

GERMAN IMPACT ON TURKISH POLITICAL THOUGHT:
BABANZADE İSMAİL HAKKI'S *HUKUK-I ESASİYE*

by
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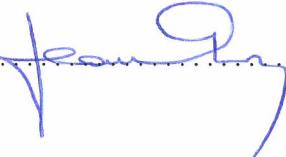
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ABSTRACT

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Turkish Political Thought

This dissertation examines Babanzade İsmail Hakkı's legal and political thought during the Second Constitutional period in the Ottoman Empire, focusing on his influential work *Hukuk-i Esasiye* (*Fundamental Law*, 1913) and writings in *Tanin*. Babanzade's role as a political theorist has been underexplored in existing scholarship. This study aims to fill this gap by situating Babanzade within the broader context of early 20th-century Turkish intellectual life, emphasizing his synthesis of Western legal state theory with Eastern intellectual traditions. In the existing literature, the influence of French thought on the Ottomans is predominantly emphasized, while the impact of German thought has been largely neglected. This study seeks to address this imbalance by demonstrating the significant influence of German Legal State (*Rechtstaat*) theory on Babanzade's work. The dissertation begins with an exploration of the historical context, including the political climate during the Hamidian reign and the 1908 revolution. Babanzade's biography and intellectual impacts are also examined. Subsequently, the dissertation delves into Babanzade's theories on statehood and national sovereignty, drawing parallels and contrasts between his perspectives and those of Western legal state theorists and Islamic political thought. It further explores his views on representation, forms of government, and key issues in political science. Ultimately, this study reevaluates Babanzade İsmail Hakkı's intellectual legacy, emphasizing his originality and depth in legal and political theory, as well as in political science within Turkish scholarship.

ÖZET

TÜRK SİYASAL DÜŞÜNCESİNDE ALMAN ETKİSİ: BABANZADE İSMAIL HAKKI'NIN *HUKUK-I ESASIYE* ESERİ

ASIM ERDEM

SİYASET BİLİMİ YÜKSEK LİSANS TEZİ, TEMMUZ 2024

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Anahtar Kelimeler: Hukuk-ı Esasiye, Alman Hukuk Devleti Teorisi, Anayasacılık, Türk Siyasal Düşüncesi

Bu tez, Babanzade İsmail Hakkı'nın Osmanlı İmparatorluğu'nun İkinci Meşrutiyet dönemindeki hukuki ve siyasi düşüncesini, etkileyici eseri *Hukuk-ı Esasiye* (1913) ve *Tanin*'deki yazılarına odaklanarak incelemektedir. Babanzade'nin bir siyaset teorisini olarak rolü mevcut çalışmalarında yeterince incelenmemiştir. Bu çalışma, Babanzade'yi 20. yüzyıl başı Türk entelektüel hayatının daha geniş bağlamına yerleştirerek ve onun Batı hukuk devleti teorisini Doğu entelektüel gelenekleriyle sentezlediğini vurgulayarak bu boşluğu doldurmayı amaçlamaktadır. Mevcut literatürde Fransız düşüncesinin Osmanlılar üzerindeki etkisi ağırlıklı olarak vurgulanırken, Alman düşüncesinin etkisi büyük ölçüde ihmal edilmiştir. Bu çalışma, Alman Hukuk Devleti (*Rechtstaat*) teorisinin Babanzade'nin çalışmaları üzerindeki önemli etkisini göstererek bu boşluğu gidermeyi amaçlamaktadır. Tezin ilk bölümü, II. Abdülhamid dönemi ve 1908 devrimi sırasındaki siyasi iklim de dahil olmak üzere tarihsel bağlamın incelenmesiyle başlar. Sonrasında, Babanzade'nin biyografisi ve entelektüel etkileri incelenmektedir. Daha sonra, Babanzade'nin devlet ve ulusal egemenlik teorilerini incelenir, onun bakış açısıyla Batılı hukuk devleti teorisyonları ve İslam siyaset düşüncesi arasında benzerlikler ve karşıtlıklar tespit edilir. Ayrıca Babanzade'nin temsil, hükümet biçimleri ve karşılaşmalı siyasetin temel meseleleri hakkındaki görüşleri incelenir. Sonuç olarak bu çalışma, Babanzade İsmail Hakkı'nın entelektüel mirasını yeniden değerlendirerek onun Türkçe literatürdeki siyaset ve hukuk teorisindeki özgünlüğünü vurgulamaktadır.

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LIST OF ABBREVIATIONS

CUP: Committee of Union and Progress	1
PDA: Ottoman Public Debt Administration	5
MP: Member of Parliament	23
SMDP: Single Member District Plurality	54
PR: Proportional Representation	54

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1. INTRODUCTION

This dissertation explores Babanzade İsmail Hakkı's legal and political thought by examining the ideas in his book *Hukuk-i Esasiye* (*Fundamental Law*, 1913), his writings in *Tanin*. Babanzade was a prominent member of Young Turks, a statesman, and a law professor, but the scholarship on his legal and political thought has remained limited. For instance, Tarık Zafer Tunaya identifies five ideological currents during the Second Constitutional Monarchy period: Westernism (*Garpçılık*), Islamism (*İslamcılık*), Turkism (*Türkçülük*), Vocationalism (*Meslekçilik*), and Socialism.¹ Nevertheless, he fails to include Babanzade in these threads, despite the fact that Babanzade offers distinct viewpoints on nationalism and constitutionalism that justify his inclusion in the discussion.

Although Babanzade was recognized as one of the most important politicians in the Ottoman parliament,² this study is significant in acknowledging his role as a political theorist. My dissertation is the first comprehensive study on his political theory and his masterpiece *Hukuk-i Esasiye*, highlighting his contributions beyond his political career. While it is not inaccurate to assert that the Committee of Union and Progress (*İttihat ve Terakki Cemiyeti*) exercised one-party rule, particularly following the Bab-ı Ali raid (1913) and the elections with stick (1912), it would be erroneous to suggest that all Unionists have the same ideology.³ After analyzing Babanzade's texts, it will become evident clear how much importance he placed on participation and freedom, which is a significant point in my dissertation.

As a heartfelt constitutionalist, Babanzade significantly contributed to the constitutionalism debates at the beginning of the twentieth century and was greatly influenced by German legal theorists and their concept of *Rechtstaat* (legal state), contrary to the understanding of Turkish thought in the literature through the French

1. Zafer Tarık Tunaya, *Türkiye'de Siyasal Partiler Cilt-1, 2* (İstanbul: Hürriyet Vakfı Yayınları, 1988), 10–11.

2. See also Zafer Tarık Tunaya, *Türkiye'de Siyasal Partiler Cilt-1, 2* (İstanbul: Hürriyet Vakfı Yayınları, 1988), 36.

3. *Ibid.*, 8.

influence.⁴ Rather, Babanzade's perspectives on political science and politicians align notably with Johann Kaspar Bluntschli's, a Swiss legal scholar and political theorist recognized for his significant contributions to the advancement of international and constitutional law. Bluntschli's conceptual division between *Staatsrecht*, which deals with the state in its existing form, and *Politik*, which concerns the objectives to which public efforts are directed, is particularly influential on Babanzade's formulation of his legal thought.⁵ Essentially, Babanzade seems to have a similar viewpoint to Georg Jellinek, Léon Duguit, and Adhémar Esmein, suggesting that they all adopt a realist understanding while also acknowledging the value of evaluating the wider objectives and aims that drive public affairs.

My argument is that Turkish intellectual life in the early 20th century moved beyond mere imitation of French political thought and evolved into a more complex synthesis with German legal thought and various local elements and Islamic ideas. Babanzade's utilization of German Legal State Theory exemplifies this departure from exclusively following French political doctrines. Babanzade was not taken seriously as a political theorist by contemporary scholarship, but my aim is to demonstrate that he contributed significantly to the development of legal and political thought in Turkey. Moreover, his notable influence on the crafting of the 1921 Constitution and his engagement with pivotal issues in political theory, drawing from both Western and Eastern thinkers, underscores the originality and synthesis of Turkish political thought during this period. Thus, Babanzade should be seen as a synthesizer of Eastern and Western political thoughts. His ideas also influenced the Republic of Turkey, as evidenced in the book *Medeni Bilgiler*⁶, written by Mustafa Kemal, which teaches the fundamentals of the state and the duties of citizenship. This underscores that Babanzade's intellectual legacy is not merely a cornerstone of Ottoman political theory but also serves as a foundational influence on the very principles that shaped the modern Republic of Turkey.

To illustrate this, the first chapter will present a comprehensive account of the historical context, with a particular focus on the Hamidian reign, the revolution, and the varying perspectives of both proponents and adversaries of the Committee of Union and Progress (CUP) about the constitution after the year 1908. Additionally, it will explore the biography of Babanzade İsmail Hakkı. The second chapter will focus on Babanzade's *Hukuk-i Esasiye*, its significance, and its objectives. Under-

4. For example, Tarık Zafer does not mention Babanzade when he explains the Turkist (*Türkçü*) movement, despite including Ziya Gökalp and the influence of Émile Durkheim on Gökalp within the Turkism movement. *Ibid.*, 10.

5. Johann Kaspar Bluntschli, *The Theory of the State* (Kitchener: Batoche Books, 2000), 13.

6. Mustafa Kemal Atatürk, *Medeni Bilgiler: Türk Milletinin El Kitabı*, 2nd ed. (İstanbul: Toplumsal Dönüşüm Yayıncılığı, 2010).

standing *Hukuk-i Esasiye* is crucial for comprehending his political views, hence it will be analyzed in detail. His writings show influence from French and German jurists such as Jellinek, Bluntschli, Duguit, and Esmein. Therefore, their views on law and politics will be examined to highlight similarities and differences with Babanzade. The concept of fundamental law and its origins, as presented in his book *Hukuk-i Esasiye*, will be explored. Babanzade's analysis of past literature, spanning from ancient philosophers to contemporary thinkers, exhibits resemblances to legal state theorists and will be subject to examination as well. Additionally, his interest in both Western philosophers and Muslim intellectuals demonstrates his ability to critique and integrate ideas from both East and West. The chapter will further explore his state theory and understanding of national sovereignty to illustrate his profound grasp of political theory. In the final chapter, I will delve into Babanzade's perspectives on various forms of government and the critical issues he addressed. This section will explore his views on the relationship between representation and sovereignty, particularism, and contemporary issues in comparative politics, including the comparison between proportional representation and single-member district systems. This chapter is crucial to highlight Babanzade's approach to the political challenges of his time, showcasing his contributions as a political scientist.

2. HISTORICAL CONTEXT AND LIFE OF BABANZADE

2.1 From Hamidian Rule to the Young Turk Revolution of 1908

During the Second Constitutional Era, a new regime was established with the implementation of a constitutional order, which generated substantial debates over the structure of both the regime, political system and the state during this time. Before exploring these discussions, examining how the 1908 Revolution has been evaluated in the literature is essential. The concept of law was extensively debated in this context as a result of the foundation of the new administration. Understanding the historical backdrop of the Hamidian regime and its main components is crucial to comprehend the opposition's motivation and the Committee of Union and Progress's goal to restore order. Especially, the context in which the Second Constitutional Era and discussions about law and state took place is essential for comprehending Babanzade's contributions to these debates.

Abdülhamid II, who took power in 1876, faced a fragile Ottoman Empire on the brink of bankruptcy due to foreign debt and agricultural issues.⁷ By the late 19th century, the empire faced financial destruction and nationalist unrest. Tax collection issues in the Balkans led to religious and national rebellions in Bosnia, Serbia, and Bulgaria. In April 1877, Russia declared war on the Ottoman Empire, promising to cede Bosnia to Austria-Hungary if victory was achieved.⁸

At the onset of the Russo-Turkish War, the Russian army faced minimal resistance, resulting in large-scale massacres of Muslims. Ottoman forces put up resistance, particularly in Pleven and Shipka (now in Bulgaria), as well as Kars and Erzurum. However, this resistance was short-lived, and Russian troops advanced toward the Ottoman capital. By February 1878, the Russians reached the outskirts of the

7. Benjamin Fortna, "The Reign of Abdülhamid II," in *The Cambridge History of Turkey. Volume 4: Turkey in the Modern World*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 44.

8. Ibid., 46.

Ottoman capital, where they massacred many Muslims and forced others into refugee status. Historians have described this period as witnessing rivers of Muslim blood due to the atrocities committed during this process.⁹ The Ottoman Empire signed the humiliating Treaty of San Stefano in 1878, which granted Serbia, Montenegro, and Romania full independence, expanded their borders, and established Bosnia with internal independence.¹⁰ Thessaly was ceded to Greece, and the Principality of Greater Bulgaria was established. However, Russia's formidable dominance and consequential influence in the Balkans elicited apprehension from England, leading to the Treaty of Berlin in 1878. This agreement restored some territories lost by the Ottoman Empire but required it to cede control of Cyprus to the British. Despite these territorial adjustments, the empire suffered significant losses, encompassing approximately 230,000 square kilometers and impacting between 5 and 6 million of its population.¹¹

The Ottoman Empire's financial struggles during the Hamidian period were worsened by the establishment of the Ottoman Public Debt Administration (PDA) in 1881. This institution claimed 30% of the empire's tax revenues, directing income towards debt repayment. Abdülhamid's rule was further consolidated by exiling opposition leaders, dissolved parliament, and establishing the Sublime Porte, a hierarchical government structure.¹²

Two important trends can be observed during the reign of Abdulhamid, especially between 1902 and 1908. The first is the Hamidian regime's effort to quell potential opposition both domestically and abroad, alongside the recurrence of the Balkan issue.¹³ At this point, the Young Turks emerged as an umbrella term to express young people opposing Abdulhamid.¹⁴ Over time, the main instrument of this movement became the Committee and Union Party. Even though the Committee of Union and Progress (CUP) had different factions and branches in various cities, they shared several common goals and characteristics, such as being constitutionalist. The members of the Committee of Union and Progress, who organized with the demands of the Constitutional Monarchy and the Constitution against the despotic regime established after the failure of the First Constitutional Monarchy attempt,

9. Kemal Karpat, *The Politicization of Islam: Reconstructing Identity, State, Faith, and Community in the Late Ottoman State* (New York: Oxford University Press, 2001), 148.

10. ed. Erim Nihat, "Ayastafanos Mukaddemati Sulhiyyesi," in *Devletlerarası Hukuku Ve Siyasi Tarih Metinleri Cilt: I (Osmanlı İmparatorluğu Andlaşmaları)* (Ankara: Ankara Üniversitesi Hukuk Fakültesi Yayınları, 1953), 387–400.

11. Benjamin Fortna, "The Reign of Abdülhamid II," in *The Cambridge History of Turkey. Volume 4: Turkey in the Modern World*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 47.

12. Ibid., 49.

13. Ibid., 58.

14. Ibid., 59.

were also comprised of the "educated offspring" of this middle class.¹⁵ The organization was mainly divided into two sects: one faction wanted reform, while the other advocated for revolution. Ultimately, the revolutionary faction prevailed. The Young Turk congresses of 1902 and 1907 are particularly significant, as the idea of revolution dominated these meetings. To exemplify, Hüseyin Cahit emphasized the concept of constitutional rule as a symbol of national unification, where the nation holds ultimate authority in decision-making and conflict resolution.¹⁶ The constitution serves as a code of laws, with the highest political power held by the people, making despotism illegal and unconstitutional.¹⁷

The July 1908 revolution led by the Young Turks marked a transition towards a constitutional monarchy, a system that remained intact, at least on paper, until the Empire's demise in 1918. The revolutionaries themselves regarded their achievement as one of the three significant "July events" in modern history, alongside the French Revolution and the American Declaration of Independence.¹⁸ The Second Constitutional Era can be considered "unprecedented" due to three characteristics that elucidate its structural disparities from the French Revolution, as explained by Hanioglu.¹⁹ Firstly, the central figures of the Young Turks were conservatives who viewed their primary objective as preserving and continuing the existing order rather than instigating radical changes. Although optimistic Europeans often labelled them as "liberals," the leaders of the Committee of Union and Progress (CUP) primarily saw themselves as guardians aiming to rescue the empire.²⁰ Secondly, the CUP had a unique objective distinct from previous revolutionary movements in France, Iran, and Russia. Unlike the French revolutionaries who sought to overthrow the regime or the Iranian revolutionaries who replaced an absolutist monarch with a constitutional system, the CUP aimed to reform and modernize the existing political structure.²¹ Thirdly, the Young Turk Revolution led to the emergence of a new type of regime commonly seen in the twentieth century: single-party rule. While

15. See also, Kemal Karpat, "İttihat ve Terakki Cemiyeti 31 Mart 1909 Ayrim Noktası ve Cumhuriyet'e Mirası," *Doğu-Bati* 2, no. 46 (August 2008): 26–28; Kemal Karpat, *Türk Demokrasi Tarihi* (İstanbul: Timaş Yayınları, 2010), 30–40.

16. Hüseyin Cahit [Yalçın], "Şanlı İttihat ve Terakki Cemiyeti'nin Siyasi Programı," *Tanin*, no. 56 (September 1908): 1.

17. See Banu Turnaoglu, *The Formation of Turkish Republicanism* (Princeton: Princeton University Press, 2017), 124–125.

18. See M. Sükrü Hanioglu, "The Second Constitutional Period, 1908–1918," in *The Cambridge History of Turkey*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 62. Citing Temmuz İnkılابat ve İhtilalatı ve Osmanlı İnkılabi Kebir-i (July Revolutions and Radical Transformations and The Great Ottoman Revolution), Read at the first post-revolutionary congress of the Committee of Union and Progress in October–November 1908. Private papers of Dr. Bahaddin Şakir. 1908

19. M. Sükrü Hanioglu, "The Second Constitutional Period, 1908–1918," in *The Cambridge History of Turkey*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 66.

20. Ibid., 66.

21. Ibid., 66.

parliament was reinstated, it was tightly controlled by CUP, which wielded influence within the palace, bureaucracy, and military, operating behind the scenes to control imperial power through existing governmental structures.²²

At this juncture, evaluating the Young Turk Revolution and the establishment of the Second Constitutional Monarchy within the context of Turkey's democratization history is crucial. While democracy, originally a Western governance model, evolved from aristocratic kingdoms to absolute monarchies and then to republics, this transformation was shaped by the advancement of mass education, the rise of the middle class, the development of bureaucracy, urbanization, and the emergence of new ideological frameworks and tools. In the Ottoman Empire, there was no bureaucracy in the modern sense until the Tanzimat,²³ and since it cannot be said that there was no bureaucratic mechanism until Tanzimat, this period is called "early modern" in the literature.²⁴ Despite the absence of many elements of the modern state in the Ottoman Empire at the beginning of the 19th century, intellectual circles proficient in European languages (especially French) or educated in Europe engaged in discussions about modern ideas before the second constitutional monarchy. The wars throughout the 19th century, changing demographic structures, and the lack of capital and bourgeois interests, unlike Europe, hindered the implementation of modern institutions in the Ottoman Empire. Moreover, the predominantly agricultural nature of the Turks, the ruling nation of the empire, and their involvement in husbandry and crafts, along with trade being predominantly conducted by minorities (Armenian, Greek, Jewish), prevented the formation of a bourgeoisie capable of playing a political role and challenging the ruling class.

Karpat outlines the socio-economic factors between the Reform Edict of 1856 and the Second Constitutional Monarchy that led to the emergence of constitutionalism in Turkey: privatization of agricultural land through land reform, the establishment of a semi-capitalist economic approach, increase in the volume of domestic and foreign trade, and the emergence of a new middle class, although it is not exactly the same as in the middle of Europe.²⁵ He defines the Constitutional Revolution of

22. Ibid., 66.

23. See Salih Karaduman, "Üç Tarz-ı Modernleşme: İslahat Fermanı Sonrası Ortaya Çıkan Modernleşme Temâyülleri (1856-1889)" (MA thesis, Yıldız University, 2019).

24. See also Paul Wittek, *The Rise of the Ottoman Empire* (London: Royal Asiatic Society, 1938); Herbert Adams Gibbons, *The Foundation of the Ottoman Empire, 1300-1403* (New York: Century Company, 1916); Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (Cambridge and New York: Cambridge University Press, 2008); Abdurrahman Atçıl, *Scholars and Sultans in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2017); Rifaat Ali Abou-El-Haj, *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries*, 2nd ed. (Syracuse: Syracuse University Press, 2005); Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (Cambridge and New York: Cambridge University Press, 2010).

25. See also Kemal Karpat, "İttihat ve Terakki Cemiyeti 31 Mart 1909 Ayrim Noktası ve

1908 as a "people's movement" rather than a military coup.²⁶ Feroz Ahmad, on the other hand, describes the events of 1908 as a coup d'état because it solely aimed at restoring the Constitution. He argues that these events acquired a revolutionary character during the process of amending the Constitution, while previously after stating that they did not constitute a revolution.²⁷ Additionally, the statement "a very broad mass targeting a cultural and social change that will save the state"²⁸ can be given as evidence supporting the notion of a revolution.

When assessed based on criteria such as initiating a profound transformation, undergoing an intellectual preparation phase, utilizing force, and garnering public support, it becomes evident that it represents a radical change movement distinct from the reform movements spanning the lengthy history of the Ottoman Empire.²⁹ Different protests, rallies, marches, and strikes were showing more and more that this new group was becoming noticeable each day, which even bothered the elites of the constitutional monarchy. Many writers, like Babanzâde, urged the public to be moderate during this time.³⁰

The 1908 elections were notably fair. Essentially, all male taxpayers aged twenty-five and above were eligible to vote. Deputies were required to be at least thirty years old and proficient in the Turkish language. Within a district, every 500 voters selected a representative for an electoral college from a list of candidates prepared by municipal officials.³¹ Although the CUP had a majority in the first chamber of deputies and controlled the government closely, its power was not absolute. Over time, opposition arose as the exhilaration of the revolution faded. This opposition included various groups: liberals discontent with the CUP's rule becoming authoritarian with time,³² bureaucrats, led by Mehmed Kamil Pasha, who hoped for the

Cumhuriyet'e Mirası," *Doğu-Batı* 2, no. 46 (August 2008): 25–31; Kemal Karpat, *Türk Demokrasi Tarihi* (İstanbul: Timaş Yayınları, 2010), 30–40.

26. Kemal Karpat, *Türk Demokrasi Tarihi* (İstanbul: Timaş Yayınları, 2010), 30–40.

27. Feroz Ahmad, *İttihad ve Terakki (1908–1914)* (İstanbul: Kaynak Yayınları, 2010), 33.

28. *Ibid.*, 40.

29. Hüseyin Özdemir, "Babanzâde İsmail Hakkı Bey'in Meşrutiyet Düşüncesi" (MA thesis, Marmara University, 2015), 46.

30. See all Y. Doğan Çetinkaya, "1908 Devrimi ve Toplumsal Seferberlik," in *II. Meşrutiyet'i Yeniden Düşünmek*, ed. Ferdan Ergut (İstanbul: Tarih Yurt Vakfı Yayınları, 2010), 13–22; Mehmet Ö. Alkan, "II. Meşrutiyet'te Eğitim, İttihad ve Terakki Cemiyeti, Milliyetçilik, Militarizm veya Militer Türk-İslam Sentezi" (2010), 62; Babanzâde İsmail Hakkı, "Ahali ve Meclis-i Mebusan," *Tanin*, no. 213 (March 1909).

