



The New Constitution of Turkey

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Political Science Quarterly, Volume 40, Issue 1 (Mar., 1925), 73-100.

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Political Science Quarterly
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THE NEW CONSTITUTION OF TURKEY¹

Prospects of Republicanism in Turkey

WAR or the threat of war has been a powerful motivating force in the accomplishment of so-called "reform" in Turkey. The Constitution of December 23, 1876, was promulgated by Abdul Hamid because of the thinly concealed desire of Russian diplomacy to force a Russo-Turkish war upon liberal and humanitarian pretexts but for dynastic and imperialistic purposes. A previous charter of Ottoman liberties, the *Hatti-Humayun* of February 18, 1856, was issued by Abdul Medjid upon the eve of the Congress of Paris which was to liquidate affairs of the Crimean War. The Young Turk Revolution of 1908 was precipitated by the Reval visit of Edward VII to the Tsar and the apparent determination of Great Britain and Russia to bring order out of the prevailing Macedonian chaos. The Turkish Nationalist movement of Mustapha Kemal Pasha in its early stages anticipated and determined to forestall the attempt of the Entente Allies to dismember Turkey by the Treaty of Sèvres. In each of these cases the progressives of Turkey were liberals in their desire to introduce Western standards of administration into a tottering imperial régime, nationalists in their desire to achieve reform before it was forced upon them.

There are certain distinctive differences, however, between the present republican reform in Turkey and former half-hearted reforms in the Ottoman Empire. The revolt of Mustapha Kemal against the Allies was not, like the shifty maneuvers of Abdul Hamid or the precipitate acts of the Young Turks, designed to maintain Turkish hegemony in non-Turkish territory; it was primarily concerned with preserving a Turkish

¹ On April 20, 1924, the Grand National Assembly of Turkey adopted a new constitution of the Republic, the text of which is appended hereto in English translation, *infra*, pp. 89-100.

homeland against Pan-Hellenistic expansion and Allied imperialism. Under the Sultans and to a lesser degree under the Young Turks the passion for reform waned as foreign pressure became less severe; under Mustapha Kemal the most significant revolutionary changes—namely, establishment of the republic, abolition of the Caliphate, and adoption of a democratic constitution—came after a signal military victory at Smyrna and a conspicuous diplomatic victory at Lausanne, when foreign intervention was little to be feared. Before the war "reform" in Turkey, as elsewhere, was interpreted in a narrowly political sense, so that the forms of liberalism were mistaken for the substance of social progress; the new régime in Turkey is founded upon fundamental reforms, such as the separation of Church and State, of which the constitution is but a necessary expression. The edicts of 1856 and 1876 were administered under the tender mercies of a reactionary, incompetent and corrupt bureaucracy, and the constitution of 1908 fell victim to an unscrupulous triumvirate; the present constitution has an even chance, at least, of being carried out by men who are admittedly inexperienced, but who seek to divorce themselves from Byzantinism and evil Ottoman traditions.

It hardly will be contended, of course, that the new constitution and its administrators can solve out of hand all problems of the new Turkish Republic. To train honest and efficient public servants in a country which has been cursed with a corrupt and incompetent official class; to cultivate intelligent public opinion and to promote elementary education among an illiterate people which has been kept in ignorance for centuries; to reform the finances of a treasury which has been drained by extravagance, pilfering and war; to promote economic prosperity in the midst of ruin—these will be nothing short of Herculean tasks. For a time, it will be the part of wisdom and charity to judge Turkey upon her good intentions rather than upon her substantial achievements.

Turkish nationalism and republicanism can be viewed accurately only in their historical setting. They are not isolated phenomena, but part of the trend of the times which produced them. In 1914, the Ottoman Empire, along with the German

and Austrian and Russian Empires, was cast into the crucible of the Great War. Military and economic catastrophe overcame Stamboul as they overcame Berlin and Vienna and Petrograd. The Sultan, supported for a time by Allied bayonets, eventually went the way of the two Kaisers. The national minorities of the Ottoman Empire, like those of Austria-Hungary and Russia, were detached from their former allegiance. In short Turkish nationalism and republicanism were prototypes of the nationalism and republicanism which swept over central and eastern Europe immediately before and after the armistice of 1918. In addition, Turkish nationalism is the reflection of a growing Asiatic antipathy to Western domination. Whether classified as fanaticism or as a righteous adherence to the principle of self-determination, this passion of the subject peoples of the East for freedom from European control has been a powerful influence in the recent history of the Near and Middle East. In the name of national independence Egypt demanded the termination of the British Protectorate, Persia freed herself from the Curzon Treaty, the Arab world resisted the mandatory Powers, India remains in ferment; in the name of national independence the Turks at Lausanne doggedly persisted in their determination that the Capitulations should be abolished and the Ottoman Public Debt Administration rigidly controlled. Located geographically between central and eastern Europe on the one hand and western Asia on the other, Turkey naturally was influenced by, and in turn herself influenced, the contemporaneous nationalist and republican movements of her neighbors.

Whatever may be the ultimate fate of the constitution and of the republic, a new social and economic order has been established in Turkey. Fifteen years of almost uninterrupted war—with their concomitants of disease, famine and massacres—have dealt a blow to the productive man-power of the nation which cannot be overcome without the introduction of agricultural and other machinery. The exigencies of war assisted in the emancipation of women from many of their former disabilities and compelled, as in other countries, a readjustment in the relationships between the sexes. The massacre and deportation

of hundreds of thousands of Greeks and Armenians have stripped the country of most of its intelligent and prosperous middle class, whose place will be taken but slowly by Turks lacking in education and experience. The forcible detachment of the non-Turkish portions of the Empire should divert to economic channels much of the intelligence and energy which formerly was dissipated in the maintenance of excessive military forces and a far-flung civil administration. It is as difficult to conceive the return to Turkey of the Osman dynasty and the Ottoman system as it is to imagine the return to Russia of the Romanovs and their Tsarist régime.

