

National and original: a brief note on the lack of direct foreign influences on the Turkish Constitution of 1924

di Haydar Burak Gemalmaz

Abstract: *Nazionale e originale: una breve nota sulla mancanza di influenze straniere dirette nella Costituzione turca del 1924* - The present study analyzes whether there were direct foreign influences on the 1924 Constitution or not. To this end, firstly, it focuses on the westernization movement discussing its indirect effects on the 1924 Constitution in the context of law reform. While examining foreign influences on the 1924 Constitution, apart from the foreign influences that may have directly inspired the Constitution, the reception of other the basic laws is analysed.

Keywords: Turkey, constitutional cross-fertilization, constitution-making process, westernization, foreign law

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1. Introduction

Bülent Tanör, one of the important scholar of the Turkish Constitutional History, examines the great transformation in the political and legal field starting from 1918 in two parts. The first part is the restoration of independence with the National War of Independence, and the second part is the reform process that took place until the 1940s. While examining 1924 Constitution¹, it would not be wrong to say that we basically understand the constitution of the revolutionary process that took place after the National War of Independence. In this context, the issue of foreign influences in the 1924 Constitution, which is also the subject of this article, can not be evaluated independently of the revolution process in question. The main reason for this is the determination of the main purpose of the reform process, which Tanör calls "Establishment", as modernization, and this is expressed in the sense of "Westernization", and progressing with the method of rationality and positive science.² It should also be noted that,

¹* Prof. Dr., Istanbul University Faculty of Law, Department of Human Rights Law, Istanbul/Turkey, b_gemalmaz@yahoo.com

^{**} Asst. Prof. Dr., Yaşar University Faculty of Law, Department of Constitutional Law, Izmir/Turkey, aslitopukcu@gmail.com; asli.topukcu@yasar.edu.tr

English text of the 1924 Turkish Constitution can be found in E.M. Earle, *The New Constitution of Turkey*, in 40 Political Science Quarterly (1925),89-100.

² B. Tanör, *Kurtuluş-Kuruluş*, 5th Edition, İstanbul, 2003, 182.

although the Turkish War of Independence is a war against imperialism³, it also contains a unique structure in which western values are not rejected.⁴

It is a generally accepted view that the 1924 Constitution, the 100th anniversary of which we are celebrating, had been influenced by various constitutions and constitutional developments in the Western world, especially the 1921 Polish Constitution. In this study, it is demonstrated that this view is not accurate and it is claimed that the 1924 Constitution was an original and national constitution that was not directly influenced by Western examples, although Turkey preferred the reception method in terms of creating law at that time.

In this context, firstly, the westernization movement should be revealed. What should be understood from the concept of westernization and its indirect effects on the 1924 Constitution shall be discussed. The effect of westernization on other basic laws in the context of law reform shall also be demonstrated. While examining foreign influences on the 1924 Constitution, apart from the foreign influences that may directly inspired the Constitution, the concept of reception in the basic laws also has an important place. Finally, it will be tried to set forth whether there were direct foreign influences on the 1924 Constitution or not.

2. The Concept of Westernization and its Impact on the 1924 Constitution

2.1 The Role of Westernization in the Turkish Revolution

The concept of westernization constitutes one of the basic characteristics of the Turkish Revolution. In this context, it should first be stated how the phenomenon of westernization should be evaluated. In addition, the similarities and differences between the revolutions in the western world and the Turkish Revolution should also be discussed.

The idea of Westernization did not emerge suddenly with the Turkish Revolution and has a history dating back to the 19th century. Especially in the Ottoman Empire, the opening of high schools that provided education based on positivist foundations since the 1880s contributed to the raising of a generation close to western and secular views.⁵

The Turkish Revolution has been discussed by some authors in the context of relations between religion and state in terms of modernization. In this context, secularization was accepted as the basis of the Turkish Revolution and the idea that modern institutions and rules were the basis of modernization as opposed to traditional institutions and rules was put

³ Earle, *ibid*, 73-74; N. Kaymaz, *Türk Kurtuluş Savaşı'nın Tarihsel Konumu ve Niteliği*, in 40 *Belleten* (1976) 599-616; B. Oran, *Kurtuluş Savaşı ve Anti-Emperyalizm*, in F. Kadıbeşgil, *Mustafa Kemal'i Anlamak*, Ankara, 1981, 26-31.

