CONSTITUTIONS AND RIGHTS

A constitution is a written document outlining the structure of a political system.

Almost all nations have constitutions because they operate according to some set of rules.

Political scientists define “constitution” as the rules and customs, either written or unwritten, legally established or extralegal, by which a government conducts its affairs.

Constitutions are supposed to establish the forms, institutions, and limits of government and balance minority and majority interests.

Who has the authority to decide what the general wording of a constitution means? Now more than 30 nations give the power of *judicial review* to the highest national court. (“Anayasa Mahkemesi” in Turkey.)

A constitution depends largely on the way it is interpreted. Two separate nations could adopt very similar constitutions but have them work quite differently.

Constitutionalism means that the power of government is limited.

In a constitutionally governed nation, laws and institutions limit government to make sure that the fundamental rights of citizens are not violated.

In contrast, a totalitarian or authoritarian government is not limited by its constitution; indviduals and minority groups have little protection against arbitrary acts of government, in spite of what the constitution may say. In the 1970s, the military regimes of Argentine and Chile “disappeared” (killed) thousands of suspected leftists even though their written constitutions promised human rights. (Similar to the so-called “Faili Meçhul Cinayetler” in Turkey.)

The Purpose of a Constitution:

Constitutions do several things. They put in writing national ideals, formalize the structure of government, and attempt to justify the government’s right to govern.

All constitutions begin with *preambles* that indicate the values, ideals, and goals of those who draft the documents. A constitution is also a blueprint, a written description of who does what in government, defining the authority and limiting the powers of each branch and providing for regularized channels through which conflict may be resolved.

A constitution may also give a government the stamp of legitimacy, something both symbolic and practical. Many nations will not recognize a new state until it has established a written constitution, which is a sign of permanence and responsibility.

HUMAN RIGHTS

Where do “rights” come from? Are they natural or artificial? Some philosophers take “natural rights” as a basis for human rights. Nature expresses God’s intentions, which are not hard to discern. Life and liberty are natural; therefore, government may deprive people of these basic rights only for good cause. Human rights are generally formulated in the *negative* as “freedom from,” namely, from various forms of tyranny.

CIVIL RIGHTS

Civil rights are newer and at a higher level; they grew up with modern democracy, in which citizens need the freedom to speak and vote. They are not as self-evident as human rights. Press freedom is probably a civil rather than a human right, although the two overlap. Those deprived of civil rights –such as the right to organize an opposition party—may soon also find themselves locked up by the dictatorial regime.

ECONOMIC RIGHTS

Economic rights are the newest, appearing in the 19th cc with the early socialists and shifting rights into the material realm. They are usually formulated in the *positive* as “freedom to,” namely, to live adequately, have a job, and get an education and healthcare. Bentham said “Right is the child of law.” Something becomes a right only when it is put into a constitution or statutes. All rights are more or less artificial or “socially constructed.”

THE UNITED STATES CONSTITUTION

(Preamble)

*We the People* of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six Years; and each Senator shall have one Vote.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Article II

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Article III

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article IV

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Article VII

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

**THE UK CONSTITUTION**

Constitutions organize, distribute and regulate state power. They set out the structure of the state, the major state institutions, and the principles governing their relations with each other and with the state’s citizens.

Britain is unusual in that it has an ‘unwritten’ constitution: unlike the great majority of countries there is no single legal document which sets out in one place the fundamental laws outlining how the state works.

Britain’s lack of a ‘written’ constitution can be explained by its history. In other countries, many of whom have experienced revolution or regime change, it has been necessary to start from scratch or begin from first principles, constructing new state institutions and defining in detail their relations with each other and their citizens.

By contrast, the British Constitution has evolved over a long period of time, reflecting the relative stability of the British polity. It has never been thought necessary to consolidate the basic building blocks of this order in Britain.

What Britain has instead is an accumulation of various statutes, conventions, judicial decisions and treaties which collectively can be referred to as the British Constitution. It is thus more accurate to refer to Britain’s constitution as an ‘uncodified’ constitution, rather than an ‘unwritten’ one.

**CONSTITUTION OF THE REPUBLIC OF TURKEY**

Date of Enactment: 18.October.1982

**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 honorable member with equal rights of the family of world nations;

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;

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 well- being 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;

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.

**PART ONE**

**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.

**V. Fundamental aims and duties of the State**

**ARTICLE  5-**The  fundamental  aims  and  duties  of  the State are to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy, to ensure the welfare, peace and happiness of the individual and society; to strive for the removal of political, economic and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual’s material and spiritual existence.

**VI.  Sovereignty**

**ARTICLE  6-**Sovereignty is vested fully and unconditionally in the Nation.

The Turkish Nation shall exercise its sovereignty through the authorized organs, as prescribed by the principles set forth in the Constitution.

The exercise of sovereignty shall not be delegated by any means to any individual, group or class. No person or organ shall exercise any state authority that does not emanate from the Constitution.

**VII. Legislative power**

**ARTICLE  7-**Legislative power is  vested  in  the  Grand National Assembly of Turkey on behalf of Turkish Nation. This power shall not be delegated.

**VIII. Executive power and function**

**ARTICLE  8-**(As amended on January 21, 2017; Act No. 6771) Executive power and function shall be exercised and carried out by the President of the Republic in conformity with the Constitution and laws.

