

Envisioning a Consultative Umma: An Introduction to Namık Kemal's Constitutional Imaginary

İstişari Bir Ümmet Tasavvur Etmek: Namık Kemal'in Anayasal Tahayyülüne Bir Giriş

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ABSTRACT

This paper examines the relationship between the concept of umma and modern constitutional thought, as expressed in Namık Kemal's writings during the Tanzimat period in the late Ottoman Empire. It analyzes a new type of constitutional imaginary called *Islamic constitutionalism*, which emerged in the late Ottoman Empire as a result of the constitutional transformations that occurred shortly before and during the Tanzimat period, and found its first mature expression in Kemal's writings. This imaginary is significant in terms of ummatic thought because it envisaged a *consultative umma*, a new type of constitutional imagination that combined the old idea of collective Muslim unity with the new sociopolitical demands of modern state formation. This new vision distinguishes Islamic constitutionalism from the other constitutional imaginaries that existed during the Tanzimat period, including *statist constitutionalism*, *classical constitutionalism*, and *sulḫānic constitutionalism*. This paper refutes the arguments that place Kemal as a pioneer of liberal constitutionalism or (secular) nationalism in the late Ottoman Empire, based on his legal and constitutional thought. It also contends that he should be considered a pioneer of modern Islamic constitutionalism, as he was among the first to critically discuss the possibility of a constitutional order based on *sharī'a* within the historical-sociological conditions and processes of modern state formation.

Keywords: Late Ottoman Empire, Tanzimat, Constitutional Thought, Constitutional Imaginary, Islamic Constitutionalism, Ottoman Constitutionalism, the Idea of Umma, Namık Kemal

ÖZ

Bu makale Osmanlı İmparatorluğu'nun son döneminde, Tanzimat sürecinde ortaya çıktığı şekliyle ümmet fikri ile modern anayasal düşünce arasındaki ilişkiyi Namık Kemal'in ilgili yazılarına odaklanarak ele almaktadır. Makalenin temel konusu, 19. yüzyılın başlarından itibaren Osmanlı İmparatorluğu'nda yaşanan anayasal dönüşümlerin bir sonucu olarak ortaya çıkan ve "İslami anayasacılık" olarak adlandırabileceğimiz yeni bir anayasal tahayyülün

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Namık Kemal tarafından ilk olgun ifadesine kavuşturulduğu biçimiyle tahlil edilmesidir. Bu yeni tahayyülün ayırt edici özelliği, istişare fikrinin anayasal düzen açısından merkezî bir yere konmasıdır. Kemal'in geliştirmeye çalıştığı bu istişari ümmet tahayyülü, Müslümanların kolektif birliğine dair klasik ümmet fikrini modern devletin oluşum süreçlerinin sosyopolitik gereklilikleri içerisinde yeniden ve yaşanabilir şekilde tasavvur etmeye yönelik bir çabadır. Bu yeni vizyon "İslami anayasacılık"ı Tanzimat döneminde mevcut olan diğer anayasal tahayyül biçimlerinden -devletçi anayasacılık, klasik anayasacılık, sultani anayasacılık- ayrı bir yere koymaktadır. Makale, Namık Kemal'i liberal anayasacılığın veya (seküler) milliyetçiliğin öncüsü olarak konumlandırılan yaklaşımların -en azından hukuk ve anayasa düşüncesi bağlamında- geçersizliğini ortaya koymakta ve Kemal'in modern devlet düzeninin oluşum süreçleri içerisinde şeriati esas alan bir anayasal düzenin imkânı üzerine düşünceleriyle modern İslami anayasacılık yaklaşımlarının öncüsü olarak konumlandırılması gerektiğini ileri sürmektedir.

Anahtar Kelimeler: Son Dönem Osmanlı İmparatorluğu, Tanzimat, Anayasal Düşünce, Anayasal Tahayyül, İslami Anayasacılık, Osmanlı Anayasacılığı, Ümmet Fikri, Namık Kemal

Introduction

One way to think about the “umma beyond the nation-state”¹ is to engage in dialogue with Muslim thinkers who lived in a world where nation-states were becoming powerful but the age of empires was not yet over. Namık Kemal was among them. He lived in the Tanzimat period of the late Ottoman Empire and was active in public debate. His eloquent and forceful essays had a lasting effect on his contemporaries and subsequent generations as the Ottoman press was just beginning to emerge. His essays covered a variety of topics. He wrote on literature, language, economics, theater, history, and law, among other topics. Most of his books are in literature and history, including poems, six theater plays, three novels, a short biographical series, and the first volume of an intended 12-volume work on Ottoman history. Meanwhile, his journal articles were more focused on politics, law, and society. Although Kemal addressed many political and societal issues, such as improving education, the proper functioning of the judiciary, foreign policy issues, and press regulations, he regarded all of these issues as secondary in comparison to what he saw as the Ottoman Empire’s primary problem: the lack of a properly functioning constitutional order. As a result, he focused the majority of his energy on this problem.

Experts in Turkish literature have written much of the literature on Kemal, which focuses on Kemal as a poet and man of letters. Kemal as a political and legal thinker has received little research and study. The foundation for future studies on Kemal’s political–legal thought has been laid by Şerif Mardin’s classic work, *The Genesis of Young Ottoman Thought*.² Although Mardin’s contribution to understanding Kemal is important, his implicit Eurocentric viewpoint prevents him from producing a genuine understanding of Kemal. I believe there is still much to explore in Kemal’s thought. This paper presents Kemal’s constitutional imaginary, which is unaffected by Mardin’s otherwise useful but limited viewpoint. Although Kemal did not provide a systematic and complete exposition of his political–legal thought in a single piece, one can draw a general sketch of his thought that underpins the scattered but well-argued fragments of a general theory he wrote in several essays.

1. Namık Kemal through Mardin’s Eyes: A Failed Attempt at a European-Islamic Synthesis

Sixty years after its initial publication, Mardin’s classic work on the origins of Young Ottoman thought remains the most significant attempt to analyze Young Ottoman thought in general, and Namık Kemal’s thought in particular. Despite Mardin’s success in dealing with

1 An early draft version of this paper was presented at the Ummatics Institute’s inaugural conference held in Istanbul on June 13–15, 2023, entitled “Umma Beyond the Nation-State: Imagination, Solidarity, Praxis.” The quote refers to the title of the conference. I would like to thank Prof. Mohammad Fadel and Dr. Usaama al-Azami for reading the early draft and making valuable comments. I would also like to thank Prof. Nurullah Ardiç and the two anonymous reviewers of the article for their insightful and critical comments.

2 Şerif Mardin, *The Genesis of Young Ottoman Thought* (Princeton: Princeton University Press, 1962).

the teleological and dichotomist approaches that have long haunted Ottoman historiography, his analysis suffers from implicit Eurocentrism and Orientalism. In fact, Mardin explicitly criticizes these problematic approaches in many of his texts; however, criticizing something does not guarantee that one is free of it. Mardin's analysis of Kemal's thought contains implicit Eurocentrism and Orientalism stemming from two premises. Although these premises can be found in many of Mardin's passages, I will only focus on his analysis of Kemal's views on the establishment of government.

