is a responsibility of all individuals in the ummah. Referring to the rule of the hakimiyet-i ümmet, it is also stated that keeping the government under control is obligation of the whole ummah and that the government should be prevented from acting contrary to the divine laws and the interests of the people because of this responsibility. The Şeyhülislam states that the people must obey all the acts of "hükümet-i meşrûta-ı meşrûa" which is controlled by a commission of supervision chosen by people (i.e. the Chamber of Deputies). He adds that the difference of religion would not be against equality; the

106 Ibid.

107 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 218

108 Şeyhülislam Mehmed Sahib, 'Beyanname', *Sırat-ı Müstakim*, II/51, 1 Şaban 1327/13 Ağustos 1325, pp. 387

non-Muslims would also have the power to check the government since they are constituent parts of the state and nation. Because, to him, the Chamber of Deputies exists as a requirement of sharia; and the meşrutiyet should be deemed as the 'true model' of caliphate.[109]

The definition of non-Muslims as the constitutive elements of the state and nation eliminates the millet-i hakime and millet-i mahkume dichotomy. Because, there is just one nation: Ottoman nation. It would not be right to mention or even legally act that there is a hierarchical division among the non-Muslims and Muslims which are both constitutive parts of this nation. While this *Beyanname* written by the Şeyhülislam uses the term 'hakimiyet-i ümmet', we can say that it opened a way for transforming into hakimiyet-i milliye with the new inclusion of non-Muslims.[110] With the intermediary of Şeyhülislam, while the Chamber of Deputies was given credit under the legitimacy umbrella of religion beyond the reach of any other public power, the presence of non-Muslims in the Parliament is irrefutably legitimized. Appearing as a redefinition of basic Islamic concepts, this discursive strategy uses the technique of resorting both historical episodes and holy texts as arguments. In this context,

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109 Şeyhülislam Mehmed Sahib, 'Beyanname', *Sırat-ı Müstakim*, II/51, 1 Şaban 1327/13 Ağustos 1325, pp. 387-388

110 As expressing clearly how the Hakimiyet-i Milliye was understood in practice in the period when these discussions took place, the following sentences of Hüseyin Cahit are important: '… Millet-i hakime tasavvuruna gelince; bundan bahsettiğimiz makalede izah olunduğu üzere bundan hiçbir zaman müsavata, adalete muhalif hareketler ve imtiyazât mânası çıkarmak icâb etmez. Zaten Parlamento usûlüyle idare olunan memleketlerde millet-i hâkime demek ekseriyet demek değil midir? Kanun-ı Esasi işte değişti. Bugün Mecliste çoğunluğa sahip olduğu inkâr edilemeyen İttihat ve Terakki Fırkası Kanun-ı Esasi'nin tadilinde Parlamento usûlünden başka bir rehbere tâbi oldu mu? Diğer unsurları ezmek fikrinde bulunsa idi Kanun-ı Esasi'ye böyle kayıtlar koymaz mıydı? Mademki çoğunluğu haizdir, bundan kendisini kim men edebilirdi? Demek oluyor ki Cemiyet'te böyle bir fikr-i tagallüb katiyyen yoktur. Devletin din-i resmîsi İslâmiyet, lisan-ı resmîsi Türkçe olmak gibi hususâta münhasır olan hakimiyet-i milliye [millet-i hâkime] terkibini böyle bir korkuluk addile daima onun etrafında dönüp dolaşanlar mutlaka hüsn-i niyyetten biraz mahrumdurlar. Bunu vesile addetmek istiyorlar' (Hüseyin Cahit, 'Ziyafet Münasebetiyle', *Tanin*, nr. 223, 15 Mart 1909, pp. 1).

Sahib Molla says: "The siyer books report that the Prophet Muhammad's (pbuh) is wide consultation sphere included many non-Muslims and even those not within the Islamic territories; he called for assistance concerning wars and places of wars."[111] The Beyanname of the Şeyhülislam is enthusiastically accepted by those who emphasize the equality of all Ottoman subjects through the meşrutiyet. Because, the Şeyhülislam authority, as the highest religious authority, affirms Muslim-non-Muslim equality and legitimizes their entry to the parliament as equals.[112]

The entry of the Muslims and non-Muslims to the Chamber of Deputies on equal footing should be evaluated together with the results of the 1909 Kanun-u Esasi Amendment process. The Kanun-ı Esasi Committee's Bill of Preamble drafted by Elmalılı Hamdi Yazır, a young representative of the Islamic scholars indicates and important threshold in terms of the definition of relationship between Chamber of Deputies and the Kanun-u Esasi. Elmalılı Hamdi says that since the Ottoman Empire was based on the Islamic Sharia, which envisaged the merge of reason and nakl, its governments had been within the sharia-legal government forms since its foundation. The executive power was given to the imam/caliph based on the principle of 'hakimiyet-i ümmet'. Since the caliph received his custody power from the ummah through biat, he is like ummah's regent. As he is obliged to adapt his actions to sharia through the ministers and viziers, he is also obliged to apply the judgments of ulema and religious scholars in accordance with the conditions of time and enforce their results. The presence of erbab-ı hall ü akd ve ashâb-ı şura as the 'balancing power' is for the separation of powers and balancing of public authority. He explains the Assembly, a requirement of Hakimiyet-i ümmet, through the supervisory power of erbab-ı hall ü akd. According to Elmalılı, the right of inspection of 'ehlü'l-halli ve'l-akd' and 'ashâb-ı şura', the powers of determining the intervention and overtime degrees, general rules and arbitration, and the expansion of the judgments and procedures related to

111 Şeyhülislam Mehmed Sahib, 'Beyanname', *Sırat-ı Müstakim*, II/51, 1 Şaban 1327/13 Ağustos 1325 (1909), pp. 387

112 Babanzade İsmail Hakkı, 'İslâmiyet ve Siyasiyât', *Tanin*, nr. 352, 25 Ağustos 1909, pp. 1

these are among the requirements of the siyaset-i şer'iyye.[113] This judgment statement expresses well that the fact that the Assembly has reached a different point. While the practice of Siyaset-i Şer'iyye is used because of its religious reference, it is given as a right to an assembly which includes non-Muslims by ignoring the traditional notion that Siyaset-i Şer'iyye is a field exclusively belonging to the caliph/ruler.

A similar interpretation is made by an Islamic scholar in the province, away from Istanbul:

> The mission of the government is maintaining justice and apply and perform the legitimate laws among all the people under its administration, without exception, which are prepared and approved after the collective consultation and negotiation of the erbab-ı hall ü akd, elected by the general public.[114]

Mehmet İzzet Efendi both defines the assembly as the *ehlü'l-halli ve'l-akd* and interferes with the classical meaning of justice. The *ehlü'l-halli ve'l-akd*, which also expresses a religious responsibility to fulfill, is the only legitimate authority in the election or dismissal of the caliph. This board, which has a small number of members, only consists Muslims who are mainly from ulema or highly experienced administrators. However, the assembly created by the Meşrutiyet rule does not only cover the ulema; it also covers Muslims at a broad spectrum as well as non-Muslims. In other words, the new form of the assembly allows the non-Muslims to dismiss the caliph of the Muslims or be determinative in the election of caliph. Thus, the assembly gets a new definition, and the content of the justice transforms. Although, as a form, the concept of justice is underlined, considering the necessity of defining justice as 'owning the right', we come across a new definition of justice on the basis of legal equality. This equality legally recognizes the non-Muslims the right to elect or dismiss the caliph.

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113 Elmalılı M. Hamdi Yazır, *Osmanlı Anayasasına Dair*, haz. Asım Cüneyd Köksal, (İstanbul: Klasik Yay., 2018), 91-92

114 Mehmed İzzet Efendi, *Mir'atı-ı Meşrutiyet* (Trabzon: Meşveret Matbaası, 1910), 26

While the concepts of *custody*, *biat*, *ehlü'l-halli ve'l-akd* which are the basic concepts of traditional/classical Islamic/Ottoman political thought related to the fiqh, i.e. law are used on the one hand, the (secular) assembly that represents the law-making process independent of sharia is placed in the central position on the other. The assembly is started to be used alone to replace the classical fiqh institutions of custody, biat, ehlü'l-halli ve'l-akd institutions. Such epistemic differentiation actually points to a paradigmatic rupture. Because the domain of legitimacy shifts from fiqh, which is based on sharia, to the (secular) assembly which ignores religious variation and the will of the representatives in the assembly. What makes this differentiation possible is nothing but the elimination of community hierarchy.

Ignoring the community hierarchy amounts to ignoring the Muslim-zımmi legal difference. 'Equality', which is within the sharia but was abolished due to istibdat after a long period of practice, means that people are equal in humanity and human rights.

> Considering that there is no difference among humans, high or low, in terms of humanity, none of them are superior or inferior than the other in terms of entire law on humanity. They all have the same rights and are subject to the same law. That is why nobody is allowed to claim superiority over others.[115]

Here, Mehmet Izzet ignores the apparent difference of rights granted to Muslims and non-Muslims in the zımni law of sharia. These legal arrangements deem Muslims hierarchically superior than non-Muslims and do not welcome a unity at the upper level of 'humanity'. "Because the Qur'an, which is the wisdom authority of Islamic civilization and source of all virtues and honors, firstly envisages the principles of freedom and legal equality to all people in the world without discriminating against nationality and creed."[116]

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115 Mehmed İzzet Efendi, *Mir'atı-ı Meşrutiyet* (Trabzon: Meşveret Matbaası, 1910), 16

116 Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kānûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908), 142-143

EXCLUSION OF THE ULEMA: THE POSITION OF THE ŞEYHULISLAM

The last rupture that is decisive in the transition from the understanding of the Millet-i Hakime to the Hakimiyet-i Milliye through Hakimiyet-i Ümmet is the hierarchical demotion of the Şeyhülislam position. As it is known, the position of the Şeyhülislam in the traditional Ottoman bureaucratic structure is the same as the grand vizier.[117] The central place of the ulema in classical Islamic/Ottoman political and legal thought was discussed in the above chapters in various occasions. This paradigmatic and epistemic central position would erode after 1909, and the ulema would lose both practical power and credibility over the personality of Şeyhülislam. The loss of power faced by the Şeyhülislam is authority against the Chamber of Deputies, i.e. the Hakimiyet-i Milliye, is not simply an institution's loss of power. It is the complete overhaul of the actor(s) that creates legitimacy both in epistemic and paradigmatic terms. We can say that the transformation is the triumph of secular actors over the sharia-centered legitimacy grounds, leading to the emergence of a new legal and political epoch.

After 1908, the relationship between the Şeyhülislam and Chamber of Deputies turned out to be a hierarchical struggle. Along with the Sultan, the Şeyhülislam attended the first inauguration of the Chamber of Deputies after 1908. However, this participation was limited only to the inauguration as the Şeyhülislam did not make any dialog with the representatives, and kept his office outside the parliament. However, in the parliament opened on 17 December 1908, the Akka Representative Sait Efendi proposed to invite the Şeyhülislam to give information to the parliament to give information as to how *kadı*s and *mütfü*s are chosen during the 25th session dated 9 February 1909.[118] However, his proposal was not accepted by the parliament as it was not supported by a sufficient

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117 Esra Yakut, *Şeyhülislamlık -Yenileşme Döneminde Devlet ve Din-* (İstanbul: Kitap Yayınevi)

118 MM, I, 1/25, 27 Kanunusani 1324 (9 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 537-538

number of representatives.[119] Two days later, at the 26th session of the Chamber of Deputies dated 11 February 1909, the Konya representative Vehbi Efendi and some other representatives submitted a proposal for *"inviting the Şeyhülislam to make explanation to the assembly regarding that necessary qualifications are not respected in the kadı appointments, that the judges are abused, the statuses of the sharia courts, and some issues about the authority of religious affairs."*[120] During the discussion of the proposal, Tokat representative İsmail Pasha noted that it would not be appropriate to call the Şeyhülislam for such reasons and said *"Gentlemen, we are representatives not children, let's not deal with everything! His holiness Şeyhülislam has already made the mentioned explanations to the government. It would not be appropriate to invite his holiness Şeyhülislam to the assembly as necessary explanations were made."*[121]

But the Bitola representative Pançedoref Efendi interrupts İsmail Pasha and asks to him: *"Are you a representative?"* İsmail Pasha ends by saying, "Let's have a heart and be fair, and consider his position".[122] The reason why Ismail pasha intervened was that he was seeing the authority of religious affairs as untouchable. The Parliament Chairman Ahmed Rıza puts the issue to the vote, and the Şeyhülislam is accepted to be invited to the parliament. Şeyhülislam would come and give an account in the parliament, and questioned by deputies, if necessary.

The public discussed whether the Şeyhülislam should go to the parliament and give account to the representatives in the assembly. In *Mizan* newspaper, pro-CUP Murad Bey gets involved in the discussion by writing an article titled "Şeyhülislam and Chamber of Deputies". He does not consider it appropriate for Şeyhülislam to go to parliament. He states that

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119 MM, I, 1/25, 27 Kanunusani 1324 (9 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 538

120 MM, I, 1/26, 29 Kanunusani 1324 (11 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 572

121 MM, I, 1/26, 29 Kanunusani 1324 (11 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 572-573

122 MM, I, 1/26, 29 Kanunusani 1324 (11 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 573

the position of Şeyhülislam is different and he should not go to the Chamber of Deputies, because Şeyhülislam's state is above the parliament. To him, "the Şeyhülislam is the leader of Muslims."[123] When Şeyhülislam, who is the "leader of the Muslims", comes to the parliament to give an account, he will also account for non-Muslims and will face the pressure of them hierarchically.

Another figure involved in the debate was Dervish Vahdeti. Vahdeti criticizes the Şeyhülislam's invitation to the parliament from two aspects: Firstly, he argues that Şeyhülislam's place is not the parliament in terms of his authority; secondly, he harshly criticizes Hüseyin Hilmi Pasha for his silence on this in the government program. Because Ziyaeddin Efendi, who was the Şeyhülislam in the government of Hüseyin Hilmi Pasha, who founded the new cabinet after Kamil Pasha's cabinet, was in the parliament at the thirtieth meeting of the parliament on 17 February 1909. Ziyaeddin Efendi attended to the parliament in the declaration of the government program as the Şeyhülislam of the term. He witnessed but not objected to the statements of Hüseyin Hilmi Pasha concerning the amendments in Kanun-u Esasi that "*we will analyze other country's laws for the appropriateness of the laws and directives we prepare; and we will not hesitate to enact those which are necessary.*"[124] This was what Vahdeti objected, when he said:

> As everybody knows, the right to intervene in the position of Şeyhülislam and to make appointment in this authority belongs only to the caliph. And the name of the authority is Şeyhülislam. Its rank is the same as the authority of Grand Vizier. Spiritually, he is the mufti and representative of the Islamic world.
>
> Without appreciating such rights of him and attending to the Chamber of Deputies with the grand vizier and not objecting to the government program is devaluing his authority and giving concessions from the honorable sharia.[125]

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123 Osman Nuri Ergin, *Maarif Tarihimiz*, vol. 5 (İstanbul: Eser Kitabevi, 1977), 1669-70

124 MM, I, 1/30, 4 Şubat 1324 (17 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 677

125 Derviş Vahdeti, 'Şeyhülislam Hazretlerine', *Volkan*, i. 50, 19 Şubat 1909

The Chamber of Deputies convened in the 32nd session on 20 February 1909. The Konya representative Mehmed Vehbi Efendi and some representatives makes the same proposal to the Assembly Chairman again and invites the Şeyhülislam to the Assembly.[126] The Assembly Chairman Ahmed Rıza Efendi states that an explanation letter was sent by the authority of Şeyhülislam and necessary explanations were made. He asks if this response would be enough. However, the Kastamonu representative Yusuf Kemal Bey asks for the floor and says that if assembly invites somebody, either himself or a person from his authority must make an explanation to the assembly, from now onwards, explanations made by letters should not be accepted.[127] While the Chairman states that this request should be made by the one who made the demand, Yusuf Kemal Bey asserts: "Please Mr. Chairman, this is all of our rights as he objects to the decision of the Parliament. *It does not only belong to them.* It is a matter of all".[128] In the end, it was decided to re-invite the Şeyhülislam to the parliament.