⁴ İ. Giritli, *The Structure and Characteristics of The Turkish Constitution*, in 10 *Annales de la Faculté de Droit d'Istanbul* (1960) 363.

⁵ H. İnalçık, *Bürokrasi, Batılılaşma, Laikleşme*, in 50 *Türkiye Barolar Birliği Dergisi* (2004) 61-63.

forward.⁶ Some authors have emphasized that the enlightenment and revolution processes previously experienced in the West did not occur in the historical and simultaneous geography of Turkey. They consider the adoption of the results of these processes into the main foundations of the newly established state as the period of westernization. According to this view, westernization is accepted as, in a sense, the "importation" of the results of the revolutions in the West.⁷ In this context, it has been stated that the Turkish Revolution was a modernization movement, meant the reshaping of the nation.⁸

In this context, it is necessary to reveal the difference between western revolutions and the Turkish Revolution. It has been determined that the modern state in Turkey emerged in a different way from the West, that modernization took place in the West as a result of the masses changing the traditional society over a long period of time, and that the revolution took place in Turkey as an intellectual class movement.⁹

To make a brief evaluation, when we look at it from the perspective of the French Revolution, it is mostly limited to political institutions.¹⁰ On the other hand, the Turkish Revolution directly affected and differentiated both political institutions and social structure. As a similar point, we can give an example of the fact that the ground of the intellectual structure was ready before the revolution. Just like the intellectual wealth accumulated before the French Revolution, the process that developed since the Ottoman period also contributed to the environment that paved the way for the Turkish Revolution.¹¹

Another similarity that can be drawn for France can be considered in terms of modernization being largely carried out by the state. One of the modernization experiences implemented by the state is considered French modernization. Since the Colbert period, it has been largely the state that has enabled modernization and industrialization, partly through the arms industry.¹²

In addition, the Turkish Revolution and its modernization were influenced by the philosophical foundations of the bourgeois democratic revolutions of the 18th and 19th centuries, as they were based on Western philosophy. The generation that includes Mustafa Kemal Atatürk and his friends is well versed in the views of the philosophers who laid the foundations of the French Revolution.¹³ The revolutionary and Jacobean traditions were generally quite influential, and it is not a coincidence that the motto "Justice" for "Fraternity" has been adopted in this period.¹⁴ In this context, it is possible to describe Atatürk's understanding of the state as an

⁶ N. Berkes, *Türkiye'de Çağdaşlaşma, Yayına Haz. Ahmet Kayaş*, İstanbul, 2002, 17-23.

⁷ E. Kongar, 21. *Yüzyılda Türkiye: 2000'li Yıllarda Türkiye'nin Toplumsal Yapısı*, İstanbul, 2015, 243.

⁸ İ. Giritli, *Modernleşme İdeolojisi Olarak Atatürkçülük*, in 4 *Atatürk Araştırma Merkezi Dergisi* (1988) 290

⁹ H. İnalçık, *Atatürk ve Türkiye'nin Modernleşmesi*, in 52 *Belleten* (1988) 992.

¹⁰ P. Gentizon, *Mustafa Kemal ve Uyanan Doğu*, Ankara, 1994, 164.

¹¹ See M.V. Gürbüz, *Genesis of Turkish Nationalism*, 67 *Belleten* (2003), 497-499.

¹² A. Touraine, *Başka Türü Düşünmek*, Translator: M. Morali, İstanbul, 2008, 50.

¹³ Tanör, *ibid*, p. 181.

