

A SUMMARY OF CONSTITUTIONAL DEVELOPMENTS IN TURKEY AND ON THE HISTORICAL AND POLITICAL SOURCES OF THE PRESENT CONSTITUTION

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The present Constitution was accepted on April 20, 1924, and was amended several times. But this Constitution is not the first Constitution of Turkey and the Constitutionality is not a new idea.

This idea which is almost as old as in the West, has an important place in the life of the Ottoman Empire, and even in the whole Islamic world. For this reason we will divide our summary under two parts ; first part belonging to the period of the Empire and the second to the period of the Republic.

I

THE POLITICAL ORGANIZATION OF TURKEY DURING THE PERIOD OF THE EMPIRE

The Turkish founders had two great guiding principles at their heart. One of them was the genius of the organization and political construction, the other was the Islamic faith. These two powers were combined to establish one of the greatest Empires in the History. Until 1926, the adoption of Swiss Civil Law system and until 1928 the amendment of the Constitution to introduce the secularity of the Islamic law principles and the Islamic State Doctrine were in force in Turkey. So it is impossible to understand thoroughly the historical background of the present Turkish Consti-

tution and of the Turkish State organization knowing Islamic Law and Islam State Doctrine.

Introduction : A GENERAL OUTLOOK TO THE
ISLAMIC LAW AND STATE PRINCIPLES

1 — The idea of Right in Islam and the sources of Law :

In Islam Right is ordered by God and Wrong prohibited by Him. God indicated what is right and what is wrong in Holy Koran sent to men through his Prophet Mohammed.

a) The Holy Koran : is the Sacred book and divine Law of the Islamic World. It indicates for all times the right and wrong and the rules to be observed among men. Then the main Source of Law in Islam is the Holy Koran.

b) Mohammed's traditions (Hadis) : The Holy Koran was revealed to Prophet Mohammed who informed the men. The Prophet Mohammed interpreted and explained the Holy Koran by his words and deeds. These words and deeds are called (Hadis) Traditions. The meaning and the conclusions to be drawn from the words and deeds of the Prophet are called (Sunnet) or the road of the Prophet. Hadis and Sunnet being a kind of realization of divine will through Prophet Mohammed are considered a second source of the law after the Holy Koran.

c) General Concurrence and agreement (Ismail Ummet) : During the first four Califs especially during the reign of Ebubekir and Omar when the hesitation arose from a problem which did not seem to be solvable by the given principles of the Holy Koran or Hadis, the elders of the city of Medina were called upon to give their opinion in an assembly. This was called " unanimous opinion " or general concurrence (Icmai Ummet). Later this concept was broadened to include an unanimous opinion of the theologian of the time upon a religious question. Then General Concurrence and Agreement is the third source of the Islamic Law.

d) Analogy : Before the increasing and changing needs as the Islamic Society was expanding and coming in contact with new civilization analogy (Kiyasi Fukaha) was accepted as a fourth source. Analogy (Kiyasi Fukaha) is to solve a new problem which

does not exist in the three preceding sources by analogy to a principle existing in the previous sources.

These four sources are called (The Four Guides) (Edille-i Erbaa) (Les quatre guides). The four of them form the Canonical Laws of Islam.

e) Islamic usages and customs : A fifth source the Islamic usages and Customs must be added to the first four sources.

2 — The State Organization in Islam :

a) The Period of Prophet Mohammed : Although Islam was an universal religion during the period of the Prophet Mohammed, its political organization remained local and patriarchal. The Prophet, the religious leader, and the judge, and the administrator and also the commander. He performed these duties himself when they were within his reach and sent his representatives called (Vali) to regions which were far away.

b) The Period of the First Calif : After the death of the Prophet, Ebubekr was elected as the First Calif. For this election Moslem met in Medina and Ebu Bekr was elected after negotiations by the people's vote. After his election he made a speech in which he asked his people for their help if he was on the right way, and their warning if he was on the wrong way. He asked for their obedience if he was following God's and Prophet's teachings and disobedience if he was not.¹

c) The Period of Calif Omar : In the history of Islam there is no comparable great Statesman to the Calif Omar. He established more than thirteen centuries ago a Democratic Administration based on goodness and justice. He never abandoned during his life the Islamic maxim, e.g. " Justice is the foundation of the State ".

He realized the separation of powers. An Assembly was deciding on matters presented to it by a majority vote. The executive was separated from the judiciary by Calif Omar.

Calif Omar had enunciated centuries ago the greatest rule of

(1) This truth is expressed in the following way in the Article 94 of the present Turkish Constitution : " In case of an infraction of the law an official or employee may not escape responsibility on the ground of compliance with instructions from superiors ".

modern law which is the first of the Turkish Civil Code. He gave the following instructions to the judges : " Give your sentences according to the Holy Koran; if you can not find there what you are looking for, look at the Prophets' traditions ; if still you do not find the solution, look to the general concurrences. If still you are not satisfied, act as if you were the law maker".²

d) The aftermath of the first four Califs : Two more Califs were elected after Calif Omar. The Califate passed to Moawiya, son of Abu Sufyan after the fourth Calif Ali. With the passing of Califate to the Ommiad family the Capital of the State moved from Hedjaz to Syria; later the Califate passed to the Abbassude family and the Capital was moved to Irak.