Against the decision of the Assembly to re-invite, Derviş Vahdeti wrote an article titled "To the Attention of the Chamber of Deputies Chairmanship" in his newspaper Volkan dated on 24 February 1909. Where he argued:

> Because of the authority of Şeyhülislam, he should not be present in the assembly like a representative, there should be nothing against the sharia in the matters discussed. As regards the Kanun-u Esasi: While the Şeyhülislam is understood to be a member of the ministers, no spiritual leader is invited to the parliament for explanation in countries ruled by meşrutiyet. Thus, the council cannot have the right to invite the Şeyhülislam, nor can it ask the Ministry of Foundations to give account. How is it possible for the

126 MM, I, 1/32, 7 Şubat 1324 (20 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 746

127 MM, I, 1/32, 7 Şubat 1324 (20 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 746

128 MM, I, 1/32, 7 Şubat 1324 (20 Şubat 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 746. Emphasis by italics are mine. (E.K.)

> parliamentary commissions consisting of members from various religions, Greek, Armenian and Bulgarian citizens to make a declaration against our foundations? .... Consequently, we hope on behalf of our community that these two points would be well considered by the parliament and a decision would be given in conformity with the honor of such authorities.[129]

Elmalılı Hamdi Efendi also joins these discussions which were highly intensified both in the parliament and in the public. Elmalılı Hamdi Efendi firstly criticizes Mizancı Murad in *Beyanü'l-Hak* on 1 March 1909 and says that he did not agree with him. In his article titled *"Islam, Caliphate and Islamic Religious Administration"*, he strongly criticizes those who were against the invitation of the Şeyhülislam to the parliament. Elmalı clarly shows his stance by saying that *'the caliphate and the authority of Şeyhülislam are even depicted as clergy"*[130], and adding *"but there is no clergy in Islam."* While taking the power of the Şeyhülislam authority bu saying that *there is no clergy in Islam, he says the following concerning the position and place of the caliph:*[131]

> While the caliph has the custody of the ummah who made biat to him on the one hand, he holds the responsibility of laws which he must obey just like the ummah who gave custody to him; the lawmakers cannot object personally the to laws he made. If he violates the laws made by the legislator, the Hakimiyet-i Millet takes necessary action. Therefore, in Islam, the Caliphate is not a spiritual presidency, as it is nothing but the implementation of sharia law. Caliphate means the Leader of Hükümet-i Meşruta-i İslamiye. That is why he does not have custody right over Muslims in foreign countries. However, Muslims feel loyal to the caliph with spiritual

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129 Derviş Vahdeti, 'Meclis-i Mebusan Riyaset-i Aliyyesine', *Volkan* i. 55, 24 Şubat 1909

130 *Beyanü'l-Hak*, i. 22, 1 Mart 1909, pp. 511

131 For the the secular transformation of the caliphate, see: Nurullah Ardıç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernization in the Early 20th Century*, (London:Routledge, 2012)

> feelings. Since the sultanate, which means oppression and intervention, inherently contains pressure, it is obligatory to recognize the meaning of the caliphate in the period of freedom as required by the meşrutiyet.[132]

These ideas are quite new in the Ottoman-Islamic political thought in terms of the role given to the caliph. While it is stated that the caliph could not have custody of Muslims in foreign countries, at the same time, the role of Caliph is reduced to the level of head of the Meşrutiyet government. The caliph, who had no power of enforcement and is theoretically reduced to a symbolic authority, is just the head of the Meşruti government and is obliged to approve whatever the parliament decides.

Elmalılı says the claim that Şeyhülislam is head of the ummah, concluding that he is just a civil servant in the constitutional system:

> The leader of Islamic Community could be nobody but the leader of Islamic Government. Such a division of the government would be defining a government within the government. If so, the Şeyhülislam is surely accountable to the parliament and give answers and make explanations when necessary. Rather, from an Islamic perspective, the highest responsibility is on the ulema. The visit of the Şeyhülislam to the assembly does not violate the requirements of Islam. Indeed, leaving the such great space to the hands of istibdat and leading to abuse due to negligence, assigning irreproachableness and holiness to the authority like the papacy do not conform with the fundamental reason behind Islamic sharia. Considering that sharia made the general public power to be dominant even over the caliph, it would never be allowed to belittle it for a person who represents just a portion of the title of caliph. In sum, Şeyhülislam is nothing more than a government official. He would definitely come to the assembly with this title. If he is worthy of his post he would be applauded for both his authority and personality. If not, his own membership to the government

132 *Beyanü'l-Hak*, i. 22, 1 Mart 1909 pp. 511

would not be valid. This is the rule in Islam which behaves the caliph and his powerless and coarse subjects on equal terms. The rest is superstition.[133]

The 40th session of the Chamber of Deputies was made on 13 March 1909 (Rumi 28 February 1324). The issue of the Şeyhülislam covers almost the entire agenda of that session. The Şeyhülislam did not come to the assembly for examination but he sent Istanbul Court Regent Hasan Lütfi Efendi with a memo that "Hasan Lütfi Efendi was assigned".[134]

The Assembly Chairman gives floor to Istanbul Court Regent Hasan Lütfi Efendi, attending on behalf of the Şeyhülislam, to make the necessary statements. The Bursa representative Ömer Fevzi Efendi objects to Hasan Lütfi Efendi, claiming that the incoming person would not replace the Şeyhülislam and that his explanation should not be accepted because he was not working in the authority of religious administration.[135] A voting is requested after other members were also involved in the matter. However, the chairman gives floor to Hasan Lütfü Bey as he has attended to session. He makes necessary explanations in the concerned issues and said that officials, judges and *kadı*s in the authority of religious administration were subject to different rules, they had economic problems etc.

While the debates were continuing in the assembly, public opinion and press, the 31 March incident broke out on 13 April 1909. Many dissidents were purged as they were held responsible for the events. After these events, the ulema group was started to be called as "*sarıklılar*" (turban wearing) and were seen despicable in the eyes of the state officials.

In the 9th session on December 1, 1909, the Aleppo representative Ali Cenahi and Gümülcine representative İsmail Bey asks for an explanation from the authority of the religious administration, i.e. from the authority of Şeyhülislam upon failure to fulfill the mandate regulating the status of

133 *Beyanü'l-Hak*, i. 22, 1 Mart 1909 pp. 514

134 MM, I, 1/40, 28 Şubat 1324 (13 Mart 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. II, pp. 249

135 MM, I, 1/40, 28 Şubat 1324 (13 Mart 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. II, pp. 249

the *kadıs*.[136] After the 31 March event, the Şeyhülislam was replaced by Sahib Molla Efendi. At the 10th session of the Assembly dated 4 December 1909, the new Şeyhülislam Sahib Molla Efendi comes to the Assembly and gives account to the representatives which include tens of non-Muslims.[137] This was an unprecedented event in the history of Ottoman state. The Şeyhülislam, representing the highest authority of ulema, came to the assembly to given an account to the representatives including non-Muslims by representing a lower authority. Following his explanation, the Şeyhülislam Sahib Molla Efendi kindly concluded his statements as "*Any other questions, sir?*"

The Konya representative Mehmed Vehbi Efendi asked harshly: "*I would like to ask that while the Assembly has been opened for 20 days, why Hoca Efendi has not yet informed [the assembly].*"[138] In fact, the place of the new authority is highly clear within the question: The assembly. The assembly possessed an authority both over the caliph and Şeyhülislam. It would even not wrong to argue that the absolute power belongs to the assembly.

Sinop deputy Hasan Fehmi too, is involved in the discussions and he makes long explanations and utters words against the authority of religious administration. When the Şeyhülislam refutes Hasan Bey, he responds: *""I would absolutely refuse to say that the expressions of a representative are lie, who committed to the honor, patronage and dignity of a country."*[139] Debates in the parliament prolongs. Although the members of the assembly ask the Şeyhülislam to fulfill their requests, he did not agree on to perform all. Then, Karasi representive Ali Galip Bey responds: *"Şeyhülislam must obey the decision of the Assembly. Otherwise, he must*

136 MM, I, 2/9, 18 Teşrinisani 1325 (1 Aralık 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 169

137 MM, I, 2/10, 21 Teşrinisani 1325 (4 Aralık 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 194-197

138 MM, I, 2/10, 21 Teşrinisani 1325 (4 Aralık 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 194

139 MM, I, 2/10, 21 Teşrinisani 1325 (4 Aralık 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 196

leave the office."[140] The Şeyhülislam becomes worried after these tough stances and tries to ease the atmosphere by saying, *"I have not said a word for now about whether I will oppose the decision of the honorary assembly, and I have not considered saying it."*[141] The Şeyhülislam who is defined as the government officer must be obedient to the assembly that is superior than the government. This was previously non-existing in the traditional Ottoman politics. The deputies who are the representatives of the Hakimiyet-i Milliye, i.e. the parliament, are positioned at the top of all political and legal authorities. We can argue that in the new order that brought Şeyhülislam to the parliament, the ulema, who would be referred to as the *sarıklılar* in the personality of Şeyhülislam, would gradually lose their reputation before the politicians, that is, the parliamentarians.

Another attack on the legitimacy of the political role of the Ulema was experienced when the CUP wanted to dissolve the Istanbul city council by using the power of Hüseyin Kazım Efendi, who was the mayor of Istanbul. Following such initiative of Hüseyin Kazım Efendi who was a Unionist, Cemiyet-i İlmiye-i İslamiye (Association of Islamic Scholars), an Ulema institution, published a declaration. The declaration is written against the personal application of Hüseyin Kazım Efendi and the misconduct is underlined:

> It is seen that the mayor insisted on dissolving the municipal council. Our society, which is the true defender of the Meşrutiyet-i meşrua, does not approve this groundless dissolution, which is against the principles of consultation and laws.
> Cemiyet-i İlmiye-i İslamiye[142]

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140 MM, I, 2/10, 21 Teşrinisani 1325 (4 Aralık 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 197

141 MM, I, 2/10, 21 Teşrinisani 1325 (4 Aralık 1909): *Meclis-i Mebusan Zabıt Cerideleri,* vol. I, pp. 197

142 Cemiyet-i İlmiye-i İslamiye, 'Beyanname', *Beyanü'l-Hak* i. 127, 12 Eylül 1911, pp. 2294

Cemiyet-i İlmiye-i İslamiye publishes another one one week later in the *Beyanü'l-Hak* journal: *"The compulsory resignation of the mayor is what agrees with the fair conscientious opinion of our Association* [Cemiyet-i İlmiye-i İslamiye] *and the wisdom of our society and agrees with the jurisprudence of the parliament. This, on the other hand, constitutes a shred of decisive evidence for the appreciation and accuracy of our Association."*[143].

The CUP sees the declaration of the group affiliated with the Ulema as an intervention in to the politics. The Committee of Union and Progress held its general congress at the beginning of October 1911, and announced the result of the congress to the public with a report, which was published in the 165th issue of Sırat-ı Müstakim journal dated 2 November 1911. The report criticizes the political declaration published by Cemiyet-i İlmiye-i İslamiye insisting that it was wrong for the ulema to be involved in politics; which clearly rests on the assumption of religious/secular distinction, locating the ulema in the former, which must be separated from the latter:

> Cemiyet-i İlmiye-i İslamiye have recently published a declaration which openly involves an intervention in the state politics. Considering that they are *the nurturers of consciences and the spiritual rulers of the ummah*, it is a religious obligation on the honorable ulema to remain superior than inter-party disputes and electoral struggles and to keep the title of prophet's heir away from the adversaries arising out of political struggles. Besides, as the ulema, in general, are the public servants salaried by the state's treasury, it would not be appropriate for them to involve in the politics apart from through the Chamber of Deputies and Notables. Finally, it should be born in mind that the intervention of ulema in the politics out of the conduits of Chamber of Deputies and Notables may

143 Cemiyet-i İlmiye-i İslamiye, 'Beyan-ı Hal', *Beyanü'l-Hak* i. 128, 19 Eylül 1911, pp. 2310

> lead to consequences harmful to the country, just like it was in 31 March.[144]

The remarkable point in here is that Elmalılı Hamdi Efendi's definition of Şeyhülislam as a public servant becomes a basic point of reference to the Unionist government. As the ulema members are the salaried public servants, they could not involve in the politics. According to the new political actors having the decision-making powers, the ulema should no longer engage and involve in the politics. In other words, ulema was no longer a legitimate actor of politics. In fact, it is implied that the matter is not directly relevant with being a public servant. With definitions like prophet's heir etc., it was aimed to prevent those acting on the grounds of religious legitimacy to transfer their legitimacy grounds to the 'secular' politics.