¹⁴ F. Ahmed, *The Making of Modern Turkey*, London and New York, 2003, 76.

individualist, libertarian and democratic understanding based on the principles of 1789.¹⁵

Another comparison can be made with the Bolshevik Revolution, which is similar in time period. However, the only similarity between the 1917 Bolshevik Revolution and the Turkish Revolution is its closeness in terms of timing. One of the distinctive features of the Turkish Revolution, was the concern for legitimacy and establishing a legal basis for the reform process.¹⁶ However, such a concern is not noticeable in the Bolshevik Revolution.

In addition, while the French Revolution represents a change largely related to the political sphere, the Bolshevik Revolution corresponds to a revolution related to the social sphere. It should be noted here that there is also a struggle for independence in the background of the Turkish Revolution. In this respect, it differs from the French and Bolshevik revolutions, which had been a class struggle in their background. The general similarity between these revolutions is in terms of creating a new individual model. The Turkish Revolution, which was concerned about creating an individual different from the Ottoman one, is similar in this sense to the French and Bolshevik revolutions that wanted to create the new French and new Soviet or socialist individual.¹⁷

Finally, in the context of westernization, it should also be noted the constitutional amendment made in 1937 to the 1924 Constitution. In this context, Article 2 of the Constitution states: “The State of Turkey is republican, nationalist, populist, statist, secular and revolutionary. (...)”.¹⁸ The principle of reformism, which is also included in the Constitution, has become an expression of the aim of reaching the “level of contemporary civilization”, and what is meant by this is “western civilization”.¹⁹

If we need to make a general evaluation, the Turkish Revolution represents a structure in which the political sphere and the social field are handled together. It is a process that affects the individual, society, political institutions and economy in every sense and reshapes society.²⁰ The war of independence lies in the background of the revolution. In this respect, the Turkish Revolution differs from many revolutions in history.

2.2 Institutional Steps Towards an Original and National Constitution

Starting from 1918 until the adoption of the 1924 Constitution and afterwards, the political and social revolution in Turkey started with an anti-

¹⁵ A. Göze, *Siyasal Düşünceler ve Yönetimler*, 12th Ed., İstanbul, 2009, 373-380.

¹⁶ S. Kili, *Mahmut Esat Bozkurt, Hukuk Devrimi ve Çağdaşlaşma*, in *2 Çağdaş Türkiye Tarihi Araştırmaları Dergisi* (1994) 279.

¹⁷ Ahmed, *ibid.*, 77.

¹⁸ See Teşkilatı Esasiye Kanununun Bazı Maddelerinin Değiştirilmesine Dair Kanun, Kanun, No. 3115, Accepted on February 5, 1937, Official Gazzette No. 3533, Date: February 13, 1937.

¹⁹ T.Z. Tunaya, *Ideologic Character of the 1924 Constitution*, in *10 Annales de la Faculté de Droit d'Istanbul* (1960) 129-130.

²⁰ Gentizon, *ibid.*, p. 164.

imperialist structure at the first stage and then evolved into a structure with a democratic character.²¹ While some of these developments started before the enactment of the 1924 Constitution, some of them took place while the 1924 Constitution was in force. These institutional steps can be considered developments of national will and sovereignty. In order to better understand the structure of the Turkish Revolution in terms of approaching the western culture and westernization, it would be appropriate to briefly examine this process.²²

2.2.1 Abolition of the Sultanate

One of the most distinctive features of the Turkish Revolution is that the power that carried out the revolution had a concern for legality and legitimacy. In this context, efforts are made to bring about political and social changes on the basis of this legitimacy idea and by making legal and social preparations. It is a result of this effort that the 1921 Constitution, which was in force during the National War of Independence, was drafted as a transitional constitution and a political duality emerged between the Istanbul Government and the Ankara Government.²³

On the one hand, the existence of the Turkish Grand National Assembly, which legally and *de facto* implements the principle of national sovereignty, on the other hand, the continuing institution of sultanate clearly reveals this duality.

