

# The Constitutional Process in Syria: Lessons Learned from the Turkish Experience



Drawing Upon the Experiences of Other Countries  
on the Way to a New Syrian Constitution (4)

## **Syria's Constitutional Process: Lessons Learned from the Turkish Experience**

*Drawing Upon the Experiences of Other Countries on the Way to a  
New Syrian Constitution (4)*

## Content

1. Introduction: .....	4
2. The Notion of the “Constitution” as a Social Contract: .....	5
3. The Modern Notion of “Constitutions” and Constitutionalism: .....	6
4. Constitutional Function of Defining the Form of State and System of Government:.....	7
5. A brief history of the Turkish constitutions: .....	8
6. The role of the Army in political life:.....	10
7. The form of the state and the system of government from the point of view of the constitution .....	11
8. Democracy and the challenges of political populism: the concept of legitimacy in light of group democracy and the role of popular referendums (their danger) .....	15
9. Lesson Learned from the Turkish experience:.....	16
10. Recommendations: .....	17

## 1. Introduction:

"Syrians for Truth and Justice" organization, with the support of the National Endowment for Democracy (NED), facilitated and organized a number of dialogue sessions, under the title of ("The Road Towards a New Syrian Constitution: How to Benefit from the Experiences of Other Countries?"). The aim of these dialogue sessions was to informing a diverse group of Syrians about the experiences of four different countries, some of which appear to have succeeded, to a great extent, in properly addressing the issue of diversity and inclusion during their constitution-drafting process, and others whose experience were not as successful, if at all. In some of these experiences, the failure to comply with the fundamental principles of the rule of law was even a politically motivated deliberate step towards discriminately excluding certain groups and systematically depriving them of some of their fundamental rights not only as groups but also as individuals.

The idea of these dialogues came as a continuation of an earlier effort in the form of a series of meetings that started in 2020, under the title of ("Syrian Voices for an Inclusive Constitution"), which aimed at promoting a more inclusive constitutional drafting process, and ensuring the fair and proper representation of marginalized groups, communities and minorities. Subsequently, a set of papers were published in that regard. These papers respectively focused on the following themes:

1. ["The Formation and Responsibilities of the Syrian Constitutional Committee"](#)
2. ["Syria's Diversity Must be Defended and Supported by Law"](#)
3. ["Transitional Justice and the Constitution Process in Syria"](#)
4. ["Governance and Judicial Systems and the Syrian Constitution"](#)
5. ["Socio-Ecological Justice and the Syrian Constitution"](#)

In the 2021 sessions, the target groups were distributed mainly in the northeastern and western regions of Syria, considering gender and ethnic diversity - women were involved alongside men, and Kurds alongside Arabs, Yazidis, Assyrians, Armenians, Syriacs and other different ethnic groups. Emphasis was placed on individuals who had not participated in any similar meetings on constitutionalism and the constitutional drafting process in Syria.

This paper addresses the Turkish constitutional experience. It is the forth in a series of four such reports, approaching [Iraq](#), [Lebanon](#), [Bosnia and Herzegovina](#), and Turkey.

After several fruitful discussion sessions between participants and a number of renowned academics and experts on the topic, "Syrians for Truth and Justice" has dedicated this paper to discussing the constitutional experience of the Republic of Turkey.

## 2. The Notion of the “Constitution” as a Social Contract:

Looking at the political reality in many countries around the world and the most significant events in their history, such as wars, internal conflicts and revolutions that followed their emergence as independent states from colonial powers or after the fall of some empires, it becomes obvious that the newly forged artificial national identities in many of these countries with their current political borders does not inclusively represent all groups within their societies. As such, these identities did not reflect or conform to the desires of all the peoples residing in those regions; on the contrary, it seems that in most cases such identities exclusively reflect or represent that of the dominant majority or the most powerful group. Moreover, such an identity, be it ethnic, cultural, political or religious would often case be (forcefully) imposed on the rest of society, while attempting to erase the original identities of the other groups and minorities with the aim of assimilating them into the single national identity of the majority or the most powerful. These tyrannical behaviors would eventually lead to prolonged violent conflicts. In that regard, we are still witnessing the consequences of systematic acts or policies in the form of political movements calling for independence or civil wars.

