

“The Military Seize the Law”

The Drafting of the 1961 Constitution

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The 27 May 1960 coup put an end to the first experience in Turkey of multi-party democracy. It was the first of a series of military interventions which have subsequently marked the political life of the country.¹ In 1950 the first free elections resulted in the victory of the Democrat Party (*Demokrat Parti*, DP) over the Republican People’s Party (*Cumhuriyet Halk Partisi*, CHP), previously the sole party in Turkey. The Democratic Party triumphed at the following elections in 1954, but this also marked the beginning of a more authoritarian mode of government with restrictions on the freedom of the public, the press, and the opposition. Against a backdrop of claims that the 1957 elections had not been free and fair, the opposition between the two main parties in the Grand National Assembly of Turkey became increasingly radicalised, and İsmet İnönü, the leader of the Republican opposition, a former companion of Atatürk and erstwhile President, was physically threatened even. In late April 1960 there were serious clashes between students and the police, and the month of May was marked by a string of protests in Ankara, with cadets from the military school joining in the demonstrations. With the government exerting less and less control over the situation, on 27 May the Army intervened and overthrew the DP government, officially to “prevent a fratricidal struggle.”

In a declaration of 27 May, immediately after taking power, the junta stated:

Our Armed Forces have taken this initiative for the purpose of extricating the parties from the irreconcilable situation into which they have fallen and for the purpose of having just and free elections, to be held as soon as possible under the supervision and arbitration of an above-party and

¹ The title of this paper echoes that of an article in French by Bastien François about verifying constitutionality in France: Bastien François, “Le droit saisi par la politique,” in Jacques Lagroye (ed.), *La Politisation*, Paris, Belin, 2003, pp. 373–386. Bastien’s title refers in turn to Louis Favoreu, *La Politique saisie par le droit: alternances, cohabitations et Conseil constitutionnel*, Paris, Économica, 1988.

impartial administration, and for handing over the administration of whichever party wins the elections.²

This declared intention to hand over power to civilians within a new framework was accompanied by a request to a group of law professors to draw up a new Constitution. In the night of 27 to 28 May, an envoy from the National Unity Committee (*Milli Birlik Komitesi*, MBK), comprised of the officers involved in the coup, went and fetched from their homes eight professors at the Istanbul University Law Faculty and took them by plane to Ankara.³ That same day it was decided to form a cabinet made up of “technocratic” ministers, in other words issued from the upper echelons of the civil service and without any links to a political party.

The very fact of calling on the civil service and law professors changed the nature of the coup, triggering a constitutional process over which the military progressively lost control. Whereas the Constitution was originally meant to be written within a few months, it in fact took over one year and the number of those involved increased considerably. The process can be roughly divided into three phases: from May to October 1960 the first Committee worked under the supervision of the military. Despite major disagreements between the members of the Committee, it handed in its draft to the MBK on 17 October. Over the course of the month of October there was increasing opposition to the Committee’s draft, and tension built up between the military and the professors. At this stage it also became clear that the draft would not be adopted in its current state and that a Constituent Assembly would be set up. A second brief period ran from late October to January 1961, during which a new Committee was tasked with deciding on what form the Constituent Assembly would take. In January this Assembly was finally elected and it approved the new Constitution on 27 May 1961, exactly one year after the coup. This constitutes the third phase. The Constitution was definitively adopted by referendum on 9 July 1961. This Constitution considerably modified the framework of Turkish politics as it created new institutions more explicitly guaranteeing fundamental liberties (in particular the Constitutional Council), introduced a series of social rights, and promoted economic development under the aegis of the State (by setting up a planning body in particular).

Most studies of 27 May 1960 interpret the coup as an act of revenge by the ‘deep state’ (even if the expression is a recent one) on the Democratic

2 Quoted in Walter F. Weiker, *The Turkish Revolution 1960–1961: Aspects of Military Politics*, Washington, DC, The Brooking Institution, 1964, pp. 20–21.

3 See below table 6.1 for the members of the Committee of law professors.

government which embodied social forces less attached to the state and Kemalist ideology than the previous party had been.⁴ These academic studies, which are often not that recent, adopt the liberal criticism that the 1961 Constitution was an instrument of domination by bureaucrats and state intellectuals (a position argued for notably by Celâl Bayar, the President who was deposed in 1960), and present the project of the coup officers and their allies as the ultimate expression of a strong state dominating a weak civil society, thus amounting to a new bureaucratic version of the Ottoman tradition.⁵

Equally, studies looking at the writing of the 1961 Constitution are often the work of legal scholars, paying particular attention to innovations with regards to institutions and freedoms.⁶ Such works are strongly influenced by what could be termed 'developmentalism', starting from the premise that the evolution of the Turkish Constitution was a long path from classical Ottoman autocracy towards a western democratic form, with the interventions by the military and other authoritarian periods being temporary deviations on the road towards democratisation. The 1961 Constitution is hence viewed as the final stage in the "passage to a constitutional system" (*anayasal sisteme geçiş*) originating in 19th-century Ottoman reforms, passing via the Kemalist Constitution of 1924, and finally triumphing in 1961.⁷

4 One of the main studies to have adopted such an approach is Metin Heper, *The State Tradition in Turkey*, Beverly, The Eothen Press, 1985. See too Kemal H. Karpat, "The Military and Politics in Turkey, 1960–64: A Socio-Cultural Analysis of a Revolution," *The American Historical Review*, vol. 75, no. 6, 1970, pp. 1654–1683. For additional academic studies which are frequently not recent, see Feroz Ahmad, *The Turkish Experiment in Democracy, 1950–1976*, Boulder, CO, Westview Press, 1977; Celalettin Güngör, *27 Mayıs ve Partileşme Sorunu* [The 27 May and the Issue of Partisanisation], Ankara, Nuru Matbaası, 1992; Suna Kili (ed.), *27 Mayıs 1960 Devrimi, Kurucu Meclis ve 1961 Anayasası* [The 27 May Revolution, the Constitutional Assembly, and the 1961 Constitution], Istanbul, Boyut Kitapları, 1998; Bülent Tanör, *İki Anayasa 1961 ve 1982* [Two Constitutions, 1961 and 1982], Istanbul, Beta Basım, 1991; W. Weiker, *Turkish Revolution*.

5 M. Heper, *The State Tradition*, p. 89.

6 Orhan Aldıkaçtı, *Anayasa Hukukumuzun Gelişmesi ve 1961 Anayasa (Ders Notları)* [The development of our constitutional law and the 1961 Constitution (lessons notes)], Istanbul, Fakülter Matbaası, 1970; Suna Kili, *Turkish Constitutional Developments and Assembly Debates on the Constitutions of 1924 and 1961*, Istanbul, Robert College Research Center, 1971. In French, see also Jean Marcou, "L'expérience constitutionnelle turque," *Revue du droit public et de la science politique en France et à l'étranger*, no. 2, 1996, pp. 426–462.