According to Mardin's interpretation of Kemal, there are two stages in the formation of the government. In the first stage, society emerges due to the need for a group of men to protect humans from one another, as humans naturally tend to harm one another. This function requires the invention of a supreme power, resulting in political power's emergence within a society. However, this raises the question of who has the authority to use this power to protect the rights of the members of society in question. Because all members of society cannot exercise this power in person at once, they delegate their right to use political power to some of them. This delegation creates the government.³

This explanation for the emergence of government can be found in various forms in Islamic and European political thought. As a result, it may be regarded as a nearly universal line of reasoning that seeks to explore humanity's social nature to understand its political existence. Interestingly, Mardin refers to this explanation as "secular" before attempting to explain Kemal's general emphasis on the *sharī'a* as the ultimate reference for the origin of the government. For him, arguing that divine law is at work in both stages of government formation would be a clear contradiction. However, according to Mardin, it was precisely what Kemal did:

"Where Namık Kemal *entangled himself in contradictions* was in his idea that the force which had regulated the workings of the first stages of association was the same as that which had obtained during the second stage, i.e., after government had come into being. In the second stage this force was the *Şeriat*. But Namık Kemal implied that the first force was identical with the second. This he had to do because if he had not he would have agreed that a natural law of secular nature had preceded the *Şeriat*. As we have tried to show in Chapter III this could not be so because Islamic natural law did not consist of a continuum but of the *Şeriat* itself and of the very special duties, political, economic, and social, which it prescribed."⁴

Why does Mardin think Kemal's idea is contradictory? I believe this is due to Mardin's assumption that the fundamental concepts of human nature, society, or universal(ity) at work in the explanation of the emergence of political power are intrinsically secular, European concepts, as he reasons within the paradigm of modern European political thought. As a result, he does not see Kemal explicitly tracing the "natural law" at work in the first stage and the "religious law" that legitimizes political power in the second stage to the same divine origin, with the standards of both being established by transcendent good and bad originating from

3 Mardin, *The Genesis of Young Ottoman Thought*, 291–293.

4 Mardin, *The Genesis of Young Ottoman Thought*, 291–292. Emphasis added.

divine justice itself, as laid down by the Qur'ān, God's very word.⁵ Mardin's assumption that universal means secular prevents him from adopting Kemal's point of view. Thus, Mardin describes Kemal's view of divine law as pre-evident in forming society and in determining good and bad as "patent absurdities" and finds his explanation of the social need for the Şariat "unconvincing."⁶

Having obstructed by his own premises to see Kemal's discursive strategy to develop a genuinely Islamic constitutional imaginary, Mardin continues to inject the "secular" elements into Kemal's thought in order to construct his thought as "the synthesis"⁷ of European and Islamic political thinking, with the European element "naturally" dominating and giving the synthesis its dominant character:

"The origin of this juxtaposition of secular and religious elements in Kemal's political theory went back to the dual origin, half European and half Islamic, of his thought. The reason for which he chose the secular explanation of the origin of government was that such an argument *naturally* led him to the conclusion that 'the right of sovereignty belongs to all.' Such a conclusion would have been hard to elicit from Islamic political theology."⁸

Mardin ignores Kemal's consistent desecularizing efforts in his interactions with European thought, accusing him of inconsistency. What Kemal actually does is willingly accept "popular sovereignty" by desecularizing it. In a passage dealing with the establishment of the government, Kemal asserts that the establishment and functioning of the government are impossible without a normative bond that holds the community together and gives the political body its constitutional character.⁹ The term he uses for this normative bond is *şer'*, which can be translated here as *nomos*. The community's consensus will determine the specifics of the *nomos*' application. However, its foundation is based on natural law. For Kemal, natural law is equivalent to *şarī'a*.¹⁰

On another occasion, Mardin attributes to Kemal certain ideals that he believes he should have adopted as he confronted European constitutional thought: "What emerges at this stage as a fundamental characteristic of Namık Kemal's theory is his attempt to devise some means by which ultimate reference in matters of government would be the will of the community while still remaining true to Islamic principles."¹¹ Because he underestimates Kemal's agency in his interaction with European thought and equates Kemal's concept of *mashwara* with representative/democratic government, he assumes, on Kemal's behalf, that the people's will should be the final authority in government matters. However, Kemal makes it clear in his discussion of law and government that the ultimate reference for law is *şarī'a*. He defines law as "the necessary bonds arising from human nature in accordance with the transcendent

5 Namık Kemal, "Devlet-i Aliyye'yi bulunduğu hâl-i hatarnâktan halâsın esbâbı," *Hürriyet* 9 (August 24, 1868), 2.

6 Mardin, *The Genesis of Young Ottoman Thought*, 292.

7 The title of the chapter on Namık Kemal in Mardin's book is "Namık Kemal: the Synthesis."

8 Mardin, *The Genesis of Young Ottoman Thought*, 293.

9 Namık Kemal, "Devlet-i Aliyye'yi bulunduğu hâl-i hatarnâktan halâsın esbâbı," 2-3.

10 The details of Kemal's ideas will be examined below.

11 Mardin, *The Genesis of Young Ottoman Thought*, 296.

moral good.”¹² Thus, the duty of legislators is to clarify those necessary bonds/relationships beginning with the perspective of the transcendent good. He concludes stating that “for us, it is the Sharī‘a who determines the good and the bad.”¹³

How could Mardin possibly misunderstand Kemal, given the most explicit statements about his view on the ultimate reference in matters of law and government? I think the answer is Mardin’s premise that political theories about democratic government, public sovereignty, and the rule of law are a European possession, complete with all of their components and connections. Thus, when Kemal takes a certain element found in European political theory, such as the need for the ruler to consult with and be checked by the people, and appropriates it within his own political theory in a way to change its meaning by relocating it in a different conceptual matrix within a new system of thought, Mardin sees in this move some inability or inadequacies of thinking, such as eclecticism, internal inconsistency, or lack of understanding about European thought. That is precisely where Mardin underestimates Kemal’s agency as a thinker, because it is perfectly legitimate to see in Kemal’s rhetorical moves a self-conscious strategy to develop his own Islamically motivated political theory in interaction with Western thought.

In his two other essays,¹⁴ Kemal discusses the ultimate source of law and argues that the will of the people cannot determine the law. The law is based on transcendent good and bad, which are known as sharī‘a. Thus, when Kemal asserts that the umma has the right to sovereignty, he is not referring to an abstract and empty politico-ontological category whose general will can generate anything and is unconstrained by any normativity other than self-reference. The umma is rather a collective category defined by natural law and historical–sociological experience, according to Kemal. The Islamic/Ottoman/Turkish¹⁵ umma gets its foundational character from sharī‘a as divine law, on the one hand, and from its historical–sociological collective experience, which is based on the application of sharī‘a as Islamic law and morals. As a result, Kemal’s “Islamic constitutionalism” desecularizes and radically redefines the principle of popular sovereignty, which is central to the European constitutional imagination of the secular nation-state. Thus, it is incorrect to portray Kemal’s political thought as an inconsistent “synthesis” between European and Islamic ways of thinking. The truth, I would argue, is that Kemal strategically engages with European thought to appropriate some of its elements into his constitutional imaginary¹⁶ by discursively desecularizing them.

12 “(...) tabâyi‘-i beşerden mehâsin-i mücerredeye mutâbık olarak münba‘is olan revâbit-ı zaruriye...”. Namık Kemal, “Hukuk,” *İbret* 5 (June 19, 1872), 2.

13 “Bizde hüsn ve kubhu şeriat tayin eder.” Namık Kemal, “Hukuk,” 2.