During the past decade, there were several referendums in many regions around the world that called for a popular vote on independence and demanded the right of those peoples to self-determination, as in Catalonia, Scotland and the Kurdistan Region of Iraq, followed by severe political and economic consequences for the peoples who called for their self-determination.

Many other issues, such as the acquisition of power by certain groups and their exercise of monopoly over drawing the main features of the broader national identity and imposing it on other groups within the society, are the most common and direct roots of some of the outstanding conflicts in most of the states that were formed in the first half of the last century (including Syria, Iraq, Turkey). All these issues have constitutional dimensions that must be understood before seeking plausible solutions for them, and any proposed solutions to these issues, especially during any form of transitional justice, must include a cohesive and comprehensive constitutional treatment at the very first place.

***How did the dictatorships in Syria, Iraq and other countries come to power, and manage to rule for decades without competition? Is such an authority considered legitimate and how can we measure their legitimacy? Where does the legitimacy of power lie, where does it derive from and when is it lost? What is meant by the concept of “the rule of law” and how could it be achieved? What institutions are required? What powers and authorities such institutions could have? What is the role of the citizen and the concept of citizenship in all of this?***

The above questions were the starting points and main focus of the discussions in the dialog sessions, through which the quest was to create a deeper understanding of the concepts of “the constitution” and the legitimacy of authority,” before delving into the specific chosen constitutional experience to extract what could be benefited from or avoided in any future attempt to draft a Syrian constitution, in a way that would make it compatible with the values of the twenty first century and in full respect of the principle of the rule of law as the basis for its legitimacy.

Before comparing the constitutional experiences of the selected countries and delving into the concepts, standards, rights or freedoms contained in their constitutions, it was very useful to return to the theories and intellectual currents that were considered the origins of modern constitutionalism. To that end, the seventeenth century AD, was the most appropriate starting point to serve the desired purpose of this project.

In the second half of the seventeenth century, several social and political theories emerged, which are known nowadays as the "social contract theories", which paved the way for the emergence of intellectual currents that had a profound impact on the concepts of power, citizenship, and legitimacy as we know them today. Among the most important of these theories are the theories of British philosophers such as Thomas Hobbes and John Locke and the French writer and philosopher Jean Jacques Rousseau. The theories proposed by these philosophers were based on different assumptions about human nature and the ideal model of a society in which the relationship between individuals and the authority holding power is determined by the notion of a "social contract." Through such an hypothetical contract the ruler's individuals confer legitimacy over the ruler as an authority to exercise power over the society in order to safeguard the interests of the society as individuals as well as groups in the best possible way. Some of these theories established intellectual currents that inspired and contributed to the formulation of the principles of the French Revolution in 1789 as well as the American Revolution in 1765.

### **3. The Modern Notion of “Constitutions” and Constitutionalism:**

The vast majority, if not all, states in the world have a so-called constitution, which is considered the supreme law in those countries. Despite the great resemblance between the connotation the term “Constitution” gives in each of these countries as well as the common understanding of the notion and what it generally entails, it may, however, vary in its forms and differ in what it actually includes from one country to another.

Often, Constitutions are formed after major events that have an impact on, or even shape, the national identity (the consideration of a group as a people). Such defining,

or re-defining moments in the history of human groups marking a new beginning or a significant turning point, is also known as a “Constitutional Moment”. The best examples of these major events may be wars, such as World War I and World War II, or revolutions and independence movements, such as the French Revolution and its values, which later inspired the formation of constitutions throughout Europe, and the American Revolution, which led to independence from the dominating colonial power that was then the United Kingdom.

Contrary to popular belief, a constitution is not necessarily written or compiled into a single document, as it may be based on binding international or regional agreements as well as unwritten customs or practices. For example, the United Kingdom, whose constitutional laws have not yet been collected in a single document.

As for the majority of countries, they do actually have a constitution that has been compiled in writing into a single document. In general, such a document, with what it includes of laws and rules, is rigid and difficult to modify, and is characterized by a somewhat superior nature, as it determines the shape of the state and its system of government. Such a document includes a set of rules that govern the formulation of laws, the structure of government and its institutions, and the separation and assignment of powers within the state. In addition to the above, one of the most important functions of the constitution is to define and protect the fundamental freedoms and rights of citizens as groups and individuals.