Constitutional Precedents in Turkey

Although self-government in Turkey is in an infant, if not an embryonic, stage of development, constitutionalism is supported by precedents of some importance. Ottoman religious and secular institutions were opposed to the theory of absolutism. The Holy Law, or *Sheriat*, was always considered superior to the arbitrary decisions of a ruler and was so generally recognized as a fundamental law of the land that it required little effort to introduce even ignorant Moslems to the idea of a constitution.¹ The non-Moslem populations of the Ottoman Empire enjoyed a considerable measure of self-government within their religious communities. By the *Tanzimat* of 1839 and the *Hatti-Humayun* of 1856 Sultan Abdul Medjid granted Ottomans a charter of personal liberties—more frequently disregarded, it is true, than observed, but “as sure a sign of progress in Turkey as the granting of Magna Charta had been to England”.²

The Constitution of 1876 was weakened from its inception by the bad faith of Abdul Hamid, who considered it a device for forestalling the efforts of the Powers to force upon him a constitution of their making. After the Treaty of Berlin the wily and unscrupulous Sultan proceeded to rid himself of the

¹ When the Grand National Assembly originally gathered at Angora in April, 1920, it claimed moral and political authority from a verse of the Koran enjoining followers of the Prophet to “meet together in council and discuss”.

² Sir Edwin Pears, *Life of Abdul Hamid* (London, 1917), p. 2.

constitution, of the parliament established by it, and of the constitutionalists who were responsible for both. The suspension of the constitution in 1878 could not, however, conceal the fact that Turkey had had her first parliament—a parliament which demonstrated a considerable amount of independence, which exposed the universal incompetence and corruption of the Ottoman imperial régime, and which held out high hopes that a future revival of representative government might rally round it a public opinion which no ruler would dare defy.

Although no parliament met in Constantinople during the three decades, 1878–1908, the Sublime Porte annually published the Constitution of 1876 as the basic law of the Empire, thereby contributing unconsciously to the Young Turk agitation for the re-establishment of parliamentary government. In fact,

the thirty years of oppression had a curious educational effect. The very badness of the Government appeared to turn the minds of many thinking Ottomans toward the principles of the unused Constitution. It alone seemed to promise release from captivity and the restoration of the nation to an honorable place before the world. . . . When, in July, 1908, Abdul Hamid, forced by the army and the Committee of Union and Progress, ordered the election of a new parliament and proclaimed his intention of governing under the Constitution, so ready was Turkey for the new régime that in the twinkling of an eye the nation transferred its obedience from the Sultan to the power that had triumphed over him.¹

Judged by Anglo-Saxon standards, the Constitution of 1876 left much to be desired; but had it been faithfully observed, it would have provided a fairly satisfactory basis for the development of parliamentary institutions in Turkey.² Its principal features were: a bicameral parliament composed of an appointed Senate of notables and an elected Chamber of Deputies; a Council of Ministers appointed by the Sultan but responsible

¹ A. H. Lybyer, "The Turkish Parliament", in *Proceedings of the American Political Science Association*, Volume VII (1910), pp. 67–68.

² The text of the constitution is available in *Parliamentary Papers, House of Commons*, 1877, Volume XCI, pp. 114–131, in French and English translations.

in a vague and indefinite sort of way to the Chamber; ¹ a judicial system which never existed except in the imagination of the Sultan and in the hopes of the constitutionalists. The Sultan, Sovereign and Padisha of all the Ottomans, Supreme Caliph of Islam, was declared to be "irresponsible" and possessed an absolute veto of any act of parliament. Financial and administrative reforms were projected in some detail but never came to pass. An elaborate bill of rights specified that liberty of person, property and domicile is inviolable; "all subjects of the Empire are called Ottomans, without distinction, whatever faith they profess"; "all Ottomans are equal in the eye of the law and have the same rights, and owe the same duties toward their country, without prejudice to religion"; ² Islam is the state religion, but "the State will protect the free exercise of all faiths professed in the Empire and uphold the religious privileges granted to various bodies"; all Ottomans are eligible to hold public office according to their fitness, merit and ability; the press is free "within the limits imposed by law"; confiscation, forced labor and compulsory levies are prohibited. The chief weakness of the constitution was not its provisions but Abdul Hamid's supreme indifference to them. It is typical, for example, that although the Sultan suspended the constitution for thirty years from 1878, Article 115 solemnly declared that: "No provision of the Constitution may, under any pretext whatsoever, be suspended or neglected."³

¹ Article 30 stated that "ministers are responsible for their acts", without specifying to whom. Article 35 provided that: "In the event of the Chamber of Deputies throwing out a bill [initiated by a Minister], and assigning its reasons therefor, upon the adoption of which bill the Minister is of the opinion he ought to insist, His Majesty the Sultan, in the exercise of his sovereignty, orders either a change of Ministers or a dissolution of the Chamber, subject to the re-election of Deputies within the period appointed by the law."

² This provision, later interpreted to require military service of non-Moslems, who had been exempt from conscription in return for the payment of a military exemption tax, was the source of a great deal of bitterness during the Young Turk Revolution. Although the Christian populations of Turkey were willing to accept equality in rights with Moslems, they objected strenuously to service in the Ottoman armies.

³ There was at least one provision of the constitution which Abdul Hamid observed with some enthusiasm. Article 113 read: "His Majesty the Sultan has the

During the revolutionary enthusiasm of 1908-1909, the Young Turks proceeded to remove many of the ambiguities of the revived constitution and to establish beyond doubt the sovereign power of parliament. Abdul Hamid was obliged to take an oath of fealty to the nation which he had so shamefully mistreated and to the constitution which he had so cheerfully ignored. The Sultan's veto of legislation was sharply curtailed and was subject to being over-ridden by two-thirds veto of the Chamber. Parliament was authorized to meet on the first of November of each year without formal convocation, and the calling of special sessions was authorized by petition of a majority of the members. Ministers were made individually and collectively responsible to the Chamber, and the decision of a general election on any issue was declared to be definitive and final. As amended by the Young Turks, therefore, the Constitution of 1876 became a liberal charter of parliamentary government.¹ That it did not lay a substantial foundation for real self-government in Turkey must be attributed to a variety of causes. The first was the unwillingness of the non-Turkish peoples of the Empire, after the first flush of enthusiasm, to surrender the special privileges which they had traditionally enjoyed since the days of Mohammed II,² and to substitute therefor the uncertain constitutional guarantee of a revolutionary régime. The second was a series of wars which provided the pretext for less faithful observance of the constitution than would have been required in time of peace; the Turco-Italian War of 1911-1912, the two Balkan Wars of 1912-1913,

exclusive right of expelling from the territory of the Empire those who, in consequence of trustworthy information obtained by the police, are recognized as dangerous to the safety of the State."