During the Ommiad period the Republican basis was abandoned and a hereditary rule was accepted.

The marvellous progress in arts and sciences, philosophy, etc. or, in short, in civilization happened during the Abbaside period. Islamic law attained a paramount place. The great Imam Abu Hanife is one of the greatest lawyers not only in the History of Islamic law but also in the History of world law.

The rules of Islam are divided into two great parts : "Faith" and "deeds". Faith concerns the inner life of man. " Deeds " is further divided into worship and ethics. The provisions on worship fix the duties of man towards God, such as prayers and asts. Ethics are divided into individual and social ethics.

In all of these provisions there is no spend divisions of law. Law in Islam is just a branch of Social Ethics. Law is penal by these provisions of Social Ethics which have Sanctions. Islamic law has three subdivisions : 1) Family (Münakehat) - Provisions on family relations such as marriage, divorce, guardianship, tutorship, etc. 2) Transaction (Muamelât) - Provisions on business life ; 3) Punishments for forbidden acts.

Is summary, law in Islam depends entirely on ethics which in turn depends on faith. The force of Islamic law springs from faith.

3 — The Principles of State in Islam :

In Islam truth is unique. There is no different truths for re-

2) Turkish Civil Law, Article 1.

ligion and State in Islamic law ; the teachings of God and of the Prophet are also the principles of the State. The obedience to the head of State " ulüemre " is a duty for Moslems. To disobey the sovereign is to disobey God. Is this duty absolute ? The head of the State must be a virtuous, honest and learned man. As long as he runs the State according to the Islamic law. Obedience is a duty, but to disobey orders which are against Islamic law is not disobedience to God's orders. In Islam there is no obedience to Tyranny.

During the Empire the principles of public law and customary practices of the State were based upon Islamic law as were the principles of private law of the period. The State organization was renewed from time to time. Taking into consideration these changes, the Constitutional Developments of the Ottoman Empire can be divided into two great parts. The first part which lasted until 1839 (Sultan's Proclamation of Gülhane) is Absolute Monarchy or Religious Sultanate. The Constitution of the State is Islamic law; the Sultan is an Absolute Monarch. The second part is Moderate Monarchy or Quasi Religious Sultanate. This part has three phases : 1) Reformation (Tanzimat) 1839-1876, 2) First Constitutional Regime and First Constitution (1876 - 1877), 3) The Second Constitutional Regime (1908-1922).

I IN TURKEY

The Ottoman Empire, built on the ruins of Byzantine and Seljuk Empires, became one of the greatest States in world history. The state organization established by Alâeddin Pasha, brother of Sultan Orhan, and was run along military lines, continued until MEHMET the Conqueror, after conquering the Byzantine Capital Constantinople broadened the State organization by his Imperial Code. The Empire reached its greatest size during the reign of SÜLEYMAN the Magnificent who modified the state organization instituted by MEHMET the Conqueror. With minor changes this organization lasted until the nineteenth century.

According to this organization the Head of the State is the Sultan who is also the Calif since Selim First.³ The Sultane was

3) Selim I, after conquering Syria, Palestine and Hedjaz, fought with Egypt's Sultan Tomanbay and conquered Egypt in 1517.

hereditary and in the beginning passed from father to eldest son, but later to the oldest male member of the Ottoman Family.

The Ottoman Sultan appointed a deputy called the Grand Visier for his worldly powers and a deputy called Shcikh-ul-Islam for his religious and spirituel power.

The title of the Grand Vizier was first given to Ali Pasha, son of Çandarli Kara Halil Pasha.

The Calif Omar established the office of Mufti who gave official opinions on religious matters. The first Muftis were great moslem scholars. Later on there were several muftis in different places. Mehmet II the conqueror gave the title of Sheikh-ul-islam to Hizir bey, son of Celâl because of his distinguished place among moslem scholars. He was made head of the muftis. After the office of Grand Vizier and Sheikh-ul-islam there was established in the juridical field of the office of Chief Justice who was the head of all judges. The Chief Justice were in the same time the Chief Army-Chaplian representing Islam in the army.

During the reign of Mehmet II the Conqueror, a second office of Chief Justice was created and the Chief Justice were called respectively the Chief Justice of Rumeli and the Chief Justice of Anadolu. Besides Grand Vizier Sheikh-ul-islam and the Chief Justice, Minister of Finance (Defterdar), Nişancı and Reis-ul-Küttap were also high State Dignitaries.

The Minister of Finance was in charge of State Finances. Nişancı was the Chief Chamberlain who was entrusted with the writing of the Sultan's Great Seal. Nişancı was chosen among the calligraphist scholars. Reisül Küttap was one of the member of the Suite of Nişancı and Chief Secretary of the Sultan's secretariat. His office is equivalent of today's Ministry of Foreign Affairs.