7 For further discussion of this passage to a constitutional system, see in particular Mehmet Seyitdanlıoğlu, *Tanzimat Devrinde Meclis-i Vâlâ, 1838–1868* [The High Council of Judicial Ordinances during the Tanzimat, 1838–1868], Ankara, Türk Tarih Kurumu Basımevi, 1994,

There is little dialogue between studies by historians and lawyers, and the thesis of “military and bureaucratic reaction” fits ill with that of the apotheosis of democracy. Most studies underline how it is difficult to perceive the logical and sociological ties between a military coup and “the most democratic constitution in history of Turkey,” according to the consecrated expression.⁸

Without seeking to offer a definitive answer, we may perhaps be able to detect the broad outlines of a solution by paying closer attention to the indeterminate and fluctuating character of the post-coup situation and to the competition between elite groups in their attempts to set up a new regime in 1960–1961. This chapter will therefore deal with the small group of people involved in writing the Constitution over a specific period of time running from May 1960, the date of the coup, to December 1960, when the decision was taken to entrust an Assembly with the task of drafting the Constitution.

Numerous recent works have studied the areas of overlap between the legal and political spheres in other fields, and have analysed the effects that drawing upon the law can have on a cause, or in other words “the specific forms of translation and elaboration brought about by legal professionals.”⁹ The drafting of a constitution and the activity of those involved constitute a privileged case for observing these overlaps,¹⁰ as the studies of the 1958 Constitution in France by Bastien François have shown in particular.¹¹ These encourage us to

p. 40; Şerif Mardin, *The Genesis of Young Ottoman Thought: A Study in the Modernization of Turkish Political Ideas*, Princeton, NJ, Princeton University Press, 1962, pp. 155ff.

8 M. Heper, *The State Tradition*, p. 87; C.H. Dodd, *Democracy and Development in Turkey*, Beverley, The Eothen Press, 1979, p. 82.

9 Brigitte Gaïti and Liora Israël, “Sur l’engagement du droit dans la construction des causes,” *Politix*, no. 62, 2003, pp. 17–30 (quotation here after the article’s abstract). See also Danièle Lochak (ed.), *Les Usages sociaux du droit*, Paris, Presses Universitaires de France, 1989; Jacques Commaille, *L’Esprit sociologique des lois. Essai de sociologie politique du droit*, Paris, Presses Universitaires de France, 1994; Lucien Karpik, *Les avocats. Entre l’Etat, le public, le marché. XIIIe–XXe siècle*, Paris, Gallimard, 1995; Jacques Commaille, Laurence Dumoulin, and Cécile Robert (eds.), *La Juridicisation du politique. Leçons scientifiques*, Paris, Librairie Générale de Droit et de Jurisprudence, 2000.

10 Bernard Lacroix, “Les fonctions symboliques des constitutions: bilan et perspectives,” in Jean-Louis Seurin (ed.), *Le Constitutionnalisme aujourd’hui*, Paris, Economica, 1984, pp. 186–199; Yves Poirmeur and Dominique Rosenberg, “La doctrine constitutionnelle et le constitutionnalisme français,” in D. Lochak (ed.), *Les Usages sociaux*, pp. 230–251; Antonin Cohen, Julien Weisbein, “Laboratoires du constitutionnalisme européen. Expertises académiques et mobilisations politiques dans la promotion d’une Constitution européenne,” *Droit et société*, vol. 2, no. 60, 2005, pp. 353–369.

11 Bastien François, *Naissance d’une Constitution. La Vème République 1958–1962*, Paris, Presses de la Fondation Nationale de Science Politique, 1996.

study the state not as a unified entity, and instead pay attention to the way the social, political, intellectual, and administrative spheres intermesh, and to internal divisions within institutions. By studying the disagreements between the law professors, the constraints weighing upon them, and the various strategies they adopted to see their point of view triumph, this chapter will analyse the Turkish state as an arena in which various actors intervene (either in their official capacity or otherwise), and enquire into what was at stake in the perception they had of their work on the Constitution as political or apolitical in nature.¹² Taking up the conclusions of Brigitte Gaïti, the aim here is to apprehend the principles and ways of acting not as intangibles but instead as resulting from strategies and “produced by cooperation and competition between the various protagonists in very different sectors of the social space.”¹³ Why did the military call upon the law professors for help immediately after taking power? How was the differentiation between law and politics negotiated and decided upon, and in return how did the decision to use the law modify the ‘game’ and transform the conditions in which politics was carried out? Lastly, how are we to account for the fact that the political parties very rapidly took control of the constitutional process?

This chapter will not be drawing on any new knowledge about the period to answer these questions,¹⁴ but rather putting forward a few hypotheses

12 Cf. Jacques Lagroye, “Les processus de politisation,” in J. Lagroye (ed.), *La Politisation*, pp. 359–372.

13 Brigitte Gaïti, “Les incertitudes des origines. Mai 58 et la V^e République,” *Politix*, no. 47, 1999, p. 39.

14 The exact chain of events is well-known thanks to in-depth investigations by journalists and the publication of first-hand accounts over recent years, mainly by military officers. For journalistic investigations see Can Dünder and Bülent Çaplı, *İsmet Paşa: Her Devir bir Hayat* [İsmet Pasha: One Life for Each Time], Istanbul, İmge Kitabevi, 2007; the best investigation however is Abdi İpekçi, *İhtilalin İçyüzü* [Revolution from the Inside], Istanbul, Milliyet Gazetesi, 1965. Abdi İpekçi was the editor of the *Milliyet* newspaper who was assassinated in 1979 and involved in the reconciliation between Greece and Turkey. For an example of a first-hand account, see Ali Fuat Başgil, *27 Mayıs İhtilâli Ve Sebepleri* [The 27 May Revolution and Its Causes], Istanbul, Kubbealtı Neşriyatı, 1966; Celâl Bayar, *Kayseri Cezaevi Günlüğü* [Kayseri Prison Diary], Istanbul, Yapı Kredi Kültür Sanat Yayıncılık, 1999; Orhan Erkanlı, *Anılar Sorunlar Sorumlular* [Memories, Issues, and Those Responsible for Them], Istanbul, Baha Matbaası, 1972; Numan Esin, *Devrim ve Demokrasi: Bir 27 Mayısçının Anıları* [Revolution and Democracy: Memories of a 27 May Protagonist], Istanbul, Doğan, 2005; Nazlı Ilıcak, *27 Mayıs Yargulanıyor* [The 27 May on Trial], Istanbul, Kervan Yayınları, 1975; Sinan Onuş, *Parola: İnkılap. 27 Mayıs'ı Yapanlar Anlatıyor* [Password: Revolution. Narratives from Those Who Made the 27 May Happen], Istanbul, Kaynak Yayınları, 2003.

about the processes at work over the course of the year 1960. It will start by analysing the specific terms of the transaction between the military and the law professors on 28 May 1960, before studying the idea of the state championed by the first Committee tasked with drafting the Constitution, and then finally examining how this idea failed to fit in neatly with the concrete functioning of the state, with its internal divisions and politicisation.

The Terms of the Transaction between the Military and the Law Professors

Why Call on the Law Professors?