¹ The revised constitution of 1909 is available in English translation in *Papers Relating to the Foreign Relations of the United States* for the year 1909 (Washington, 1914), pp. 585-594.

² Christians and Jews in the Ottoman Empire were exempt from jurisdiction of the imperial courts in matters of religion and personal status (including marriage, divorce, legitimacy, inheritance, etc.); they enjoyed ecclesiastical self-government within religious communities; they were permitted to maintain their own schools, conducting instruction in the vernacular. For details see George Young, *Corps de droit ottoman* (7 volumes, Oxford, 1905 *et seq.*), especially Volume II, chapters XXI-XXIX.

and the Great War of 1914-1918 subordinated parliamentary experiments to the more pressing problems of national defense. The third was the conflicting interests of the Great Powers, each maneuvering for some special advantage in the Near East and showing no disposition to assist reform in the Ottoman Empire except in so far as such reform might be expected to serve its own purposes. Finally, the financial difficulties of the Young Turks compelled them to consent to a tightened grip of European financiers and concessionaires on the imperial purse-strings. In view of these obstacles, it is small wonder that the outbreak of the Great War enabled the triumvirate of Enver, Talaat and Djemal, supported by German military power, to disregard the constitutional guarantees of 1908 as Abdul Hamid had ignored those of 1876.

The Rise of Republicanism in Turkey, 1919-1924

Remarkable as was the resurgence of Turkish military power under Mustapha Kemal Pasha, it is less remarkable than the extraordinary changes which have taken place in Turkish institutions since the advent to power of the *Tashkikat Milli*, or Nationalist Organization. Originating as a movement to "safeguard the Sultanate, the Supreme Caliphate, and the integrity of the country against foreign pressure",¹ Turkish nationalism gradually altered and expanded its program to include abolition of the Sultanate, deposition of the Caliph, and establishment of a republic. The antithesis between original purpose and final accomplishment is not to be explained by any sudden and unwarranted change of mind on the part of Mustapha Kemal and his followers, but rather by the gradual adaptation of their program to changing conditions. It is clear from the proclamation of the Congress of Sivas in September, 1919, and again from the National Pact adopted by the Ottoman Parliament in January, 1920, that it was not the intention of the Nationalist movement to alter the form of government of Turkey. But the subserviency of the Constantinople Government to the

¹ Proclamation of the Turkish Nationalist Congress of Sivas, September 9, 1919, quoted in *Report of the American Military Mission to Armenia* (Washington, 1920).

Allies led to its being identified with the cause of the enemies of the nation; the reliance of the Sultan upon foreign bayonets cast the suspicion of treason upon him; the association of the Caliphate with the internationalism of Islam was deemed inconsistent with the independence of a purely nationalist program; support of the Caliphate by reactionaries caused fear that traitors might use the prestige of the office for the promotion of counter-revolution. Hence the cause of national independence came to be associated with the necessity of completely divorcing Turkey from Constantinople and its Byzantinism, from the Sultanate and his dependence upon foreign support, from the Caliphate and its international Islamic embarrassments, and from the monarchy and its essential conservatism.

The new governmental system of Turkey rests not merely upon the constitution of 1924 but also upon important documents which preceded it. First among these is the National Pact.¹ In its constitutional aspects the National Pact is important chiefly for two reasons: first, it demanded the abolition of the Capitulations and other foreign extraterritorial jurisdiction in Turkey; second, it expressed the willingness of the Turkish Nationalists to accept a special international status for such minorities as might remain under Turkish rule after a treaty of peace. Each of these points requires consideration.

The Capitulations, granting to foreigners certain immunities from the jurisdiction of Ottoman law, gradually led Westerners in Turkey to consider themselves as being subject to *no* law. As a result of the privileged juridical status of foreigners in Turkey the grossest abuses arose. Foreign consuls were exalted officials usurping the place of the Turkish authorities, who often found themselves quite helpless under the most trying and exasperating circumstances. The police were impotent to deal with cafés, gambling houses, saloons, dance-halls and other pleasure resorts which flourished in defiance of the law and of public decency.² The exemption of foreigners from

¹ The text of the National Pact is available in *Current History*, vol. XVII (1923), pp. 280-281, in English translation, and in A. J. Toynbee, *The Western Question in Greece and Turkey* (New York, 1922), pp. 207-210, in French and English.

² These disorders reached their highest point of development during the Allied occupation of Constantinople, 1920-1923.

taxation and the veto of foreign governments over increases in the customs duties assisted in the perpetual pauperization of the Ottoman treasury and placed the Sublime Porte at the mercy of European diplomatists and financiers. The general effect of the Capitulations was to produce "an irritating superiority on the part of the foreigner; a corresponding resentful hostility on the part of the humiliated Turk; and incessant diplomatic controversies of the most trying nature".¹ From the standpoint of the Nationalists the Capitulations were an unwarranted and unjustifiable infringement upon the sovereignty of Turkey, and they demanded that they should be considered abrogated as of 1914. In the words of the National Pact, they said:

With a view to assuring our national and economic development, and with the end of securing to the country a more regular and more modern administration, the signatories of the present pact consider the possession of complete independence as the *sine qua non* of our national existence. In consequence, we oppose all juridical or financial restrictions of any nature which would arrest our national development.

Upon this platform the Turkish delegates at Lausanne stood adamant. As a consequence, Article 28 of the Treaty of Lausanne provides for the "complete abolition of the Capitulations in every respect", thus confirming in international law one of the fundamental contentions of the National Pact. Henceforth, foreigners as well as Turks will be subject to the Turkish Constitution and to other laws of the land.