Former Şeyhülislam Mustafa Sabri Efendi objects to the statements of Unionists with harsh words. To him, ulema's mission is "emr-i bil ma'ruf ve nehy-i anil münker". Institutionally Cemiyet-i İlmiye-i İslamiye, and personally Mustafa Sabri Efendi responds harshly against the Unionists' report in the 131th issue of *Beyanü'l*-Hak dated 17 October 1911. Cemiyet-i İlmiye-i İslamiye publishes a declaration named *"Cevap Sevap"* and Mustafa Sabri Efendi expresses his views in his essay titled *"A Matter in the Report Declared in the Congress of Union and Progress."* In its short statement, Cemiyet-i İlmiye-i İslamiye says:

> We regret to see that the congress report of the Union and Progress criticizes some of the acts of our society whose single goal and mission is the protection of the virtues of paramount principles and Islamic ethics as well as meşrutiyet-i meşrua and prosperity of people. Our association limits its expressions on this issue for now and highlights: The Union and Progress is not in the position of making critical statements considering authority; rather, it is in the position to care about the problems of people.[145]

144 *Sırat-ı Müstakim,* i. 165, 2 Kasım 1911, pp. 134

145 Cemiyet-i İlmiye-i İslamiye, 'Cevap Sevap', *Beyanü'l-Hak*, i. 131, 17 Ekim 1911, pp. 2358

Mustafa Sabri Efendi, in particular, deals with the recommendation that they should stay away from politics, and argues that this would be unacceptable:

> Let's start with whether if Ulema could involve in politics: If the ulema is prevented from involve in politics, they could not perform the duty of 'enjoining good and forbidding wrong'; thus, they would never accept the removal of their such right. That is why the ulema would be involved in religious politics. It is the most important task of ulema to be on the fair side of the politics which has two sides.[146]

While the objection of Mustafa Sabri Efendi was remarkable for the period, it is clear that the active support[147] of ulema to the Unionists' rise

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146 Mustafa Sabri, 'İttihat ve Terakki Kongresinde Kıraat Olunan Raporun Bir Noktası', *Beyanü'l-Hak*, i. 131, 17 Ekim 1911, pp. 2359

147 Musa Kazım Efendi indicates the real reasons for ulema's support during his interrogation in the Divan-ı Harbi Örfi established after the the World War I. We will make a long quotation from his answer to the question as regards his joining to the Committee of Union and Progress: "... I joined to the Committee after declaration of the Meşrutiyet. The Committee had an Islamic Scholars branch. In that time, I was a member of the Cemiyet-i İlmiye İslamiye. We were a few people in that branch including deceased Manastırlı İsmail Hakkı Hoca and existing Chairman of Notables, Mustafa Asım Efendi. We were talking about the fruits and benefits of Meşrutiyet as well as its conformity with the honorable sharia. That is, we were making recommendations and enjoining in this matter. Because, were convinced that our country's progress and development would only be possible with the estabslishment and application of the meşrutiyet. We worked from that perspective for a few years. We did our best. Meşrutiyet is legitimate; our sharia ordered it, not prevented. Meşrutiyet means the method of consultation. We explained in length how the method of consultation was ordered in the Qur'an and hadiths. We elaborated the concepts of freedom, solidarity, justice, equality by making specific references. These references include religious provisions, traditions and many others. Our goal was to explain it to the people. That is, we endeavored that they should not fully apply the European form of meşrutiyet. We wrote books, published treatises and essays. Our goal was the establishment of the method of consultation within the framework of honorable sharia in our country. In particular, myself often taken position against the parties and held that there werer no parties in Islam. Islam is a party.

to the power had moved to a different dimension. Because, Unionists did not need ulema's ideological support as much as before, the hegemony was now in the hands of those who want to prevent the ulema from politics. Those who held the political and military power were drawing the boundaries of ulema and decide the forms of its political role if it is allowed to involve in the politics. Mustafa Sabri Efendi was aware of the political maneuvers and the paradoxes of the Unionists.

> There is a contradiction that while Cemiyet-i İlmiye-i İslamiye was accepted to be involved in politics when they were together with the Committee of Union and Progress, this right was wished to be terminated after they separate from them. And even now, the Şehzadebaşı club of the Union and Progress hosts an Islamic scholar delegation which deals with the politics. Therefore, all the matter takes the form that 'O, Ulema! You have any right as long as you are with us. But, if you leave us, you have no rights at all.' In short, it is not acceptable for us to deny the right of Cemiyet-i İlmiye-i İslamiye to engage in politics. The ulema does and will engage in politics, naturally. But he is-sue is about whether the pursued policies are good or evil.[148]

Because, the honorable Qur'an states that Muslims are brothers. As parties breed antagonism, I highly insisted that there should be no party. Then, they told me that, if there was meşrutiyet, there would definitely be parties. I said that I did not really understood such a form of meşrutiyet, and honestly no longer sustained too much effort. When the European meşrutiyet was entirely applied, disputes and adversaries prevailed. Of course, I would not desire it. The Muslims become the greatest enemies of each other. I would surely not desire it. This was not appropriate to my profession, authority and personality. Consequently, I stopped working in those matters. I started to work by myself. But, the parties brought us to positions occasionally." ('Musa Kazım Efendi'nin Divan-ı Harb-i Örfî'de Sorgulanması', in İsmail Kara, *Türkiye'de İslamcılık Düşüncesi - Metinler/Kişiler-* vol. I, (İstanbul: Kitabevi Yay., 1997), 598

148 Mustafa Sabri, 'İttihat ve Terakki Kongresinde Kıraat Olunan Raporun Bir Noktası', *Beyanü'l-Hak*, i. 131, 17 Ekim 1911, pp. 2359

The goal of the CUP was that nobody from the ulema opposed to it.[149] While the Unionists were pushing the ulema outside the active politics, oddly, it was Sırat-ı Mustakim, another publication of ulema, which fully published the Unionists' report. In the journal, no reaction was made against the report. It is possible to find the traces of the unresponsiveness of Sırat-ı Müstakim and its stance even in the first issues. It seems that two writers of Sırat-ı Müstakim, Musa Kazım Efendi and Eşref Edip, approached the issue passionately while giving night lessons at the Union and Progress club, and they argued that opposition to the government was not everyone's business:

> ... But, alas, this matter became a widespread disease. Nobody knows what to do. Unaccustomed... This situation has been like this before, history shows this. For instance, the student says: Let's go to the Şeyhülislam, to the Bab-ı Ali. Of course, the government deserved this behavior at that time. Because the government was bad. But, do we need it today? It is again like that, what a pity![150]

The Meşruti order, which was created to check the uncontrolled acts of the government, keeps the habits of the *ancién regime* with a new status quo constructed by the new holders of the power. If an interpretation is to be made concerning the government, it should be those who are competent on it, not ordinary people. However, it would be possible to hear a similar argument from the representatives in the former 'istibdat' regime. Thus, the question of what political rights the meşrutiyet rule grants to ordinary people cannot be answered in concrete terms. Reconstructing the Legal/Political Hierarchies used as a discursive strategy is evident in the discussion above. Ulema is no longer the legitimate

149 In this context, see the following studies that examine the relationship between the CUP, the Opposition, and the Ulema very well: İsmail Kara, 'Ulema-Siyaset İlişkilerine Dair Önemli Bir Metin: Muhalefet Yapmak/Muhalefete Katılmak', *Dîvân*, i. 4 (İstanbul, 1998), 1-25; İsmail Kara, 'Ulema-Siyaset İlişkilerine Dair Metinler II: Ey Ulema! Bizim Gibi Konuş!', *Dîvân*, i. 7, (İstanbul, 1999), 65-134

150 *Sırat-ı Müstakim* i. 59, 21 Ekim 1909, pp. 94-95

political actor and no longer possess the legitimate knowledge. This discursive maneuver made by giving reference to Islam as a meta-strategy is used together with legitimization by reference to the West which was the new era's dominant meta-strategy. It should be evaluated in this context that, like Europe, progress and promotion depend on equality among citizens while the opposite represents a decline, like the East.[151]

5.3.2.3 Hükümet-i Teşriiyye: Secularization of Law-Making Process and the Assembly

As we have stated before, the emphasis on the fact that rule of law is a fundamental factor in the development of a country was one of the leading arguments in the debates on the meşrutiyet.[152] The demand was that, since the Ottoman State was ruled by istibdat, the meşrutiyet should be declared and practices as the single way of getting a place within the European states. However, supporters of the meşrutiyet who voiced these demands did not really have a sophisticated idea about the law-making process. Because, adopting the meşrutiyet just as a form and the naive belief that all socio-political and economic problems would magically be solved with the meşrutiyet did not give the opportunity to put the law-making processes and legal procedures on the agenda. Those who spoke, albeit superficially, about law-making[153] intended to resolve the issue by emphasizing fiqh or sharia. However, the practical agenda after 1908 was not so naive, and this issue was intensely discussed both in the public and in the assembly. Especially the amendment process of Kanun-u Esasi in 1909 merits a discussion here again.

Before the inauguration of the assembly, many deputy candidates in the election process declares their pledges to the public through press. An interesting and influential actor was undoubtedly Hüseyin Cahit. Hüseyin Cahit was a strong character in the press in the context of forming public opinion, as he was using the newspaper Tanin, of which he was the chief writer, as the official publication of the CUP. Hüseyin Cahit was

151 Mehmed İzzet Efendi, *Mir'atı-ı Meşrutiyet* (Trabzon: Meşveret Matbaası, 1910), 24

152 Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293]), 2

153 See, Esad Efendi, *Hükümet-i Meşruta*, (İstanbul: Mihran Matbaası, 1876 [1293])

on the Kanun-u Esasi amendment committee, who was an important group in the establishment of a social basis for many policies that the Committee plans to make, and in normalizing them by bringing the public agenda. Even the clerk of the amendment committee before Elmalılı Hamdi was Hüseyin Cahit. As the new form of the Kanun-u Esasi after the amendment was largely the same with the Hüseyin Cahit's electoral pledges on the Kanun-u Esasi amendment, it is necessary to think about the election promises of Hüseyin Cahit.

His first pledge was to try in the Chamber of Deputies, before anything else, for the establishment of the meşrutiyet administration in the country. To this aim, he strove for the amendment of the Kanun-ı Esasi so as to provide a solid and genuine meşrutiyet administration. In this context, according to H. Cahit, if the Kanun-ı Esasi is not amended, the points that would harm the freedom of the country are as follows: i- Ottoman sultans do not take an oath that they would obey the Kanun-ı Esasi; ii- the Grand Vizier is not a member of the parliament (The Chamber of Deputies) contrary to the other countries ruled by the meşrutiyet; iii- the ministers are not liable to the Chamber of Deputies contrary to the countries governed by the meşrutiyet; iv- if the Parliament is dissolved, the elections cannot be made without the need for a separate summons or invitation from the government after two months; v- that the law proposal right is not clearly given to the Chamber of Deputies and Chamber of Notables and the condition of subjecting the bill of law "to the high will of the sultan" not the assembly in contrary to other countries who are governed by meşrutiyet.[154] Apart from them, the abolishment of article 113 (see Appendix B) is already commonly desired.

The final version of the Bill of the Kanun-ı Esasi Committee and the main amendment framework that Hüseyin Cahit recommended and presented as an electoral pledge almost perfectly overtop.[155] What is remarkable here is that there is no reference to sharia or fiqh concerning the law-making process. On the other hand, he repeatedly emphasizes the

154 Hüseyin Cahit, 'Beyanname', *Tanin*, nr. 57, 13 Eylül 1324, pp. 1-2

155 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 188

countries governed by the meşrutiyet as a reference in almost every article he wants to amend. This emphasis suggests that law making processes and parliamentary proceedings should be the same as in the Western parliaments. Obviously, he argues this not as a simple recommendation, but as the basic requirement of the meşrutiyet rule. The inclusion of fiqh or sharia as a central element in the law-making process within the meşrutiyet rule was not mentioned. As Yörük said, at the start of Committee's works, Hüseyin Cahit did not made religious/fiqh reference while listing the methods to be applied and articles to be amended. Obviously, he was even strongly against conducting the Chamber of Deputies negotiations within the framework of fiqh or turning them into a fiqh debate.[156]

While it is claimed that the practices of the Meşruti rule should take Europe, in other words, the countries governed by the meşrutiyet as a model, the natural law paradigm, which is the basic acceptance of the secular law, is matched with the sharia. Kolcalı Abdulaziz's comments on this matter is as follows:

> [The prophet] declared that all human beings are equal in all their natural laws and civil/social laws, regardless of their differences. Thus, he has put an end to the domination and molestation of powerful people, tyrants and despots who claim concession with their veil of wealth, nobility, strength and spirituality. And he extended the legal equality all over the people as the rule of justice.[157]

Thus, Sharia is identified with the Natural Law paradigm implying the similarity of Ottoman society with Europe. The imitation of the meşrutiyet practice of Europe was actually nothing but the application of the universal legal principles. This discursive practice is an example of the selective comparison strategy of the Legitimization by Reference to the West meta-strategy.

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156 Ibid, 187-188

157 Kolcalı Abdulaziz, *Kur'ân-ı Kerîm ve Kānûn-ı Esâsî: Hürriyet, Müsâvât, Usûl-i Meşveret, Hürriyet Ve Hududu* (İstanbul: Vezir Hanı 48 numaralı Matbaa, 1908), 141

Another argument used through the Selective Comparison Strategy is the following judgment that facilitates to match the mentioned natural law paradigm with sharia: The institutions that makes Europe strong are those borrowed from Islam; thus, getting them back from Europe does not mean that foreign elements are imported.[158] According to this argument, Europe's adoption of practices, already existing in Islam, to its political-legal arrangements does not mean that these practices/institutions are non-Islamic.

In the light of the above-mentioned examples, it would not be wrong to say that the legitimization of the meşrutiyet by reference to Europe meta-strategy gained strength and became dominant in the assembly the press during the amendment of Kanun-ı Esasi. As this discursive strategy gets stronger, the emphasis on shariah or fiqh weakens, and those who want to make this emphasis become marginalized. In this context, some bills proposed by some members of the Chamber of Deputies to be applied both in nizamiye courts and in sharia courts are very important. A bill signed by 97 representatives (some of them were opposed to CUP) in the Chamber of Deputies, dated February 9, 1909 (27 Kânun-ı Sâni 1324) emphasized the insufficiency of *Mecelle* and making *public law (kanun-ı umûmî)* through translation from fiqh books. The bill says the following: "… Practicing the the part of the Nizamiye Courts in the Nizamiye Courts and the part of the Sharia Courts in the Sharia Courts and a detailed public law is made with the translation of all of the provisions other than the prayer part of the fiqh books in order to appropriately ensure law to people ..."[159] Among the representatives who made their proposal, there were Islamic scholars (such as Elmalılı Hamdi, Mustafa Sabri Efendi) who strongly defended limiting the rights of the caliph-sultan. However, the striking point is that the number of representatives signing the bill only corresponds to a quarter of the parliament. This ratio gives enough information about what the representatives think about the relationship between the fiqh/sharia and the Meşruti rule. In other words, the majority

158 Ibid, 142

159 MM, I, 1/34, 11 Şubat 1324: *Meclis-i Mebusan Zabıt Cerideleri,* vol. II, pp. 35

of the Muslim representatives did not demand fiqh/sharia to be decisive on the Kanun-u Esasi. This arithmetic gives an idea about the general opinion of the assembly.

The date of the bill is striking, because, the 31 March incident had not broken out yet. The bill shows that there are some doubts not only in the public but also among the representatives in the context of the practices of the constitutional regime and fiqh/sharia relations. If such a bill had been proposed to calm the events that took place on March 31, it would be interpreted it as a maneuver by the parliament to dispel public discontent. However, as we said, this proposal was submitted before March 31, and it came to the agenda of the parliament after amending Article 118 (see Appendix B) which specifies the amendment procedure of Kanun-u Esasi. Since amendents were made to Article 118, it was decided to be forwarded to the *İlmiye* and *Adliye* Committees.[160]

In the meeting of Kanun-ı Esasi Amendment Committee on 21 February 1909, the article 118 which was as *"The laws, customs and traditions in force today will remain valid until they are amended or abolished with the [new] laws and directives that will be enacted in the future"* was decided to be added the following clause: *"The laws and directives will be based on the fiqh and legal provisions, customs and traditions which are 'muamelat-ı nasa erfak ve ihtiyac-ı zamana evfak."*[161] 'The requirements of time' is directly accepted as the ground, and a secular field is defined in the law-making process.

