EXAMINATION OF CONSTITUTIONALIST MOVEMENTS AND CONSTITUTIONS IN TERMS OF THE DEVELOPMENT OF DEMOCRACY IN THE OTTOMAN EMPIRE

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Constitutionalism involves curbing state power, protecting fundamental rights, and defending citizens' rights against the state. Aligned with democratic theory, it's grounded in the concept of human dignity, advocating for the autonomy and participation of vulnerable individuals in community governance. Democratic theory emphasizes the crucial right of citizens to influence the selection of lawmakers in a free society. Constitutionalism insists on honoring human dignity and values, affirming citizens' right to democratic participation while ensuring clear constraints on their governments, even when in line with the majority's preferences. Originating with the Magna Carta in 1215, constitutionalism reached Ottoman lands about six centuries later. Ottoman constitutional movements, commencing with the 1808 Sened-i Ittifak (Charter of Alliance) and progressing through the 1839 Tanzimat Edict (Imperial Edict of Reorganization), the 1856 Islahat (Reform) Edict, and the 1876 Constitution, were influenced by both internal and external factors. These movements, despite lacking public demand, played a pivotal role in introducing democratic values and institutions in Ottoman history, including the country's first parliamentary election.

Keywords: *Constitution, Constitutional Movements, Democracy, Democratization, Ottoman Empire.*

Jel Codes: *K10, K16, Z13.*

1. INTRODUCTION

The Ottoman Empire has been governed by a strong monarchy since its establishment in 1299. The Ottoman sultans, unlike the kings in Europe, did not allow any authority to come between them and the people. The state was administered under the absolute sovereignty of the sultan. There has been no law limiting the sultan since its establishment. In this context, one might contemplate the necessity for the sultan to solicit a fatwa from the esteemed office of the sheikh al-Islam regarding certain matters. However, it is imperative to acknowledge the precarious position of the sheikh al-Islams, who find themselves subject to the peril of execution at the behest of the sultan. It is also debatable how much they could limit the sultans with their fatwas.

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This monarchical structure, where the sultan was not limited, continued until the 19th century. With the 19th century, a change began in the State. During this century, attempts to limit the monarchy, which were previously encountered in the West, began to be seen in the Ottoman Empire for the first time. Constitutional movements started in the Ottoman Empire in 1808 and had continued until the last years of the state.

Attempts to limit the monarchy started in the West with the aim of preserving the autonomy of the aristocratic segment. Later, when the bourgeoisie became economically stronger, it was not content with only economic power, but also wanted to seize political power, and attempts to limit the monarchy were shaped under these conditions. The bourgeoisie, imbued with democratic ideals emphasizing popular participation in governance, has spearheaded endeavors to circumscribe monarchical authority by garnering the support of the working class. As a result, democratic constitutions began to emerge. This shows that there is a close relationship between constitutions and constitutionalism movements in the West and democratization.

However, it is difficult to establish a close relationship between constitutionalism and democratization in the Ottoman Empire. Because, as in many areas in the Ottoman Empire, such movements in constitutionalism originated from above and did not occur as a result of the demands of the people or the struggle of certain social classes as in the West. As a result, the relationship between constitutionalism movements and democratization was weak in the Ottoman Empire. This understanding continued most of the time even in the republican period. The view that a change in the state administration can only come from above has almost become a characteristic feature for Turkish society.

2. MATERIAL AND METHODS

In this study, the Ottoman constitutional movements in the 19th and 20th centuries will be discussed and its relationship with democratization (essentially in liberal terms) will be attempted to be revealed. In this context, this study seeks to find answers to the following questions: To what extent did constitutionalism in the Ottoman Empire influence the development of democratic values and institutions, particularly in comparison to Western models? What role did external influences, such as European powers and global trends in governance, play in shaping constitutionalism movements and democratization efforts in the Ottoman Empire?

Ottoman constitutional documents are the main sources of this study. These sources are Sened-i Ittifak, 1839 Tanzimat Edict, 1856 Islahat (Reform) Edict, and 1876 Constitution.

3. CONSTITUTION, CONSTITUTIONALISM, DEMOCRACY CONCEPTS

In order to understand the relationship between constitutionalism and democratization in the Ottoman Empire, these concepts (constitution, constitutionalism, democracy) should be explained first. After explaining meaning of the concepts, it will be more possible to analyze this relationship.

3.1. Constitution and Constitutionalism

The constitution consists of superior legal rules that show the basic structure, organization, and operational rules of the state and guarantee the rights of individuals. The Constitution is based on two basic blocks. On the one hand, it determines the structure and functioning of the state and their main principles, and regulates the relations of organs with each other. On the other hand, it defines citizen rights and freedoms (Ankara Barosu, 27.02.2017).

The concept of constitution was first used in Italy. In 1797, the course on constitutional law began to be taught at the Università di Ferrara under the name 'Dirito Constituzionale'. In Turkiye, concepts such as 'Kanun-i Esasi (Basic Law)' and 'Teşkilat-ı Esasiye (The Foundations of the Organization)' were used for the constitution (Yilmaz, 2012 :16). For example, with the expression Teşkilat-ı Esasiye, it has been revealed that constitutions are the main determinant in the organization of the state, and with the expression of Kanun-i Esasi, the basis of all laws should be in the constitution.

Constitutionalism, on the other hand, is a movement that demands the making of a strict law called constitution, which is above the law and can be changed more difficult than the laws, in order to limit the state power and protect the fundamental rights and freedoms of the citizens against the state (Gozler, 2011: 71).

The beginning of the understanding called constitutionalism, although the concept referred to as constitution is older, dates back to the 1700s. Therefore, it can be said that constitutionalism is, in a sense, a concept belonging to modern times. Constitutionalism emerged as a result of the American and French Revolutions in the late 18th century and spread to many countries around the world in the following centuries (Grimm, 2016: 3). As noted by Bailyn in his examination of the American Revolution, those who carried out the revolution established a new system different from traditional institutions. The system they established is based on principles such as the separation of powers and freedom. These principles emerged as a turning point in political history and influenced many countries, especially Western civilization (Bailyn, 2003).