By the National Pact, also, Turkey expressed a willingness to guarantee the rights of minorities "as defined in the treaties concluded between the Entente Powers and their enemies and certain of their associates", in return for the assurance that Moslem minorities in neighboring countries should be granted similar guarantees. By the Treaty of Lausanne the promise contained in the National Pact was redeemed, for Turkey extends certain guarantees to all its nationals "without distinction of birth, nationality, language, race or religion": equality

¹See Philip Marshall Brown, *Foreigners in Turkey: their Juridical Status* (Princeton, 1914), and a most illuminating article by the same author, "The Capitulations", in *Foreign Affairs* (New York), June, 1923.

before the law and full protection of life, liberty and property; equal civil and political rights; permission to establish, maintain and control religious and philanthropic institutions; freedom of religion and unrestricted use of the vernacular; freedom of social customs, including family law and personal status. These guarantees seem to be amply provided for in the new constitution.¹ Aside from their incorporation in the constitution, however, the pledges to minorities must be considered part of the fundamental law of Turkey, in view of Article XLIV of the Treaty of Lausanne, which reads, in part, as follows:

Turkey agrees that in so far as they affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations.

Turkey agrees that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these articles between the Turkish Government and any one of the other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article XIV of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demand, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article XIII of the Covenant.

Although the problem of minorities is a less difficult one than it used to be,² Turkey will be obliged to protect such minorities

¹ See part V, especially Articles 75 and 88, pp. 97-98 *infra*.

² By an interchange of populations agreement of January, 1923, about one hundred thousand Greeks remaining in Turkey were deported to Greece and about four hundred thousand Turks remaining in Macedonia and Thrace were deported by Greece to Turkey during 1924. See E. M. Earle, "The Trek of Near Eastern Minorities", in *Asia*, January, 1925, pp. 49-70 *passim*.

as remain in her territory; it is an obligation she assumed voluntarily under the National Pact, under the Treaty of Lausanne, and under her new constitution.

The National Pact is of great importance in the constitutional developments in Turkey from 1919 to 1924, but it was not a revolutionary document. It envisaged no overthrow of the existing order in any respect. Quite different, however, was the Organic Law of April 23, 1920, by which the self-appointed Grand National Assembly declared itself to be the sole representative of the nation, exercising sovereign powers of legislation and administration. This "Law of Fundamental Organization" repudiated the existing government of the Sultan and Parliament at Constantinople as of March 16, 1920 (the date of the Allied occupation of the city), and set up a legislative body, executing its decisions through agents, not provided for or countenanced by the existing constitution. By authority of this revolutionary measure, the Grand National Assembly put armies in the field, repudiated the Treaty of Sèvres, signed secret treaties with the governments of France and Italy, drove the Greeks out of Smyrna, and negotiated the Mudania Armistice of 1922.¹

The next important step toward the establishment of a republic was taken on November 1, 1922, when the Sultan Mohammed VI was deposed by the Grand National Assembly, the office of Sultan was abolished, and the Caliphate was made elective by the Grand National Assembly from among the princes of the House of Osman. The decision of the Assembly was made known in the following terms:

The Palace of the Sublime Porte having, through corruption and ignorance, for several centuries provoked numerous ills for the country, has passed into the domain of history. Recently the Turkish nation, the real master of its own destinies, the founder of the Ottoman Empire, revolted against its foreign enemies in Anatolia and undertook a struggle against the Palace of the Sublime Porte, which took sides

¹ The text of the Law of Fundamental Organization of April 23, 1920, is given, in English translation, by Clair Price in his *Rebirth of Turkey* (New York, 1923), pp. 181-183, and in *Current History*, vol. XVII (1923), pp. 458-459.

with its enemies and against the nation, and to that end it constituted the Grand National Assembly of Turkey its Government. . . . Today the era of liberation has at last been entered into. . . . The sovereignty of the Sultan is assumed by the nation; executive and legislative powers are conferred upon the nation. . . . The former Ottoman Empire has collapsed and in its place the new national Turkish State is called into being.

From the abolition of the Sultanate to the proclamation of a republic was an easy and logical step. Nevertheless, it was almost a year later, on October 29, 1923, before the definite announcement of a republic was made. Simultaneously, the office of President of the Republic was established and conferred upon Mustapha Kemal Pasha. Also the government was somewhat regularized by the creation of a Council of Ministers, appointed by the President but responsible to the Assembly. The executive powers were exercised by the President and the Council of Ministers on behalf of the Grand National Assembly, which continued as formerly to retain all sovereign power. There were no further changes in the governmental system until the adoption of the constitution of April 20, 1924.

There remained but one tie binding the Turkish Republic to the traditions of the Ottoman Empire, namely, the Caliphate. The office was held by an agreeable and charming prince of the House of Osman, Abdul Medjid, who was much more interested in art, literature and philosophy than in politics. Nevertheless, on March 3, 1924, the Grand National Assembly unceremoniously bundled the Caliph off into exile, along with all other members of the House of Osman then remaining in Turkey. The Caliphate was formally abolished, all mention of the Caliph was omitted from the State Prayers on Friday (*Selamlık*), and instead the favor of God was implored for the nation and the republican government. Simultaneously almost all surviving privileges connected with the Caliphate and with Mohammedanism as the State religion were swept away: the *Sheriat*, or Holy Law, was abolished to all intents and purposes; all religious courts were subordinated to the Ministry of Justice; education was secularized, even in the mosque schools, which were placed under the jurisdiction of the Minister of Educa-

tion; the Ministry of Pious Foundations (*Evkaf*) was suppressed, and the administration of its vast religious and philanthropic endowment was taken over by the Government; the Sheikh-ul-Islam, chief expounder of the Holy Law, was dropped from the Cabinet. By a series of drastic decrees issued within less than a week, therefore, the Grand National Assembly had destroyed all differentiation between civil and religious jurisdiction, had secularized religious property, had driven religious influences out of the schools and the law and the courts, had divorced religion and politics in the Cabinet, and in general had done away with all those Moslem prerogatives which formerly had constituted one of the principal reasons for the maintenance of the Capitulations and for the special immunities under which the Christian populations of the Ottoman Empire had lived. Although open rebellion by a conservative Moslem peasantry was freely prophesied, the changes—which would have been unthinkable even to their originators ten years before—were accomplished without any suggestion of disorder. Other dire predictions that the abolition of the Caliphate would produce serious disturbances throughout the Moslem world likewise proved to be premature. In general, qualified observers were of the opinion that Turkey had taken the most important step forward which had been taken since her advent into European affairs.