14 Namık Kemal, “Hukuk,” and Namık Kemal, “Hukuk-ı Umûmiye,” *İbret* 18 (July 8, 1872).

15 Kemal uses these identity markers (Islamic, Ottoman, and Turkish) quite interchangeably. He never gives clear definitions of these terms or explains their differences, if any. However, they seem to be inclusive categories that refer to a common religious nationality, made possible by assuming a place within a sharī‘a constitutional order.

16 Before going further, briefly explaining what I understand from “constitutional imaginary” would be appropriate. The imaginary dimension of constitutions increasingly attracts attention in constitutional theory/public law and

2. Political and Constitutional Background of the Tanzimat Period

A growing body of recent literature on the early modern Ottoman Empire suggests that its sociopolitical structure underwent such a radical transformation that it is appropriate to refer to the 17th–18th century Ottoman polity as “the second Ottoman Empire.”¹⁷ This revisionist literature, which frames the 17th and 18th centuries as periods of reconstruction rather than decline, has already altered Ottomanist perceptions of the early modern period. The Ottoman Empire’s politico-legal constitution is one of the most important areas of discussion in this literature. Challenging, if not displacing, the sultān/dynasty-centered views of Ottoman history that dominated the decline paradigm, which suggests that the Ottomans lost power, prestige, and land during the 17th and 18th centuries due to the weaknesses of individual sultāns, many scholars have argued that an implicit constitutional structure limiting central power and regulating power relations among diverse collective actors making up the Ottoman polity was quite well established in the late Ottoman Empire.¹⁸

The Janissaries were the primary check on power and had the military force to overthrow the sultān and the government if necessary. However, military force is insufficient to overthrow the government unless the religious authority of the ulema justifies it. As a result, the ulema were always involved in forming and evolving the constitutional order. During the 18th century, we see the rise of another important type of actor with the power to intervene in Ottoman constitutional order: the a’yāns. From the rebellion of 1703 to the revolts of 1807–1808, it is simple to observe that the aforementioned collective actors, as well as those in positions of

in the sociology of constitutions (Latham-Gambi, 2021; Priban, 2018; Angeli, 2017). Defining constitutional imagination as “the manner in which constitutions can harness the power of narrative, symbol, ritual and myth to project an account of political existence that shape and reshape political reality,” Loughlin argues that there are three distinct constitutional imaginaries that have shaped modern constitutional thought and practice: conventional constitutionalism (of which Hobbes laid down the first scheme), negative constitutionalism (Locke), and positive constitutionalism (Rousseau) (Loughlin, 2015, 1–25). Similarly, Blokker speaks of constitutional imaginary, building upon Costeriadis’ concept of social imaginary, and distinguishes between modernist and democratic constitutional imaginaries (Blokker, 2017, 167–193). Without delving further into the details of their discussions, as they are not of direct interest for this article, I draw on these conceptions of constitutional imaginary to develop my own definition of the concept. Constitutional imaginary, as I understand it, refers to how the relationality between the central elements of a society-cum-polity is processed through the diverse capacities of human intellect such as conceptualization, imagination, symbolization and mythicization.

At the center of a constitutional imaginary lie two questions: “Who are we?” and “What is the order that constitutes us?”. The constitutional imaginary refers to the symbolic universe in/through which a definition of “We” germane to political unity and legal order is thought and achieved. Thus, a constitutional imaginary includes an understanding of 1) political unity and the exercise of political power by/within it, 2) normative order and the constitutional function it performs, and 3) the dialectic relation between them. Finally, I would like to assert that “constitutional imaginary” and “constitutionalism,” as used in this paper, refer to the fundamental laws that govern a society-cum-polity, whether they are explicitly declared or not.

17 Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (New York: Cambridge University Press, 2010).

18 See Tezcan, *The Second Ottoman Empire*; Hüseyin Yılmaz, “Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Modernity,” *Osmanlı Araştırmaları/The Journal of Ottoman Studies* 45 (2015), 231–264; Ali Yaycıoğlu, *Partners of the Empire: The Crisis of the Ottoman Order in the Age of Revolutions* (Stanford: Stanford University Press, 2016).

central power, engaged in numerous and multifaceted struggles to maintain power and determine the constitutional character of the Ottoman Empire. Most of these struggles followed recurring patterns, which suggests that Ottoman politics was governed by an implicit constitutional order, of which most actors were aware at various levels.¹⁹

However, beginning with the reign of Maḥmūd II, central power (the sultān and his close circle of statesmen) pursued a long-term strategy of eliminating rival power groups with enough power and prestige to have a say in government, as well as amassing political and military power in the hands of the central government. The successful implementation of this centralizing policy by Maḥmūd II resulted in the elimination of the most powerful *a'yāns*, the abolition of the Janissaries, and the weakening of the *ilmīye* establishment. Thus, Maḥmūd II destabilized the early modern Ottoman constitutional order, allowing an implicit system of checks and balances to operate within the Ottoman political field.²⁰ Maḥmūd II implemented administrative reforms in his final years of rule, allowing the central bureaucracy to emerge stronger than ever as the Tanzimat period began.²¹ Namık Kemal grew up in a political climate in which three statesmen, namely, Reşid, 'Ālī, and Fuād pashas, alternately held the top government offices and controlled the Ottoman bureaucracy. Namık Kemal (and others) developed their constitutional imaginary in the context of this political and constitutional background.

3. Constitutional Imaginaries during the Tanzimat Period

There were at least three distinct ideal-typical constitutional imaginaries in the post-Tanzimat Ottoman field of political power, all of which were roughly based on the pre-Tanzimat period. Without going into detail, let us simply list them and outline their basic characteristics to provide an understanding of the intellectual context in which Namık Kemal developed his constitutional imaginary. The first is the *statist constitutional imaginary*, which is defined by the ontological premise (explicit or implicit) of a transcendent state, the importance of its preservation, and the prevalence of its interest in forming a political society. The bureaucratic elite represents and applies the transcendent state's interests and will, as they have the privilege of knowing and deciding what is best for the state and its people. The so-called *ricâl-i Tanzimat*, statesmen like Reşid, 'Ālī, and Fuād Pashas, who alternately dominated key administrative-bureaucratic positions during the Tanzimat period, primarily represent this imaginary. The second is the *sultānic constitutional imaginary*, which advocates restoring the ostensibly *kadīm* sultān-centered political authority structure, albeit reformulating it within the Tanzimat framework. One of the most vocal representatives of this imaginary is the grand vizier Maḥmūd Nedīm Pasha,

19 See Rifa'at Ali Abou-el-Haj, *The 1703 Rebellion and the Structure of Ottoman Politics* (Leiden: Nederlands Historisch-Archaeologisch Instituut, 1984); Yayıncıoğlu, *Partners of the Empire*; Aysel Yıldız, *Crisis and Rebellion in the Ottoman Empire* (London: I.B. Tauris, 2017).

20 Frederick Anscombe, *State, Faith, and Nation in Ottoman and Post-Ottoman Lands* (New York: Cambridge University Press, 2014), 61–90.

21 See Carter Findley, *Bureaucratic Reform in the Ottoman Empire* (Princeton: Princeton University Press, 1980); Ali Akyıldız, *Osmanlı Bürokrasisi ve Modernleşme* (İstanbul: İletişim, 2004).

whose “anti-Tanzimat concepts”²² distinguish him from other Tanzimat statesmen. Finally, the *classical constitutional imaginary* influenced the minds and practices of many ulema who received classical madrasa education, which served as the foundation for the classical Ottoman constitutional order. This imaginary, rooted in the classical Islamic normative sciences, is anchored on the rule of law/sharī‘a, which is imagined as divine authority permeating the entire structure of political society, mediated by normative speech acts and textual authority of fiqh. I contend that a fourth new constitutional imaginary, which I will refer to as “Islamic constitutionalism,” was added to the repertoire of imaginaries that cultivated and motivated the minds and bodies of agents fighting within the field of constituent power to shape the Ottoman constitution (of social and political space). Namık Kemal was the most eloquent advocate for this new constitutional vision.