As we have already mentioned at the beginning of the chapter, the fiqh and laws are used as synonyms. Thus, we can say that since this discursive strategy presents law making processes without resorting to fiqh, the amendment in the article 118 codes the 'requirements of time' as the main decisive element. Such decisive element was actually developed not to directly make an authentic law, but to 'localize' the legal rules to be taken from Europe. Because, the following statements expressed by Hüseyin Hilmi Pasha during the declaration of the government program

160 MM, I, 1/34, 11 Şubat 1324: *Meclis-i Mebusan Zabıt Cerideleri*, vol. II, pp.35-36

161 'Kanun-ı Esasi Encümeni', *Sabah*, nr. 6972, 22 Şubat 1909, pp. 1

were not just left in the minutes of the parliament, but they lead a discussion within the parliament and reaction from the public:[162]

> We will analyze widely and deeply the laws of other countries so as to ensure the true and intellectual harmony of laws and directives provided to you and we will duly take the necessary rules from them. Since there are stages of development towards the political excellence achieved by some European states ...[163]

This got negative reaction even in the parliament and the Grand Vizier was asked 'why there is no reference to sharia rules whose power/excellence are globally known' and to say 'the essence of Ottoman State rules is honorable fiqh.'[164] Then, the grand vizier stated that he was misunderstood; they would take into account the special circumstances of the people, and barrow the required rules only. They would not just absurdly transplant, for instance, a French law.

Hüseyin Hilmi Pasha's expressions made even before the amendment of the 118th article caused serious debates among the people, and new public action practices was realized, which had not been seen in Ottoman history. Among these are petition campaigns, each conducted in different places and by different people unaware of each other.[165] The petitions were collected in crowded spaces such as bazaars, Kapalıçarşı[166] and among the ulema[167]. The common point of these petitions collected to be sent either to the authority of religious affairs or directly to the Chamber of Deputies was the desire of the people that 'sharia should be applied and performed' and that 'the laws should be drafted and enacted in accordance with sharia.' Those who apply to this public practice also care about the existence of the meşrutiyet rule and criticize the period of

162 See, Vahdeti, 'Şeyhülislâm hazretlerine', *Volkan*, nr. 50, 19 Şubat 1909, pp. 1

163 MM, I, 1/30, 4 Şubat 1324: *Meclis-i Mebusan Zabıt Cerideleri*, vol. II, pp. 677-678

164 MM, I, 1/30, 4 Şubat 1324: *Meclis-i Mebusan Zabıt Cerideleri*, vol. II, pp. 678

165 See, İttihad-ı Muhammedi Cemiyeti, 'Beyanname', *Volkan*, nr. 58, 27 Şubat 1909, pp. 1

166 'İmza Toplanıyor', *Yeni Gazete*, nr. 191, 1 Mart 1909, pp. 4

167 'Toplanmış İmzalar', *Yeni Gazete*, nr. 192, 2 Mart 1909, pp. 3

istibdat.[168] The desire to express ideas by arranging petition campaigns in the public sphere and to participate in the government by establishing an element of social pressure were not welcomed by the CUP and its supporters. Those who brought freedom did not want the people to be involved in the legislative activity and defined it as *irtica*. This political maneuver which we have previously seen in the purge of ulema appears again. In this respect, the evaluations of Hüseyin Cahit is remarkable.

Hüseyin Cahit completely changed the course of the debate with his article titled "We Want Sharia", published in Tanin on 2 March 1909, which focused the aforementioned acts. Considering its adverse impact on politics as decisive, Hüseyin Cahit reduces the issue of sharia aspect of laws to the concept of *irtica*. This article, which also resonated in the Yıldız Palace, caused a great reaction among Istanbul and the provincial ulema.[169] H. Cahit says that conscientious and pure-hearted Muslims should be enlightened and not allowed to be deceived under the guise of sharia. In the essay, he says the following for sharia rules: *'Concerning the sharia punishments that have not been enforced for eight or ten centuries, the attempts to collect petitions, make provocations, and lead confusion as if the sharia was being violated absolutely show that foreign conspirators are involved in these activities.'*[170] Thus, it is clearly stated that the sharia punishments not applied by the Kanun-ı Esasi had not actually been performed for centuries and implied there was no difference between the Kanun-u Esasi and the old kanunnames. On the other hand, H. Cahit sees the punishments of sharia different from the sharia itself, and when he was referring the 'sharia as a form' he mentioning outside the field of sharia in practice. Hüseyin Cahit who defended a non-shar'i, i.e. secular, lawmaking process by adhering to the sharia as a form, stated this exactly one month ago. When he had written the Kanun-ı Esasi Amendment

168 Mahir Said Pekmen, *31 Mart Hatıraları -İsyan Günlerinde Bir Muhalif-*, (Ankara: TTK, 2014), 71

169 Ali Adem Yörük, *II. Meşrutiyet Döneminde Hukukçuların Meşrutiyet Algısı*, (unpubl. PhD dissertation), (İstanbul: İstanbul Üniversitesi, 2016), 209

170 Hüseyin Cahit, 'Şeriat İsteriz', *Tanin*, nr. 210, 2 Mart 1909, pp. 1

Committee clerk in February 2, 1909: 'The principle that the commission adopts as a guide in the amendment of the Kanun-ı Esasi is the *hakimiyet-i milliye*. There is no single dispute on this matter among the members of commission".[171] That is, the decisive element in the amendment process is nothing but the national sovereignty -hakimiyet-i milliye- (not fiqh or sharia); sharia/fiqh were only reduced to formality.

Elmalı Hamdi claims that the Kanun-ı Esasi or the meşrutiyet would not be accepted by the Muslim Ottoman people unless it has an Islamic form and says: *"Everybody knows that a type of government, administration, or law not in the form of sharia would not be solid in this country even if it is adopted..."*[172] While emphasizing the importance of the form, Elmalılı does not only attach priority to the form like H. Cahit; he underlines that the content should also be in conformity with the sharia/fiqh. But, being aware of the fact that the amendment activity, which would define the character of the meşrutiyet rule, is a struggle for hegemony, he asks the following question:

> It is now time for deeds not words. Our Chamber of Deputies, the consultation assembly, convened. It was even decided to amend the Kanun-ı Esasi. ... Would the meşrutiyet resort support from sharia in details [content] just like in the form? Or it will mind doing so?[173]

To give a clear answer to this question in the chaotic conditions of the period was not possible. However, in his memoirs, Hüseyin Cahit responds:

> … to demand compliance of laws with the sharia means to abolish the people's right to make laws. If the religion is dominant over the world affairs, what is the Chamber of Deputies, having

171 Hüseyin Cahit, 'Kanun-ı Esasi'nin Tadili', *Tanin*, nr. 183, 3 Şubat 1909, pp. 1

172 Elmalılı Hamdi Yazır, *Meşrutiyetten Cumhuriyete Makaleler*, Haz. A. Cüneyd Köksal, Murat Kaya, (İstanbul: Klasik Yay., 2011), 76

173 Ibid, 76-77

> legislative power, for? What would be the place of Christian representatives in such an Assembly? In this context, rising up with the claim that 'we want sharia' was nothing but 'we do not want the meşrutiyet.[174]

On the other hand, as a new political position, emphasize on the fiqh was started to be defined as reactionary.[175] Concernig this matter, Hüseyin Cahit was clear in his essay titled 'We want sharia': ... The reactionary movements started with people like Kör Ali has not yet finalized. This goes on in an ominous sequence. We can't see all parts of a mountain range under the sea. Only the very sharp peaks emerge as an island..."[176]

Against those who want to see fiqh or sharia as the basic principle of the Kanun-u Esasi, the Assembly (more correctly the General Assembly consisting of Chamber of Deputies and Chamber of Notables) emerges as the sole owner of legislation. It has not gone unnoticed that all the discussions mentioned above were held in a very short historical period. The secularization of the legal and political knowledge, or more correctly, the political and legal legitimacy, which we traced throughout this dissertation, was seen more clearly in this period. Some rights of the sultan-caliphs were transferred to the parliament (General Assembly), the Muslim-non-Muslim division was removed legally, and equality was provided on the basis of hakimiyet-i milliye. Although it was a historically highly narrow period, there is also another important theme made in this period where the epistemic fractures were realized with struggles for hegemony: *Kuvve-i Teşriiyye:* With this concept, the power that practice the legislative activity in the Ottoman law where the sharia has decisive role gets a new definition: legislature gets an absolute role in the domination over government.

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174 Hüseyin Cahit, 'Kudretsiz Bir Hükümet - Müvesvis Bir Padişah', *Yakın Tarihimiz*, vol. III, p. 76

175 M. Hilmi (İlmiyeden), 'Şeriat İsteriz Unvanı Altında İstemeyiz Fikri', *Volkan*, nr. 70, 6 Mart 1909, pp. 3-4; nr. 71, 11 Mart 1909, p. 4; [Kemal Paşazade Said], 'Ahvâl-i Siyasiye', *Tercümanı Hakikat*, nr. 10027, 13 Mart 1909, p. 1-2

176 Hüseyin Cahit, 'Şeriat İsteriz', *Tanin*, nr. 210, 2 Mart 1909, pp. 1

The discussions on Kuvve-i Teşriiyye started with the essay of Mustafa Sabri Efendi, titled 'Edebi Tahrir' (11 January 1909), published in *Beyanü'l-Hak* journal. The reason why Mustafa Sabri Efendi brought this issue to the agenda was that the Chamber of Notables used the term Kuvve-i Teşriiyye for General Assembly.

> … a case against the principles of religion and the ethics of sharia is visible in the Chamber of Notables' response to the inauguration speech [of the sultan]. The Chamber of Notables used the term kuvve-i teşriiyye in its response. This is term used by the lawyers, but it is mistaken. And its use is an example of ignoring religion. Teşri' is making of sharia and the only Şari' is the His Holiness Allah. Even calling our prophet (pbuh) as şari' would have a figurative meaning. Thus, one should not use the term kuvve-i teşriiyye for the parliament. To find a terming meeting the objective, one should use kuvve-i kanuniyye or kuvve-i tanzimiyye for the parliament. While even Europeans do not attribute titles of Allah to his servants, unfortunately, the Chamber of Notables did it.[177]

Mustafa Sabri Efendi's criticism is crucial, because directly concerning the law-making process, presenting the parliament as the tashri' (teşri') authority was not a common case in the Ottoman legal-political practice (See Chapter 2). While the concept of *tashri'* is used in the daily language, its scope is limited to *füru'* section of the fiqh; in other words, ulema practically means the *tafri'* field with the concept of tashri' (teşri').[178]

The Islamic understanding of law which was also dominant in the Ottoman state, deems the absolute power of legislation as a divine title. Thus, the absolute power of teşri' only belongs to the Vahy (Qur'an and Sunnah). Therefore, the Muslim rulers does not have an absolute power on legislation. The Shari'ah, as both the practical law and the legal theory

177 *Beyanü'l-Hak*, i. 15, pp. 327

178 İsmail Hakkı İzmirli, 'İslam'da Siyaset', in İsmail Kara, *Türkiye'de İslamcılık Düşüncesi - Metinler/Kişiler-* vol. II, (İstanbul: Risale Yay., 1987), 111

itself, specifies i- how the ruler took power, ii- the personal powers the ruler iii- the application of this power by the rule.[179] However, as we have examined in the above chapters, the sultan-caliph, as the Emirü'l-Müminîn, i.e. leader of Muslims, wields powers to impose punishment and make ictihad in consultation with the ulema.[180] Kanunames and other legal practices, punishments such as ta'zir etc. are in this category. This legal activity area is often defined as tefri'. In this respect, interpreting the General Assembly as the teşri' power, who consists of many sections other than the ulema as well as non-Muslims indicates that a new mentality was arising in the Ottoman legal-political thought.

Manastırlı İsmail Hakkı Efendi responsed to the criticism of Mustafa Sabri Efendi with an essay titled 'Kuvve-i Teşri'iyye', This article was published in the 17th issue of *Beyanü'l-Hak*. Objecting the claims of Mustafa Sabir Efendi, he says: 'Firstly, the Allah Almight is referred as Şar'i not teşri'.' He also cites 13th verse of Surah Ash-Shuraa as an evidence. He adds that teşri' means 'opening and clearing the path'.[181] Referring the lexical meaning, Manastırlı notes that it would not be a problem to use the term 'teşri' for people (deputies). As a pro-Meşrutiyet member of ulema, he sees no problem in using the term kuvve-i teşriiyye for the parliament. Mustafa Sabri Efendi, on the other hand, said that it is not right to approach the issue solely through its lexical meaning, otherwise it would be an epistemic rupture. Resorting to literal lexical meanings means to rely on lexicographers who are not aware of what legal and fiqh problematic are, and it is these authors who are also directly translating laws from Europe. In other words, it is not correct to simplify the issue and believe that concepts from different worlds could simply be translated. This debate continued with a few more articles that repeat same claims written against each other and fell off the agenda.

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179 Ali Fuat Başgil, 'Türkiye'deki Anayasa Hareketleri ve Şimdiki Anayasa', in *Türk Parlamentoculuğunun Ilk Yüzyılı 1876-1976: Kanun-u Esasi'nin 100. Yılı Sempozyumu,* Haz. Siyasi İlimler Türk Derneği (Ankara: Türk Gazetecilik ve Matbaacılık Sanayii, 1976), 3-4

180 Ibid, 13

181 *Beyanü'l-Hak*, i. 17, pp. 381

However, the term criticized by Mustafa Sabri Efendi was not regarded by the General Assembly and it was even got firm place within the legal texts.[182] This term was continued to be used to describe the legislature of the state, and was even included in the first constitution of the Republic.[183] Besides, one should also consider the issue that the Ottoman Civil Law was harmonized with European civil laws. The CUP's employment of the famous Italian lawyer and the orientalist Comte Leon Ostrogog as the special advisor in the Ministry of Judiciary shows the destination of legal activities.[184] While Mustafa Sabri Efendi and some ulema strongly insisted that the duty to reform the legal system should be given to Muslims not to the foreigners their objections were not considered.[185]

Defining the legislative activity without emphasizing fiqh and Shariah means that the state monopolizes the law-making activity. More precisely, the law-making process, which is the epistemic activity field of the ulema, gets under the domination of the state independently of the ulama, and this domination is expressed as the teşri' power.[186] Thus, while the secular activity of the modern state is expressed with sharia-related terms, the form reminds sharia and the content changes. Elmalılı Hamdi, who fiercely defended the meşrutiyet and signed the dismissal fatwa of Abdulhamid II, explained the change of content years later. While explaining the 31st verse of Surah At-Tawbah in his Qur'an tafsir, *Hak Dini Kur'an Dili*, which he wrote upon the request of Mustafa Kemal, he makes important comments on the concepts of *hüküm*, *rab*, *şari'*, and sharia.