31. M. Şükrü Hanioglu, "The Second Constitutional Period, 1908–1918," in *The Cambridge History of Turkey*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 67.

32. Sabahaddin Bey, a notable liberal critic, expressed concerns about the CUP's policies and actions. Leading the League of Private Initiative and Decentralization in exile, he offered alternative approaches to governance, emphasizing the importance of private initiative and decentralization for addressing the challenges faced by Ottoman society. See also, M. Şükrü Hanioglu, "The Second Constitutional Period, 1908–1918," in *The Cambridge History of Turkey*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 62–111.

return of the Sublime Porte's supremacy; nationalist and proto-nationalist groups unsatisfied with the CUP's narrow view of Ottomanism; local organizations frustrated with the increasing centralization of power and loss of privileges from the previous regime; Islamists critical of the new regime's secular nature; and socialists who disagreed with CUP's socio-economic policies.³³

After the revolution, various political parties appeared, spanning different ideologies: the Mohammedan Union Party (*İttihad-i Muhammedi Firkası*), the center-left Democratic Party (*Demokrat Firkası*), the Liberal Party (*Ahrar Firkası*), and the Moderate Freedom-Lovers' Party (*Mutedil Hürriyetperveran Firkası*). However, none of these parties had enough power to challenge the CUP alone, so diverse groups often joined forces. In April 1909, some opposition groups backed a military uprising in the capital, which is also known as the 31st March Incident because it occurred on 31 March 1325 according to the Rumi calendar. The fact that a military coup occurred almost nine months after the revolution needs clarification. It indicates that the CUP's control over the armed forces was not secure. Soon after taking power, the CUP tried to strengthen its influence over the military by dismissing officers loyal to the sultan.³⁴

The ideology of the CUP is diverse rather than monolithic. Its leadership tended to prioritize state interests over individual rights. This perspective resonated with their ideological leanings, influenced by various philosophical currents: eighteenth-century French materialism, mid-nineteenth-century German *Vulgärmaterialismus*, and late nineteenth-century French solidarism and positivism. Many CUP leaders embraced this diverse set of influences.³⁵ This sentiment was succinctly expressed by Ziya Gökalp, a prominent CUP ideologue, in his well-known poem, "Duty":

I do not have rights, interests, and desires
I have my duty, and do not need anything else...
I close my eyes
I perform my duty.³⁶

This perspective serves as an exemplary illustration of one of the main ideologies and state conception of the CUP, which later evolved into Turkism. Nedim Nomer emphasizes that although Gökalp is often referred to as a staunch Turkist in the

33. M. Şükrü Hanioğlu, "The Second Constitutional Period, 1908–1918," in *The Cambridge History of Turkey*, ed. Resat Kasaba (Cambridge: Cambridge University Press, 2008), 68.

34. Ibid., 70.

35. Ibid., 71.

36. Ziya Gökalp, *Yeni Hayat* (Istanbul: Yeni Mecuma, 1918), 17.

literature, he actually presents a more hybrid social reality.³⁷ Even though Gökalp's perspective changed over time, as Taha Parla discussed, Nomer states that his understanding of social reality remained consistent.³⁸ Thus, his nationalism should be understood as part of a social culture that is inherently hybrid and not merely a copy of Western thinkers.

On the other hand, Babanzade, as a Unionist, embodied a distinct nationalism (which will be discussed in the next chapter) during that period, advocating for a more liberal viewpoint. He never denied the importance of rights. Thus, it becomes evident that the second constitutional period provided space for diverse ideologies and legal interpretations, allowing for varying degrees of representation. Hence, it is essential to touch upon the constitutionalism debates of important political figures and thinkers of the period after the constitution was declared, as these debates significantly shaped the political landscape and the evolution of ideological thought during that era.

2.2 The Impact of German Political Thought in the Ottoman Empire

The Triumvirate of Enver, Cemal, and Talat Pashas, who dominated Ottoman politics after the Second Constitutional Revolution, were heavily influenced by German thought, embracing militarism, nationalism, and elitism. They prioritized mass mobilization, violence, and war, setting aside revolutionary ideals like rationalism, progress, and liberalism in favor of power, unity, and heroism.³⁹ Following the Ottoman Empire's defeat in the Balkans, intellectuals looked to Prussia as a model for national revival, inspired by its transformation after the Battle of Jena in 1806.⁴⁰ Prussian ideals, especially those of military discipline and education, were seen as essential for rebuilding a strong state. Ottoman thinkers praised figures like von Moltke for Germany's rise as a nation-in-arms. Moise Cohen Tekinalp compared the Ottoman Empire's situation in 1912-1913 to Prussia's 1806 defeat, hoping for a similar resurgence.

Ottoman interest in German thought had already begun in the late 19th century.

37. Nedim Nomer, "Ziya Gökalp's Idea of Cultural Hybridity," *British Journal of Middle Eastern Studies* 44, no. 3 (2017): 412.

38. Nedim Nomer, "Ziya Gökalp's Idea of Cultural Hybridity," *British Journal of Middle Eastern Studies* 44, no. 3 (2017): 411.

See also, Taha Parla, *The Social and Political Thought of Ziya Gökalp* (Leiden: Brill, 1985).

39. Banu Turnaoğlu, *The Formation of Turkish Republicanism* (Princeton: Princeton University Press, 2017), 138.

40. *Ibid.*, 144.

Besir Fuat (1852–87) praised Kant's contributions to philosophy, astronomy, and metaphysics.⁴¹ Tanzimat writer Münif Paşa (1828–94) referenced Kant and Fichte in his work *Telhis-i Hikmet-i Hukuk* (Philosophy of Rights), while Ahmet Mithat Efendi offered a Kantian interpretation of Schopenhauer's philosophy, emphasizing the concept of Will as an entirely self-determining force.⁴² In 1911, Bahâ Tevfik (1881–1914) founded *Felsefe Mecmuası* (Journal of Philosophy), aiming to introduce a philosophical language and way of life capable of strengthening the nation, discussing consciousness, obligations, ethics, and Kantian philosophy.⁴³ These translations introduced new ideas about the state and philosophical idealism to the Ottoman world. After the Balkan defeat, Ottoman thinkers emphasized the role of philosophy and literature in shaping national identity, inspired by Germany's success. Tekinalp praised Fichte for fostering national consciousness, while Hafiz Hakkı called for a "Turkish Fichte" to inspire similar ideals.⁴⁴

At that time, national idealism emerged as a new philosophy focused on nation-building, rejecting the French universalism that had influenced Ottoman politics since the Young Turk Revolution. Akçura dismissed universalism and the utopian goal of serving an imagined humanity, advocating instead for distinct and separate civilizations.⁴⁵ The nation was redefined as a unified entity bound by shared values and traditions, rejecting the French liberal model of individual freedom and equality. Ottoman nationalists adopted a German-inspired view of nationality, emphasizing race, language, and tradition, rooted in the Uralo-Altaic "Turaniens," to forge a new, dynamic nationalist identity.⁴⁶

Gökalp, also heavily influenced by German thought, advanced his program in "New Life and New Values," where he saw ideals as social forces rooted in collective representations.⁴⁷ Drawing from Fouillée's interpretation of Kant, he argued that ideals are shaped by individuals within society and are not independent of human consciousness. Gökalp criticized the Young Turk Revolution as superficial, emphasizing that true republican ideals like liberty, equality, and fraternity must align with the unique social consciousness to spark a genuine revolution.⁴⁸ He believed this

41. See also Okan Orhan, *Besir Fuad: İlk Türk Pozitivist ve Natüralisti* (İstanbul: Dergah Yayınları, 2008), 131–132.

42. Münif Paşa, *Telhis-i Hikmet-i Hukuk* (İstanbul: İdare-i Şirket-i Mürettibiye, 1895), 227.

43. Harun Anay, "Ödev Ahlakının Türk Düşüncesine Giriş ve Bahâ Tev k'in Kant Hakkındaki Yazılıları," *Dini Araştırmalar* 13, no. 36 (2010): 154.

44. Banu Turnaoglu, *The Formation of Turkish Republicanism* (Princeton: Princeton University Press, 2017), 146.

45. See Jeremy Jennings, "Introduction," in *Reflections on Violence*, ed. Georges Sorel (Cambridge: Cambridge University, 2002), iix–x.

46. Taner Akçam, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (New York: Macmillan, 2006), 39–41.

47. Ziya Gökalp, "Yeni Hayat ve Yeni Değerler," *Genç Kalemler*, no. 8 (1911): 56.

48. Banu Turnaoglu, *The Formation of Turkish Republicanism* (Princeton: Princeton University

union would bring harmony and unity, making Turks the embodiment of Nietzsche's Übermensch, with a new life emerging from Turkism as the source of renewal.⁴⁹ In addition, Gökalp viewed culture and civilization not as opposing forces but as complementary. In "*Hars ve Medeniyet*" (Culture and Civilization), he explained that these concepts overlap across various aspects of social life, including religion, morals, law, intellect, aesthetics, economics, language, and technology.⁵⁰ The key distinction he made was that "culture is national," representing the unique aspects of a single nation, while "civilization is international," encompassing the common features shared by multiple national cultures, such as those within Western civilization, which includes European and American nations, each with its own distinct culture like English, German, or French.⁵¹

The Second Constitutional revolution transformed the state's conception from being personified by an individual to adopting the French model, where the state became the guarantor of legal liberty and equality, embodying justice and fraternity.⁵² However, in the later debates of the Second Constitutional period (1913–18), this understanding evolved significantly toward a German perspective, viewing the state as a distinct organization and a spiritual and social organism.⁵³ Much like the German "organic state theorists" of the late nineteenth and early twentieth centuries, Ottoman national idealists perceived the state as the true embodiment of social power and national spirit, with authority rooted in the collective conscience and a personality reflecting national identity. To exemplify, Recai, citing Hegel, emphasized that "all power held by a nation will serve the exaltation of the state," a view also echoed by Tekinalp, who admired the German state's rise through a deep-seated national ideal of state supremacy.⁵⁴ This shift marked a departure from the traditional belief that the sovereign's authority came from God, towards a new understanding of sovereignty as belonging to the nation and the state, where the sultan's power was diminished in favor of the political elite. This turn toward German thought is unmistakable, and Babanzade can be seen as part of this intellectual shift. He viewed culture as a vital source of law and developed his own theory of the state by drawing on German Legal State theory, which will be explored in detail in the second chapter.

Press, 2017), 149.

49. Ziya Gökalp, ““Yeni Hayat ve Yeni Değerler”,” *Genç Kalemler*, no. 8 (1911).

50. Ziya Gökalp, “‘Hars ve Medeniyet’ (Culture and Civilization),” in *Turkish Nationalism and Western Civilization: Selected Essays*, ed. Niyazi Berkes (London: Allen / Unwin, 1959), 104.

51. Ziya Gökalp, “‘Hars ve Medeniyet’ (Culture and Civilization),” in *Turkish Nationalism and Western Civilization: Selected Essays*, ed. Niyazi Berkes (London: Allen / Unwin, 1959), 104.

52. Banu Turnaoglu, *The Formation of Turkish Republicanism* (Princeton: Princeton University Press, 2017), 156.

53. Ziya Gökalp, “‘Millet ve Vatan’ (Nation and Fatherland),” in *Turkish Nationalism and Western Civilization: Selected Essays*, ed. Niyazi Berkes (London: Allen / Unwin, 1959), 78.

54. Tekinalp, “The Ideal,” in *The Turkish and Pan-Turkish Ideal*, 137.

2.3 Constitutional Debates During the Early Years of the Second Constitutional Period

After revolution, the CUP should have fully seized control of the executive branch, given its significant military power. The CUP settled for a monarchical constitutionalism, despite the possibility that parliamentary structures might hinder or even jeopardize its radical reform agenda.⁵⁵ Disputes over the rights and responsibilities of the Chamber, the cabinet, the prime minister, and the monarch, as well as over procedures for changing or amending the constitution and standards for interpreting it, exemplified some of these issues. In practice, these disputes led to the interpellation of ministers, the fall of cabinets, clashes between opposition parties, and maneuvering and coalition-building within the Chamber, with rivals exploiting these differences.

The 1908 incident replaced the absolute monarchy with a constitutional one and introduced citizenship. These changes revealed its liberal-revolutionary nature. However, this transition naturally sparked extensive and profound debates about the nature of law and the form of the regime. Within this context, Babanzade's work, *Hukuk-i Esasiye*, was published in 1913. In this work, Babanzade theorized his views on law and regime, presenting a political theory from a comprehensive rule of law perspective on what the newly established constitutional monarchy should be based on the needs of the period. Sohrabi describes these debates as a war and states that the "constitutional" battle unfolding on the sidelines was just as crucial as the developments within the Chamber.⁵⁶

At this point, especially the opposition's discourses against the Union and Progress government can be evaluated in terms of offering a different form of constitutionalism. The liberal opposition gradually increased their opposition to the CUP, especially after the end of the conservative Kamil Pasha government, and went so far as to argue that even the previous despotic regime could be better.⁵⁷ The religious opposition similarly aligned itself with Kamil Pasha and eventually grew closer to the Liberals, despite having strong reservations about the Liberals' decentralization program and differing views on equality with religious minorities.⁵⁸ Apart from these differences, their criticism of the CUP's violation of liberal constitutionalism closely

55. Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (Cambridge: Cambridge University Press, 2011), 135.

56. Ibid., 153.

57. "Sadr-ı Müstakbel," 13 Mart 1325 / 4 Rebiülevvel 1327, *İkdam*, no. 5328 (March 26, 1909): 1.

58. Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (Cambridge: Cambridge University Press, 2011), 164.

mirrored the sophisticated Liberal critique, but it was expressed in a more crude, personal, and populist manner.⁵⁹ The primary faction within the religious opposition was led by Dervish Vahdeti, who operated through his journal, *Volkan* (Volcano), and his later-formed party, the Society of Muhammad (*İttihad-i Muhammedi*). Sohrabi contends that this group's vigorous support of constitutionalism was surprising, especially given its almost century-long anti-constitutional image.⁶⁰ The first issue stated that although *Volkan*'s publication was intended to be delayed until the Chamber's opening, it began its efforts sooner, on election day, to address the deceptions and political instabilities of that day. Later, the blame for these issues was directly placed on the CUP and its elitism.⁶¹

Liberals, on the other hand, criticized the CUP's anti-liberal policies. One point of contention arose over the CUP's handling of public rallies. In February, Hilmi Pasha government introduced a regulation (though not yet a law) on meetings and public gatherings, mandating a police permit 24 hours in advance. *Tanin* and the CUP praised this move, applauding the government for distinguishing between freedom and anarchy.⁶² In contrast, the Liberals condemned it as unconstitutional, contending that a mere notification of time and place should be adequate. They also pointed to the newly established pro-CUP government and warned that such regulations undermined the Chamber's efforts to uphold freedom of association and the press, viewing it as a troubling indication of potential restrictions on freedoms in the future.⁶³ Dr. Rıza Nur, a prominent Liberal deputy from Sinop, strongly chastised the Committee by questioning if the Committee operated as a parallel government, exerting influence over official affairs, exercising its influence over official matters, and raised concerns over its accountability and purpose. According to Rıza Nur, the Committee was not merely a conventional organization; it operated through multiple divisions spanning finance, correspondence, information, and more, with a hierarchical structure that reached down to local levels across provinces, districts, and subdistricts in Istanbul and beyond.⁶⁴ Rıza Nur argued against the notion of a guardian for the nation or a paternalistic administration. While acknowledging the Committee's role as an observer, he insisted that it should not disrupt public affairs or influence public opinion. *Volkan* republished the article due to the significant

59. "Telif-i Muvaffakiyetler Yahud Beşaret-i Uzma," 17 Kanun-i Sani 1323 / 8 Muharrem 1327, *Volkan*, no. 30 (January 30, 1909): 1-2.

60. Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (Cambridge: Cambridge University Press, 2011), 165.

61. See "Bismillah al-rahman al-rahim," 28 Teshrin-i Sani 1324, *Volkan*, no. 1 (December 11, 1908): 1.

62. See "İçtimalar," 13 Şubat 1324 / 5 Sefer 1327, *Tanin*, no. 207 (February 26, 1909): 1.

63. "Mitingler Hakkında," 14 Şubat 1324 / 6 Sefer 1327, *İkdam*, no. 5301 (February 27, 1909): 1; "Ufuk-ı Siyasi," 15 Şubat 1324 / 7 Sefer 1327, *İkdam*, no. 5302 (February 28, 1909): 1.

64. Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (Cambridge: Cambridge University Press, 2011), 165.

attention it garnered.⁶⁵

By contrast, Hüseyin Cahit, a close associate of Babanzade, supported the CUP's policies during debates. Drawing inspiration from French literature and liberalism, Cahit emphasized the concept of liberty and its connection to national unity. He believed that true liberty could only exist within a legal framework that reflected the people's will, reflecting Namik Kemal's influence on patriotism and liberty.⁶⁶ In response to criticism directed to the CUP, Hüseyin Cahit acknowledged the details of its organizational structure, noting that the CUP had numerous branches extending down to the district level. However, he argued that such organization was common practice for any political party and did not necessarily indicate that the CUP functioned as a parallel government. Regarding the Liberals' call for a complete withdrawal from politics, the CUP openly opposed it. Initially, *Tanin* accused their opponents of using Committee interference as an opportunistic excuse to sway public opinion and push for its dissolution.⁶⁷

However, liberals continued to oppose the paternalistic tendencies of *Tanin* and CUP. Ali Kemal, a prominent Liberal, criticized the CUP's philosophy, which viewed public opinion as immature and in need of guidance, comparing it to children needing protection from unsuitable ideas or influences, arguing that this fundamentally flawed approach was flawed.⁶⁸ The Liberals argued that there were fundamental differences between their party and the CUP (Committee of Union and Progress). These differences were evident in their understanding of the constitution and their stances on public gatherings, press freedom, and the importance placed on ethnic unity (*ittihad-i anasır*).⁶⁹ The Liberals emphasized their support for Ottomanism and unity among various ethnicities, whereas the CUP was criticized for discouraging minorities from embracing Ottoman identity and unity.⁷⁰

Hasan Bey (deputy from Pristina) attributed the current disorder to the Unionists and advocated for stronger laws to prevent it from acting as a parallel government.

65. "Görüyorum ki İş Fena Gidiyor," 27 Şubat 1324 / 19 Sefer 1327, *İkdam*, no. 5314 (March 12, 1909): 1; "Biz de Görüyoruz ki İş Fena Gidiyor!" 23 Sefer 1327 / 2 Mart 1324, *Volkan*, no. 74 (March 15, 1909): 1-4.

66. Banu Turnaoğlu, "Particularism vs. Universalism: Ottomanism and Constitutionalism During The Second Constitutional Period," in *The I.B. Tauris Handbook of the Late Ottoman Empire: History and Legacy*, ed. Hans-Lukas Kieser and Khatchig Mouradian, Forthcoming, currently unpublished (London: I.B. Tauris, 2024), 4.

67. "Ziyafet Münasebetiyle," 14 March 1909/1 Mart 1325/21 Sefer 1327, *Tanin*, no. 223 (March 14, 1909): 1.

68. "Amme Efkari Amme," 18 March 1909/5 Mart 1325/25 Sefer 1327, *İkdam*, no. 5320 (March 18, 1909): 1.

69. "İttihad'dan Ahrar'a ve Ahrar'dan İttihad'a," 20 March 1909/7 Mart 1325/27 Sefer 1327, *İkdam*, no. 5322 (March 20, 1909): 1.

70. "Ahmed Rıza Bey'e," 26 March 1909/13 Mart 1325/4 Rebiyülevvel 1327, *İkdam*, no. 5328 (March 26, 1909): 3.

He argued that appeals to its centers were ineffective.⁷¹ Similar sentiments were expressed by the Liberal general secretary, Nurreddin Ferah, who criticized the CUP for imposing its authority over the government, exerting control over individuals nationwide, and even using the esteemed army to intimidate both the government and the Chamber.⁷² The CUP was accused of employing methods reminiscent of the old regime, including the use of spies and intimidation tactics. They were also criticized for granting desirable positions to corrupt officials from the previous regime who supported their cause. Liberals raised concerns about the disparity between the fear-inducing strategies utilized by the Yıldız Palace and those deployed by the CUP.⁷³

Volkan agreed with the analogy to the old regime, criticizing the CUP government for unconstitutional interference and its failure of transparency.⁷⁴ The CUP controlled everything, including the Chamber and the cabinet, and appointed or dismissed bureaucrats at arbitrary will. It granted positions to supporters at all levels, often at the expense of others.⁷⁵ *Volkan* described Kamil Pasha's fall as a clear victory for the CUP. While the Assembly's power to replace the prime minister technically demonstrated constitutional authority, *Volkan* argued that this was not something to celebrate. It is noted that true constitutional governments never allow their Parliament to be influenced by, or act on behalf of, a secret political committee. Such a committee's existence violated constitutional principles and hindered the development of public opinion necessary for proper constitutional governance. Rather than representing a triumph of the constitution, this event signified a dangerous and irrational power undermining these principles in contemporary Istanbul.⁷⁶ The CUP's approach to constitutionalism and its unease with a liberal interpretation of Ottoman citizenship favored a centralized administration under the guise of collective interests. While this change signaled a turn towards authoritarianism, it did not imply the abandonment of the constitution, but it can be called parliamentary

71. "Hasbihal," 22 March 1909/9 Mart 1325/29 Sefer 1327, *İkdam*, no. 5324 (March 22, 1909): 1.

72. "Ahmed Rıza Bey'e," 26 March 1909/13 Mart 1325/4 Rebiyülevvel 1327, *İkdam*, no. 5328 (March 26, 1909): 3.

73. "İttihad ve Terakki Cemiyeti'nin Beyannamesi Hakkında Mütaalaat," 31 March 1909/18 Mart 1325/9 Rebiyülevvel 1327, *İkdam*, no. 5333 (March 31, 1909): 4-5; "Ahmed Rıza Bey'e," 26 March 1909/13 Mart 1325/4 Rebiyülevvel 1327, *İkdam*, no. 5328 (March 26, 1909): 3.

74. "İkdam Refikimize," 15 December 1908/2 Kanun-ı Evvel 1324, *Volkan*, no. 5 (December 15, 1908): 2-3; "Hakikat, Hakikatdir," 17 December 1908/4 Kanun-ı Evvel 1324, *Volkan*, no. 7 (December 17, 1908): 3-4; "Serbesti'den: Menafi-i Milliye Namina Bir Davet," 27 February 1909/6 Sefer 1327/14 Şubat 1324, *Volkan*, no. 58 (February 27, 1909): 1-2; "Millet, Asker," 22 March 1909/30 Sefer 1327/9 Mart 1325, *Volkan*, no. 81 (March 22, 1909): 2-3.