Even in those countries that have a single document called the constitution, what these constitutions stipulate may be completely different from their counterparts in other countries in terms of the distribution of powers and the separation between them, as well as the designation of rights and duties assigned to individuals and institutions, in addition to defining the form of the state and its system of government.

#### **4. Constitutional Function of Defining the Form of State and System of Government:**

To know the form of the state or the system of government adopted by any state, it is self-evident to refer to the constitution of that country and simply look at how powers are distributed within the state structure. This assessment consists of the following two basic steps. First: the vertical distribution of powers and authorities between the center and the periphery of that state, thus defining the shape of the state, whether it is centralized or decentralized at all levels, such as Syria, which is considered a highly centralized state, where we see all the powers and authorities concentrated and centered in the capital, unlike the Republic of Iraq, which has adopted the federal model. Second: The distribution and horizontal separation between the basic institutions within the power structure in the state, such as the legislative, judicial and executive authorities, and the determination of the size of the powers granted to them



at the expense of other of those institutions, which distinguishes the system of government, whether it is, for example, presidential such as the United States of America, or parliamentary such as the Netherlands and Canada.

Some of these constitutions attach more importance to the concept of national identity than others, and it usually appears in the form of a narrative story in its preamble, such as the Chinese constitution. In most cases, this story is the embodiment of the thought of a particular group in a position of power over other groups of the same society. Others, on the other hand, may not even contain a preamble, but rather enter directly and practically into the core of articles that stipulate basic rights, such as the Dutch constitution.

Some constitutions were keen to include articles and paragraphs that are not subject to amendment, in order to protect these constitutions from (easily) being changed during political fluctuations as a natural response to their historical experiences, as in the German constitution. As such, the German Constitution stipulates in the third provision of Article 79 that it is not allowed to submit or accept any amendment to those articles of the Constitution related to the federation of the German state as a union and the right of the states to participate in the legislative process. Accordingly, it may be necessary at times for these constitutions to show rigidity as a form of protection for some basic concepts and principles from changing easily, but it may also be used to perpetuate the authority of a person or a particular group or racist or discriminatory concepts against minorities, groups and other individuals within their societies, which may even cause conflicts in the future due to social, cultural or political changes. Herein lies the importance of our awareness of the sensitivity and difficulty of drafting or amending a document such as the constitution of a country so as to include a more inclusive and more just concept of citizenship, which would be primarily based on equality and respect for others under the principles of the rule of law, not only for the time of drafting but also capable of remaining remain valid and viable in the future.

## 5. A brief history of the Turkish constitutions: <sup>1</sup>

### 5.1 Deed of Agreement (Charter of Alliance) of 1808

After the killing of Sultan Selim III, the chaos and weakness of the Empire to assert control over the remote areas and the unwillingness of the rural regions to fully resubmit to the central authority, a number of notables (*Ayans*) tried to regulate the internal affairs of the Empire through a charter. The agreement was concluded between the Empire and those officials in the form of a document known as the Deed

---

<sup>1</sup> A general background of the Ottoman/Turkish Constitutional history could be found in: <http://lm-dp.org/a-brief-history-of-turkish-constitutionalism/>



of Agreement (*Sened'i İttifak*) on October 7, 1808. The document is considered to be of great importance as it was the first official document defining the powers of the Ottoman Sultan, and it is considered as an early form of a (written constitution) between the ruler and officials, but it was not a constitution in a formal sense, as we know it nowadays. The Deed of Agreement shares similar futures with the Magna Carta of 1215.

## 5.2 The Constitution of 1876

The Ottoman Constitution of 1876, also known as the Basic Law (*Kanûn-u Esâsî*), was drafted during the reign of Sultan Abdul Hamid II in 1876, and it is formally considered to be the first Ottoman constitution. Such a Constitution was prepared and drafted by an assembly of western educated Ottomans headed by Midhat Pasha. The Basic Law was influenced by the Armenian National Constitution,<sup>2</sup> and modeled after the Prussian (German) Constitution of 1851.<sup>3</sup> This constitution became the legal document of the Ottoman state after it included the basic rights and freedoms of citizens, the structure of the state, its powers, and the relationship between them.

The House of Representatives, whose members are elected by the people, and the House of Notables, whose members are elected from among state officials.