The characteristic that distinguishes this prevalent understanding from others, in other words, the fundamental issue that differentiates the understanding known as constitutionalism despite laws existing before the 1700s, is its shaping around the idea of restricting political power. Accordingly, in America, which gained independence, and in France, where the monarchy was overthrown, a legitimate governance vacuum emerged. This governance vacuum was filled within the framework of

constitutionalism, establishing a new system that limits political power and bases the legitimacy of governance on the consent of the governed (Grimm, 2016: 6). The initial and most significant developments of this emerging system are exemplified by the "Bill of Rights" adopted in the United States (1791) and the "Declaration of the Rights of Man" adopted in France (1789).

Accordingly, when we look at the articles in the Bill of Rights, all articles fall within this understanding; however, especially the ninth and tenth articles are significant in terms of limiting government (Bill of Rights Institute, 08.03.2024). Similarly, when we look at the Declaration of the Rights of Man, it is stated that people are born free, and therefore, all citizens have the right to decision-making, providing an idea of the limits within which the government will operate (Yale Law School the Avalon Project, 08.03.2024). However, not every instance of governance vacuum in history has been filled with constitutionalism. Either new dynasties or new rulers have filled this vacuum and continued governance. At this point, as in the examples of America and France, we need to answer the question, "Why did the system not renew itself through traditional methods but filled this vacuum within the framework of constitutionalism?" The answer to this question lies in the Enlightenment thought and its fundamental principles.

The Enlightenment, also known as the Age of Reason, emerged in the 17th and 18th centuries in the Western world as an intellectual movement emphasizing reason, individualism, and skepticism towards traditional doctrines. It advocated ideals such as freedom, progress, tolerance, brotherhood, constitutional government, and the separation of church and state (Britannica, 08.03.2024). It can be understood from this that the close connection between the Enlightenment and the mentioned revolutions has been influential in the emergence and prevalence of the concept of constitutionalism.

In the absence of a constitution in a country, the power of the state to govern and therefore the behavior of those who exercise state power become arbitrary. State decisions cease to be matters of public administration that must be viewed and executed within the confines of well-established and deeply understood principles. In such countries, state power grows by destroying all borders, and as it grows, the possibility and potential of arbitrary use becomes stronger (Yayla, 2012: 14).

3.2. Democracy

Democracy, as a concept, is derived from the Greek words 'demos' and 'kratos'. While demos means people, kratos means government. So, democracy means the rule of the people.

However, in Athens, one of the ancient Greek city-states, the concept of the people did not include large segments of the population as it does today. In order to be included in the concept of the people in Ancient Greece, first, one had to be of Athenian origin. Also, one had to be over the age of 20. Lastly, one had to be a free man. When this is compared to today, it is seen that more than half of the people were excluded from democratic governance (Held, 2006: 19).

While a limited number of people had democratic rights in ancient Greece, more people started to benefit from these rights in the following years. These rights were first enjoyed by men, and then by all citizens. Of course, there are some exceptions to the expression of all the citizens. The most well-known example of these exceptions is the condition of being of a certain age. However, when democracy is mentioned today, it is understood that adult citizens have the right to vote and be elected, regardless of whether their gender.

Thousands of years after the direct democracy in Ancient Greece, this form of democracy, i.e. the representative type, began to resurface prominently in the 18th century, especially during the American and French revolutions (Landemore, 2020: 33). If we were to discuss the characteristics of the type of democracy around the views of John Stuart Mill, one of the founders of representative democracy, first and foremost, it can be said that representative democracy is inherently elitist. This is because elections typically result in the selection of wealthy and prominent individuals in society. Second, in a representative democracy, the legitimacy of those in power stems from their accountability to the represented individuals. Third, in representative democracy, it is assumed that voters will choose well-educated and wise individuals as their leaders. Fourth, in representative democracies, there is an emphasis on limiting the concentration of power. However, Mill advocates for measures that limit the influence of uneducated individuals and ensure that those in governance possess expertise or knowledge (Lederman, 2022). However, as will be noted below, elections are only one of the components of liberal democracy.

Accordingly, elections are the foundation and sine qua non of democracy, but having elections alone is not considered sufficient. Robert Dahl (2010: 99-100) argues that in order to talk about a full democracy, other conditions are needed besides elections. First, elections must be free, fair, and often should be renewed. Citizens should be free to form organizations such as political parties. All citizens should be equal in terms of voting. People should have alternative sources of information and finally freedom of expression. The approach Robert Dahl put forward regarding democracy is referred to as "polyarchy." Polyarchy is a political system that allows for opposition, competition, or contestation between a government and its rivals, which is an important aspect of democratization (Dahl, 1971).

Democracy can be defined in many different ways such as direct, representative, elitist, liberal among others. Therefore, these different definitions cause researchers to focus on certain aspects of democracy when making an evaluation in terms of democracy. However, since democracy is analyzed in this study on the basis of its liberal meaning and in the light of constitutional developments in the Ottoman Empire, it would be appropriate to limit the analysis within this scope for a non-dispersed result.

3.3. Relationship between Democracy and Constitutionalism

In this study, since constitutionalism will be analyzed within the scope of liberal democracy, touching upon the basic principles of liberalism will contribute to a better understanding of the relationship between liberal democracy and constitutionalism. The principles of liberalism can be summarized as follows: individual freedom, faith in reason, equal rights for individuals, pluralism, constitutional government, democratic governance, limited government, and free market (Yayla, 2015: 155).

The German philosopher Wilhelm von Humboldt, born in 1767, also argued in his work "The Limits of State Action" (2013: 117) that freedom is an indispensable condition and that even the most suitable things to human nature cannot produce beneficial results without freedom. Things that do not arise from individuals' free choices or only result from a command or guidance cannot influence the individual's own identity and are incompatible with its true nature. Therefore, Humboldt emphasized the importance of avoiding interference with individual freedom and considering that individuals' own free choices are more suitable for human nature, highlighting from a liberal perspective how crucial the connection between constitutionalism and liberal democracy is.