75. "Tanin'i Hakka Davet," 27 February 1909/6 Sefer 1327/14 Şubat 1324, *Volkan*, no. 58 (February 27, 1909): 2-3; "Teskin-i Helecan Emr-i Muhal," 12 April 1909/30 March /21 Rebiyülevvel 1325, *Volkan*, no. 102 (April 12, 1909): 1-2.

76. "Times Ne Diyor?," 25 February 1909/4 Sefer 1327/12 Şubat 1324, *Volkan*, no. 56 (February 25, 1909): 2-3.

despotism.⁷⁷

The constitutional debates during the Second Constitutional Monarchy period (1908-1913) also focused on the framework of "national sovereignty" and the interpretation of Ottomanism.⁷⁸ Discussions included how the constitution should address these concepts and the appropriate attitude or language to be used. According to Turnaoğlu, the Second Constitutional period was defined by a struggle between different visions of democratic constitutionalism such as: cultural nationalism (emphasizing social unity and a homogeneous identity), liberal universalism (promoting individual freedom and equal rights regardless of identity), and pluralism/multiculturalism (seeking substantive equality that recognizes diverse identities). Turnaoğlu examines these debates through the representatives of each vision—Hüseyin Cahit as the cultural nationalist, Babanzade Hakkı İsmail as the liberal universalist, and Krikor Zohrap as the multiculturalist.⁷⁹

Hüseyin Cahit argues that national unity would benefit all Ottoman citizens, preventing the nation from disintegrating and falling under foreign rule.⁸⁰ He states that a constitutional rule means the unification of the nation (*milletin tevhidi*).⁸¹ Hüseyin Cahit criticizes liberals' decentralization policy, stating it is the grave of the Ottoman nation. Cahit defends the CUP's policy of making Turkish an official language⁸² and implementing military service for non-Muslims as steps toward forging a cohesive nation.⁸³

The concept of *millet-i hakime* emerged in late nineteenth-century debates as a peripheral idea.⁸⁴ However, Cahit played a significant role in popularizing and centralizing this concept within cultural nationalism or Turkism.⁸⁵ Turnaoglu states

77. Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (Cambridge: Cambridge University Press, 2011), 174.

78. Banu Turnaoğlu, "Particularism vs. Universalism: Ottomanism and Constitutionalism During The Second Constitutional Period," in *The I.B. Tauris Handbook of the Late Ottoman Empire: History and Legacy*, ed. Hans-Lukas Kieser and Khatchig Mouradian, Forthcoming, currently unpublished (London: I.B. Tauris, 2024), 1.

79. Ibid., 2.

80. Hüseyin Cahit [Yalçın], "Osmanlılık ve Hanedan-ı Sultanat," in *Tanin Gazetesi Başmakaleleri 1 Ağustos 1908-13 Nisan 1909*, ed. Kudret Emiroğlu (İstanbul: Ötüken Yayıncılık, 2023), 592.

81. Hüseyin Cahit [Yalçın], "Şanlı İttihat ve Terakki Cemiyeti'nin Siyasi Programı," *Tanin*, no. 56 (September 1908): 1.

82. Hüseyin Cahit [Yalçın], "Maarif Islahatı," *Tanin*, no. 97 (November 1908): 263; Hüseyin Cahit [Yalçın], "Mektepler Meselesi," In *Tanin Gazetesi Başmakaleleri*, 1, *Tanin*, June 1909,

83. Hüseyin Cahit [Yalçın], "Askerliğin Bizce Ehemmiyeti," In *Tanin Gazetesi Başmakaleleri*, *Tanin*, no. 41 (September 1908): 125-127.

84. M. Şükrü Hanioğlu, "Turkism and the Young Turks, 1889-1908," in *Turkey Beyond Nationalism: Towards Post-Nationalist Identities*, ed. Hans-Lukas Kieser (London: Bloomsbury Publishing, 2006), 3-19.

85. Banu Turnaoğlu, "Particularism vs. Universalism: Ottomanism and Constitutionalism During The Second Constitutional Period," in *The I.B. Tauris Handbook of the Late Ottoman Empire: History and Legacy*, ed. Hans-Lukas Kieser and Khatchig Mouradian, Forthcoming, currently unpublished (London: I.B. Tauris, 2024), 6.

Hüseyin Cahit aims to establish a Turkish identity and national structure, preserving the Ottoman Empire's hierarchy but placing Turks at the top.⁸⁶

As Turnaoğlu stated, Cahit's nationalist ideas closely resembles those of Ziya Gökalp, the nationalist ideologue of the CUP.⁸⁷ Gökalp had also proclaims the Turks as the *Herrenvolk* (master race) of the Ottoman Empire: "The *Übermensch* (fevkalbeşerler), envisaged by the German philosopher Nietzsche, are the Turks. They are the new people of every century."⁸⁸ According to Gökalp, "We are of the Turkish nation (*millet*), of the Islamic religious community (*ümmet*), of western civilization (*medeniyet*)."⁸⁹ However, while Cahit is a Westernist who despises traditionalism and religion, Gökalp harmoniously synthesized Turkism, Islam, and Westernization.⁹⁰

Constitutional discussions not only aimed to defend Turkism, with Zohrab arguing for a decentralized constitution. Zohrab, an Armenian-origin deputy from Istanbul, interpreted Ottomanism in a different fashion; his multiculturalism emphasized a different approach to pluralism through constitutionalism. Turnaoğlu states that actually both cultural nationalism and multiculturalism aim for the constitution to realize liberty, equality, sovereignty, the rule of law, unity, and Ottomanism, but their reasoning differs.⁹¹

Zohrap believes that minority needs shaped interactions with others and the state, and that the state's preservation of a multicultural "Ottoman" identity was crucial for its survival.⁹² Turnaoğlu states that inspired by Herder's *Volkstheorie*, Zohrap linked culture with nation and politics, and emphasized the role of language.⁹³ In addition, Zohrap envisioned an egalitarian society without a dominant national identity or social classes. He envisioned a multicultural, communitarian state with a unique culture, promoting a decentralized state.⁹⁴

86. Ibid., 7.

87. Ibid., 8.

88. Ziya Gökalp, ““Yeni Hayat ve Yeni Değerler”,” *Genç Kalemeler*, no. 8 (1911): 55.

89. Ziya Gökalp, ““Üç Cereyan” [Three Currents of Thought],” in *Turkish Nationalism and Western Civilization: Selected Essays*, ed. Niyazi Berkes, vol. 3, 35, Originally published in *Türk Yurdu* 3, no. 35 (1913) (London: Allen / Unwin, 1959), 76.

90. Banu Turnaoğlu, “Particularism vs. Universalism: Ottomanism and Constitutionalism During The Second Constitutional Period,” in *The I.B. Tauris Handbook of the Late Ottoman Empire: History and Legacy*, ed. Hans-Lukas Kieser and Khatchig Mouradian, Forthcoming, currently unpublished (London: I.B. Tauris, 2024), 8.

91. Ibid., 12.

92. Krikor Zohrap, *Siyasi Nutuklar*, Published in 1324 [1908] (Dersaadet: n.p., 1908), 28–29.

93. Banu Turnaoğlu, “Particularism vs. Universalism: Ottomanism and Constitutionalism During The Second Constitutional Period,” in *The I.B. Tauris Handbook of the Late Ottoman Empire: History and Legacy*, ed. Hans-Lukas Kieser and Khatchig Mouradian, Forthcoming, currently unpublished (London: I.B. Tauris, 2024), 14.

94. İsmail Yıldız, *II. Meşrutiyet Döneminde Ermenilerde Devlet, Toplum ve Kimlik Tartışmaları (1908-1914)* (Ankara: Yüzde İki Yayınları, 2019), 265.

As a result, the constitutional debates of the second constitutional period revolved around individual freedoms, the situation of minorities, the meaning of "national sovereignty" (*hakimiyet-i milliye*), the definition of a nation, and the preference for a strong versus a weak state, and a centralized versus a decentralized state.⁹⁵ Criticisms of the authoritarian CUP came from conservatives, minorities, and liberals—various opposition groups—leading to detailed discussions about the nature of the constitution. Considering that this was the period in which Babanzade wrote his book, it can be said that the book offers a comprehensive answer to these questions, an answer that aligns with the writings in *Tanin*.

2.4 The Life Story of Babanzade

Babanzade is a prominent political thinker who contributed to the constitutional debates at the beginning of the twentieth century and was greatly influenced by German legal theorists and jurists and their concept of *Rechtstaat* (legal state). Babanzade's views on political science and politicians align closely with Bluntschli's division between *Staatsrecht* (the state in its existing form) and *Politik* (the goals of public efforts).⁹⁶ In essence, Babanzade appears to share a resonance with Jellinek, Duguit and Bluntschli, suggesting a parallel acknowledgment of the importance of understanding the state as it currently exists, while also recognizing the significance of considering the broader goals and purposes guiding public endeavors.

Babanzade was born in Baghdad in 1876. He was a member of the Baban tribe, based in Sulaymaniyah, Iraq. His father was Mustafa Zihni Pasha, a state official.⁹⁷ The most important event that influenced the formation of Babanzade's legal and political thought was their move to Istanbul. Istanbul is not only the capital but also a multinational metropolis. Istanbul had a significant influence on him in making comparisons between the Eastern world where he grew up and the Western-influenced world in which he lived, and in developing his mentality.⁹⁸ Spending his education in quality schools and learning French will enhance Babanzade İsmail

95. See also Nader Sohrabi, *Revolution and Constitutionalism in the Ottoman Empire and Iran* (Cambridge: Cambridge University Press, 2011); Banu Turnaoglu, "Particularism vs. Universalism: Ottomanism and Constitutionalism During The Second Constitutional Period," in *The I.B. Tauris Handbook of the Late Ottoman Empire: History and Legacy*, ed. Hans-Lukas Kieser and Khatchig Mouradian, Forthcoming, currently unpublished (London: I.B. Tauris, 2024).

96. Johann Kaspar Bluntschli, *The Theory of the State* (Kitchener: Batoche Books, 2000), 13.

97. Edip Bukarlı, *19. Yüzyıl Osmanlı Devlet Adamı Bâbânzade Mustafa Zihni Paşa'nın hayatı ve İlmi Kişiliği* (İstanbul: Libra Kitapçılık ve Yayıncılık, 2019), 31.

98. Faysal Mayak, "Babanzade İsmail Hakkı Bey'in Gözünden Osmanlı Devleti'nin İç ve Dış Politikası (1908-1913)" (MA thesis, Akdeniz University, 2019), 3.

Hakki Bey's ability to make direct comparisons between the West and the East. When his travels to Europe are added to this, we encounter a Babanzade who has internalized Eastern thought and been influenced by Western society.

Notably, his siblings were also influential figures. One of his brothers, Ahmet Naim Bey, was an influential intellectual of his time, while another, Hasan Şükrü Bey (Şükrü Baban), served as a professor of economics during the Republican era. Babanzade graduated from Galatasaray High School and began his studies at Mektebi Mülkiye.

The period that provided a thorough understanding of Western ideas was the reign of Abdulhamid II. The intellectual group who received education in the schools opened during this period and had the opportunity to learn foreign languages there, created an important foundation for dragging society towards a modern understanding.⁹⁹ With the improved programs of these schools, a knowledgeable generation was raised. This generation was not limited to the military class but also emerged in the fields of bureaucracy, diplomacy, and politics. A well-informed and well-educated generation emerged as a result of the modern these institutions. This generation's influence was not restricted to the military; it also manifested in the realms of diplomacy, politics, and bureaucracy. Babanzade İsmail Hakkı Bey's education during the reign of Abdulhamid II exemplifies this phenomenon.¹⁰⁰ However, he was expelled by the Sultan Hamid Government due to his opposition to the extant system and graduated from the Law School in 1902. Regarding his intellectual abilities, he was proficient in Arabic, Persian, and French, evident from his role in giving French lessons at the engineering school.¹⁰¹

Another aspect of Babanzade İsmail Hakkı Bey's career is his active involvement in politics.¹⁰² In the 1908 elections, he was elected as a member of parliament from an important city like Baghdad.¹⁰³ The fact that he was simultaneously a member of parliament, a journalist, and a teacher at *Mektebi Mülkiye* at a young age shows his versatile personality. Additionally, his performance in political life increased his reputation both within the party and in the eyes of the public. His success was further acknowledged when he was appointed as the Minister of Education in

99. Şerif Mardin, *Türk Modernleşmesi-Makaleler 4* (İstanbul: İletişim Yayıncılık, 1991), 17–18.

100. Faysal Mayak, "Babanzade İsmail Hakkı Bey'in Gözünden Osmanlı Devleti'nin İç ve Dış Politikası (1908-1913)" (MA thesis, Akdeniz University, 2019), 1.

101. Anıl İbrahim Bakırçı, "Babanzade İsmail Hakkı Bey'in Anayasa Hukukçusu Olarak Portresi," *Adalet Dergisi* 62-63 (2019): 559.

102. Hüseyin Özdemir, *Demokrasi Tarihimizde İttihad ve Terakki'li Yıllar* (İstanbul: Ötüken Neşriyat, 2016), 34.

103. Faysal Mayak, "Babanzade İsmail Hakkı Bey'in Gözünden Osmanlı Devleti'nin İç ve Dış Politikası (1908-1913)" (MA thesis, Akdeniz University, 2019), viii.

1911.¹⁰⁴

Babanzade İsmail Hakkı Bey started his journalism career at the *İkdam* newspaper before the second declaration of the Constitutional Monarchy.¹⁰⁵ When the Constitutional Monarchy was declared in 1908, and the main law came into force again, Babanzade was also affected by the atmosphere of change in the country. On 13 August 1324 (26 August 1908), he moved from the *İkdam* newspaper to the *Tanin* newspaper, where he wrote his first article and began to contribute to the ideology of the Committee of Union and Progress. What prompted Babanzade İsmail Hakkı Bey to leave *İkdam* was the principle of Ahmet Cevdet Bey, the owner of the *İkdam* newspaper, to publish articles without a signature.¹⁰⁶ Hüseyin Cahit Bey wrote the following regarding this issue: "His articles were published unsigned in *İkdam*. This first caught Babanzade Hakkı's attention. Since he had previously worked at *İkdam*, it was natural that his views had special value. Hakkı said, 'Our signature is a spiritual capital for us. We cannot truly own our words if we write without a signature. Everything then belongs to the newspaper. We always remain at the level of workers who can be dismissed and thrown out into the streets.'"¹⁰⁷

Tanin played a significant role in Babanzade İsmail Hakkı Bey's life, and his prominence among the Ottoman public was largely due to his significant writings for the newspaper. *Tanin*, established after the declaration of the Constitutional Monarchy, had a longer publication life than other newspapers. It operated essentially as a semi-official publication of the Party of Union and Progress. *Tanin* was founded by Hüseyin Cahit, Tevfik Fikret, and Hüseyin Kazım on 2 August 1908, following the declaration of the Constitutional Monarchy. Tevfik Fikret left shortly after the newspaper began publication. In the subsequent years, figures like the Unionist Minister of Finance Cavit Bey and Adnan Adıvar also contributed to the newspaper. *Tanin* was eventually closed by the Independence Tribunals in 1925.¹⁰⁸ Babanzade wrote for *Tanin* throughout his life and occasionally assumed editorial roles when the newspaper underwent name changes. His friendship with Hüseyin Cahit is evident from this period. While Hüseyin Cahit focused on domestic issues in the newspaper, a section was dedicated to Babanzade where he addressed foreign affairs. Nonetheless, many of his articles explored theoretical, domestic and contemporary issues such as the separation of powers and civil conflicts in Ottoman Empire.

During the 31 March Incident, the *Tanin* printing house was destroyed and looted by

104. Ibid., viii.

105. Ibid., viii.

106. Ibid., 10.

107. Hüseyin Cahit [Yalçın], *Edebiyat Anıları* (İstanbul: İş Bankası Kültür Yayınları, 1975), 165.

108. Hifzı Topuz, *II. Mahmut'tan Holdinglere Türk Basın Tarihi* (İstanbul: Remzi Kitabevi, 2003), 83.

a group of rebels. Hüseyin Cahit Bey and Babanzade İsmail Hakkı Bey fled Istanbul and went to Thessaloniki. During their stay there, they published a special edition of the *Tanin* newspaper dated April 26, 1909, as a souvenir.¹⁰⁹ Similarly, Babanzade İsmail Hakkı Bey continued to write articles for the newspaper, which underwent name changes such as *Senin*, *Renin*, *Yeni Tanin*, *Hak*, and *Cenin*. In fact, there were times when the newspaper changed its name and Babanzade assumed the role of editor-in-chief.¹¹⁰

According to Hüseyin Cahit, Babanzade İsmail Hakkı Bey was also a member of the Masonic lodge. Hüseyin Cahit Bey mentioned that several Masonic lodges were opened in Istanbul after the March 31 incident. He wrote that he visited his lodge twice: once to register Babanzade and the second time to register Hallaçyan Efendi and to participate in its ceremony.¹¹¹ Hüseyin Cahit also disclosed that Babanzade was among those who urged the CUP to refrain from engaging soldiers in politics. Lütfi Fikri Bey confirms this in his memoir dated March 3, 1913: "According to reports, Talat, Halil, Babanzade İsmail Hakkı Bey, and others were here last night in Ayastefanos, where Enver Bey sent Hurşit Pasha to the headquarters. They were at the residence of Kazim Bey, to whom they were assigned. So, there was a meeting there last night!... It's quite regrettable. On one hand, they argue that the military should stay out of politics, yet they convene with high-ranking military officials at the army's headquarters."¹¹² Thus, Babanzade is criticized for his inconsistency in defending the idea that the army should not intervene in politics while also engaging with influential CUP leaders who were military commanders. Nonetheless, this anecdote shows that he played an important role through his connections with CUP leaders.

As the empire began to disintegrate even before the constitutional revolution, intellectuals attributed this to the absence of a constitutional system and proposed various solutions. Although Babanzade emphasized the importance of the constitution both before and after the revolution, he was aware that it alone was not the sole solution. He engaged in discussions about the state, contemplating the structure of

109. Caner Arabacı, "İttihat ve Terakki Basını," in *İkinci Meşrutiyet Devrinde Basın ve Siyaset*, ed. Hakan Aydin (Konya: Palet Yayınları, 2010), 128–129.

110. Babanzade İsmail Hakkı Bey's first editorial in *Tanin* was the article titled "Avusturya-İtalya ve Arnavutluk," which he wrote in the issue dated 22 December 1909. The circumstance that made this possible was Hüseyin Cahit's trip to Romania at the time. In such situations, it was often observed that the responsibility for writing editorials fell to İsmail Hakkı Bey.

See also Faysal Mayak, "Babanzade İsmail Hakkı Bey'in Gözünden Osmanlı Devleti'nin İç ve Dış Politikası (1908-1913)" (MA thesis, Akdeniz University, 2019), 5.

111. Hüseyin Cahit [Yalçın], *Siyasal Anılar* (İstanbul: İş Bankası Kültür Yayınları, 1976), 115; Hilmi Bengi, *Gazeteci, Siyasetçi ve Fikir Adamı Olarak Hüseyin Cahit Yalçın* (Ankara: Atatürk Araştırma Merkezi Yayınları, 2000), 26.

112. Lütfi Fikri Bey, *Lütfi Fikri Bey'in Günlüğü*, ed. Yücel Demirel (İstanbul: Arma Yayınları, 1991), 44.

this failing state, how it could be salvaged, and what the political system formed under the new constitution should be like. These considerations help us understand why *Hukuk-i Esasiye* was written. His writings in *Tanin* critique the domestic and foreign policies of the new regime. In this context, Babanzade's works and a theory of the state theory he devised can be interpreted as responses to the challenges of his time.

Babanzade was not only a prominent figure in the Ottoman Empire during his time but also a member of parliament who undertook significant duties in political/intelectual circles abroad. In the summer of 1909, a delegation of MPs, led by Talat Bey, embarked on a European excursion at the behest of England following the commencement of the Parliament. Babanzade İsmail Hakkı Bey, who was a Baghdad deputy at the time, was also included in this group of MPs.¹¹³ Babanzade reported these visits in *Tanin*.¹¹⁴ The Ottoman delegation, which stopped in Paris before going to London, reached the city on July 11. During their stay, they attended Parliament sessions and various banquets. The Turkish delegation, present in Parliament until the evening of July 12, listened to speeches and discussions about French foreign policy for three days. From the lodges opposite the Parliament Presidency, the delegation carefully followed the four-hour-long statements of French Prime Minister Clemenceau.

On the evening of July 12, 1909, a grand banquet was held at the Garibon Hotel by the "*Muhibban-i Şark Cemiyeti*" (Lovers of the Oriental Society). Minister of Foreign Affairs Pichon also attended this banquet and delivered a speech, declaring that the interests of Turkey and France were aligned in many respects and that France approached Turkey with a friendly disposition. In response to this speech, the Ottoman Empire's Ambassador to Paris, Naum Pasha, thanked Pichon for his friendly expressions. Babanzade İsmail Hakkı Bey, one of the speakers at the same banquet, said in his speech, "We would like to see France materially support Turkey." These words received intense applause.¹¹⁵ On July 14, the anniversary of the French Revolution, the Ottoman Parliamentary delegation participated in the official parade. The delegation watched the parade, which was organized by 25,000 soldiers from various classes, and then attended the dinner hosted by the President of the French Parliament, Henry Brisson.¹¹⁶

113. Faysal Mayak, "Babanzade İsmail Hakkı Bey'in Gözünden Osmanlı Devleti'nin İç ve Dış Politikası (1908-1913)" (MA thesis, Akdeniz University, 2019), 25.

114. Babanzade İsmail Hakkı, "Seyahat-i Mebusan," *Tanin*, no. 309 (July 12, 1909); Babanzade İsmail Hakkı, "Fransa Meclis-i Mebusanında," *Tanin*, no. 314 (July 21, 1909); Babanzade İsmail Hakkı, "Newcastle-Manchester," *Tanin*, no. 331 (August 4, 1909).

115. Babanzade İsmail Hakkı, "Seyahat-i Mebusan," *Tanin*, no. 309 (July 12, 1909): 2.

116. Ahmet Gazel and Sacit Uğuz, "Osmanlı Mebuslarının Avrupa Seyahati (1909)," *Atatürk Dergisi* 5, no. 1 (2006): 223-242.

Babanzade also visited England, listened to parliamentary speeches in London, engaged with the leading politicians of the period, and visited Birmingham and Oxford. On July 20, the Ottoman delegation examined the various ships of the British Navy in the English Channel and attended a banquet held for them on the flagship.¹¹⁷ Sir Edward Grey, Minister of Foreign Affairs, gave a speech at the banquet organized by the British Government on July 22. In his speech, Grey, who provided important messages and various recommendations about the future of Turkish-British relations, described the Ottoman Sultan as the "First Constitutional Caliph."¹¹⁸ These travels and contacts were significant for Babanzade to experience Europe and to express his admiration for British development in his memoirs. The connections he established at banquets also highlight his relationships with other countries' leaders during his time. In other words, Babanzade should be regarded not only as a theorist working in academia but also as a leading political figure actively involved in domestic and international politics.

