

Reform of The Turkish Constitution: A Step Forward or Backward?

Written by James W. Warhola

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JAMES W. WARHOLA, MAY 23 2012

Turkey has been ruled since November 2002 by the Islamic-oriented *Justice and Development Party*, or AK Party (*Adalet ve Kalkinma Partisi*). Reforming the Constitution had been a priority of the AK Party even before coming to power, and its determination to bring about substantial constitutional change has only intensified in the past few years. A significant step was made with an amendment package put before the public in a national referendum in September 2010. The AK Party sponsored and thus heavily favored the 26 proposed amendments; the vote in that referendum was 58% in favor with nearly 74% voter turnout. Western reaction to the referendum was highly positive. EU Enlargement Commissioner Stefan Füle hailed the results as a “step in the right direction” but offered that “other much-needed reforms” were necessary, particularly in the domains of religion and freedom of expression.[1] Prospective EU membership has been a partial motivation for reforms, but many other factors were involved, including an array of domestic political considerations.

Building on the momentum from the 2010 referendum, the AK Party began a process to rewrite the constitution following its success in the June 2011 parliamentary elections. Under the AK Party’s leadership, the Parliament established the *Constitutional Reconciliation Commission* in late summer 2011 to “prepare the draft text of a new constitution and manage the constitution-crafting process.”[2] The Commission is designed to be ‘supra-partisan’ in order to craft a document with broad and deep popular support; accordingly, it is composed of 12 members, three each from the four political parties represented in parliament.[3] The proportion of the population favoring constitutional change rose from only 41% in late 2008 to nearly 69% in early 2011.[4] The Commission began its work on October 19 of 2011 and continues to this day, having sketched out a very rough draft on May 1.

Numerous questions emerge from this situation: what is the AK Party’s aim in this process, and what is the general perspective of the other three parties in parliament? What might the proposed new constitution look like, and what might its effect be on Turkish domestic and perhaps even foreign policies? How democratic and socially dialogical is the current constitution crafting process? The last question is no small matter since the current Constitution, dating to 1982, was crafted by the military during its reign from 1980-1983. Before addressing these questions, it is important to bear in mind three critical aspects of the contemporary Turkish political landscape.

First, the AK Party enjoys substantial popularity, manifested in various domains but certainly including a commanding majority of seats in the parliament through the past three national parliamentary electoral cycles. Even though the size of its parliamentary majority has been slowly declining, the *percentage* of votes it won has steadily increased: 363 of 550 seats in November 2002 (34 % of the vote), 341 of 550 seats in July 2007 (46.6 % of the vote), and 336 of 550 seats in June 2011 (49.8 % of the vote). At the local and regional levels the AK Party also retained a commanding lead in the latest elections in 2009 even despite the unpropitious temporal context of the global financial crisis.[5]

Second, Turkish society has shown evidence of becoming more religiously oriented at least since the middle 1990s and perhaps earlier. This reorientation is

complex but hardly universal throughout society.[6] The overall rise in religiosity has contributed to the third major

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point: Turkey is a deeply divided society. The lines of division run along several axes of difference, although several of the lines intersect and some even run parallel. Religion is a major factor in the overall configuration of divisions, however, and directly or indirectly touches each one. The other major line of division is the Kurdish issue, which touches at the heart of Turkey's identity as both a *nation* and, given the present Constitution's definition of "Turkishness," also as a *state*.^[7] Given these three characteristics of the present Turkish political landscape, the very name of the governmental apparatus for bringing about a new constitution is instructive: the "Constitutional *Reconciliation* [*Uzlaşma*] Commission." What is it likely to produce?

A major driving force behind the AK Party's determination to alter the Constitution is its conviction that the present document, among other problems, consigns religion to a marginalized role in society. A number of related issues all play a role, such as the role of the military in society and especially in politics, the Kurdish question, the degree of independence of the judiciary, the institutional configuration of power at the highest levels of government, the appropriate degrees of freedom for civil society-type organizations, and even the foreign policy disposition of Turkey. Again, however, religion appears to be a fundamental and in fact a touchstone issue -- all of the above are related to it, to one degree or another.