Considering the relationship between constitutionalism and democratic theory, it is stated that there is a connection between these two concepts. Democratic theory is a concept based on human dignity. Accordingly, people who are by their very nature respectable beings should enjoy a great deal of autonomy and have a stake in the management of their own society. According to this, there is no more valuable right in a free country than to have a say in the election of lawmakers. Constitutionalism also accepts respect for human dignity and human value as its basic principle. To preserve this value, citizens must have the right to democratic participation and their governments must be rigidly restrained, even if they perfectly reflect the will of the majority (Murphy, 1993: 3). It can be argued that, there must be a close relationship between constitutionalism and democratization under normal conditions.

Even though such a situation is considered natural under normal conditions (assumption that constitutionalism and democracy coexist), deviations from this situation may also occur. Hence, while possessing democratic attributes is deemed desirable and customary within constitutional frameworks, it would be wrong to assert that "all constitutional systems inherently embody democratic principles." (Isiksel, 2013: 709-710). Indeed, not every constitutional system automatically evolves into a democracy. This notion is exemplified when examining the characteristics delineated by Mark Tushnet (2015) as indicative of authoritarian constitutionalism. Such systems, while structured under constitutional frameworks, may diverge from democratic principles, thus underscoring the nuanced nature of constitutional development vis-à-vis democratic progression.

Accordingly, in systems with authoritarian constitutionalism, public policy decisions are made by a dominant party and cannot be challenged. The regime can impose various sanctions on its political

opponents. Even if elections are held, fraud and physical intimidation can be observed (Tushnet, 2015: 449). As can be seen, these features contradict democracy and the existence of constitutional systems alone does not necessarily go hand in hand with democracy.

In fact, the history of these debates goes back even further than the modern world. For example, when the ancient world and especially Aristotle's views on constitutions are considered, according to Aristotle, constitutions can be democratic, aristocratic or monarchical. Therefore, according to him, the most important thing is that constitutions should be in accordance with the common interests of the society, rather than a state being governed by these forms of government (Urhan, 2016: 218).

As ancient and modern constitutional models have shown, the existence of constitutions does not always entail the existence of democracy, even though it is often associated with democracy today. Therefore, it is important to recognize that such exceptions can also arise in order to understand the issue from a broader perspective. However, even if such exceptions do occur, the combination of democracy and constitution has been a common feature of successfully functioning democracies. Therefore, it is important to evaluate constitutional developments in a country together with democratic developments in order to understand how this general situation is realized in a particular country.

4. CONSTITUTIONAL MOVEMENTS IN OTTOMAN AND ANALYSIS OF OTTOMAN CONSTITUTIONALISM IN TERMS OF DEMOCRATIZATION

In this section, constitutional movements in the Ottoman Empire will be examined and their relationship with democratization will be analyzed. Accordingly, constitutional movements in the Ottoman Empire started with the Sened-i İttifak (Charter of Alliance) in 1808, and then continued with the Tanzimat Fermanı (Tanzimat Edict) and the Islahat Fermanı (Edict of Reform). In 1876, Kanun-i Esasi, the first written constitution of the Ottoman history, was adopted. In 1909, with the changes made in the constitution, the monarchical system turned into a constitutional monarchy.

4.1. Sened-i Ittifak (Charter of Alliance)

The Ottoman Empire was a monarchical regime in terms of its state administration system. Most of the powers were concentrated in the sultan. In the West, in the 18th and 19th centuries, the powers of the governments were limited by the constitutionalist movements. Personal rights and freedoms are guaranteed by written legal texts as a basic principle. However, in these centuries, constitutionalism movements were not seen in the Ottoman Empire as in the West (Kucuk, 2005: 41).

However, in 1808, with the adoption of a document called Sened-i İttifak, constitutionalism movements started in the Ottoman Empire. Considering the conditions under which the Sened-i Ittifak was prepared, there was an uprising against Selim III in Istanbul in 1807 under the rule of Kabakci Mustafa. Selim III was deposed and replaced by Mustafa IV. Alemdar Mustafa Pasha marched to Istanbul to put Selim III on the throne again, and Selim III was killed thereupon.

Alemdar Mustafa Pasha brought Mahmut the Second to the throne and he became the grand vizier himself. Alemdar Mustafa Pasha re-established the authority of the state in Istanbul. However, in this period, the central authority was completely ineffective in the provinces. In Rumelia and Anatolia, the notables established almost independent administrations and began to ignore the authority of the center. Alemdar Mustafa Pasha invited Rumelian and Anatolian notables to Istanbul in order to make the central authority dominant in the provinces. Under the chairmanship of Grand Vizier Alemdar Mustafa Pasha, a large meeting called 'mesveret-i amme' was held in Kagithane on 29 September 1808 between the ayans[1] (notables) on one side and the notables of the state on the other. The decisions reached at the meeting were determined in a document called 'Sened-i Ittifak' and this document was approved by Sultan Mahmut II (Turkish Constitutional Law Site, 28.02.2017).

With the Sened-i Ittifak, on the one hand, the duty of loyalty of the notables to the Sultan was emphasized and the central power was sought to be fortified. On the other hand, the central power was tried to be limited by the Sultan's promise of security to the notables (Kucuk, 2005: 43).

The decisions taken with the Sened-i Ittifak can be grouped under three headings: the gains of the center, the general gains and the gains of the notables. First of all, the gains of the center can be defined as: everyone's acceptance of the authority of the sultan and the state; obedience to the grand vizier; complying with orders regarding the collection of taxes; obedience of soldiers to the sultan. It was decided that the notables would not intervene outside their own lands. This last article is notable for its emphasis on 'own territory'. Because this emphasis brings to mind the feudal system. In the feudal system, each lord has territory under his control. This article can be considered as one of the situations in which the non-feudal Ottoman Empire came closest to the feudal system. Second, the gains of the general population can be defined as: Sened-i İttifak envisaged the protection of the poor and the reaya (subjects), the proportional behavior in their taxation, and at the same time the protection of the poor and the reaya from oppression. Third, the gains of the notables (ayans) can be defined as: preventing the arbitrary acts of the grand vizier and treating non-criminal notables with justice; acknowledgment of hereditary rights from father to son; recognition of the administrative areas of the great notables; recognition of the dominance of the great notables over their minor notables (Gozler, 2013: 10).