Furthermore, despite his significance, Babanzade İsmail Hakkı Bey has been largely overlooked. This thesis aims to contribute not only to Ottoman intellectual history by uncovering his unique perspectives on contemporary issues and engagement with German thought but also to political theory. His ability to blend Islamic and Western sources in his analyses adds valuable insights to both fields.

117. Ahmet Gazel and Sacit Uğuz, "Osmanlı Mebuslarının Avrupa Seyahati (1909)," *Atatürk Dergisi* 5, no. 1 (2006): 235.

118. Hüseyin Cahit [Yalçın], "Avrupa'da Osmanlı Heyet-i Mebusesi," *Tanin*, July 1909, 1.

3. GERMAN IMPACT ON TURKISH POLITICAL THOUGHT: BABANZADE ISMAIL HAKKI'S *HUKUK-I ESASIYE*

This chapter examines various important facets of Ismail Hakkı Babanzade's political and legal theory through an analysis of his fundamental work, *Hukuk-i Esasiye*. Written within an important period in Ottoman history, Babanzade's thesis on fundamental law is of great intellectual and historical significance. This chapter examines the history, theoretical foundations, and distinctive contributions made by Babanzade to legal theory in an effort to clarify the complex aspects of *Hukuk-i Esasiye*.

The first part of the chapter examines the goals and importance of *Hukuk-i Esasiye*, shedding light on how it influenced political and legal discourse in the late Ottoman Empire. Subsequently, it presents an overview of the core ideas in the work, encompassing Babanzade's analysis of the fundamental law (*Hukuk-i Esasiye*) and its consequences for politics and government.

An examination of Babanzade's interaction with legal state theory, in especially his criticism of well-known European jurists like Jellinek, Esmein, and Duguit, is crucial to this research. This evaluation of the literature highlights Babanzade's distinctive approach, which integrates references from Islamic texts and literature with European legal theory. This synthesis, which connects Islamic and Western legal theories, highlights Babanzade's distinctive philosophical stance.

The chapter also looks at Babanzade's explanation of the goals of fundamental law, analyzing the ways in which his theories differ from and are critical of earlier interpretations. Babanzade is also notable for his critical analysis of influential thinkers on politics.

The chapter concludes with a discussion of Babanzade's formulation of *Drei Elementstheorie* (three-element theory) of the state and national sovereignty, which forms the basis of his political and legal theory. This study captures Babanzade's conception of statehood, wherein he integrates aspects of European thought to create

a holistic view of national sovereignty.

3.1 Significance and Objectives of *Hukuk-i Esasiye*

The significance of *Hukuk-i Esasiye* lies in its status as the first constitutional law book written in Turkish, which was utilized as a foundational resource at Mektebi Mülkiye in the early 20th century.¹¹⁹ Haldun Eroğlu asserts that it is the inaugural constitutional law book read by Mustafa Kemal during the formulation of the 1921 Constitution (*Teşkilat-i Esasiye*).¹²⁰ Bülent Tanör argues that national sovereignty and the national played an important role in the core of Mustafa Kemal's constitutional thought.¹²¹ Even though Babanzade presented different arguments regarding the separation of powers, it can be asserted that notions of the 1921 Constitution like national sovereignty and the sovereign assembly share noteworthy similarities with Babanzade's theory. In fact, Ergun Özbudun asserts that one of the most important features of the 1921 constitution was the full representation of the national will during the drafting phase.¹²² National will was emphasized in the first article of the 1921 constitution, and this article was unanimously accepted by the constituent assembly in accordance with this will.¹²³ As a result, it is evident that Babanzade's *Hukuk-i Esasiye* was influential in both Mustafa Kemal's thought and the drafting of the first constitution of the Republic of Turkey, highlighting the significance of this study. However, Babanzade did not formulate sovereign power as indivisible and defended the separation of powers, a perspective that differs from that of the 1921 Constitution.

However, *Hukuk-i Esasiye* should not be considered merely as a work on constitutional law. In Babanzade's thought, law is also formulated as a sub-branch of philosophy; thus, this book can be regarded as a contribution to political theory.¹²⁴

Hukuk-i Esasiye also significantly influenced the intellectual life of the founding elites of the Republic of Turkey. In *Medeni Bilgiler*, written by or for Mustafa Kemal to outline modern state definitions and citizenship for the Turkish people, Babanzade's

119. Kemal Gözler, *Anayasa Hukuku'nun Metodolojisi* (Bursa: Ekin Kitap Evi Yayımları, 1999), 197–199.

120. Haldun Eroğlu, "Mustafa Kemal Atatürk'ün Düşün Dünyasının Oluşumundaki Etkenlerle İlgili Bazı Görüşler," *Atatürk Yolu Dergisi* 7, no. 27 (2001): 292.

121. Bülent Tanör, *Anayasal Gelişme Tezleri* (İstanbul: Yapı Kredi Yayımları, 2013), 14–20.

122. Ergun Özbudun, *1921 Anayasası* (Ankara: Atatürk Araştırma Merkezi, 1992), 2.

123. Ibid., 23.

124. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 13.

theory of the state is clearly evident.¹²⁵ The formulation of the newly established Republic was deeply shaped by both German Legal State theory and Babanzade's ideas. For instance, the book identifies three essential elements of the state—nation, territory, and sovereignty—mirroring the *Drei-Elemente-Lehre*.¹²⁶ Additionally, the concept of state power is defined as will and sovereignty, an extension of the three-element theory discussed in this chapter. Furthermore, the structure of the "State" chapter in *Medeni Bilgiler* closely resembles Babanzade's work, indicating that the book's conceptualization of the state was heavily influenced by his theory.¹²⁷ It is certain that Mustafa Kemal read *Hukuk-i Esasiye* in detail, marking hundreds of pages and taking extensive notes.¹²⁸ In other words, it is clear that Babanzade significantly influenced Mustafa Kemal's world of thought.

Hukuk-i Esasiye represents a synthesis of new perspectives on law and political thought influenced by the West, as well as ideas from influential Muslim thinkers. Thus, his knowledge of both Eastern and Western thinkers sets Babanzade apart from Western philosophers and makes him unique. Babanzade's political ideology is notably influenced not only by the German Legal State theory and Georg Jellinek but also by French thinkers such as Léon Duguit, Adhémar Esmein, and Joseph Ernest Renan. Given all this, it is crucial to fill the gap with a detailed examination of the book. This will demonstrate that German political theories hold as much influence as French theories in Turkish political thought, emphasizing that Turkish intellectuals are not mere recipients but thinkers capable of producing their own original works.

3.2 Introduction to *Hukuk-i Esasiye*

The opening lines of *Hukuk-i Esasiye* emphasize the pivotal role of the science of Law in regulating interpersonal relations. As stated before, Babanzade asserts that Law is a discipline that forms a branch of philosophy.¹²⁹ Consequently, the primary concern of Law is "justice," a fundamental aim of philosophy, defined as the "ultimate practical goal" for humanity. Following this, Babanzade categorizes law

125. Mustafa Kemal Atatürk, *Medeni Bilgiler: Türk Milletinin El Kitabı*, 2nd ed. (İstanbul: Toplumsal Dönüşüm Yayınları, 2010).

126. Ibid., 49.

127. Ibid., 49-56.

128. Recep Cengiz, ed., *Atatürk'ün Okuduğu Kitaplar: "Altını Çizdiği Satırları, Özel İşaretleri, Uyaruları, Düşürü Notlar ve Kitap İçerisindeki Özel Yazları ile"*, vol. 8 (Anıtkabir Derneği Yayımları, 2001), 193-326.

129. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 13.

into two branches: public law (*Hukuk-i Umumiye/Hukuk-i Politikiye*) and private law (*Hukuk-i Hususiyet*). Babanzade places the examination of the concept of law within a political philosophy, asserting that what is public is inherently political.¹³⁰ Expanding on the topic of public law, he highlights its three distinct categories: fundamental law, administrative law, and criminal law.¹³¹ The title of this book emphasizes its concentration on the former, *Hukuk-i Esasiye*.

Hukuk-i Esasiye pertains to fundamental legal ideas, especially those found in the constitution. For two reasons, according to Babanzade, the fundamental law is different from administrative law. First, "fundamental law only focuses on the state."¹³² This suggests that "although a citizen may have ties to a city, town, or neighborhood, these connections are not covered by the fundamental law."¹³³ Instead, fundamental law addresses the connections of individuals with the state, encompassing opinions and practices concerning the structure of the state. Second, certain aspects of state affairs and institutions involve general departments and activities concentrated on broader national interests.¹³⁴ These departments and activities oversee and manage these interests generally and at a high level. Some organizations handle these matters in a closer, more specialized, and peripheral manner. While the latter is subject to administrative law scrutiny, the former is governed by fundamental law.¹³⁵

When Babanzade elaborates on the nature of *Hukuk-i Esasiye*, it becomes evident that the book is essentially a work of political theory. He asserts that *Hukuk-i Esasiye* addresses questions regarding the state, categorized into three main sections. Firstly, he delves into the essence of the state, exploring its sovereignty, origins, and legitimacy. This forms the initial segment of his examination. Secondly, Babanzade scrutinizes the mechanisms for appointing rulers and examines prevalent systems of government, including absolutism, constitutional monarchy, and republicanism. He discusses these types of regimes and defends constitutional governance, whether it is in a republic or monarchy, as a central theme in his political thought. Finally, he explores the extent of executive authority within the state, its prescribed boundaries, the legal framework governing subjects, and their corresponding obligations, encapsulating the third section of his interrogation.¹³⁶ Thus, fundamental law encompasses three main areas: the legal aspects and nature of the state, the organization of the state, and the legal relationships between individuals and the state.

130. Ibid., 14.

131. Ibid., 14.

132. Ibid., 15.

133. Ibid., 15.

134. Ibid., 15.

135. Ibid., 15.

136. Ibid., 16.

At the very beginning, Babanzade clarifies a distinction between politics and political science (*siyaset ve ilmi siyaset*), aligning with the conceptual differentiation as articulated by Jellinek. Jellinek believed that politics was a practical branch of knowledge with a strong foundation in German influences on state affairs, and it was tied to the practical objectives of the state; however, in its true sense, *Staatsrecht*, or public law, concentrated on the state's legal cohesion, particularly in light of contemporary circumstances.¹³⁷ Similarly, Babanzade argues that political intellectuals (*ulemayı siyaset*) cannot be satisfied with only recording the issues of the state and society, but they also want to "break down the curtain of darkness and ignorance of the past with their light of intelligence, they discover the beginnings of humanity, study the first foundations of society, strive to understand the past, and devise some plans to organize society according to their own ideals and judgments."¹³⁸ These might be regarded as Babanzade's precise motive for formulating his own political theory. Yet, politicians are not necessarily required to possess direct theoretical knowledge. Figures like Genghis Khan or Mehmed Ali Pasha achieved success through their practical political knowledge, even in the absence of literacy. Nonetheless, Babanzade contends that contemporary political leaders of his time should ideally possess a combination of theoretical and practical political knowledge. He cites historical statesmen such as Alexander, Caesar, Fatih the Conqueror, and Frederick II as exemplars who were well-versed in both disciplines.¹³⁹

3.3 Legal State Theory: Jellinek, Esmein, and Duguit—Babanzade's Critique of Previous Literature

Understanding Babanzade's political theory requires examining the foundational elements of the theories that influenced him. This exploration aims to enhance our understanding of Babanzade and determine how his potential influences informed his theories, specifically focusing on the theory of Jellinek, whose name appeared in *Hukuk-ı Esasiye*. Additionally, Esmein and Duguit, significant figures frequently cited in the book, will be examined. The common thread among these thinkers lies in their advocacy for the concept of the Legal State (*Rechtstaat*). Despite some nuances in their perspectives on modern state theories, it is plausible that they articulated similar viewpoints.

137. Georg Jellinek, *Das Recht des modernen Staates: Bd. 1: Allgemeine Staatslehre* (1900), 11–13, 15; Andreas Anter, "Georg Jellinek's Wissenschaftliche Politik: Positionen, Kontexte, Wirkungslinien," *Politische Vierteljahrsschrift* 39 (1998): 50.

138. Babanzade İsmail Hakkı, *Hukuk-ı Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yaynevi, 2017), 17.

139. Ibid., 18.

Beginning with Jellinek, one encounters a distinguished 19th-century German jurist who played a significant role in advancing a positivist perspective, particularly within the domain of international law.¹⁴⁰ Jellinek, a 19th-century German jurist, significantly contributed to the positivist perspective in international law. He proposed the *allgemeine sozial Staatslehre*, which accounts for the state's empirical and historical existence, and the *allgemeine Staatrechtslehre*, which examines legal norms.¹⁴¹ Thus, for him, law should be perceived as a scientific discipline and the modern state is an institution founded on law. Essentially, this aligned with what is commonly known as his *Drei Elementstheorie* (three-element theory), according to which for any state to exist, it needs three main components: territory, citizens (nation), and ruling authority (government).¹⁴²

Bernstaff argues that Jellinek was the most prominent figure in constitutionalist thinking in international law during the 19th century.¹⁴³ In fact, part of the view of the state has a Hegelian perspective. Without denying the idea that there is no power above the state, Jellinek accepts Hegel's perspective that "the rights and duties of the States could find their origins only in their particular will."¹⁴⁴ According to Jellinek, a legal scholar should refrain from acknowledging any formal basis of the law apart from the voluntary consensus of the international community and individual states. He differs from Hegel in his belief that a positivist law based on the international system and the "voluntarist premise" is possible.¹⁴⁵ Consequently, Jellinek believed that the will of the state can be considered law, as law is the will of states or nations. This search for a monist understanding of law led him to view the nation (*Volk*) as an organized entity and the State as the basis of his understanding.¹⁴⁶

In considering Jellinek's works, one of his most significant contributions to literature was *The Declaration of the Rights of Man and Citizens*, which discussed the American and French Revolutions. He rejected the idea that the French Revolution was an implementation of the Rousseau's social contract tradition. Indeed, upon examining the leaders of the revolution, it becomes evident that a significant number of them

140. Jochen Von Bernstorff, "Georg Jellinek and the Origins of Liberal Constitutionalism in International Law," *Goettingen Journal of International Law* 4 (2012): 660.

141. Duncan Kelly, "Revisiting the Rights of Man: Georg Jellinek on Rights and the State," *Law and History Review* 22, no. 3 (2004): 519, <https://doi.org/10.2307/4141687>.

142. *Ibid.*, 521.

143. Jochen Von Bernstorff, "Georg Jellinek and the Origins of Liberal Constitutionalism in International Law," *Goettingen Journal of International Law* 4 (2012): 662.

144. G. W. F. Hegel, *Grundlinien der Philosophie des Rechts oder Naturrechts und Staatswissenschaft im Grundrisse*, 12th (2011).

145. Georg Jellinek, *Die rechtliche Natur der Staatenverträge: ein Beitrag zur juristischen Construction des Völkerrechts* (A. Hölder, 1880), 3, note 3.

146. Jochen Von Bernstorff, "Georg Jellinek and the Origins of Liberal Constitutionalism in International Law," *Goettingen Journal of International Law* 4 (2012): 667.

were not followers of Rousseau. According to Jellinek, *The Declaration of the Rights of Man* created with full legal force for the first time, introducing the concept that, until then, had only existed within natural law—the idea of individual rights of the members of the state against the state as a whole.¹⁴⁷ This legal understanding was later included in the first French constitution of September 3, 1791. It is listed a set of "natural and civil rights," guaranteed by the constitution, based on a previous declaration of rights. Adopting an anti-social contract stance, Jellinek argued that the Declaration contradicts the social contract concept. The Declaration of Rights establishes clear limits between the state and individuals.¹⁴⁸ Thus, lawmakers should consistently regard these boundaries as enduring restrictions determined by the "natural, inalienable, and sacred rights of man." Duncan Kelly argues that Jellinek sought to blend scientific investigation with political support and connect legal theory with legal history.¹⁴⁹ This approach offered a purpose-driven foundation, enabling Jellinek to position the evolution of the modern state as a manifestation of increasingly intricate human associations. In essence, the state was portrayed as the most advanced form of social union attained thus far. As will be discussed, Babanzade was heavily influenced by Jellinek's views on positive law and the idea of an anti-social contract.

Adhémar Esmein (1848-1913) is frequently considered the pioneer in the field of teaching legal history and constitutional law in France.¹⁵⁰ It can be said that he is the person Babanzade cites most in *Hukuk-i Esasiye*. However, while giving references, Babanzade generally criticized his views and stated that he did not agree with him on many different points. Considered the father of French scholarship in legal history and constitutional law, Esmein appears as a champion of the republican system. The main points of his historicism may seem more indistinct, but Esmein approached legal history as a scientific discipline and did not limit it to the study of institutional arrangements.¹⁵¹ Esmein experienced the golden age of the Third Republic of France and became one of the key defenders of republicanism and French legal doctrine. However, later thinkers such as Duguit criticized him for being statist, viewing him as a defender of sovereignty and an opponent of innovations like civil servants' unionism rather than a proponent of the rule of law.¹⁵²

147. Georg Jellinek, *The Declaration of the Rights of Man and the Citizen* (New York: Henry Holt, 1901), 3.

148. Ibid., 11.

149. Duncan Kelly, "Revisiting the Rights of Man: Georg Jellinek on Rights and the State," *Law and History Review* 22, no. 3 (2004): 519, <https://doi.org/10.2307/4141687>.

150. Jean-Louis Halpérin, "Adhémar Esmein et Les Ambitions de l'histoire Du Droit," *Revue Historique de Droit Français et Étranger* 75, no. 3 (1997): 415.

151. Ibid., 415.

152. Ibid., 417. Citing, M.-J. Redor, *De l'Etat légal à l'Etat de droit. L'évolution des conceptions de la doctrine publiciste française 1879-1914*, Paris 1992, p. 164; H. S. Jones, *The French State in Question*, Cambridge University Press 1993, pp. 49 and 109.

Esmein thinks that history is not only a field of reference in the context of law but also a method to be used for argumentation.¹⁵³ In this sense, it would not be wrong to say that he is a historicist. Hence, it can be stated that Esmein's views are built on two foundations: first, his fundamental republicanism, and second, his historical method. In the preface of *Cours élémentaire d'histoire du droit français*, Esmein clearly states that the aim of the book is to define the concept of the state and its important aspects using the historical method.¹⁵⁴ For Esmein, the French Revolution clearly created the modern state, and the old laws were merely preparation for its formation. Esmein, who also evaluates feudalism, argues that feudalism fundamentally changed the concept of the state. As a matter of fact, Babanzade also accepts the thesis that the modern state is affected by feudalism, particularly when examining the source of representation, and he clearly references Esmein.¹⁵⁵

According to Esmein, the French monarchy led to the partial sovereignty of feudalism to disappear, especially through the absolute and administrative monarchy, which he mentions as an important development in the transition to the modern state. However, as a staunch republican, Esmein was also opposed to the monarchy. The harsh situation of Protestants following the revocation of the Edict of Nantes, the "odious and vexatious" ordinances against the Jews, the absurdity of the trades system, the dangers of the parliamentary opposition's theses, and the deplorable effects of office venality were just a few of the vices of the absolute and administrative monarchy that Esmein mentions. Thus, according to Esmein, revolution was necessary to eliminate such a regime.

The work in which he actually revealed his republican project was his famous book *Eléments de droit constitutionnel*, published in 1896.¹⁵⁶ This work was very likely intended to be the first republican treatise on constitutional law.¹⁵⁷ In the article "Two Forms of Government", Esmein argued that representative government developed through the merging of English parliamentary practice and the theories of French revolutionaries like Sieyès.¹⁵⁸ Thus, he defends representative government as a legitimate form of governance. In another article, he emphasizes the importance of a strict conception of national sovereignty and the separation of powers, and he is absolutely against an executive that originates from the parliament.¹⁵⁹ Esmein

153. Ibid., 417.

154. Ibid., 417. Citing: *Cours élémentaire d'histoire du droit français*, Paris 1892, p. VI.

155. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayinevi, 2017), 215.

156. Jean-Louis Halpérin, "Adhémar Esmein et Les Ambitions de l'histoire Du Droit," *Revue Historique de Droit Français et Étranger* 75, no. 3 (1997): 419.

157. Ibid., 419.

158. Ibid., 419. Citing: *Revue du droit public et de la science politique en France et à l'étranger*, 1894, p. 17.

159. Ibid., 419. Citing: *Revue politique et parlementaire*, 1894, t. I, p. 200-224.

states that he is a constitutionalist, but neither a royalist nor a democrat. Thus, he formulates the republic through the constitution. In the second part of his book *Elements* Esmein particularly praises the 1875 constitution as an ideal one, viewing it as the pinnacle of French constitutional history.¹⁶⁰ He argues that the republican form of the State, which existed before the Constitution, is legitimized by the implicit acceptance of the entire nation. Additionally, he considers the Parliamentary Republic as the "logical" outcome of historical development.

Esmein believes that the Constitution of 1875 is quite sufficient and is not receptive to changes in this constitution. Halperin argues that for this reason, Esmein was against women's suffrage, referendums, and proportional representation.¹⁶¹ Esmein is also very opposed to the idea of the Senate and the parliament's sanctions on the executive. In particular, his opposition to the idea of a Senate and his stance against proportional representation are discussed and criticized in detail by Babanzade.

For Esmein, constitutional law emerged from a historical process, gradually evolving through the accumulation of texts, ideas, and practices. This historical perspective illuminates the nature of the controversy between Duguit and Esmein.¹⁶² Esmein argues that despite variations in formation across different times and places, the consistent effects stemming from the inner nature and logic of a particular type of institution tend to emerge.¹⁶³ At this juncture, Babanzade holds a different perspective from Esmein. According to Babanzade, institutions yield varying outcomes in different geographical contexts. Babanzade asserts that each institution and law ought to be selected based on the specific context of its time and place.¹⁶⁴ Hence, it can be said that Babanzade adopts a broader perspective on change and different ruling systems compared to Esmein.

According to Esmein, the institution is one of the foremost concepts in French legal history. He believes that change and development in law and institutions have led to the Republic, considered the most suitable form of governance. However, this stance has faced criticism for its lack of dynamism. Esmein's perspective appears to overlook the interconnectedness of economic and social changes and their impact on institutions. Therefore, Halperin, for instance, suggests that Esmein's theory is static.¹⁶⁵

160. Ibid., 420. Citing: Esmein, Adhémar. *Éléments de droit constitutionnel*. L. Larose, 1896.

161. Ibid., 421.

162. Ibid., 423.

163. Ibid., 428.

164. Babanzade İsmail Hakkı, *Hukuk-ı Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 335.

165. Jean-Louis Halperin, "Adhémar Esmein et Les Ambitions de l'histoire Du Droit," *Revue Historique de Droit Français et Étranger* 75, no. 3 (1997): 432.

Léon Duguit, a French legal scholar, also made substantial contributions to the analysis of the relationship between the state and legal issues. His investigation into the nature of ownership and property, defining them as social functions, was crucial in dismantling the theoretical divide between public and private law. As a French anti-formalist, he criticized the dominant view of law as a separate field and advocated for the use of sociological and scientific analyses in investigating law and the state. His impact can be seen in political philosophy, state understanding, and conventional private law and societal property restrictions. His influence extends to various aspects of law and society.