In the Ottoman Empire there was in the Capital a Council of the Sultan (Divani Hümayün). The Sultan and all high dignitaries were members of this Council which negotiated several Sta-

Selim I met in Egypt the last Abbaside Calif Mütevekkil al Allah and received from him the Califate. Selim brought back to Istanbul the sign of the Califate such as the Sacred Banner of Prophet Mohammed which was only unfurled on case of Holy War, and his cloac. Since then the Ottoman Sultan were Califs.

te Affairs acted as a Court to solve cases and listen to citizen's complaints.

Until the Reign of Mehmet II the Conqueror, the Council of His Majesty met every morning in early hours, and worked without interruption until noon. With the Conqueror's Code the working days of the Council were reduced to four in a week. During the reign of the Suleiman the Magnificent the Council met in a specially built hall called " Under the Cupola " and the Viziers who participated to these meetings were called (the Viziers of under the Cupola).

Beside the Council of His Majesty the Grand Vizier had a Council called (Second Council or Second Divan) which met every day except Tuesday and Friday. This Second Council too negotiated state business and listened to the people's complaints.

II. MODERATE MONARCHY

The Reformation Period which started with the Proclamation of Gulhane lasted until the Second Constitutional Regime in 1908, with a staquation period of 32 years during the Reign of Abdulhamit II. This reformation was in thought, in language and literature, in daily life as well as in legal order and State organization.

In fact this reformation started even before the reign of Sultan Selim III, but undertaking reforms were mainly military in character and the Proclamation of Gülhane is a political and legal document.

1 — *Proclamation of Gülhane* :

The treaty of Kuchuk Kaynarja signed in 1774 was decomposing the Ottoman Empire. Sultan Selim III, who was crowned in 1789, the same year of the French Revolution, tried vainly to save the Empire and lost his life. After Mustafa IV, who was forcibly abdicated Mahmut II was enthroned but during his reign Greece got her independence by the treaty of Edirne of 1822, and Egypt revolted under Mehmed Ali Pasha. The young Sultan Abdülmecid who became the ruler after the death of Mahmud II, listened to the good advices of Vizier Reshid Pasha who read on October 3, 1839 at the Gülhane square the Proclamation of Sultan before the Sultan, the dignitaries of the State and foreign diplomats. This Proclamation was a kind of Reforme Project. New laws would

be enacted, the life, property and honour would be guaranteed against illegal attempts, taxes would be reconsidered and military service was to be regulated. The Sultan was promising to obey to his proclamation and the foreign diplomats were accepted witnesses to the Sultan's swearing.



The Proclamation of Gülhane is not a Constitutional in the modern sense of the word. It is a charter. It is not a Constitution because a Constitution is not a sworn promise, but the fundamental principles of the State. It is a charter because an absolute monarch is restricting powers.

However, the value of the Proclamation is great. In fact, it was after 1839 that laws and regulations were enacted in a new spirit in the judiciary, financial and administrative fields. Turkey engaged a cultural exchange with the Western world.

2 — *The First Constitutional Regime and the First Constitution:*

Abdulhamid II, changed by his own (firman) the absolute monarchy into a Constitutional regime. He made this sacrifice on his part for two reasons : First the idealists and the second his worry of interference with European Powers. The First Constitution was prepared by Mithat Pasha and a mission of scholars studied it. It was proclaimed on December 23, 1876. And the First House of Representatives was opened by the Sultan on March 7, 1877.

The reasons which restricted Abdulhamid II, who was very ambitious for power, were not only internal but were also external such as the fear of intervention by some European Powers. And most of the time Tzarist Russia found the other powers against her.

In the years following 1872 the great poet of freedom Namık Kemal, and great man such as Mithat and Ziya Pashas who had patriotic zeal had raised their voices in favour of Constitutionality and freedom. Russia was fomenting trouble in Ottoman territories, Bulgarians and Serbians revolted in 1875 and Russia opened war against Turkey in July 1876. European powers intervened and a conference met in Istanbul to solve the Turkish-Russian conflict. The powers asked for new reforms and guaranties for them.

Mithat Pasha and his friends with a last effort persuaded Abdulhamid II to proclaim the Constitution. By that action Turkey would undertake the reforms by herself without external intervention.

A General Outlook To The First Constitution

The First Constitution which was accepted on December 23, 1876 had 12 chapters and 119 articles. These chapters and articles were 1) On the governmental organization, 2) On the rights of Ottoman citizens before this organization.

1) The organization established by the First Constitution. The separation of Powers was given to the Sultan and a Council of Ministers. The legislative power was given to a General Assembly composed of two chambers and the Judiciary powers was given to independent courts.

a) Executive Powers belong to the Sultan who is the head of the State and head of the executive branch of the government. The Sultan uses this power of his through ministers who are only responsible to him and who can be removed from office or appointed only by him. The Sultan as the head of the State is the protector of all Ottomans and as the Calif of the Moslems is the protector of all Moslems in the world. His Imperial Self is sacred and not liable under any circumstances (articles 4 and 5). The Sultan as the head of the State and of the executive has far reaching rights and prerogatives. He appoints all ministers, government officials ; he has the power to coin money, to make treaties, to declare war, and to make peaces. He was the Commander in Chief of the Army and of the Navy. He executes all laws, legislates regulations, he suspends or reduces sentences of convicts, thus proclaims partial or general amnesty. The Sultan used there powers through his ministers (Article 7).