4. Namık Kemal’s Constitutional Imaginary

The gist of Kemal’s argument about the late Ottoman constitutional transformation can be described using a medical metaphor: illness. The Ottoman constitutional order was effective for Kemal until the Janissaries were abolished. The final years of Maḥmūd II’s reign saw a significant transformation in the Ottoman constitutional order, as the central tenets of the previous order were either demolished (Janissaries) or significantly weakened (the *ilmiye* institution), and a strong impetus to carve out a new administrative design, seemingly aimed at a new constitutional order, was unleashed. However, the post-Reşīd Pasha Bābīālī government, led by the two infamous powerful Tanzimat statesmen, Fuād and ‘Ālī Pashas, halted or diverted this momentum. According to Kemal, the impolitic nature of the Bābīālī’s policies at the time, combined with the previous undermining of the pre-Tanzimat constitutional order, resulted in a serious illness in the Ottoman Empire’s constitutional functioning. Kemal’s discursive struggle primarily aimed to articulate a constitutional imaginary that would address the Ottoman Empire’s acute illness. Positioning himself as the Young Ottomans’ spokesperson, Kemal argued that the *Devlet-i Aliyye* was doomed unless it adopted and implemented the constitutional imaginary they so vehemently advocated. Let us now examine this constitutional imaginary as expressed in Namık Kemal’s widely read essays.

Namık Kemal is widely known in Republican Turkey as the nationalist “poet of homeland and freedom,” as these are the dominant themes or leitmotifs of his poems, which have received high praise from Turkish readers²³. His constitutional imaginary places critical importance on the same ideas. It was no coincidence that the two essays he wrote for the first issue of *Hürriyet*, which Kemal published while self-exiled in London (1868–1869) and had a significant impact on the contemporary Ottoman reading public, were about homeland

22 Butrus Abu-Manneh, “The Sulṭān and the Bureaucracy: The Anti-Tanzimat Concepts of Grand Vizier Maḥmūd Nedīm Pasa,” *International Journal of Middle East Studies* 22/3 (1990), 257–274.

23 Although Kemal is certainly a “poet of homeland and freedom”, he is not the first and only poet deserving this title, according to Özgül, who contends that Kemal’s poetry is overrated. See M. Kayahan Özgül, *Kemâl’le İhtimâl: Nâmık Kemâl’in Şiirine Tersten Bakmak* (İstanbul: Dergâh, 2014)

(*vatan*) and freedom (*hürriyet*). We can start to explore the conceptual repertoire that networks Kemal's constitutional imaginary through these two essays.

4.1. Kemal on Homeland and Freedom

Namık Kemal's first essay, "The love of homeland is from faith,"²⁴ begins with a brief definition of the homeland: "the abode of the community one belongs to."²⁵ He then inquires about the connection between the homeland and the community members who live there. Kemal describes the homeland as a "generous provider of blessings" (*mün'im-i kerîm*), by means of which one is provided with food, clothing, and everything one requires to enjoy one's life and freedom. Thus, anyone recognizing that thankfulness is the highest responsibility should value his homeland more than his own body. According to Kemal, this is especially true for the Ottomans because "the divine blessing called homeland is the crop of their swords to them."²⁶ This formulation reveals two additional aspects of Kemal's conception of the homeland. First, the homeland is a God-given blessing, not just a geographical territory. The second reason is that this bestowing is the result of the Ottomans' *jihād*. Kemal uses metaphor to express a theme that can be found in many of his writings: *jihād* as a constituent part of the homeland. Religiously motivated military efforts build and protect the homeland. To elaborate on his earlier statement, Kemal praises past sultāns, viziers, scholars, and common people who either sacrificed or risked their lives for the sake of their homeland. He establishes a direct link between the greatness of the state and the steadfastness of the umma on the one hand, and the abundance of martyrs for the homeland on the other hand. However, Kemal's homeland appears to extend beyond the territories conquered or ruled over by the Ottomans. The following sentences provide some insight into the boundaries of his conception of the Ottoman homeland: "Is not our homeland that country in the thrones of which 'Umars and Süleymāns have ruled? Are not the Turks that nation in whose madrasas Farabīs, Ibn Sīnās, Ghazzālīs, Zamakhsharīs have spread the knowledge?"²⁷ As these rhetorical questions suggest, Kemal's Ottoman homeland is neither territorial nor limited to the historical period during which the Ottoman Empire existed. Because no sultān called 'Umar reigned during the Ottoman period, and none of the scholars mentioned were alive when the Ottoman state was founded. As a result, Kemal's concept of homeland appears too flexible to be restricted by territoriality or temporality. One should ask then what is it that makes a land homeland? I believe that for Kemal, it is the *nomos* of the people who live there that defines it as home. According to Kemal, the *nomos* of the Ottoman homeland is shari'a. The following section examines shari'a's place in Kemal's constitutional imaginary.

24 Namık Kemal, "Hubbü'l-vatan mine'l-îmân," *Hürriyet* 1 (June 29, 1868). The essay's title refers to a supposed hadith of the Prophet Muhammad (pbuh). Even though its authenticity is highly problematic, Kemal's use of it points to his discursive strategy of settling on Islamic sources. See also the titles of the following essays.

25 Namık Kemal, "Hubbü'l-vatan," 1.

26 "(...) vatan denilen nimet-i ilahiye onlara kılıçlarının ekmeğidir." Namık Kemal, "Hubbü'l-vatan," 1.

27 "Vatanımız o memleket değil midir ki tahtgâhlarında Ömerler Süleymanlar i'lâ-yı hükümet etmiştir. Türkler o millet değil midir ki medreselerinde Fârâbîler, İbn Sînâlar, Gazâlîler, Zemahşerîler tevsî'-i marifet eylemiştir." Namık Kemal, "Hubbü'l-vatan," 1.

Although Kemal discusses freedom in many of his writings, two of his essays, “the Right is the highest, nothing is higher than it”²⁸ and “consult with them in (conducting) matters,” contain his clearest articulations.²⁹ Kemal begins his first essay by saluting the Sulṭān’s imperial address (*nutk-ı hümayun*) issued when the Council of State (*Meclis-i Şûrâ-yı Devlet*) was established. Kemal sees it as a successful result of public opinion and the efforts of the Young Ottomans, and he appreciates that it explicitly and unconditionally recognizes the rights of freedom, arguing that it is incumbent upon the government “to protect the rights of freedom” and that the latter “has no right to rule through coercion and domination.”³⁰ Having said that, he continues with his criticism. First, he finds it unacceptable that the text does not mention the sharī‘a. He compares the imperial address to the Gülhane Edict, claiming that Reşīd Pasha built it on the sharī‘a. If the reason for not mentioning sharī‘a is the Europeans’ assumed demand that reforms be based on reason rather than revelation, Kemal finds this argument invalid. As the address is well received by Europeans and its content is clearly under the sharī‘a, it is absurd to argue that Europeans would not want the wording of sharī‘a in the text. Kemal’s response to the second argument he raises is more interesting because it reveals the sulṭānate’s place and relationship to sharī‘a in his constitutional imagination. Here is the full quote.

