

The ideas of Babanzade İsmail Hakkı regarding the Ottoman Constitution: Sovereignty, Jurisprudence, and the Caliphate

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Unlike other Islamic polities that were colonized by the Western powers, the Ottoman Empire remained independent until the very end. Therefore, the relationship between Islamic law and the Empire's public law became an important topic in Ottoman jurisprudence, especially after the Young Turk Revolution of 1908, when the principle of national sovereignty (*hakimiyet-i milliye*) was proclaimed as a basis of the state's new constitution. This article addresses the views of Ottoman jurists regarding national sovereignty by analyzing Babanzade İsmail Hakkı's *Hukuk-ı Esasiye*, one of the first textbooks on Ottoman constitutional law.

While continuing his predecessors' endeavors to defend Ottoman sovereignty, İsmail Hakkı introduced a new approach to understanding the character of the Ottoman Caliphate. To wit, sovereignty derives solely from the nation which is one and indivisible. The state is a juridical person representing the nation's natural sovereignty. Consequently, the monarch, namely, the Sultan-Caliph, was no more than an organ of the state.

İsmail Hakkı discussed the development of parliamentarism in a way that enabled him to construct an alternative approach to world legal history. While in the West parliaments were the product of feudal privilege, in the East there was no such privilege, due to the fact that Islamic law dictated that all men were equal and also that the Caliphate was, in essence, nothing but a form of universal suffrage, through which the nation's will was expressed in the form of *bay'a* (oath of allegiance). Therefore, for İsmail Hakkı, there was no reason to respect the three "privileges" that had been introduced into the Ottoman state governance since the late eighteenth century—the Capitulations (*imtiyazat-ı ecnebiye*), autonomous provinces (*eyalat-ı mümtaze*), and the religious

privileges of non-Muslims (*imtiyazat-ı mezhebiye*) — because they were contrary to the principle of equality among Ottomans and formed exceptions to the rules of a sovereign state system.

While he took it for granted that the Ottoman nation was composed of various ethnic and religious groups, İsmail Hakkı kept silent on the question of how to legally define the multi-ethnic and multi-religious character of the Ottoman constitution. He condemned the religious/ethnic quota system because, according to him, the Ottoman parliament represented the will of the one and indivisible nation as a whole. Religious/ethnic quotas contradict this fundamental basis of constitutional law. This attitude of Babanzade İsmail Hakkı foreshadowed the subsequent legal tradition of the Turks to legitimize their Republic, which they alleged was ethnically homogenous.