With the abolition of the Caliphate in March, and the adoption of the new constitution in April, 1924, the Turkish Revolution was complete. It now remains to be seen whether republican institutions thus established can survive. Every friend of liberalism must wish sincerely that Turkey will enjoy success far beyond her own and our expectations. For the triumph of the new régime in Turkey is of importance not only to the Near East, but to the peace of the entire world.

The Constitution of 1924

The Constitution of 1924, if it is faithfully carried out, will provide Turkey with a representative and democratic government. In the unicameral Grand National Assembly are vested all sovereign powers of the nation, executive and legislative.

The Assembly is elected by vote of all male citizens of eighteen years of age or more.¹ The members of the Council of Executive Commissioners (the Cabinet) are chosen from the membership of the Assembly and are individually and collectively responsible to the Assembly. Elaborate regulations are provided for the exercise of control by the Assembly over the collection of taxes and the expenditure of public funds. A bill of rights defines those liberties which are the prerogative of all Turkish citizens, regardless of race or religion. Justice is intended to be free from political pressure or other extraneous influence. The permanency of the republic is sought to be secured by the provision that no amendment may be entertained which seeks to alter the form of government.

An interesting section of the constitution is that which deals with the powers and privileges of the President of the Republic. Fear has been expressed that the great personal prestige of Mustapha Kemal Pasha, combined with his leadership of the Popular Party and his constitutional prerogatives, might lead to the gradual transformation of the republic into a virtual military dictatorship. In this connection it is of interest to note that the original draft of the constitution conferred on the President greater powers than he enjoys under the constitution as finally adopted. It was originally provided that the President should be elected for a period of eight years; in fact, he now serves only for the life of the Assembly, so that no premium is placed upon his arbitrary dissolution of that body. In the first draft of the constitution, it was specified that the President's veto of a bill passed by the Assembly could be overridden only by two-thirds vote of the Assembly; at present legislation may be passed over his veto by majority vote. Legislative provision for the removal of military influences in the Government has led to the resignations of a number of army officers from their commissions in order that they may hold their seats in the Chamber of Deputies. The office of Chief of Staff no longer carries with it a seat in the Cabinet. The slow development of

¹ Deputies must read and write the Turkish language and must not be subject to the disqualifications enumerated in Articles 11 and 12.

a parliamentary opposition has led to the resignation of Ismet Pasha as President of the Council of Commissioners and the assumption of that office by Fethi Bey, former President of the Grand National Assembly. Although Mustapha Kemal Pasha's magnetic personality has been a powerful factor in the determination of public policies, there is as yet no indication that he aspires to the position of dictator or that, if he did aspire to the position, he could attain it.

The abolition of the Capitulations and the secularization of the law have made possible the adoption of fundamental reforms in the administration of justice. It doubtless will be some time before Turkey will have trained and developed a corps of honest and capable judges. But simplification of the law has been achieved by the abolition of consular and religious jurisdiction, and special committees of the Grand National Assembly are now engaged in the codification of the law and in the elaboration of a suitable judicial system. The Turkish Government has announced its intention of having the work of these legislative committees supplemented by the work of foreign expert advisers. Inasmuch as these advisers are to be nationals of countries which did not participate in the Great War,¹ they may be counted upon to serve in the best interests of Turkey without regard to political and diplomatic considerations.

Turkey has provided herself with the machinery of a democratic republic. The operation of the machinery will require skill, patience and determination. She cannot be expected to achieve immediate perfection in the difficult task she has undertaken. Like other infant republics, she will make mistakes. If errors of intent and errors of judgment, however, are looked upon chiefly as occasions for self-improvement, the new Turkish Republic will win well merited respect.

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¹ See a declaration of Ismet Pasha at Lausanne concerning the administration of justice in Turkey. *Parliamentary Papers*, No. Cmd. 1969, Treaty Series No. 16 (1923), pp. 201-203.

NOTE.—Hussein Bey Effendi, Professor of the Turkish Language and Literature at Robert College, Constantinople, graciously provided the author of this article with a French translation of the Constitution of 1924. This translation, carefully checked against the Turkish version and an English translation thereof, forms the basis of the appended copy of the Constitution. Professor Hussein Bey, however, has not read the foregoing article and assumes no responsibility for the sentiments expressed therein.—E. M. E.

CONSTITUTION OF THE REPUBLIC OF TURKEY

SECTION I

Fundamental Provisions

Article 1: The Turkish State is a Republic.

Article 2: The religion of the Turkish State is Islam; the official language is Turkish; the seat of government is Angora.

Article 3: Sovereignty belongs without restriction to the nation.

Article 4: The Grand National Assembly of Turkey is the sole lawful representative of the nation, and exercises sovereignty in the name of the nation.

Article 5: The legislative and executive powers are vested and centered in the Grand National Assembly which concentrates these two powers in itself.

Article 6: The Grand National Assembly of Turkey exercises the legislative power directly.

Article 7: The Assembly exercises the executive power through the intermediary of the President of the Republic, whom it elects, and through a Cabinet chosen by him. The Assembly controls the acts of the government and may at any time withdraw power from it.

Article 8: The judicial power is exercised in the name of the Assembly by independent tribunals constituted in accordance with the law.

SECTION II

The Legislative Power

Article 9: The Grand National Assembly is composed of members elected by the nation in conformity with the electoral law.

Article 10: Every Turkish citizen over the age of eighteen possesses the right to vote at legislative elections.

Article 11 : Every citizen over the age of thirty is eligible to election to the Grand National Assembly.

Article 12 : The following are ineligible to be deputies : those in the service of a foreign power, persons condemned to penal servitude, persons acknowledging foreign nationality, persons condemned for fraudulent bankruptcy, persons who have been deprived of their civil rights, and citizens who cannot read and write the Turkish language.