The fact that law professors were immediately called on to draw up a new constitution was not part of some clearly defined political plan, but instead motivated by immediate preoccupations. Being able to proclaim that a new constitution was being drawn up and getting the most eminent law professors in the country to help was, for the military, a way of legitimising the coup and obtaining the support of academia.

The nomination of the Committee on 28 May seems to have been very much an improvised affair, and we would be hard-pressed to find any coherent common project shared by the military and the legal sphere. Whilst it has been established that there were contacts in the 1950s between university professors and officers susceptible to take part in a coup, nothing indicates that there were contacts between the group of officers on the MBK and the law professors they chose. According to Abdi İpekçi they were selected in the following manner:

Madanoğlu¹⁵ did not know which University professors to choose, and was unable to settle the matter himself. He remembered that two weeks previously he had met Professor Nedim Ergüven when dining with a friend in Bahçelievler,¹⁶ and they had talked about the country's problems. [He went round to his house:] "Excuse me, could you write down the names of a few professors?" he said.¹⁷

15 Madanoğlu was the officer in charge of the political direction of the junta at the beginning of the coup, prior to the arrival of Cemal Gürsel in Ankara.

16 A part of Ankara inhabited mainly by officers and high-ranking civil servants at that time.

17 A. İpekçi, *İhtilalin İcyüzü*, p. 196.

Apparently he wrote down the names of the professors who were subsequently selected for the Committee. This anecdote clearly illustrates the degree of improvisation, and that the importance of these nominations was massively underestimated. For the MBK it was a matter of obtaining academic backing but the difficulty of the task was not assessed very precisely. Over the course of the first few days the MBK and the president of the Committee, Sıddık Sami Onar, were still officially declaring that a constitutional draft would be ready within one month.

This impression is further reinforced if we look at the characteristics of the professors selected. The military called on those who had the most distinctions, and the selection would appear to have been based on paper qualifications. Onar was the Rector of the University, Naci Şensoy was the Dean of the Law Faculty, whilst Hüseyin Nail Kubalı and Hıfzı Veldet Velidedeolu has also acted as dean on several occasions.¹⁸ The members of the Committee were not specialists in constitutional law and this considerably slowed down their progress. Onar specialised in administrative law, Şensoy in criminal law, and Velidedeolu in civil law. All that seemed to count was the title 'law professor', and the junta would appear to have cared little about the exact composition of the team of academics. What mattered was that there be one, and that it be prestigious.¹⁹

This use of legal experts also illustrates the important role law academics had acquired in politics during the 1950s. As Bernard Lacroix observes, "constitutions are always the work of people whose authority to help draft them is based solely on their position within the established order; nevertheless they always present themselves as being a clean break and unconnected with the established order."²⁰ The professors had been fully part of routine political life since before the coup. The 1924 Constitution did not provide for any Constitutional Council, and if there were any doubts about the constitutionality of the law the press or opposition often called on law academics to give their expert opinion. In April 1960, for example, when solicited by journalists, Sıddık Sami Onar and Hüseyin Nail Kubalı (a law professor at the University of Istanbul who was also on the Committee) had judged the "Investigating Committee" of the Democratic Party²¹ to be

18 See the appended table at the end of the chapter.

19 Cf. W. Weiker, *Turkish Revolution*, p. 69.

20 B. Lacroix, "Les fonctions symboliques," pp. 53–54.

21 The setting up of the "Investigating Committee" on the initiative of the Democratic government was the event to cause the biggest backlash in 1960, and one of the principal causes of the coup. On 18 April, when the DP proposed to set up this Committee composed

a “violation of the Constitution.”²² These declarations did not produce any immediate effects but played a large part in depriving the DP government of its legitimacy in the eyes of the bureaucratic elites. Calling on the help of the law professors thus indicates that non-institutional actors were being brought into politics and this prior to the coup. Thus in a way the military were simply following a ‘normal’ or ‘routine’ procedure and confirming the role law academics played as the semi-official referees of the world of politics.

Lastly, the fact of drawing up a new constitution is illustrative of the shared belief in the possibility of refounding political life via constitutional means. To adopt Bastien François’s terms in his study of the 1958 Constitution in France, “having recourse to an institutional solution may be explained firstly in terms of modernising the legal and institutional habitus of the political leaders, which leads them to spontaneously opt for this sort of solution (revising the constitution) or else spontaneously adopting an institutional register to test the ongoing validity of politics.”²³ In fact the idea of the ‘constitution’ had been central to opposition movements in the Ottoman Empire and in Turkey since the late 19th century, one of the main opposition demands made to the Sultan being the return to the 1876 Constitution, viewed as the solution to all the evils besetting the Empire. With regards to the period under study here, one of the main intellectual opposition movements (based on the *Forum* journal from 1954 onwards) suggested revising the constitution so as to ‘normalise’ the world of politics that had been destabilised over the Democratic years, attributing what it saw as the DP government’s mistakes and excesses to the shortcomings of the 1924 Constitution.²⁴ Without necessarily having links to this journal, groups of law academics had already met to discuss what a democratic constitution could look like in Turkey. For example Nermin Abadan, a lecturer at the University of Ankara at the time, referred to a constitutional seminar held in

solely of MPs from the Democratic party to investigate the crimes committed by the CHP since the war of independence, fights broke out between the members of Parliament and one DP member brandished a revolver, but it was the CHP group who were expelled from the Chamber.

22 Ali Fuad Başgil, *La Révolution militaire de 1960 en Turquie (ses origines). Contribution à l'histoire politique intérieure de la Turquie contemporaine*, Geneva, Perret-Gentil, 1963, p. 131.

23 B. François, *Naissance d'une Constitution*, p. 65.

24 *Forum* first came out in April 1954. The journal intended, in the terms of its first editorial “to help enlighten the people by confronting different opinions.” “Forum’un Davası” [The Forum Case], *Forum*, April 1, 1954. It was the work of young lecturers, most of them from

June 1959 at Kilyos near Istanbul, under the aegis of the University of Columbia and American law professors such as Walther Gellhorn.²⁵ This seminar was attended by many legal experts who sat on the various constitutional committees in 1960 and 1961.

And so opting for a constitutional solution and calling on the law professors to help seemed 'automatic', and this for a whole set of reasons having to do with the place occupied by the law and legal specialists in the Turkish political order of the 1950s, and with the strategies adopted by the offices behind the coup. In return, working with the officers did not seem to pose any problem for the elite at the Law Faculty recruited by the junta for the occasion. The fact that this should seem so 'natural' requires examination, and it may be explained by the experience many of the law professors had had of the Democratic government and by their conception of the state, as expressed notably on 28 May by a declaration they issued justifying the coup.

Why Did the Law Professors Accept to Write a Constitution for the Officers?