Ministers were headed by the Great Vizier. They were chosen among the people "relied upon". Each minister was individually responsible for the acts and affairs of his own ministry. A minister, accused of his ministerial acts, can be summoned for trial before the Supreme Court. For the acts outside of his ministerial activity and for personal reasons he can be sued in ordinary courts.

The Council of Ministers legislates the " temporary laws " when the Parliament is not in session and there is no convenient time for the meeting of the Parliament and when there is a danger imminent against the State.

The " temporary laws " are in force as the ordinary laws are but when the Parliament meets, it accepts or rejects them.

b) Legislative Powers : The legislative power is exercised by a General Assembly composed of two houses. The members of the house of deputies are chosen from among the people, and the members of the Senate are appointed for life by Sultan. The members to the House of Deputies were elected among the Turkish male citizens over thirty years of age once every four years. The suffrage was indirect and was carried out by secret ballot.

The senate members were celebrated over 40 men who accomplished good services to the State. They could not be removed. The Senate approves or rejects the bills approved by the House of Deputies. If it approves the bill, it is presented to the Sultan to be approved. After the signature of the Sultan the bill is proclaimed and it becomes a law. The Senate can reject the bill either for good on the ground that it is contrary to religion, the Sultan's prerogatives, to citizens' rights, to the Constitution for amendment.

The General Assembly has power to legislate new laws and to modify the old ones. The initiation of bills by members of the General Assembly was restricted by Article 53.

c) Judicial Powers : The Constitution vested the judicial powers in Shari and ordinary courts.

The Shari courts dealt with cases on family and inheritance relations. Ordinary courts dealt with criminal cases. The judges of both types of courts could not be removed.

A Supreme Court and a Court of Accounts were created.

2 — General Rights and freedoms of Ottoman citizens :

All Ottoman citizens, regardless of religion, were equal before law. The right of life and personal and inviolability, the freedom of press and freedom of education were guaranteed. Private property cannot be taken for public use without just compensation. Inviolability of domicile was also guaranteed.

The spirit of the first Constitution and the value of the system accepted by the Constitution : This law is a Constitution in character. But the method of its preparation shows that this Constitution is a (firman). There was no Constituent Assembly to prepare it. The Constitution of 1876 is not laic. But the State Organization is no completely religious either.

In the Constitution of 1876 the last word belongs to the Sultan. He has the prerogative to convoke the General Assembly.

As long as he does not wish to convoke the Parliament does not convene. The bills are delated in both Houses only by permission by His Majesty. The ministers are responsible individually not to General Assembly but to Sultan.

Article 113 gave the exclusive power to Sultan to deport anyone whose activities were regarded as against the government. The same article was used to deport Mithat Pasha whose reputation as an earnest liberal minded person was spreading among people.

The General Assembly was dissolved in February 1877.

3) The Second Constitutional Regime :

The Young Turks worked in Europe against Abdulhamid II, and the Council of Ministers gave an alarming report to the Sultan on July 24, 1908. It was stated in this report that the army had revolted in Salonica, Monastir, and Kosova, and was asking that the Constitution be put into effect. Upon this, the Constituion was put again into force.

The Amendment of the Constitution :

The General Assembly of 1877 was chosen according to the provisions of a " Provisional Regulation " which on many instances had contradictory items to the Constitution, i.e. Article 65 of the Constitution fixed the number of the represenaives on he basis of one depuy for every fifty thousand persons, but the Provisional Regulation specified a total minimum of 120, and there were 130 representatives in the first General Assembly.

Article 130 of the Constitution stated that the House of Representatives shall convene from the first day of November until March. Bu the Provisional Regulation stated that the House of Representatives shall convene from the first day of December for three consecutive months. The election was held according to the Elec-

toral Bill which was accepted by the first General Assembly but not approved by the Sultan who approved it during the events in 1908. The General Assembly reconvened, but fanaticism broke out, (March 31 incident), and Abdulhamid II was abdicated in favour of Mehmed Reşad V.

Mehmed Reşad was a complaisant and an ambitious person. But the government of the Union and Progress Party tried to fortify the position of the Parliament before the Sultan fearing that the Parliament may be dissolved again. In August 1909 both the Houses voted in favour of the amendment by 2/3 majority.

The Amended Constitution gave again the power to dissolve the Parliament to the Sultan but this power was restricted by two conditions which were as follows : that within three months of the act of dissolving, the Parliament should convene again and specifically the Senate should agree for dissolving, the Parliament should convene again and specifically the Senate should agree for dissolving.

II

THE POLITICAL DEVELOPMENTS AND THE CONSTITUTIONS DURING THE ERA OF THE REPUBLIC

The history of the Constitutional developments during the era of the Republic in reality is the history of the development of the national will and sovereignty. The history of the Turkish Constitutional law is a part and the core of the Turkish reforms. Therefore, in order to understand the Turkish Constitution, one has to follow closely the striving for freedom and independent existence. However, we will not go into the history of the Turkish War of Independence but we will only sketch the main phases in terms of the Constitution.