The AK Party's determination to bring about a new constitution has fueled the deepening division within Turkish society to a certain degree. However, as noted above, the Constitutional Reconciliation Commission is composed of an equal number of members — 3 — from each of the four parties represented in parliament, and the range and depth of political disagreement among these parties is not small. These four parties are: (1) the ruling AK Party; (2) the CHP (Republican People's Party), the main opposition party and party of Atatürk; (3) the nationalist-oriented MHP (National People's Party); (4) perhaps surprisingly, the Kurdish-oriented BDP (Peace and Democracy Party). Thus for whatever political charges one might wish to level at the ruling AK Party, it can hardly be accused of ramming and imposing constitutional change on Turkey without serious, sustained, and highly deliberative interaction among the parliamentary parties and also among the general population.

The three opposition parties all support constitutional reform in principle, but differ dramatically among themselves, and from the AK Party, in terms of what needs to be reformed. The CHP fears, among other things, a weakening of judicial independence and Turkey's political secularism; the MHP leadership generally opposes the reform process, but its supporters are said to be divided, with 43% favoring reform, 46% opposing it, and 11% undecided; the Kurdish-oriented BDP understandably places a premium on greater Kurdish rights. Not surprisingly, about 62-67% of AK Party supporters were said to favor constitutional reform in early 2010, but the figure is likely higher today. ^[8]

The Commission has engaged a broad array of civil society organizations in the deliberative process: the list of organizations, groups, and even individual citizens providing input and feedback, through the Commission, is strikingly long and deep.^[9] Furthermore, during the past few months numerous cities and localities have held public discussions in which wide arrays of opinions and concerns on the constitutional-reform issue have been advanced.^[10] This process itself is not only politically healthy, but is likely to produce a document that is useful and fitting for the country given its present configuration of issues. The process bears no resemblance to the military *diktat* that produced, in 1982, the foundations of the present Constitution. One would think also that a new constitution deriving from broad social dialogue might best serve the prospect of advancing Turkey's goal of expanding the country's foreign-policy influence in the region, all the while helping move toward resolution of the Kurdish issue.^[11]

Whether or not the present constitution of Turkey provides a sufficient framework for further democratization and for continued social progress is a matter of intense dispute not only with Turkey but outside of it as well. As noted above, the EU expressed unequivocal support for the 2010 amendments and encouraged even more change. The US did likewise. On the other hand, numerous well-informed and politically reasoned voices within Turkey itself have argued that the present constitution is entirely adequate and though minor modifications may be in order, no wholesale re-crafting is necessary.^[12] After all, about 42% voted "no" in the 2010 referendum. As suggested above, much of the dispute revolves around the question of the nature of the Turkish state, the role of religion in society, and even Turkey's identity itself.

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A major complaint by the AK Party about the present constitution is that its strict, French-like separation of religion and politics (*laïcité*) is simply inappropriate for the increasingly religious Turkish populace. Significantly, various religious minorities agree: on February 20 of this year Eastern Orthodox Patriarch Bartholomew appeared before the Constitutional Commission, at its invitation and request, to appeal for greater religious rights in Turkey. Various religious minorities including the Alevis and others have long advocated such change. The fact that such an appeal was allowed in this venue, and was seriously heard, suggests that significant changes in Turkish politics have already occurred.

From the perspective of constitutional change, Turkey could shift from a French-style 'secular state' to a US-style 'separation of church-and-state' wherein the role of religion in the metaphoric "public square" is considerably larger. Political change of this nature has been the intent of the AK Party and its allies, and has been underway for some time, although the strict secularists are deeply suspicious of the AK Party's longer-term motives in this. An even thornier problem regarding constitutional transformation is likely to be the Kurdish issue, since it touches not only on the core issue of national identity, but also on national security and even territorial integrity. The role of this issue in any proposed constitutional change is particularly complex and daunting, since it deals with: (1) a significant portion of the country's population claiming Kurdish identity — perhaps as high as 15 – 25% — that is to some degree politically disaffected or outright alienated, and (2) with the official, constitutionally-mandated conception of the country's identity ("all citizens are Turks") that has its roots in the venerated Kemalist foundations of the Republic itself in the 1920s.

In conclusion, it is to be hoped that just as during the difficult 1920s when the political genius of Mustafa Kemal Atatürk brought about the modern Turkish Republic that became increasingly prosperous and democratic as the 20th century progressed, even despite serious setbacks, so also in the 21st century the current nationwide constitutional dialogue will itself evoke a similar spirit of necessary, prudent change given Turkey's circumstances of the present age.[13] The task is daunting indeed given the deep divisions in Turkish society, the history of military takeovers, and Turkey's tumultuous international context. The present process, however, has been admirably participatory to date, and demonstrates a political maturity that may well serve as the foundation for an appropriate constitution, even though its details are as yet undetermined. Thus so far at least, the process appears to be much more of a step forward than a step backward, both for Turkey and for its frequently troubled international neighborhood.