**IX.  Judicial power**

**ARTICLE  9-** (As amended on January 21, 2017; Act No. 6771) Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation.

**X.  Equality before the law**

**ARTICLE  10-**Everyone is  equal  before  the  law  without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice. Measures taken for this purpose shall not be interpreted as contrary to the principle of equality.

Measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings.

TWO HISTORICAL “CONSTITUTIONS”

1. The Prophet’s Constitution of Medina

The Constitution of Medina (*Saḥīfat al-Madīnah*), also known as the Charter of Medina, was drafted by the Islamic Prophet Muhammad. It constituted a formal agreement between Muhammad (sav) and all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews, Christians and pagans. This constitution formed the basis of the future caliphate.

The document was drawn up with the explicit concern of bringing to an end the bitter inter tribal fighting between the clans of the Aws and Khazrac within Medina. To this effect it instituted a number of rights and responsibilities for the Muslim, Jewish, Christian and pagan communities of Medina bringing them within the fold of one community—the Ummah.

The precise dating of the Constitution of Medina remains debated but generally scholars agree it was written shortly after the Hijra (622). It effectively established the first Islamic state. The Constitution established: the security of the community, religious freedoms, the role of Medina as a *haram* or sacred place (barring all violence and weapons), the security of women, stable tribal relations within Medina, a tax system for supporting the community in time of conflict, parameters for exogenous political alliances, a system for granting protection of individuals, a judicial system for resolving disputes, and also regulated the paying of blood money.

After emigration to Medina, Hz. Muhammad drafted the *Constitution of Medina*, "establishing a kind of alliance or federation" among the eight Medinan tribes and Muslim emigrants from Mecca, which specified the rights and duties of all citizens and the relationship of the different communities in Medina (including that of the Muslim community to other communities, specifically the Jews and other "Peoples of the Book")

The Constitution of Medina was a social contract derived from a treaty and not from any fictional state of nature. The contract was built upon the concept of one community of diverse tribes living under the sovereignty of one God.

The Medina Constitution also instituted peaceful methods of dispute resolution among diverse groups living as one people but without assimilating into one religion, language, or culture.

Another important feature of the Constitution of Medina is the redefinition of ties between Muslims. The Constitution of Medina sets faith relationships above blood-ties and emphasizes individual responsibility.

Tribal identities are still important, and are used to refer to different groups, but the "main binding tie" for the newly-created ummah is religion. This contrasts with the norms of pre-Islamic Arabia, which was a thoroughly tribal society.

1. Magna Carta

The document that has come to be known as Magna Carta (spelled variously as "charta" or "carta"), or Great Charter, is recognized as a fundamental part of the English constitutional tradition. Although it is not a constitution, it contains provisions on criminal law that were incorporated into the Bill of Rights of the U.S. Constitution.

In 1215 King John of England fought more than forty English barons and their followers in a civil war. The king had angered the barons by extracting revenues based on their feudal obligations in order to fight a war in France. After John lost the war, the barons rebelled against the king. Finally they agreed on a 63-article charter, limiting the King’s power over the barons as well as the subjects.

Magna Charta contains sixty-three chapters. Many of the chapters defined the king's feudal rights over his vassals, preventing the king from arbitrarily collecting revenue from the barons. Chapter 39 established the right to due process of law, and in chapter 40 the king promised that he would not sell, deny, or delay justice to anyone.

1. First, we grant to God, and by this our present charter we confirm, for us and our heirs forever, that the English church be free, and have its rights whole and its liberties unimpaired. We have granted to all free men of our realm, for ourselves and our heirs forever, all these underwritten liberties to have and to hold, for themselves and their heirs, from us and our heirs.

13. The city of London shall have all its ancient liberties and its free customs, *both by land and by water.* Besides we will and grant that all other cities, and burghs [boroughs], and vills [towns], and ports shall have all their liberties and free customs.

39. No free man shall be seized, or imprisoned, or outlawed, or exiled, or injured in any way, nor will we enter on him or send against him except by the lawful judgment of his peers, or by the law of the land.

40. We will sell to no one, or deny to no one, or put off right or justice.

41. All merchants shall have safe conduct and security to go out of England or come into England, and to stay in, and go through England, both by land and water, for buying or selling, without any evil tolls, by old and right customs, except in time of war; and if they be of the land at war against us, and if such shall be found in our land, at the beginning of war, they shall be attached without loss of person or property, until it be known by us or our chief justice how the merchants of our land are treated who are found then in the land at war with us; and if ours be safe there, others shall be safe here.

42. It shall be lawful for anyone hereafter to go out of our realm, and return, safe and sound, by land or by water, saving fealty to us, except in time of war for some short time, for the common weal of the realm, except imprisoned men, and outlaws according to the law of the realm, and as natives of a land at war against us, and to the merchants of whom is done as is aforesaid.

63. Wherefore we will and firmly order that the English church should be free, and that the men of our realm should have and hold all the aforenamed liberties, rights, and grants, well and in peace, freely and quietly, fully and completely, for them and their heirs, from us and our heirs, in all things and places, forever, as is aforesaid. It is sworn both by us, and on the part of the barons, that all these aforesaid shall be kept in good faith and without ill meaning.