“If the intention here [by not mentioning sharī‘a] is to imply that ‘the Ottomans have been captives/slaves of the sulṭān so far now, his imperial person recognized their freedom out of his complete mercy,’ there is no way we accept it. For in our belief, the rights of the people are primordial just like the divine justice. The person who holds the office of the sulṭānate is our ruler, not our owner. Indeed, it is deplorable to build a regime on the will of a person, which is not possible to be secure of change even for a moment, while we have a foundation for justice that will never be changed [that is, the sharī‘a].”³¹

This passage makes it clear that, for Kemal, the sulṭānate or the sulṭān’s will cannot serve as a legitimate foundation for a constitutional regime. The sharī‘a is the sole legitimate foundation for the Ottoman constitutional regime. After demanding that the sharī‘a basis of freedom be openly declared on a constitutional level, Kemal calls for implementing all means to ensure “freedom.” Again, Kemal explains what he understands from it.

“A community is not free, unless its members enjoy their personal and political rights,” asserts Kemal.³² This formulation succinctly expresses Kemal’s understanding of freedom: the

28 Namık Kemal, “el-Hakku ya‘lû ve lâ yu‘lâ aleyh,” *Hürriyet* 1 (June 29, 1868), 2–4. Here Kemal uses again an expression that is widely referred to as an hadith.

29 Namık Kemal, “Ve şâvirhüm fi‘l-emr,” *Hürriyet* 4 (July 20, 1868). This title refers to an ayah of the Qur‘ân (3: 159).

30 Namık Kemal, “el-Hakku ya‘lû,” 1.

31 “Yok, murâd bu deđil de ‘Osmanlılar bugüne gelinceye kadar padişahın esiri idi, zat-ı şahane kemal-i merhametinden hürriyetlerini tasdik etti’ denilmek istenildiđi halde, işte biz onu hiç kabul edemeyiz. Zira itikadımızca hukuk-ı ahali ‘adl-i İlähi gibi ezeliđir. Makam-ı saltanatta bulunan zat bize hâkim olur, mâlik olamaz. Hakikat, böyle elimizde asla hâle bulamayacak bir esâs-ı ma‘delet mevcut iken onu bırakıp da şahs-ı vâhidin bir vakit tagayyürden selameti mümkün olmayan ihtiyârı üzerine tesis-i nizam etmek teessüf olunacak şeylerdir.” Namık Kemal, “el-Hakku ya‘lû,” 2.

32 “Bir ümmet hür olmaz, tâ ki onun efrâdı hukuk-ı şahsiye ve hukuk-ı siyasiyesine mâlik olmaya.” Namık Kemal,

ability to enjoy one's rights. If a person cannot exercise his or her personal and political rights, he or she is not free and does not live in a free society. He defined "one's personal rights" as "one being safe and secure in terms of one's life, property, and honor."³³ The provision of this security is dependent on the judiciary's proper functioning. However, according to Kemal, this is another issue that the Ottoman state faces. The Ottoman judiciary system's inefficiency is due to two major factors. The first is a human resources issue: for two centuries, qualified sharī'a scholars have been scarce due to the *ilmiye* establishment's career system, which prioritizes nobility over merit. Because scholars from the *ilmiye* establishment make up the judiciary, its institutions are in disrepair. The other reason is the Tanzimat statesmen's politics of the judiciary that included the instituting regular (*nizāmi*) courts along with the sharī'a courts and the adaptation of some European codes, of which Kemal bitterly complains: "Various courts have been instituted, and all sorts of codes have been legislated until now; what benefit have been derived from these other than disempowering and devaluating the Aḥmadī sharī'a?"³⁴ The root cause of both issues is again a failure to observe the sharī'a.

Kemal defines political rights (*hukûk-i siyâsiye*) as "the supervision of governmental actions by the umma" ("*ümmetin ef'âl-i hükûmete nezâreti*") after highlighting deficiencies in personal rights.³⁵ According to Kemal, the only way to carry out this supervision is through the consultative method (*usûl-i meşveret*). The essence of this method is the separation of legislation and execution, which is considered necessary by fiqh and the law. Because the government must follow the law, the law must be legislated by those in charge of enforcing it and approved by the people in order for it to be legitimate and just. Otherwise, if the government is in charge of legislation and execution, it will likely issue a law for any action it wishes to take, whether just or wrong. In this case, the government's power would be unlimited. This is why Kemal advocates for an Ummatic Consultative Council:

"(...) In every constitutional state, the law is prepared by the government (that is what the Council of State does), but it would not take effect unless it is approved by the umma. The approval of the umma cannot be learned but through consultation, and the best way to achieve consultation is through the institution of an Ummatic Consultative Council."³⁶

This council's responsibilities would extend beyond simply supervising and approving legislation. It monitors the government's budget and spending, oversees the implementation of laws, and holds government officials accountable for their actions.

"el-Hakku ya'lû," 2.

33 "İnsanın hukuk-ı şahsiyesi can ve mal ve namusudan her cihetle emniyetidir." Namık Kemal, "el-Hakku ya'lû," 2.

34 "Şimdiye kadar mütenevvi' mahkemeler ve türlü türlü kanunlar yapıldı. Bunlardan şeriat-ı Ahmediyenin kadrini kırmaktan başka ne fâide hâsıl oldu?". Namık Kemal, "Devlet-i Aliyye," 3.

35 Namık Kemal, "el-Hakku ya'lû," 4.

36 "(...) kanunu her muntazam devlette hükümet hazırlar (hangi memlekette Meclis-i Şûrâ-yı Devlet var ise vazifesi budur) fakat ondan sonra kabûl-ı ümmete makrûn olursa hükmüne itibâr olunur. Kabûl-ı ümmeti bilmek istişâreye muhtaçtır, istişârenin husûlü hakkında ise Meclis-i Şûrâ-yı Ümmetten emin yol bulunamaz." "Namık Kemal, El-Hakku ya'lû," 4.

According to Kemal, another important step in achieving “freedom” is to issue a written document that publicly declares the government’s fundamental laws. His argument begins with the premise that freedom is a divine blessing everyone should have. General/public freedom (*hurriyet-i ‘âmme*) can only be preserved within a community/society. Because only a group of people can generate authoritative power (*kuvve-i gâlibe*) to protect individuals’ freedom from one another. This authoritative power belongs to the community as a whole because it is generated not by a single person or group of people, but by all members of the community. According to Kemal, “(...) in every umma, the right to rule belongs to the general public (*umûm*).”³⁷ However, because the public cannot perform governmental functions with all of its members, an imâm and a government are required. This is nothing more than a community delegating the right to rule to a few members. As a result, rulers’ right to rule rests solely on the representative power they obtain from the umma through the *bay‘ah*. What is the extent of this representative power? Is there an absolute delegation of authority? Kemal responded that “every umma can set the boundaries of representative power according to its general moral and needs, but it is a general rule that the government should be formed in a manner that limits its individuals’ freedom as less as possible.”³⁸ Two primary methods exist for limiting and checking the boundaries of representative power that a government may exercise. The “method of consultation” is the first, as previously discussed. The second method is to “openly declare to the world the fundamental laws of government”³⁹ to ensure that the Ottoman government is truly based on liberty and justice.

