

CHAPTER 5: CONSTITUTIONAL LAW

WHAT DOES
CONSTITUTION MEANS?

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I. DEFINITION OF CONSTITUTION

- ▶ The term "constitution" can have a narrow or formal meaning and a broad and substantial meaning.



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1.1 Contents of the Constiution

- ▶ Contents of the constitutions vary from a country to another.



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1.1.1 Preliminary chapter (or Preamble)

- ▶ **CONSTITUTION OF THE REPUBLIC OF TURKEY PREAMBLE**

(As amended on July 23, 1995; Act No. 4121) Affirming the eternal existence of the Turkish Motherland and Nation and the indivisible unity of the Sublime Turkish State, this Constitution, in line with the concept of nationalism introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, and his reforms and principles;

Determining to attain the everlasting existence, prosperity, material and spiritual well-being of the Republic of Turkey, and the standards of contemporary civilization as an honourable member with equal rights of the family of world nations;

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CONSTITUTION OF THE REPUBLIC OF TURKEY PREAMBLE

- ▶ The absolute supremacy of the will of the nation, the fact that sovereignty is vested fully and unconditionally in the Turkish Nation and that no individual or body empowered to exercise this sovereignty in the name of the nation shall deviate from the liberal democracy indicated in the Constitution and the legal system instituted according to its requirements,

The separation of powers, which does not imply an order of precedence among the organs of the State, but refers solely to the exercising of certain state powers and discharging of duties, and is limited to a civilized cooperation and division of functions; and the fact that only the Constitution and the laws have the supremacy;

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CONSTITUTION OF THE REPUBLIC OF TURKEY PREAMBLE

- ▶ (As amended on October 3, 2001; Act No. 4709) That no protection shall be accorded to an activity contrary to Turkish national interests, Turkish existence and the principle of its indivisibility with its State and territory, historical and moral values of Turkishness; the nationalism, principles, reforms and civilizationism of Atatürk and that sacred religious feelings shall absolutely not be involved in state affairs and politics as required by the principle of secularism;

That every Turkish citizen has an innate right and power, to lead an honourable life and to improve his/her material and spiritual wellbeing under the aegis of national culture, civilization, and the rule of law, through the exercise of the fundamental rights and freedoms set forth in this Constitution, in conformity with the requirements of equality and social justice;

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CONSTITUTION OF THE REPUBLIC OF TURKEY PREAMBLE

- ▶ That all Turkish citizens are united in national honour and pride, in national joy and grief, in their rights and duties regarding national existence, in blessings and in burdens, and in every manifestation of national life, and that they have the right to demand a peaceful life based on absolute respect for one another's rights and freedoms, mutual love and fellowship, and the desire for and belief in "Peace at home; peace in the world";

With these IDEAS, BELIEFS, and RESOLUTIONS to be interpreted and implemented accordingly, thus commanding respect for, and absolute loyalty to, its letter and spirit;

Has been entrusted by the TURKISH NATION to the democracy-loving Turkish sons' and daughters' love for the motherland and nation.

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1.1.2 General Principles Chapter

General Principles

I. Form of the State

ARTICLE 1- The State of Turkey is a Republic.

II. Characteristics of the Republic

ARTICLE 2- The Republic of Turkey is a democratic, secular and social state governed by rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.

III. Integrity, official language, flag, national anthem, and capital of the State

ARTICLE 3- The State of Turkey, with its territory and nation, is an indivisible entity. Its language is Turkish.

Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background.

Its national anthem is the "Independence March".

Its capital is Ankara.

IV. Irrevocable provisions

ARTICLE 4- The provision of Article 1 regarding the form of the State being a Republic, the characteristics of the Republic in Article 2, and the provisions of Article 3 shall not be amended, nor shall their amendment be proposed.