> They have taken their rabbis (Jews) and their monks (Christians) as lords apart from Allah.' They became subject to their orders and

182 See, 'Kanun-ı Esasi'ye dair Damat Ferit Paşa'nın Bir Lâyihası', *Tanin*, nr. 525, 18 Şubat 1910, pp. 1

183 *Teşkilat-ı Esasiye Kanunu* (Ankara: Büyük Millet Meclisi Matbaası, 1926), 3

184 Feroz Ahmad, *The Young Turks: The Committee of Union and Progress in Turkish Politics, 1908–1914* (Oxford: Clarendon Press, 1969), 63

185 Amit Bein, *Ottoman Ulema, Turkish Republic: Agents of Change and Guardians of Tradition* (Stanford Junior University Press, 2011), 60

186 Wael B. Hallaq, *Shaia -Theory, Practice, Transformations-* (New York: Cambridge University Press, 2009), 510

> wills not to Allah's orders and will. They worshiped them as if they worshiped Allah, even abandoned Allah and worshiped them, abandoned Allah's orders and obeyed their arbitrary desires, which clearly contradicted Allah's orders. They regarded the things halal in line with their orders, which Allah rendered haram. They did things which Allah said "do not do" and did not do things which he said "do". They did not listen to Allah's orders and prohibitions, but their orders and prohibitions. They considered them as if they were authorized to make judgments and make rules in religion, not as those who obey Allah's orders and who understood and explained the provisions of His religion. They considered them as if they have right to make sharia by themselves and impose religious rules, as if they were the *müdebbir* Lord. They followed their wills and desires.[187]

Although he was a firm supporter of the meşrutiyet, the last sentences of Yazır in the tafsir of the verse clearly shows the meaning of the relationship between the tashri' activity and parliament for the traditional/classical Islamic epistemology: 'After period where the Lord title were given to rabbis and monks, this Lord concession passes from the clergy to the parliamentarians."[188] When we evaluate these statements of Elmalılı Hamdi Yazır on the theoretical ground that we discussed in Chapter 2, it becomes clear that Ottoman political-legal knowledge has transformed gradually and has been more secular and less traditional as a result of the debates around the concept and practice of the Meşrutiyet.

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187 Elmalılı Muhammed Hamdi Yazır, *Hak Dini Kur'ân Dili*, vol. IV, (İstanbul: Eser Kitabevi), 2513-2514

188 Ibid, 2515

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Conclusion

Ottoman political-legal thought encountered a different practice and concept in the second half of the 19th century. This encounter did not continue with a direct and radical break, but rather with a process that made mutual interaction possible. The aforementioned new practice/concept, with what we have as a demand of Meşrutiyet (constitutional monarchy), first started to be discussed with reference to the practical/classical Ottoman political thought. For this reason, Ottoman political-legal thought did not undergo a radical break; instead, differentiation over a long period of time has been experienced.

Demands for the Meşrutiyet/constitutional monarchy were first voiced by the New Ottomans during the reign of Sultan Abdulaziz. Afterwards, the constant discussion of the Constitutional regime -overtly or indirectly- became the defining criterion of the Abdülhamid II period. In this period, there is either opposition to the Constitution or demand for the Constitutional Monarchy. Despite censorship and many similar practices, this issue has never fallen off the agenda.

When it was not possible to discuss publicly in the capital or in the Ottoman lands, the exiled actors used to make this discussion. In this dissertation, the debates around the concept of Meşrutiyet between 1860-1911 were examined. CDA (Critical Discourse Analysis) of these discussions was done on written texts. Through Critical Discourse Analysis, the concept of Meşrutiyet -and its regime- was

put forward and explained how politics and law was theoretically secularized in the period between 1860 and 1911.

The demands for the constitutional regime reveal the mentality change in the political-legal thought. However, this did not take place in a linear (and absolute) process from the traditional to the modern, as the modernization paradigm assumes. The struggle for hegemony among the debating actors has been the main factor determining where the concept will evolve in practice. Those who are victorious in the struggle for hegemony have made the political situation they live in absolute and had ignored their own historicity/actuality. However, if their victorious struggle for hegemony had ended in another way, we would be destined to face another historical situation (or historical *telos*) today. That is, historical situations do not absolutely 'flow' on a predetermined course towards a certain end. In addition to this historical teleological reading, it also renders the actions/struggles of the actors unimportant. Therefore, it is necessary to evaluate carefully the debates around the concept and regime of the Meşrutiyet from today's perspective.

Our main argument in this study is as follows: Concepts borrowed by analogy bring their own epistemic assumptions. As such, where modern concepts taken by analogy conflict with the traditional meanings, it is not the traditional meaning but modern practice that is preferred. Accepting modern concepts as the same as traditional concepts through analogy actually modernizes the content of these traditional concepts. In other words, it is not enough for the 'meaning' to remain traditional by just keeping the 'form' traditional. This is also what is theoretically consistent. Because if it is remembered that western hegemony dominates the whole world[1] - not only economically but also culturally - it becomes obvious that borrowing the concepts of the hegemon is actually accepting the epistemology of the hegemon. In the historical period we examined, the practice of constitutional monarchy was defined with the concept of Meşrutiyet/constitutionalism and defended through traditional Ottoman political-legal concepts. However, this

1 Immanuel Wallerstein, *The Modern World-System IV: Centrist Liberalism Triumphant, 1789–1914* (Berkeley: University of California Press, 2011)

modern practice transcended the analogy and allowed the theoretical thought of secular politics-law.

It is possible to collect the discourses that emerged in the written texts about the concept and practice of the Meşrutiyet under two meta-strategy: i. Legitimizing the Meşrutiyet regime by referencing Islam; ii. Legitimizing the Meşrutiyet regime by referring to the West. These two meta-strategies are supported by many different discursive strategies and discursive techniques. The discursive strategies used to legitimize the constitutional regime are very diverse. While some of these strategies are completely independent of each other, some of them are interrelated, even intertwined and support each other. For example, *redefining basic Islamic concepts* and, *presenting modern concepts with Islamic terminology*. These two strategies actually feed each other and allow another discursive strategy, which is *establishing a new political theory*.

Legitimizing the Constitutional monarchy regime by referring it to Islam is, as another discursive strategy, accomplished by highlighting some concepts of Ottoman political-legal thought, including *Siyaset, Siyaset-i Şer'iyye, Şura, Meşveret, Kanun*. Thus, *identifying the Meşrutiyet and constitution with Shariah* is a main referenced strategy. These concepts or political-legal practices that we have mentioned are those that traditional Ottoman political-legal thought is very familiar with. Here, their main argument was as follows: Meşrutiyet is not actually a new form of government; it is the same political practices that the Ottoman state has done for centuries. Thus, an analogy was established between these concepts we have mentioned and the practice of constitutional monarchy, and practices that are the product of different historical experiences (of the West) were accepted as if they were the same.

In the pre-modern period, as we showed in Chapter 2, the concepts of Siyaset or Siyaset-i Şer'iyye describe the legal practices applied in situations where the sharia does not give a definitive verdict. These practices are embodied in the Kanunname tradition in the Ottoman history. The new laws that the sultan created on the basis of sharia are not actually different legal practices that are independent of sharia. These legal practices, which mainly correspond to the field of public law, are cited as examples in the

constitutional debates, emphasizing that the Constitutional regime will actually perform the same thing. However, the political-legal practice of the constitutional regime in 1908 and later did not follow such a path. In particular, leaving aside the distinction between the millet-i hakime and milleti mahkûme, in which the Ottoman society was fundamentally differentiated as a legal order, it has come to the fore that all subjects of the state, which is a modern citizenship practice, should be 'equal elements'.

As discussed in detail in Chapter 3, all non-Muslim Ottoman subjects, who are not normally covered by the concept of Ummah, have begun to be evaluated within the scope of the concept of Ummah in the discourse of the New Ottomans. As a discursive strategy, both Islam is referenced and also a new practice is demanded. Those who want the Constitutional Monarchy ignore the difference between Muslims and non-Muslims among the Ottoman population and demand a legal understanding in which all are considered equal. When the ummah, an Islamic concept, was expanded to include all the Ottoman people, it was assumed that the legal practices that the ummah indirectly revealed as an Islamic concept would also be Islamic in the form. Similar approaches were true for other concepts/practices like şura, meşveret, etc. Whereas, in the pre-modern era, almost all of these concepts (as shown in Chapter 2) were basically practiced on the ground of legitimacy given by the sharia. And this ground did not consider all the Ottoman people as equals as the objects of law. This approach was weakened through the constitutional practice after 1908 and the new conditions facilitated the secularization.

SECULARIZATION AND DEMOCRATIZATION

As discussed in Chapter II, scholars who embrace the modernization paradigm assume that with urbanization (modernization) religion would decline, and secular ideologies will replace it.[2]

[2] Talcott Parsons, *The Social System* (New York: Free Press, 1951); Robert Bellah, *Beyond Belief: Essays on Religion in a Post-Traditional World* (New York: Harper & Row, 1970); Robert Bellah, *The Broken Covenant: American Civil Religion in Time of Trial* (New York: The Seabury Press, 1975); Mark Gauchet, *The Disenchantment*

According to them the religion will lose its importance for the individual and its public significance will disappear in the struggle between secular powers (politics) and religion. On the other hand, the alternative ap-proach to secularism claims that at the individual level religion is more emphasized, in the modern period than previously, when superstition dominated in the West. This approach suggests that the individuals have come to embrace religion in his/her private sphere and preferences as a result of diversity of beliefs in the supply side with urbanization and modernization.[3]

In the first approach, the definition of secularism as a field of struggle between the two different powers has led to the emergence of the following dualisms: Modernity vs. Tradition, Progressiveness-Reactionism (İrtica), and Enlightenment-Medieval Darkness. Historians who defended the theory of modernization, such as Tarık Zafer Tunaya, Bernard Lewis, Niyazi Berkes, Feroz Ahmad put these oppositions in the center of their historiography. Thus, for them, it becomes easier to present the Constitutional Monarchy and all the developments belong to it as the struggle between 'enlightened supporters of the modernization' and 'anti-modernization reactionists'[4] or between 'progressivists' and 'reactionists/şeriatçılar'.[5] This approach highlighted the historical consequences of these dualisms, such as 'breaking from tradition' and 'transition to modernity', as absolute.[6]

This dissertation has shown, however, that secularization in Turkey was relative and hybrid: though we observe a decline of

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of the World: A Political History of Religion (Princeton, NJ: Princeton University Press, 1997); Peter Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor Books, 1967)

3 Roger Finke and Rodney Stark, 'Religious Economies and Sacred Canopies: Religious Mobilization in American Cities, 1906' *American Sociological Review*, vol. 53, 1988, no. 1, 41

4 Feroz Ahmad, *Making of Modern Turkey*, (London: Routledge, 1993); Bernard Lewis, *The Emergence of Modern Turkey* (London/New York: Oxford University Press, 1961)

5 Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1998[1964])

6 Tarık Zafer Tunaya, *Devrim Hareketleri İçinde Atatürk ve Atatürkçülük* (İstanbul: Turhan, 1981)

Islam's influence on politics, this never amounted to a complete disappearance. More significantly, secularization (and modernization steps in general) was mostly legitimized and made possible with reference to Islam. Thus, the constitutional monarchy established in 1876 and 1908 resulted in the gradual and partial (rather than absolute) replacement of the Sharia as the main framework of law and politics, but this was achieved to a great extent with the mobilization of Islamic law and history. Therefore, as discussed in detail, this partial secularization was a process was a result of largely internal dynamics of Islamic law and culture. An intense use of Islamic discourse enabled this political-legal transformation.

This process also concerns, in addition to Secularization, Democratization, which is another crucial concept of modern political thought.. Three approaches conceptualize democratization in the literature. Two of them are 'structuralist' (modernization theory and Marxist view) while the last one is 'the agency approach' (or transition studies). According to the modernization theory, modernity is a single universal experience that results inessentially similar societies and states. "As a theory of change, modernization is functionalist and economistic, in that it sees democracy as an outcome of the capitalism."[7] Seymour Martin Lipset, the main theorist of Modernization theory, asserts that increasing the stage of urbanization of the society, increasing (secular) high educational standards of the society, as well as increasing economic development, will lead to democratization.[8] In the Marxist approach, a state's mode of production, whether it has a strong aristocracy or feudal tradition, and the contradictions between the bourgeoisie and the

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7 Jean Grugel and Matthew Louis Bishop, *Democratization -A Critical Introduction-*, (London: Palgrave Macmillan, 2014) 76. Though Grugel and Bishop designate this structuralist approach as "historical sociology," this is clearly a mistake as historical sociology entails not just the Marxist perspective(s) but also Weberian (e.g. Tilly 1990, Mann 1986) and rational-choice (Kiser & Hechter 1991) approaches, which cannot be simply called structuralist.

8 Seymour Martin Lipset, 'Some Social Requisites of Democracy: Economic Development and Political Legitimacy', *American Political Science Review* 53 (1) (1959), pp. 69-10

working class are the factors that directly affect democratization.[9] This approach admits a significant role to the collective actors. According to it, social change emerges in the relationship between the state and classes. Thus, this approach traces the transformation of the state through class conflicts.[10] In the last approach called the Transitionalist (or the agency), democratization is examined within a bargaining process between the political elites. According to it, the democratization of states and changes in the regime occur as a result of bargaining and power balances between the elites in the system.[11]

In the context of the Ottoman Empire, democratization took place predominantly at the state level where some democratic institutions (Parliament, Constitution, elections, etc.) had emerged. However, it was not a consequence of the end of a process that ordinary people were involved in and struggled to construct. Democratization did not occur because of the changes in the economic structure as a result of the rise of capitalism and industrialization, or since the social structure was forced to change by class struggle. In other words, it is not possible for democratization to emerge just because people have a desire to achieve it. Although structural factors such as industrialization, urbanization, and the rise of economic development and welfare as well as the increase in secular educational institutions have different effects, the main determinant of this process was the intra-elite struggle. More specifically, the constitutional regime was created and re-created (in 1908) as a result of the struggle for political hegemony within the Ottoman "ruling class," primarily between the Palace and the Bab-ı Ali, the state (military and civil) bureaucracy, as well as their supporters in the civil society, mainly the ulema and journalists. Many pro-Meşrutiyet actors even argued that the state should be run by a "privileged group" (fırka-i mümtaze), rather than the masses. Thus,

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9 Barrington Moore, *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, (London: Penguin Books, 1966) 430-431

10 Jean Grugel and Matthew Louis Bishop, *Democratization -A Critical Introduction-*, (London: Palgrave Macmillan, 2014) 81-82

11 Dankwart A. Rustow, 'Transitions to Democracy: Toward a Dynamic Model', *Comparative Politics* vol. 2, no. 3, (New York: City University 1970), pp. 337-363

since it is an intra-elite struggle, the re-proclamation of the Meşrutiyet could not be defined as a "social revolution" (in the sense in which Skocpol defines it [see Skocpol 1979]), as it did not fundamentally alter the social-class structure of the Ottoman society. However, it might be called a "political revolution" as there is obviously a regime change.

The basic assumption of the advocates of the modernization theory is that the actors who supported the Meşrutiyet put up a 'conscious' struggle for secularism and democracy, which implied the weakening of the "tradition." Aside from the weakness of its analytical explanatory capacity and the fact that it is a crude and formalistic approach, such a reading prevents us from understanding the actors in the mentioned period. This is because the secularization of political and legal thought in the Ottoman Empire was not as likely as this approach assumed. Even the actors advocating secular policies frequently referred to religion as a source of legitimacy. Those who advocated the equality of all citizens on a secular basis, did this by giving religious references, too. In other words, secularization were like the two sides of the coin: On one side, while the basic legitimacy of law-politics gradually became secular, the discourses of the actors continued to be religious, on the other.[12] Moreover, not all those who supported the new constitutional regime were "secularist;" most ulema and religious intellectuals, too, were in favor of it and harshly against the Hamidian despotism. All groups involved in this quarrel incorporated this essentially religious discourse in their political struggle via different strategies and techniques that I discussed throughout the dissertation. Therefore, the political-legal processes of secularization in this period had a hybrid character, and can be said to have indicated more a continuity than a radical break.

