

**EXPECTATIONS FROM THE “NEW CONSTITUTION” IN TURKEY:
DEMOCRATIZATION OF LIBERALISM OR LIBERALIZATION OF
DEMOCRACY?**

Funda GENÇOĞLU-ONBAŞI* & Aybars YANIK

ABSTRACT

This study analyses the main themes of the (new) constitution debate in Turkey by focusing on the representatives of different ideological/political dispositions in the Turkish print media. The recent debate revolving around the need for a new constitution, the deficits of the current constitution, and the expectations from the new constitution hints at the dominance of liberal perspective on the notion of democracy. Although this may not come as a surprise considering the long-lived global alliance between liberalism and democracy, it is interesting that the debate on the new constitution in Turkey is coupled with the concept of “advance democracy” and its timing parallels the deliberations on “democratisation of liberal democracy” in the world of political theory. However, while the latter refers to an endeavour to develop a critical perspective on the theory and practice of liberal democracy, based mainly upon the notions of participation, popular sovereignty and equality, in the Turkish case advance democracy comes to mean liberal (or more liberal) democracy. Such notions as ‘limited state’, ‘individual rights and liberties’, ‘rule of law’, and ‘legitimacy’, which are indeed the central themes of the liberal tradition, are recalled as the major characteristics of a democratic constitution in Turkey; and they also serve as the major criteria according to which the current constitution is criticized. But this happens without any reference to (or a sign of acknowledgement of) the history of complex relationship between liberal and democratic traditions. In other words, what we observe in the case of the debates on the new constitution in Turkey is the conflation of liberalism and democracy.

Keywords: Constitution making, Democratic constitution, Turkey, Neoliberalism, Liberalism and Democracy.

**TÜRKİYE’DEKİ YENİ ANAYASADAN BEKLENTİLER: LİBERALİZMİN
DEMOKRATİKLEŞMESİ YA DA DEMOKRASİNİN LİBERALLEŞMESİ**

ÖZET

Bu çalışma Türkiye’de yeni anayasa tartışmalarının ana temalarını, bu tartışmaların hangi sorular ve meseleler etrafında döndüğünü incelemektedir. Bunu yaparken de ülke yazılı

basınında farklı ideolojik ve politik duruşları, eğilimleri temsil eden gazeteler örneklem olarak alınmaktadır. Yeni bir anayasaya duyulan ihtiyaç, mevcut anayasanın eksiklikleri ve yeni bir anayasadan beklentiler hakkındaki tartışma demokrasi olgusunun ele alınışında ve kavramsallaştırılmasında liberal pespektifin hakimiyetini işaret etmektedir. Liberalizm ve demokrasi arasında uzun yıllardır süregiden ve neredeyse küresel yaygınlık kazanmış birlikteliği göz önünde bulundurunca bu çok şaşırtıcı gelmeyebilir. İlginç olan, Türkiye’de yeni anayasa tartışmalarına eşlik eden ‘ileri demokrasi’ kavramının siyaset kuramı dünyasında bir süredir devam eden ‘liberal demokrasinin demokratikleştirilmesi’ tartışmalarıyla aynı zamanlara denk gelmekte olmasıdır. Ancak, ikincisinde esas olan katılım, halk egemenliği, eşitlik kavramlarını hareket noktası olarak alarak liberal demokrasi teorisi ve pratiğine dair eleştirel bir bakış açısı geliştirmek iken Türkiye’de ileri demokrasi liberal (ya da daha liberal) demokrasi anlamını kazanmaktadır. ‘Sınırlı devlet’, ‘bireysel haklar ve özgürlükler’, ‘hukuk devleti’, ‘meşruiyet’ gibi aslında liberal geleneğin yapı taşları olan kavramlar Türkiye’de demokratik bir anayasanın sahip olması gereken özellikler olarak anılmakta, bu kavramlar aynı zamanda demokratik olmadığı düşünülen mevcut anayasayı eleştirmek için kullanılan ana kriterler olmaktadır. Fakat bütün bunlar olurken liberal ve demokratik gelenekler arasındaki karmaşık ilişkinin uzun geçmişi neredeyse hiç hatırlanmamakta, sanki bu yokmuş gibi davranılmaktadır. Diğer bir deyişle aslında Türkiye’deki yeni anayasa tartışmalarında gözlemediğimiz şey demokrasi ve liberalizmin birbirine karıştırılmasıdır.

Anahtar Kelimeler: Anayasa yapımı, Demokratik anayasa, Yeni anayasa, Türkiye, Neoliberalizm, Liberalizm ve Demokrasi.

Introduction

As a scholar has put it recently, Turkey seems to have a “chronic constitutional problem” (Gönenç, 2011: 1). The 1982 constitution is the third constitution, after the 1924 and 1961 constitutions that the Republic of Turkey has had since its foundation in 1923. Both the 1961 and 1982 constitutions were put into effect as a result of constitutional making processes controlled almost completely by the military. Despite the fact that the 1982 constitution was submitted to a referendum and was approved by a great majority (91 per cent) there has always been scepticism about its legitimacy in both procedural and substantive terms. Consequently, although it has gone through 16 amendments, the latest of which was in 2010, the idea of the need for a new constitution has continued to occupy a central place in the political agenda of Turkey.