Article 13 : Legislative elections take place every four years. Members whose terms have expired are eligible for re-election. The Assembly which has reached the end of its term continues to sit until the meeting of the new Assembly.

In case it is impossible to proceed to legislative elections, the session of the legislature may be prolonged one year.

Each deputy represents not only the constituency which has elected him, but the whole nation.

Article 14 : The Grand National Assembly shall meet every year on the first day of November, without the necessity of convocation. The Assembly may not be in recess more than six months a year ; such recesses are considered necessary for the purpose of permitting the deputies to visit and inspect their constituencies, of re-uniting the elements of control [of the executive power], and of rest and recreation.

Article 15 : Initiation of legislation rests with the members of the Assembly and the Cabinet.

Article 16 : On the day of their admission to the Assembly, the deputies take the following oath :

“ I swear before God that I will have no other aim but the happiness and safety of the fatherland and the absolutely unrestricted sovereignty of the nation and that I will never forsake republican principles.”

Article 17 : The immunities of a member of the Grand National Assembly in the Chamber or elsewhere may not be challenged. A deputy who is accused of an infraction of the law, whether committed before or after his election to the Assembly, and whose interrogation or arrest is demanded by the responsible authorities, may be surrendered only by vote of the Assembly in case of flagrant crime. The execution of any judgment pronounced against a deputy before or after his election shall be suspended until the expiration of his legislative term. The statute of limitations, however, shall not be considered to operate during this term.

Article 18 : The annual salaries of deputies shall be fixed by special law.

Article 19: If the Assembly is in recess, the President of the Republic or the President of the Council may convoke the Assembly in special session.

Likewise, if one-fifth of the number of deputies should demand the convocation of the Chamber in special session, the Chamber must reconvene.

Article 20: The debates of the Grand National Assembly are held publicly and the reports of its debates are published without any modification of the text.

However, in conformity with its own rules of procedure, the Assembly may also meet in secret session. In such cases, it is for the Chamber to decide whether it is proper to publish the text of the discussions.

Article 21: The debates of the Chamber are governed by its own rules of procedure, adopted in the same manner as ordinary legislation.

Article 22: The Grand National Assembly includes among its powers the right of interpellation and of conducting investigations and parliamentary inquiries.

The method of transaction of such proceedings is governed by the regulations of the Assembly.

Article 23: No person may hold simultaneously the office of deputy and any other public office.

Article 24: The Grand National Assembly at the beginning of November in each year shall elect its president and three vice-presidents for the duration of one year.

Article 25: When the Assembly by absolute majority votes to dissolve before the expiration of its term, the session of the new Assembly must begin the first of November following. A session held before that date is considered as an extraordinary session.

Article 26: The Grand National Assembly itself executes the holy law; makes, amends, interprets and abrogates laws; concludes conventions and treaties of peace with other states; declares war; examines and ratifies laws drafted by the Commission on the Budget; coins money; accepts or rejects all contracts or concessions involving financial responsibility; decrees partial or general amnesty; mitigates sentences and grants pardons; expedites judicial investigations and penalties; executes definitive sentences of capital punishment handed down by the courts.

Article 27: Only by a vote of two-thirds of the deputies may the Assembly impeach one of its members for high treason or for other crimes committed in the course of his legislative term.

If a deputy is liable to one of the penalties mentioned in Article 12 and if he is condemned by a court, he loses his seat as deputy.

Article 28 : Every deputy loses his office if he resigns, if as a result of unavoidable circumstances he is unable to attend the sessions, or if for two months he absents himself from the sessions without valid excuse or without permission, or if he accepts public office.

Article 29 : A deputy shall be elected to replace one who has lost his seat for the reasons enumerated in the preceding Articles or who is deceased.

Article 30 : The Assembly assures discipline and regulates its administration by its own rules of procedure, which are enforced by the President of the Assembly.

SECTION III

The Executive Power

Article 31 : The President of the Republic is elected by the Assembly from among its members for a period equivalent to that of the parliamentary term. The President exercises his functions until the election of a new President of the Republic. He is eligible for re-election.

Article 32 : The President of the Republic is the head of the State ; in this capacity he presides over the Assembly on ceremonial occasions and in case of necessity over the Council of Commissioners.

During his entire term of office the President of the Republic may not take part in the discussions or in the deliberations of the Assembly and may not vote.

Article 33 : If the President of the Republic, by reason of illness, or travel outside the country, or for any other cause, cannot perform his duties, or if as a result of his death, his resignation, or any other cause, the presidency of the republic is vacant, the President of the Assembly takes up his duties in the interim.

Article 34 : If, while the Assembly is in session the presidency of the Republic becomes vacant, a new President is elected immediately.

If the Assembly is not in session, it must be convoked at once by its President to elect the new President of the Republic.

If the vacancy occurs at the end of the legislative term or if a new election has been ordered, the new Assembly shall elect the new President of the Republic.

Article 35 : The President of the Republic shall promulgate in ten days of its enactment any law voted by the Assembly.

The President of the Republic must return within ten days any law which he does not consider worthy of promulgation, together with a statement of his reasons, for consideration by the Assembly; amendments to the constitution and legislation concerning the Budget are not subject to the President's suspensive veto.

The President is obliged to promulgate any law which is enacted by majority vote of the Assembly after reconsideration.

Article 36: In November of each year, the President of the Republic delivers, or causes to be read by the President of the Council, an address concerning the activities of the government during the past year and the recommendations of the government for the year to come.

Article 37: The President of the Republic designates the diplomatic representatives of the Republic of Turkey in foreign countries and receives those from foreign states.

Article 38: After his election and in presence of the Assembly, the President of the Republic shall take the following oath:

“As President of the Republic, I swear to dedicate myself exclusively to the respect, defense and execution of the laws of the Republic and of the principles of national sovereignty, to devote all my efforts loyally to assure the happiness of the Turkish nation, to contend with all my strength against every danger which may menace the Turkish state, to cherish and defend the glory and honor of Turkey, and in general to conduct myself so that I may never fail in the performance of the duties with which I am entrusted.”