META-STRATEGY AND DISCURSIVE STRATEGIES

12 Talal Asad, "Muslims and European Identity: Can Europe Represent Islam?" in A. Pagden (ed.), *The Idea of Europe: From Antiquity to the European Union* (Cambridge: Cambridge University Press, 2002), 193

While the basis of legitimacy was already Sharia, a new law-creating authority, national sovereignty (hakimiyet-i milliye), had emerged at the end of this period. Non-Muslims, whose legal existence is in the status of Dhimmi, could not be involved in the process of creating law in the pre-modern period, they could only continue their lives within the framework of the rights granted to them by the Islamic Sharia. The Non-Muslims were solving their legal problems in the social life, under the supervision of clergy, on the basis of their own religious law. With the coming to the agenda of the constitutional monarchy, this legal difference begins to be eroded.

While the efforts to legitimize the Meşrutiyet by referring it to Islam from the 1860's to 1911 continued, this meta-strategy was partially weakened in the process and efforts to legitimize the Constitutional Monarchy with reference to the West has increased. However, the strategy of referencing Islam was never abandoned, and even continued until 1911 and beyond. Such as, discursive strategies *drawing on the ulema's prestige for legitimization* and *giving references to sacred texts* were used. But while this is going on, as we have shown in this dissertation -especially in Chapter 5-, Shari'a, as the main ground of legitimacy in the law creation process in 1908 and later, loses its central position and was gradually replaced by the secular concepts of hakimiyet-i milliye and hükümet-i teşri'iyye. The strategy that allowed the emerging of these two concepts was *'presenting modern concepts with Islamic terminology*'. In order for these two concepts to occupy the central place, the place and rights of the sultan-caliph in traditional Ottoman political-legal thought should be discussed. The right of the sultan-caliph to make laws within the scope of Siyaset/Siyaset-i Şer'iyye should be taken away and given to another authority. This was also realized in the constitutional debates between 1860-1911, and although the supporters of Meşrutiyet claimed that the traditional rights of the sultan-caliph would be protected during most of the period; this was realized at the end of the period. With the amendment made in Kanun-u Esasi in 1909, the traditional rights of the sultan-caliph were taken away and given to the parliament -the assembly consisting of Muslims and non-Muslims-. Thus, the emirü'l-müminin, or the caliph of the Muslims, could be limited by a parliament where Muslims and non-

Muslims were mixed. On the other hand, non-Muslims can be involved in the making of laws that regulate the lives of Muslims by being included in the law-making process. The strategy of *'reconstructing the legal/political hierarchies*' has made this possible. This is not something we can witness in traditional Ottoman politics-law practice. However, the theoretical ground that gives legitimacy to this is, as we mentioned above, that the concept of hakimiyet-i milliye has become the basic legitimacy.

The secularization of the political-legal legitimacy ground after 1908, especially in the period between 1909 and 1911, provided an epistemic, legal and political opportunity for the westernization movements carried out in the first years of the Turkish Republic. Because almost all of the Republican elites, especially M. Kemal and his colleagues, were the actors who have been in the constitutional struggle we discussed above. These actors witnessed how discursive strategies were constructed, the aforementioned debates and the struggle for hegemony, which we examined in Chapters 3, 4 and 5, and they even entered this struggle, and used similar strategies in the Caliphate debates, as Nurullah Ardıç showed.[13]

Therefore, it can be said that the debates around the concept of Meşrutiyet led to legal secularization, which made it possible to institutionalize political secularization through the institution of the caliphate in the caliphate discussions.

We said that we define the differentiation of the aforementioned ground of legitimacy as Secularization in our thesis. However, in our study, we do not consider secularization as a necessary/absolute process. In other words, the issue of political-legal secularization was not an inevitable situation. If that were the case, all the actors demanding Meşrutiyet would have to stay away from religious references. Yet, in practice, the opposite happened, and the emphasis on Islam in the discursive strategies of the actors who defended the Meşrutiyet continued throughout the whole process. However, this process has been shaped in the struggle for hegemony between the actors. The actors struggling for the establishment of the

13 Nurullah Ardıç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernization in the Early 20th Century* (Routledge, 2012)

constitutional regime did not have a homogeneous structure in terms of both the social strata they came from and their political visions. Considering that there is no homogeneity among the actors, it becomes clear that it was necessary to evaluate the actors and their efforts in detail, who demanded legitimacy but were also against secularization.

We could not undertake such an effort here, which would greatly expand the scope of our study. In other words, the fact that the actors who were against political-legal secularization despite their demand for Meşrutiyet lost the struggle for hegemony after 1908, which led to the secularization of the Ottoman constitutional practice in 1909 and later. The elimination of actors such as Elmalılı Hamdi Yazır, Mustafa Sabri Efendi, Şeyhülislam Musa Kazım, Zeynelabidin Efendi, etc. from the political decision-making bodies after 1909 and later caused the realization of the Constitutional practice in only one aspect. The mentioned actors were the main ones who legitimized the Constitutional regime by skillfully referring it to Islam as a discursive strategy. All the leading figures of the CUP fought for constitutionalism by using the epistemic efforts of these actors (ulema and intellectuals) since in the period of 1908 and after, most of the arguments used to legitimize the Constitutional regime by referring to Islam appeared in the texts of these names. However, as we examined in detail in Chapter 5, the secularizing moves of the CUP's law-making process and its subsequent elimination left these actors out of action.

The scope of this study is limited to reveal the secularization of politics and law as a result of the political modernization from the 1860s to 1910s focusing on the debates in the Ottoman empire that mostly took place in Istanbul, the Ottoman political and religious center. I could not delve into the constitutional debates in different regions in the same period, for example, Iran, the Arab world (such as Egypt and Syria), Russia, and the Balkans. To better understand what kind of path secularization followed with the Constitutional Monarchy in the non-Western world, it is necessary to look at the constitutional debates in the mentioned regions comparatively. Comparing the Ottoman with these will make our case more

understandable. This comparison will surely yield very important and worthwhile outcomes.

The actors -in Ottoman political debates on the Meşrutiyet- we have mentioned above were recommending to take the political-legal concepts, which are the products of the West's own historical experience, by analogy. Therefore, we understand from what they wrote in the later period that they were not aware of the secularizing power of this activity. Both the statement given by Şeyhülislam Musa Kazım Efendi in the 'divan-ı örfi', the writings of Mustafa Sabri Efendi after the World War I, and Elmalılı Hamdi Efendi's views on the parliamentary system we used at the end of chapter 5 are cases in point. It is obvious that the practice of Meşrutiyet in their minds was very different from that of the CUP elites. If the eliminated actors, not the CUP elites, had won the hegemonic struggle, what kind of constitutionalism practice would have emerged? This is an important issue to work on, since the political-legal policies/maneuvers in this period deeply affected the republican period. The progress of new studies on this route will make it easier to understand both the late Ottoman political-legal thought and the early republican Turkey era.

Appendix A Table of Meta-Strategy, Discursive Strategies and Discursive Techniques

Meta-Strategy	Strategies	Techniques	Arguments
A- Deriving Legitimization from Islam	i- Identifying the Meşrutiyet and Constitution with Shariah	Invoking the Sharia as the basis of the Meşrutiyet	
		Establishing the Sharia as the Protector of the rights of non-Muslims	
		Linking the Popular Surveillence of the State to the Sharia	Meşrutiyet will assure the control and suveilleance of the state by the people as required by the Sharia.
		Connecting the Meşrutiyet with Ending Arbitrary Practice of Law	Lawlessness is actually people's interpretation of the law according to their own will, which the Meşrutiyet prevents by making the laws clear.
		Justifying the receprion of European laws with reference to the Nass	Receiving the laws taken from Europe in a way that will be in compliance with the nass and not oppose the nass
		Using Kanun-u Esasi synonymously with Fiqh, Kanun, and Sharia	
		Establishing the Meşrutiyet as a necessary condition for Islam's survival	
		Limiting 'Liberty and Consultation'with the Sharia	
		Stuating Despotism against the Ahkam-ı Şeriyye	
	ii- Drawing on the Ulema's prestige for legitimization	Emphasising the presence of ulema-deputies in the Parliament	
		Referencing to the supervisory role of the classical ulama	the ulema provided supervision and control in the periods when the Ottoman Empire was strong.
			Ulema replaced by MP's
		Distinguishing the superior position of the ulema vis-à-vis the people	Implying that those emphasizing sharia are not truly religious
			Expressing that Sharia already exists and that the Ulema support the Kanun-u Esasi
		Undermining the opponents' moral and political legitimacy	Defining everyone who is anti-constitutional as a re-actionary

Meta-Strategy	Strategies	Techniques	Arguments
A- Deriving Legitimization from Islam	ii- Drawing on the Ulema's prestige for legitimization	Undermining the opponents' moral and political legitimacy	Defining those who oppose the Meşrutiyet as those who benefit from the status quo
			Individualizing the objections to the Kanun-u Esasi, claiming that the general ottoman public tacitly accepted it
			Positioning the parliament as a balancing element between the Caliph and the People
	iii- Giving References to Sacred Texts	Abstracting the concepts from their cotext and context	Explaining the interlocutor in the verses as all Ottoman subjects
			Understanding the pronoun 'hum/they[them]' in the verses as everyone
	iv- Redefining the Basic Islamic Concepts	Identifying the Ottoman society with Islamic Ummah	Citizenship
			Equality
		Identifying the Ijma with consensus	Dominance
			Meşrutiyet
		Identifying Justice with Equality	Being dhimmi = Cruelty
			İstibdat
		Re- Presenting Islam as fully open to progress and innovation	
		Identifying Biat (Allegience) with Social Contract	
		Identifying Istibdâd with oppression, bigotry, and disunity	Claiming that istibdat and 'justice' are in absolute opposition
			Saying that İstibdat is the root of all evil
		Including non-Muslims in 'Ehlulhal wa'l-aqd'	Including all the deputies
			Including all non-Muslims
		Presenting Consultation as an absolute value	Making consultation obligatory
			Parliament + Constitution

Meta-Strategy	Strategies	Techniques	Arguments
A- Deriving Legitimization from Islam	iv- Redefining the Basic Islamic Concepts	Presenting Consultation as an absolute value	Claiming that consultation has been used not only by Muslims but also by many different nations in the past
			Saying that not everyone has the conditions to participate in the consultation
	v- Presenting Modern Concepts with Islamic Terminology	Identifying Meşrutiyet with Shura	
		Identifying Kanun-u Esasi with Sharia	
		Identifying İcma-ı Ümmet with Popular will	
	vi- Presenting Selective Examples from History	Presenting Examples from Early Islamic History	Saying that Islam gives the right/responsibility of inspection to all people, not just Muslims.
			Islam has always been constitutionalist in history; In fact, democracy has always existed in the past of Islam.
			Using the opinions of important figures from Islamic history about the şura as a reference
		Presenting Examples from Classical Ottoman History	The Ottoman Empire Was Already Ruled by the Meşrutiyet
			The Kanuns of the Previous Sultans Allow the Meşrutiyet
			Emphasizing that the institutions in the heyday of the Ottoman Empire were in line with the rational and religious wisdom, but this was corrupted by İstibdat
	vi- Presenting Selective Examples from History	Presenting Examples from Classical Period of Ottoman History	Claiming that the Ottoman Empire would set an example and leader for the Islamic World with the constitutional order.
		Making up non-existant historical events	

Meta-Strategy	Strategies	Techniques	Arguments
A- Deriving Legitimization from Islam		Abstracting historical events from their proper context	
	viii- Devising a Hybrid Political Theory	Inserting the Constitutiobalism vs. Despotism dichotomy into Islamic political theory	
		Emphasizing Separation of Powers as already Islamic	
		Presenting Popular Consent as a pre-condition for law making	The Discovery of 'Social Consent': These laws cannot be considered legitimate laws since the people are not consulted while making laws in the regime of istibdat
		Situating Despotism as contrary to human nature	Istibdat destroys the brotherhood between people
		Defing Despotism as Reactionary	In the tyranny regime, enlightened people cannot grow to enlighten the people.
		Emphasizing the Right to Resist against authority	
	ix-Reconstructing Legal/Political Hierarchies	Reducing the Caliph's status to a Temporal Ruler	Biat= Socil Contract
			The Caliph is the Officer of the Ummah
	ix-Reconstructing the Legal/Political Hierarchies	Turning the Caliph-Subjetct hierarchy upside down	To assert that the caliph has no absolute authority over the nation, but that the nation has the right over him
		Equalizing the Calph's status with that of Parliament	Caliph's Authority should be constrained
			Non-Muslims also have a say/authority over the caliph
		Rejecting the Muslim—Non-muslim hierarchy	Ignoring the Legal Difference between Muslim and Dhimmi
			Declaring that all nations are legally equal
		Reducing the Şeyhülislam's status to that of (Muslim—Non-muslim) Minister	Minister = Şeyhülislam
			Non-muslim = Şeyhülislam

Meta-Strategy	Strategies	Techniques	Arguments
B- Legitimization with Reference to the West	i- Power-Centered Perception of Europe	Presenting the Meşrutiyet as a pre-condition of strong state like the European Powers	i- The all-Powerful States are European… ii- The form of government directly affects the unity and solidarity among its subjects.
		Portraying the Parliament as the Major Barrier to nationalist separatism	
	ii- Advancing a Progressive view of Society	Defining the Law as the main criterion infor Socio-political Progress	
		Describing citizenship as the main element of European progress in contrats to East	
		Depicting the Consultation as an integral part of civic and political progress	
		Assosiating the Meşrutiyet with Progress and its absence with Regress	
	iii- Making Selective Comparisons	Depicting the European Constitutionalism as rule of Elites (Fırka-i Mümtaze)	The administration of the Fırka-i Mümtaze means the execution of Meşrutiyet on behalf of the people which the Eorupeans practice.
	iii- Making Selective Comparisons	Justifying the similarity between the Meşrutiyet and European regimes by identifying the Sharia with natural law	
		Tracing the roots of modern European political institutions to Islamic civilization.	All the reasons/institutions that make Europe strong are actually what Europe takes from Islam, so taking them from Europe does not mean importing foreign things.
		Linkining the constituional reform to European advancement	In order to catch up with the advanced European countries, the government and society like them need to be reformed. With the Constitution, first the government and then the people will be reformed.
		Presenting the Meşrutiyet as pre-condition for political and military power	Trying to eliminate criticism by arguing that the period was very sinister and expressing the need for the Meşrutiyet for being powerful
		Justification with reference to the 'Requirements of the Time'	

Appendix B The Ottoman Constitution (23 December 1876)

The Ottoman Empire

Art. 1. The Ottoman Empire comprises present territory and possessions, and semi-dependent provinces. It forms an indivisible whole, from which no portion can be detached under any pretext whatever.