The immediate involvement of the law professors in the coup may be explained firstly by the role the universities had played in protests against the Democratic government. The two main universities in the country—Istanbul and Ankara—had been opposition strongholds since the late 1950s. Without going back over the Democratic decade in detail, it should be remembered that the policies pursued by the DP had resulted in an ever more pronounced divorce between part of the state apparatus (both civil and military) and those in political authority. From 1950 onwards the Democratic government conducted major purges of civil servants who had been part of the former party-state regime, whilst limiting the ability of civil servants to appeal against decisions made by

the Faculty of Political Sciences at the University of Ankara (Bahri Savci, Aydın Yalçın, Turhan Feyzioğlu, Akif Erginay, Cahit Talas, Muammer Aksoy, Çoşkun Kırca, Mümtaz Soysal, and Nilüfer Yalçın), and it rapidly opposed the Democratic government, especially on questions relating to the autonomy of the University (the Democratic government was trying to curb the ability of academia to voice criticisms of it) and to the protection of civil servants (from the purges carried out by the Democratic government to remove those recruited during the single-party regime). It also put forward ideas relating to the Constitution, suggesting that a Constitutional Council and a second Chamber be set up. See Diren Çakmak, *Forum Dergisi 1954–1960* [The *Forum* journal, 1954–1960], Istanbul, Libra Kitap, 2010.

25 Nermin Abadan-Unat and Kabaş Sedef, *Hayatını Seçen Kadın: Hocaların Hocası Nermin Abadan Unat* [The Woman Who Chose Her Life: The Masters' Master Nermin Abadan Unat], Istanbul, Doğan Kitap, 2010, p. 273.

the political authorities.²⁶ In addition to this the inflationary policy the Democratic government pursued with American aid was disadvantageous to public sector personnel who were on a fixed salary, at a time when a new emergent capitalist class was becoming wealthier just as they were becoming poorer. Lastly, the Democratic government gradually became more and more authoritarian, seeking to place legal limits on criticising the government. These measures limiting freedom of expression particularly affected the universities where many of the teaching staff were also active in the press as critical commentators of Turkish political life. In 1960 a series of student protests were put down, something which played a key role in the collapse of the regime.²⁷

For some of the professors on the Constitutional Committee, the coup therefore put an end to a regime during which they had personally suffered. Sıddık Sami Onar had been wounded seeking to intervene between students and the police on 28 April 1960. Since then he had acquired a reputation as a “hero of the revolution.” Huseyin Nail Kubalı was suspended from his position at the University of Istanbul in 1958 because of his activities writing opinion pieces. Bahri Savcı and Muammer Aksoy both played a part in *Forum*, and the latter resigned from his university position in 1956 to protest against a decision by the Democratic government undermining university autonomy.²⁸

The coup was thus for them an opportunity to do away with a regime that they deplored and to apply the ideas they had developed in their criticisms of the previous regime. This “collusive transaction”²⁹ between law professors and the military was made all the easier by the fact that the military appeared to meet their demands by proclaiming the autonomy of the law professors from the outset, and stating that they would not intervene in the preparation of the Constitution. This autonomy was furthermore guaranteed due to the technical nature of constitutional law,

26 M. Heper, *The State Tradition*, pp. 85ff. Law no. 6422 of 1954 (*Retirement Kanunu*) reduces the number of years of service required for a civil servant to be retired to 25, and sought to purge those who had been in place during the single-party regime.

27 W. Weiker, “Academic Freedom and Problems of Higher Education in Turkey,” *Middle East Journal*, vol. 16, no. 3, 1962, pp. 279–294.

28 In 1956 the government decided to suspend Turhan Feyzioğlu, the Rector of the Faculty of Political Sciences at the University of Ankara, after he had criticised a government decision in a speech. This triggered a large wave of protest both in the University and the press.

29 This idea has been developed by Michel Dobry, *Sociologie des crises politiques*, Paris, Fondation Nationale des Sciences Politiques, 1986. It refers to the stabilised forms of relationships between social sectors, based on “mutual recognition,” enabling institutions to function on a routine basis.

an area in which the military declared themselves to be incompetent.³⁰ According to A. İpekçi, General Gürsel (the head of the junta) addressed the law professors in the following terms when they arrived in Istanbul: “We believe in the University. [...] The reason you have been invited is as follows: make us a new constitution immediately. I particularly ask you to accomplish this task in as short a time as possible. For we have decided to hold elections in three months time, and to hand power over to a civilian cabinet. *We do not want to exert any influence over the content of the constitution that you will prepare.*”³¹ This autonomy was all the more remarkable given that the military exerted strict control over other parts of the administration via the ministers they had appointed.³²

For all of these reasons the elite of the Law Faculty and the military junta were able to work together as of 27 May 1960. In addition, these political strategies were validated by a conception of the state which placed the law professors ‘at the centre of the game’. This conception of things was expressed in the fundamental text that the Committee of law professors published on the day after the coup, with the aim of justifying the military intervention.

The Role of the Law Professors and their Conception of the State

The text published on 29 May 1960 by the “Constitutional Committee” is worth close examination as it enables us to understand the conception of the state underlying the transactions between the military and the professors in the immediate aftermath of the coup.

The condemnation of the Democratic government by the Constitutional Committee takes up, firstly, the misdoings of which the Democratic leaders were accused—the trials of Prime Minister Menderes and President Bayar were starting at the time. Both were accused primarily of corruption. Traces of this may be found in the accusation of “materialism” said to guide the action of

30 On several occasions Gürsel stated that he did not have any competence in legal matters. See for instance his speech to the Constituent Assembly in March 1961 when he said that he did not understand anything about constitutional law and that he left such matters to the legal experts. Cf. S. Kili, *Turkish Constitutional Developments*, p. 67. These declarations were not so much a recognition of any shortcoming on his part, as a way of recognising the autonomy of the law professors.

31 A. İpekçi, *İhtilalin İçyüzü*, p. 198 (italics added).

32 Cf. W. Weiker, *Turkish Revolution*.

EXCERPT FROM THE "REPORT OF THE CONSTITUTIONAL COMMITTEE"
 (AS PUBLISHED IN ULUS, 29 MAY 1960), SIGNED BY SEVEN PROFESSORS
 FROM THE LAW FACULTY OF THE UNIVERSITY OF ISTANBUL

The situation in which we find ourselves today cannot be considered as an ordinary [*âdi*] political coup. Political power, which should represent the interests of the state, the law, justice, morality and public interest, uphold the idea of public service, and protect public rights, has unfortunately ceased to do so over recent months or years even and has turned into a materialistic force serving personal interests and those of an avid group.

The power of the state, which should be first and foremost a social force rooted in law, has been turned into a means to satisfy this greed. That is why political authority—having lost all moral links with the Army, which is the basis of state power, with the judiciary and courts, with civil servants devoted to their duty, with the universities, with the press representing public opinion, and with the other social forces and institutions—has found itself opposed to all the parent institutions of state and to Atatürk's revolution, which is of exceptional value and importance in providing Turkey, as a civilised state, with a place in the Concert of Nations of the world. [...]