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1.1.3 Institutions of the State Chapter



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1.1.4 Fundamental Rights and Freedoms Chapter



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1.1.5 Effectiveness and Amendment Chapter

PART SEVEN Final Provisions

I. Amending the Constitution, participation in elections and referenda

ARTICLE 175- (As amended on May 17, 1987; Act No. 3361) Amendment to the Constitution shall be proposed in writing by at least one-third of the total number of members of the Grand National Assembly of Turkey. Bills to amend the Constitution shall be debated twice in the Plenary. The adoption of a bill for an amendment shall require a three-fifths majority of the total number of members of the Assembly by secret ballot.

The consideration and adoption of bills for the amendments to the Constitution shall be subject to the provisions governing the consideration and adoption of laws, with the exception of the conditions set forth in this Article.

The President of the Republic may send back the laws on the amendments to the Constitution to the Grand National Assembly of Turkey for reconsideration. If the Assembly readopts, by a two-thirds majority of the total number of members, the law sent back by the President of the Republic without any amendment, the President of the Republic may submit the law to referendum.

If a law on the amendment to the Constitution is adopted by a three-fifths or less than two-thirds majority of the total number of members of the Assembly and is not sent back by the President of the Republic to the Assembly for reconsideration, it shall be published in the Official Gazette and be submitted to referendum.

A law on the Constitutional amendment adopted by a two-thirds majority of the total number of members of the Grand National Assembly of Turkey directly or upon the sending back of the law by the President of the Republic or its articles deemed necessary may be submitted to a referendum by the President of the Republic. A law on the amendment to the Constitution or the related articles that are not submitted to referendum shall be published in the Official Gazette.

Entry into force of the laws on the amendment to the Constitution submitted to referendum shall require the affirmative vote of more than half of the valid votes cast.

The Grand National Assembly of Turkey, in adopting the law on the Constitutional amendment shall also decide on which provisions shall be submitted to referendum together and which shall be submitted individually, in case the law is submitted to referendum.

Every measure including fines shall be taken by law to secure participation in referenda, general elections, by-elections and local elections.

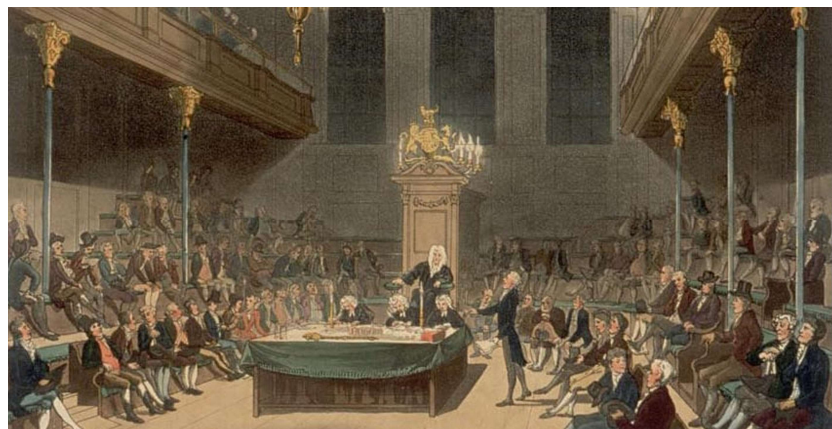
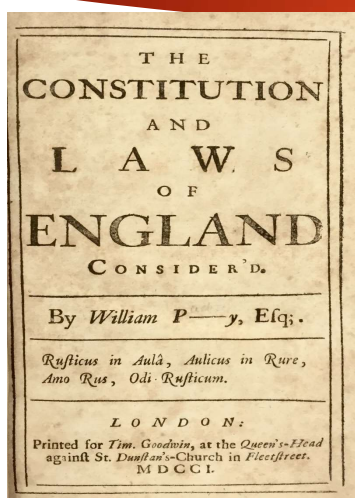
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1.2 Essentials or Requisites of a Good Constitution

- ▶ Clarity or definiteness
- ▶ Brevity
- ▶ Comprehensiveness
- ▶ Flexibility
- ▶ Declaration of rights
- ▶ Independence of judiciary
- ▶ Directive principles of state policy

