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## The 1921 Constitution and Beyond: Any Inspiration After 100 Years?

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### Abstract

The 1921 Constitution has mostly been considered as a unique piece of legal document in Turkish Legal History with regard to the time it was written, the conditions under it was created, the necessity it touched and the era it changed. The 1921 Constitution had been assessed by scholars, bureaucrats, politicians and lawyers in different times from distinct perspectives. It has got special attention lately as regards to the discussions on constitution-making processes. Even after 100 years, many of its features inspire today's constitutional discussions as the 1921 Constitution touches even today's sociological, political and legal needs.

In this context, this paper aims to assess the 1921 Constitution first by pointing out the unique features; then, gives try to answer a question posed whether the 1921 Constitution is a constitution itself, or not. This trial is done under the double constitution period discussions and by pulling out the deficiencies of the 1921 Constitution.

Subsequently, the box of inspirational touches of the 1921 Constitution to 100 years beyond is opened. In that sense, it has been found that the understanding of sovereignty that brings it down to its origin "earth/humankind", the idea of local democracy and the vision on fundamental rights and freedoms that open the door to modern understanding of rights on this part of the world, could be drawn/inherited for today's constitutional making processes.

### Keywords

1921 Constitution, Centenary of 1921 Constitution, Double Constitution Period, Turkish Constitutional History

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## Introduction

The 1921 Constitution has a significant role in Ottoman Turkish Constitutionalism in terms of both constitution-making process and the time period it was enacted and its content. In fact, it was based on the period that covered both “liberation” and “establishment” of the newly Turkish state.<sup>1</sup> Even though the 1921 Constitution was left behind over a hundred years back it still has important features that enlighten today’s constitutional works and indeed needs. In this context and in this study, the 1921 Constitution is examined by its unique features and its nature, in order to find out whether any reflection or inspiration could be drawn for today’s constitution making processes.

### I. Unique Features of the 1921 Constitution

The 1921 Constitution differs from the constitutional movements of the Ottoman Empire and the successor constitutions of the Republic of Turkey due to some of its prominent features.<sup>2</sup> The 1921 Constitution has an extremely important and exceptional character in Ottoman-Turkish constitutional history, with its essential founding feature in terms of the way the constitution was formed, as well as with its characteristics indicating the establishment of a new state and being the highest in the hierarchy of norms in the course of the struggle for independence.

In this context, the effect of the struggle for independence and the ideal of establishing a new state on the axis of the main constituent power debates are essential. As a matter of fact, with the establishment of a new state, the creation of its law is in question. Although the Grand National Assembly, which accepted the 1921 Constitution, was not formed for the purpose of preparing a constitution, yet it is accepted that the Grand National Assembly is a constituent assembly because it established a new state as “a parliament with extraordinary powers” and laid down the rules for its organization.<sup>3</sup>

In terms of constituent power, a parallel structure is observed with Arendt’s understanding. In this context, Arendt encourages the participation of councils and the people in terms of constitution, and also advocates the separation of the source of government (power) and law. As regards to the Turkish Revolution, local congresses<sup>4</sup> might be linked to Arendt’s concept of “council”.<sup>5</sup> When the

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1 Such identification was used by Prof. Dr. Bülent Tanör, who has intensive and expanded work on Ottoman Turkish Constitutional movements and whose work we are deeply indebted from See Bülent Tanör, *Osmanlı-Türk Anayasal Gelişmeleri* (11th edn, Yapı Kredi Yayınları 2004).

2 For a detailed information on 1921 Constitution see Ergun Özbudun, *1921 Anayasası* (Atatürk Kültür Dil ve Tarih Yüksek Kurumu Atatürk Araştırma Merkezi Yayınları 2008). For a recent work on the centenary of 1921 Constitution see <https://blog-iacl-aidc.org/centenary-of-the-turkish-constitution>, last accessed August 21, 2022.

3 Erdoğan Teziç (Anayasa Hukuku, Beta 2020) 185, Belkıs Konan, “1921 Teşkilat-ı Esasiye Kanunu Layihası” (2022) 71 (1) Ankara Üniversitesi Hukuk Fakültesi Dergisi 437, 448.