The situation is the same from a legal point of view. The legitimacy of a government does not depend solely on its origin, that is say the way it came to power, but also in abiding by the Constitution which brought it to this position, and the way and continuity with which it operates within the legal order [*hukuk nizamı*] in cooperation with national opinion, the Army, the judicial and scientific institutions, and other such institutions. But this government has, firstly, passed laws which are completely opposed to the Constitution which it has infringed by acting on these laws. It has become lawless [*kanunsuz*]. Secondly, instead of being an agent for cooperation, serenity [*huzur*], and calm [*sükun*] as ought to be the case, the government has brought the political and social institutions of state and the people working for them into opposition with each other. By criticising them to the people and to foreign countries, it has become a factor of anarchy and thus lost its legitimacy.

The Grand National Assembly, which ought to represent the nation, has ceased to be a true legislative body and has become a party group serving individual and sectorial interests, and has thereby placed itself in a state of dissolution.³³

33 "Report of the Constitutional Committee," *Ulus*, 29 May 1960, p. 5. A partial translation can be found in M. Heper, *The State Tradition*, pp. 85–86.

the Democrats, as opposed to the servants of the state who are guided by their idealism and “awareness of the sacred nature of their duty.”³⁴

More fundamentally this text implicitly sketches out an ideal form of state which ought to serve as the model for political action. This ideal government is firstly one that is not based on party politics. The whole text is based on the opposition between “the state” (*devlet*) and “politics” (*siyaset*), with the “general interest” (*amme menfaati*), “unity and cooperation” (*işbirliği*), and especially ideals (such as “sacredness,” *kutsiyet*) being aligned with the state, whilst politics is said to be a matter of “particular interests” (*şahsi nüfuz*), the interests of “cliques” (*zümre*), divisions, fratricidal struggles (*birbirine düşürmek*), and above all vulgar “material” (*maddi*) interests.³⁵ This conception is rooted firstly in the Kemalist corporatist solidarism dating from the 1920s and 1930s,³⁶ according to which party divides based on class antagonisms are illegitimate and inappropriate to Turkish society, said to be a classless society.³⁷ Party divides are thought of as struggles between cliques and so associated with

34 “Report of the Constitutional Committee,” p. 5.

35 This opposition coincides for the most part with that described in J. Commaille, *L'Esprit sociologique des lois*. The law academics' distrust of politics is discussed in more detail later.

36 The most detailed study of Kemalist corporatism is Taha Parla and Andrew Davison, *Corporatist Ideology in Kemalist Turkey: Progress or Order?*, Syracuse, NY, Syracuse University Press, 2004, p. 219: “Solidaristic corporatist regimes do not eliminate freedom; they guarantee it, but freedom comes with a deep mistrust for *political* manifestations that ‘threaten’ the order and tranquillity of the social whole. Freedom is stressed side by side with ‘unity’ and ‘order’ but is constrained by ‘solidarity’. For the RPP [CHP], freedom meant freedom within the solidary, unified, corporate life of a corporatist society.” The similarity between Kemalist vocabulary and that used by the Onar Committee is worth noting.

37 Pioneering work by İsmail Beşikçi on 1930s Kemalism and the *Kadro* journal have shown to what extent this corporatism was indebted to the model of fascist regimes of the period, and how the regime's promotion of a “classless society” needs to be understood within the framework provided by the relationship between the Head (Atatürk) and his people. İsmail Beşikçi, *Cumhuriyet Halk Fırkası'nın Programı (1931) ve Kürt sorunu* [The Program of the Republican People's Party (1931) and the Kurdish Issue], İstanbul, Belge Yayınları, 1991 [1978]. This work, like that of Parla and Davison, is based on the 1931 programme of the Single Party, probably the fullest expression of this corporatism: “the people of the Republic of Turkey are not composed of separate classes; on the contrary, one of our basic principles is to consider the people, from the point of view of the division of labour, as a community (*camia*) divided into various trades in social and individual life,” in “Programme adopted 18 May 1931 following the CHF conference,” quoted in İ. Beşikçi, *Cumhuriyet Halk Fırkası'nın Programı*, pp. 14ff.

nefarious factionalism. Good government, on the contrary, is freed of *political* conflict and serves “justice, morality, and the general interest.”

The professors on the Committee, rejecting as illegitimate the radicalisation of social conflict and of struggles between the parties, theorised about a state above society and drawing its legitimacy from within and from the “legal order” (*hukuk nizamı*). Political authority is only legitimate in so far as it operates within the framework of this “legal order” that it is in charge of protecting. As Orhan Aldıkaçtı rightly points out, the 1961 Constitution therefore draws its authority not from Parliament, but from itself.³⁸

As described by the report of the Committee, the state is not only ‘above’ society, it is also unitary. The state is not at the service of political authority. Political authority is only one institution of state among others. State interests are not identical to those of political authority. The Army acts as the basis of ‘state power’ and the relations between state institutions form a harmonious order. The main fault of the Democratic government was thus to have broken the order which ought to reign within the state, to have disturbed the “serenity” and “calm” necessary for its proper functioning. Whilst a multi-party system is accepted *in theory*, it must function within a framework of “harmonious cooperation” between institutions. Democratic *practice* overstepped these limits. Once again we may detect here an echo of the ideas from the single-party period, with the insistence on a “form of state based on the principle of the unity of powers”³⁹ rather than their separation, reflecting the Kemalist idea of the unity of the administration.⁴⁰

This conception of the state concords with the constitutional draft put forward by the Onar Committee in October 1960, which includes a large number of checks on executive and legislative power. The main aim was to promote

38 Orhan Aldıkaçtı, “The 1982 Constitution,” public lecture, Boğaziçi University, Istanbul, May 15, 1984, quoted in M. Heper, *The State Tradition*, p. 88.

39 1931 programme of the single party, quoted in T. Parla, A. Davison, *Corporatist Ideology*, p. 223.

40 Work by Taha Parla and Andrew Davison has shown how the separation of powers proclaimed by the 1924 constitution was largely illusory. Parla has drawn on the 1931 programme of the single party and on speeches by Mustafa Kemal to prove that Kemalist political thought was built largely *against* the liberal separation of powers, proclaiming the unity of national sovereignty and refusing any differentiation between the administration, party, and National Assembly, thereby setting out a form of “administrative” rather than political government. This idea even influenced the choice of vocabulary in the 1931 programme, with the word *idare* (administration) being used to designate the form of state being championed by the C HF rather than the word *hükümet* (government). Cf. T. Parla, A. Davison, *Corporatist Ideology*, pp. 223ff.

harmony between social groups, by proposing a predominantly corporatist second Chamber on an equal footing with the first Chamber elected along party lines (with any conflict to be resolved by a meeting of the two Chambers). A further aim was also to avoid any return to what was perceived as the “dictatorship of the majority party” under the Democratic government by proposing a very full and detailed constitution acting as the framework for the Assembly and the executive.⁴¹

To a certain extent it may be seen that the plan of the authors of the 28 May 1960 report was in many ways a Kemalist *restoration*, as evidenced by the large number of Kemalist references and the omnipresence of the word “*inkılapçı*” (revolutionary), functioning here as a sign of allegiance to the 1960 “revolution” as well as to the Kemalist principle of “*inkılapçılık*” (revolutionism). It is, however, the restoration of an *idealised* way of functioning of the single-party regime. The reference to an ideal Kemalist legal order, based on a state of harmony between the various state institutions is not calling for a straightforward return to the single party regime. On the contrary it acts as a way of envisioning a regime where political authority would no longer be able to take full control of the administration—a regime where public policies would be devised by harmonious negotiations between public institutions, a regime where the “legal order” would rule.