The main event that ignited the radical change in the institution of sultanate was the invitation both of the Istanbul and Ankara governments to the Lausanne Peace Conference. The representation issue in Lausanne turned into a sovereignty and a constitutional issue and became the driving factor for the abolition of the sultanate.²⁴ However, it is also a very important reason that the First World War resulted in the collapse of some authoritarian monarchies and dynasties in Europe.²⁵

The decision makers of the Turkish Revolution also showed a cautious stance in terms of the abolition of the sultanate. In this context, the sultanate was abolished not by a law, but by a parliamentary decision, and the caliphate authority was protected in the first place by separating the caliphate from sultanate position.²⁶ However, in line with the ultimate aims of the Turkish Revolution, which aimed at democracy and republicanism, the caliphate would also be completely abolished after a while.²⁷

²¹ Earle, *ibid.*, p.80; Tanör, *ibid.*, p. 183.

²² A.F. Başgil, *A Summary of Constitutional Developments in Turkey And On The Historical And Political of The Present Constitution*, in 15 *Annales de la Faculté de droit d'Istanbul* (1960) 85.

²³ N. Arat, A. Topukcu, *The 1921 Constitution and Beyond: Any Inspiration After 100 Years?*, in 71 *Annales de la Faculté de Droit d'Istanbul* (2022) 27-39.

²⁴ Başgil, *ibid.*, 91; B. Tanör, *Osmanlı-Türk Anayasal Gelişmeleri*, 11th Ed., İstanbul, 2004, 277-278.

²⁵ Tanör, *Kurtuluş-Kuruluş*, 186.

²⁶ Tanör, *Osmanlı-Türk Anayasal Gelişmeleri*, 278-279. For the English translation of the text of the Turkish Parliament, see Earle, *ibid.*, 8-85.

²⁷ Başgil, *ibid.*, 93.

It should also be noted that the abolition of the sultanate was an important development in measuring the reaction of the people to the abolition of a traditional institution, and was welcomed in terms of the continuity of the revolution.²⁸ In fact, with an amendment made in the 1921 Constitution, the republican regime was named and placed on a constitutional basis.

2.2.2 Abolition of the Caliphate

One of the most important effects of the abolition of the sultanate, apart from reinforcing the sovereignty of the nation and laying the groundwork for the republican regime, is that the political authority of the caliphate has disappeared with the separation of the sultanate and the caliphate.

The abolition of the caliphate, whose political authority weakened, also laid the groundwork for the structuring of a state based on rule of law, universal values and many reforms in the political and social field.²⁹ It should also be noted that the abolition of the caliphate was not met with a serious negative social reaction.³⁰

The caliphate was abolished with the Article 1 of Law No. 431³¹ adopted on March 3, 1924. The importance of this development in the constitutional context must first be determined in terms of nationalization and national sovereignty. The new state, which was established on the basis of national sovereignty, does not need the understanding of ummah (Islamic religious community, Islam nation) and Islamic unity as are in the Ottoman Period. On the contrary, the abolition of the caliphate will contribute to the process of nationalization. Thus, abolition of the caliphate is seen as the completion of Turkish Revolution.³²

Secondly, an evaluation can be made in the context of the state being purged of a religious institution. It is not possible to interpret this development as accepting the principle of secularism. In this sense, the religion of the state was Islam, and it still existed as a constitutional rule. However, Law No. 431 and two other laws³³ enacted at the same time represent a step towards to the “de-religion” and secularization of the state.³⁴ Indeed, after the conditions for the establishment of the nation-state were

²⁸ Tanör, *Kurtuluş-Kuruluş*, 194.

²⁹ Giritli *ibid.*, 264; İ. Yücel, *Fransız Belgelerinde Son Halife Abdülmecid ve Türkiye’de Hilafetin Kaldırılması*, in 61 *Ankara Üniversitesi Türk İnkılap Tarihi Enstitüsü Atatürk Yolu Dergisi* (2017) 468.

³⁰ See S. Akgün, *Yeni Türkiye Cumhuriyetinde Halifelik Örgütünün Yersizliği*, in 14 *Tarih Araştırmaları Dergisi* (1981) 61-67.