June 2011 general elections were an important turning point in the history of Turkish politics for several reasons: First, this was the first time in the history of the republic that the same political party (Justice and Development Party – JDP) came into power for a third term by progressively increasing its votes.¹ Second, it symbolized the opening of a new episode in the civil-military relations in Turkey, a country that is infamous for the problematic nature of this relation. It is now often argued that especially the second term of the JDP government was an epoch during which the scope of military involvement in civilian politics narrowed considerably. Third, as an outcome of the first two, ongoing discussion on the need for a new constitution acquired a new dimension after the electoral victory of the JDP. Throughout its electoral campaign, this party had several times mentioned “a new and democratic constitution” on top of its future plans. A new constitution was devised by the leading figures of the party as a symbol of the civilianisation of the Turkish polity. Indeed, the JDP is not alone in highlighting the need for a new constitution. The main opposition parties Republican People’s Party (RPP), the Peace and Democracy Party (PDP) and also the Nationalist Action Party (NAP) declared their commitment to new and democratic constitution both before and after the elections. The JDP’s electoral victory has both strengthened the party’s position to initiate a constitutional change and it has aroused expectations of the electorate from the Turkish parliament.

A recent survey, conducted in 81 cities with 49.740 respondents through the method of face-to-face interview, indicates that the adherence to the idea of a new constitution is not limited to political leaders in Turkey: 61 per cent of the respondents think that a new constitution is needed (Memur-Sen, 2011). Considerable number of civil society organizations, professional organizations and trade unions in Turkey also has been declaring their commitment to a new and democratic constitution and some of them have already published their own constitutional drafts.² There is also an external dimension of this stimulus towards a new constitution. European Commission’s 2011 Progress Report on Turkey states that “consensus has emerged on the need for a new constitution to replace completely the 1982 constitution” and that “a new constitution would cement the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and address long-standing problems including the Kurdish issue”.

As a consequence of all those developments, the hottest topic in the political agenda of the country in the aftermath of the 2011 general elections has been “the new constitution”. We focus in this article on the way(s) in which the notion of (new) constitution has been discussed in the Turkish print media. We think that an analysis of this debate can help to make

inferences about the ways the concept of democracy is thought and discussed in Turkey. Accordingly, we contend that the recent debate in the Turkish media revolving around *the need for a new constitution, the deficits of the current constitution, and the expectations from the new constitution* hints at the dominance of liberal notion of democracy. This may not come as a surprise considering the long-lived global alliance between liberalism and democracy. What is interesting regarding the debate on the new constitution in Turkey is that it is accompanied by the notion of “advance democracy” and the timing of this issue parallels the deliberations on “deepening of democracy” or “democratisation of (liberal) democracy” in the world of political theory. However, while the latter refers to an endeavour to develop a critical perspective on the theory and practice of liberal democracy, essentially based upon the democratic ideals of popular sovereignty and equality, in the Turkish case advance democracy seems to mean liberal (or more liberal) democracy. As will be shown below, this situation is most clearly observed in the way(s) the idea of the “new constitution” is elaborated in the columns. Before this analysis, however, it would be illuminating to focus on the complex relationship between liberalism and democracy.

Liberalism and Democracy

The relationship between liberalism and democracy is a controversial issue; some argue that the two denote each other while some others are concerned with showing the disentanglement between them. From a historical perspective, we can easily observe “the fact that democracy and liberalism are *not* inseparably linked is proven by the historical existence both of nonliberal democracies and of liberal nondemocracies” (Plattner, 1998: 2, emphasis added). David Held points out that “it is important to bear in mind that the “modern” Western world was liberal first, and only later, after extensive conflicts, liberal democratic... It should be stressed that by no means all liberals, past and present, were democrats, and vice versa. However, the development of liberalism was integral to the development of liberal democracy” (1990: 5).

Liberal democracy is what most people in the world today understand from democracy and it indeed complicates the matters in terms of the debates about the nature of democracy and/or democratisation: “There are many people today for whom the word “democracy” does indeed simply mean: personal freedom, freedom of speech and expression, the maximization of personal choice. However, this is an ideological nonsense which utterly strips the word “democracy” of any specific meaning” (Gilbert, 2009: 2). This is so because the cited

concepts are indeed the core precepts of “the great liberal tradition, which is, after all, *the* major tradition of Western political thought in the modern era” (Held, 1990: 5).

The way liberalism-democracy relationship is approached is directly related with the way democracy is conceptualized. If what is understood from democracy is a political system marked by free and fair elections, the rule of law, a separation of powers, and the protection of basic freedoms, then the answer to the question whether liberalism implies democracy is a clear yes. This is the case in the liberal democratic tradition. As Held points out with reference to Hayek, in the liberal tradition “democracy is not an end itself; rather it is a means, “a utilitarian device” to help safeguard the highest political end: liberty” (Held, 1990: 249). Needless to say, this is individual liberty: “Only individuals can judge what they want and therefore the less the state interferes in their lives, the better for them. Any systematic attempt to regulate the lives and activities of individuals is perforce oppressive and an attack on their freedom: a denial of their right to be the ultimate judge of their own ends” (Held, 1990: 246). The centrality of the idea of individual freedom in the liberal tradition is closely related with another tenet of it: pluralism. Robert Nozick justifies it with reference to the notion of utopia and argues that since individuals are “extraordinarily diverse”, there is a wide range of conceptions of utopia and argues that “we must get away from the idea that utopia represents *a* single conception of the best of all social and political arrangements” (Held, 1990: 246, emphasis original). Rather, utopia should be thought as “a framework for utopias” making it possible that people are “at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can impose his own utopian vision upon others” (Nozick quoted in Held, 1990: 246).