I — THE FOUNDING OF A CONCEPTION BASED ON THE PRINCIPLE OF NATIONAL WILL :

As a result of Mondoros treaty of October 30, 1918 the country was occupied by foreign powers in 1919. Ataturk was sent to Anatolia as the Inspector General of the Third Army ; whereupon he took steps in order to start the war of independence. From the

city of Amasya on June 22 he sent a communiqué to governors and to the lieutenant-generals of the army asking them a national congress be convened at the city of Sivas in order to express the national will. He requested three representatives be sent from each district of the departments for this purpose.

Prior to the Sivas congress, another congress was convened at Erzurum under Atatürk's chairmanship. In the first meeting Atatürk proposed the establishment of a council based on national will and the establishment of a government which would draw its force from national will. Thus Atatürk set the principle of not only the war of independence but also the Constitution of the future republic.

The most important decision of the congress which met for fourteen days was the following : It is the principle to establish the sovereignty of national will by means of national force.

The decision reached at the Sivas congress and the National Pact of Istanbul Parliament on January 28, 1920 gave impetus to the opinion already formed. In sum the Amasya communiqué and the decisions reached at the Erzurum and Sivas congresses laid the foundations of the present administrative organizations and the idea of a government based on national will was developed.

II — THE FIRST GOVERNMENT OF THE GRAND NATIONAL ASSEMBLY :

Although the idea of government based upon national will was created still the governmental organization and an organ to realize this idea did not exist. The last House of Representatives which began to meet from January 12, 1920 on, declared the (National Pact) but was dissolved on March 16 upon the threat of occupation forces. The great commander who anticipated this outcome concerning the House of Representatives in an occupied city, had decided to establish in Ankara a National Assembly as the capital of the physical and moral forces of the country and to manifest the national will in this assembly.

Atatürk had communicated his decision to the country and five representatives from each department (vilayet) was chosen

according to his instructions and met in Ankara on April 23, 1920 in the First Great National Assembly.

The assembly, above all, felt the need to make known its legitimacy denied by the Istanbul Government and its duly representation of the will of nation. For this purpose the assembly passed an (Act of High Treason).

According to this law those who by speech, act, or in writing were opposing and denying the legitimacy of the assembly and initiating revolt against it were declared as traitors. After this, a difficult problem facing the assembly was the setting up of the government, in other words, the organization and the way of using the national will and sovereignty. This difficulty was settled. After a short controversial discussion, by a statement and a motion coming from Ataturk, a governmental system for extraordinary times was accepted. The principles of this system related with our subject are the following :

a) "The sovereignty on Turkey's destiny of the national will concentrated in the Assembly. There is no sovereign power above the Grand National Assembly".

b) "The Grand National Assembly has legislative and executive authorities. A council elected from among the members of the assembly, by the assembly exercises the executive authority as the representative of the assembly. The President of the assembly is also the head of this Council."

c) Memorandum : The Sultan and Calif's position will be settled by the Assembly after he is freed from the actual pressures upon him.

The Assembly agreeing on these principles elected Ataturk on April 24 as its president and passed a law containing four articles on May 22, 1920 on the formation of the Council of Ministers.

The first article of this " law of the Council of Ministers " was establishing a Council of Ministers and at the same time showing the procedure of their election. The Assembly was electing the ministers individually from among its members by an absolute majority vote. The last article regulated the case of conflict bet-

ween ministers. In such a case the Grand National Assembly had the jurisdiction to solve the problem. The form of election of ministers was rendering very difficult the government's composed of members having common opinion and ideas and forming a homogenous body. To prevent this defect the second article was amended on November 4, 1920. According to this amendment the Assembly was still electing the ministers by absolute majority but from a list presented by the President of the Assembly.

The First Grand National Assembly was in reality the Constituent Assembly and the center of leadership for the war of independence. In this capacity the Grand National Assembly by passed the principles of normal times and accepted the unity of powers. The Assembly assembled in itself the legislative and constituent authorities as well as the executive authority. But actually since the details of daily administrative and governmental activities was impossible, the Assembly elected representatives from among its members. In this way the unity of opinion, administration and command necessary for the defense of the country was realized.

From this unity of power a problem arose. The Assembly, having both the legislative and executive authorities, could not adjourn. The Assembly had to meet continuously in order to perform the executive authority and to control the Council of Ministers in an uninterrupted manner.

This problem was solved with "the law of quorum" of September 4, 1920. The continual meeting of the Assembly was accepted. Each department had 5 deputies, the quorum was formed with half of the total membership of the Assembly. The attendance to the Assembly was considered very important by this law. Any member of the Assembly who was absent from the Assembly without permission or admissible excuse for a period of two months, was considered to have resigned by a decision in a plenary session.

Another problem arose with this law it was stated : The the first article of the above mentioned law it was stated : The Grand National Assembly meets continuously under the following conditions until the liberation of the country and the nation and the caliphate and the Sultanate which is the main objective of the

Grand National Assembly. Thus the existence of the Grand National Assembly was limited to its objectives which was to liberate the country and at the same time to liberate the Caliphate and Sultanate from the forces of occupation. The latter part of the objective did not conform with the spirit and the accepted principles of the Assembly.