Article 39: All decrees promulgated by the President of the Republic shall be signed by the President of the Council and by the Commissioner within whose jurisdiction the measure lies.

Article 40: Supreme command of the army is vested in the Grand National Assembly, which is represented by the President of the Republic.

The command of the military forces in time of peace shall be entrusted, according to special law, to the Chief of Staff, and in time of war to the person designated by the President of the Republic, with the advice of the Cabinet and the approval of the Grand National Assembly.

Article 41: The President of the Republic is responsible to the Grand National Assembly of Turkey only in case of high treason. The responsibility for all decrees promulgated by the President of the Republic, according to Article 39, devolves upon the head of the Cabinet and the responsible ministers whose signatures are affixed to the decrees. In case charges other than high treason are preferred against

the President of the Republic, Article 17 of the Constitution, concerning legislative immunities, shall be applied.

Article 42: The President of the Republic, on the recommendation of the Government, may annul or commute the sentences of persons on account of long-continued illness or of old age. Nevertheless, the President is not authorized to use this right in the case of members of the Council of Commissioners who may have been convicted by the Grand National Assembly.

Article 43: The salary of the President of the Republic shall be fixed by special law.

Article 44: The President of the Council [of Commissioners] is designated by the President of the Republic from among the deputies. The other commissioners [members of the Cabinet] are likewise chosen from among the deputies by the President of the Council, who, after obtaining the approval of the President of the Republic, presents the list of the members of the Council to the Grand National Assembly. The Government must within a week present its program to the Assembly and request a vote of confidence. If the Assembly is not in session, this is postponed until the new session.

Article 45: The commissioners, headed by their president, constitute the "Council of Executive Commissioners".

Article 46: The members of the Council of Executive Commissioners are collectively responsible for the general policies of the government. Each member, individually, is likewise responsible within the scope of his authority for the general character of his policy and for the actions of his subordinates.

Article 47: The functions and responsibilities of the commissioners shall be defined by special law.

Article 48: The number of the commissioners shall be fixed by law.

Article 49: In case of leave of absence or for any other valid reason necessitating the absence of a commissioner, another member of the Council may be named to replace him temporarily, but no commissioner may be charged with the duties of more than two departments at any one time.

Article 50: A motion of the Grand National Assembly summoning a commissioner before the High Court entails the commissioner's removal from office.

Article 51: There shall be established a Council of State which shall be called upon to decide administrative controversies and to give its advice on contracts, concessions and proposed laws drafted and presented by the Government, and to perform specific duties which may be determined by law.

The Council of State shall be composed of persons chosen by the Grand National Assembly, from among those who have held important posts, who possess great experience, who are specialists, or who are otherwise qualified.

Article 52: With the advice of the Council of State, the Council of Commissioners shall promulgate regulations for the administration and execution of the law, provided that such regulations shall not contain new clauses. When the regulations are alleged to be contradictory to the law, the Grand National Assembly of Turkey is empowered to adjudicate the matter.

SECTION IV

The Judicial Power

Article 53: The organization, the jurisdiction, and the functions of the courts shall be determined by law.

Article 54: Judges are independent in the conduct of trials and in the rendering of their judgments. They shall be protected from any sort of intervention and are subject only to the law. Neither the legislative nor executive power may modify, alter, or delay execution of decisions of the courts.

Article 55: Judges may be recalled only in conformity with the procedure determined by law.

Article 56: The qualifications of magistrates, their rights and duties, as well as their salaries and the manner of their nomination and of their dismissal, shall be determined by special law.

Article 57: Judges may not assume any public or private office outside of that entrusted to them by law.

Article 58: Court trials are public. Nevertheless, a court may order a secret trial, in cases specified by the code of procedure.

Article 59: Every person is free to use all the legal means which he deems necessary to the defense of his rights before the courts of justice.

Article 60: No court may refuse to examine and pass judgment upon cases which are submitted to it and which fall within its jurisdiction. Cases which are outside its competency may be rejected only by a decision of the court itself.

Article 61: A High Court shall be constituted, the jurisdiction of which shall include the trial of members of the Cabinet, members of the Council of State, the Attorney General, and members of the Court of Appeals in all questions pertaining to the performance of their duties.

Article 62: The High Court shall be composed of twenty-one members, eleven of whom are chosen from among the members of the Court of Appeals and ten from among the members of the Council of State. The said members are elected by secret ballot by the plenary assemblies of each of these bodies. The members of the High Court elect by the same procedure a president and a vice-president.

Article 63: Trials shall be conducted by fourteen members and the president of the High Court, which shall reach its decision by majority vote. The remaining six members shall be considered as alternates, to be chosen by ballot, three from the Court of Appeals and three from the Council of State. The president and vice-president may not be chosen as alternates.

Article 64: The office of prosecutor-general of the High Court is filled by the Attorney General of the Republic.

Article 65: The decisions of the High Court are subject neither to appeal nor to annulment.

Article 66: The High Court shall apply only the provisions of existing laws in the examination of cases which are pleaded before it and in the judgments which it pronounces.

Article 67: The High Court is constituted when necessary by the Grand National Assembly of Turkey.

SECTION V

Public Law of the Turks

Article 68: All citizens of Turkey are endowed at birth with liberty and full right to the enjoyment thereof. Liberty consists in the right to live and enjoy life without offense or injury to others. The only limitations on liberty—which is one of the natural rights of all—are those imposed in the interest of the rights and liberties of others. Such limitations on personal liberty shall be defined only in strict accordance with the law.

Article 69: All Turks are equal before the law and are obliged to respect the law. All privileges of whatever description claimed by groups, classes, families and individuals are abolished and forbidden.

Article 70: Inviolability of person; freedom of conscience, of thought, of speech, of press; freedom of travel and of contract; freedom of labor; freedom of private property, of assembly, of association; freedom of incorporation, are among the natural rights of Turks.

Article 71: The life, the property, the honor, and the home of each and all are inviolable.

Article 72: Personal liberty shall not be restricted or interfered with except as provided by law.

Article 73: Torture, corporal punishment, confiscation and extortion are prohibited.