Intertwined with the ideas of individual freedom and pluralism the third major principle of liberalism is the rule of law, which in turn is the essence of the liberal doctrine of the minimal state. In this framework, “power, understood in neutral sense, that is independently from who exercises it, has to be limited (in its use and functions)” (Gomez, 2008: 24). The rule of law, according to Hayek means that the coercive power of the state can be used only in cases defined in advance by the law and in such a way that it can be foreseen how it will be used... Coercive political power can be contained if and only if the Rule of Law is respected... Citizens can enjoy liberty only if the power of the state is circumscribed by law; that is circumscribed by rules which specify limits on the scope of state action – limits based upon the rights of individuals to develop their own views and tastes, to pursue their own ends, and to fulfil their own talents and gifts (Hayek quoted in Held, 1990: 249).

“Liberals hold that it is not what is done *by* a liberal government but what is done *under* such a government by private agency that is the beauty and good of liberalism” (Hardin, 1999: 6). This is in this sense that Hayek formulates the difference between liberalism and democracy: “Liberalism is a doctrine about what the law ought to be, democracy a doctrine about the manner of determining what will be the law” (Hayek quoted in Held, 1990: 248). Democracy, in the liberal tradition is thought rather as a set of rules, procedures designed with the aim of safeguarding individual freedom which, as was said before, is the highest political end. Norberto Bobbio, who wrote two books specifically on liberalism-democracy relationship, came to the conclusion “in all good conscience that democracy is the rule of law par excellence” (1987: 156)

Considering these definitions, together with Hayek’s reference to democracy as a “device”, one can argue that for the liberal democratic tradition it is these liberal elements (individual freedom, pluralism, rule of law, and minimal state) that are supposed to shape our understanding of democracy. This, however, happens at the expense of an understanding of democracy as “a form of life marked by the promise of equality and the best conditions for human development in a rich context of participation” (Held, 1990: 165) and/or as “the principle of popular sovereignty [implying] the idea of collectivities making effective and binding decisions which they are capable of enacting in the world” (Gilbert, 2009: 2). Held sums up all the points that are neglected by the liberal understanding of democracy in a manner that is worth quoting at length here:

By focusing on “government”, they have attracted attention away from a thorough examination of the relation between: formal rights and actual rights; commitments to treat citizens as free and equal and practices which do neither sufficiently; conceptions of the state as, in principle, an independent authority and involvements of the state in the reproduction of the inequalities of everyday life; notions of political parties as appropriate structures for bridging the gap between state and society and the array of power centers which such parties and their leaders cannot reach; conceptions of politics as governmental affairs and systems of power which negate this concept. None of the models of liberal democracy is able to specify adequately the conditions for the possibility political participation by all citizens, on the one hand, and the set of the governing institutions capable of regulating the forces which actually shape everyday life on the other. The conditions of democratic participation, the form of democratic control, the scope of democratic decision making, -all these matters are insufficiently questioned in the liberal democratic tradition (Held, 1990: 282).

Anne Phillips wrote back in 1993 about the difficult situation that those “who challenge the complacencies of democracy today” due in large part to “the fear of appearing naive” and to “the dissolution of the confidence in staking out something different” (1993: 3). The situation does not seem to have changed today due to “the liberal democratic common-sense according to which, in effect “democracy” just *means* liberalism” (Gilbert, 2009: 2), in other words, due to the “taken-for-grantedness or naturalism” of neoliberal democracy (Ayers, 2006). As Alison J Ayers has formulated it, “the great-power-defined agenda of democratisation is concerned not with substantive democratisation but with the contraction of democracy to (neo) liberalism” (2006: 323). Diego Giannone showed in a recent study that this could easily be observed in the case of the Freedom House (FH) index, which is “the most used tool for measuring democracy” (2010: 69). He argues that the checklists used by the FH are not politically neutral; rather they are ideologically driven, they reflect the dominant neoliberal paradigm and they are the instruments of the “affirmation of neoliberal democracy” (Giannone, 2010: 68). Yet this is highly problematical. As will be shown below, this is what best describes the “new constitution debate” in Turkey. As elsewhere in the world, in Turkey too “the “naturalism” of (neo) liberally constituted “democratisation” is such that its promotion is rarely questioned or critically interrogated” (Giannone, 2010: 68). Although the same observation can also be made for other parties of the debate (like parliamentary political parties and civil society organizations for instance), the following analysis will show the dominance of the liberal view of democracy in the way the expectations from the new/democratic/civil constitution are given voice by influential opinion leaders in the Turkish media. The debates have been going on under the main title of “democratisation”, but between the lines the major concern appears as that of “liberalisation” of Turkish politics.