On the one hand to state that (there is no power above the Grand National Assembly) and on the other hand to indicate as the objective of the Grand National Assembly the liberation of the office that is the Caliphate and the Sultanate it denies were conflicting statements.

Some members of the Assembly claimed that the objective of the Grand National Assembly was limited to the liberation of the Caliphate and the Sultanate whereas other members headed by Ataturk believed that some of these 'limitations should not exist and claimed that the sovereignty should rest to the Grand National Assembly. The first article of the above mentioned law was accepted in order to satisfy the members who shared the first viewpoint. And the Constitution of 1921 was accepted in order to strengthen the sovereignty of the Grand National Assembly.

III — THE CONSTITUTION OF 1921 :

This Constitution has two chapters and a separate article. The first chapter is on the principles of the organization and the second on the administration of provinces (vilayet).

In the Chapter on Organization the following provisions are made : The sovereignty belongs unconditionally to the Nation. The legislative authority and executive powers concentrated and manifested in the Grand National Assembly which is the sole representative of the Nation. The name of the Government established by this Constitution is (the Government of the Grand National Assembly).

The Assembly convenes on November of each year without a summons; its members are elected for every two years. Should holding new elections prove impossible the legislative term may be extended for another year.

The Constitution of 1921 the general duties and powers of the Grand National Assembly (Article 7). The same article giving general directives on the legislative authority of the Assembly was at the same time restricting it by religious laws and the general rules of morals and manners.

The Constitution was fixing the form of the Government (Article 9). The Government of the Grand National Assembly was divided into many departments. Each of these departments was governed by a minister elected by the Grand National Assembly from among its members according to a special law. The same article 9 contains the provisions on the election, duties and powers of the President of the Assembly.

The Assembly elects in a plenary session from among its members and for one assembly term the President of the Grand National Assembly who is also the natural president of the Council of Ministers. In these capacities he signs both the decisions of the Assembly and of the Council of Ministers. The ministers elect one member of their body as the Prime Minister.

The Constitution in the chapter on administration divides Turkey on the basis of geographic conditions and economic relations into provinces, the provinces into districts, and the districts into sub-districts. The Provinces are governed by a governor appointed by the Assembly and as the representative of the Assembly. The sub-districts have Juridical personality, free to govern themselves. In the Sub-district there is a council elected by the people and a Executive Board designated by this council. The sub-governor in charge of the districts is also designated by the council. Districts are an administrative and disciplinary part of the provinces to which they belong. They are appointed by the Grand National Assembly, but they act under the orders of the Governor of the province.

Above this Administrative Organization there are the regions of Inspector-Generalships. The Constitution was establishing units among several provinces on the basis of social and economic relations and placed each of them under a chief called inspector-general. With substantial authority the Inspector-General is responsible for order and security in the respective regions, and for the collaboration between the provinces within each region.

The Constitution of 1921 rendered official the spirit which came out from the communique of Amasya and became a foundation to the consecutive organization laws. The Constitution of 1924 has the same spirit.

IV — THE ABOLITION OF THE SULTANATE AND THE PROCLAMATION OF THE REPUBLIC AT THE END OF THE WINTER OF 1921

The Turkish army won after many battles the victories of İnönü and Sakarya. In August 1922 the great attack began and by September 18, West Anatolia was cleared from the enemy forces. The Armistice of Mudanya was the first phase of the Turkish victory. Finally Europe decided to make peace and invited the government of the Grand National Assembly and the government of Sublime Porte to Lausanne Peace Conference. On the other hand the Prime Minister of the Istanbul Government Tevfik Paşa applied to Atatürk and to the Assembly for a reconciliation in order to contrise in the Conference. The controversy was becoming dangerous. Which one of the governments was going to speak in the name of the Turkish nation at Lausanne, the government of Sultan which acted against its vital interest or its representative the government of the Grand National Assembly?

The Assembly gave its historical consent on the abolishment of the Sultanate in November 1922. This decision was separating the Sultanate from the Caliphate. Upon being informed about it the Istanbul government resigned and the last Ottoman Sultane fled to a foreign country.

During Lausanne Conference there were differences in opinion in the Assembly. But unanimity of the Assembly was necessary for the victory of Turkish point of views in Lausanne. For this reason the Assembly voted for the new elections and the country's opinion were represented by the new and second National Assembly.

The Second Great National Assembly ratified the honorable Lausanne Treaty and on October 29, 1923 formally proclaimed the Republic. So the Great National Assembly Government which was born from the exigencies of the war years ended. The

necessary amendments of the Constitution of January 20, 1921 were adopted on the day of the proclamation of the Republic.

V — GIVING AN OFFICIAL EXPRESSION TO THE REPUBLIC :

A law officially called " The law on the amendments and explanation of some articles of the Constitution " was accepted on the same day of the Proclamation of the Republic. This was a law of transition between the Constitution of 1921 and the present Constitution. (Statute No. 364 ; Date : 10.29.1923; Düstur Vol. 1, Section 4, p. 196.)

The articles 1, 7, 10, 11 and 12 of the Constitution of 1921 were all together amended by this law.