4 For detailed information on local congresses, see Bülent Tanör, *Türkiye’de Kongre İktidarları* (Yapı Kredi Yayınları 2009).

5 Dinçer Demirkent, *Bir Devlet İki Cumhuriyet*, (Ayrıntı 2017) 66.

1921 Constitution is evaluated based on this approach and the process before its establishment, a democratic structure that had never before existed in the process of Ottoman constitutional developments had been encountered. This draws attention to the original structure of the 1921 Constitution in terms of its differentiation from the constitutional developments until that time.

It has been observed that the 1921 Constitution differed sharply from the previous constitutional processes in terms of its understanding of sovereignty thus perception of national sovereignty had been introduced to the constitutional order. In this context, the 1st article of the 1921 Constitution stated, “(T)he prerequisite for sovereignty belongs to the nation. The administrative method is based on the principle that the people personally and actively manage their destiny.” Right after, with the October 29, 1923 amendment, the understanding of national sovereignty was emphasized with the “republic”, which is the new form of government introduced by the Constitution.

Apart from the understanding of national sovereignty, one of the philosophical principles that dominated the 1921 Constitution was the principle of populism. What is meant by the principle of populism in the context of practice was popular administration and democratic administration.<sup>6</sup> In the first four articles, titled Purpose and Profession (Aim and Doctrine) of the Populism Curriculum, which has a significant role in the context of the 1921 Constitution the main objectives of the government are set forth. In this context, it was especially mentioned that the people are the real owners of sovereignty. Thus, it is possible to find the traces of the idea of national sovereignty in the Populism Program.<sup>7</sup>

The 1921 Constitution was in force during the transitional period under extraordinary conditions, and for that, some aspects that are required to be essential parts of a constitution were lacking. The most important of these issues was that the 1921 Constitution did not include provisions on fundamental rights and freedoms. Such issues should be assessed as period specific deficiencies. It could be asserted that the function of the constitution as regards the struggle for national independence was initially prioritized over many other issues including fundamental rights and freedoms.

One of the most original aspects of the 1921 Constitution was to adopt the principle of unity of powers (Art. 2). In this context, legislative and executive power was gathered in the Grand National Assembly. The principle of unity of powers was not limited to the legislative and executive branches, but also the judiciary. In this

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6 Demirhan Burak Çelik, *Ulusal Kurtuluş Savaşı Döneminde Anayasal Gelişmeler ve 1921 Anayasası* (M.A. Thesis, 2003) 105, Serdar Narin, “1921 Anayasası’nın Genel Özellikleri Bağlamında Yer Yönünden Yerinden Yönetimler ve Siyasal Özerkliğin Reddi” (2018) Eylül İzmir Barosu Dergisi 79, 89.

7 Çelik (n 6) 121-122, Murat Sevinç and Dinçer Demirkent, *Kuruluşun İhmal Edilmiş İstisnası 1921 Anayasası ve Tutanakları* (İletişim Yayınları 2021) 21.

context, the Independence Courts (“İstiklal Mahkemeleri”) should be mentioned as the members of these courts were elected by the Assembly and among the deputies.<sup>8</sup> The government system established by the 1921 Constitution also emerged as the “parliamentary government system” in this context.

Another prominent feature of the 1921 Constitution is that it included wide range of provisions regarding local governments. The 1921 Constitution, which lacked provisions on fundamental rights and freedoms and the judiciary, gave such a wide place to local governments, leaving the impression that the understanding of autonomy in the administration had a wide dominance. This could have been rooted in the understanding of dominance of populism by the Grand National Assembly; the wide range of provisions on local governments are mostly linked with the “Populism Program” and the experience of Anadolu and Rumeli Associations for Defence of Rights.<sup>9</sup> In this context the effect of Bolshevik “shura” system and the October Revolution of 1917, which was closely related during the War of Independence, is given credit to effect both the pre constitution making period and the 1921 Constitution itself.<sup>10</sup> In addition, it is argued that the concepts of “populism”, “Bolshevism” and “self-determination” are used in line with “local autonomy”, and that the idea of populism is not only related to Bolshevism but also to autonomy. As a matter of fact, the emphasis on autonomous council emerges in each of the populism programs that cast about for the associations destined after the opening of the Grand National Assembly.<sup>11</sup>

As regards to the local governments provisions, it has to be pointed out that the Kurdish issue was also linked to that preference.<sup>12</sup> In this context, local government was expressed as the “method of living together” of the Turkish and Kurdish populations.<sup>13</sup>

However, although autonomy was given wide scope under the constitution, it did not have a common application due to the inability to convene the provincial and sub-district councils specified in the Constitution.<sup>14, 15</sup>

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8 Tanör (n 1) 258-263.