Art. 2. Istanbul is the capital of the Ottoman Empire. This city possesses no provilege or immunity peculiar to itself over the other towns of the empire.

Sultan, "Supreme Caliph"

Art. 3. The Ottoman sovereignty, which which includes in the person of the Sovereign the Supreme Caliphat of Islam, belongs to the eldest Prince of the House of Osman, in accrodance with the rules established ab antiquo.

Art. 4. His Majesty the Sultan, under the title of "Supreme Caliph," is the protector of the Muslim religion. He is the sovereign and padişah (emperor) of all the Ottomans.

Art. 5. His Majesty the Sultan is irresponsible; his person is sacred.

Art. 6. The liberty of the members of the Imperial Ottoman Dynasty, their property, real and personal, ad their civil list during their lifetime, are under the guarantee of all.

Sovereign Rights of the Sultan

Art. 7. Among the sovereign rights of His Majesty the Sultan are the following prerogatives: - He makes and cancels the appointments of ministers; he confers the grades, functions and insignia of his orders, and confers investiture on the chiefs of the privileges provinces, according to forms determined by the privileges granted them; he has the coining of money; his name is pronounced in the mosques during public prayer; he concludes treaties with the powers; he declares war and makes peace; he commands both land and sea forces; he directs military movements; he carries out the provisions of the Şeriat (the sacred law), and of the other laws; he sees

to the administration of public measures; he respites or commutes sentences pronounced by the criminal courts; he summons and prorogues the General Assemly; he dissolves, if deems it necessary, the Chamber of Deputies, provided he directs the election of the new members.

Public Rights of the Ottomans

Personal Liberties

Art. 8. All subjects of the empire are called Ottomans, without distinction whatever faith they profess; the status of an Ottoman is acquired and lost according to conditions specified by law.

Art. 9. Every Ottoman enjoys personal liberty on condition of non interfering with the liberty of others.

Art. 10. Personal liberty is wholly inviolable. No one can suffer punishment, under any pretext whatsoever, except in cases determined by law, and according to the forms prescribed by it.

Religion

Art. 11. Islam is the state religion. But, while maintainig this principle, the state will protect the free exercise of faiths professed in the Empire, and uphold the religious privileges granted to various bodies, on condition of public order and morality not being interfered with.

The Press

Art. 12. The press is free, within limits imposed by law.

Art. 13. Ottomans have the power of forming commercial companies, industrial or agricultural, within limits imposed by law and statute.

Right of Petition

Art 14. One or more persons of ottoman nationality have the right of presenting petitions in the proper quarter relating to the breaking of law and regulation, done either to their own or public detriment, and may likewise present in protest signed petitions to the General Ottoman Assembly, complaining of the conduct of state servants and functionaries.

Education

Art. 15. Education is free. Every Ottoman can attend public or private instructions on condition of conforming to the law.

Schools

Art. 16. All schools are under state supervision. Proper means will be devised for harmonizing and regulating the instruction given to all the Ottomans, but without interfering with the religious education in the various districts.

Equality before the Law, Public Offices

Art. 17. All Ottomans are equal in the eyes of the law. They have the same rights, and owe the same duties towards their country, without prejudice to religion.

Art. 18. Eligibility to public office is conditional on a knowledge of Turkish, which is the official language of the State.

Art. 19. All Ottomans are admitted to public offices, according to their fitness, merit, and ability.

Taxes

Art. 20. The assessment and distribution of the taxes are to be in proportion to the fortune of each taxpayer, in conformity with the laws and special regulations.

Property

Art 21. Property, real and personal, of lawful title, is guaranteed. There can be no dispossession, except on good public cause shown, and subject to the previous payment, according to law of the value of the property in question.

Inviolability of Domicile

Art. 22. The domicile is inviolable. The authorities cannot break into any dwelling except in cases prescribed by law.

Tribunals

Art. 23. No one is bound to appear before any other than a competent tribunal, according to statutory form of procedure.

Property. Forced Labour. Contributions in Time of War

Art. 24. Confiscation of property, forced labour ("corvée"), and taking temporary possession of property are prohibited. Nevertheless, contributions lawfully levied in time of war, and measures rendered necessary by the exigencies of war, are exempt from this prevision.

Taxes and Imports

Art. 25. No sum of money can be exacted under the name of a tax or impost, or under any other title whatever, except by virtue of law.

Torture and Inquisition

Art. 26. Torture and inquisition, under any form, are wholly and absolutely forbidden.

Ministers of the Crown

Art. 27. His Majesty may appoint as Grand Vizier and Şeyhü'l-İslam whomsoever he confides in, and thinks right to nominate to those posts.

The other ministers are appointed by Imperial Decree (İrade)

Art. 28. The Council of Ministers meets under the presidency of the Grand Vizier.

All weighty state affairs, whether domestic or foreign, come within the competency of the Council of Ministers. Those of their measures, which must be submitted for the approval of His Majesty, are made law by Imperial Decree

Art. 29. Each head of department, within the limits of his powers, carries out the measures, which appertain to his Department. In matters without this limit he must have recourse to the Grand Vizier.

The Grand Vizier takes action on the measures presented to him by the heads of departments, either by referring them, if need be, to the Cabinet, and then presenting them for the Imperial sanction; or, on the other hand, by deciding on them himself, and referring them to the decision of His Majesty the Sultan.

Special enactments will, in the case of each department, determine under which of the preceding heads the various business is to be distributed.

Art. 30. The ministers are responsible for decisions or acts under their management.

Art. 31. If one or more members of the Chamber of Deputies wish to lodge a complaint against any Minister, by reason of his responsibility, and with reference to matters within the Province of the Chamber, the petition and complaint must be handed to the President, who will refer it within three days to the Committee appointed by the rules of the House to investigate the charge, and determine whether it be right to submit the same to the decision of the Chamber. When the necessary investigation has taken place, and explanations have been laid before them by the Minister interested, the decision of the Committee will be taken by the vote of the

majority. If the Committee advise that the complaint be laid before the Camber, their report containing this decision is to be read at a public sitting, and the Chamber, after hearing the explanations of the accused Minister who shall be summoned to appear, or of his representative, will vote on the question at issue, a majority of two-thirds being requisite for a decision. In the event of the adoption of Committee's Report, an address praying for the trial of the Minister is to be transmitted to the Grand Vizier, who will submit it for the sanction of His Majesty the Sultan, and remit it to the High Court by virtue of an Imperial İrade.

Art. 32. A special law will settle the forms of procedure to be followed for the trial of Ministers.

Art. 33. There shall be no distinction between Ministers and private individuals in respect of private suits, which do not relate to their functions. Causes of such nature are to be referred to the ordinary Tribunals.

Art. 34. The Minister whose trial has been decreed by the Chamber of Accusation of the High Court is to be suspended from his functions until he has been acquitted of the charges brought against him.

Art. 35. In the event of the Chamber of Deputies throwing out a Bill, and assigning its reasons therefor, upon the adoption of which Bill the Minister is of opinion he ought to insist, His Majesty the Sultan, in the exercise of his sovereignty, orders either a change of Ministers or a dissolution of the Chamber, subject to the re-election of Deputies within the period appointed by the law.

Art. 36. In case of urgent necessity, if the General Assembly be not in session, the Minister may adopt measures to protect the State against danger or to preserve the public safety.

These measures, sanctioned by an Imperial Irade, have provisionally the force of law if they be not contrary to the Constitution. They must be submitted to the General Assembly immediately upon its meeting.

Art. 37. Each Minister has the right to be present at the sittings of the Senate and of the Chamber of Deputies, or to be represented there by one of the chief officials of his Department.

He has also a right to be heard before any member of the Chamber who may have leave to speak.

Art. 38. When, in consequence of a decision adopted by a majority of votes, a Minister is requested to appear in the Chamber to give explanations, he is bound to reply to the questions addressed to him either by appearing there in person or by delegating this duty to one of the heads of his Department.

He has, nevertheless, the right to postpone his reply, if he shall deem it necessary to do so, by assuming the responsibility for such postponement.

Art. 39. All appointments to various public functions shall be made in conformity with the regulations which shall determine the conditions of merit and capacity required for admission to employment under the state. No functionary appointed under these conditions can be dismissed or transferred; unless it can be proved that his conduct legally justified such removal; unless he shall have resigned, or unless his retirement is considered indispensable by the government.

Officials who may have given proof of good conduct and uprightness, as well as those whom the Government may have thought it indispensable to place on half-pay, shall have a right either to promotion, or to a pension, or to half-pay, according to the terms which will be laid down in a special regulation.

Art. 40. The duties of the several offices will be settled by special regulations. Each functionary is responsible within the limit of his duties.

Art. 41. Every functionary is bound to pay respect to his superior, but obedience is only due to orders given within the limits defined by the law. In respect of acts contrary to law, the fact of having obeyed a superior will not relieve the official who has carried them out from responsibility.

The General Assembly

Art. 42. The General Assembly is composed of two chambers: the Chamber of Notables or Senate, and the Chamber of Deputies.

Art. 43. The two chambers will meet on the 1st of November of each year, the opening to take place by imperial decree (irade), the closing, fixed for the following 1st March, also to take place following

an imperial decree. Neither of the two chambers can meet while the other chamber is not sitting.

Art. 44. His Majesty the Sultan according to the exigencies of circumstances, may anticipate the date of the opening or may abridge or prolong the session.

Art. 45. The opening of the session shall take place in the presence of His Majesty the Sultan, either in person or represented by the Grand Vizier, and in the presence of the Ministers and the Members of the two Chambers.

An Imperial Speech will be read, giving an account of the internal position of the Empire and the state of its foreign relations during the past year, and setting forth the measures the adoption of which for the following year is deemed to be necessary.

Art 46. All the members of the General Assembly shall take an oath of fidelity to His Majesty the Sultan and to the country, shall bind themselves to observe the Constitution, to perform the duties entrusted to them, and to abstain from all acts opposed to those duties.

This oath shall be taken by new members at the opening of the Session in the presence of the Grand Vizier, and after the opening in the presence of their respective Presidents and at a public sitting of the Chamber of which they are members.

Art. 47. Members of the General Assembly are free to express their opinions and to vote as they like.

They cannot be bound by conditions or promises, nor influenced by threats. They cannot be prosecuted for opinions or votes delivered in the course of debate, unless they have contravened the Standing Orders of the Chamber, when they are amenable to the provisions of the regulations in force.

Art. 48. Any member of the General Assembly who, by an absolute majority of two-thirds of the Chamber of which he is a member, is accused of treason, or attempting to violate the Constitution, or of peculation ("concussion"), or has been condemned to imprisonment or exile, loses his status as Senator or Deputy.

He will be tried and sentence passed by the competent tribunal.

Art. 49. Every member of the General Assembly must vote in person. He can refrain from voting.

Art. 50. No one can at the same time be a member of both Chambers.

Art. 51. No business can be done in either of the Chambers unless one member more than the majority of the Chamber be present.
Except in cases where a majority of two-thirds is requisite, all resolutions must be carried by an absolute majority of members present.
When the votes are equally divided, the President shall have the casting vote.

Art. 52. All private petitions presented to either Chamber shall be rejected if in the course of inquiry it should be shown that the petitioner did not apply in the first instance to the public officers concerned, or to their superior officers.

Art. 53. The initiative of bringing forward a bill or altering an existing law lies with the Ministry.
The Senate and Chamber of Deputies may also originate a new law, or the modification of an existing one, with reference to matters within their own province. In the latter case, the demand is submitted by the Grand Vizier to His Majesty the Sultan, and, if occasion requires, the Council of State is empowered by an Imperial Decree to prepare the proposed Project of Law, aided by information and details from the proper quarter.

Art. 54. Drafts of Bills elaborated by the Council of State are in the first instance laid before the Chamber of Deputies, and after that before the Senate. Though passing both Chambers, no Bill will become law until it has been sanctioned by the Imperial İrade. No draft Bill, once thrown by either of the Chambers, can be brought forward a second time in the course of the same session.

Art. 55. A Bill is not regarded as carried if it has not been successively passed both by the Chamber of Deputies and the Senate by a majority of votes, voting article by article, and if the whole Bill has not been voted by a majority in each of the two Chambers.

Art. 56. With the exception of the Ministers, of their deputies, and the functionaries summoned by a special call, no one can be introduced in either Chamber, nor allowed to make any communication whatever, whether he present himself in his own name or as the representative of a body.

Art. 57. The debates of the Chambers are conducted in the Turkish language. The Bills are printed and circulated before the day fixed upon for discussion.

Art. 58. The votes are given at the call of the House ("par appel nominal"), by show of hands or by ballot. The vote by ballot is subject to the decision of a majority of the members present.

Art. 59. The maintenance of order in each Chamber is entrusted to its President.

Senate.

Art. 60. The President and members of the Senate are nominated directly by His Majesty the Sultan. The number of senators cannot exceed a third of the members of the Chamber of Deputies.

Art. 61. To be nominated a senator it is necessary to have shown by one's acts that one is worthy of public confidence, or to have rendered signal services to the State, and to be, at least, forty years of age.

Art. 62. The senators are nominated for life.

The rank of senator may be conferred on persons "en disponibilité," having exercised the functions of Minister, Governor-General (vali), Commandant of Corps d'Armée, Judge, Ambassador or Minister Plenipotentiary, Patriarch, Grand Rabbi, General of Division of armies by land or sea ("terre et de mer"), an generally on persons combining the requisite conditions.

Members of the Senate, called at their request to other functions, lose the position as senator.

Art. 63. The stipend of senators is fixed at 10.000 piastres per month.

A senator receiving from the Treasury salary or pay in any other capacity is entitled only to the difference if the sum is below 10.000 piastres. If the sum is equal to or above the pay of senator, he continues to receive it.

Art. 64. The Senate examines the Bills or Budget transmitted to it by the Chamber of Deputies. If in the course of the examination of a Bill the Senate finds a provision contrary to the sovereign rights of the Sultan, to liberty, the Constitution, the territorial integrity of the Empire, the internal security of the country, to the interests of the defence of the country, or to morality, it rejects it definitely by a

vote, assigning its reasons; or it sends it back, accompanied by its observations, to the Chamber of Deputies, demanding that it should be amended or modified in the sense of those observations.
Bills adopted by the Senate are invested with its approval, and are transmitted to the Grand Vizier.
The Senate examines the petitions presented to it; transmits to the Grand Vizier such as it thinks deserving of reference, accompanying them with its observations.

Chamber of Deputies

Art. 65. The number of deputies is fixed at one deputy for every 50.000 males belonging to the Ottoman nationality.

Art. 66. The election is held by secret ballot. The mode of election will be determined by a special law.

Art. 67. The mission of deputy is incompatible with public functions, except those of ministers. Any other public functionary elected deputy is free to accept or refuse; but, in case of acceptance, he must resign his functions.

Art. 68. The following are ineligible as deputies:
1. Those who do not belong to the Ottoman nationality; 2. Those who, by virtue of the special regulation in force, enjoy immunities attached to the foreign service to which they belong; 3. Those not understanding Turkish; 4. Those not turned thirty years of age; 5. Persons attached to the service of a private individual; 6. Bankrupts not rehabilitated; 7. Those notoriously in disrepute for their conduct; 8. Persons visited with judicial interdiction, as long as that interdiction is not raised; 9. Those not enjoying their civil rights; 10. Those who lay claim to a foreign nationality. After the expiration of the first period of four years, one of the conditions of eligibility will be ability to read Turkish and, as far as possible, to write in that language.