The first article was amended to read as follows : " Sovereignty belongs unconditionally to the Nation. The government is based on the system of people's own rule over their destiny. The form of the Turkish State is the Republic ".

The second article had an added clause : " The religion of the Turkish State is Islam. Its official language is Turkish ".

The fourth article was amended to read as follows : " Turkish State is governed by the Great National Assembly. The Assembly governs the branches of governments through the ministers ".

By this article the Assembly was keeping the power to govern and to administer but it was transferring the use of this power to the ministers.

The tenth article was amended to read as follows : " The president of the Turkish Republic shall be elected for one assembly term by the Grand National Assembly in a plenary session from among its members. The out going president shall remain in office until the election of the new President of the Republic. A president is eligible for re-election. "

The eleventh article was amended to read as follows : " The president of the Republic is the chief of the State. In this capacity he may preside over the Assembly and the Council of Ministers whenever he should deem it necessary ".

The twelfth article is the most interesting one. It reads :

“ The Prime Minister is designated by the President of the Republic from among the members of the Assembly ”. Whereas in the Constitution of 1921 all ministers after being elected by the Assembly from among the members this body of ministers elects the Prime Minister among themselves.

The article continue as follows : “ The other Ministers are chosen by the Prime Minister from the members of the Assembly and presented as a group by the President of the Republic to the Assembly for approval.

In the event that the Grand National Assembly is not in session, the presentation and approval of the Council is delayed until the meeting of the Assembly ”.

After the acceptance of these amendments on the same day the election of the President of the Republic was held and Ataturk was elected. The event of the Proclamation of the Republic was announced in the whole country by a hundred gun salute.

VI — THE ABOLITION OF THE CALIPHATE :

After the proclamation of the Republic it was the turn for the abolition of the Caliphate. Thus was done by an act of 13 articles which was accepted on March 3, 1924. With the last Calif Abdulmecid Efendi, the citizenship of all female and male members of the Ottoman dynasty was rebuked, and they were deported. The real estate of those who were sovereign during the Empire, the furniture and the works of art of the palaces and mansions were nationalized.

It was necessary to accept a new Constitution in order to collect all these Constitutional decisions, principles and enactments. This Constitution passed on April 20, 1924 and it is the Present Constitution of Turkey.

Here we will summarize this Constitution only in a descriptive way.

VII — A GENERAL GLANCE AT THE CONSTITUTION OF APRIL 20, 1924 :

This Constitution is shorter than the Constitutions of many countries (the Constitution of the Federal Republic of Germany

has 146 articles ; that of the German Democratic Republic 188 articles ; that of Austria 150 articles ; that of Belgium 139 articles...). Our Constitution has only 105 articles. This shortness is both a defect and a virtue. It is a defect because the Constitution is not complete as a fundamental program of the State. It is a virtue in that it renders possible the interpretation of the needs which were impossible to be anticipated in advance.

We must note in behalf of the Turkish Constitution that this law is not translated and adopted like many of our laws; on the contrary it is a product of a long historical evolution, consequently 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.

The Constitution has 105 articles and 6 chapters. The first chapter is on the form of the state and the principles of the government. We can summarize these as follows : The Turkish State is a Republic. Thus the Chief of the State is no more the eldest male child of a dynasty as it was the case in the Constitutions of the Empire. The Chief of the State is elected for a given and temporary time. In Turkey Sovereignty belongs exclusively to the Nation. The Nation cannot share this power of heirs' as she did in the organization of the Empire with a power and office having sovereign rights by heredity.

The Nation delegates the use of its legislative and executive authority to the Grand National Assembly composed of deputies elected by the Nation in accordance with the Election Law once in every four years.

The Grand National Assembly exercises the legislative authority. The right to legislate in Turkey belongs exclusively to the Assembly. The Grand National Assembly exercises its executive authority through the person of the President of the Republic elected from among its members and a council of ministers chosen by the President. The Assembly may at any time control the activities of the government and dismiss it.

Judicial authority is exercised by independent courts in the name of the Nation in accordance only with the law.

The second chapter of the Constitution is on the legislative

powers. Thus the meeting and duties of the Assembly, the persons eligible to be deputies, the right of introducing laws, the form of their oath of office, etc... are stated. The third chapter is on executive powers. The President of the Republic takes immediately after his election an oath before the Grand National Assembly. All decrees promulgated by the President of the Republic shall be signed by the Prime Minister and the Minister concerned. All responsibility for decrees promulgated by the President of the Republic is incumbent on the Prime Minister and on the Ministers who have placed their signatures on the decree in question. The Prime Minister is designated by the President of the Republic from among the members of the Assembly. The other ministers are chosen by the Prime Minister from the members of the Assembly and presented to the President in a list. Later —after his approval— the Prime Minister submits the program and policy to the Assembly as well as the designated ministers and requests a vote of confidence.

The Council of Ministers is collectively responsible for the government's general policy. Each minister is individually responsible for the affairs falling within his jurisdiction, towards both the Chief of the State and the Grand National Assembly.