³¹ Hilafetin İlgasına ve Hanedan-ı Osmani’nin Türkiye Cumhuriyeti Memaliki Haricine Çıkarılmasına Dair Kanun, No. 431, Accepted on March 3, 1924, Official Gazzette No. 63, Date: March 6, 1924.

³² Earle, *ibid.*, p.86.

³³ See Şeriye ve Evkaf ve Erkan-ı Harbiye-i Umumiye Vekaletlerinin İlgasına Dair Kanun, No. 429, Accepted on March 3, 1924, Official Gazzette No. 63, Date: March 6, 1924; Tevhid-i Tedrisat Kanunu, No. 430, Accepted on March 3, 1924, Official Gazzette No. 63, Date: March 6, 1924.

³⁴ Tanör, *Osmanlı-Türk Anayasal Gelişmeleri*, 286-287.

officially established³⁵, one of the focal points of the revolution in the next period was the secularization of the state and its removal from religious affairs.

2.2.3 Laicism

Before the establishment of the Republic of Turkey, the Ottoman Empire was ruled by an absolute monarchy until the 19th century, the state was a theocratic state model based on Islamic religious rules³⁶ with the partial existence of traditional law (*örfî hukuk*).

The first constitution 1856 Kanun-i Esasi of the Ottoman Empire was defined Islam as the religion of the state. However, the Kanuni-i Esasi stipulated that the state would protect the free practice of professed beliefs in the Empire and support the religious privileges granted to various institutions, provided that public order and morality were not interfered with (Article 11).

With the Turkish Revolution in 1922, there was a real evolution regarding freedom of religion. In the process of the Turkish Revolution, which is a social and political project, the principle of laicism was accepted as a constitutional principle in 1937.³⁷ In fact, when the 1924 Constitution was first adopted, the provision that the official religion of the state was Islam, as in the 1876 Constitution, was included.

The transition to the principle of laicism took place slowly, and after the abolition of the sultanate and the caliphate, Islam was removed from the Constitution as the religion of the state, with an amendment made in the 1924 Constitution for the first time in 1928. Then, in 1937, the principle of laicism was accepted as a constitutional principle and has been included in all Turkish constitutions since then.

The principle of secularism and its reflections on social life have been the subject of ongoing debate since its acceptance as a constitutional principle. Also, the Turkish Constitutional Court specifically included in its evaluations that laicism means the separation of religion and state affairs and it also has a specific meaning to Turkey³⁸ as an expression of the Turkish Revolution. This assessment of the Turkish Constitutional Court was later relied on by the European Court of Human Rights in some of its judgments.³⁹

The Turkish Constitutional Court, in its decisions that included the concept of laicism specific to Turkey, drew attention to its feature that accelerates modernization and aims at the advancement of society in the direction of rationalism and science. In this context, it should be interpreted

³⁵ See H. İnalcık, *The Caliphate and Atatürk's Inkılab*, in 46 *Belleten* (1982) 363.

³⁶ Tunaya, *ibid.*, 102-103.

³⁷ Tunaya, *ibid.*, 125-129.

³⁸ See TCC Decision, 1986/11-1986/26, November 4, 1986; TCC Decision, 2008/16-2008/116, June 5, 2008.

³⁹ See *Case of Refah Partisi (The Welfare Party) and Others v. Turkey*, Grand Chamber Judgment, 41340/98-1342/98-41343/98 and 41344/98, February 13, 2003, par. 90-95 and 126-128; *Case of Leyla Şahin v. Turkey*, Judgment, 44774/98, November 10, 2005, par. 112-114.

that one of the closest elements of the revolution to the idea of westernization is the principle of laicism.

In addition, in the context of westernization, the principle of laicism in the Turkish Revolution was discussed in connection with the French model. According to this model, which was carried out by Jacobin, revolutionary and republican methods and was kept under the control and tutelage of the church until the Secession Law of 1905.⁴⁰ The principle of laicism, which entered into Turkish law with the 1924 Constitution, also followed the French model, but the transformation experienced in France after the 1905 Secession Law was not experienced in Turkey.