## 5.3 The Constitution of 1921

The Turkish Constitution of 1921 (*1921 Türk Anayasası*) was enacted by the Grand National Assembly of Turkey (*Büyük Millet Meclisi*) on January 1921, and the this document was later amended in 1923 to formally establish the post Ottoman Empire state known as the Republic of Turkey. The 1921 Constitution was a brief document with only 23 articles. This constitution states that the people are the source of authority without restriction or condition, and they administer the state by themselves.

## 5.4 The Constitution of 1924

This Constitution was totally replaced by the Constitution of 1924, which was also introduced by Turkey's Grand National Assembly (*Büyük Millet Meclisi*) and was ratified in April 1924. This Constitution stayed in force until 1961, when it was replaced by a new constitution after the *coup d'état* of 1960.

---

<sup>2</sup> Roderic H. Davison, *Reform in the Ottoman Empire, 1856-1876*, (Gordian Press, 1973) p. 134. Retrieved 21 January 2013. But it can be shown that Midhat Pasa, the principal author of the 1876 constitution, was directly influenced by the Armenians.

<sup>3</sup> Johann Strauss, 'A Constitution for a Multilingual Empire: Translations of the Kanun-ı Esasi and Other Official Texts into Minority Languages', in Christoph Herzog and Malek Sharif, *The First Ottoman Experiment in Democracy*, (2010) pp. 20-52.

## 5.5 Constitution of 1961

The 1960 coup d'état in Turkey was planned and carried out by 38 Turkish Military officers against the democratically elected government of the Democrat Party. The coup ultimately succeeded in taking over the power and subsequently the military executed the prime minister, Adnan Menderes, together with two ministers. A new constitution was drafted and later approved after a popular vote through a referendum in July 1961. The Turkish Constitution of 1961 remained in force until it was replaced by another constitution after the *coup d'état* of 1980.

## 5.6 1982 Constitution

The Turkish Armed Forces took over the administration of the country on the morning of September 12, 1980, to bring the country under military rule. The group of senior leaders is called the directors of state for the National Security Council. After that, Parliament was dissolved, parliamentary immunity for deputies was lifted, basic rights and freedoms were suspended, and martial law was declared in all the country. Subsequently, retired soldier Bulent Oluso was appointed prime minister and formed the government.

The National Security Council formed a constituent assembly on June 29, 1981. The text of the new constitution was submitted to a popular vote on November 7, 1982 and was accepted and adopted as the country's new constitution.

## 5.7 The 2017 Revisions to the 1982 Constitution

We can clearly see that these constitutions were drafted and presented at constitutional moments with the aim of influencing/changing the form of the state/system of government, in addition to changing or affecting what is directly related to the ideological identity of the state (secular/religious).

One may wonder and ask about the reason why even the most powerful tyrants would often justify their authoritarian behavior through constitutional procedures or amendments: the answer in the first place is legitimacy, both internal and/or external. Additionally, such a constitutional path, be it an established procedure or a new one through an amendment, would make it “legally” justifiable to keep doing what they want to do also in the future.

## 6. The role of the Army in political life:

In 1921 the First Constitution of the Republic of Turkey was drafted, establishing a unicameral legislative system. That constitution, however, was subject to several revisions and later changed after multiple political and power struggles and military

take-overs within the country, such as the *coup d'état* of 1980 that was led by the Chief of the General Staff of the Turkish army.<sup>4</sup>

Subsequently, a new constitution was introduced in 1982 that gave the military institution far-reaching powers over political life in Turkey.<sup>5</sup>

Ever since, till the AKP managed to consolidate its power, the military had been watching the increasingly ambitious Islamic political parties very closely, and fiercely intervening to prevent them from gaining more grounds and influence in the political scene in Turkey as they were perceived as a threat to the constitution.

## 7. The form of the state and the system of government from the point of view of the constitution

### 7.1 Vertical Separation of Power - Form of State

Turkey is a unitary state with an extremely centralized political system; the evidence is clearly stated in the Article (3) of the Turkish Constitution: “The State of Turkey, with its territory and nation, is an indivisible entity.” The contents of Article (3), alongside Article (1), that define the State of Turkey to be a Republic, and Article (2), which emphasizes on the characteristics of the Republic to be social, democratic and secular governed by the rule of law, are considered “Irrevocable Provisions”. In other words, these articles shall not be amended, nor an amendment to them shall be proposed, according to the Article (4).