As previously explained, Namık Kemal’s thought appears to be a slightly adapted version of European constitutionalism expressed in Islamic terms. Reaching such a conclusion without first investigating Kemal’s concept of law and state would be imprudent. After conducting such an examination, I contend that Kemal’s constitutional imaginary is fundamentally different from a typical European constitutional imaginary, although both contain seemingly similar conceptual and institutional elements. The distinction is primarily due to Kemal’s understanding of law and state, which is ultimately based on classical constitutionalism. In other words, Kemal’s Islamic constitutionalism can be defined as a reconstruction of classical constitutionalism in interaction with European constitutional thought within the historical–sociological context of post-Tanzimat.

37 “(...) her ümmette hakk-ı hâkimiyet umûmudur.” Namık Kemal, “Ve şâvirhüm,” 1. Having first explicitly stated that the right to rule belongs to the general public, and then limited this right to be within the shar‘î boundaries, Kemal may well be considered a pioneer of Islamic theories of popular sovereignty. For a thorough assessment of the theories of popular sovereignty in the post-caliphate Islamic thought, see Andrew March, *The Caliphate of Man: Popular Sovereignty in Modern Islamic Thought* (Cambridge: The Belknap Press of Harvard University Press, 2019).

38 Namık Kemal, “Ve şâvirhüm,” 1.

39 “(...) idarenin nizâmât-ı esâsiyesini zimniyetten kurtararak âleme ilân etmektir.” Namık Kemal, “Ve şâvirhüm,” 1.

4.2. Kemal on the Law

The prevalence of the *sharī'a* in the Ottoman constitutional order is a central tenet of Kemal's constitutional vision. He considers it the origin of law and politics. Kemal argues in an essay titled "The means to save the Ottoman state from the dangerous state it is in" for the importance of *sharī'a* within the Ottoman state and the need to uphold it so that the Ottoman state can live a long time.⁴⁰ To support his argument, Kemal returns to the origins of political society. As human populations grow, there is a greater need for government. Any form of government would require a normative social bond to keep the community together. Kemal defines this normative social bond as *shar'*, which could be translated as *nomos*.⁴¹ It is "the political rulings that ensures the protection and administration of members of a community individually and publicly."⁴² The community's consensus determines the specifics of the *nomos* application. However, its foundation is based on natural law. Kemal defines natural law for the Ottomans and argues that it is central to the Ottoman state as follows:

"For us, the natural law is the divine justice itself, which is determined by the Noble Qur'ān. Even the most tyrannical ruler cannot change it, as it is under the protection of the One; the most he can do is to temporarily suspend it. We should seek for our survival and remedy in observing it."⁴³

He then takes a comparative approach to the argument, addressing his Ottoman and European readers. First, he likens the Romans to Israel's sons. The former was once the world's largest community with a consistent legal structure. However, when their state failed, they went bankrupt. The sons of Israel, however, retain their (religious) nationality because, according to Kemal's argument, they are a people of *nomos*, despite having lost their government 2,000 years ago. Second, he contrasts the European perspective on the relationship between law and politics with that of the Ottomans. "The foundation of European governments is based upon secular law (*qānūn*)," says Kemal, because "they are Christian and there is no *sharī'a* in Christianity."⁴⁴ Thus, he claims, having suffered greatly from the dominance of the church in

40 Namık Kemal, "Devlet-i Aliyye'yi bulunduğu hâl-i hatarnâktan halâsm esbâbı," *Hürriyet* 9 (August 24, 1868).

41 I translate *şer'*/*şeriat* here as *nomos*, as it is the most appropriate equivalent available in English that I can think of. Yet by no means do I argue that *şer'* and *nomos* are totally equal or interchangeable concepts, as they may have significant tensions in their respective semantic implications. As my purpose in the article is to present in English what Kemal understands from these concepts, I prefer to use the concept of *nomos* to facilitate the understanding of the function that *sharī'a* performs in Kemal's thought. The conceptual relations between *shar'*, *sharī'a*, *nomos*, and natural law need to be further discussed, but this is for another article. For such a discussion that argues for Robert Cover's definition of *nomos* being the best encapsulation of what Juwaynī understands from *Sharī'a*, see Sohaira Z. M. Siddiqi, *Law and Politics under the Abbasids: An Intellectual Portrait of al-Juwaynī* (Cambridge: Cambridge University Press, 2019), 273–282. (I would like to thank the anonymous reviewer for pointing me to this work).

42 "(...) efrād-ı heyet-i münferiden ve müctemi'an hıfz u idâreye vesile olan ahkâm-ı siyasiyedir." Namık Kemal, "Devlet-i Aliyye," 2.

43 "Bizde o hukuk-ı tabiiye ayn-ı adl-i ilâhî'dir ki Kur'an-ı Kerim tayin etmiştir. Nam-ı ehadiyetin سایe-i himayesinde bulunduğu için en büyük mütegalibler bile onu tatil eder; tağyir edemez. Biz bekamızı, devamızı o esasa riayetle aramalıyız." Namık Kemal, "Devlet-i Aliyye," 2.

44 Namık Kemal, "Devlet-i Aliyye," 2.

state affairs and being unaware of the Islamic *sharī'a*, Europeans misinterpret the reason for Ottoman internal administration problems as *sharī'a* and seek to displace it, that is, to separate religious affairs from political order. However, they are unaware, according to Kemal, that the problems in the Ottoman government are precisely the result of failing to observe the rulings of the *sharī'a*, which is the basis and foundation of the government, and that if the Ottomans leave this foundation, they will perish. As a result, he warns the Europeans that if they believe the Ottoman state's perpetuity is necessary for the international balance of power, they should be aware that if the Ottoman state's foundation, i.e., *sharī'a*, is displaced, the Ottoman state will be jeopardized. Kemal concludes that "(...) if our state would like to live long, it cannot help but stay as an Islamic state and follow the Aḥmadī *sharī'a*. *Sharī'a* is the spirit and the essence of life for our state."⁴⁵

Throughout this article, Kemal clearly argues that the *sharī'a* takes precedence over the state, politics, and law. He regards the *nomos/sharī'a* as the fundamental foundation of a community and the assurance of its survival. In Kemal's constitutional imaginary, the Islamic *sharī'a* is thus foundational. His two essays, "Law" and "Public Law," radically formulate this understanding.⁴⁶ In his first essay, Kemal discusses the origins of law. After highlighting the phenomenon of legal plurality in the world, he questions whether there is an objective basis for law or whether it is simply a human construct. Following deductive reasoning, he concludes that there can be no law in the universe unless there is a first cause (God), which provides the necessary foundation for human freedom and responsibility, both of which are prerequisites for law. The concepts of *ḥusn* (good) and *qubḥ* (evil), created by the omnipotent God in the universal nature, determine the boundaries of human freedom and responsibility. This conceptual pair of *ḥusn* and *qubḥ*, understood as transcendent good and evil, serves as the objective foundation for law.⁴⁷ Kemal discusses and claims to have refuted various definitions of law in European thought, including those referring to the public interest and general will. He concludes that *ḥusn* and *qubḥ* are the only objective grounds for law and can only be obtained through *sharī'a*.

The second essay discusses the categories of rights known as "public law" in European legal thought. Kemal is opposed to the idea that abstract and fictive entities can be granted any right because they are legally constructed as personalities. Only real people have rights. Following that, he contends that popular sovereignty cannot be founded on people or the

45 "Hülâsa-i kelâm devletimiz muammer olmak isterse şeriat-ı Ahmediye'ye ittibâdan ve devlet-i İslamiye hâlinde kalmaktan ayrılamaz. Demektir ki şeriat devletimizin canı ve mâyeü'l-hayatıdır." Namık Kemal, "Devlet-i Aliyye," 3.