The last article here resembles the fief contract in the feudal system with the part of 'recognition of the sovereignty of the great notables over the small notables'. In this respect, it can be said that the great notables resemble the suzerain in the feudal system and the minor notables resemble the vassals in the feudal system.

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[1] The concept of ayan, with its first usage in the Ottoman Empire, refers to prominent, respected and well-known people living in a city. These people have different backgrounds. The term ayans (notables) has been used in a broad sense, covering many segments such as high-ranking state officials such as sanjak beys, beylerbey, Kapıkul, janissary leaders, kadis, mudarris, muftis, tax collectors, and guild leaders. The official titles of the notables are limited to their region of residence (Zens, 2011: 434).

Since the Sened-i Ittifak is a bilateral document, it is accepted as a covenant. The Covenant refers to an agreement between the monarch and the others. In this respect, a similarity is established between Sened-i Ittifak and Magna Carta, which is accepted as the beginning of constitutionalism movements in the world. It will be possible to understand the similarities and differences between them by examining the conditions that created the Sened-i Ittifak, as well as the conditions that created the Magna Carta.

After the death of Henry the Second, Richard the First (Lionheart) and John Lackland tried to establish absolute power in England. They wanted to use a strong central administration to establish an oppression regime that did not recognize any restrictions. This situation resulted in the feudal barons revolting together in order to restore the feudal political, military, social and economic order they longed for. While estranging the church with his adversarial stance and opposition to the Papacy, John concurrently incurred the ire of the urban populace, alongside the barons, through his implementation of new taxes and judicial practices that undermined the feudal order, compounded by his flagrant transgressions against legal norms. The barons rejected King John's call to fight against the French king Philippe Auguste and demanded that the rights and freedoms granted to them by the edict of Henry the First be guaranteed on January 6, 1215, in the face of demanding new taxes to continue the war. Otherwise, they declared that they would revolt. The barons entered the city of London on 24 May 1215 and the people of London joined them with great enthusiasm. After this, the majority of the king's entourage also obeyed the call of the revolting barons, and the king John, who was left alone, had to put his seal on Magna Carta in the town of Runnymede on the Thames river on 15 June 1215 (Ilal, 2011: 212-213).

The conditions that created the Sened-i Ittifak and Magna Carta show the similarities and differences between them. First, as mentioned above, both are covenants. Second, both were accepted as a result of the uprisings. Third, local power holders were influential in the adoption of these documents. However, while the aristocratic section in England acting with a class consciousness, in the Ottoman Empire, the notables do not have a class consciousness. Fourth, Magna Carta was accepted in a feudal system, while Sened-i İttifak was accepted in the Ottoman Empire, which had a strong central structure since its establishment. For this reason, the start of the Ottoman constitutional movements was delayed by about 600 years compared to England, and it coincided with the years when feudal tendencies began to be seen, the central structure weakened and the notables were more visible. From this it follows that: Attempts to limit power, developments such as democratization and constitutionalism mostly occur when the power of a person or group weakens and the others gain power. This is what happened in the Ottoman Empire. To give a third example of this situation, the French Revolution took place in the period when the bourgeois class gained power and the traditional aristocratic structure weakened.

The important articles of Magna Carta in terms of this study are as follows (British Library, 14.10.2018):

Article 1: If an earl, baron, or any person who holds land directly attached to the crown for military service dies, the heir, can claim the inheritance.

Article 12: No tax will be collected without general approval.

While the first article of the Magna Carta is similar to the article of the Sened-i Ittifak, 'the acceptance of the inheritance of dynastic rights from father to son', the twelfth article is similar to its articles on taxation.

Proceeding with the analysis grounded in this foundational information regarding the Sened-i İttifak, it is noteworthy that only four of the dignitaries convened in Istanbul upon the summons of Alemdar Mustafa Pasha affixed their seal to the document, while the remaining dignitaries, apprehensive of potential constraints on their autonomy, chose to return to their respective hometowns. However, not only the notables, but also the Sultan Mahmut the Second, thinking that his sultanate rights would be in danger, hesitated to approve Sened-i Ittifak. Along with the suggestion of Omer Aga, one of the notables of Enderun, to the Sultan that 'Approve this deed for now, you can remove it later', the Sultan approved the Sened-i Ittifak. Mahmut the Second was compelled to do so due to the conditions he was in (Tanor, 2017: 43-44). As can be seen, the Sened-i Ittifak has no democratic purpose. It was approved entirely in the sultan's desperation due to the circumstances. According to Ergun Ozbudun (2000: 25-26) Sened-i Ittifak shows how much the central authority has weakened.

There was no public participation, which is the most important indicator of democracy, in the preparation and adoption of the Sened-i Ittifak. In fact, this document generally concerns the central government and notables, not the public. Even if it is accepted that only the notables constitute the people, it is still not possible to talk about democracy. Because not all of the notables in the country were invited to the meeting, not all of the invited ones attended the meeting, and not all of those who attended the meeting approved this document.

It should be noted here that, as a historical reality, the process of making constitutions is generally carried out by elected representatives all over the world. However, what was lacking in terms of popular participation in the Ottoman Empire was that the people had no voting rights in the selection of those who approved the constitutional text. In addition to the lack of voting rights of the people in the Ottoman Empire, what was also lacking was the absence of a grassroots popular movement for constitutional developments, and the fact that the state always viewed the people as "the governed".

The state's view of the public has an important effect on the lack of public participation. In the Ottoman Empire, the people were also defined as reaya. The word reaya, derived from the Arabic word raiyet, which means herd of grazing animals, refers to people living under the ruler's rule and paying taxes (Ünsal, 1998: 3). In both Islamic and Turkic-Iranian traditions, the ruler was responsible for ensuring the happiness of his subjects before God and for realizing a just government.

According to this tradition, the people will be governed fairly in accordance with the shari'a. Reaya will obey his sultan unconditionally and without question (Unsal, 1998: 4). This situation is mentioned in the Daireyi Adliyeyi Osmani as follows (Timur, 2001: 242):

'Property and state are with soldiers and statesmen.