Duguit thoroughly explored perspectives on the state and law in his seminal work, *The Law and The State*. Its central question, as underscored in the introduction, is: "Does a legal principle (*ne règle de droit*) superior to the State exist?"¹⁶⁶ Babanzade's *Hukuk-i Esasiye* can also be read as an answer to this question, by discussing the relationship between law and state. Duguit posited that the issue of constraints on the State, as articulated, is inherently juridical in nature.¹⁶⁷ He firmly supports a positivist stance on law by stating that legal principles (*la règle de droit*) dictate specific actions, not based on their intrinsic moral value determined *a priori*, but rather on their alignment or discordance with established social relations within a particular human community.¹⁶⁸ According to Duguit, theories regarding the origin and nature of the state fall into two categories: metaphysical and realist. Metaphysical theories characterize the state as a personal entity, though not solely tied to religion or myth. For instance, scholars like Rousseau, Hegel, and Stirner fall into this category.¹⁶⁹ Regarding realist perspectives, the state is perceived as a construct inseparable from individuals. On this matter, Babanzade does not entirely align with Duguit; he defends the state as a legal entity, which means the state is more than just a collection of individuals (citizens). However, he employs similar ideas when addressing the legitimacy of the state.

Another dimension in which Babanzade is influenced by Duguit is through Duguit's criticisms of Rousseau. Duguit criticizes Rousseau's social contract theories due to the contemporary evidence provided by biological and anthropological sciences.¹⁷⁰ These sciences demonstrate that, considering man's physical organs and physiological constitution, living in isolation is untenable. Man has never existed alone; his thriving is possible only in society, and he has always been situated within a social framework. According to Duguit, it is unfounded to perceive the natural man as

166. Léon Duguit, "The Law and the State," *Harvard Law Review* 31, no. 1 (November 1917): 2.

167. Ibid., 3.

168. Ibid., 4.

169. Ibid., 8.

170. Ibid., 23.

independent and isolated; one can only envision man as a social being, or more precisely, one can only conceive of society.¹⁷¹ Man does not exist prior to society; his existence is intricately connected with and reliant upon society. A further criticism pertains to the concept of freedom: according to Rousseau's theory, the individual's rights are unable to place any limitations on the unlimited power of the State.¹⁷²

When we compare Duguit with Jellinek, some differences stand out. Firstly, unlike Jellinek, Duguit sees the French Revolution as a continuation of the Rousseauian understanding and evaluates it as an effort to establish absolute state sovereignty. According to him, J. J. Rousseau is the father of Jacobin despotism.¹⁷³ Yet, Duguit admires Jellinek for his belief in the state being based on law, stating that Gerber was the pioneer of the German State of Law theory, but Jellinek completed and perfected it.¹⁷⁴ According to Duguit, the German public law doctrine can be explained in four key points.¹⁷⁵ First, the State is a distinct entity from the nation and individuals, although it is a national organization and the nation consists of individuals. Second, the State is considered a legal person with rights and subject to public power, which Jellinek refers to as the "*Herrschaft*." Third, the sovereign public power implies that the State can judge the extent of its own authority, make decisions based on its will, and establish objective rights independently of other controlling wills. Fourth, despite being independent, the State, with its *Herrschaft*, can choose to voluntarily abide by the rule of law and self-imposed restrictions, determined solely by its own will. The modern State is consequently a *Rechtstatt* (legal state), adhering to the rule of law.¹⁷⁶ Indeed, these four points are significant as they outline the fundamental characteristics of the state theory developed by Babanzade's *Hukuk-i Esasiye*, mirroring the principles found in German public law theory.

Duguit criticizes the German legal state theory from various perspectives. Firstly, according to Duguit, the self-imposed limitations of the State regarding the law are illusory.¹⁷⁷ As he puts it:

If the State in fact is in submission to law only because it so desires, only when it so desires and only to the extent that it so desires, it is not in reality under obligation to law at all.¹⁷⁸

171. Ibid., 24.

172. Ibid., 27.

173. Ibid., 27.

174. Ibid., 119.

175. Ibid., 124.

176. Ibid., 124.

177. Ibid., 124.

178. Ibid., 124.

Jellinek defines the State as the organization of a population within a designated territory, possessing an inherent authority to issue commands, or, using a common expression, a territorial entity endowed with an original power to give orders.¹⁷⁹ According to Duguit, this definition is rather Hegelian; however, Jellinek diverges from Hegel by regarding the State as an entity subject to law. Nevertheless, the primary issue is that he believes to have resolved the problem of auto-limitation. Duguit contends that the law alone is not powerful enough to resolve the deep-rooted conflicts that can emerge within states. The effectiveness of the law encounters an inherent limitation due to the mere existence of the State.¹⁸⁰ Duguit evaluates Jellinek's theses in the metaphysical category:

All these doctrines are in agreement on one point, namely: it is vain and extra-scientific to affirm that a personal reality, such as the State, exists distinct from the individual.¹⁸¹

According to him, the State always originates from the "human will." The concept that the State functions as an organism holds no philosophical or scientific merit. Duguit posits that a state exists due to a distinct division within a group of individuals on a specific territory, separating those holding governing authority from those under governance. Duguit asserts that the terms such as "personality of the State", "will of the State", and "the State as an organism" do not carry any meaningful content and such expressions fail to contribute to a genuine understanding of the State's true nature.¹⁸² Rather, the modern state is a service-oriented institution, with social solidarity imposing limitations on state actions. Duguit defended the notion that all subsidiary functions of the state, including law, were likewise seen through the lens of human solidarity and social interdependence.¹⁸³ Given Duguit's perspectives, his departure from German Legal State Theory, as a Frenchman, becomes clearer. This creates a distinct contrast with Babanzade's views. In this context, Babanzade seems to align more closely with the Jellinek's perspective than that of Duguit.

When closely examining Babanzade's work, one can readily identify influences from

179. Ibid., 125. Citing: Georg Jellinek, *Das Recht des modernen Staates: Bd. 1: Allgemeine Staatslehre* (1900), 161.

180. Ibid., 133.

181. Ibid., 147.

182. Ibid., 153.

183. M.C. Mirow, "Léon Duguit," in *Great Christian Jurists in French History*, ed. Olivier Descamps and Rafael Domingo, Florida International University Legal Studies Research Paper No. 18-03 (Cambridge: Cambridge University Press, 2019), 363.

Duguit, particularly in his critiques of ancient and modern philosophers, a topic to be discussed in detail later. Nevertheless, it would be inaccurate to see Babanzade as a simple replica of Duguit. He adeptly incorporated the ideas of Duguit and Jellinek, thoroughly examining topics that were not well studied in Europe and used their perspectives to tackle difficulties peculiar to Ottoman society and politics from his own perspective. For instance, while Babanzade used Duguit's arguments to critique modern philosophers, he did not repeat Duguit's criticisms of Jellinek. Instead, he formulated a definition of the state more aligned with the German Legal State concept. Another example is his discussion of Esmein's definition of the state, where he pointed out the absence of territoriality and emphasized this aspect more, aligning with a Jellinekian stance. Babanzade's political theory, while not fully responding to Duguit's critiques of auto-limitation, is a unique and eclectic approach that draws inspiration from various sources.

However, it must be acknowledged that Babanzade falls short in adequately responding to Duguit's critiques of auto-limitation, representing a deficiency in Babanzade's theory. Nevertheless, it is evident that Babanzade presented an original and eclectic political theory of the state, drawing inspiration from various sources.

3.4 References to Islamic Literature and Sources

Although Babanzade states that we (Turks) need European knowledge and literature, this did not make him alien to his own culture.¹⁸⁴ He also possessed an intimate familiarity with the foundational scriptures of Islam and the scholarly contributions of prominent Islamic thinkers and gave importance to them. This was typical of the intellectual atmosphere of his time. Prominent Turkish intellectuals of earlier generations, such as Namik Kemal and Ali Suavi, adeptly employed Qur'anic verses and hadiths to underpin their ideological frameworks.¹⁸⁵ His contemporaries similarly engaged with and relied upon texts from the Turkish and Islamic tradition in their literary pursuits. Nonetheless, a significant point of departure that distinguished Babanzade from his peers lay in his exceptional depth of knowledge and expertise in Arabic textual sources, even though many knew Arabic at that time.

Babanzade utilizes hadiths in their original Arabic form and accorded significant

184. Babanzade İsmail Hakkı, "Avrupa Matbuatına İhtiyacımız Var," *Tanin*, August 13, 1911, 1.

185. See also Ahmed Şeyhun, "Namik Kemal (1840-88)," chap. 1 in *Competing Ideologies in the Late Ottoman Empire and Early Turkish Republic: Selected Writings of Islamist, Turkist, and Westernist Intellectuals* (I.B. Tauris, 2021); Charles Kurzman, ed., *Modernist Islam, 1840-1940: A Sourcebook* (Oxford: Oxford University Press, USA, 2002), chap. 16-17.

importance to *Quranic* verses and Islamic history. Particularly in his analysis of the Caliphate, he engages in discussions regarding the egalitarian nature of the government Islam advocates,¹⁸⁶ delving into the perspectives of Ibn Khaldun, a key Islamic intellectual, on governance. While scrutinizing the conceptual framework of Islamic governance, he contends that it harbors a degree of flexibility, asserting that variations in interpretation afford Muslims a form of autonomy in delineating their conception of governance and its transmission.

He begins to examine the legal basis of governments in Islam by first touching on the foundations of Islamic law and states that there are four basic bases of Islamic law: *Quran*, *Sunnah*, *Ijma* (consensus of scholars), *Qiyas* (comparison).¹⁸⁷ According to Babanzade, while the *Quran* and the *Sunnah* do not prescribe any specific form of government (*sekli-i hukumet*), the practices during the period of the four caliphs and the evolution of the caliphate have demonstrated the significance of consultation.¹⁸⁸ To exemplify, according to Babanzade, the caliphate of Hazrat Abu Bakr was the outcome of public votes (*aray-i umumiye*, Universal Suffrage).¹⁸⁹ Many companions in Medina, including Hazrat Ali, came and pledged allegiance (*biat*) to Hazrat Edu Bekr. Babanzade insists that when examining this allegiance, it can be understood as voting (*intihab*) and delegation (*tevkil*).¹⁹⁰

The second Caliph, Hazrat Omar, was appointed through a different method known as a covenant of guardianship (*velayeti ahd*). Hazrat Abu Bakr's endorsement of Omar before his death was also considered another method, laying the groundwork for the selection of the head of state in Islamic societies. Following the exposition of the selection methodologies employed in the appointment of other caliphs, Babanzade cites the Prophet's hadith "*El caliphate'un min badi selasun sene*" in Arabic, which translates into English as "the caliphate for thirty years after me."¹⁹¹ This quotation serves as a testament to Babanzade's adeptness in engaging with Arabic source materials. Based on this hadith, Babanzade emphasizes that while the actions of the caliphs subsequent to the Prophet were significant, the combined tenure of the four great caliphs did not span thirty years. Therefore, Babanzade suggests that there existed scope for the incorporation of "customs and traditions" (*örf ve adat*) within Islam.¹⁹²

In summary, based on practices observed during the Caliphate, Babanzade outlined

186. Babanzade İsmail Hakkı, "İslamiyet ve Siyaset I," *Tanin*, August 8, 1909, 1.

187. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yaynevi, 2017), 57.

188. Ibid., 58.

189. Ibid., 59.

190. Ibid., 59.

191. Ibid., 59.

192. Ibid., 60.

two legitimate methods for determining the leader of the government in Islam. One method involves the allegiance (*biat*) of the people, as demonstrated by the election of Abu Bakr. The other method entails the appointment of a successor leader by the preceding leader, as exemplified by Hazrat Abu Bakr's recommendation for Omar.¹⁹³ The significance of these methods lies in their reflection of Babanzade's deep engagement with a contentious issue among Islamic scholars. For instance, he mentions a debate on whether a caliph can appoint multiple rulers after their tenure. The origin of this debate can be traced back to Prophet Muhammad's appointment of Zayd bin Haritha as commander in the Battle of Mute. He stipulated that if something happened to Zayd, Ja'far ibn Talib would replace him, and if something happened to Ja'far, Abdullah bin Rawaha would take over.¹⁹⁴ Consequently, either these individuals lost their lives or were injured, resulting in a change in command as per the Prophet's directive. Thus, some scholars argue that the caliph can adopt such a practice, while others view it as a unique case of appointing a commander. Although many Islamic scholars, including Imam Shafi, supported this argument, dissenting opinions exist.¹⁹⁵ Babanzade's adept handling of such nuanced debates underscores his comprehensive understanding of Islamic sources and history.

Referring to the concept of the state in the Eastern context, Babanzade asserts that Islamic law and jurisprudence scholars showed little interest in defining the nature of the state.¹⁹⁶ He contends that Islamic societies established sultanates based on the appointment of Hz Ömer to the caliphate. However, again Babanzade criticizes Muslim scholars (*fujaha*) for their lack of interest in the theory of the state. According to him, for a considerable period, Islamic scholars failed to address fundamental political questions such as: What constitutes the state? Who are the people? What are the components of the state? Nonetheless, he acknowledges Ibn Khaldun's significant contribution to exploring the theory of the state. Although Ibn Khaldun does not touch upon concepts such as national sovereignty (*hakimiyet-i milliye*) and the manifestation of national sovereignty (*hakimiyet-i milliyenin sureti tecellisi*), he is still considered noteworthy by Babanzade because he articulates views on the nature of the state and develops a theory, albeit limited.¹⁹⁷ Yet, Babanzade criticizes Ibn Khaldun for certain shortcomings, such as equating the state with the government and neglecting to delve into the origins or causes of the state. Babanzade highlights Ibn Khaldun's likening of governments or states to human beings as problematic, since Babanzade believes that the state should be understood as a legal entity, not a human-like structure. Babanzade's objection

193. Ibid., 64.

194. Ibid., 67.

195. Ibid., 68.

196. Ibid., 72.

197. Ibid., 72.

here is understandable and consistent with his own state concept.

While some of Babanzade's critiques of Ibn Khaldun may be interpreted as anachronistic readings, such as expecting Ibn Khaldun (14th century intellectual) to mention national sovereignty (*hakimiyeti milliye*), others, such as Ibn Khaldun's analogy of the state to human beings, provide insights into Babanzade's own conception of the state. Babanzade views the state as a distinct entity from human beings, and thus, he believes that likening it to human beings overlooks the essence of the state. These criticisms align with Babanzade's notions of the state and the rule of law. Therefore, it can be concluded that Babanzade established significant connections with many forms of literature, including the *Quran*, hadiths, Islamic legal principles, influential figures like Imam Shafi, and Muslim philosophers such as Ibn Khaldun.

In addition, Babanzade believes that the style of government that is appropriate and even inherent in Islam is quite egalitarian, constitutional and democratic. In the series of articles '*İslamiyet ve Siyaset*', Babanzade goes even further and defends the idea that the consistency and development of Islam (*İslamiyetin kivam ve tealisi*) are dependent on constitutional rule.¹⁹⁸ According to him, the problems that Islam has suffered so far have always been due to the prevention of constitutionalism, and as long as constitutionalism is violated, the people of Islam will be weak and enslaved, living in condemnation and misery. He argues that "the fact that the democratic style of government, which we translate and use incorrectly as a government of the common people (*hükümet-i avam*), does not have a word and a term to be expressed in our language is not because this style of government has not found a place in the East until now, but perhaps because it is already assumed to be present in the nature and nature of things."¹⁹⁹ Babanzade stated that "what makes the essence of things more conspicuous is the existence of their opposites."²⁰⁰ For example, cold and heat can be understood through the absence of each other. It is not possible to think of or produce a concept that does not have an opposite and is inherent in everything. In Europe, the existence of the nobility or bourgeois class is in opposition to each other and to the common people. However, Babanzade contended that this is not the case in Islamic societies; for example, an ordinary man can find a place at the grand vizier's table.²⁰¹ In other words, it should be understandable not to have the concept of democracy in a geography where such equality is inherent, and classes are not separated as in Europe. However, Babanzade accepts the fact that the constitutional regime (or democracy) as it was implemented in Europe was not observed in Islamic

198. Babanzade İsmail Hakkı, "İslamiyet ve Siyaset II," *Tanin*, August 26, 1909, 2.

199. Babanzade İsmail Hakkı, "İslamiyet ve Siyaset I," *Tanin*, August 8, 1909, 1.

200. "Mahiyet-i eşyayı daha ziyade göze çarpitan şey ezdadıdır." Babanzade İsmail Hakkı, "İslamiyet ve Siyaset I," *Tanin*, August 8, 1909, 1.

201. Babanzade İsmail Hakkı, "İslamiyet ve Siyaset I," *Tanin*, August 8, 1909, 2.

societies (except for the period of the four caliphs) and states that the reason for this is easily understood: despotic rulers took over the government, lulled the ignorant people, and prevented the ulema from expressing their opinions and writing books on this matter.²⁰²

3.5 The Objective and Origins of Fundamental Law

Upon revisiting *Hukuk-i Esasiye*, it becomes evident that Babanzade recognizes the welfare of individuals as the primary objective of the Fundamental Law. At this point, Babanzade raises the question, "*La fin justifie les moyens?*" (Does the end justify the means?) and criticizes this proposition of the Jesuits for its lack of ethical consideration. According to Babanzade, Nietzsche shares a similar perspective and arrives at a conclusion that lacks moral concern, viewing morality in his philosophy as a product of power relations:

If we look at some of the more recent greats who consider everything to be legitimate for the sake of survival and prosperity among their subjects, and who consider morality to be not moral and natural, but a form and an external proposal designed for the preservation and continuation of human beings, and if we examine, for example, Nietzsche's theories on *sur homme* (*feuka'l-insan*, *Übermensch*), it would be difficult to find a place for morality in the actions of states.²⁰³

According to him, this Machiavellian view is also incorrect, and as he cites Bluntschli's view and argues, "The wisdom of government is not an empty phrase."²⁰⁴ According to Babanzade, truth and morality remain constant, unaffected by time and circumstances. However, the manner in which they are perceived evolves.²⁰⁵ Consequently, people consider their contemporary context, aligning their actions with the era that recognizes absolute happiness and eternal truth, even if that time seems different. Failing to do so may distort the truth, transforming it into an illusion and jeopardizing genuine interests with the shadows of unrealities. Therefore, he advised to engage in practical politics, avoiding utopian or dreamy pursuits.²⁰⁶

202. Ibid., 4.

203. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 19.

204. Ibid., 20.

205. Ibid., 25.

206. Ibid., 25.

Regarding the sources of fundamental law, Babanzade acknowledges the constitution as the primary source, with tradition and convention also playing a role in maintaining social order:

The Constitution is a document and a covenant that determines the form of government of a nation's political law and the composition and organization of the general affairs of which this government is composed.²⁰⁷

When it comes to tradition and conventions, this source occupies a very important place even in fundamental law, as it is in all its definitions. We can say that the main thing in fundamental principles is custom.²⁰⁸

The fact that he embraces modern concepts, such as the constitution, as the primary source of fundamental law and acknowledges tradition (or the Sharia) as another source indicates that he is, essentially, a synthetic modernist thinker who emphasizes the role of the state. However, Babanzade approaches these concepts with a historicist motivation, stressing that both law and traditional structures should remain open to change. As previously stated, he believes that truth is unitary and immutable, but acknowledges that its expressions inevitably evolve throughout time. Therefore, the constitution, as a form of law, should be amenable to modification:

The nation has the authority to amend its Constitutional Law (*Kanun-i Esasi*) at any time without being constrained by the time frames or procedures outlined in the preceding Constitutional Law. This is because nations consist of individuals in their natural state, free from various societal constraints. Consequently, they have the ability to articulate their will independently of any external influences.²⁰⁹

The Constitutional Law can be amended by the committee that drafted the Constitutional Law and in accordance with the procedure set out in the Constitutional Law... ...The possibility of the amendment of the Constitutional Law within the framework of the Constitutional Law meant that the nation had made a number of public commitments to itself.²¹⁰

As can be inferred from these statements, the term "nation" holds a pivotal role in his theory of state and law, as will be discussed later. Babanzade criticizes

207. Ibid., 25.

208. Ibid., 27.

209. Ibid., 33.

210. Ibid., 34.

Hobbesian and Grotian ideas for their limited perspective on the concept that "the sovereignty of the nation is vested in the ruler."²¹¹ In the upcoming part, I will delve into Babanzade's critique of previous literature and influential philosophers on the state, providing deeper insights into his unique stance.

3.6 Babanzade's Critique of Previous Literature and Influential Philosophers on the State

Babanzade starts the discussion of the state by employing Esmein's definition. However, as noted earlier, Babanzade underscores the absence of the concept of "territoriality" in Esmein's definition.²¹² Babanzade's state theory consists of a nation, government, and territory, inspired by Jellinek's three-element theory. He scrutinizes notable thinkers' theories on the state, demonstrating comprehensive theoretical criticism. Babanzade's formulation is based on territory, membership, and ruling power, and his analysis is crucial for further understanding. In addition, his critique of Rousseau aligns with Duguit's criticisms, indicating that he not only studied these influential philosophers but was also cognizant of the contemporary debates of his time.

First, he starts his analysis with Plato's perspective on unity, asserting that unity is perceived as perfection (*onun nazarında kemal vahteddedir*).²¹³ He highlights the presence of the concept of collectivity in Plato, stating that, according to Plato, everything is communal, which he contends is the root of socialism.²¹⁴ He critiques Plato's ideas, such as the notion that women should be shared collectively and the abolition of the family, attributing them to the foundation of utopianism (*utopistes*).²¹⁵ Babanzade asserts that this is the reason why anarchists are also regarded as utopists in his days. Another point of criticism is directed at Plato's merging of morality (*ahlak*) and politics (*siyasiyat*), whereas the author argues that they should be regarded as distinct entities. However, the analysis also underscores Plato's accuracy in identifying justice as the primary purpose of politics. Babanzade's central focus of Plato's criticism is:

All these mistakes of Plato stem from the fact that he sacrificed the indi-

211. Ibid., 33.

212. Ibid., 43.

213. Ibid., 45.

214. Ibid., 46.

215. Ibid., 47.

vidual and sacrificed everything for the state and the collective because he thinks that the state is the goal of the individual. In reality, the duty of protecting the law and freedom of the people is the duty of the state.²¹⁶

Although Babanzade's criticisms demonstrate that he has read Plato in detail, his assertion that the idea of freedom is not fundamental in Plato is inaccurate. On the contrary, if criticism is warranted, it should be directed at Plato for constructing a different notion of freedom, termed positive freedom by Isaiah Berlin.²¹⁷ Nevertheless, these critiques are significant, as Babanzade's objections clearly indicate his liberal stance, wherein he regards personal freedom as fundamental.