This conception of the state placed the academics ‘at the centre of the game’, firstly as ‘men of science’ who had a role to play in defining public policy. Whilst the increasing inflexibility of the Democrats and their mode of governance, characterised in particular by clientelist phenomena, had meant that academics felt sidelined from the process of devising public policy, academic opposition to the regime had taken Kemalist scientism as the justification for their demands to play an active political role. The editorial line of *Forum* was based on defending freedom of expression and on the government taking greater account of the opinion of academics. The call on state institutions to “cooperate” was thus also a *pro domo* call to give academics an enhanced role within the apparatus of power.

More specifically the “Report of the Constitutional Committee” places law and legal specialists at the heart of political life. The legitimacy of a government residing in its compliance with the “legal order,” legal experts are the only ones in a position to decide this matter and, in a striking parallel with Ottoman practice, act as the new ulemas of the Kemalist regime, “those who unite and set asunder” (*aht al-‘ahd wa’l-hal*),⁴² although by constitutional opinion not

41 For a summary of the constitutional drafts, see S. Kili, *Turkish Constitutional Developments*; and W. Weiker, *Turkish Revolution*.

42 This modern fatwa aspect has been underlined by several commentators. In his article “Kemalism,” Ernest Gellner refers to this text and argues that “the spirit in which Kemalism was

fatwa. Here once again the constitutional draft of the Onar Committee concurs with this enhanced role accorded to legal experts, notably via their suggestion that a Constitutional Court be created so as to guarantee that laws passed by the political authorities comply with the legal order.

The coup of 27 May 1960 was therefore marked from the outset by a “collusive transaction” between the officers involved and the legal elite of the country. The fact that they started working together so rapidly may be explained by a series of reasons relating to the strategies of those involved, which were congruent with the political and legal ideas worked out during the single-party period and the decade of Democratic rule.

The great political issue of the period, namely drawing up the Constitution, was entrusted to a small group of law professors enjoying extensive autonomy and who were accountable only to the military. Participation by the people was suspended, and everything appeared in place for the “serene” functioning of the state rid of the plague of party politics, as envisaged by the text of the Onar Committee. And yet, the process of drafting the Constitution lasted a lot longer than originally planned and involved a large number of contributors. This hiatus between the state as perceived by the Committee of law professors and its actual functioning may be explained firstly by internal divisions within the various institutions involved in the process, and by the divisions between public institutions.

The Impossibility of a ‘Serene’ State

Divisions within the Legal World

The period running from May to October 1960 was far from being a harmonious period of work for the academics helping the military, and in fact revealed the deep divisions within Turkish academia.

The first of these divisions was between the country’s two law faculties, in Istanbul and Ankara. As a result of the military’s invitation to the law professors from the University of Istanbul, those from the University of Ankara—and

formulated and upheld was, at any rate in the first generation, a kind of perpetuation of High Islam,” Ernest Gellner, “Kemalism,” in *Encounters with Nationalism*, Oxford/Cambridge, MA, Blackwell, 1994, p. 86. See Hamit Bozarslan, “Un bienheureux malentendu: Ernest Gellner et la Turquie,” in F. Pouillon *et al.*, *Lucette Valensi à l’œuvre. Une histoire anthropologique de l’islam méditerranéen*, Saint-Denis, Bouchene, 2002, pp. 243–256. If such a parallel clearly seems warranted, any logical relation between the place of the ulemas in Ottoman political practice and the legal experts in the 1960s would appear to be tenuous. The legal texts published around the time of the coup do not refer to the Ottomans in any case.

especially from its prestigious Faculty of Political Sciences which educated the administrative elite of the country—protested in early June and were subsequently appointed to the Committee. These rivalries between the two universities largely coincided with more fundamental divisions relating to the constitutional draft itself.

Without being able to go into the details of the constitutional drafts, there were two opposing schools of thought. The first, which Weiker calls “legalist,”⁴³ was that of the dominant part of the Committee led by Onar. As seen above, it proposed a constitution that would provide a strong framework to the political authorities with in particular a largely corporative second Chamber. Whilst it would be simplistic to reduce the legal debates to oppositions between social groups, it may nevertheless be noted that the group supporting this view tended to be senior academics, two good examples being the 62-year-old Onar (University Rector) and the 56-year-old Velidedeoğlu (who had been Dean on several occasions).

Opposed to this dominant group was a second set of law professors who Weiker refers to as “political,” comprising the Ankara members of the Committee as well as a few from Istanbul. They were opposed to Onar’s draft and supported the idea of a shorter constitution giving greater room to the parties and more freedom of action to the political authorities. The point where they parted company with the ‘leaders’ was over the corporatist nature of the second Chamber, something which they refused. This group was made up of individuals who often held less directly dominant positions within academia, either because they were younger (İsmet Giritli was 36 years old and only a *doçent*)⁴⁴ or else because they had moved away from purely legal interests (Tanık Zafer Tunaya taught at the Economics Faculty and at the Institute of Journalism and was increasingly moving towards the political sciences, publishing a work in 1952 on the political parties which is still regarded as a classic⁴⁵). They had the support, however, of prestigious Ankara professors not on the Committee, such as Tahsin Bekir Balta and Yavuz Abadan who were professors at the Ankara Faculty of Political Sciences.

Independently of whether or not they were members of the Committee, all the members of the second group were, in addition to their academic careers, closely involved in political circles. Yavuz Abadan had joined the CHP and was

43 This analysis draws largely on the taxonomy of W. Weiker, *Turkish Revolution*, pp. 66ff.

44 The Turkish university system is very closely based on the German system of chairs. The three ranks in ascending order are *asistan*, *doçent*, and *profesör*.

45 Tanık Zafer Tunaya, *Türkiye’de Siyasi Partiler, 1859–1952* [Political parties in Turkey, 1859–1952], Istanbul, Doğan Kardeş Yayınları, 1952.

the MP for Eskişehir from 1943 to 1946; Balta had been the MP for Rize from 1943 to 1950 as well as a Minister (from 1947 to 1950) in the last CHP government before the DP took power. Another Committee member, Muammer Aksoy, had acted as editor notably for the journal *Forum*, which had led him to join the CHP in 1957. Bahri Savcı, whilst not directly involved in party political activity, had been close to the Republican Party via his involvement in opposition movements, both through his association with *Forum* and his union activities defending civil servants.

And so these divisions between the legal academics were related to a complex series of internal divides within academia and to certain characteristics external to it which we will examine later. These divisions made the Committee's task particularly difficult given the lack of any minimal consensus on the constitutional draft. They also made the task harder for the military, who encountered major difficulties with regard to these questions.