And the statesman is found with the goods.

Goods come from reaya.

Reaya's condition is regulated with justice.'

As it can be understood from here, the people generally remained passive in political matters, due to the role assigned to them. Subsequent constitutionalism movements were also generally carried out without consulting the public and their views. These movements were generally carried out either by the request of the sultan, by the influence of the notables, or by the influence of the administrators and bureaucrats. The people, on the other hand, were mostly expected to abide by the results of these movements. In this respect, the influence of the people on Ottoman politics was weak.

Apart from these, none of the principles stated above for democracy by Robert Dahl (2010) were included in the Sened-i Ittifak. Neither the elections nor freedom of expression was mentioned. As such, there is no parliament to ensure the representation of the people.

In fact, the reason for the emergence of the document was stated not as democratization, but as the disagreements and conflicts between the state dignitaries and the malik dynasties brought the state to the point of collapse (Tanor, 2017: 44).

Ozbudun (2000: 26) stated that in a few years, when Mahmut the Second strengthened the central authority, he did not recognize the provisions of the Sened-i İttifak. In fact, the murder of Alemdar Pasha five weeks after the Sened-i İttifak weakened the possibility of the implementation of this document (Tanor, 2017: 49). This also proves the thesis of this study. Developments such as democratization and constitutionalism movements mostly took place in the event of a weakening of authority. Often, the main goal is not simply to idealistically achieve popular participation or that everyone has a say in the management of society. It is to take advantage of the authority vacuum that arises due to the weakening authority of one party. Concepts such as democracy and constitution were used as a way to put this on a legitimate basis. In this way, it is possible to provide the necessary support.

4.2. Tanzimat Edict

The second important document of the Ottoman period in terms of constitutional movements is the Tanzimat Edict, which was adopted in 1839 (Küçük, 2005: 44). The main reason for the proclamation of the Tanzimat Edict is, in short, the problems faced by the Ottoman Empire throughout the 19th century. Among these problems are rebellions in the territories under its control (such as the

revolt of the Egyptian governor Mehmet Ali Pasha, the Serbs and the Greeks) and nationalist movements. The exposure of the threats faced by the state due to its weakness in the face of these rebellions, as well as the efforts of the Ottoman Empire (among others, including Austria and Russia) to strengthen the state internally in the face of nationalist movements, are among the main factors contributing to the emergence of the Tanzimat Edict (Ozdemir, Ciydem and Aktas, 2014: 324-327). Even when the Tanzimat Edict was proclaimed, it was stated in the original text that new laws would be enacted due to the turmoil and weakness experienced by the state (Grand National Assembly of Türkiye, 2023: 11).

After the death of Mahmut the Second in 1839, Abdulmecit took his place. Abdulmecit declared an edict reorganizing the establishment of the state. This edict was read in Gülhane on 3 November 1839 by the Minister of Foreign Affairs, Mustafa Resit Pasha, who wrote the edict in the presence of the Sultan, foreign ambassadors and the public (Turkish Constitutional Law Site, 28.02.2017).

With the Tanzimat Edict, all subjects of the Ottoman Empire were given assurances on issues such as safety of life, inviolability of chastity and honor, right of property and prohibition of confiscation. It was decided to collect the tax according to financial power, and the principle of justice in recruiting soldiers was introduced. Various safeguards have been accepted regarding criminal prosecution. These are the principles such as the right to be tried and the publicity of the trial, and there will be no unlawful crime or punishment. The principle of equality applies in terms of having and benefiting from the rights accepted here. Along with the Tanzimat Edict, the task of preparing the laws was given to a committee called the 'Meclis-i Ahkâm-ı Adliye' and the laws prepared by this committee will enter into force after the approval of the sultan (Gozler, 2013: 12).

The sanction of not complying with the principles accepted in the Tanzimat Edict is as follows: 'May Allah Almighty grant us success in our sentence, and may those who act against this rule of law be damned by Allah and not be successful (Amen)'.[2]

Moving on to the analysis of the Edict in terms of democratization, unlike the Sened-i İttifak, the Tanzimat was an edict, not a pact. In other words, the sultan limited his power of his own will. In addition, the Sened-i İttifak was declared due to internal reasons (riots), while the Tanzimat was announced both by the influence of minorities internally and by the pressure of European states externally. According to Ulken (2018: 27-33), the Tanzimat Reforms remained a useful tool for minorities who benefited from foreign intervention and wanted to leave, rather than the realization of ideals such as freedom, equality and democracy in Western nations within a homogeneous nation. The Tanzimat movement, and even its consequences, are not only the result of a deep need of the

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[2] For the original text of the Tanzimat Edict, see:
cdn.istanbul.edu.tr/statics/cezakriminoloji.hukuk.istanbul.edu.tr/wp-content/uploads/2017/10/TanzimatFerman%C4%B1-Original-Metin.pdf

administrators (heads of the state), or the direct action of the nation. It has largely occurred as a result of the pressure exerted by political-economic events originating from outside sources, such as Europe.

The public had no influence on the preparation, announcement and acceptance of both the Sened-i Ittifak and the Tanzimat Edict. They were prepared either in the form of a unilateral will of the sultan or a pact. As a result, there was a weak relationship between constitutionalism and democratization in the Ottoman Empire. As noted, constitutionalism is closely related to democratic theory. Accordingly, citizens should have the right to democratic participation and have a say in the governance of their own society in order to achieve the goals of constitutionalism. Even the dictionary definition of democracy is based on the sovereignty of the people (TDK, 15.10.2018).

Robert Dahl (2010: 56) stated that democracy produces some desirable results. Of these, articles on preventing violence and on fundamental rights are included in the Tanzimat Edict. For example, basic rights with articles such as safety of life, inviolability of honor and dignity, property right; The tax is collected according to financial power, there will be no unlawful crime or punishment, as well as the rules to prevent violence. Dahl also emphasizes equality in democracies. The expression 'the principle of equality is valid in terms of having and benefiting from accepted rights' in the Edict also complies with this criterion, which is important for democracy. Although a constitutional monarchy had not yet been established and it was necessary to wait until 1876 for this, the Tanzimat Edict was an important milestone in the process leading to democracy, which would emerge with the First Constitutional Era. Therefore, it is important to highlight this aspect of the Tanzimat Edict. Thus, if the democratic aspect of Edict is to be mentioned, that is, only those accepted with these articles in the Edict are suitable for democracy.