9 ibid 266-267.

10 Bülent Tanör, *Kurtuluş, Kuruluş* (Cumhuriyet Kitapları 2009) 153; Sevinç - Demirkent (n 7) 20; Tolga Şirin, “Inspiration of Turkey’s 1921 Constitution: October Revolution”, <https://www.tolgasinir.com/post/1921turkishconstitution>, last accessed November 1, 2022.

11 Sevinç - Demirkent (n 7) 21.

12 Mustafa Kemal, *Eskişehir-İzmit Konuşmaları 1923* (3rd edn. Kaynak Yayınları 1993) 105.

13 Sevinç - Demirkent (n 7) 40.

14 Oktay Uygun, “Yerel Yönetim Reformu için Anayasal İlkeler” (2015) 2 Strategic Public Management Journal 1, 1-27.

15 One of the prominent features of the 1921 Constitution is that it gave a wide place to local governments and regulated local governments in terms of autonomy. In the 1921 Constitution, which does not include the provisions on fundamental rights and freedoms and the judiciary in the material sense, the fact that local governments are given such a wide place gives the impression that the understanding of autonomy in the administration has a wide scope. The basis of this is that the Grand National Assembly has made the understanding of populism dominant. (Tanör (n 1) 266). However, although autonomy is given wide coverage in terms of legal regulation, it has not been a common application area due to the inability to convene the provincial and sub-provincial councils specified in the Constitution. (Uygun (n 15) 7).

After pointing out the unique features of the 1921 Constitution there comes out a question as regards how such features affect the constitutional value/nature of the 1921 Constitution. If such a question is posed the answer has to be given by examining whether the 1921 Constitution constitutes a constitution or not.

## II. What Constitutes a Constitution? Does 1921 Constitute One?

Rules regarding the establishment and organization of states, governmental bodies and their relations, along with fundamental rights and freedoms consist a constitution. The components also underline the material sense of a constitution. In light of the features of 1921 Constitution, it has to be put forth that it comprises provisions regarding sovereignty, functioning of the parliament and provincial and local authorities and governmental system. However, the 1921 constitution lacks fundamental rights and freedoms and rules regarding judiciary. From that point of view, material constitution issue might be questioned as the 1921 Constitution came with shortfalls as regards to the fundamental rights and freedoms and judiciary. However, the period the 1921 Constitution was introduced might give a clue to answer such a question as those days were featured by the War of Independence. Hence, the 1921 Constitution emphasized governmental institutionalization and endeavors to establish a new state.<sup>16</sup>

At this point, the feature of the 1921 Constitution as a “double constitution period” should also be evaluated. The period of the 1921 Constitution is considered as “double constitution period” under the Turkish constitutional literature.<sup>17</sup> Although, a detailed evaluation was not included in terms of this “double constitution period” it has been generally accepted that the provisions of the 1876 Constitution, which did not conflict with the 1921 Constitution, were still in effect.

It was claimed that the 1921 Constitution abolished the “raison d’être” of the 1876 Constitution due to the concept of sovereignty, the fact that all state apparatuses were tied to elections, and the legislative, executive and judicial powers were gathered in the parliament. Due to the conditions of the period, the repeal of the 1876 Constitution was not expressly stated, it was not legally abolished, yet, in the letter conveyed by Mustafa Kemal Pasha to the Grand Vizier Tevfik Pasha, it was stated that the provisions of the 1876 Constitution, which did not contradict the 1921 Constitution, were in effect.<sup>18</sup> Finally the 1876 Constitution was abolished by the 1924 Constitution article 104.