Furthermore, building upon Aristotle's ideas, Babanzade expresses great admiration for Aristotle because he acknowledged the family as the fundamental unit of the state, and from there, the family evolves into villages, which in turn advance into cities and city-states. In particular, Babanzade highlights Aristotle's positive emphasis on progress (*thelos*), reaffirming Babanzade's historicism, as discussed earlier. However, he criticizes Aristotle for overlooking the positive impact of trade on societal progress.²¹⁸ Babanzade evaluates then Hobbes and Locke within the framework of 17th-century natural law. According to him, Hobbes, as a thoroughly materialist philosopher, adopted an anti-Aristotelian stance, asserting that man is not a political animal, and introduced the concept of the state of nature. Babanzade finds it incomprehensible that all people would transfer their rights and authority to a single person (sovereign). While Locke shares a similar attitude at this point by defending the social contract, Babanzade speaks more favorably of Locke, especially concerning his defense of three fundamental rights. The advocacy of these three rights—property right, the right to individual liberty, and the right to defend these two rights—is viewed as a positive development. Thus, Babanzade's liberal stance is clear when it comes to his evaluation of Lock's political theory.

When discussing Montesquieu and Rousseau, Babanzade regards them as “the two stars of the 18th century”.²¹⁹ He particularly commends Montesquieu for his interpretations grounded in historical facts and his formulation of an anti-Hobbesian theory. Montesquieu, in his exploration of three types of government, posits that three regimes succeeded each other based on historical observations: despotism,

216. Ibid., 48.

217. Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 8.

218. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 52.

219. Ibid., 89.

monarchy, and republic. Babanzade argues that Montesquieu demonstrates that "to claim there is nothing right or unrighteous except what is commanded and prohibited by the laws of the land is akin to asserting that before the reversal of societal norms, wolves were not equal to each other."²²⁰ Therefore, Montesquieu contends that the only law for humanity is human reason. This notion is crucial for Babanzade to support the idea that man cannot exist without law. For him, the concept of the state of nature is incorrect; humans cannot exist without rules or laws.

Babanzade, unlike Duguit, values Rousseau's concept of the "general will", stating that "National sovereignty is simply the collective desire of the nation, and desire is essentially universal. According to his perspective, even the law is considered the expression of the ruler's will, referred to as the general will, serving as the interpreter of this overarching desire."²²¹ The national will can only find its expression in the people "through the enactment of laws". Additionally, Rousseau's perspective on the purpose of law is deemed accurate by the author. According to Rousseau, the purpose of the law is to maximize the well-being of all people, encompassing freedom and equality.²²² Babanzade also concurs with Rousseau's consideration of property in its association with freedom, supporting Rousseau's stance that no one should be rich enough to buy another, and conversely, no one should be destitute enough to be bought.

3.7 Babanzade İsmail Hakkı's State Theory and National Sovereignty

After completing Babanzade's critique of the existing literature, his theory of the state becomes more comprehensible. For Babanzade, the state's most essential characteristic is its distinct existence as a legal entity, similar to Jellinek's concept:

From the point of view of law, a state can be likened to a person, but this person is separate and independent both from the individuals who constitute it and from other states, which are composed of individuals like itself. It has a person of its own and sovereignty is inherent in this person.²²³

220. Ibid., 90.

221. Ibid., 101.

222. Ibid., 104.

223. Ibid., 107.

In the following, Babanzade emphasizes that a state's existence depends on both its externality in relation to other states and its internality in relation to its own population. He discusses questions of legitimacy in two groups: theocratic (divine, *ilahi*) and democratic. The theocratic group should not be understood only as religious views; according to him, the views of many philosophers can be included in this group or, for example, Louis XV's "*L'etat c'est moi* (I am the state)" is an example of theocratic legitimacy.²²⁴ In this category, beliefs come into play and a divine legitimacy is accepted in the ruler. On the other hand, according to democratic theories of legitimacy, political authority is justified based on the fact that it originates from the people and ordinary citizens, and Babanzade supports the latter.²²⁵

Babanzade also discusses social contract theories and his critique is similar to that of Duguit. The absence of anthropological evidence undermines the validity of the pre-social contract scenario, rendering it historically unsubstantiated and hence its argument futile.²²⁶ At this point, the question arises: "Since the social contract cannot be a basis for the general will, and it is a theory that must be abolished. On which ideas and opinions can the sovereignty of the nation be based?"²²⁷ He answers it by saying that "...it can be based on the public opinion (*ara-yi umumiye*) of people who have the right to vote, who have intellect and wisdom."²²⁸

Here, Babanzade uses Jellinek's three-element theory in a distinct way. Babanzade's thought emphasizes the legality of the state, and he interprets these three elements (nation, territory, government) from his own viewpoint. Thus, understanding how Babanzade utilizes these three elements and how he relates them to each other is significant for comprehending his modern state theory.

3.7.1 Nation (*Millet*)

Another crucial concept discussed in the context of the basic characteristics of the state is "sovereignty" (*hakimiyet*). First, this concept is discussed in relation to territoriality and nation (millet). "First of all, it (state) occupies a certain area of land, and it can absorb the inhabitants of this land, whether they desire it or not. In addition, it can detain them even if they wish to leave."²²⁹ Secondly, the community transforming into a state not only issues directives but also ensures compliance

224. Ibid., 109.

225. Ibid., 109-110.

226. Ibid., 112.

227. Ibid., 113.

228. Ibid., 115.

229. Ibid., 122.

through the use of coercion and force.²³⁰ Hence, the society that becomes a state not only orders, but also enforces its orders through force and coercion. Thirdly, the society (*cemiyet*, *Gesellschaft*), becoming a state in the context of sovereignty, is seen as the legalization and finalization of this state of sociality. "This state of society (*cemiyet*) is what is called the nation, which is the result of history and nature."²³¹ In other words, according to Babanzade, the modern state was formed historically within the framework of law in a given territory, and the nation, the subjects of the state, was likewise an end product of nature and history. While Babanzade argues that sovereignty may be seen as a fourth component, he does not treat it as a distinct element as it is inherent in each of the other three elements.

As a result of historical progression and civilization, the nation represents the ultimate stage of social organization. Babanzade asserts that there are four basic theories regarding a nation: some argue being subject to the same administration and government (*ayni idare ve hükümete tabi*) is crucial, some say language (*lisan*) is the element that constitutes a nation, others say sect/religion (*mezhep/din*) is the pinpoint of being a nation, and another viewpoint argues that being subject to the same boundaries (*ayni hududa tabi*) holds the nation together.²³² However, regardless of which of these four elements are counted as chosen, a clear and comprehensive definition of a nation remains elusive. For instance, the French colonies are under French rule but are not regarded as part of the French nation. There are individuals who share the same language but belong to different nations, those who adhere to the same religion but are part of different nations, and finally, those within the same borders who perceive themselves as separate nations.

Babanzade cites Proudhon and expresses disagreement with him.²³³ Proudhon defines the nation as "a collective entity that consistently interacts with other similar entities, and thus establishes an organ, a representative, in short, a government, for its international relations."²³⁴ According to Proudhon, oppression and mutual hostility among peoples are interconnected realities that perpetuate each other. He argues that these can only end simultaneously by abolishing their common cause—government. Proudhon believes nations will remain in conflict as long as they are governed by monarchs, leaders, or dictators who enforce laws.²³⁵ Therefore, no international alliances or councils can resolve this fundamental issue, as

230. Ibid., 122.

231. Ibid., 122.

232. Ibid., 126.

233. The section where Babanzade references Proudhon is found in the article titled "Millet ve Milliyet Bahisleri." Although the specific page and book are not cited by Babanzade, I conducted a search and located these statements in Proudhon's work.

234. P.-J. Proudhon, *General Idea of the Revolution in the 19th Century*, trans. John Beverly Robinson (New York: Haskell House Publishers Ltd., 1969), 280.

235. Ibid., 282.

Proudhon regards the nation itself as a mechanism of oppression. In "Millet ve Milliyet Bahisleri" Babanzade, opposing Proudhon, argues that nationality cannot be explained solely by government oppression; it is more complex than that, as even language alone cannot be the sole reason.²³⁶

At this point, Babanzade defends a view of the nation similar to that of Renan's and argues that the nation can be understood as the historical result of common feelings and interests.²³⁷ Every human being belongs to a social group, a family, a clan, and the last stage in the historical process is the nation. As soon as a human being becomes conscious of this fact, he realizes that his needs and the purpose of his life can only be realized in this way. This is where the concept of "*solidarité*" makes sense.²³⁸ In *Tanin*, Babanzade extensively tackles the question of nation and nationality as well. The individual must grasp the importance of this solidarity and cooperation and seek his individuality there. Like Renan, he argues that to achieve unity, groups must be willing to "forget" past conflicts. For instance, in "Türkler, Kürtler, Ermeniler", Babanzade mentions that Kurds and Armenians have had numerous issues between them, but he asserts that forgetting these conflicts is the only solution for achieving unity.²³⁹ Similar to the liberal perspective of the nineteenth century, the nation, viewed as a social unity, signifies a standard of progress and civilization. The breakdown of this unity is seen as a regression in historical development. By the way, Babanzade does not deny the importance of language. He believes that people or groups should be free to speak or learn any language. However, in his article "Osmanlılaştırmak", he argues that when it comes to being part of the state (*memur olmak*), there should be a common language (which is Turkish), which helps being united.²⁴⁰

3.7.2 Territoriality

Territoriality, as crucial an element as nationality, is carefully addressed by Babanzade in his writings. He asserts that the issue of territory (*arazi meselesi*) was one of the most significant concerns of the Ottoman Empire, following closely after life and honor in importance.²⁴¹ The organization of the Catholic Church is not a state because it has no territoriality. "The exclusivity of the land to the state is the essential

236. Babanzade İsmail Hakkı, "Millet ve Milliyet Bahisleri," *Tanin*, March 6, 1909, 2.

237. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 127.

238. Ibid., 128.

239. Babanzade İsmail Hakkı, "Türkler, Kürtler, Ermeniler," *Tanin*, July 5, 1910, 2.

240. Babanzade İsmail Hakkı, "Osmanlılaştırmak," *Tanin*, June 30, 1912, 2.

241. Babanzade İsmail Hakkı, "Arazi Meselesi," *Tanin*, July 10, 1910, 1.

condition for the existence and resurrection of the state.²⁴² Land may sometimes be permanently lost, sometimes temporarily. Babanzade supports his ideas with examples on this issue, Alsace-Lorraine was permanently abandoned, while Cyprus was temporarily ceded by the Turks to the British.²⁴³ At this point, he discusses the state's relationship with the land and states that public property (real estate owned by the public) is at the disposal of the state, while private property (real estate owned by individuals) should be left to the discretion of the individual. These ideas clearly reflect Jellinek's influence, emphasizing both Jellinek's ideas on territoriality and property, as well as the significance of territoriality in defining the state and Jellinek's liberal stance on property rights.

3.7.3 Government

The last element of the concept of the state, the government, is defined as the organs (*vesait*) of the state.²⁴⁴ By organs, Babanzade specifically means the executive branch of the state, which should be considered in relation to "power" (*puissance*). In "Mesuliyet-i Vükelâ", he claims that the government must also be understood as a dynamic entity that evolves and progresses over time. As it develops, the executive branch grows simultaneously, divides into new branches, and undergoes changes in its composition simultaneously, divides into new branches, and undergoes changes in its composition simultaneously, divides into new branches, and undergoes changes in its competition, responsibilities, and people. Babanzade states that the most critical task in a constitutional state is in the executive branch, that is the government.²⁴⁵ However, this should not mean that the government acts independently and arbitrarily; the government is also accountable for this duty.²⁴⁶

According to Babanzade, who explores the discourse surrounding strong and weak states and relates this discussion to the concept of anarchy, the term "weak state" presents an inherent paradox.²⁴⁷ Possessing limited or inadequate state power constitutes a fundamental deficiency, rendering it illogical to categorize such entities as states. Babanzade further asserts that anarchy represents a more reprehensible state of affairs than governance under tyrannical leaders like Genghis Khan or Nero, as the absence of any institutionalized authority creates the most extreme form of

242. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 155.

243. Ibid., 161.

244. Ibid., 169.

245. Babanzade İsmail Hakkı, "Mesuliyet-i Vükelâ," *Tanin*, December 8, 1908, 1.

246. Ibid., 2.

247. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 171.

intolerability.²⁴⁸

Moreover, Babanzade supports a strong state in internal matters. In one of his *Tanin* articles, he argues that it is essential to notify the state in advance about the time, content, and expected number of participants for rallies or protests (*ıçtima*), allowing the police to take appropriate measures.²⁴⁹ He believes that rallies should be held in closed venues to facilitate state control. These views highlight Babanzade's strong support for a powerful state, particularly in terms of domestic actions. Consequently, Babanzade advocates for states to consistently uphold power. However, he conducts a nuanced exploration into the multifaceted dimensions of power, advocating not only for material power but also for spiritual power. He emphasizes the necessity for governmental or state entities to operate in a manner that fosters public confidence, thereby ensuring that their authority aligns with the interests of the populace. Despite acknowledging the widespread disdain for despotic regimes stemming from a lack of public trust, Babanzade suggests that even despots occasionally fulfill popular desires in pursuit of self-interest. In contrast, he argues that elected leaders frequently prioritize personal agendas over the collective welfare.²⁵⁰ Nevertheless, it is crucial not to misconstrue Babanzade's position as inherently anti-electoral. As further elaborated, Babanzade, opposing despotism (*istibdad*), underscores the paramount importance of a strong state, asserting that the concern extends beyond mere electoral mechanisms to encompass the broader efficacy of governance.

In Babanzade's thought, the state embodies a unique form of authority, one defined by its possession of legitimacy, whether material (*maddi*) or spiritual (*manevi*). An absence of either form of legitimacy leads to anarchy, underscoring the pivotal role of governance in the very existence of a state. Babanzade underscores the essential nature of government, suggesting that without it, the concept of a state loses its essence and coherence.²⁵¹ Babanzade then discusses the relationship between the government and the nation, pointing out that many people regard them as opposites. First, the government increases its power to the detriment of the nation, a phenomenon seen especially in the East, where all wealth is concentrated in the government's coffers.²⁵² In this case, however, the state harms itself by putting its own citizens in a difficult situation. The second erroneous approach is the empowerment of groups outside the state (the masses), with feudalism and socialism cited as examples of this misunderstanding. Situations in which the government is

248. Ibid., 172.

249. Babanzade İsmail Hakkı, "Kapalı Yerde İctima," *Tanin*, June 4, 1912, 3.

250. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 172.

251. Ibid., 171.

252. Ibid., 173.

weakened or is desired to be weakened stem from a misunderstanding of the nature of government. According to Babanzade, as could be observed in Europe, socialism was gradually spreading and becoming the enemy of public security (*asayış*) and order (*düzen*), as well as the mortal enemy of the army and the homeland, as stated in his article "Meclis-i Mebusan'da Sosyalizm."²⁵³ However, he defends that when governments are strong and prioritize the rights of their people, they often achieve success. A notable illustration is the British economy, which played a crucial role in helping the English army secure victory in the Napoleonic wars.²⁵⁴ Babanzade views the government in a Rousseauian sense, stating, "The power and might of the government is nothing but the power of the nation concentrated for the common good."²⁵⁵

The government wields this power through two types of instruments: material and spiritual. The instrument of spiritual power is the law, with the first element being the decrees of the sovereign or the parliament, the second element being the governmental orders and decrees, and the last element being the criminal, civil, and administrative judiciary.²⁵⁶ The material means of government are essentially divided into two categories: economic and coercive. Economic means encompass taxation and infrastructure development such as roads, telegraph, and postal services. The coercive means consist of criminal courts, the police, and the military.²⁵⁷ By the way, he believes the army should not intervene in politics, as discussed in "Asker ve Siyaset."²⁵⁸ Babanzade considers military service the most valuable duty in the world, but he firmly states that the military should be kept away from politics. In his opinion, the military's involvement in politics will drag domestic affairs into chaos.²⁵⁹ Thus, the state is defined in terms of these government powers, which is sufficient evidence to illustrate that Babanzade proposed a modern theory of the state.

In addition, Babanzade examines the relationship between the state and territory, he presents Duguit's views, critically engaging with them. Duguit asserts that the state possesses only one right and freedom, which pertains solely to the people (*efrad*).²⁶⁰ He contends that the sovereignty of the state is inherently tied to the people and entails issuing orders, with the dynamic existing between the entity

253. Babanzade İsmail Hakkı, "Meclis-i Mebusan'da Sosyalizm," *Tanin*, April 26, 1910, 2.

254. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 174.

255. Ibid., 174.

256. Ibid., 175.

257. Ibid., 176.

258. Babanzade İsmail Hakkı, "Asker ve Siyaset," *Tanin*, June 30, 1912, 1.

259. Ibid., 1.

260. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 164.

giving the orders (the state) and the recipient of those orders (the people). Consequently, asserting that the state holds direct sovereignty over the land is inherently contradictory. Babanzade responds to this view with several different arguments. Firstly, he notes that while the need for authority typically pertains to humans, humans have extended their control not only over other humans but also over animals and objects (*hayvanat ve cemadat*) to fulfill their will and desires.²⁶¹ Second, a state can claim ownership of land within the territory of another sovereign state. In such a scenario, the owning state retains its rights over the land despite not being the governing authority or issuing orders to the people residing there. Therefore, Babanzade argues that a state can exert dominion over land through individuals, as well as exercise sovereignty (*icrayı hakimiyet*) over individuals by owning land in a foreign country.²⁶²

In 1908, when the Second Constitution was proclaimed but the first government after the revolution was under Kamil Pasha, who was not a Unionist, Babanzade examines the issue of the relationship between government and freedom in his article "Ahali ve Memurin."²⁶³ Because Babanzade was a Unionist and wanted Unionist rule through the revolution, he was critical of that situation. Asserting that freedom is the most necessary factor for progress, Babanzade points out that many evils have been committed in the name of freedom. For example, he quotes Madame Roland, one of the leading women of the French Revolution, as saying, "O freedom! What murders are being committed in your holy name!" on her way to the guillotine.²⁶⁴ What is important here is to understand the relationship between the people (*ahali*) and the incumbent (*memurin*) when thinking about freedom. The will must be the will of the nation (*irade-i milliye*), and for this reason, the assembly must be sovereign, and the rulers or the government must not be able to say, "We don't want" against the wishes of the people.

Emphasizing that the separation of powers is critical at this point, Babanzade states, "If every individual in a nation is both an intellectual, a lawmaker, and an executive, that is, if he is a ruler (*metbu*), a subject (*tâbi*), and a challenger (*müddei*), no good can come from that nation."²⁶⁵ In other words, it can be concluded from this that Babanzade defends both the separation of powers and "representation." He argues that if every person participates in the ruling process, it is difficult and nearly impossible to sustain, while at the same time, he opposes the arbitrary practices of the government. Thus, Babanzade defended that the government should be responsible

261. Ibid., 165.

262. Ibid., 165.

263. Babanzade İsmail Hakkı, "Ahali ve Memurin," *Tanin*, 1908, 1–3.

264. Ibid., 1.

265. Ibid., 2.

to the parliament (*Meclis-i Mebusan*).²⁶⁶

Ismail Hakkı Babanzade's work, *Hukuk-ı Esasiye*, is a groundbreaking synthesis of European and Islamic legal and political thought. Babanzade transcends conventional boundaries by integrating diverse intellectual traditions, providing a comprehensive framework for understanding statehood and governance. His emphasis on national sovereignty is exemplified through the *Drei Elementstheorie* (three-element theory) of the state. Babanzade's work not only addresses the theoretical foundations of the state but also advocates for a balanced relationship between government and individual rights, influenced by European legal principles and Islamic ethical considerations. This nuanced approach positions Babanzade as a pivotal figure in the intellectual history of the late Ottoman Empire, profoundly influencing subsequent discourse on constitutionalism and the theory of the modern state. The influence of Babanzade's theories extended to the founding elites of the Republic of Turkey, as evident in *Medeni Bilgiler*, which reflects his ideas on statehood and sovereignty. In contemporary contexts, Babanzade's insights continue to resonate, offering valuable perspectives on the complex interplay between law, governance, and societal values.

266. Babanzade İsmail Hakkı, "Mesuliyet-i Vükelâ," *Tanin*, December 8, 1908, 3.

4. BABANZADE AS A POLITICAL SCIENTIST

This chapter examines Babanzade's significant contributions to political science during the Second Constitutional Period, focusing particularly on his insightful observations about representation, sovereignty, and governmental structures. It delves into Babanzade's careful examination of these topics, emphasizing his views on representation as the foundation of legitimate governance and sovereignty. The chapter also explores Babanzade's analysis of various political systems, including representative government, the differences between single-member district plurality (SMDP) and proportional representation (PR) in elections, and his advocacy for robust checks and balances. Babanzade provides a balanced viewpoint by examining different political systems both historically and within his contemporary context.

4.1 Babanzade's View on Representation and Sovereignty

Babanzade suggests that French political thought can be employed to define and theorize the relationship between the state and its organs (*vesait*). He asserts that two crucial concepts arise from this discussion: mandate (*vekale*) and representation (*temsil*).²⁶⁷ According to Babanzade, the primary organs of the state are the voters (*heyet-i intihabiye*). These primary voters serve as the "*organe direct supreme*" of the state, and sometimes they directly elect administrators and civil servants, eliminating the necessity for a representative assembly.²⁶⁸

Babanzade argues that "the nation reveals its desires and wills through its voters" and "as if the nation is a person and the voters are the mouthpiece of that person."²⁶⁹ However, voters do not directly exercise their sovereignty through elections; they can

267. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 179.

268. Ibid., 180.

269. Ibid., 181.

do so through proxies. Regarding representatives, when they express their desires and will, this expression reflects their personal desires. While this is the reality, from a legal standpoint, it is necessary to regard their will as the will of the nation. Orders and wills of deputies, made in reference to the nation, cannot be subject to inspection and control because there is nothing above the national sovereignty (*hakimiyet-i milliye*). However, the same cannot be said for civil servants; since they are not elected by the nation, they cannot be considered as representatives or deputies.²⁷⁰ Their actions cannot be seen as a result of the nation's will. Babanzade's opinion, particularly concerning civil servants and representatives, is significant as it underscores the importance he attributes to elections. Although he advocates for a strong state, he does not defend the notion that every action of the state is inherently legitimate or that the nation's will always manifests in the state's actions. Instead, he argues that if there is an election, those who are elected will be the bearers of the national will.²⁷¹

In "Hakimiyet-i Milliye" Babanzade states that "national sovereignty (*hakimiyet-i milliye*) does not refer to the idea that people can independently and according to their own wills. Rather, national sovereignty is "the law and order of a legitimate parliament."²⁷² At this juncture, Babanzade highlights three key points from French thought on state organs. Firstly, the rule of voters forms the foundation of nationalism. Secondly, the ascent of the head of state through elections signifies the emergence of nationalist rule. And finally, the authority of unelected civil servants cannot be deemed nationally relevant; their will is their own.²⁷³ Contrasting these theories with French thought, Babanzade highlights objections to German political thought. Primarily, the French theory distinguishes between the state and the nation as separate entities. However, considering Rousseau's ideas, it can be argued that national sovereignty cannot be delegated to any entity. Therefore, the state should be viewed as a legal person that unifies with the nation; only then can the nation's will be discerned in state decisions.