4.3. Islahat Edict (Edict of Reform)

Another constitutional development after the Tanzimat Edict is the declaration of the Reform Edict. The Reform Edict was prepared in the last years of the Crimean War and announced in the Sublime Porte on February 18, 1856, six weeks before the signing of the Treaty of Paris, before all ministers, high officials, sheikh al-Islam, patriarchs and notables of the community and it was notified to the states that prepared the Paris Agreement. In the Crimean War, England, France and Austria supported the Ottoman Empire against Russia. Before the Paris Conference of 1856, the European States put forward some conditions as the price of protecting the Ottoman Empire against Russian interventions and the condition of the Ottoman's joining the European States family.

These conditions were agreed between Ali Pasha and the British and French ambassadors in Istanbul as the principles of the Reform Edict. The main purpose of the Reform Edict was to ensure full equality in all aspects between Muslims and non-Muslims. For example, the principle that non-Muslims can also enter military and civil schools was accepted, and political rights were given to non-Muslims by giving representation in parliaments (Gozler, 2013: 13-14).

When the analysis of the Islahat Edict in terms of democratization is considered, during the Tanzimat period, other edicts were issued to show the general directions and to implement the Tanzimat Edict. The most important of these is the Reform Edict of 1856 (Tanör, 2017: 95). In the Reform Edict, as in the Sened-i İttifak and the Tanzimat, the people did not have any participation. Decisions were made at the state level under the influence of European pressure, and the public was not consulted. Therefore, the relationship between Ottoman constitutionalism and democratization was still weak. According to Tanor (2017: 96), the main purpose of the Reform Edict is to provide non-Muslims with equality with Muslims in all aspects.

However, in this period, elected assemblies were established at the local level. These assemblies were formed in the sanjak centers and districts. Religion or sectarian discrimination was not observed among the members of the assembly. Although the assemblies were mostly dominated by the large landowners and the provincial wealthy, these assemblies provided an accumulation for the transition to the parliament that would be formed with the Constitutional Monarchy in the future (Tanor, 20017: 109).

4.4. Kanun-i Esasi (the Ottoman Basic Law): First Constitutional Period (1876)

The first written Constitution in the Western sense of the Ottoman-Turkish legal history is Kanun-i Esasi dated 1876. Kanun-i Esasi is the first constitution that determined the transition to constitutional monarchy and laid the foundations of the constitutional regime in the Ottoman Empire. There is no popular movement at the origin of the 1876 Constitution. The people did not participate in the public discussion of this constitution, nor did it apply to its vote. In the formation of the constitution, there are the Sultan, who actually uses the supreme power of the state, and the bureaucracy representatives who share his power. If a treaty feature is mentioned in this constitution, it can be said that it is an agreement between the representatives of the military/civil bureaucracy and the Sultan (Kucuk, 2005: 46).

If the process before the Kanun-i Esasi is examined, the natural rights and obligations in the edicts issued after the Tanzimat have been gradually forgotten. The arbitrary and discretionary rule seen in the periods of autocracy has started again. Sultan Abdulaziz often exiled officials, and large offices became offices that were distributed in return for bribes. Some intellectuals who grew up in the European school began to oppose this arbitrary and absolutist attitude of the administration. These consisted of a group of intellectuals (Namik Kemal, Ziya Pasha, Sinasi, Mithat Pasha) called 'Young Ottomans' (Durdu, 2003: 92).

The bureaucrats and intellectuals, who were not satisfied with this situation, dethroned Sultan Abdulaziz and replaced him with Murat the Fifth. Due to the mental health problems of Murat the Fifth, Abdulhamid II, who declared that he was a supporter of the constitution and constitutionalism, was enthroned. During the Tanzimat era, intellectuals and bureaucrats envisioned the future trajectory of the state as characterized by constitutional governance and the adoption of Western institutions, thereby

endeavoring steadfastly towards these objectives. After Abdulhamid II came to the throne, Mithat Pasha forced the sultan to establish a commission for the preparation of a constitution. Working under the influence of Mithat Pasha, the commission was inspired by the French and Belgian constitutions, prepared a draft constitution and presented it to the sultan. The Sultan made some changes in the draft as a result of the examinations he had made. These changes were made to increase the powers of the sultan. In 1876, the first constitution of the Ottoman Empire was proclaimed by the sultan (Presidency of the Turkish Grand National Assembly 16.10.2018).

Kanun-i Esasi accepted the irresponsibility of the sultan and stated that the powers such as dismissal of the deputies, declaration of war and peace, command of the army, vacation of the general assembly belong to the sultan. It accepted that everyone who had Ottoman nationality was Ottoman, regardless of religion or sect. The press is free in accordance with the law. Rights such as personal freedom and the right to education are among the rights enshrined in the constitution. Confiscation, drudgery, torture and unlawful taxation are prohibited. It has been stated that the right to property has been recognized for everyone, the official language is Turkish, and that qualification and ability will be the basis for entering the civil service. The legislature is composed of a dual structure called the Assembly General (Meclis-i Umumi). On one wing of the legislature, there is the Heyet-i Ayan (the chamber of notables), and on the other wing, there is the Heyet-i Mebusan (the chamber of deputies). The Sultan may open the General Assembly ahead of time, if deemed necessary. A member of parliament cannot be blamed for the votes he cast during the General work of the Assembly. The number of members of the Heyet-i Mebusan is determined as one member for every fifty thousand people with Ottoman nationality, and elections are held every four years (Gozubuyuk and Kili, 1982: 27-36).