3. Reception Process of Basic Laws

One of the most important features of the 1924 Constitution in the context of westernization and its close relationship with the western state models is that almost all of the basic laws of the new state came into force during the period when the 1924 Constitution was in force. In this period, the law reform, one of the inseparable elements of the Turkish Revolution, took place.

First of all, it should be noted that it has been determined that the ancient legal system could meet the needs of the new state and the society that was being shaped.⁴¹ Then, in a short period of time, there was a process that included the amendment of all the basic laws, which we can define as a legal revolution.

There are two main reasons for this prompt process. Firstly, the accumulated knowledge and experience from the Tanzimat Reform Era, the legislation taken from foreign legal systems at that time provided an interaction with western law. For instance, the Code of Criminal Procedure was taken from France in 1879. In addition, 1876 Constitution Kanun-i Esasi was taken from the 1850 Prussian Constitution with some changes.⁴² Secondly, the legal revolution is a very important element for the independence of the country. During the Lausanne Peace Conference, the major European states made efforts to maintain the old privileges of the capitulations and non-Muslim minorities and communities. The Turkish Government, on the other hand, was able to oppose this by revealing that a secular legal order would be adopted and no privilege would be given to anyone.⁴³

The revolutionary cadres, who wanted to carry out the law reform promptly, decided to renew the legal system with the method of reception from the western states. Firstly, it was decided to adopt the Swiss Civil Code

⁴⁰ B. Tanör, N. Yüzbaşıoğlu, *1982 Anayasasına Göre Türk Anayasa Hukuku*, 19th ed., İstanbul, 2019, 100-101.

⁴¹ G. Bozkurt, *Atatürk'ün Hukuk Alanında Getirdikleri*, 22 *Atatürk Araştırma Merkezi Dergisi* (1991) 48.

⁴² C. Üçok, *Hukuk Devriminin Nedenleri*, 52 *Belleten* (1988) 1009-1010. We shall deal with the issue of the sources of the Kanun-i Esasi later below.

⁴³ Earle, *ibid.*, 81-82; Y. Işıktaç, *Türk Hukuk Devriminin Felsefesi*, Muğla Üniversitesi Sosyal Bilimler Enstitüsü Dergisi, Atatürk'ün Doğumunun 125. Yılı ve Cumhuriyetimizin 83. Yılı Özel Sayısı, 2006, 121-123.

as a whole with some amendments, and it has been entered into force on October 4, 1926. Then, the Italian Penal Code of 1889 was adopted in 1926. In the same year, the Commercial Code based on the German and Italian legal systems entered into force. In 1927, the Code of Civil Procedure, which was prepared on the basis of the Procedural Code of the Canton of Neuchatel in Switzerland, was adopted. Likewise, the Code of Criminal Procedure, which originated in German law, was adopted in 1929. As can be understood from these explanations, the laws of the new state were shaped on a completely new legal system in a short period of three years.⁴⁴

4. Are There Direct Foreign Constitutional Effects on the 1924 Constitution?

4.1 Foreign Constitutional Effects on Ottoman Constitutional Tradition

The basic documents of constitutionalism in the modern sense, on the one hand, regulated the institutions of the state apparatus and their functioning and relations, on the other hand, included fundamental rights and freedoms reflecting the individualist view. Constitutions shaped as a two-column basic law were produced by almost every nation starting from 18th century. Examples such as the Swedish Constitution of 1809, the Norwegian Constitution of 1814, the Spanish Constitution of 19/03/1812, the Bolivian Constitution of 1826, the Belgian Constitution of 1831, the German Constitution of 1848, the Swiss Constitution of 1848 can be listed. When the construct, regulations and approach in these constitutions are analysed, it is seen that they influence and direct each other.⁴⁵

Similar process can be observed with regard to Ottoman constitutional developments. Here one also should be considered Edicts (kind of bill of rights) that precede Kanuni-Esasi of 1876 (First Ottoman Constitution). 1808 Sened-i Alliance, 03/11/1839 Gülhane Hatt-ı Hümayunu⁴⁶, 28/02/1856 Edict of Reform, 1875 Edict of Justice are among the main documents. Just as the constitutions of different states influenced each other, documents in the form of bill of rights had a decisive effect on each other and on constitutions.⁴⁷

⁴⁴ C. Üçok, A. Mumcu, G. Bozkurt, *Türk Hukuk Tarihi*, 10th ed., Ankara, 2002, 308-309.