Art. 69. General elections of deputies are held every four years. The commission of every deputy lasts only four years, but he is re-eligible.

Art. 70. The general elections commence at the latest four months before the 1st of November, which is the date fixed for the meeting of the Chamber.

Art. 71. Every member of the Chamber of deputies represents the whole body of Ottomans, and not exclusively the circumscription which has elected him.

Art. 72. The electors are bound to choose their deputies from among the inhabitants of the province to which they belong.

Art. 73. In case of the dissolution of the Chamber by Imperial İrade, the general elections are to commence in such times as that the Chamber may meet again at the latest within six months of the date of the dissolution.

Art. 74. In the case of death, judicial interdiction, prolonged absence, loss of the office of Deputy resulting from a condemnation or from the acceptance of public functions, a substitute shall be elected in conformity with the prescriptions of the electoral law, and in such time as that the new deputy will be able to exercise his mandate at the latest in the following session.

Art. 75. The mandate of deputies elected to vacant places only lasts till the following election.

Art. 76. The Treasury will allot to each deputy 20.000 piastres Per session and the expense of this journeys. The amount of these expenses will be established conformably with the provisions of the regulations dealing with the repayment of travelling expenses incurred by civil functionaries of the State, and will be calculated on the basis of a monthly salary of 5.000 piastres.

Art. 77. The President and the two vice-presidents of Deputies are selected by His Majesty the Sultan from a list of nine candidates elected by the Chamber by a majority of votes, three for the Presidency, three for the first vice-presidency, and three for the second vice-presidency. The appointment of the president and vice-presidents is made by Imperial İrade.

Art. 78. The sittings of the Chamber of deputies are public.

At the same time the Chamber may form itself into secret committee if the proposition is made by the ministers, or by the president, or by fifteen members, and that proposition is voted in secret committee.

Art. 79. No deputy can, during the session, be arrested or prosecuted, except in case of flagrant delinquency, unless a majority of the Chamber grant an authorization to prosecute.

Art. 80. The Chamber of deputies discusses the Bills submitted to it.

It adopts, amends, or rejects the provisions affecting finance or the Constitution.

It examines in detail the general expenditure of the State comprised in the Budget, and settles the amount with the Ministers.

It likewise determines, in accord with the Ministers, the nature, amount, and mode of assessment and collection of the receipts destined to meet the expenditure.

The Law Courts

Art 81. The judges nominated in conformity with the special law on this subject and furnished with the patent of investiture are irremovable, but they can resign.

The promotion of Judges, their displacement, superannuation, and revocation, in case of judicial condemnation, are subject to the provisions of the same law.

That law fixes the conditions and qualities requisite for exercising the functions of judge or the other functions of a judicial order.

Art. 82. The sittings of all tribunals are public

The publication of judgments is authorized

Nevertheless, in cases specified by law, the tribunal may sit with closed doors.

Art. 83. Any person may, in the interest of his defence, make use before the tribunal of the means permitted by the law.

Art. 84. No tribunal can, under any pretext, refuse to judge an affair within its competency.

It cannot either arrest or adjourn judgment after having commenced the examination or instruction, unless the plaintiff desists.

Nevertheless, in penal matters the public prosecution continues to be carried on conformably to law, even in case the plaintiff has desisted.

Art. 85. Every affair is judged by the tribunal to whose province it belongs. Suits between individuals and the State are within the competency of the ordinary tribunals.

Art. 86. No interference is to be attempted with the tribunals.

Art. 87. Affairs touching the Şeriat are tried by the tribunals of the Şeriat. The judgment of civil affairs appertains to the civil tribunals.

Art. 88. The various categories of tribunals, their competency, functions, and the emoluments of the judges are settled by law.

Art. 89. Apart from the ordinary tribunals, there cannot, under any title whatever, be formed extraordinary tribunals or commissions to judge certain special cases.

Nevertheless, arbitration and the nomination of a "muvella" (judge delegate) are sanctioned in the forms established by law.

Art. 90. No judge can combine his functions with other functions paid by the State.

Art. 91. Public prosecutors will be appointed, charged with acting on behalf of the public. Their functions and grades will be fixed by law.

High Court of Justice

Art. 92. The High Court is formed of thirty members, of whom ten are Senators, ten Councilors of State, and ten chosen among the presidents and members of the Court of Cassation and Court of Appeal.

All the members are nominated by lot.

The High Court is convoked, when necessary, by Imperial İrade, and assembles in the Senate building.

Its functions consist in trying the ministers, the president, and the members of the Court of Cassation, and all other persons accused of treason or attempts against the safety of the State.

Art. 93. The High Court is composed of two chambers; the Chamber of Accusation and the Chamber of Judgment.

The former is formed of nine members, nominated by lot among the members of the High Court, three of them being senators, three councilors of State, and three members of the Court of Cassation or Court of Appeal.

Art. 94. The decision of sending before the Chamber of Judgement is pronounced by the Chamber of Accusation by a majority of two-thirds of its members. The members belonging of the Chamber of Accusation cannot take part in the deliberations of the Chamber of Judgment.

Art. 95. The Chamber of Judgement is formed of twenty-one members, seven of whom are senators, seven members state councilors, and seven members of the Court of Cassation or Court of Appeal. It judges the cases that are sent to it by the Chamber of accusation by a majority of two-thirds of its members, and conformably to the laws in operation.

Its decisions are not susceptible either of appeal or of recourse to Cassation.

Finance

Art. 96. Taxes to the profit of the State can only be established, assessed, or collected in virtue of a law.

Art. 97. The Budget is the law which contains the estimates of the receipts and expenses of the State.

Taxes to the profit of the State are governed by that law as to their assessment, their distribution, and collection.

Art. 98. The examination and the vote by the General Assembly of the budget bill is carried through article by article. The tabular statements to be annexed, comprising the details of the receipts and expenditure, are to be divided into sections, chapters, and articles, according to the model defined by the regulations.

These tables are voted by chapters.

Art. 99. The Bill of the budget is submitted to the Chamber of Deputies immediately after the opening of the session, in order to make its execution possible from the commencement of the year to which it applies.

Art. 100. No extra budgetary expense can be defrayed out of the State funds except by virtue of a law.

Art. 101. In the case of urgency caused by extraordinary circumstances, the Ministers may, if the General Assembly is not sitting, create by an Imperial İrade the necessary resources, and defray expenses not provided for in the budget, on the condition of immediately laying a bill on the subject before the Assembly at the opening of the next session.

Art. 102. The budget is voted for one year, and has only legal force for the year to which it refers.

At the same time, if, in consequence of exceptional circumstances, the Chamber of Deputies is dissolved before the budget is voted, the

Minister may, by a Decree issued in virtue of an Imperial İrade, apply the budget of the preceding year till the next session, but the application of this provisional budget shall never extent beyond the term of one year.

Art. 103. The law definitely settling the Budget indicates the amount of receipts collected and payments made out of the revenue and expenditure of the year to which it relates. Its form and provisions must be the same as those of the budget.

Art. 104. The definitive bill is submitted to the Chamber of Deputies at latest within four months from the end of the year to which it relates.

Art. 105. A Court of Accounts shall be created charged with the examination of the operations of the finance functionaries, as also of the annual accounts drawn up by the various ministerial departments.

It will yearly address to the Chamber of Deputies a special report stating the results of its labors, accompanied by its observations.

At the end of every quarter it will present to the Sultan, through the Grand Vizier, a report containing the explanation of the financial situation.

Art. 106. The Court of Accounts shall be composed of twelve irremovable members, nominated by Imperial İrade.

None of them can be revoked unless the explanatory proposition for his dismissal be approved by a decision of the majority of the Chamber of Deputies.

Art. 107. The conditions and qualities required of members of the Court of Accounts, the details of their functions, the rules applicable in case of resignation, replacement, promotion, and superannuation, as well as the organization of its bureaus, shall be determined by a special law.

Provincial Administration

Art. 108. The administration of provinces shall be based on the principle of decentralization.

The details of this organization shall be fixed by a law.

Art. 109. A special law will settle on wider bases the election of the administrative councils of provinces (vilayet), districts

(sancak), and cantons (kaza), as also of the Council General, which meets annually in the chief town of each province.

Art. 110. The functions of the Provincial Council-General shall be fixed by the same special law, and shall comprise:

The right of deliberating on matters of public utility, such as the establishment of means of communication, the organization of "caisses de crédit agricole," the development of manufactures, commerce, and agriculture, and the diffusion of education.

The right of applying to the competent authorities for the redress of acts committed in contravention of the laws and regulations as regards assessment or collection of taxes or any other matter.

Art. 111. There shall be in every canton a Council appertaining to each of the different confessions. This Council will be charged with controlling:

1. The administration of the revenues of the real property of pious foundations (vakıf), the special destination of which is fixed by the express provisions of the founders or by custom.
2. The employment of funds or properties assigned by testamentary provision to acts or charity or beneficence.
3. The administration of funds for orphans, in conformity with the special regulation governing the matter.

Each Council shall be composed of members elected by the community it represents, conformably to special rules to be established. These Councils will be subordinated to the local authorities and the Councils General of provinces.

Art. 112. Municipal business will be administered in Istanbul and in the provinces by elected municipal councils.

The organization of the municipal councils, their functions, and the mode of election of their members, will be determined by a special law.

Various Provisions

Art. 113. In the case of the perpetration of acts, or the appearance of indications of a nature to presage disturbance at any point on the territory of the Empire, the Imperial Government has the right to proclaim a state of siege there.

The state of siege consists in the temporary suspension of the civil laws.

The mode of administration of localities under a state of siege will be regulated by a special law.
His Majesty the Sultan has the exclusive right of expelling from the territory of the Empire those who, in consequence of trustworthy information obtained by the police, are recognized as dangerous to the safety of the State.

Art. 114. Primary education will be obligatory on all Ottomans. The details of application will be fixed by a special law.

Art. 115. No provision of the constitution can, under any pretext whatsoever, be suspended or neglected.

Art. 116. In case of duly proved necessity, the Constitution may be modified in some of its provisions. This modification is subordinated to the following conditions:
Every proposal of modification, whether presented by the Minister or by either of the two Chambers, must be, in the first instance, submitted to the deliberations of the Chamber of Deputies.
If the proposition is approved by two-thirds of the members of the Chamber it shall be forwarded to the Senate.
In case the Senate also adopts the proposed modification by a two-thirds majority, it shall be submitted for the sanction of His majesty the Sultan.
If it is sanctioned by Imperial İrade, it shall have force of law.
Articles of the Constitution, which it is proposed to modify, remain in force, until the modification, after having been voted by the Chambers, shall have been sanctioned by Imperial Irade.

Art. 117. The Court of Cassation will interpret the civil and penal laws; the Council of State administrative laws; and the Senate the articles of the Constitution.

Art. 118. All the provisions of the laws, regulations, usages, and customs now in force shall continue to be applied, so long as they shall not have been modified or abrogated by other laws and regulations.

Art. 119. The preliminary order of 28th October 1876, concerning the General Assembly, will cease to have effect from the end of the first session.

Appendix C Revised Articles of the 1876 Constitution, August 1909

Art. 3. The Imperial Ottoman sovereignty, which carries with it the Supreme Caliphate of Islam, falls to the eldest Prince of the House of Osman, according to the rule established *ab antiquo*. On his accession the Sultan shall swear before Parliament, or if Parliament is not sitting, at its first meeting, to respect the visions of the Şeriat (canon law) and the Constitution, and to be loyal to the country and the nation.

Art. 7. Among the sacred prerogatives of the Sultan are the following:
The mention of his name in prayers; the minting of money; the granting of high public offices and titles, according to the law *ad hoc*; the conferring of orders; the selection and appointment of the Grand Vizier and the Şeyhülislam; the confirmation in their offices of the members of the Cabinet formed and proposed by the Grand Vizier, and, if need arise, the dismissal and replacement of Ministers according to established practice; the approval of putting into force of general laws; the drawing up of regulations concerning the workings of Government departments and the method of administering the laws; the initiative in all kinds of legislation; the maintenance and execution of the canon and civil laws; the appointment of persons to the privileged provinces according to the terms of their privileges; the command of the military and naval forces; the declaration of war and the making of peace; the reduction and remission of sentences passed by penal Courts; the granting of a general amnesty with the approval of Parliament; the opening and closing of the parliamentary sessions; the summoning of Parliament before its time in extraordinary circumstances; the dissolution of the Chamber of Deputies if necessary, with the consent of the Senate, on condition that elections take place and the Chamber assembles within three months; and the conclusion of Treaties in general. Only, the consent of Parliament is required for the conclusion of Treaties which concern peace, commerce, the abandonment or annexation of territory, or the fundamental or personal rights of

Ottoman subjects, or which involve expenditure on the part of the State. In case of a change of Cabinet while Parliament is not sitting, the responsibility arising out of the change rests upon the new Cabinet.

Art. 27. Just as His Imperial Majesty the Sultan entrusts the posts of Grand Vizier ad Şeyhülislam to men in whom he has confidence, so the other Ministers, who are approved and proposed by the Grand Vizier entrusted with the formation of the Cabinet, are confirmed in their offices by Imperial Irade.

Art. 28. The Council of Ministers shall meet under the presidency of the Grand Vizier. It shall deal with affairs of importance, both home and foreign. Such of its decisions as need the Imperial assent shall be put into force by Imperial Irade.

Art. 30. Ministers shall be responsible to the Chamber of Deputies collectively for the general policy of the Government and personally for the affairs of their respective departments. Decisions which need the Imperial sanction shall only become valid if signed by the Grand Vizier and the Minister concerned, who thus accept responsibility, and countersigned by the Sultan. Decisions arrived at by the Council of Ministers shall bear the signatures of all the Ministers, and in cases where the Imperial assent is necessary, these signatures shall be headed by that of His Imperial Majesty the Sultan.

Art. 41. Both houses of Parliament shall meet without being summoned on the 1st (14th) November of every year.

Art. 44. If need arises His Imperial Majesty the Sultan may open Parliament before the specified time, either on his own initiative or on application from an absolute majority of the members. He may also prolong the session either in virtue of a decision of Parliament or on his own initiative.

Art. 54. Bills become law after being examined and accepted by the Chamber of Deputies and the senate, and sanctioned by Imperial İrade. Bills submitted for the Imperial sanction must either receive that sanction within two months or be returned for re-examination. If a bill sent back to be discussed again is to be accepted, it must be voted by a two-thirds majority. Bills, which are voted urgent, must either be sanctioned or be returned within ten days.

Art. 120. Ottomans enjoy the right of assembly, on the condition that they obey the law on the subject.

The societies are forbidden which aim at injuring the territorial integrity of the Ottoman Empire, changing the form of the Constitution or of the government, acting contrary to the provisions of the Constitution, or bringing about a separation between the various Ottoman elements, or which are contrary to public morals.

The formation of secret societies in general is also forbidden.

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