Turkish Media on the New Constitution

We believe that the best way of drawing a map of the constitution debate in Turkey is to delineate the main themes this debate revolves around. For this purpose, we have reviewed the columns of six daily newspapers, *Hürriyet*, *Cumhuriyet*, *Zaman*, *Star*, *Birgün*, and *Taraf* for the period of 13 June 2011- 30 October 2011. We have considered all articles that take new/democratic/civil constitution as the subject matter. We have selected these six newspapers as representatives of different political dispositions. *Hürriyet* is taken as the foremost representative of the mainstream media in Turkey. *Cumhuriyet* stands as the symbol of Kemalism, the founding ideology of the Turkish republic. *Zaman* represents the Islamic-

leaning media and it has the highest rate of circulation among the Islamic newspapers in Turkey. *Star* is considered to be symbolic for its ideological/political backing to the JDP government. *Taraf* and *Birgün* are selected as representatives of different streamlines of the leftist media in Turkey. *Taraf* embodies liberal-left via its emphasis on political liberalism and on the problematic of the state-society/individual relations, whereas *Birgün* epitomizes left-dissidence by a focus on labour rights and class struggle. We have chosen 13 June 2011 as the starting date of our media review since it symbolizes the beginning of the third term of the JDP government, and thus –as explained above- a turning point in the constitution debate. Closing date of our survey is 30 October 2011. Throughout our survey we tried to find out the answers given by the columnists to three major questions: 1) Does Turkey really need a new constitution? 2) What are the major deficits of the current constitution? 3) What are we to expect from a new constitution? The method that we follow in this type of research is critical discourse analysis. As Teun A. van Dijk (2003: 352) explains, “critical discourse analysis (CDA) is a type of discourse analytical research that primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context.” As can be seen, a central theme in CDA is the relations between discourse and power. Power, in turn, is defined “in terms of *control*” (van Dijk 2003: 354 emphasis original). Thus, from this perspective, “access to specific forms of discourse, e.g. those of politics, the media, or science is itself a power resource” and “those groups who control most influential discourse also have more chances to control the minds and actions of others” (van Dijk 2003: 355). For the critical discourse analysts “the power of dominant groups may be integrated in laws, rules, norms, habits, and even a quite general consensus, and thus take the form of what Gramsci called ‘hegemony’”; but it is equally important to note that “power is not always exercised in obviously abusive acts of dominant group members, but may be enacted in the myriad of taken-for-granted actions of everyday life” (van Dijk 2003: 355).

We aim in this article a critical analysis of the media discourse on the “new and democratic constitution” in Turkey. We believe that the debate in the media is important since according to the CDA perspective “recipients tend to accept beliefs, knowledge, and opinions (unless they are inconsistent with their personal beliefs and experiences) through discourse from what they see as authoritative, trustworthy, or credible sources, such as scholars, experts, professionals, or reliable media” (Nesler et al. 1993 cited in van Dijk, 2003: 357). The objective of our analysis is twofold: first, we strive to illustrate the conflation of liberalism and democracy in these debates through CDA of the columns of the newspapers and through

direct quotes from the newspaper writers; and argue that this happens through constant reference to the central themes and principles of liberalism (such as individual rights and liberties, limited state, rule of law, pluralism, accountability) as the main pillars of the “democratic constitution”. Second, we try to shed light on the ways in which the neo-liberal hegemony is (re)produced within the discussion on the “new and democratic constitution” in Turkey as an outcome of the conflation of liberalism and democracy.

Does Turkey Really Need a New Constitution?

It can easily be observed that there is widespread agreement among the writers that Turkey needs a new constitution. The case of *Cumhuriyet* is an exception in this respect because it mostly gives voice to an almost unreserved rejection of the idea of a new constitution on the grounds that an enlightened citizenry is what Turkey needs before it undergoes a process of constitution making. Otherwise, it is argued by the *Cumhuriyet* columnists, an attempt at writing a new constitution would amount to a challenge to the fundamentals of the Turkish republic; and it would simply consolidate the power of the incumbent government in the country (See for instance Coşkun, 2011a, 2011b ; Soysal, 2011a, 2011b; Akgüç, 2011a, 2011b; Aybay, 2011; Çölaşan, 2011; Baykam, 2011. This is closely related with the fact that *Cumhuriyet* has historically been the yardstick of the founding ideology of the republic and its top-down modernization project.³ Among other five newspapers there are only four articles (by three columnists) arguing against the priority attached to the idea of new constitution for similar reasons. Two columnists claim that Turkey’s major political problems could indeed be solved through amendments in Law on Political Parties, Election Law, Prevention of Terrorism Act or lifting the 10 per cent national threshold without a constitutional change, and that behind the JDP’s enthusiasm lies the desire to tailor the political regime to its own worldview and/or to monopolize the Turkish polity (Ince, 2011; Cangızbay, 2011a, 2011b; 2011c) while the debate on the new constitution is utilized as an instrument of distraction and opposition of any kind has been labelled as being anti-democratic. The other columnist is of the view that “there is no popular demand for constitutional change since the only things that the people ask from the government are job and peace of mind” (Bayer, 2011).