No provisions had been made to oversee the functioning of the "scientific committee." And so the military had to become involved despite their declarations of incompetence in legal matters. Onar referred a dispute between him and two Committee members to the MBK in August,⁴⁶ and threatened to resign. The MBK decided in his favour and excluded İsmet Giritli and Tanık Zafer Tunaya. According to the account of one member of the junta, the military were unable to decide on the substantial merits of the case, and it was a matter of respecting the hierarchy and renewing the terms of their transaction with Onar.⁴⁷

Confronted with these divisions within academia, with which they were not fully acquainted, the military were all-powerful yet paradoxically found it hard to know exactly where they stood and how to proceed: the habits of the military institution and their way of going about things differed profoundly from the informal roles of academia. On 28 October 1960, when the constitutional draft had been presented to them, the MBK enacted a law that reorganised the universities and purged 147 academics at the same time. What mattered to the military here was acting to affirm that the University was part of the sovereign domain. But whilst the military frequently used purges to resolve conflicts, the academics were most upset. One of their main demands

46 The dispute related to two points. Tunaya and Giritli were opposed to a second corporative Chamber, and to the fact that the Committee's debates were conducted in secret. For a detailed account about this event and various documents relating to it, see A. İpekçi, *İhtilalin İcyüzü*, pp. 299–302.

47 *Ibid.*; see also the account provided by O. Erkanlı, *Anılar Sorunlar Sorumlular*, pp. 46ff.

since the mid-1950s had been autonomy, and so this resulted in a clean break between the junta and most of academia. Onar resigned from his position as Rector to protest against these measures, followed by many of his colleagues. Students and academics boycotted the opening ceremonies of the academic year. Confronted with the risk that the mutual support between the University and Army would collapse, the junta was obliged to retreat and promise modifications to the law (the “147” were only reappointed two years later, however, as their reintegration posed major problems for the universities). The “147 crisis” shows to just what extent the postulated continuity between military, bureaucratic, and academic elites was in fact far from being self-evident, and that the ways in which state institutions worked together was far from automatic.⁴⁸

Furthermore, the border between non-official and institutional actors would appear to have been porous. The sort of organisation chosen to draw up the Constitution was a Committee. This was conceived by Onar as a group of specialists operating as autonomously as possible both from public opinion (Onar chose not to communicate with the press) and from the military (with the recognition of the academics’ autonomy being the condition for their cooperation).

The fact that the Committee conducted its work in secret was one of the most problematic issues. The members who adhered to the “political” school of thought decided to go against Onar and adopted a strategy of making its debates public, by leaking its work to the press (this was one of the reasons for which Tunaya and Giritli were excluded in August)⁴⁹ and organising “constitutional seminars” at the Faculty of Political Sciences in Ankara from September onwards. These seminars, which were open to the public, acted as a platform for their ideas. They were attended by journalists, ministers, members of the MBK, and increasingly by party officials too. The press—with which the Ankara academics enjoyed good relations—provided extensive coverage of the seminars. The Faculty of Political Sciences published its own constitutional draft as well.⁵⁰ Supporters of the “political” school of thought were able to act as a link between various sectors—the press,

48 A detailed account of the events of the “147 crisis” is provided in W. Weiker, “Academic Freedom,” and a personal account by one of those involved in O. Erkanlı, *Anılar Sorunlar Sorumlular*, pp. 45ff.

49 “Prof. Onar ve Prof. Tunaya dün birer demeç verdiler” [Prof. Onar and Prof. Tunaya Both Made a Speech Yesterday], *Ulus*, September 4, 1960, p. 5.

50 Ankara Üniversitesi Siyasal Bilgiler Fakültesi, *Siyasal Bilgiler Fakültesi İdari Bilimler Enstitüsünün Gerekçeli Anayasa Tasarısı* [Draft Constitution and Covering Memorandum by the Faculty of Political Science’s Institute of Administrative Science], Ankara, AÜSBF İdari Bilimler Enstitüsü Yayınları, 1960.

academia, political organisations, and even the Army—and so were able to turn their seminars into the semi-official forum for debating constitutional matters, even taking on an ever more official role and effectively replacing the Onar Committee from late October onwards (the Committee having completed its work on 17 October). The constitutional draft of the Faculty of Political Sciences became the basis for the work of the Constituent Assembly in January, on an equal footing with that of the Onar Committee.⁵¹

The Law Professors Caught between the Politicians and the Military

The fact that the process of drafting the Constitution was opened up to new sorts of participants—the written press, academics not on the Committee, party officials—fundamentally changed the nature of the game. Onar's strategy had been to steer towards a constitution written by specialists and 'men of science', insisting on the technical nature of law, demanding full autonomy, and refusing any party political interference. The organisers of the Ankara seminars chose instead to include as many participants as possible in the process.

The most striking thing on reading the press accounts of the "constitutional seminars" held at the Faculty of Political Sciences from October 1960 onwards is how tactical considerations far outweighed fundamental and theoretical considerations. When on 2 November 1960 it was decided to have a Constituent Assembly, the dominant question became how it was to be elected and the role of the political parties in the process of appointing representatives. The idea of the sovereignty of the people and the need for a party-based system were unanimously supported in the seminars. Where there was disagreement however was over whether it was a good idea to *immediately* reintroduce a party system in Turkey. The seminar of 7 November 1960, for instance, was opened by the following question from Osman Köksal, a military member of the MBK: "Can we, in the current conditions, hold general elections?" The intellectuals there agreed on the superiority of electoral government in terms of its theoretical legitimacy, but they differed over how best to organise elections (which can take a long time) and with regard to public order issues (the country was still in a revolutionary situation), distinguishing between their theoretical preferences and those they envisioned given the country's specific "conditions" (*şartlar*).⁵²

51 On 7 November 1960 Turhan Feyzioğlu, the president of the Committee in charge of determining the form of the future Constituent Assembly, referred to the results of these seminars as providing the basis for debates about the future Constitution. "Feyzioğlu açıklama yaptı" [Feyzioğlu Issued a Statement], *Ulus*, November 8, 1960, p. 5.

52 "Kurucu Meclisin bir 'Seçimle Teşkilî' Fikri Ağır Basiyor" [The Idea of Forming the Constitutional Assembly by Election Gains Prominence], *Tercüman*, November 10, 1960, p. 3.