In essence, the parliament serves as a "manifestation" (*timsal*), an organ, and an extension of national sovereignty, rather than merely a representative (*temsil*).²⁷⁴ Thus, the nation does not relinquish its will to another entity, be it the parliament or its representatives; instead, the will of the nation finds embodiment in the parliament. This aspect unequivocally illustrates the extent to which Babanzade was influenced by the *German Rechstaat* theory rather than solely adhering

270. Ibid., 181.

271. Babanzade İsmail Hakkı, "Hakimiyet-i Milliye," *Tanin*, May 19, 1909, 2.

272. Ibid., 2.

273. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 183.

274. Ibid., 185.

to French thought. In "Ahali ve Meclis-i Mebusan," Babanzade addresses a general misunderstanding by stating that the notion of "having elected and appointed the deputies, gathered them together, and vested the sovereignty of the nation in them, thus thinking that all power should concentrate in this parliament" is quite problematic.²⁷⁵ Babanzade continues, "Power (*kuvvet*) and absolute political authority (*kuvvet-i mutlaka-i siyasiye*) reside solely within the state."²⁷⁶

Inspired by German legal state theory, Babanzade challenges this misunderstanding by asserting that the state should be viewed as comprising the population, the government, and other components, emphasizing that "the state is a holistic abstract entity (*külli manevi*) that encompasses these elements."²⁷⁷ In other words, according to Babanzade, parliamentary deputies should be regarded as integral to the government. They represent a pivotal element, but parliament does not manage all functions. Delegation assumes numerous executive responsibilities. Indeed, Babanzade argues that it is a significant mistake for parliament to oversee all state affairs. Essentially, parliament's primary duties are checking and auditing, scrutinizing and approving the budget, and legislating.²⁷⁸

4.1.1 Representative Government

Babanzade's *Hukuk-i Esasiye*, provides valuable insights into political theory and comparative politics. He extensively examines various states, evaluating differences in areas like parliamentary structures, voting systems, and government forms. His contributions suggest that the book *Hukuk-i Esasiye* should be considered a political science text that occasionally explores comparative politics. Commencing his analysis of direct government, Babanzade initially defines both direct and representative governance. Direct government entails executive functions being directly carried out by an assembly composed of citizens.²⁷⁹ In contrast, representative government refers to a system where the government is elected either by this assembly or through a separate election process, termed *gouvernement représentative*.²⁸⁰

Even Rousseau, one of the most significant proponents of direct governance, acknowledges that a government directly controlled by the people is not feasible. Matters related to execution and administration necessitate promptness (*sürat*) and unity

275. Babanzade İsmail Hakkı, "Ahali ve Meclis-i Mebusan," *Tanin*, March 5, 1909, 1.

276. Ibid., 1.

277. Ibid., 1.

278. Ibid., 2.

279. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 187.

280. Ibid., 188.

(*vahdet*).²⁸¹ This perspective of Rousseau is not solely derived from his theoretical understanding of politics. Despite the existence of direct democracy in the Swiss Cantons where Rousseau resided, as well as in ancient Greece and Rome, governance was administered by rulers appointed by the citizens, rather than directly by the populace themselves. Undoubtedly, Rousseau based his ideas on these historical examples.²⁸²

Although Rousseau does not oppose representative government, he does object to representative democracy, wherein an assembly exists with elected representatives. In fact, Babanzade articulates his disagreement with Rousseau on this matter by examining Rousseau's perspectives. Directly quoting from the fifteenth chapter of the third book of "*Social Contract*": "When the nation goes to war, they pay the soldiers and stay at home. Thanks to their indolence and wealth, they end up with soldiers to enslave the country and representatives to sell it."²⁸³ Another important quote from Rousseau on this subject is: "When someone declares indifference toward state affairs, it can be said that the state is in ruin."²⁸⁴ According to Rousseau, once deputies are elected, the nation becomes enslaved. The concept of mandate and representation is a governmental form originating from feudalism. In ancient republics, the people never had representatives; they were the representatives themselves.²⁸⁵

At this juncture, Babanzade invokes Montesquieu's views to advocate for the concept of representative democracy. Indeed, Montesquieu contends that nations have the liberty to elect individuals to whom they can delegate their authority.²⁸⁶ Another argument supporting this stance is that ordinary citizens, in their daily lives, are more intimately acquainted with the issues and challenges of society than any monarch. Hence, it can be inferred that a leader elected by the people represents a more rational form of governance than a monarchy.

Babanzade approaches this issue more from Plato's perspective, in contrast to Rousseau's viewpoint. Babanzade states for instance, when one falls ill, they en-

281. *Ibid.*, 188.

282. *Ibid.*, 189.

283. *Ibid.*, 193. See also: "As soon as public service ceases to be the citizens' principal business and they prefer to serve with their purse rather than in person, the state is already close to ruin. Is there a call to battle? They pay troops and stay home. Is there a summons to council? They appoint deputies and stay home."

Jean-Jacques Rousseau, "The Social Contract," in *The Social Contract and Other Later Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 113.

284. *Ibid.*, 193. See also: "As soon as public service ceases to be the Citizens' principal business, and they prefer to serve with their purse rather than with their person, the State is already close to ruin."

Jean-Jacques Rousseau, "The Social Contract," in *The Social Contract and Other Later Political Writings*, trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 113.

285. *Ibid.*, 194.

286. *Ibid.*, 195.

trust themselves to a doctor, and a plaintiff to an attorney.²⁸⁷ Similarly, the nation entrusts itself to those who professionally handle law-making and state matters, considering that very few individuals possess knowledge of parliamentary deliberations or functioning. Most citizens are not well-informed and do not harbor private thoughts regarding parliamentary votes and ideas discussed in parliament.²⁸⁸

In addition, Babanzade objects to Rousseau as follows: "Rousseau assigns a restricted interpretation to national sovereignty, attributing solely legislative power to it."²⁸⁹ Considering national sovereignty incompatible with representation is an extreme notion from one standpoint. The proposition that law serves as the cornerstone of the nation is acceptable, and also from this perspective, the nation can either directly enact laws or entrust this task to individuals they trust. Yet, Babanzade argues that one of Rousseau's objections remains valid and warrants consideration. According to Rousseau, if the nation truly possesses sovereignty, then representatives should have the authority to dismiss the individuals they elect at any time.²⁹⁰ However, since this is not always feasible in representative assemblies, it can be inferred that Rousseau's argument holds merit. Babanzade suggests that limiting the term of office (*müddeti içtimayesini meh-ma-emken tenkis etmek*) of the National Assembly, and having options such as cancellation of assembly and early elections (*fesh ve intihabatı cedideye müracat*), could address this issue, emphasizing that determining fixed terms of office could mitigate this problem to some extent.²⁹¹

Babanzade argues that while it can be contended that referendums serve as a remedy in representative democracies, he deems them a highly detrimental tool. Referendums exhibit negative attributes of both governmental styles mentioned. For instance, in representative democracies, if a referendum is conducted, representatives may neglect their responsibilities, asserting that the ultimate decision lies beyond their responsibilities.²⁹² Alternatively, when laws are presented to the public, citizens may lack the capacity to thoroughly examine these laws or the entirety of the legislation, leading them to defer to a particular party under the assumption that it has already scrutinized the matter adequately. In essence, Babanzade asserts that the referendum procedure embodies numerous adverse aspects.

Babanzade, in agreement with Esmein's opposition to the referendum, primarily agrees that citizens vote for a package of laws rather than individual ones. Consequently, voters find themselves in situations where they must approve one law

287. Ibid., 196.

288. Ibid., 196.

289. Ibid., 200.

290. Ibid., 200.

291. Ibid., 201.

292. Ibid., 202.

while rejecting another, thereby limiting their freedom.²⁹³ However, since laws are voted on separately in parliament, deputies have greater freedom to make choices. According to Babanzade, it is erroneous to assume that all deputies thoroughly scrutinize laws and either accept or reject them after extensive criticism, diverging from Esmein's perspective on this matter. Yet, Babanzade does not believe it is appropriate to dismiss the notion that the legislative process in parliament is superior to referendums.

Babanzade discusses the concept of representational government by presenting his own views on representation. He states that the mandate of the national assembly is based on considering the nation as a person.²⁹⁴ According to this theory, the nation should be considered a personality that has concentrated its sovereignty, so the elected assembly becomes the representative of this nation. Stating that the first national assembly formed by the national sovereignty method was the *États Généraux* convened in Tours in 1484, Babanzade sees the importance of this as the first time the nation gave power of attorney to a parliament.²⁹⁵

Addressing the issue of the Law on Churches and the Greek Patriarchate in his article "Kiliseler Kanunu ve Patrikhane Mehafili", Babanzade states that the established regime has constitutional sovereignty which represents the nation.²⁹⁶ He notes that Greek deputies currently represent the Greek community and claims that the existence of churches or the patriarchate as legitimate representatives, rather than Greek deputies, would pose a threat to national sovereignty.²⁹⁷ Hence, he emphasizes the sovereignty of the parliament above any other institution, including the Greek Patriarchate.

Babanzade sees representation as a result of feudalism. While feudalism, especially in France, evolved into absolutism and despotism in the sixteenth and seventeenth centuries, the United Kingdom, particularly in the seventeenth century, developed a form of representation and constitutionalism by limiting the power of the crown.²⁹⁸ This method of dividing the administration of feudalism gradually became a proper government system over time. It is stated that there were assemblies and forms of representation in many kingdoms in Europe in the Middle Ages such as *Cortes* in Spain or *Etats Généraux* in France.²⁹⁹ And the first time two knights from each

293. Ibid., 203.

294. Ibid., 213.

295. Ibid., 214.

296. Babanzade İsmail Hakkı, "Kiliseler Kanunu ve Patrikhane Mehafili," *Tanin*, July 4, 1910, 1–3.

297. Ibid., 2

298. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 215.

299. Ibid., 218.

county were sent to parliament to join the barons and high clergy was in 1254 in the UK. However, as Babanzade, citing Esmein, states, the British regard the parliament convened by Edward I in 1295 as the model parliament.³⁰⁰ Stating that the importance of the House of Commons increased in the 14th century, Babanzade notes that at first, the duty of this chamber was only to give advice. Over time, the power of the assemblies gradually increased, especially due to financial reasons, and they evolved from a position of giving advice to a function that partners with the administration.³⁰¹ These examples are significant because they demonstrate that Babanzade considers issues related to representation and government not just as legal matters, but also as historical phenomena. Babanzade asserts that just as a parliament can be elected, so too can a person. He cites Napoleon III, elected as President in 1848, as an example.³⁰² However, Babanzade was skeptical that an individual truly represents the will of the nation through election, delves into the intricacies in later sections of the book. He examines how the election of the head of the executive can potentially engender problems, particularly in the absence of a balance of power and checks and balances.

Babanzade's views, which also examine nobility and aristocracy in detail, are fairly democratic. He presents Montesquieu's arguments in favour of the House of Lords. Montesquieu states that people with wealth and honor should not be mixed with the public, otherwise freedoms will be damaged.³⁰³ However, Babanzade criticizes this point, acknowledging that while the decline of aristocratic power during Montesquieu's time led to various negative outcomes, he does not view aristocratic assemblies favourably. Babanzade argues that the existence of an aristocratic assembly contradicts the notion of the assembly as a place where the nation is represented. Nonetheless, he also notes that, for example, the House of Lords in England is a place where aristocrats tend to be liberal rather than conservative.³⁰⁴ He emphasizes that it is wrong to label a parliament as conservative solely because it is aristocratic. According to Babanzade, aristocrats are merely the remnants of history.³⁰⁵ While it makes no sense for there to be a privileged class in places where no such class historically exists, it is understandable that in places where such a parliament exists, their power gradually decreases or they play a balancing role, such as in England.

Babanzade dedicates a significant portion of his book to the debate between bicameral and unicameral parliaments, exploring four fundamental arguments in favor of bicameralism. His investigation gains importance within the historical context,

300. Ibid., 218.

301. Ibid., 219.

302. Ibid., 227.

303. Ibid., 245.

304. Ibid., 246.

305. Ibid., 246.

highlighting the extensive debates on constitutional forms during that period. First, using France as an example, he argues that chaos was higher when there was only one chamber, whereas two chambers provided a more peaceful political atmosphere.³⁰⁶ However, supporters of a unicameral parliament may object to this, emphasizing the potential to prevent the interregnum of unicameral periods and to take rapid action in times of confusion. Additionally, the coercion and domination of Napoleon I occurred when there were two assemblies.³⁰⁷ Although this might initially seem like a valid argument, Babanzade does not find it strong enough.

Secondly, balance should be seen as a key measure in ensuring public order in a country, and it is important that the legislature is also balanced. A structure with two chambers may enable this balance in the legislature. A single parliament can concentrate power and lead to an unbalanced relationship with the executive.³⁰⁸ In other words, if there is a single parliament, the legislature can completely upset the balance of power with the executive. According to Babanzade, the purpose of the formation of the first constitutions was to balance the personal arbitrary administrations of the rulers. Over time, the power of elected parliaments increased, and monarchs ceased to be a threat to the people. Babanzade states that in today's situation, parliaments themselves can be prevented from becoming elements of domination and having an upper chamber can be a solution to that threat.³⁰⁹

Thirdly, the upper chamber can act as a referee. Babanzade states that there is a danger that disagreements between the legislature and the executive may lead to turmoil or even civil war, and argues that the upper chamber can play the role of a referee and soften conflicts in such moments.³¹⁰ And finally, the Assembly of Notables fulfills its postponed duty, which also serves the well-being of the country. When parliament stands alone, many decisions are made quickly and sometimes without sufficient thought. In emergency situations, events can force the parliament to take measures and make legislative decisions that cannot correct some of the unpleasant consequences that have arisen.³¹¹ The existence of the upper chamber allows for the avoidance of hasty law-making and decision-making processes.

Babanzade generally continues the discussion not one-sidedly but from several different perspectives, reflecting his broad intellectual knowledge. After presenting these four arguments, he moves on to the objections of single-parliament advocates, noting that they can be grouped under two headings. Firstly, those who express the

306. Ibid., 248.

307. Ibid., 249.

308. Ibid., 249.

309. Ibid., 250.

310. Ibid., 252.

311. Ibid., 253.

first objection explain their ideas as follows: national sovereignty consists of national administration. The law is the embodiment of this administration. Since the nation is one, national sovereignty (*hakimiyet-i milliye*) is therefore one, indivisible, and inalienable. Consequently, the parliament representing a nation should also be one. Babanzade criticizes this view by stating that the basis of this seemingly very logical reasoning is unacceptable. Since the existence of a delegation representing the nobility movement is not feasible within theories and legal rules, there is no doubt that representation in a country should be based solely on the nation. However, it is necessary to deduce from this basis not that the parliament should be a single parliament, but that the nation should be the basis and source of power for both chambers.³¹²

The second objection group, as termed by Babanzade, is referred to as the practical objection (*fili itiraz*) group. This group contends that the upper chamber plays a procrastinating and inhibiting role in implementing reforms, criticizing it through practical examples. For instance, Franklin likened a legislature divided into two branches to a chariot pulled by two animals.³¹³ Conversely, Babanzade rebuts this perspective by invoking Esmein, asserting that the focus should not solely be on the quantity and speed of lawmaking, but rather on the quality of laws produced. Essentially, a nation requires sound laws, not merely numerous ones, and only political stability can ensure this.³¹⁴ The balance of power facilitated by bicameral structures is deemed beneficial in achieving this objective.

Babanzade argues that in a bicameral system, there is no mandate for one of the two chambers to be inherently noble. He suggests that it would be advantageous if the two assemblies were elected using distinct election methods. Otherwise, if they were elected in the same manner, having two assemblies would be redundant as one would essentially replicate the other. For instance, while lower chamber could be elected through a single-stage selection process, the upper chamber could be elected via a two-stage selection process. Consequently, the deputies in the upper chamber could be fewer in number but of significantly higher caliber.³¹⁵ Based on all of these considerations, it can be said that Babanzade clearly finds the bicameral structure more functional than the unicameral structure.

Finally, he concludes this discussion by including the views of Duguit and Jellinek on the subject regarding the two parliaments. Duguit argues that the nation consists not only of one unit but many units coming together. These units include families, towns, workers, agricultural, artistic, and commercial companies, and scientific and

312. Ibid., 254.

313. Ibid., 254.

314. Ibid., 255.

315. Ibid., 256.

sectarian groups. If the parliament is to be a reflection of the country, there must be two chambers: one composed of deputies representing individuals, and the other corresponding to social interests. Jellinek similarly stated that one of the councils should represent labor (*sa'y ve amel*), and the other, capital (*sermaye*).

4.1.2 Single Member District Plurality vs. Proportional Representation

Babanzade gave great importance to elections and election systems, analyzing them in detail. According to him, there are two important points to consider in an election or the election system in general as discussed in his article "İntihabatta Lüzum-ı İntizam". First, voters should be free to vote conscientiously. Second, they should be able to vote for candidates who are spiritually, emotionally, and intellectually aligned with them.³¹⁶ In conclusion, Babanzade argues that every individual should have the freedom to vote and that there should be a system allowing them to vote for candidates who align with their personal or group interests and beliefs.³¹⁷ This perspective helps us understand why Babanzade examines the differences between the pros and cons of Single-Member District Plurality (SMDP) and Proportional Representation (PR). For him, elections are not just ordinary decisions; they are where the nation selects its representatives.

Babanzade examines the relationship between SMDP and PR, which are key topics in the field of comparative politics today. He delves into both perspectives in detail. After defining SMDP as the single-person constituency, Babanzade evaluates its advantages. He highlights the smaller size of the constituency in this system, emphasizing that responsibility becomes more personalized with the election of a single individual.³¹⁸ Furthermore, compared to a multi-member district, the political program of the candidate elected under SMDP tends to be clearer, given that there is only one candidate. This clarity is advantageous. Additionally, he notes that the candidate's reputation holds greater importance in SMDP compared to the multi-member district method.³¹⁹

Babanzade then examines the PR (expressed in French as *représentation proportionnelle*) system and presents arguments that this system will be more advantageous for several different reasons. The first argument is that if a single candidate was elected in the SMDP, there would be hundreds of thousands of votes wasted, whereas

316. Babanzade İsmail Hakkı, "İntihabatta Lüzum-ı İntizam," *Tanin*, March 15, 1912, 1.

317. Ibid., 1.

318. Babanzade İsmail Hakkı, *Hukuk-ı Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 269.

319. Ibid., 270.

in the PR system, when the electoral districts grow and there is a proportional representation, many people can be able to vote for their own candidate and a more representative parliament can be formed.³²⁰ In SMDP, individuals tend to vote for candidates closer to winning rather than their own candidate if their candidate lacks a chance of coming first.³²¹

Quoting Mirabeau, Babanzade states that he likens the assembly to a map. According to Babanzade, for this map, which mirrors the nation, it must closely resemble it to accurately reflect reality.³²² Thus, this is more achievable through the PR system. Babanzade divides those who oppose PR into two groups: those with theoretical reasons and those with practical reasons. He particularly criticizes the theoretical objections, especially those raised by Esmein.

First, Babanzade addresses one of Esmein's objections directly. As discussed in detail before, Esmein is of the opinion that the SMDP is more suitable for representation, as it ensures that national sovereignty (*hakimiyet-i milliye*) is undivided. Babanzade instead defends PR by stating that the representation of the nation can only be achieved through the representation of the entire population, and the number of laws strengthens this.³²³ No part of the nation should be superior to another, and no component should be completely excluded from law-making simply because it receives fewer votes. Similar to Esmein, Babanzade also argues that a deputy does not represent personal interests or merely a specific region, but rather the entire country, as discussed in his article "Mebuslar ve Tavsiye."³²⁴ Babanzade insists that Esmein's criticism of PR, emphasizing the indivisibility of national sovereignty, is utterly flawed because there is no contradiction between proportional representation and national sovereignty; the representation of the nation is not contrary to the principle that the national will is one and indivisible.³²⁵ At this point, what needs to be considered is which election system best carries the will of the nation to the parliament.

Another objection of Esmein is that if the existence of two parliaments has already divided the nation, the implementation of a PR system would completely fragment national sovereignty. Esmein likens this to taking poison while trying to use medicine.³²⁶ Referring to Monsieur Charles Benoist, who was a member of parliament for Paris, Babanzade states that there is not enough evidence to show why the

320. Ibid., 279.

321. Ibid., 282.

322. Ibid., 284.

323. Ibid., 284.

324. Babanzade İsmail Hakkı, "Mebuslar ve Tavsiye," *Tanin*, July 8, 1910, 2.

325. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yaynevi, 2017), 285.

326. Ibid., 286.

proportional system in the legislature would affect the executive and judiciary.³²⁷ Moreover, the principle of representing the nation, a crucial feature of the legislature, does not exist in the executive or the judiciary.³²⁸ For all these reasons, Babanzade argues that PR would create a more accurate representation than SMDP and result in an outcome more appropriate to the *raison d'être* of the parliament. Practical reasons for objecting to the PR procedure are emphasized, with Babanzade citing examples from Switzerland, Belgium, Finland, Hamburg, Württemberg, Serbia, and Kosovo, suggesting that its implementation will not pose any issues.³²⁹

Babanzade also discusses the notion of professional representation (*representation professionnelle*). Professional representation (*intihabat-i silkiye*) is a system in which professional groups are represented. Duguit advocated for the nation's representation in every detail, including professional groups, through proportional representation, as Babanzade states.³³⁰ Esmein, on the other hand, is absolutely opposed to professional representation as this method prevents the benefit of the nation from being ensured; the general interest of the nation should be included in the national assembly, and the inclusion of the interests of any group will harm the will of the nation.³³¹ Esmein defends that deputies should work for the benefit of the general public, not for their own benefit or the benefit of the group they belong to, and professional representation is an obstacle to this. Babanzade stresses that Rousseau and Sieyès were also of this opinion.³³²

Babanzade mutually presents Duguit and Esmein's views on this issue, creating a dialogue between the two. Babanzade stated that Duguit responded to Esmein's objections as follows: What could be more important than the desire to live in a nation whose sovereignty is national? This nation includes communities and groups; therefore, their representation is not contrary to national sovereignty; in fact, it is a requirement of it.³³³ In other words, according to Duguit, if the groups or communities within the nation cannot be represented, it cannot be said that the nation is fully represented and that national sovereignty is realized. In fact, professional representation will not defend the interests of small groups; it will protect people's interests by representing the most powerful industrial and commercial delegations in a country. Even though Babanzade seems to regard professional representation positively, he avoids taking a clear position and states that this debate was not very important for the Ottoman Empire because the Ottoman Empire had not developed

327. Ibid., 286.

328. Ibid., 287.

329. Ibid., 288.

330. Ibid., 303.

331. Ibid., 303.

332. Ibid., 304.

333. Ibid., 304.

professional representation, the stage at which a business industry in the Ottoman Empire desired representation.³³⁴

Discussing whether it would be more appropriate to renew the entire parliament through elections or a portion of it at regular intervals, Babanzade again brings a discussion from the field of today's comparative politics into his *Hukuk-i Esasiye*. Emphasizing the importance of representation, Babanzade repeatedly stresses that all functions of election systems should be adjusted to maximize this representation. For this reason, he advocates that the election of the Upper House should be held at the same time as the Lower House so that the nation will vote for both simultaneously, ensuring there is no difference in their legitimacy.³³⁵ For the same reason, Babanzade believes that parliaments should be completely renewed. According to him, if only a part of the parliament changes in each election period, it will never be known exactly what the nation's desire is. He also refers to Esmein, stating that the legitimacy of a completely renewed parliament is stronger than that of a parliament whose parts have been changed during the election period.³³⁶ Thus, with these views, Babanzade articulated the necessary conditions for periods of change within the Ottoman Constitution, thereby making a significant contribution to the constitutional debates of his time. All these discussions demonstrate how he valued representation, which is one of the most important notions of his political theory. This clearly shows that he was influenced by German scholars, as he argued that the state should represent the nation.