According to Article (126) the powers conferred upon provinces by the central administrative organizations, are to merely serve the purpose of efficiency and coordination of public services.<sup>6</sup> In other words, the mandate of local administrative institutions is limited to only delivering public services to the citizens.<sup>7</sup> Such powers are limited and restricted by Article (127), clearly stating the absolute power of the central administration over the local ones in every aspect.<sup>8</sup>

---

<sup>4</sup> TRT World website, News: A timeline of Turkey's constitutional history, 12 April 2017  
<https://www.trtworld.com/referendum/turkeys-constitutional-history-a-timeline-334848>

<sup>5</sup> Turkey Between the Ottoman Empire and the European Union: Shifting Political Authority Through the Constitutional Reform by A. Serra Cremer. Fordham International Law Journal, Vol.35 (2016)  
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://en.wikipedia.org/&httpsredir=1&article=2421&context=ilj>

<sup>6</sup> The Constitution of Turkey, Article 126: “*Central administrative organizations comprising several provinces may be established to ensure efficiency and coordination of public services. The functions and powers of these organizations shall be regulated by law.*”

<sup>7</sup> World Atlas website, World Facts: What Type of Government Does Turkey Have?  
<https://www.worldatlas.com/articles/what-type-of-government-does-turkey-have.html>

<sup>8</sup>The Constitution of Turkey, Article 127: “... *the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom an investigation or prosecution has been initiated on grounds of offences*”

In addition to being generally considered a risk factor and a main ingredient for producing totalitarianism or even dictatorship, such an extreme concentration of power and the push towards a single culture, language and identity seem to be a major cause of the increased tension among the non-Turkish ethnic groups, such as Kurds, that turned into a major armed conflict for several decades. The discontent and public dissatisfaction was felt almost everywhere in the country, especially in the countryside and among the rural areas' communities that felt underrepresented and alienated from the political life that has for a long time been dominated by major cities' elite. This, of course, was one of the major factors that led to the rise of populism, as a large chunk of the country's population became more susceptible for manipulation by populist politicians.

This situation sharply contrasts with the fact that Turkey is obliged as a member state of the Council of Europe to implement the European Charter of Local Self-Government. The Monitoring Committee's fact-finding mission published a report in 2011, stating that they hardly found any progress in the implementation of the Charter.<sup>9</sup>

## 7.2 Horizontal Separation of Power - System of Government

Until very recently Turkey was known to be a Parliamentary Republic where the legislative power was solely vested in the Grand National Assembly (*Büyük Millet Meclisi*) that effectively exercised its supremacy over the work of the government.<sup>10</sup> The government, headed by a prime minister (in Turkish called a *Başbakan*) and a council of ministers, was dependent on a vote of confidence by the parliament, thereby providing the government with democratic legitimacy. In such a system the Head of State is the President of the Republic (*Cumhurbaşkanı*). This position was nevertheless a merely ceremonial position with limited power. This all started to change when Erdogan's AK Party came to power. Before diving into the constitutional changes initiated by Erdogan, it is relevant to look into some constitutional developments in the modern history of the Republic of Turkey.

In 1921 the First Constitution of the Republic of Turkey was drafted, establishing a unicameral legislative system. That constitution, however, was subject to several revisions and later changed after multiple political and power struggles and military

---

*related to their duties."* & *"The central administration has the power of administrative tutelage over the local administrations in the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the integrity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs properly."*

<sup>9</sup> Council of Europe, Report: Local and regional democracy in Turkey, Monitoring Committee, 1 March 2011 <https://rm.coe.int/168071a9f7>

<sup>10</sup> The Constitution of Turkey, Article 7: *"Legislative power is vested in the Grand National Assembly of Turkey on behalf of Turkish Nation. This power shall not be delegated."*

take-overs within the country, such as the *coup d'état* of 1980 that was led by the Chief of the General Staff of the Turkish army.<sup>11</sup>

Subsequently, a new constitution was introduced in 1982 that gave the military institution far-reaching powers over political life in Turkey.<sup>12</sup>

Ever since, the military had been watching the increasingly ambitious Islamic political parties very closely, and fiercely intervening to prevent them from gaining more grounds and influence in the political scene in Turkey as they were perceived as a threat to the constitution.