A great majority of the columnists, however, rationalizing their claims on different grounds, are of the opinion that Turkey now needs a new constitution: A new constitution is portrayed as “an exam that Turkish democracy has to pass in order to prove its maturity” (Ergin, 2011); as the “precondition of a mentality change that will relieve Turkey”

(Hakyemez, 2011) through “liberating all of us by freeing our minds”... from “the narrow intellectual milieu that this text (current constitution) creates” (Berkan 2011a); as the symbol of the end of the military tutelage and the abolition of the legal and ideological heritage of the military regime of the early 1980s (Ocaktan, 2011; Özbudun, 2011; Dağı, 2011c; Gülerce, 2011); as “the most cheerful and exciting moment of the process of restructuring that has been going on since 2002 in the sense of democratisation and deepening of democracy” (Karaalioğlu, 2011). A writer, who is a professor of constitutional law, argues that Turkey needs a new constitution since the current constitution belongs to a “100 years old paradigm”, which has “lost its legitimacy completely” as a result of the “deepening of estrangement between changing social dynamics and political regime” (Can, 2011b). In this respect he talks about a “quiet revolution” in which the “society reads history; reads its own future, its own needs and its own life and produces its own code of conduct” (Can, 2011b). Another columnist puts it more briefly by stating, “the reason behind the quest for a new constitution is the crisis of Kemalism”(Dağı, 2011c). Parallel to this, there is the belief that the electoral successes of the JDP are to be conceived as an expression of the rising tide of the popular challenge to the official ideology and thus as a manifestation of the popular will to make a new constitution (Altan, 2011b ; Belge, 2011a). In this view, the democrats in the country have supported the JDP in order to encourage and enable it to turn the political and legal system of the country into a civilian and modern system (Altan, 2011a). It is also argued that a new constitution is what the new parliament “owes the people” (Ocaktan, 2011) since all parties currently in the parliament had undertaken it during their election campaigns. For a similar point of view, “no one has the right to have the Turkish people live with this shame” of still having a “coup d’état constitution” (*darbe anayasası*) that has turned into a “patchwork” in time but still cannot catch up with today’s Turkey (Dumanlı, 2011). The current constitution is accused of containing “out-dated rules falling quite short of the maturity level of democracy” in Turkey thereby causing crises in the country, and hence it is considered being in need of adjustment to the existing living conditions in the country (Türköne, 2011a). A columnist believes that Turkey’s success in making a new constitution would be a manifestation of the existence of a societal consensus, which in turn would leave no place for terrorism (Türköne, 2011b). He also suggests that the process of constitution making can be an opportunity for the people to become “democratic subjects” (Türköne, 2011d).

The writers who believe that Turkey needs a new constitution almost unanimously think that this is the right time to initiate this process. The main reason behind the consensus

on the timeliness of new constitution making is the current configuration of the TGNA. More specifically, the distribution of the seats in the parliament among four political parties JDP, RPP, NAP and PDP reflects (despite the ten per cent national threshold) the distribution of the votes among the electorate: the sum of the votes that those four parties gained correspond approximately to 95 per cent of total votes. Moreover, the level of electoral participation was 87 per cent, quite high compared to many European countries. These statistical data lead almost all columnists to state that there is no place for scepticism about the representativeness of the current parliament (See Ünal, 2011b; Yağcı, 2011; Çınar, 2011 among others).

The high level of representativeness in turn is considered an important characteristic authorizing the TGNA to make a new constitution. This kind of a consensus among the leading figures of the Turkish media is important since especially prior to elections Turkey witnessed a discussion about whether the Turkish parliament could act as a constitutional assembly and there are still opposing views among the professors of constitutional law on this issue.⁴

What are the Major Deficits of the Current Constitution?

There are a number of closely related points appearing as the most-stressed deficiencies of the current constitution in Turkey. First and foremost, it is argued that the 1982 constitution is characterized by “a concern with limitations over liberties rather than liberties, regarding especially freedom of expression and freedom of political organization” (Berkan, 2011a). Another columnist, a professor of constitutional law at the same time, writes: “Why do we want to replace the 1982 constitution with a brand new one? Because there is much of (state) power but there is minimum freedom in it. The nature of the state/society relation is in favour of the authority” (Kaboğlu, 2011b). He also mentions the 2011 report of the international Rule of Law Index published by the World Justice Project that shows Turkey getting the lowest grade in the category of “Basic Rights” and ranking as the 58th among 66 countries (Kaboğlu, 2011a).

The shortcoming in terms of rights and liberties is usually explained with reference to another characteristic feature of the 1982 constitution, namely its conception of the state/society relations. The great majority of the columnists share the opinion that it is a manifestation of an “ideological framework that prioritises the state power as against human rights and liberties” (Berzeg, 2011). According to this point of view, the “1982 constitution is built upon an anti-libertarian philosophy” that “glorifies the state; takes the continuity of the state as the utmost political value; aims to create a homogenous society” (V. Coşkun, 2011). It is even claimed “the texts that are not in harmony with the aims of guaranteeing human rights

and freedoms and of gaining the consent of the ruled ... are not to be counted as constitutions” (Berzeg, 2011).

