

## Analysis

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**Summary:** This brief examines the issue of constitution writing and its political effects in Turkey and discusses the chances of change in political culture. First it presents constitution-making in the late Ottoman period and the experience of the Turkish Republic. Then it discusses the recent dynamics that necessitate a new constitution. Lastly, it describes current debates regarding the new constitution.

## Quest for Civilian Constitution in Turkey and Political Aspects of Constitution-Making

by *Hasan Selim Ozertem and Mehmet Yegin*

The 1982 constitution, designed by a military administration, is becoming more and more irrelevant in Turkey's changing society. The constitution has been amended 18 times since 1987 (in total, 60 percent of the content has been revised), yet, its intrinsically non-democratic perspective and motivations still linger. Its patchwork character after these amendments and problematic premise still causes complications.

One of the recent problems was the 2007 presidential election, which ended in a deadlock that led to a change of law in the constitution and an early election. The problem was solved only after a change in the constitution by a referendum. This example stems from the very nature of the present constitution, which was written in a fashion that prioritized the state over society or the individual and overemphasized ethnic references.

Public discontent over the constitution has become more active. In the 2011 general elections, the new constitution became a salient issue. The media and many civil society organizations supported changes, and a new consti-

tution was on the agendas of most of the mainstream parties.

While the lively national debate over the constitution has contributed to the participatory political culture in the country, this process has not been problem-free. The political culture in Turkey has recently been characterized by polarization, and it is quite difficult to develop a bipartisan approach. On the other hand, there is popular pressure on the political parties to not contribute to a failed process.

### Constitution-Making Not New for Turkey

Constitutionalism is not a new business in Turkey. The first attempt, known as Kanun-i Esasi (the Constitution), was made in 1876, along with the debut of the parliamentary system. It was. Western-educated elite were influenced by the rising republican thought in Europe and the French Revolution, and they pushed for a constitution in the empire. This attempt was interrupted by the Russian-Turkish war in 1878.

The first round of the constitutional system could not initially resist



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## Analysis

the monarchic power, but it was reinstated in 1908 once again. This time, World War I and then the collapse of the Ottoman Empire caused this constitution to live for only a short while. Later, republican constitutions in the 1920s replaced the 1908 version. The Republic's first constitution was approved by the Ankara Parliament on an interim basis in 1921. But because it was a wartime constitution, it was replaced in 1924 when the Independence War ended.

The 1924 constitution was replaced in 1961 following a 1960 coup. Since it was a product of a military coup, this constitution contained some elements that gave advantages to the civil and military bureaucracy over the elected. It also created safe outlets for the tutelary powers. This included the establishment of the National Security Council (NSC) as a platform for the military and the relocation of the Chiefs of Staff to the Prime Ministry rather than the Ministry of Defense. This constitution also originated with the elite, which led first to political polarization and then to violence. This paved the way for a second military coup in 1980.

The military administration that then took power decided to strengthen the regime by preparing a new constitution in 1982. This included some new elements such as legal immunity for the high chamber of command, which committed the military coup. Furthermore, it empowered the status of NSC recommendations. According to Umit Cizre, a prominent scholar on Turkish politics, the 1982 constitution created an autonomous military in the state mechanism. However, starting from 1987, parliament made certain changes through political consensus or by referenda. Five out of 18 amendment packages were prepared before 2000; the remaining changes have been made since.

### Dynamics of Change in Turkish Society and the Constitution

Internal and external factors have influenced these constitutional changes. The main internal factor is the economic and social transformation of the country. After the 1980 coup, the country abandoned the import substitution economy and a liberalization process began. These changes paved the way to new economic centers of gravity called the "Anatolian tigers." New rising elite gradually started to gain more power, which became more visible after the Justice

and Development Party (AKP) took office in 2002. This new elite is one of the driving forces behind the changes.

The second internal dynamic is the urge to solve Turkey's chronic problems that have roots in the constitution as well, including civil-military relations, the Kurdish issue, and individual rights. In recent times, there have been improvements regarding these issues. Nevertheless, there is a perception that without changing the constitution, the problems will linger. Among others, the Kurdish issue is at the top of the agenda and necessitates an urgent solution. Terrorist attacks on security forces and civilians create huge pressure on the government. But the clause in the constitution that defines citizenship based on Turkishness is exploited by Kurdish politicians and the PKK terrorist organization. A new constitution without this language has a chance to remove this excuse for radical politics in Turkey.

### The Kurdish issue is at the top of the agenda and necessitates an urgent solution.

Additionally, the AKP, particularly its leader, Prime Minister Recep Tayyip Erdoğan, started a debate on also changing the parliamentary system into a presidential one, but this has not been embraced by the wider public. A recent poll conducted by Genar indicates that 34.4 percent of Turkish voters support the idea while 43.6 percent oppose. In spite of the low rates of support, higher echelons of the AKP try to keep the issue warm. For instance, Deputy Prime Minister Bekir Bozdag repeatedly called for debate on the issue and expanded it to include the possibility of a semi-presidential system like in France. As a result, the AKP will probably take the issue to the constitutional committee.