46 Namık Kemal, "Hukuk," *İbret* 5 (June 19, 1872), 2; Namık Kemal, "Hukuk-ı Umûmiye," *İbret* 18 (July 8, 1872), 1–2.

47 On the concepts of *ḥusn* and *qubḥ* see Anver Emon, *Islamic Natural Law Theories* (New York: Oxford University Press, 2010). Kemal also refers to the concept of *nafs al-amr* as the ontological basis of rights. On this concept, see Hasan Spiker, *Things as They Are: Nafs al-Amr and the Metaphysical Foundations of Objective Truth* (Abu Dhabi: Tabah Foundation, 2021).

general public; rather, it stems from the human autonomy that every individual possesses as a necessary characteristic of human nature:

“Popular sovereignty is nothing but the origination of governmental powers from the people and known as the right of bay‘ah in shar‘ī terminology. It is not a potency pertaining to the abstract meaning conveyed by the words public or people, but a right necessitated by the autonomy every individual has as an attribute of their creation.”⁴⁸

Kemal strikes a balance between emphasizing the necessity of basing legal and political rights on human autonomy and highlighting the need to limit this autonomy within the sharī‘a framework.⁴⁹

4.3. Kemal on the Ontological Status of the State

Namık Kemal intervened in an ongoing debate between the *Gülşen-i Saray* and *Basiret* newspapers about the relationship between the state’s and nation’s interests in an essay titled “A Friendly Intervention.”⁵⁰ According to Kemal’s interpretation, *Basiret* claimed that “the interests of the state and the nation are separate” whereas *Gülşen-i Saray* argued that “those interests are interconnected.” Objecting to the positions of both parties, Kemal presents his alternative position:

“We believe that the state has no existence apart from the people. It cannot have an interest on its own. For a nonexistent object cannot bear any attributes. If a state triumphs over its enemy, makes its country prosper, and advances its education, it is the general public who benefits from these. Therefore, the term ‘state’ refers to no entity other than the general public, lest it could have an interest on its own.”⁵¹

Kemal’s stance is rather radical. According to him, the relationship between the interests of the state and the nation is incorrect because the term “state interest” does not exist. The state has no interests of its own because it does not exist as a separate entity from the people who make up the state. This radical stance on the ontological status of the state sets Islamic constitutionalism apart from statist constitutionalism, which is based on the premise of a transcendental state whose high interests are known and administered by the bureaucratic elite. This stark contrast between the two constitutional imaginaries parallels Kemal’s fierce opposition to the powerful Tanzimat statesmen, who were the primary representatives of statist constitutionalism.

48 “Hâkimiyet-i ahali ki kuvâ-yı hükümetin halktan münba‘is olmasından ibaret ve lisan-ı şer‘de nâmı hakk-ı biattır. Umûm veya ahali kelimesinin ifade ettiği mâna-yı mücerred üzerine ârız olmuş bir salâhiyet değil her ferdin hilkaten mâlik olduğu istiklâl, istiklâl-i zâtî levâzımından bir haktır.” Namık Kemal, “Hukuk-ı Umûmiye,” 1.

49 We should note that any explicit discussion on the meaning of the sharī‘a is missing in Kemal’s writings. Therefore, we must settle for a general understanding of the term while dealing with Kemal’s thought, at least for now. A further study on the genealogy of the term as used in Kemal’s writings may contribute to a better understanding of Kemal’s legal and political thought.

50 Namık Kemal, “Dostâne Bir Vesâat,” *İbret* 10 (June 26, 1872).

51 “İtikadımızca devletin halktan ayrı bir vücûdu yoktur. Kendine mahsus hiçbir menfaati olamaz. Çünkü ma‘dûm üzerine hiçbir avâzı terettüb etmez. Bir devlet hasmına galip gelir, “mülkünü ma‘mûr eder,” maarifini ilerletirse bu saadetlerden müstefid olan heyet-i umûmiyedir. Yoksa devlet tabiri o heyet-i umûmiyenin haricinde hiçbir mevcûd ifade etmez ki ona bir fâide terettüb edebilsin”. Namık Kemal, “Dostâne Bir Vesâat,” 2.

Kemal continues his criticism by referring to the European understanding of the corporate body/state and its harsh practical consequences:

“In Europe, some supporters of the oppressors said such nonsense as ‘the state is a corporate body/legal person. It enjoys such rights and has such interests.’ As a result of these excessive ideas, a vicious principle called *raison d’Etat* showed up. Owing to it, Napoleon broke his public oath to become an emperor, and wreaked havoc on twenty five thousand men of ardor and insight in a single night using many vile means.”⁵²

Kemal defends his position by criticizing the European conception of the state and referring to the concept of right in the Islamic sciences.

“Let one consult the books of kalām and fiqh. It is evident that many rights are designated for the persons of the imām, the vazīr, the muftī, the ‘āmil, or the dābīṭ. However, are there any rights or duties designated for the government or the state, which are nothing but the terms nominated to express a particular form of the general public?”⁵³

In short, Kemal believes that neither a state nor a nation are distinct entities that exist above or beyond the individuals who make up their populations. As a result, when one speaks of the interests of a state or a nation, he is referring to the interests of specific or all of the people who make up those entities.⁵⁴ Kemal criticizes statesmen who justify policies by citing state and national interests. At the very least, this is the practical application of Kemal’s approach to this theoretical problem.

A final note on Kemal’s understanding of Ottoman collectivity and its implications for his conception of the umma is appropriate. He refers to Ottoman collectivity through a variety of concepts, including nation (*millet*), state (*devlet*), people (*halk*), public (*umûm*), umma (*ümme*), general public (*heyet-i umûmiye*), and civil society (*heyet-i medeniye*). As he stated in his rejection of assigning ontological status to abstract constructs such as state or nation, Kemal appears to see these collectivities as diverse associations of human individuals who came together in various types of social relationships. Thus, these collectivities lack independent ontological substances other than the individuals who comprise them. Their collective or public appearances or properties are simply derivations of the properties of the individuals who make up the group. Furthermore, Kemal employs numerous identity markers in relation to these terms when referring to Ottoman collectivity. For example, Kemal uses the term nation (in various contexts) to refer to three distinct types of collectivity that we now refer to by different names: the Ottomans, Turks, and the Hanafis. Meanwhile, he employs the terms Ottoman, Turk, and Muslim interchangeably.⁵⁵

52 “Vâkıa Avrupa’da birtakım zaleme mu’înleri “devlet bir şahs-ı mânevîdir. Şu hakkı hâizdir. Şu işten menfaat görür” yollu safсата-perdâzlıklar etmişlerdir. Hatta bu tuğyan-ı efkâr netâyicindendir ki *raison d’Etat* yani ıztırar-ı düvelî namıyla bir kâide-i fâside peyda oldu. Onun sayesinde ma’hûd Napolyon imparator olmak için alâ-melei’ n-nas ettiği yemini bozdu, bir gecenin içinde yirmi beş bin ashâb-ı gayret ve fetâneti bin türlü vesâat-i şeni’ a ile mahvetti“. Namık Kemal, “Dostâne Bir Vesâat,” 2.

53 “Kütüb-i kelâmiye ve fihriyeye dahi müracaat olunsun. İmamın, vezirin, kadının, müftünün, âmilin, zâbitin şahıslarına dair birçok hukuk tayin olunduğu görülür. Lâkin hiç hükümet gibi, devlet gibi, heyet-i umûmiyenin bir tavr-ı mahsûsunu ifade için vaz’ olunmuş birer lugattan ibaret olan şeylere hak veya vazife namıyla hiçbir şey tayin olunmuş mudur?” Namık Kemal, “Dostâne Bir Vesâat,” 2.