If the analysis of the Kanun-i Esasi is evaluated in the light of the information provided above, the public did not take part in the preparation and adoption of previous constitutional documents. This is because, as mentioned above, a parliament constituted by the electorate does not yet exist. These documents were announced under the influence of the sultan, notables and bureaucrats. For this reason, it was stated that democratization was not among the targets of these documents, and that the Ottoman constitutionalism movements were weakly related to democratization. This situation continues in the same way in terms of Kanun-i Esasi dated 1876. The preparation of the constitution was carried out by the appointed persons, and its adoption was carried out by the sultan; The public was not consulted at any stage of the process. This means that public participation, which is the basis of democratic theory and is closely related to constitutionalism, does not take place. The lack of public participation causes the democratic aspect of the 1876 Constitution to be insufficient.

The lack of the democratic side is actually a situation that can be expected. Because the Young Ottomans, who were influential in the proclamation of the constitutional monarchy, aimed to save the state, not democracy. The desire to save the state is not only encountered in the adoption of constitutionalism. Many political ideologies have also been adopted as they are seen as different ways

to save the state. Likewise, Sultan Abdulhamid II, who accepted the constitution, proclaimed Kanun-i Esasi in order to take the throne, not in the name of democracy. Apart from that, Abdulhamid suspended the parliament indefinitely two years after the constitution was adopted. This reveals that democratization was a means, not an end, for Abdulhamid II.

Some articles of the constitution are also incompatible with the democratic understanding. Articles such as the sultan's authority over the elected and the assembly, the fact that the electorate consists only of men, and that the wing of the assembly, which consists of notables, comes by appointment, not by election, harms the democratic aspect of the constitution. However, Kanun-i Esasi has an important difference from the others. This difference is the first time in Turkish history that a parliament has been elected at the national level. Although it did not take long for the parliament to remain open, the Ottoman society experienced an unprecedented experience, election. Although the right to democratic participation is granted only to men[3] and is lacking in many aspects, in this respect, Kanun-i Esasi differs from previous constitutional developments. Because the participation of the people, which is the basis of democratization, is a regulation that has been revealed for the first time by this constitution. Although the people could not influence the preparation and adoption of the constitution, they were able to partially influence the future decisions, at least for a limited period of time.

In Kanun-i Esasi, the powers of the assembly were kept narrow. For example, before a councilor can propose a law, he must first obtain permission from the sultan. Bills approved by both assemblies do not enter into force unless the sultan approves them. In addition, the responsibility of the government to the parliament is not clearly stated in the Kanun-i Esasi. On the other hand, the sultan can dissolve the assembly at any time (Ozbudun, 2000: 26). In an assembly where nothing can be said when the sultan does not allow, It can be said that deputies do not have enough freedom of expression. Therefore, considering the basic democratic features that Dahl also stated, it can be argued that the Kanun-i Esasi is insufficient in terms of democracy.

In addition to these, the sultan has a say in the election of the presidents of the assemblies. He directly elects the head of the Heyet-i Ayan (the chamber of notables). He elects the chairman and two vice chairman of the Heyet-i Mebusan (the chamber of deputies) himself from among the three candidates nominated by the assembly. The entire delegation of the Heyet-i Vükela (the council of ministers) is appointed by the sultan (Tanor, 2017: 137). The articles mentioned here also harm the democratic feature of the constitution.

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[3] This situation was not unique to the Ottoman Empire. In most states of the period, the right to democratic participation belonged only to men. Women first gained the right to vote in New Zealand in 1893.

4.5. 1909 Amendments to Kanun-i Esasi (Second Constitutional Period)

According to the 1909 Decree of Heyet-i Ayan, the aim of the 1909 amendments was to provide constitutionalism in the administration and to realize the sovereignty of the nation (Presidency of the Turkish Grand National Assembly 06.05.2019). Here, with the principle of national sovereignty, it is stated that sovereignty does not belong to a person or group, but to the nation. Thus, with the amendment, the democratic feature of the constitution was increased. Because popular participation, which is the basis of democratic theory, has been counted among the most important aims of the constitution.

In the third article of the amendment, it is stated that the sultan will take an oath that he will abide by the laws and be loyal to the homeland and nation. Thus, an important step was taken in order to limit the state power, which is the basis of the principle of constitutionalism. By taking this oath, the Sultan accepted the rule of law. In addition, the sentence 'press is free within the scope of the law' in the twelfth article also strengthens the democratic aspect by securing the freedom of thought, which is one of the important values of democracy.

In the 1908 elections, multi-party elections were held for the first time in the Ottoman history. The parties participating in this election were the Ittihat ve Terakki (Committee of Union and Progress) and the Ahrar Party. The Committee of Union and Progress won all the deputies except one. The Committee of Union and Progress and Hurriyet ve Itilaf Party (Freedom and Entente Party) participated in the 1912 elections. Ittihat ve Terakki won the election again. The 1914 elections were held as a single party, that is, only with the participation of the Committee of Union and Progress (Olgun, 2011: 5-8). The number of deputies coming out of each region is determined according to the male population living there, and the deputies are also among the males. This undermines the democratic character of the constitution by ignoring the participation of women.[4] However, when examined by the period, women do not have the right to democratic participation in most countries. In this period, the number of countries where women have the right to choose does not exceed the fingers of one hand.

From here on, if the 1909 amendments are analyzed in terms of democratization, The Kanun-i Esasi of 1876, which is accepted as the beginning of the First Constitutional Period, came into force as a result of the influence of bureaucrats from above and the sultan's reluctant acceptance. The most basic features of democracy, such as elections, popular vote, and public participation have not been the case

However, unlike the First Constitutional Monarchy, the Second Constitutional Monarchy did not take place only as a movement from the top down. It took place as a result of a movement from the bottom up, in a way that is important for democracy. Although the members of the army made important contributions to the re-enactment of the Kanun-i Esasi with the Second Constitutional Monarchy, this is actually a popular movement. In Rumelia and Anatolia, the people made great demonstrations and

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[4] Women first gained the right to vote in Australia in 1902 and in Finland in 1906.

demanded that the Kanun-i Esasi be re-enacted and that political freedom be given to them (Karpat, 2012: 45).