There is also the claim that the current constitution expresses a “distrust in politics” that is evident in the fact that “it encompasses a variety of the spheres of life” in a way that “it leaves too little space to be engaged in politics” (Berkan, 2011b). An extension of the political sphere is in turn considered as a prerequisite of democratic consolidation (Berkan, 2011b). In a similar manner, another columnist and professor of constitutional law, asserts that the constitution is constructed upon the idea of “castrating politics” through “dictating the official ideology over society” thereby “rendering the society an impassive mass”; and upon the idea of “politics for the society rather than politics together with the society” denoting that “the society should not be demanding; the rulers would both assess and fulfil what is needed” (Sancar, 2011).

The way the 1982 constitution approaches the notions of rights and liberties, the state-society relations and the accompanying conception of politics are regarded by the leading figures of the print media in Turkey as symptoms of a particular understanding of democracy, namely, “praetorian or guardianship democracy”; and this is viewed as yet another deficit of its. Accordingly, it is argued that the 1982 constitution has been definitely effective in consolidating bureaucratic guardianship (civil and military) over elected bodies (Özbudun, 2011; Belge, 2011b; Esayan, 2011) although the traces of such a worldview could be found back in the 1961 constitution. In a parallel line of thinking, the issue of constitution is categorised as “a matter of sovereignty”: “The constitution issue is not about the government-opposition relations. It is a matter of the nation’s strive for sovereignty in its own house” (Can, 2011a). This is so because “starting with the 1924 constitution the saying “sovereignty rests unconditionally with the nation” has been turned into an empty slogan” coming in time (with the 1961 and 1982 constitutions) to connote, “sovereignty rests with the nation but it is exercised by the guardians” and the role of the 1982 constitution has been that of “increasing the number of guardians” (Can, 2011a).

Lastly, the 1982 constitution is criticised in procedural terms. The main argument here is that it lacks legitimacy due to the fact that it was made and put into effect by the military junta without public consent (Berzeg, 2011; Özbudun, 2011). In this view, “the newly formed TGNA is expected to make a legitimate constitution for Turkey where there is none”; and in doing this “it is to take into account only its own legitimacy that the people bestowed on it at the elections and not to be bounded by the terms of the 1982 document which has no legitimacy at all” (Berzeg, 2011).

What are We to Expect From a New Constitution?

The points that are put forward as the major flaws of the existing constitution expectedly shapes the expectations from a new/democratic/civil constitution. This is why what we read most often is the assessment that the new constitution should prioritize (individual) rights and liberties and should be concerned with protecting the individual/citizen against the danger of arbitrary use of political power by the state. Almost without exception, in all the articles reviewed there is reference to a dichotomy of *the individual vs. the state*. The new constitution is expected to be “more progressive” in terms of its approach to the principles of “liberties, human rights and the rule of law” since “all constitutions enforced during the republican period are state-centred” (Koru, 2011). Thus, the major question that is to guide the constitution making process is formulated as such: “Would the constitution protect the state against the individual or the individual against the state?” (Koru, 2011). The answer to this major question is to be found in another column: “The new constitution will unquestionably prioritize the individual and his/her rights and the state will come in the second place” (Pakdemirli, 2011). In a parallel line of thinking, “the state apparatus” is defined as “a mechanism to protect individual liberties”(Hakyemez, 2011). This, in turn, is in accordance with the view that the new constitution would conceptualize the state as a tool in the service of the nation (Ünal, 2011a). In this respect “the essential goal of the principle of constitutionalism” is demarcated as that of “genuine protection of the individual against the state and the limitation of the state through human rights” ”(Hakyemez, 2011). It is even asserted, “the texts that fall short of assuring human rights and liberties and that lack the consent of the governed people are not to be recognized as “constitutions in true sense of the term” (Berzeg, 2011). In short, “if the ultimate aim is a new constitution there is no doubt about what is to be done: writing it in a way that its philosophy is just the opposite of that of the 1982 constitution” so that it should be erected on a libertarian philosophy that “takes the individual as its focal point, regard individual rights and liberties as the fundamental principle, recognizes social plurality ...” (V. Coşkun, 2011). This emphasis on the individual rights and liberties goes hand in hand with a commitment to pluralism. It is generally argued that the 1982 constitution represents a homogenizing approach toward differences in society and hence lacks the principle of pluralism. The new constitution, therefore, by recognizing the category of the individual with his/her rights and liberties would at the same time recognize individuals with their disparities (V.Coşkun, 2011; Özçer, 2011; Hakyemez , 2011).This reference to the principle of pluralism is, at the same time, the major reason why the new

constitution is devised by a group of columnists as a means to find a solution to long-lasting Kurdish issue in Turkey. This kind of an approach is particularly noticeable among the columns of *Taraf* and *Zaman*. The constitution making process is viewed as “a great chance” in this respect (Türköne, 2011c; Alpay, 2011b). Furthermore, the new constitution in some cases is thought as the precondition of solving the fundamental problems of the country: “Unless a new constitution is made the problems of Turkish politics such as the Kurdish issue and Ergenekon case will remain unresolved” (Aktaş, 2011). These observations are closely related with the widespread view that there are problems related with the way the 1982 constitution conceptualized citizenship. The article 66 of the constitution states: “Everyone bound to the Turkish state through the bond of citizenship is a Turk”. This conceptualization of citizenships via *Turkishness*, is deemed exclusionary due to its ethnic reference. In this sense, the new constitution is expected to create a deeper sense of belonging and hence perpetuate democratic citizenship by defining citizen with reference to his/her rights and liberties as democratic ideals rather than as grants associated with belonging to an ethnic identity.⁵ In other words, it is claimed that the new constitution must avoid from all ethnic emphasis to be helpful in such problematic areas as minority rights, and specifically the Kurdish issue. In addition to all these, we see that since the 1982 constitution is criticized for being too detailed signifying the attempt on the part of the state at controlling nearly every aspect of social, political and economic life in Turkish society, new constitution is expected to be a short document.