The seminars also gave rise to clashes between the parties. When it became clear in late November that the Constituent Assembly would be elected on a corporative basis, with a quota of representatives to be designated by the parties, the issue became which parties would be authorised to send representatives and how many they would be allowed to send.⁵³ During the November 9 seminar, representatives of the two major opposition parties in the Assembly prior to the coup, the CHP and the ÇKMP (the National Farmers' and Peasants' Party, a smaller right-wing party) disagreed about the wisdom of proceeding to general elections, with the CHP representatives fearing a resurgent Democratic vote whilst the ÇKMP representatives supported the idea of elections (thinking that their party would be able to win part of the now free-floating Democratic vote).⁵⁴

During the same seminar its chairman, Tahsin Bekir Balta was obliged to intervene vehemently to remind those present of the academic nature of the seminars, notably given the demands made by small parties who were using the seminar to call for representation in the future Assembly.⁵⁵ Balta was obliged to point out that "the seminar has the limited and purely academic objective of throwing light on the problems. We do not take any binding decisions here, and work within the framework of academic endeavour."⁵⁶ These regular affirmations of the boundary between political and academic activity show that the divide between the two was no longer something which could be taken for granted, and that it was in the interest of certain participants to politicise the debates, in the sense of "redefining" constitutional activity by "social agents with a tendency to [...] transgress or question the differentiation between spheres of activity."⁵⁷

The conditions for this rapid politicisation were numerous. They related firstly to the highly porous boundaries between Turkish academia and politics. As seen earlier, many of the law professors involved in drawing up the Constitution pursued both a political and academic career. However this politicisation cannot be explained solely in terms of the intrinsic characteristics of the individuals involved. It was rather the result of the successful strategies of groups able to mobilise resources in various social sectors,

53 "The parties have launched the struggle over the Constituent Assembly," *Tercüman*, November 22, 1960, p. 1.

54 "Kurucu Meclisin," p. 3.

55 *Ibid.*

56 "S. Bilgiler Fakültesinde Anayasa Seminerleri" [Seminars on the Constitution at the Faculty of Political Science], *Ulus*, November 12, 1960, p. 5.

57 J. Lagroye (ed.), *La Politisation*, pp. 360–361.

and thereby set up multi-sectorial alliances. Once the conflicts within the group of law professors became such that they could not be decided by an external body, a role that the Army had difficulty in fulfilling, it was the political parties that provided the structures making it possible to “pool and articulate the demands of varied social groups”⁵⁸ and relay a common project to the press, the administration, academia, and the Army. İsmet İnönü was a central figure here. A former military hero with the ear of the junta and especially that of its leader Cemal Gürsel, the president of the CHP, and a former President of the Republic with close links both to academia⁵⁹ and to the upper echelons of the civil service, he was in a position to coordinate the various social sectors and get them to unite around a party.⁶⁰

The election of the Constituent Assembly thus constitutes very direct proof of how the political parties had returned to the constitutional process. Although the procedure finally chosen by the military was an election along corporative lines (each trade category electing its representatives), and with the parties only appointing 75 representatives, the CHP managed to politicise the elections. Work by Celalettin Güngör has shown that out of the 278 representatives, 222 were linked in some way to the CHP.⁶¹ The law academics elected to this Assembly largely owed this to their party connections.

Conclusion

This series of events from July to December 1960 shows that the state, despite the declarations by the Onar Committee about its unity, was far from constituting a unified apparatus independent of social logics. On the contrary, the course the constitutional debate took was significantly

58 Jacques Lagroye, Bastien François, and Frédéric Sawicki, *Sociologie politique*, Paris, Presses de la Fondation Nationale des Sciences Politiques, 2006, p. 250.

59 He directly appointed six CHP representatives to the Constituent Assembly, including two young academics with progressive ideas, Doğan Avcioğlu and Mümtaz Soysal.

60 Although initially opposed to the coup, İnönü took the interests of the officers behind the coup into account when he got the CHP to propose a clause in the constitution stating that members of the MBK would become permanent members of the future Senate. He also supported the purged academics to the military, and pushed for the rapid return of civilian rule. Metin Heper, *İsmet İnönü: The Making of a Turkish Statesman*, Leiden/New York, E.J. Brill, 1998, pp. 218–220.

61 C. Güngör, *27 Mayıs ve Partileşme Sorunu*, p. 67, quoted in S. Kili, *27 Mayıs 1960 Devrimi*, p. 24.

influenced by conflicts between clashing professional norms, with the hierarchical reasoning of the military coming into conflict with the demands for autonomy of the Committee of academics, and with the strategies of some of its members meaning that the Committee was unable to maintain the veil of secrecy over its workings. Furthermore, despite censorship, repression, and the fact that loyalty to the junta was crucial for whoever wished to take part in the process of drawing up the Constitution, the military were unable to keep party political considerations at bay and to act independently of public opinion. The academics with the closest ties to political parties were able to mobilise them and to use of press (despite the fact that it was extensively controlled) to see their point of view triumph.

The very rapid return to the fore of political parties shows how solidly rooted they were in the very heart of state institutions. The “bureaucratic elite” did not form a coherent whole able to prevail against the “political elite” elected by universal suffrage.⁶² On the contrary, it was unable to prevent the politicisation of the issues and the return of party political strife.

Whereas the first draft of the Onar Committee proposed to circumscribe politicians in a mesh of administrative institutions overseeing political affairs, the Constitution which was finally produced on 27 May 1960 left extensive freedoms to those in political power, according an essential place to the parties while seeking to ensure administrative continuity should it come under threat due to the actions of any dominant party.⁶³ The plan of the first Committee for a state whose institutions would function harmoniously in a more depoliticised manner was swept away over the course of the 1960s by the ever greater divergence between the Army and the intelligentsia (who drifted leftwards), by the massive politicisation of public sector appointments, and by the military’s inability to maintain Turkish democracy within Kemalist dogma.

62 M. Heper, *The State Tradition*, p. 99.

63 This is a reference to Chapter 114 which protects public sector employees against unfair dismissal by the state. The 1961 constitution is generally considered as a compromise between the initial draft of the Onar Committee and the one published by the Faculty of Political Sciences in Ankara. Cf. S. Kili, *Turkish Constitutional Developments*.

TABLE 6.1 Composition of the "Constitutional Committee"

Name	University	Speciality	Position	Remarks	Position with regard to the corporative nature of the second Assembly
Signatories of the declaration of 28 May					
Siddık Sami Onar (president)	Istanbul	Administrative Law	Rector, Ord.Prof. (Emeritus Professor)	"Hero of the revolution" of 27 May 1960	For
Naci Şensoy	Istanbul	Penal law	Dean, Prof.		For
Hüseyin Nail Kubalı	Istanbul	Constitutional law	Prof.	Critic of the Democrat government, suspended from his position in 1958	Against
Tank Zafer Tunaya	Istanbul	Constitutional law	Prof.	Dismissed from the Committee late August	Against
Ragıp Sarıca	Istanbul	Administrative Law	Prof.		Against a second Chamber
İsmet Giritli	Istanbul	Administrative law	Doç. (Lecturer)	Dismissed from the Committee late August	Against
Hıfzı Veldet Velidedeoğlu	Istanbul	Civil law	Ord. Prof. (former Dean)		For

Members who joined the Committee in early June	İlhan Arsel	Ankara, Faculty of Law	Constitutional law	Prof.	Against
	Bahri Savcı	Ankara, Faculty of Political Sciences	Constitutional law	Prof.	Against University trade unionism
	Muammer Aksoy	Ankara, Faculty of Political Sciences	Constitutional law	Doç.	Against CHP member, resigned in 1956

64 In late August 1960 Vakur Versan and Lütfi Duran, teachers at the Faculty of Law at the University of Istanbul, were selected by Onar to replace Tank Zafer Tunaya and İsmet Girtli. The final column of this table is based on A. İpekçi, *İhtilalim İcyüzü*, p. 355.