However, in the context of “double constitution”, apparently at that time period there existed two different constitutions; yet, in terms of the spirit of the new

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16 Tanör (n 1) 247.

17 Tarık Zafer Tunaya, *Devrim Hareketleri İçinde Atatürk ve Atatürkçülük* (İstanbul Bilgi Üniversitesi Yayınları 2002) 78; Tanör, (n 1) 268.

18 Tanör, (n 1) 267.

constitution, which forms the institutional foundations of a new state and radically changes the understanding of sovereignty, there existed only 1921 Constitution.<sup>19</sup>

It is obvious that the 1921 Constitution is not a follow-up of the 1876 Constitution besides it benefits from the achievements of Ottoman constitutional developments. Thus, such benefits could also be considered to amount to inspiration. Surely, there existed two separate governments (one being Ankara and the other being Istanbul) with two distinct constitutions having unlike legitimate basis where provisions of these constitutions did not overlap, they ran in parallel lines.

The “*double constitution period*” also has to be examined in the light of the concept of “*deconstitutionalization by revolutions*”. It is accepted under the “*deconstitutionalization by revolutions*” concept that after revolutions constitutions are abolished and only the provisions not related with state institutions and organizations might be effective at a statutory level. In general, provisions regarding fundamental rights and freedoms and criminal law principles are accepted to be in force. Thus, provisions of constitutions left behind by revolutions become deconstitutionalized with the effect of revolution.<sup>20 21</sup>

In addition, it has to be put forth that in the 1921 Constitution, there existed no provision referring to the 1876 Constitution in any way, including its effectiveness and abolishment.<sup>22</sup> In that sense, the “Discrete Clause” (“Madde-i Münferide”) which explicitly articulates that the 1921 Constitution be effective from the date of its release without any reference to any former legal instrument including the 1876 Constitution, has to be considered. Under such scheme, it might be asserted that the provisions of the 1876 Constitution that are not in contradiction with the 1921 Constitution be effective only at the statutory level.

As stated above, the contribution of the constitution to the struggle for national independence was prioritized over the need for special regulation of fundamental rights and freedoms. Again, it should be noted that the perception of fundamental

19 In the same parallel see; Osman Can, “1921 Anayasası’nın 100. Yılı: Bir İstisnai Başarı ve Dramatik Başarısızlık Hikayesi” (2021) 38 (1) Anayasa Yargısı Dergisi 127, 136 ft. 22. For a different view see; Mustafa Erdoğan, “Anayasacılık ve Demokrasi Açısından 1921 Teşkilat-ı Esasiye Kanunu”, <http://erdoganmustafa.org/anayasacilik-ve-demokrasi-acisindan-1921-teskilat-i-esasiye-kanunu/>, last accessed July 1, 2022.

20 Kemal Gözler, *Kurucu İktidar* (2<sup>nd</sup> edn, Ekin 2016) 69-70.

21 A common example for such under Turkish Law is the article 1 of the Law on the Constitutional Order (Law No 2324, date 27.10.1980) that entered into force after 1980 coup d’état, which gives a way to some provisions of the 1961 Constitution be effective until a new constitution enters into force.

22 “In fact, an example for such could be pulled out from 1958 French Constitution that does not involve social and economic rights, yet it refers to the 1946 Constitution for such.

In other words, the preamble of the 1958 Constitution explicitly refers to the preamble of the 1946 French Constitution which brings us to an end on the effectiveness of the provisions covering civil, political and social rights during the 1958 French Constitution period. Such relation in between the 1958 Constitution and 1946 Constitution could be named as complementary and continuity. Nevertheless, it is hard to say that same argument applies to the case of 1876 Constitution and the 1921 Constitution. Hence, mentioned two different constitutions reflects and represents two distinct states’ institutional spirit.” See; <https://blog-iacl-aide.org/centenary-of-the-turkish-constitution/2021/3/9/the-turkish-constitution-of-1921-an-assessment-of-the-double-constitution-period-f712f>, last accessed August 14, 2022.

rights and freedoms has to be considered indispensable in a constitution, and that it had not yet been embraced or rooted in the Ottoman Empire, especially in the context of a struggle for independence.