4.2 Babanzade's Analysis on the Form of Government

One of the important issues that Babanzade deals with is his classification of regimes and his thoughts on which one is better and why. Babanzade starts this topic with Aristotle's classification. Aristotle divides regimes into monarchy, aristocracy, and polity (with the degenerate version being democracy).³³⁷ Babanzade, on the other hand, states that the form of government can be divided into three different categories: despotic rule (*hükümet-i müstebide*), absolute rule (*hükümet-i mutlaka*), and limited rule or constitutional rule (*hükümet-i mahdude veya meşruta*).³³⁸ Babanzade states that the government systems that fall under these names cannot be

334. Ibid., 306.

335. Ibid., 307.

336. Ibid., 310.

337. Ibid., 311.

338. Ibid., 311.

completely pure and without any conflict.³³⁹ For example, in a despotic government, the ruler does not have to be very harsh; he can fulfil the wishes of the people from time to time or most of the time, but this government does not cease to be brutal. In despotic rule (*hükümet-i müstebide*) and absolute rule (*hükümet-i mutlaka*), Babanzade continues, there is no parliament, hence they differ from the third form of governance, limited rule or constitutional rule (*hükümet-i mahdude veya meşruta*). The difference between despotic rule and absolute rule lies in the fact that in despotic governance, the ruler has arbitrary and unlimited power, whereas in absolute rule, despite the absence of a parliament, the ruler adheres to the laws.³⁴⁰

In addition, Babanzade examines the concept of "Republic," first defining it in a classical manner as a form of government where the leadership is not passed down by inheritance.³⁴¹ Babanzade states that Jellinek defines the republic differently. For Jellinek, if the highest authority of a state consists of many individuals, it is a Republic; if it rests with a single person, it is a monarchy.³⁴² Criticizing Jellinek's definition of a republic, Babanzade argues that although England is considered a monarchy, the most pivotal decisions are made by the House of Commons, rendering it the *de facto* highest office of the state. Similarly, in the German Empire, while the Bundesrat holds the highest rank, there is still a king.³⁴³ Moreover, Babanzade highlights the challenge of determining the highest office of the state, which leads him to favor the classical definition of republic over Jellinek's. Babanzade asserts that national sovereignty is inherently linked to the republic and cannot be found in absolute rule, as national sovereignty entails all sovereignty belonging to the nation, while absolute rule entails sovereignty belonging to one person.³⁴⁴ Hence he criticizes the social contract philosophers who defended the natural law doctrine in the 17th and 18th centuries. As an example cited by Babanzade, Voleff says that the nation can completely abandon its sovereignty and, in this way, make the ruler the owner of that sovereignty and withdraw from sovereignty completely.³⁴⁵ Babanzade adds that Hobbes also defended the same view. According to Hobbes, people must relinquish their will to a single will for the continuation and survival of society.³⁴⁶ According to these thinkers, the ruler or parliament that holds this singular will dominate the power of the state, and its power can be unlimited.

After stating that Rousseau strongly rejects Hobbes's views, Babanzade says that

339. Ibid., 312.

340. Ibid., 314.

341. Ibid., 313.

342. Ibid., 313.

343. Ibid., 313.

344. Ibid., 318.

345. Ibid., 319.

346. Ibid., 319.

the nation cannot abandon its sovereignty or leave it to someone else.³⁴⁷ According to Babanzade, the 18th-century writers argued that sovereignty cannot be abandoned, and that the king cannot transfer sovereignty to anyone and, even if he grants certain privileges he can abolish them whenever he wants. Rousseau, on the other hand, argued that the sovereignty of the nation cannot be abandoned or left to anyone. Similar to Rousseau, Babanzade argues that power can be abandoned or transferred, but the will cannot be relinquished.³⁴⁸

Just as a person cannot rid herself of the ability to think by claiming she sold her ideas, a nation cannot abandon its will by claiming it surrendered its will. Will and desire are not qualities that can be exchanged or given away.³⁴⁹ In addition, a person has the right to dispose of her possessions—she can sell or rent them—but since the will of the nation belongs not only to the living but also to future generations, it cannot be disposed of at will.³⁵⁰

Analyzing the perspectives of the British people, Babanzade states that the idea of sovereignty is different in England. According to him, there is no doubt that in practice the British have elevated the concept of sovereignty to a very high level. The idea that the nation should govern itself is ingrained in everyone's mind, and the government always acts with this motive. However, the British have also accepted the monarchy.³⁵¹ Everyone knows that the will of the nation has the final say, and the Crown can only survive if this will exist. Furthermore, they have never used the term "national sovereignty" in their law. They assert that the sovereignty of the nation is vested in Parliament and do not delve deeper into the matter. They do not try to reconcile the theoretical with the practical. In this, as in all their actions and behaviour, the British focus on deeds, not words.³⁵²

Babanzade discusses whether a republic or a constitutional monarchy would provide a better foundation for national sovereignty. He posits that the core issue is the coexistence of one-man rule and the will of the nation and that these two are fundamentally opposed to each other.³⁵³ However, it would be incorrect to label Babanzade as a strict defender of the republic. He was not against a monarchy to which the people were historically accustomed; if the monarch was recognized as legitimate by the people and the government was in the hands of a parliament rather

347. Babanzade made historical mistakes here, as, in fact, among the thinkers he listed, those who argued that the power of the monarch was absolute, such as Grotius and Hobbes, were 17th-century thinkers. *Ibid.*, 320.

348. *Ibid.*, 320.

349. *Ibid.*, 320.

350. *Ibid.*, 321.

351. *Ibid.*, 324.

352. *Ibid.*, 325.

353. *Ibid.*, 325.

than a single person (as in England), this should not pose a problem. Babanzade asserts that while it is wrong to accept historical practices as the ultimate truth, sometimes what is historically practiced prevails over theoretical truths.³⁵⁴ Ultimately, Babanzade centers his argument on the opposition between representation and despotism, and he is a proponent of parliamentary sovereignty over autocracy. He considers the sovereignty of a national assembly to be the most important issue; if there is parliamentary sovereignty, the distinction between a republic and a constitutional monarchy becomes secondary or even unimportant. Babanzade, in his article "Meşrutiyetten Ne Fayda Gördük?" ("What Benefit Did We Receive from Constitutional Rule?"), states that Constitutional Rule bestowed a new spirit on the state and determined its behavior (*reftar*) and goals (*hedef*) by subjecting it to a new principle (*düstur*).³⁵⁵ The fact that he wrote such an article at that time should be interpreted as a response to the liberal and religious opposition mentioned in the first chapter. However, this does not directly mean that with the constitution everything will get better in the state. In fact, representation is an important issue here, because with constitutional rule, the ruling elites are representatives of the people. "As long as there are evils in the people, there will of course be flaws in the form of government that represents, rules, and manages them."³⁵⁶ He adds that "Constitutional rule is not the goal in itself, but it ultimately determines the happiness of the people."³⁵⁷ Thus, even though having decent rule is not the endpoint, Babanzade defends that constitutional rule is the best regime, and no better regime type has been found to date, showing his defense of the 1908 constitution. All these demonstrate his defense of "constitution," clearly defining him as a constitutionalist who favors representation.

4.2.1 The Defense of Checks and Balances

In developing his constitutional theory, Babanzade also examines the relationship between the legislature and the executive. As discussed in the first chapter, there was a constitutional debate in the late Ottoman period during the Second Constitutional Era, and this part aims to show Babanzade's contribution to this debate. Babanzade argues in "Hakk-ı Sual ve Hakk-ı İstihzal" that "one of the most essential duties of the parliament is to supervise (*murakabe*),"³⁵⁸ but this supervision cannot be possible if

354. Ibid., 329.

355. Babanzade İsmail Hakkı, "Meşrutiyetten Ne Fayda Gördük?," *Tanin*, August 1, 1910, 1.

356. Ibid., 1.

357. "Meşrutiyet-i idare zaten maksud-un bizzat değil, nihayette kavmin mehma emken saadetine hakimdir." Babanzade İsmail Hakkı, "Meşrutiyetten Ne Fayda Gördük?," *Tanin*, August 1, 1910, 1.

358. Babanzade İsmail Hakkı, "Hakk-ı Sual ve Hakk-ı İstizah," *Tanin*, June 24, 1909, 1.

each member of parliament visits the ministries as they wish; if that were the case, the executive branch would not be able to govern. He states that some find basis in the Rousseauian view and argue that national power resides solely in the parliament. According to them, the legislature, or parliament, can stop the executive whenever it wants; the executive is responsible to the parliament and should not have any power over the legislature.³⁵⁹

Babanzade also discusses the Swiss system, which has a decentralized structure where ministers are elected by cantons or the people. They cannot be dismissed during their term and cannot participate in the legislature. In central Switzerland, ministers can only propose laws as a group and do not need to be members of a party.³⁶⁰ This structure allows for different opinions on the law and does not require party membership. Babanzade argues that the decentralized nature of the Swiss system, which is far from partisanship, simplifies internal affairs and reduces the administrative burden on the central government, even though such a system might lead to chaos in other countries.³⁶¹

Babanzade's opinion on the relationship between legislative and executive branches emphasizes the importance of the balance of powers; according to him, giving all power to only one branch leads to concentration of power and arbitrary rule, despotism and domination.³⁶² Babanzade argues that it is nearly impossible to fully separate the duties of parliament from those of the executive branch.³⁶³ Thus, according to Babanzade, it is essential for the mutual positioning of the two branches of sovereignty to serve the public interest, and experience has proven this to be true. The relationship between the two powers (legislative and executive) should be as precise and explicit as possible.³⁶⁴ If the points of contact and interaction between them are not subjected to a system and rules, chaos ensues instead of balance, leading to sudden domination, oppression, and disintegration.³⁶⁵ However, he opposed the idea of a universally applicable government system, arguing that the balance should be determined according to the climate, country, and time.³⁶⁶ Babanzade does not claim that either the parliamentary cabinet system or the presidential system was necessarily better. For instance, if the balance found in America were applied in France, continuous conflict between the legislative and executive

359. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 331.

360. Ibid., 333.

361. Ibid., 334.

362. Ibid., 334.

363. Babanzade İsmail Hakkı, "Hakk-ı Sual ve Hakk-ı İstizah," *Tanin*, June 24, 1909, 1.

364. Babanzade İsmail Hakkı, *Hukuk-i Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 334.

365. Ibid., 335.

366. Ibid., 335.

branches would be inevitable. Similarly, if the Swiss system were implemented in France, the legislative dominance that leads to anarchy and despotism would not end. During the Convention period, France had a government system similar to the current Swiss model, but this resulted in regret. Likewise, during the Directory period, France had a government system similar to that of America, which failed to save the country from severe and destructive upheavals.³⁶⁷ The important thing is to achieve a balance of power and prevent arbitrary rule that leads to despotism.

In a series of articles in *Tanin*, Babanzade extensively discussed the issue of checking and controlling the power of the parliament. Babanzade states that this balance can be achieved through parliamentary questions (*hakkı-sual*) and interpellation (*hakkı istihzal*) and that these two rights are instruments of parliament to control the executive; he states that these two methods are not the same and should be differentiated.³⁶⁸ While interpellation (*hakkı istihzal*) is a more serious process that can cancel the executive branch, in this process, the relevant minister or secretary is responsible for defending and responding to government policy. Interpellation thus allows parliament to monitor the government's activities, making it closer to a proposal for a vote of no confidence. On the other hand, parliamentary questions (*hakkı-sual*) are a more common and time-efficient method to check the executive branch.³⁶⁹ Babanzade argues in his article "Sual mi İstizah mı?" that for secondary issues, parliamentary questions should be used rather than interpellations to save time. It is not efficient to frequently suspend the executive branch; therefore, parliament can address less serious issues by raising parliamentary questions.³⁷⁰ However, he asserts that parliament always retains the right to use interpellations at any time. Thus, if parliament decides that the issue is more serious than initially assumed, parliamentary questions (*hakkı-sual*) can become interpellation (*hakkı stihzal*).³⁷¹

Babanzade, comparing regime types, explains the difference between relative constitutional rule and absolute constitutional rule in terms of the balance of powers and accountability. In absolute constitutional rule, accountability lies with the parliament, whereas in relative constitutional rule, it is directed towards the monarch. Babanzade points out that the balance of powers is more stable in absolute constitutional rule.³⁷² Thus, it is also clear that Babanzade values the strength of the parliament and the constitution. He states that three conditions are necessary for absolute constitutionalism. The first is that the two branches of government must

367. Ibid., 335.

368. Babanzade İsmail Hakkı, "Hakkı Sual ve Hakkı İstizah," *Tanin*, June 24, 1909, 2.

369. Babanzade İsmail Hakkı, "Sual mi İstizah mı?," *Tanin*, October 29, 1911, 1.

370. Ibid., 2.

371. Babanzade İsmail Hakkı, "Hakkı Sual ve Hakkı İstizah," *Tanin*, June 24, 1909, 3.

372. Babanzade İsmail Hakkı, *Hukuk-ı Esasiye*, ed. Fernaz Balcioğlu and Ayça Büşra Balcioğlu (Ankara: Erguvani Yayınevi, 2017), 337.

be balanced. The second is that these branches must participate in the functioning of the state with complete sincerity and equality. The third is that each branch must have an equal influence over defining the limits of the other.³⁷³

When the first condition is considered in detail, Babanzade emphasizes that the parliament and the government (whether in a parliamentary cabinet or presidential system) should have equal influence. If the parliament is too powerful, the balance will be disturbed, and the same is true if the government is too powerful. Babanzade cites the French Law of 1848 as an example, in which the government is directly elected, and the parliament is also elected by direct vote. However, while the head of state was a single person and thus could keep power and authority unified, the parliament was divided into different parties and could not form a majority group. Taking advantage of this situation, Napoleon III had the leaders of the parliament arrested in a coup d'état and declared himself emperor on the basis of an election.³⁷⁴ In this example, Babanzade argues that the balance of powers was clearly not achieved in France.

In contrast, he states that this balance and the closest form of absolute constitutionalism can be observed in England. The king and parliament are considered equal parts of the same political entity. Babanzade notes that national sovereignty is concentrated in both the king and the parliament. He describes them as two forces almost in a state of constant negotiation and agreement.³⁷⁵ The ancient legal principle of England, where the parliament, the monarchy, the House of Lords, and the House of Commons are unified, aligns with the spirit of absolute constitutionalism.³⁷⁶ The parliament intervenes indirectly in all the actions and operations of the government, and all these actions occur with its participation.

After pointing out that many examples of the dangers of combining powers can be seen throughout French history, Babanzade argues that the American Constitution was modeled on the 18th-century British constitutionalism and inspired by Montesquieu's ideas.³⁷⁷ While the president is independent and not subject to the parliament, he is subject to the approval of the Senate, i.e., the legislature, in many matters.³⁷⁸ To exemplify, when concluding a treaty, the president must obtain the consent of the Senate. Considering the powers of the Senate in America, it can be said that it functions not only as a legislative body but also as a working parliament. In the American Constitution, the executive does not even have the right to enter

373. Ibid., 338.

374. Ibid., 339.

375. Ibid., 339.

376. Ibid., 340.

377. Ibid., 342.

378. Ibid., 342.

the chamber of parliament. Representatives cannot participate in debates in the chamber. They cannot propose or publicly defend laws. However, the president can significantly influence by sending a declaration to the parliament on a very critical and urgent matter, thereby drawing the parliament's attention.³⁷⁹ Hence, the second condition for balance, which is the equal participation of both legislative and executive powers, is already present in the United States not by law but in practice. The unique situation in America prevents bloody conflicts.³⁸⁰ Indeed, the American people are known for their moderate temperament and steadfastness, and they are exceptionally committed to their customs. Moreover, the holders of legislative or executive power do not gain excessive influence to dominate each other, as might happen in other countries. Thus, Babanzade presents the American system as a notable example of checks and balances. These details demonstrate his profound knowledge of American politics.

In the detailed examination of the third condition, Babanzade states that the system of absolute constitutionalism requires the parliament and the government to exert equal influence over each other.³⁸¹ For example, holding elections for the elected members of the parliament, inviting the electors to convene the parliament, recessing the parliament, adjourning the parliament, adjourning the parliamentary debates, and most importantly, dissolving the parliament and inviting the electors to perform their duties again for the purpose of conducting new elections within the period of time specified by law, all constitute strong evidence of the government's influence on the parliament.³⁸² However, for example, in England, in exchange for the government's right to dissolve, the parliament also has a right of equal importance. Indeed, the parliament continuously and publicly scrutinizes the government's conduct. The highest officials of the government, the cabinet, are individually and collectively accountable to the parliament. If the entire parliament or a part of it condemns the government's conduct, the government must resign. However, if the implementation of this necessary procedure, which involves the participation of the parliament in the actions of the executive power, required even the resignation of the highest executive, there would be no stability in the government. The British, known for making practical solutions to every problem, have found a remedy for this as well and established the cabinet system, which is the core mechanism of absolute constitutionalism.³⁸³

All these comparisons of governmental systems are crucial in demonstrating Ba-

379. Ibid., 343.

380. Ibid., 344.

381. Ibid., 345.

382. Ibid., 345.

383. Ibid., 346.

Babanzade's nuanced understanding of comparative politics and justifying the classification of his work as a scholarly contribution to Turkish comparative politics. Furthermore, Babanzade adeptly applies political theory within this comparative framework, emphasizing the pivotal role of parliamentary institutions, the balance of power between legislative and executive branches, and the significance of constitutional principles. For Babanzade, these themes are more than the mere application of specific governmental structures. He holds a deep admiration for both the British and American models, advocating for the selection of a governmental system that aligns historically with contemporary societal conditions.

Moreover, from his analyses, it can be understood that Babanzade finds the British system more suitable for Turkey. Instead of advocating for a republic, he supports a constitutional state governed by the rule of law, where the presence or absence of monarchy is of secondary importance. For Babanzade, the fundamental issue is to establish a state based on law—a strong constitutional framework.

In summary, this chapter has demonstrated that Babanzade made fundamental contributions to political thought and political science in the late Ottoman era. His dedication to constitutionalism and representation is evident in his analyses of election systems, governmental structures, and the balance between legislative and executive branches. The chapter clearly shows that Babanzade was a constitutionalist, with a firm belief in the principles of constitutional governance. His defense of constitutionalism and the rule of law retains relevance in contemporary Turkey, offering valuable insights on sovereignty, representation, and power. Moreover, these discussions underscore the richness and depth of political debate during the Second Constitutional Era.

5. CONCLUSION

The Second Constitutional Monarchy period was marked by a vibrant political atmosphere in many respects. As discussed in the first chapter, the declaration of the constitution following the despotic rule of the Abdulhamid period marked the beginning of a freer environment, enabling the expression of diverse views on constitutional principles and governance. This period saw a notable tendency among Ottoman intellectuals, especially within the Committee of Union and Progress (CUP) elite, to be influenced by German thought. Babanzade wrote within this context, actively engaging in constitutional debates and developing a theory of the modern state influenced by German political thought, particularly emphasizing the concept of national sovereignty.

My dissertation is the first study to show that Babanzade İsmail Hakki's *Hukuk-i Esasiye* presents an in-depth and comprehensive examination of crucial concepts. It highlights Babanzade's creation of a nuanced political theory grounded in law and his role as a theorist of the modern state. By integrating German Legal State theory, liberal values, and historical viewpoints, Babanzade formulates a unique theory that addresses the complex interrelationships and multifaceted nature of the state.

As a dedicated constitutionalist, Babanzade İsmail Hakki's work demonstrates a deep-seated commitment to the principles of constitutional governance and the legal state. His *Hukuk-i Esasiye* was crucial in shaping the political and legal environment during a pivotal moment in Turkish history and significantly influenced the formulation of the 1921 constitution. The practical value of his theories is underscored by their integration into the constitutional framework, illustrating their applicability to nation-building and governance. Moreover, Babanzade's legal state theory and understanding of the state impacted the ideas of the elites who founded the Turkish Republic. This influence is evident in Mustafa Kemal's book *Medeni Bilgiler*, where the definition of the state closely mirrors Babanzade's modern state theory.

Babanzade's difference from French political thought demonstrates his intellectual

independence. Instead, he drew inspiration from a variety of sources, including Jelinek and Bluntschli, to present a broader perspective that transcended national boundaries. This difference is evidence of his commitment to a comprehensive and global understanding of political theory. The influence of German Legal State theory on Babanzade's work can be seen in his conceptualization of the state as an independent legal entity. The congruence with Jelinek's views highlights the influence of German legal thought on his intellectual structure, enriches his analysis, and contributes to a more nuanced understanding of the nature and functioning of the state.

Babanzade's critical examination of major philosophers, including Locke, Aristotle, Hobbes, Montesquieu, Rousseau, and Plato, shows his liberal position, which values individual freedoms and emphasizes the significance of society advancement through trade and solidarity. Thus, Babanzade's intellectual depth is reflected in the synthesis and accumulation of diverse influences in his theories.

In essence, Babanzade Ismail Hakki's contribution to political theory is significant not only for its practical implications for constitution-making, but also for the intellectual depth and comprehensiveness he brought to the political theory. His ability to draw on a variety of influences and present a coherent theory of the state has cemented his place in intellectual history, making him a scholar whose ideas shaped not only his students and the youth of his time but also the generation that designed the newly emerging Turkish Republic.

In addition, I demonstrate how his analyses of representation, sovereignty, and governmental structures during the Second Constitutional Period underscore his influence in political science. His examination of election systems, including the comparison of proportional representation with single-member district plurality, highlights his commitment to improving governance through well-informed institutional design. Furthermore, his support for strong checks and balances reflects a deep understanding of the complexities involved in constitutional governance.

It is debatable how Babanzade, who tragically passed away while delivering a lecture in 1913, would have responded to the war years and the policies of the Unionists in subsequent periods. I am among those who believe that he would have upheld his unionist spirit and dedication to constitutionalism throughout his life. I trust that this study will serve to illustrate this spirit and pave the way for further research into Babanzade's thoughts and late Ottoman political theory.

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