54 Namık Kemal, “Herkesin Maksûdu Bir Ammâ Rivayet Muhtelif,” *İbret* 13 (July 2, 1872), 1–2.

55 See for example, Namık Kemal, “Türkistan’ın esbâb-ı tedennisi,” *Hürriyet* 5 (July 27, 1868).

Most interestingly, Kemal does not use the term *umma* exclusively for Muslim collectivity, as was common in the postcaliphate context. He refers to the Ottoman *umma* and the French *umma*.⁵⁶ In Kemal's terminology, I would argue, an *umma* is a sociopolitical collectivity of diverse individuals held together by a *nomos*, a foundational normative bond. According to Kemal, the Ottoman *umma*'s normative bond appears to be neither religion nor ethnic identity. It is a *shar'ī* constitutional order that accommodates Muslims and non-Muslims through various constitutional mechanisms. Kemal's "Islamic constitutionalism" is an attempt to reimagine this *shar'ī* constitutional order, which was in effect as classical constitutionalism until the Tanzimat period, when it lost its primary social and institutional bases, such as Janissaries or the strength of the *ilmiye* class. Another institutional foundation of the classical constitutional order was the millet system, which enabled the Ottomans to accommodate non-Muslims within a *shar'ī* constitutional framework.⁵⁷ As the millet system was also weakened during the Tanzimat period, Kemal attempted to pragmatically integrate the concept of citizenship into his constitutional imaginary to accommodate non-Muslims, some of whom were dissatisfied with their millet status and began to threaten the Ottoman constitutional order.⁵⁸ Finally, Kemal's vision for the Ottoman *umma* extended beyond Muslims living under direct Ottoman rule. He enthusiastically advocated for the "unification of Islam" worldwide, seeing the Ottoman caliphate as the focal point of this future unity.⁵⁹

Conclusion

Justice, freedom, *shar'ī* a, and homeland are all so intertwined in Kemal's constitutional imaginary that removing them from the conceptual matrix would fundamentally alter it. Most Kemal interpreters fail to see this. As we have argued, the primary reason for this failure is that they allow their ideological engagements and metahistorical narratives to determine their premises, undermining Kemal's agency in his interaction with European thought and interpreting his text accordingly. This failure results in a bizarre Eurocentric reading of Kemal, portraying him almost as a pioneer of liberal constitutionalism or secular nationalism while ignoring his strong commitment to the *shar'ī* a.

56 For the "Ottoman *umma*" see Namık Kemal, "Hubbü'l-vatan," 1; for the "French *umma*" see Namık Kemal, "Fransa İhtilali," *Hürriyet* 52, (June 21, 1869).

57 On the millet system, see Karen Barkey, "The Ottoman Millet System: Non-Territorial Autonomy and Its Contemporary Legacy," *Ethnopolitics* 15/1 (2015), 24–42.

58 See the following expressions: "Müslümanlar bilirler ki tebaa-i gayri müslime dahi vatan karındaşları ve vatanın nef' ve zararında kendilerinin müşerikleridir." Namık Kemal, "Mesele-i Müsâvât," *Hürriyet* 15 (October 5, 1868); "...muhalefet-i diniyenin vücûduyla beraber itilâf-ı vatandaşın husûlü..." Namık Kemal, "Usûl-i Meşverete Dair Altıncı Mektup," *Hürriyet* 18 (October 26, 1868); "Bizim vatandaşlarımız olan akvâm-ı tâbiânın cümlesi bu maksatta bizimle hem-efkârdır." Namık Kemal, "Memâlik-i Osmaniye'nin Yeni Mukâsemesi," *Hürriyet* 20 (November 9, 1868). For an evaluation of Kemal's attempt to accommodate the non-Muslims in what the author calls his "constitutional Ottomanism," see Joseph Rahme, "Namık Kemal's Constitutional Ottomanism and Non-Muslims," *Islam and Christian-Muslim Relations* 10/1 (1999), 23–39.

59 For Kemal's call to the "unification of Islam": Namık Kemal, "İttihâd-ı İslâm," *İbret* 11 (June 28, 1872), 1.

The centrality of *sharī'a* in Kemal's constitutional imaginary makes it difficult to characterize him as a pioneer of (secular) nationalism and liberalism, simply because the terms homeland and freedom are central to his thought, as is common in Ottoman-Turkish modernization literature. The methodological error here is twofold. First, Kemal's ideas are not interpreted cohesively and holistically. When combined with a Eurocentric reading, this error results in the assignment of predefined meanings to Kemal's terms. It is assumed that because the concepts of homeland and freedom were widely used in Europe following the French Revolution, Kemal must have adopted these terms with the meanings assigned to them by Europeans. Kemal's agency as a thinker is undermined. Second, failure to acknowledge that the meanings of these terms have changed since Namık Kemal's time results in an anachronistic reading of his writings. I argue that Kemal has interacted with modern European constitutional thought self-consciously and strategically, appropriating some of its elements into his constitutional imaginary, which is primarily based on classical *sharī'a* constitutionalism on the one hand and pre-Tanzimat Ottoman constitutional practice, on the other. If this qualifies Kemal as a pioneer of anything, it is modern Islamic constitutionalism.

I conclude by arguing that Kemal pioneered modern Islamic constitutionalism, including almost all of its points of agreement and disagreement. March summarizes his long list of "some points of general consensus that together form a kind of modal modern Islamic constitutional theory,"⁶⁰ as follows:

"Thus, the aspects of constitutionalism that are more or less subject to agreement in modern Sunni Islamic thought are that the people is, broadly-speaking, the source or origin of the legitimacy of political institutions; can elect and supervise political officers; and can participate in various forms of consultation and lawmaking. Similarly, it is broadly agreed that elected rulers are agents or civil servants subject to the law and limited in their authority, and that all laws and enactments are subject to some kind of *sharī'a* review. This is what is meant when some contemporary Islamic constitutional theorists claim that the state in Islam is neither theocratic nor fully secular, but rather a 'civil state.'⁶¹

This summary of the common position of modern Islamic constitutionalism could be developed *grosso modo* as the overall outlook of Kemal's constitutionalism. However, Kemal's position differs significantly from 20th-century Islamic constitutionalism, owing primarily to radical changes in the historical–sociological context. Kemal lived in a world where the Islamic caliphate existed and overcame numerous challenges. Thus, his conception of the Islamic umma and its politico-legal constitution was developed through direct interaction with Ottoman society and state structure. However, in the post-caliphate 20th century, Islamic constitutionalism could only abstractly engage with the concept of the caliphate. As a result, the concept of an umma is most commonly envisioned as a transnational abstract unity of fellow Muslims, with little reference to social or political unity at the constitutional level. Umma's

60 Andrew March, *The Caliphate of Man*, 10.

61 Andrew March, *The Caliphate of Man*, 13.

internationalist conception developed in response to the concept of a nation-state. Although this is a valuable position because it provides an antidote to the factionary effects of exclusive nationalism, it also runs the risk of producing globalist Islamists who are estranged from their homelands as spatiotemporal sites of ongoing Islamic practice. In any case, contemporary ummatic discourse suffers from a significant rupture in the caliphate's historical continuity. An in-depth exploration of the modern Islamic thought prior to the abolition of the caliphate may provide new insights and perspectives in this respect.

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