Under the 1876 Constitution<sup>23</sup>, fundamental rights and freedoms was regulated under the title of “The General Law of the Subjects of the Ottoman State” (“Tebaa-i Devlet-i Osmaniye’nin Hukuk-ı Umumiyesi”). Under this scheme, citizenship<sup>24</sup> and religious freedoms, right to liberty and security, freedom of expression had been granted. Additionally, rights and freedoms in the sphere of economic and social life such as right to education, right to enterprise and the principle of legality of taxation had also been regulated.

Although the 1921 Constitution<sup>25</sup> lacks any provision as regards to the judiciary it offered rights and freedoms on procedural issues. In article 23, the guarantee of a legal judicial process is provided, and it is regulated that a person cannot be compelled to go to another court prescribed by law. In addition, under the title of “Mehakim” of the 1876 Constitution, there are some regulations that could be discussed within the scope of the right to a fair trial in today’s sense. For example, the principle of publicity of the proceedings was regulated under the Article 82, and that courts cannot be established other than the existing courts was set forth under the Article 89, and in this context, the principle of natural judge, the right of defense was enshrined under the Article 83, and the guarantee of judges and prosecutors was regulated under the Articles 81 and 91.

However, under this legal fragment there existed numerous contradictions on provisions regarding the fundamental rights and freedoms that had been granted by the 1876 Constitution. The guarantees brought by the 1876 Constitution in the field of the judiciary had not been followed, and therefore a weakness had emerged in the protection of fundamental rights and freedoms. Especially in this period, the formation and functioning of the Independence Courts contradicted the principles of the independence of judges and legal judge assurance. For these reasons, under the 1921 Constitution, a significant piece of legislation was enacted regarding judicial guarantees and the right to personal freedom and security. In addition to article 203 of the current 1858 Ottoman Penal Code, the 10-item Personal Freedom Law (“Hürriyet-i Şahsiye Kanunu”)<sup>26</sup> proposal was submitted on April 18, 1921 however, adopted in the form of 5 articles on February 12, 1923.

23 For an unofficial translation of the text in English see <https://iow.eui.eu/wp-content/uploads/sites/18/2014/05/Brown-01-Ottoman-Constitution.pdf>, last accessed November 20, 2022.

24 The article 8 of the 1876 Constitution defined the citizenship as “(A)ll subjects of the empire are called Ottomans, without distinction whatever faith they profess; the status of an Ottoman is acquired and lost according to conditions specified by law.”

25 For an unofficial and selected translation of the text in English see <http://genckaya.bilkent.edu.tr/1921C.html>, last accessed November 20, 2022.

26 For detailed information on Hürriyet-i Şahsiye Kanunu see; Asaf Özkan and Esra Taşdelen, “Türkiye’de Kişi Hak ve Özgürlüklerinin Gelişimi Bağlamında Hürriyet-i Şahsiye Kanunu” (2019) 8 (1) Atatürk Dergisi 53, 53-78; Can (n 21) 154-157.

Under the Personal Freedom Law, among other issues, the violation of the principle of natural judge and the right to a fair trial, and those who participated in these crimes being sentenced to imprisonment from one year to three years and to life imprisonment was covered. It was regulated that they will have been punished with the penalty of dismissal from rank and civil service. In addition, it was stipulated that the personal damage will have been compensated.

In this period, based on many examples, it was observed that the guarantees brought by the 1876 Constitution in the field of the judiciary were not complied with; therefore a weakness appeared in the protection of fundamental rights and freedoms. Especially the formation and functioning of the Independence Courts contradicted the principles of independence of judges and legal judge assurance. For these reasons, the importance of the Personal Freedom Law will be better understood while taking into account the time period.

### **III. What could be inherited from the 1921 Constitution?**

The 1921 Constitution, has an important role in the history of the Turkish Constitutionalism as it is a legal document in which the first phases of the important constitutional principles and founding values that have come down to the present day could have been found. It carried extremely advanced steps compared to the conditions of that specific period both in terms of its understanding of sovereignty, introducing a new form of government, and focusing on decentralization. In addition to these features, another important element is related to the role of the primary constituent power in the constitution-making process. Under an assessment as regards the constitution-making processes until today the 1921 Constitution has a unique quality in terms of being in line with democratic procedures. However, it emerged under the conditions of the struggle for independence.<sup>27</sup>

The 1921 Constitution, which provides the basis of the following constitutions of the Republic of Turkey, is an important text that includes previous constitutional experience, repertoire and progress from Ottoman constitutional period.