As is obvious from the way the state-individual relations are conceptualized, another tenet is the rule of law, and relatedly, the principle of accountability. A columnist claims in this respect “the main aim of the new constitution, without any doubt, is to put politics in order according to law” (Yavuz, 2011a). These principles are viewed as the bulwarks against arbitrariness; and they are associated with the idea of democracy. Accordingly, democracy is defined as “a regime of accountability” in which the public officials, such as prosecutors, are thought as “advocates of the people” (Berkan, 2011c). In this respect, “democracy is not merely national will. It is national will restricted by the law based on human rights” (Alpay, 2011a). The principle of accountability is also associated with “civility”: “Civility is something to do with rendering the public officials of all ranks accountable to the people and preventing the emergence of a hierarchy between them and the ordinary citizens in terms of status and legal protection” (Yılmaz, 2011). In addition to this, there is a unique interpretation according to which a constitution is a social contract whose aim is that of “limiting the government” rather than “limiting the state”: “a human-centered government cannot be

created by weakening the state; to the contrary, it is necessary to strengthen the state through law and order” (Cansen, 2011).

Another theme that appears quite often is the idea of “non-ideological constitution”. Such a concern is common especially among liberal and conservative stream in the media highlighting the ideology-laden and dogmatic, character of the 1982 constitution, which in this view, is designed to guarantee that Turkish society as a whole holds a definite ideology, Kemalism. Thus, it is argued, the borders of the political realm in Turkey have been drawn by the founding/official ideology of the republic, which in turn, as was explained in the previous section, minimizes the sphere of politics (Alkan, 2011a, 2011b; Dağı, 2011b; Yavuz, 2011b; Türköne, 2011e; Sancar, 2011) where the constitution is treated almost as a sacred text (Alkan, 2011b). This is considered as a major problem for the democratisation of the country since in a democratic regime “the state does not have an ideology of its own written in the constitution”; rather it is the people who can have ideologies which “they would choose freely” (Dağı, 2011b). More specifically, it is argued that the current constitution embodies the ideology of the RPP, the founding party of the republic, under the guise of the guardianship of Atatürk Principles and Reforms (Yavuz, 2011b). Consequently, the new constitution should stand above and outside of all ideological positions and keep its equal distance to all segments in the society rather than being the voice of a particular ideology. The non-ideological character of the constitution is essentially thought as a manifestation of the neutrality of the state. The latter in turn is supposed to be reflected in other state institutions such as the military: “Can a state’s army represent an official ideology when that state’s constitution does not have one?” (Dağı, 2011a). In that sense, the new constitution is conceived as a means to ease the problematic nature of the civil-military relations in the polity.

Concluding Remarks

There are different models of constitutions reflecting the variety of views on the role of a constitution and hence, the concept of constitution may mean different things in different contexts. In Turkey, one can easily observe that *the constitution* has always had a central place in political life and there is always much to be expected from it. 1924, 1961 and 1982 constitutions have all been portrayed by different segments of the society both as the source of the major political problems of the country and the solution to most of these problems. Moreover, in each case the debate on the constitution and/or constitutional changes has been intertwined with a debate on democracy and democratisation. A closer look at these processes

would recognize various (and mostly contradictory) conceptualizations of democracy. Nowadays, we are once again in the middle of a debate about the vices of the existing constitution and the virtues of a new one. Although the current situation is undeniably unique as what triggered the constitutional process is the willingness of the major political parties and the encouragement of the electorate rather than a coup d'état; there is continuity in the sense that the notion of constitution is once again coupled with a debate revolving around the theme of democracy. The starting point of this study has been a curiosity about the way this connection is established between constitution and democracy in the Turkish media; and relatedly, about the way democracy is conceptualized within these debates. The major finding of such exploration is that, not unlike the case in many other parts of the world, in Turkey the term democracy in most cases denotes liberalism. In other words, the leading figures of the Turkish media are in line with the neo-liberal tradition that is “concerned to advance the cause of “liberalism” against “democracy” ” (Held, 1990: 244). The 1982 constitution is criticized primarily for being anti-democratic while the would-be constitution is referred either as the “new constitution” or “democratic constitution”. Both the criticisms directed at the 1982 constitution and the expectations from the new constitution are centred upon the same tenets: The first of these is the idea of a limited state accompanied by an overemphasis on individual rights and liberties. There is constant reference to the need for a reconstruction of the state-individual relations in a way that would prioritize the individual and the new/democratic constitution is expected to respond to this need. The rights and liberties of the individual are mentioned in terms of the liberal idea of minimizing state’s interference into individuals’ right to be the ultimate judge of their own ends. The emphasis on the notions of minimal state and individual liberty is accompanied by a focus on the principles of pluralism and rule of law (and also accountability) with regard to which the 1982 constitution is accused of having serious shortcomings. These criticisms and expectations are surrounded by sensitivity about the legitimacy of the political system. As was discussed above, however, all these notions are the central premises of the liberal tradition. None of them is immanent and unique to the idea of democracy. Well, what is the matter with this equation of “democracy = liberalism”? We believe that there are more than one problematic aspects of this presumption.