Article 74: No one may be dispossessed of his property or deprived of the possession of his property except in the public interest. In such cases the actual value of the expropriated property must previously have been paid. No one shall be constrained to make any sort of sacrifice, other than such as may be imposed in extraordinary circumstances and in conformity with the law.

Article 75: No one may be molested on account of his religion, his sect, his ritual, or his philosophic convictions. All religious observances shall be free on condition that they do not disturb the public peace, or shock public decency or exist in violation of social conventions or the law.

Article 76: Except in specified cases and according to the form of procedure prescribed by law, the persons and the property of citizens shall be immune from search and molestation.

Article 77: The press is free within the limits of the law and shall not be submitted to any censorship previous to publication.

Article 78: The government shall not restrain the freedom of travel except during general mobilization or a state of siege, or following the declaration of an epidemic in the country.

Article 79: Limitations upon freedom of contract, labor, property, assembly, association and incorporation shall be determined by law.

Article 80: Subject to the supervision and control of the State, education in all its forms is free on condition that it conforms to the law.

Article 81: Letters, documents and packages transmitted through the mails may not be opened without an order from the Attorney General of the Republic and a decision of the competent court.

The secrecy of telephone and telegraphic communications likewise is inviolable.

Article 82: Any Turk, acting on his own behalf or on behalf of others, may address petitions and make complaints either to the competent authority or to the Grand National Assembly of Turkey concerning acts and circumstances which he considers contradictory to the law. Complaints or petitions may be offered by separate individuals or by several persons at the same time. The reply to an individual complaint must be given in writing to the person concerned.

Article 83: No one may be forced to appear before a court other than that to which he is subject by law.

Article 84: Taxes are the contribution of the people toward the general expenses of the State. Any levy which does not contribute to the general expenses of the State, or any tax, tithe or contribution of any other nature imposed by individuals or by corporations other than the government or in the name of the government, is illegal.

Article 85: Taxes are levied in conformity with the law. Taxes and contributions received in conformity with usage, either by the State or by the local administration of the vilayets or municipalities, may continue to be collected until they have been regulated by law.

Article 86: When the Council of Commissioners takes cognizance of the danger or imminence of war, or of internal sedition or conspiracy or intrigues directed against the nation or against the Republic, it may decree martial law, which shall not exceed the duration of one month, in all or part of the Turkish territory. This measure shall then be submitted to the Assembly for its approval as soon as possible. The Assembly may prolong or diminish the duration of martial law. In case the Assembly be not in session, it shall be convened immediately in special session. Martial law consists of the suspension or temporary restriction of the inviolability of the person, the home, freedom of the press, correspondence, association and incorporation. The zone placed under martial law, as well as the provisions to be applied and the procedure to be followed in this zone, shall be determined by special law. The suspension or restriction of personal liberty and personal inviolability in time of war likewise shall be regulated by law.

Article 87: Primary education is obligatory for all Turks and shall be gratuitous in the government schools.

Article 88: The name Turk, as a political term, shall be understood to include all citizens of the Turkish Republic, without distinction of, or reference to, race or religion. Every child born in Turkey, or in a foreign land of a Turkish father; any person whose father is a foreigner established in Turkey, who resides in Turkey, and who chooses upon attaining the age of twenty to become a Turkish subject; and any individual who acquires Turkish nationality by naturalization in conformity with the law, is a Turk. Turkish citizenship may be forfeited or lost in certain circumstances specified by law.

SECTION VI

Miscellaneous Provisions

Article 89: Turkey is divided into vilayets, based upon geographic situation and economic relationship. The vilayets [provinces or administrative districts] are subdivided into kazas [counties], the kazas into nahiyes [townships], the nahiyes into kassabas and villages.

Article 90: Each vilayet, together with its subdivisions, enjoys a separate entity.

Article 91: The affairs of the vilayets are administered and governed by law, in accordance with the principles of local autonomy and the separation of functions.

Government Officials and Employees

Article 92: Any duly qualified citizen of Turkey, in full possession of his rights of citizenship, is eligible to appointment as an official or employee of the government.

Article 93: The duties and privileges of government officials, including the procedure in their nomination and dismissal, shall be determined by special law.

Article 94: In cases of violation of the law, the obedience of a subordinate to the orders of his superiors does not diminish the responsibility of the subordinate.

Finance

Article 95: The proposed Budget (budgetary balance law) shall be placed before the Assembly at the opening of the session, that is, no later than the first of November.

Article 96: No expenditure of public funds may be made except as provided for in the Budget or authorized by special law.

Article 97: The Budget shall be adopted for one year only.

Article 98: The statement of final accounting shall give in detail the amounts of the receipts and expenditures during the fiscal year.

Article 99: The statement of final accounting must be placed before the Assembly without fail not later than the first of November of the second year following the end of the fiscal year which the report covers.

Article 100: A Special Court of Accounts shall be established to control the revenues and expenditures of the State on behalf of the National Assembly and in accordance with the law.

Article 101: The Court of Accounts shall present a statement of audit and verification within six months after the Commissioner of Fi-

nance shall have submitted to the Assembly his statement of final accounting.

Amendments to the Constitution

Article 102: Amendments to or modifications of this Constitution may be made only upon the following conditions: The proposal to amend must be signed by at least one-third of the total number of deputies. The proposed amendment must be thereafter discussed by the Assembly and adopted by vote of two-thirds of the total number of deputies.

No proposal to alter or amend Article 1 of this Constitution, specifying that the form of government is a Republic, shall be entertained.

Article 103: None of the provisions of this Constitution may be arbitrarily modified on any pretext; neither may the enforcement of any provision be suspended.

No law shall be in contradiction to the Constitution.

Article 104: The Constitutional Law of 1878 (1293) together with its amendments and the Organic Law of January 30, 1921 (1337), and the amendments thereto are hereby annulled.

Article 105: The present Constitution shall be considered in force immediately upon publication.

Provisional Article

The sections of the law of December 19, 1923, regulating the status of military officials who have been elected or are eligible to election to the Grand National Assembly of Turkey, shall remain temporarily in force.

Voted and published April 20, 1924 (1340).