The 1921 Constitution comes to the forefront with the ability of establishing a constitutional accumulation in Ottoman Turkish constitutional movements, both benefitting from previous experience and forming a basis for future constitutional movements, by addressing and implementing significant constitutional principles for the first time.

In this context, the idea of “democracy” and with reflection of such as a constituent assembly, first steps were taken towards the institutionalization of

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27 Narin (n 6) 85.



democratic institutions. Even under extraordinary circumstances the guidance of law and democracy culture not being laid aside indicates the sensibility of the 1921 Constitution as regards to “solve the crisis with democracy”<sup>28</sup>.

As regards to the local governments, the 1921 Constitution pointed to a different political philosophy from the Ottoman-Turkish administrative tradition. In that context, the formation of the organization model based on the sub-district is interpreted as the constitutionalization of the reaction of Anatolia against the center.<sup>29</sup>

During the discussion of the articles of the 1921 Constitution in the Parliament, the positive opinions of the majority of the deputies on the principle of decentralization draw attention. Contrary to the practice up to that period, it was stated that an order from the local power to the center would be more appropriate.<sup>30</sup>

Besides, allowing local governments a wide setting in the 1921 Constitution, creating assemblies elected by the people in local governments, and transferring important powers and duties of the center to local governments should be considered as a step in the realization of national sovereignty.<sup>31</sup>

The local congress governments, which prepared the environment in which the 1921 Constitution emerged, are also the starting point of the understanding of “resolving the crisis with democracy”. In this context, it can be said that the understanding of democratic participation and the power of representation is extremely broad provided that it is evaluated within the framework of the conditions of the period.<sup>32</sup> As a matter of fact, thirty congresses were convened between 05.11.1918 and 08.04.1920, which were based on the representation of different geographical regions throughout the country and constituted “examples of spontaneous direct participation”<sup>33</sup>. The main purpose of the local congresses and their contribution to the following process was to reveal the will of the people. This was reached through the congresses, democratic discussions and joint decision-making processes.<sup>34</sup> Another contribution of congresses to democracy was seen in the 1919 election. It could be said that the culture of democracy developed through congresses during this period was reflected in the last Ottoman parliament that was formed with the 1919 elections. This had a positive impact on the first assembly, which also included the members of the last

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28 Tanör (n 1) 288, Tanör (n 10) 75.

29 Narin (n 6) ft. 27, Tanör (n 1) 265, Rıdvan Akın, “Birinci Türkiye Büyük Millet Meclisi’nin 1921 Teşkilat-ı Esasiye Kanunu Lahiyasını Müzakeresi” in *Tarik Zafer Tunaya’ya Armağan* (İstanbul Barosu Yayınları 1992) 357.

30 Konan (n 3) 470.

31 ibid 472.

32 As for the participation the issue has to be considered under the conditions of those times in terms of electoral rights, i.e. universal suffrage. For a gender based e-assessment on this issue see; <https://blog-iacl-aide.org/centenary-of-the-turkish-constitution/2021/3/23/gender-of-the-constituent-power-of-the-turkish-constitution-of-1921>.

33 Tevfik Çavdar, *Türkiye’nin Demokrasi Tarihi 1839-1950* (6th edn, İmge 2019) 162.

34 ibid 183.