First, this point of view that culminates in the precept “democracy means liberalism” presupposes an eternal connection between liberalism and democracy. By doing this, however, it misses out the fact that the concepts “liberalism” and “democracy” denote two different traditions and that the articulation between them took place only at the end of the nineteenth century. By ignoring that this articulation was the culmination point of certain

historical developments, in turn, this approach falls into the trap of ahistoricism. This is perhaps the most upsetting thing about the debate on the “new and democratic” constitution in Turkey; many writers conflate liberalism and democracy in their analyses of the non-democratic character of the 1982 as well as in their expectations from a “democratic” constitution, and they do this without showing a sign of an awareness of the perplexities of the relationship between liberalism and democracy.

Second, the presumption that democracy implies liberalism bears the risk of disregarding the notion of participation as the central democratic ideal. The liberal idea of democratic participation indicates conventional modes of political action basically in the form of voting which, in turn, is conceived as a means to legitimate the existing political system. At this point we should remember that democracy means popular sovereignty. In liberalism political participation is seen as a means of realizing individual interests and politics as a technique of problem solving while in the democratic tradition it is viewed as a good in itself. In other words, in the democratic tradition political participation symbolizes the emancipation of the individuals through actively taking place in the decision-making processes during which the rules that bound them are made. More briefly, in the democratic tradition political participation is what renders individuals into subjects who are active manipulators of their living conditions. In the Turkish case, we do not come across any reference to this notion of participation. What we see rather is a peculiar understanding of participation as a means of limiting the state, legitimizing the political system, and pursuing the individual interest.

The assumption that liberalism means democracy has a third deficit that is connected to the notion of equality. The attention given by the neoliberal ideology to the dimension of freedom is “reflected by an almost complete disregard for the dimension of equality” and this goes hand in hand with “the emphasis on the formal and procedural aspects of democracy to the detriment of the substantive ones” (Giannone, 2010: 91). The liberal democratic tradition takes the unequal power relation between the state and individual as the main focal point at the expense of a reflection on democracy *within* society with an eye on the unequal power relations and their hegemonic configuration. As Elazar (1985) has put it, “a constitution which does not sufficiently reflect and accommodate socio-economic power realities remains a dead letter”. Alas, it is almost impossible to observe such a questioning within the debate on the new and democratic constitution in Turkey.

As an outcome of all these problems, the equation “democracy=liberalism” in the last instance serves the reproduction of the neo-liberal hegemony via legitimation of the liberal principles through a discourse on democracy. By this way, not only the term “democracy” is

nullified but also “liberalism” is placed at an above-ideologies position. In other words, the liberal ideal becomes the democratic ideal *per se*. As was shown above, this is exactly what has been going on in the case of the debate on the new constitution in Turkey and it can be observed most clearly in the argument in favour of the so-called “non-ideological constitution” which is quite common among the columnists. This, however, is distraction leading to a puzzlement regarding the aim of the whole process of democratic constitution making: Is it liberalisation of democracy or democratisation of liberalism that we long for? We believe this to be the major question to guide the constitution debates.

END NOTES

* Assist. Prof., Başkent University, Department of Political Science and International Relations, Ankara, Turkey.

¹ The JDP was established in August 2001 by former members of the Virtue Party which had been closed down by the Constitutional Court. Approximately one year later it came to power by gaining 34% of the votes which was to increase to 47% in 2007 and to 50% in 2011.

² Some well known examples include Turkish Industry and Business Association (TÜSIAD), Independent Industrialists and Businessmen's Association (MÜSIAD,) Confederation of Progressive Trade Unions (DISK), Turkish Economic and Social Studies Foundation (TESEV). It is important to note here that 83 non-governmental organizations and professional organizations participated the Constitution Platform National Workshop that took place in 8-9 December 2010 in Ankara and announced through a final report their willingness to take part in the constitution making process (Gönenç, 2011: 9).

³ For a more detailed analysis of the significance of *Cumhuriyet* for the Turkish media and its changing role in the modernization and democratisation of the country see Fuat Keyman (2010), "Turkey, Transformation and the Left Media", *Turkish Studies*, Vol. 11, No 4, pp. 539-553.

⁴ This was one of the hottest issues discussed at the meeting that Cemil Çiçek, the president of the parliament, came together with 24 professors of constitutional court from various universities. For different points of view on this and other questions discussed at that meeting see, <http://www.sabah.com.tr/Gundem/2011/09/20/yeni-anayasa-icin-mesai-basladi>

⁵ An emphasis on this point is common especially among the *Taraf* columnists.

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