⁴⁵ For example, the US Constitution of 1787 effected the Polish and French Constitutions of 1791; The US Constitution of 1787 and the French Constitution of 1791 influenced the Spanish Constitution of 1812; 1831 Belgian Constitution had particular influence on 1837 Spanish, 1844 and 1864 Greek, 1848 Luxembourg, 1851 Prussian, 1864 and 1879 Bulgarian Constitutions. On the other hand, the Belgian Constitution of 1831 was greatly influenced by the French Constitutions of 1791 and 1830 and the Dutch Constitution of 1815. It has also been argued that the Belgian Constitution has many similarities with the British constitutional principles and is a written reproduction of them (See, M. S. Gemalmaz, *Devlet, Birey ve Özgürlük*, 3rd Edition, İstanbul, 2012, 312-312).

⁴⁶ Başgil, *ibid.*, 81.

⁴⁷ Gemalmaz, *ibid.*, 313.

The tendency to enshrine rights and freedoms in constitutions and the process of constitutions directing each other has also found its reflections in the Ottoman-Turkish constitutionalist movement. For instance, it has been argued that the Belgian Constitution of 1831, together with the French Constitution of 1875, influenced the Ottoman Kanun-i Esasi of 1876. In other sources, in addition to the Belgian Constitution of 1831, the Prussian Constitution dated 1851 is shown among the constitutions that influenced the 1876 Kanun-i Esasi. According to Üçok-Mumcu, "...In the end, the Belgian Constitution of 7 February 1831 and the Prussian Constitution of 31 January 1851 were taken as models. However, instead of the principle of separation of powers in the Belgian Constitution, the concentration of all powers in the person of the sultan (as in Prussia) was accepted". On the other hand, Prof. Üçok stated that it is not possible to take the French Constitution of 1875 as an example and argued that the Prussian Constitution sets an example. In fact, the 1851 Constitution of Prussia has 119 articles and is in complete conformity with the Kanun-i Esasi of 1876, even the section headings and the subject matter of the articles, even the article numbers, remain unchanged.⁴⁸

4.2 Lack of Direct Foreign Source on 1924 Constitution

In the drafting process of 1924 Constitution, it is believed that the Constitutional Commission of the Turkish Grand National Assembly had studied the constitutions of modern republics, keeping Turkish revolutionary process in mind, not like a scholar in an ivory tower.⁴⁹ Celal Nuri İleri, rapporteur in Turkish Grand National Assembly, argued that in the Turkish Grand National Assembly minutes during the preparatory process of the 1924 Constitution, the 1875 French Constitution and especially the 1921 Polish Constitution were an important source of inspiration.⁵⁰ Celal Nuri İleri who informed the general assembly about the draft, was a graduate of Galatasaray High School and Mekteb-i Hukuk (Faculty of Law) and had a good knowledge in French language.⁵¹ It should be noted that the Commission that prepared the draft of 1924 Constitution has a formation that can follow the constitutionalism activity in Europe.⁵²

Indeed, while evaluating the provisions in which the 1921 Polish Constitution inspired the 1924 Constitution, we come across provisions regarding the status of the president. In the debates of the 1924 Constitution in the Turkish Grand National Assembly, the direct references to the 1921 Polish Constitution are related to the issue of the chief command of the

⁴⁸ See, Gemalmaz, *ibid.*, 314-315.

⁴⁹ E. C. Smith, *Debates On The Turkish Constitution Of 1924*, in 13 *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi* (1958) 84.

⁵⁰ A. Ş. Gözübüyük, Z. Sezgin, *1924 Anayasası Hakkında Meclis Görüşmeleri*, Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, Ankara, 1957, 33.