Ottoman assembly, in the context of democratic participation. In this context, the 1919 elections ensured public participation in the axis of the War of Independence.<sup>35</sup>

Apart from the perception of democracy, it may be necessary to evaluate the characteristics of the Grand National Assembly as a constituent assembly in the making of the 1921 Constitution. Although the will that created the 1921 Constitution was not formed only to make a constitution, it should be considered as a constituent assembly in terms of revealing the basic principles of a newly established state.<sup>36</sup> It is seen that the founding leaders had concerns about legality and legitimacy during the establishment of the new state, which is combined with the concern for democracy.<sup>37</sup> As a matter of fact, in the circular that Mustafa Kemal sent to Anatolia after the occupation of Istanbul, he called for the convening of the Assembly of Establishment<sup>38</sup>, and he explained the purpose of this statement as the assembly to be equipped with powers to realize the regime change. However, later on, this expression was abandoned and the expression “assembly with extraordinary powers” was preferred. Here, it could be evaluated that there was a perception of a constituent assembly formed by democratic methods in terms of both legal and sociological representation<sup>39</sup> in the context of the constitution-making technique, even under war conditions. In this context, the construction process of the 1921 Constitution is very unique in terms of the fact that these conditions under the occupation conditions produced democracy within their own possibilities, and in Tanör’s words, it almost created a democracy of war<sup>40</sup>, and that it was evaluated as a civilian constitutionalism<sup>41</sup> experience under the occupation conditions.

## Conclusion

After assessing the 1921 Constitution in a general framework, it is necessary to reveal its aspects which we might reach and benefit from for today’s constitution making processes/constitutionalism.

It draws ones attention that it was an environment in which two states, one of which is ending and the other being newly established, and their founding principles were dramattically contradicted, co-existed together. Additionally, the newly established

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35 ibid 192.

36 For detailed information on the constituent assembly see; Sinem Şirin, “1921 Teşkilatı Esasiye Kanunu Çerçevesinde Kurucu İktidar Tartışması”, (2019) 8 (16) Anayasa Hukuku Dergisi 359, 369-388.

37 Yusuf Tekin and Şeref İba, “Görüşme ve Yasama Yöntemi Bağlamında 1921 Anayasasının Kanunlaşma Süreci” (2020) 53 (2) Amme İdaresi Dergisi 1, 17.

38 Faik Reşit UNAT, “Atatürk’ün Toplamak İsteddiği ‘Meclis-i Müessisan’”, <https://belleten.gov.tr/tam-metin-pdf/1282/tur> , last accessed June 2, 2022.

39 Tarık Zafer Tunaya, “TBMM’nin Kuruluşu ve Siyasi Karakteri” (1958) 23 (3-4) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 227, 231-232.

40 Tanör (n 10) 75, 115.

41 Tanör (n 1) 288.

state did not left behind the constitutional accumulation of the past even during the struggle for the independence. From this point of view, if an inspiration has to be gained for today's constitutional processes from the 1921 Constitution times, in cases where a new system, a regime or a legal framework is to be created, the existing knowledge might be guiding and even complementary; considering that the 1921 Constitution benefitted from the provisions of the 1876 Constitution -at a level of law- that did not conflict with the 1921 Constitution and inspired from the experience of the previous period within the scope of both election and democracy experience.

In addition, although fundamental rights and freedoms were not covered under the 1921 Constitution, the perception of fundamental rights in the previous period had been preserved at a level of law. And even further, it could be asserted that, the philosophical ground was prepared for the understanding and regulations of human rights for the future constitution making periods. This perception is a result of the understanding of national sovereignty, the abolition of the sultanate, as well as the proclamation of the republic and thus the naming of the new regime. In this context, even the fundamental rights and freedoms were not covered even under the struggle for independence period, the importance attributed and the guarantees granted by law to fundamental rights and freedoms should shed light on the present day as an issue that should be handled with care and sensitivity in every period since fundamental rights and freedoms is one of the most important elements of the constitutional system.

The key point in benefiting from the accumulation of previous constitutions is not to ignore the characteristics of the rules that formed the framework of the principles of administration and fundamental rights in accordance with the needs of existing social dynamics. New rules and new institutions could be integrated into the system according to the needs of society; however, the spirit of the constitutional structure has to be kept. In this respect, constitutional accumulation must be taken into account while meeting the social dynamics and needs.

Today, if the 1921 constitutionalism is to be inspired, attention should be paid to the reflexes in the formation process of the constitution, but the needs and social structure shaped by today's conditions should also be prioritized. However, it should be kept in mind that the essential founding element peculiar to this period did not appear in the constitutions of the next period, and it has been observed that the spirit of the 1921 Constitution has been misjudged in the recent past.

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