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II. CLASSIFICATION OF CONSTITUTIONS



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2.1 Unwritten and Written Constitutions



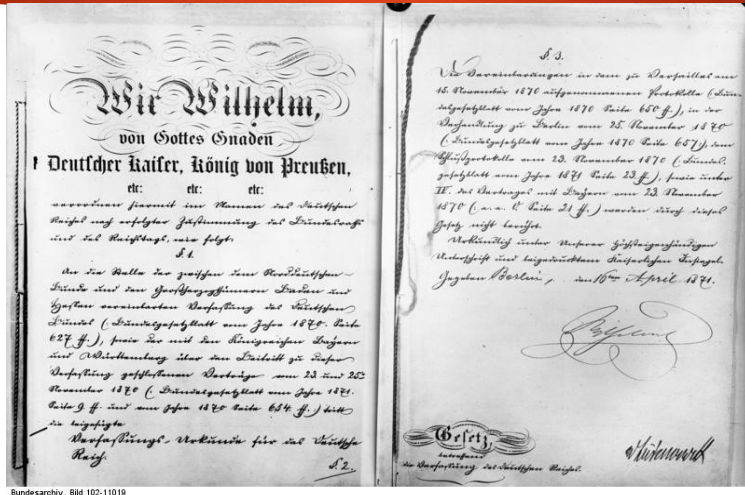
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2.1.1 Merits and Demerits of Unwritten Constitutions



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2.1.2 Merits and Demerits of Written Constitutions



Bundesarchiv, Bild 102-11019
Foto: a.d.g., J. Janssen, 1971

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2.2 Soft and Rigid Constitution



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2.2.1 Merits and Demerits of Soft Constitutions

Rigid constitutions are made, become invalid and changed differently from the ordinary codes. Turkish constitutions of 1961 and 1982 were made by the special conventions.



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2.2.2 Merits and Demerits Rigid Constitutions



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Yeni Anayasa ile yeni bir dönem Evren Cumhurbaşkanı

SON DAKIKA: Kabul oyları yüzde 90 dolayında

- Halkoylamasına katılım birçok seçim merkezinde yüzde 90'ı aştı
- Yurttaşların büyük çoğunluğu sabah erken saatlerde oylarını kullandı

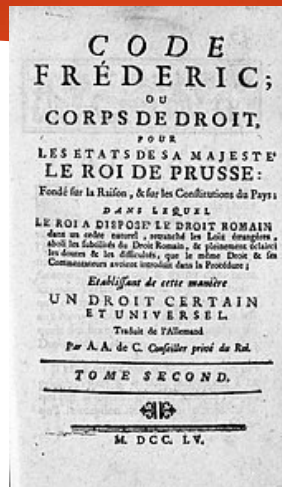
"Evet., rekoru Hatay ve Ağrı'da % 97"



The newspaper clipping features a large headline at the top: "Yeni Anayasa ile yeni bir dönem Evren Cumhurbaşkanı". Below it, a sub-headline reads "SON DAKIKA: Kabul oyları yüzde 90 dolayında". The main text on the left lists two bullet points: "Halkoylamasına katılım birçok seçim merkezinde yüzde 90'ı aştı" and "Yurttaşların büyük çoğunluğu sabah erken saatlerde oylarını kullandı". In the center, there is a photograph of Evren's inauguration ceremony with the caption "“Evet., rekoru Hatay ve Ağrı'da % 97”". To the right of the main text, there is another photograph showing a group of people, likely the inauguration ceremony, with a caption that is partially obscured but includes "Anayasa...".

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2.3 Frame and Regular Constitutions



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3. CONSTITUTIONALISM IN THE WORLD AND TURKEY

Constitutionalism



DEFINITION OF CONSTITUTIONALISM



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3.1 The History of Constitutionalism in the World



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3.2 The Constitutional History of Turkey