According to Tanil Bora (2017: 52-53), the proclamation of the Second Constitutional Monarchy, unlike the others, was based not only on top-down but also on a wave of social opposition. Apart from the officers in the army, even the privates have become politicized. In addition, political messages were given in the theaters and political parties were established one after another. A carnival atmosphere was experienced not only in cities such as Istanbul and Thessaloniki, but throughout the country, the people hoped that all problems would be resolved with the constitutional government, and an atmosphere of optimism arose among the people.

With the Second Constitutional Monarchy, innovations such as freedom of assembly, no censorship of the press, and freedom of learning and teaching were introduced. This strengthens freedom of expression. In addition, a transition from the sultan's sovereignty to the understanding of national sovereignty began. Just as the purpose of the 1909 amendments was stated as realizing the constitutional administration and the sovereignty of the nation, Ahmet Rıza, the chairman of the parliamentary assembly, also stated that one of the duties of the parliament was to strengthen the sovereignty of the nation. In fact, the parliament began to refer to itself as the 'National Assembly' (Tanor, 2017: 180-185).

Apart from this, Abdulhamid was dethroned during the 1909 changes, and Mehmed Reşad was replaced. The dethronement of the sultan is not the first time in Ottoman history, but the dethronement of the sultan by the representatives of the nation, on behalf of the nation, is a situation seen for the first time in Ottoman history. If we look at the other firsts in this period, unlike the previous one, the Heyet-i Mebusan started to elect its own president and vice president. The obligation of the Council of Ministers to obtain permission from the sultan in order to discuss an issue has been removed (Tanor, 2017: 190-195). These show that the influence of the people in the administration increased in the Ottoman Empire and the freedom of expression was strengthened with the opportunity to express their opinions without the permission of the sultan.

In addition, as mentioned above, in the 1908 elections, multi-party elections were held for the first time in the Ottoman history. The parties participating in the elections were the Committee of Union and Progress and the Ahrar Party. Thus, one of the conditions required for democracy, namely the participation of opposition parties in the elections, has been realized.

Despite such positive developments in terms of democracy, the elections were not held in a completely positive way. During this period, the elections held in 1912 were called 'elections with sticks'. The Committee of Union and Progress showed intolerance in the elections, events broke out in various parts of the country, the voters were sometimes subjected to violence, and some candidates were beaten (Tepekaya, 2013: 39). As stated, even if the election is the most basic condition of democracy, it

is insufficient on its own. In addition, some other conditions are also needed. Considering this election held in 1912, it is seen that the elections were not free and were not held in a fair environment. For this reason, Ottoman democracy still lacks in terms of fair and free elections. Furthermore, the unopposed single-party election of 1914 compromised democratic principles by virtue of its absence of oppositional voices.

5. CONCLUSION

The attempt to limit the state power, which started with Magna Carta in the West, continued in the USA in 1787 with the world's first written constitution. The second constitution is the French constitution of 1791. In the Ottoman Empire, it was necessary to wait until the 19th century to talk about constitutionalism movements.

While constitutionalism movements in the West were based on the people, in the Ottoman Empire, the people were not consulted in the constitutionalism movements and the emerging constitutions. The accepted constitutional documents and constitutions were prepared from the top down and were adopted not by the participation of the people, but by the unilateral will of the state. Nevertheless, despite their lack of adherence to democratic procedures in terms of preparation and ratification, the outcome yielded one of the most pivotal democratic benchmarks: elections.

It was stated that the concept of 'reaya' had an effect in cases such as constitutionalism movements in the Ottoman Empire were generally not based on the people, were top-down, and had a weak relationship with democracy. Another important factor is the state of civil society in the Ottoman Empire.

If civil society is taken into consideration, the concept of civil here refers to the rights and obligations that come with urban life. The most emphasized feature of civil society is that it is the first social structure to overcome the authority of the politician. Freedom from the authority of political forces has a serious place in the entire civil West's understanding of freedom. When the Ottoman Empire is considered, it is seen that this idea of salvation has never had as deep roots as in Europe. Civil society has created an opportunity not only for certain social classes in Europe, but also for organization in the form of autonomous groups in general (Mardin, 1990: 9-14).

The central authority of the Ottoman State, on the other hand, aimed to connect different ethnic and religious communities and groups, social movements, social institutions and organizations to its own superior will in order to achieve its own benefit and purpose. It did not hesitate to eliminate local organizations and organizations that opposed his authority and harmed tax revenues. Since its establishment, the Ottoman Empire aimed to bring all its income and power sources under its own control. Then, the political authority tried to keep the full potential of the tribes under its control. For

this, civil servants were appointed to form the basis of the tax, and the entire population, income and property of the tribes scattered in different regions were determined.

From this point of view, it can be said that the attitude of the state is one of the most important obstacles to the development of civil society. A centralist understanding dominated the Ottoman Empire. At the root of this understanding is the aim of ensuring the survival of the state. The centralist understanding had such an impact on the political structure that there was no problem in sacrificing even the members of the dynasty. For this reason, even the smallest structures opposed to the state were severely punished. The central government organized the social structure from bottom to top in a way similar to the military bureaucracy in order to make its own power absolute. For this reason, any development that may compete with the central authority and lead to autonomy has been seen as a threat that must be eliminated (Cihan and Dogan, 2006: 59-67).

In a society where civil society is surrounded by such barriers, it is normal that there is no public participation at the heart of constitutionalist movements. Because the state does not want a civil society or popular movement that can rival its own authority.

Finally, on some issues, it is necessary not to be unfair to the Ottoman Empire. First of all, when compared to Magna Carta, the Ottoman Empire lagged behind about 600 years in terms of constitutionalism. However, Magna Carta did not foresee a democracy in today's sense, but only fulfilled the task of limiting the king. In terms of constitutionalism movements in the modern sense, the Ottoman Empire is not that far behind. Like many other countries, the Ottoman Empire had a written constitution in the 19th century. Secondly, women could not vote in the Ottoman Empire. However, as stated, this situation is not only valid for the Ottoman Empire. In almost all states of the period, women did not have the right to vote and be elected. Evaluating democracy on the basis of the principle of universal suffrage is partly due to what we understand by democracy today. For this reason, it is necessary to evaluate the events in history in terms of the period in which they were lived, not from the perspective of today.

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