The turning point was when the government of Erdogan succeeded in amending the constitution after a call for referendum in 2007. The new amendments, among others, gave the presidency a stronger mandate and made the position independent from the parliament; the president is to be directly elected by a popular vote instead of being elected by the parliament.<sup>13</sup>

In a bid to strengthen their power position and further stretch the constitutional structure to fit their high ambitions, the Justice and Development Party (AKP) suggested new amendments to the Constitution in 2010 to change the structure of the country's judiciary and courts.<sup>14</sup> Although the party did not have the qualifying two-third majority to directly amend the constitution, they did have a 60% majority vote in the parliament that was sufficient to call for a referendum on the new reforms;<sup>15</sup> The AKP got its way: in the referendum the amendments were approved by the Turkish people.

In 2014 Erdogan becomes the first directly elected president of Turkey,<sup>16</sup> after being the prime minister for about 10 years. At the heart of his political populist agenda that

---

<sup>11</sup> TRT World website, News: A timeline of Turkey's constitutional history, 12 April 2017  
<https://www.trtworld.com/referendum/turkeys-constitutional-history-a-timeline-334848>

<sup>12</sup> Turkey Between the Ottoman Empire and the European Union: Shifting Political Authority Through the Constitutional Reform by A. Serra Cremer. Fordham International Law Journal, Vol.35 (2016)  
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://en.wikipedia.org/&httpsredir=1&article=2421&context=ilj>

<sup>13</sup> Turkish Press website, News: Erdogan: History Will Judge President's Veto, Tuesday, 29 May 2007  
<http://www.turkishpress.com/news.asp?id=178755>

<sup>14</sup> TRT World website, News: A timeline of Turkey's constitutional history, 12 April 2017  
<https://www.trtworld.com/referendum/turkeys-constitutional-history-a-timeline-334848>

<sup>15</sup> The Free Library website, News: Schedule of the Referendum to Be Set After Constitutional Amendment Published in Official Gazette, 12 May 2010  
[https://www.thefreelibrary.com/\(GEN\)+SCHEDULE+OF+REFERENDUM+TO+BE+SET+AFTER+CONSTITUTIONAL+AMENDMENT...-a0226100480](https://www.thefreelibrary.com/(GEN)+SCHEDULE+OF+REFERENDUM+TO+BE+SET+AFTER+CONSTITUTIONAL+AMENDMENT...-a0226100480)

<sup>16</sup> TRT World website, News: A timeline of Turkey's constitutional history, 12 April 2017  
<https://www.trtworld.com/referendum/turkeys-constitutional-history-a-timeline-334848>

paved his rise to power was the project of bringing Turkey back to its true Islamic values and identity, which was inspired by his master Necmettin Erbakan.<sup>17</sup>

The 2016's failed military coup in Turkey marked the beginning of a new era that would dramatically change Turkey's political life.<sup>18</sup> The coup attempt was used as an ultimate excuse and ideal moment to get rid of not only his political rivalry, but also every single obstacle that could possibly stop in his way to consolidating his power.<sup>19</sup> The immediate reaction to the failed coup came as a state of emergency in which tens of thousands of people were arrested, including thousands of judges,<sup>20</sup> military officers and academics, in addition to firing more than 160,000 people from their jobs.<sup>21</sup>

Later in 2017, and to make strategic use of the recent events, the AKP introduced new amendments to the constitution, and called for another referendum to vest more powers in the president as the head of the executive and consequently changing the system of government from a parliamentary into a presidential one. The package of amendments got popular support in a referendum.<sup>22</sup> One of the most significant changes was made to Article (104) that assigns the executive power to the President, making him the head of both the state and the government - meaning that the position of Prime Minister will be abolished.<sup>23</sup> Moreover, the President who is going to be directly elected by a popular vote can keep his political party membership.<sup>24</sup> In other words, Erdogan will become the head of state, the head of the executive branch, and the head of a political party with the biggest majority in the parliament.