In the same chapter the formation and duties of the Council of State are stated. The Council of State examines and decides administrative suits and conflicts, expresses its opinion in regard to draft laws and terms of contracts and concessions to be granted by the government, approves the regulations drawn by it.

Regulations determine the mode of application of existing laws. They cannot contain new legal provision contrary to the existing laws. In case of an alleged conflict between the regulations and the laws, the Grand National Assembly has jurisdiction in the matter.

The fourth chapter is on judicial powers. The judges are free from all kinds of interference and are dependent only on the law. The decisions of courts may not be modified in any matter whatsoever by the Council of Ministers or by the Grand National Assembly, nor can they be postponed or their application be obstructed.

Each individual has free recourse to all legal means which may be deemed necessary for the defense of his rights before a court.

No tribunal may refuse to examine cases which lie within its competence and jurisdiction. Cases not coming within the court's jurisdiction can be rejected only following the rendering of a decision by the court itself.

In the same chapter, a Supreme Court to be constituted by decision of the Grand National Assembly whenever it is deemed necessary is foreseen. The trial of members of the Council of Ministers, the President and members of the Council of State and of the Court of Cassation as well as the Chief Public Prosecutor in all matters arising from the performance of their duties is within the jurisdiction of the Supreme Court.

The fifth chapter is on Public Rights of Turkish citizen. There are provisions on the organization of provinces, government officials, financial affairs. In this chapter the establishment of a Court of Accounts is attached to the Grand National Assembly and charged with the control in accordance with the law *ad hoc* of all revenues and disbursements of the State is foreseen.

The last articles of the chapter are on the introduction of amendments.

VIII — THE AMENDMENTS TO THE CONSTITUTION OF 1924 :

a) The amendment of April 10, 1928 and the legalization of the principle of secularism.

Since the establishment of the first Grand National Assembly an opposing attitude against the institutions of the Sulanate and the Caliphate was assumed proclamation of the Republic was made inevident. Finally the Caliphate and Sultanate were abolished and the Republican regime which existed in practice (*de facto*) was legally established and proclaimed on October 29, 1923. But still religion had its place in the State organization. The Constitution of 1924 kept the religious principles as the Constitution of 1921.

The second article of the Constitution of 1924 stated that (The Religion of the Turkish State is Islam). In the article 26 of

the same Constitution among functions to be carried out directly by the Assembly (the execution of religious matters) was stated. In fact these provisions were concessions to satisfy the conservative members of the Assembly. But even so they were not fitting to the exigencies of the practice and to the logic of the radical changes undertaken.

The convenient time contemplated had arrived. The ministries of Religious Affairs (Şer'îye) and Religious Foundations (Evkaf), the Canonical Courts were abolished, medresehs (schools of theology) and convent of dervishes (Tekkes) were closed, the new Civil Code was accepted and so the last ties to Islamic rules in legal organization were cut. It was necessary to amend the Constitution in order to normalize the situation. Otherwise the acts passed were unconstitutional.

Upon the proposal of amendment signed by 120 deputies the Grand National Assembly accepted in April 1928 the proposed amendments, and the provisions and clauses related to Religion in the Constitution were taken out. The amended articles were the following (2, 16, 26, 38). The paragraph of the second article stating that (the Religion of the Turkish State is Islam) and the clause (the execution of religious matters) of the article 26 were taken out, in article 16 and 38 in the oath taken in the Assembly by the President of the Republic and representatives upon their election, the word "Vallahi" which means "God is my witness" was placed by "I swear on my honor".

b) The amendment of December 10, 1931 : The article 95 of the Constitution was amended to read : "The bill relating to the annual budget as well as all the draft budgets, tables and annexed budgets connected therewith shall be submitted to the Grand National Assembly at least three months before the beginning of the fiscal year".

c) The amendment of December 11, 1934 : According to articles 10 and 11 of the Constitution every male Turkish citizen who has completed his 18 year could vote for the election of deputies and every male Turkish citizen who has completed his thirtieth age could be elected as a deputy to the Assembly. These two articles were amended to include the Turkish women and the

age to cast vote for the election of representatives to the Assembly was raised to 22 for both sexes.

d) The amendment of February 5, 1937 : The amendments brought to the Constitution in February 1937, even if they were not the most important, they were the most original.

The articles 2, 44, 47, 49, 50, 61, 74 and 75 were amended. With this amendment the principles of people's Republican Party were included in the Constitution and in every Ministry the office of a political under-secretary was established.

e) The amendment of November 1, 1937 : Offices of political under-secretaries introduced by the amendments of February 5 were abolished and the related articles were amended accordingly.

f) The amendments of January 10, 1945 : With this amendment the wording of the Constitution of 1924 was completely translated to language called " genuine Turkish ". Although it was contened that in this change of wording the meaning remained the same, with the change of words very naturally the spirit and the meaning had changed more or less.

g) The amendment of December 24, 1952 : With this amendment the amendment of January 10, 1945 was abolished and the Constitution was brought to its form in 1945.

In summary, the problems and developments of the Constitution and regime in Turkey which started by the end of the first half of the 19th century, evolved through many stages of revolution and radical changes and led to the principle of National Sovereignty, the system of Republican and secular organization in today's Turkey.