External dynamics also are a driving force. Turkey's bid to join the European Union has played a crucial role, particularly in the first half of the last decade, in the transformation of political culture and socio-economic dynamics in the country. Turkey entered a reform process in the aftermath of the Helsinki Summit in 1999, when it attained



candidate status. Turkey started to make reforms in its political, administrative, and judicial spheres based on the Copenhagen Criteria, and the Turkish Parliament has made reforms regarding freedoms and the equality of men and women, and abolished the death penalty, and amended civil-military relations. Since the enthusiasm for membership declined in the second half of the 2000s both in the EU and Turkey, the influence of the European Union has diminished as well. Consequently there have been some occasional detours on the path toward democracy.

Nonetheless, the public was encouraged by successful changes, even without the EU. One of these was passed on September 12, 2010. The AKP prepared a package that contained 26 amendments to the 1982 constitution and referred it to the public for approval. The date of the referendum was symbolically fixed for September, the anniversary of the 1980 coup. The package was criticized both for its contents and the fact it would be either totally approved or totally rejected rather than allowing votes on individual articles. Despite the criticisms and lack of support from the major opposition parties, it got the approval of 58 percent of voters. Since this result was well above the popularity of the AKP, it also had the support of social democrats, Kurds, and, particularly, of nationalists. The referendum results indicated that reforms, as long as they are discussed in public, bring some credit to political parties if they are for change rather than for protecting the status quo.

Some of the amendments contained important changes, which were praised by the European Union. For instance, the guarantees to protect the high command of the mili-

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tary administration responsible for coup d'état in 1980 were abolished (Article 15). Furthermore, it changed how members of the Constitutional Court and the High Council of Judges and Prosecutors were elected. Previously, these members were only elected by the votes of the members of the High Council, but now judges and prosecutors all around Turkey can attend the election process.

### Need for New Constitution, But How?

In the past, the culture of Turkish constitution-making was shaped mainly by the political elite and the role of the people was limited.<sup>1</sup> The constitutional amendments in the 1980s and 1990s were a product of the elite's consensus. Other than latent support, the public opinion was not an important input for these changes.

However, a common negative reaction to the 1980 coup and changing dynamics in Turkey paved the way for society to raise its voice. The changes during the last decade, however, were brought before the public. The deadlock in the system necessitated public input, especially after the presidential election crisis. The 2007 elections and referenda<sup>2</sup> on vital constitutional changes invited and encouraged public involvement. Society responded positively and began to demand more. In the June 2011 elections, all political parties aimed to take advantage of these popular expectations and used a more pro-change discourse.

After the elections, the Turkish Parliamentary Constitution Committee was formed with members from all political parties to prepare a brand new constitution. This commission consists of 12 members — three members from each party represented in the parliament — and is supposed to take decisions based on consensus. The commission called for help from professionals, civil society organizations, and even individuals, and the response created huge pressure on the political parties not to impede the activities of the commission. So, despite the strict redlines of some political parties, they hesitate to be the wet blanket.

1 The 1921 constitution was prepared by the Ankara Parliament, independent from the Istanbul Government. In this sense, rising elite of Turkey took initiative against the establishment. However, the constitution was written during the war period in a top-down fashion.

2 There are three referenda after 1982 constitution: 1987, 2007 and 2010. The 1987 referendum might be distinguished from the other two by not being a result of political deadlock to be solved by the public. It gave back the suspended political rights of certain political leaders by the military rule.



## Analysis

The process is not problem-free though. The Nationalist Action Party and pro-Kurdish Peace and Democracy Party, in particular, may not come to a consensus about certain identity matters, since both of these parties represent the opposite sides of the political spectrum. A prominent academic, Ergun Özbudun, argues that chances for a consensus of all parties are low, yet there is hope for the consensus of the two major parties of Turkey: the AKP and Republican People's Party (RPP). These two parties are able to provide the maximum base with a winning coalition, but they are also the most electorally vulnerable for failure to do so.

The leaders of the AKP and the RPP came together to sort out a common prescription for the Kurdish issue in June 2012. This meeting raised the hopes for consensus-based politics in Turkey. It is too early to talk about a change in political culture, but one way or another, Turkish society's quest for democracy will not let political parties off without a negotiated draft for the new constitution. In other words, the dynamics of transformation and the rise of a new elite create a challenging environment for the politics status quo. The parties that fail to satisfy these demands will be prone to losing credibility and momentum in the future, and this factor may pave the way for new actors in Turkish politics.

### About the Authors

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