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[1] "Western powers back Turkish referendum results," *Hurriyet Daily News*, 13 September 2010, accessed 4 May 2012 at: www.hurriyetdailynews.com/default.aspx?pageid=438&n=western-powers-back-turkish-referendum-results-2010-09-13.

[2] The full, official name of the Commission is the "Turkish Grand National Assembly Constitutional Reconciliation Commission." According to the Commission's official website, in Turkish: "Komisyonun görevi, anayasa yapım sürecini yönetmek ve anayasa taslak metnini hazırlamaktır"; <https://yenianayasa.tbmm.gov.tr/calismaesaslari.aspx>.

[3] A list of the members and pertinent background information may be found at: <https://yenianayasa.tbmm.gov.tr/uyeler.aspx> (accessed May 18, 2012).

[4] The source of this data is "Social Demand Grows for the New Constitution", TEPAV; accessed 17 May 2012 at: <http://www.tepav.org.tr/en/haberler/s/1982>.

[5] Ali Çarkoğlu, "Turkey's Local Elections of 2009: Results, Trends and the Future", *Today's Zaman*, May 17, 2009; accessed May 4, 2012 at: http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=179407.

[6] For a deeper examination of this matter, see Turkish Studies, *Special Issue: Islamicization of Turkey under AK*

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Party Rule, Volume 11, Issue 1, 2010.

[7] According to the present Constitution, Article 66 (as amended October 17, 2001):

"Everyone bound to the Turkish state through the bond of citizenship is a Turk. " Perhaps needless to say, many Kurds within Turkey do not share this view or support this constitutional dictum. This is no small matter given that the Kurds constitute from 8% to 25% of the population, depending upon which data-set one consults: the Turkish government reckons it to be about 8%, whereas the *CIA World Factbook* offers a figure of 18% (<https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>), and Wikipedia claims "25-30%" (http://en.wikipedia.org/wiki/Kurds_in_Turkey); both websites accessed May 20, 2012.

[8] "AK Party to Act Alone on Package", *New Istanbul Times*, 28 April 2010; accessed May 18, 2012 at: http://www.newistanbultimes.com/news_print.php?id=62.

[9] A full list of these organizations and groups is provided on the Commission's website, though only in Turkish language, cf. <https://yenianayasa.tbmm.gov.tr/tesekkur.aspx>.

[10] For a list of such events, see TEPAV (Turkish Economic and Political Research Organization), "Anayasa Çalışmaları" <http://www.tepav.org.tr/tr/calismalarimiz/s/360> (accessed May 6, 2012).

[11] Kadir Ustun, "Turkey Needs to Re-Think Policy Toward its Fractious Neighbors," (Washington DC: SETA: *Foundation for Economic, Political, and Social Research*): [t]he issue of Kurdish separatism dominated Turkey's bilateral relationships and international engagements during [the 1990s]. This severely undercut Turkey's prospects to join the European Union as well as its economic growth, democratic credentials, human rights record and overall foreign relations. But in the early 2000s, . . . Turkey set out to change these regional relationships. Turkey recognized that the security challenge posed by the PKK could not be resolved through military means alone; it needed more and other kinds of cooperation with its neighbors." Accessed May 7, 2012 at: <http://setadc.org/articles/436-turkey-needs-to-rethink-policy-toward-its-fractious-neighbors>. The AK Party also eventually concluded that domestically the country needed more constitutional reform to resolve the Kurdish question.

[12] This view was shared with the author in a conversation in February 2010 with noted Turkish political scientist Dr. Metin Heper, author of numerous significant works on Turkish politics and society.

[13] For in-depth commentary on this aspect of the constitutional reform process, see Dr. Levent Gönenc, "Towards a Participatory Constitution Making Process in Turkey," TEPAV Policy Note, January 2011; accessed May 17, 2012 at: http://www.tepav.org.tr/upload/files/1296466407-8.Towards_a_Participatory_Constitution_Making_Process_in_Turkey.pdf.