⁵¹ N. Uyanık, *Batıcı Bir Aydın Olarak Celal Nuri İleri ve Yenileşme Sürecinde Fikir Hareketlerine Bakış*, in 15 *Selçuk Üniversitesi Türkiyat Araştırmaları Dergisi* (2004) 234-235.

⁵² H. A. Demirci, *1921 Polonya Anayasası'nın 1924 Türkiye Anayasası Üzerinde Etkileri*, in 26 *Pamukkale Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* (2017) 2.

president⁵³, who will have the power of attorney for the president⁵⁴ and the provisions regulating the responsibility of the president.⁵⁵ In addition, at the beginning of the negotiations, the preparation processes of the 1875 French Constitution and the 1921 Polish Constitution were compared.⁵⁶ Also, in the debate about whether the republic is a form of state or a form of government, reference was made to the Polish Constitution of 1921.⁵⁷ During the discussion of the amendment process, it is seen that the French Constitution of 1875 and the Polish Constitution of 1921 were included without being too in-depth, and mostly critically.⁵⁸

But there is no real similarity or resemblances of 1924 Constitution to the 1921 Polish Constitution.⁵⁹ As can be seen in the minutes of the Turkish Grand National Assembly, any provision of the 1924 Constitution was not directly taken from a foreign constitution. It seems, Celal Nuri (İleri) has some sort of inclination for the Polish constitutional tradition which has deep roots in history⁶⁰ to the extent that he also argued that Kanun-i Esasi of 1876 was influenced by Polish Constitution of 1791⁶¹, despite the fact that Kanun-i Esasi had been mostly taken from Prussian Constitution.

1924 Constitution is not translated and adopted like many of Turkish laws. “On the contrary, it is a product of a long historical evolution, consequently it is a work completely national and original. With the amendments after 1924, its original form was changed more or less but it kept its national character.”⁶²

5. Conclusion

As mentioned above, basic laws were received from foreign countries through reception in the law reform process. In fact, it is possible to find traces of the constitutions of different countries when the constitution is examined both during and after the preparation process of the constitution. The Turkish Grand National Assembly took into account the revolutionary movements in the country and the constitutions of the states governed by the republic at that time, and wanted to prepare a constitution that would meet national needs.

However, the 1924 Constitution is not a constitution prepared on the basis of a particular country's constitution, nor enacted from foreign countries legislation through reception. The 1924 Constitution has a unique position in the Turkish constitutional history in many respects. One of its

⁵³ Gazette of TGNA Minutes, C.1, i: 30, 6.4.1340.

⁵⁴ Gazette of TGNA Minutes, C.2, i: 24, 30.3.1340.

⁵⁵ Gazette of TGNA Minutes, C.1, i: 36, 13.4.1340.

⁵⁶ Gazette of TGNA Minutes, C.1, i: 7, 9.3.1340.

⁵⁷ Gazette of TGNA Minutes, C.1, i: 13, 16.3.1340.

⁵⁸ Gözübüyük, Sezgin, *ibid.*, 297-320.

⁵⁹ Demirci, *ibid.*, 7-8.

⁶⁰ For the Polish constitutional tradition, see, Demirci, *ibid.*, 3-4.

⁶¹ For critical appraisal, see, Gemalmaz, *ibid.*, pp.315-316. According to Gemalmaz, while arguing 1791 Polish Constitution's possible influence on 1876 Kanun-i Esasi through Celal Nuri İleri's thesis, Tunaya (and Tanör by only mentioning Tunaya) did not give concrete examples on similarities or resemblances.

⁶² Başgil, *ibid.*, 94.

unique aspects is that, as a new nation-state, the Republic of Turkey, during its founding period, remained outside the main organizational process that stood out in the form of legal reception and inspiration from the West, and that it was an original and national constitution that completely reflected the ideology and goal of the Turkish Revolution based on national will and sovereignty.

Burak Gemalmaz
Istanbul University
Faculty of Law.
Beyazıt, 34116, Fatih/Istanbul, Türkiye
b_gemalmaz@yahoo.com