---

<sup>17</sup> BBC website, Country Profile: Turkey  
[http://news.bbc.co.uk/2/hi/middle\\_east/48025.stm](http://news.bbc.co.uk/2/hi/middle_east/48025.stm)

<sup>18</sup> Foreign Policy website, Argument: Why Turkey's Coup d'État Failed, And why Recep Tayyip Erdogan's craven excesses made it so inevitable. Edward Luttwak 16 Jul. 2016  
<http://foreignpolicy.com/2016/07/16/why-turkeys-coup-detat-failed-erdogan/>

<sup>19</sup> The New York Times website, Article: Turks See Purge as Witch Hunt of 'Medieval' Darkness. By Tim Arango, Ceylan Yeginsu and Safak Timur 16 Sept. 2016  
<https://www.nytimes.com/2016/09/17/world/europe/turkey-erdogan-gulen-purge.html>

<sup>20</sup> BBC website, News: Turkey: Mass arrests after coup bid quashed, says PM. 16 July 2016  
<https://www.bbc.com/news/world-europe-36813924>

<sup>21</sup> The New York Times website, Article: Turkey to Release Tens of Thousands of Prisoners to Make Room for Coup Suspects. By Tim Arango and Ceylan Yeginsu. 17 Aug. 2016  
<https://www.nytimes.com/2016/08/18/world/europe/turkey-prisoners-erdogan.html>

<sup>22</sup> Reuters website, World News: Turkish parliament nears approval of presidential system sought by Erdogan 19 Jan. 2017  
<https://www.reuters.com/article/us-turkey-politics-constitution/turkish-parliament-nears-approval-of-presidential-system-sought-by-erdogan-idUSKBN153238>

<sup>23</sup> Diken website, News: 21 Amendments to the Constitution Proposed to Parliament: The president as the Head of the Executive. 10 Dec. 2016  
<http://www.diken.com.tr/21-maddelik-anayasa-metni-mecliste-guclu-yasama-guclu-yurutme-dedik/>

<sup>24</sup> The Union of Turkish Bar Associations website, Comparing the Amended Articles by Constitutional amendment of 2017  
[http://anayasadegisikligi.barobirlik.org.tr/Anayasa\\_Degisikligi.aspx](http://anayasadegisikligi.barobirlik.org.tr/Anayasa_Degisikligi.aspx)

## 8. Democracy and the challenges of political populism: the concept of legitimacy in light of group democracy and the role of popular referendums (their danger)

### 8.1 Religious ideology and the Ottoman dream

The AKP headed by its populist leader managed to successfully manipulate the vast majority of the Turkish voters, by acknowledging their grievances and frustrations, and offering promises and simple solutions to all of their problems. All of that in a simple language that the public could understand. The agenda was more strategically aimed at evoking the religious sentiments of people of Turkey, reminding them of the lost glories of the Ottoman empire; with the promise to resurrect it and bring it back even stronger.<sup>25</sup>

### 8.2 “Erdogan-ism” inspired by “Putin-ism”

Following the political developments in Turkey, especially during the past decade, one can see that power goes wherever Erdogan is. Regardless of what official position he is occupying, the power must move with him – the executive power was vested in the Prime Minister when Erdogan held that office, and now Erdogan is the president, it is concentrated in the presidency. This sounds just like the power swing in Putin’s Russia.

### 8.3 The rule of law v. rule of Erdogan

Consequently, the system of government in Turkey is not just shifting from a parliamentary system to becoming a presidential one. It has already gone beyond that.

In addition to the questionable supreme status of the Turkish Constitution, and the checks and balance system that seem to have been systemically disabled to pave the road for concentrating more and more powers in one person; A single person becoming the head of the executive branch with a strong mandate from the Turkish people, and the head of a political party with a sufficient majority to secure a legislation that will only consolidate his power. In constitutional terms this can only mean one thing – dictatorship.

#### Note:

The main idea and the main purpose of these sessions is to give a clearer idea of the experiences of some countries, which are somewhat similar to the Syrian context (of course from different points) and to focus on some details from those experiences that can be benefited from in the Syrian experience - both positive ones and which can be

---

<sup>25</sup> Foreign Policy: Erdogan Is Making the Ottoman Empire Great Again by Michael Colborne, Maxim Edwards, June 22, 2018 <https://foreignpolicy.com/2018/06/22/erdogan-is-making-the-ottoman-empire-great-again/>



followed Or its application in the Syrian context, or the negativity that should be avoided in any subsequent attempt to draft a new constitution - with the aim of creating a more healthy constitutional formula that reflects the social, cultural, historical reality, etc., in a fair and logical manner.

#### **8.4 Returning to the basic element of the principle of legality - the individual**

Focusing on individuals by building their capabilities to have a deeper understanding of the political and legal changes that will have a direct impact on their lives (as well as subsequent generations) and approaching the issues surrounding them logically beyond the momentary feeling in addition to creating a critical vision that enables them to connect to such a deeper understanding of what is going on around them. Meaning transforming individuals from being fuel or victims of the political and social changes surrounding them into active agents to bring about real and meaningful change that reflects their aspirations

### **9. Lesson learned from the Turkish experience:**

During the dialogue session on the Turkish constitutional experience, the participants discussed the theory of the social contract, the concepts of authority and legitimacy, and the form of the state. They also addressed the legislative, executive, and judicial authorities and the important principle of separation of powers. They discussed the constitutional changes that took place in Turkey, which changed the form of the state and the government system since World War I, after the fall of the Ottoman Empire. They mentioned the Treaty of Sèvres which defined the rights of some nationalities within the Ottoman Empire and the Treaty of Lausanne that deprived the Kurds of their rights.

The participants also discussed the 1982 Constitution (the current Constitution), which despite its several amendments, preserved the identity of the Islamic Turkish state. Moreover, they mentioned the 2010 Constitutional Amendment which changed the form of the state from parliamentary to presidential, through a popular referendum and how –for the first time in the history of Turkey– the head of state was elected by the people to become the head of both the executive and legislative authorities.

Furthermore, several topics were addressed; the establishment of the Turkish Republic, the 1923 Constitution and its limitations, as well as the constitution and political participation, inclusion, diversity, and minority rights. Participants argued that the constitution was used as a political tool, and that politicians who wrote the constitution were not interested in it being inclusive, but rather insisted on writing a narrow constitution that would be for the Turkish people only and would not include other diverse groups who live in the country.

In addition, participants discussed the Kurdish issue in Turkey and its connection to the Constitution. Also, how the Kurdish identity challenged the military forces of the Ottoman Empire that considered separatism an inevitable consequence of giving minorities their rights.

Finally, participants agreed that Turkey is not a perfect model, but compared to the Middle East, it has been fairly successful in achieving a peaceful and democratic transition of power.

## **10. Recommendations:**

In the dialogue session that was held on 9 July 2021 as a part of “The Path to a New Syrian Constitution: How Can We Benefit from the Experiences of Other Countries” project, the attendees discussed the Turkish constitutional experience and how to benefit from it. As a result, they agreed on several recommendations.

- The state should respect the rights, history, and language of religious, ethnic, and racial minorities and this must be reflected in the constitution.
- Islamic law “Sharia” should not be the major source of the Constitution because it does not include all the people who live in the country.
- The Constitution must ensure women's rights and gender equality.
- Participation in drafting the Constitution must be far from dictatorship and exploitation, because it is easy for those who have power to have the authority to amend constitutions and draft them in a way that benefits them rather than the people.
- It should be noted that a successful constitution in one country does not necessarily succeed in another.
- Avoid the inclusion of broad language in the Constitution that may carry multiple interpretations.
- Popular referendum should be taken into account as a democratic mechanism capable of changing the form of state.
- There must be accountability for crimes committed before the issuance of the Constitution so that the concept of citizenship is not fragile among citizens.

## About STJ:

Syrians for Truth and Justice (STJ) started as an idea in a co-founder's mind while attending the U.S. Middle-East Partnership Initiative's (MEPI) Leaders for Democracy Fellowship program (LDF) in 2015. The idea became a reality and flourished into an independent, non-profit, impartial, non-governmental human rights organization.

STJ's beginnings were more than humble; initially, it only reported stories of Syrians who experienced arbitrary arrest, enforced disappearance, or torture. Planted in fertile soil, the seed of this project grew into an established human rights organization licensed in the Middle East and the European Union. STJ today undertakes to detect and uncover violations of all types committed in all Syrian parts by the various parties to the conflict.

Convinced that Syria's diversity is a wealth, our researchers and volunteers serve with unflinching dedication to monitor, expose, and document human rights violations that continue unabated in Syria since 2011, regardless of the affiliation of the victims or perpetrators.