

Alien Citizens: Kurds and Citizenship in the Turkish Constitution

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Kurds are the largest minority ethnic group in Turkey. Most Kurds share the common religion of Islam with Turks, but they also have a distinct language, culture, and history. Turkey's current Constitution, drafted after a military coup in 1980, is thoroughly nationalist and contains repeated references to the Turkish language, people, and culture. Most relevant for the purposes of citizenship, an ambiguous and controversial Article 66 declares that, "everyone bound to the Turkish State through the bond of citizenship is a Turk." Many Kurds interpret this provision as an imposition of an ethnic identity—of being a Turk—that they vehemently reject.

This Article explores the historical origins of this provision, studies its competing interpretations, and analyzes its consequences. It argues that citizenship in Turkey has attained a political meaning that has shaped, and at times, trumped, its legal definition. In the name of promoting national unity and solidarity, Kurds have been relegated to "alien citizen" status—assigned its duties but denied many of its benefits. Kurds have been shut off from the political discourse and denied the right to education and media in their own language. These state policies have expelled Kurds to the fringes of society, undermining the very national solidarity that they sought to construct.

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I. INTRODUCTION	771
II. HISTORICAL BACKGROUND	773
III. CITIZENSHIP IN THE 1982 TURKISH CONSTITUTION.....	781
IV. THE 1980S AND 1990S: TWO STEPS FORWARD, ONE STEP BACKWARD.....	784
V. THE KURDISH OPENING (AND CLOSING).....	788
VI. HYBRID LEGAL-POLITICAL CONCEPTION OF TURKISH CITIZENSHIP	793
VII. CONCLUSION	796

I. INTRODUCTION

In October 2015, Dr. Aziz Sancar became the first Turkish-born scientist to receive the Nobel Prize.¹ Sancar was co-awarded the Prize in Chemistry for discovering how the body repairs the damage caused to DNA by ultraviolet light.² In an interview after the Nobel announcement, Sancar reflected on how his motherland would react to the rare Nobel nod for a Turk.³ The award would prompt widespread celebrations in Turkey, Sancar believed. “So, I’m glad for my country as well,”⁴ he added.

But instead of parades for its native son, Turkey launched an intense public debate about whether Sancar was “truly Turkish.”⁵ Sancar was born in Savur, a town located in Turkey’s Kurdish-dominated southeast. He is also a distant relative of a legislator from the People’s Democratic Party (*Halkların Demokrasi Partisi*), which in part represents the Kurdish minority in Turkey.⁶ In a major online community in Turkey, there is now a separate page called “Aziz Sancar’s Ethnic Roots,” with fifteen pages of comments, some seriously debating the issue and others vigorously disputing its relevance.⁷

Although estimates vary, Kurdish is the mother tongue of as many as one in five Turks, making Kurds the largest minority ethnic group in Turkey.⁸ Although most Kurds share the common religion of Islam with Turks, they also have a distinct language, culture, and history.⁹ The Kurdish population in Turkey has been historically marginalized and denied the right to education and media in their own language.¹⁰ Turkey has also been engaged in a violent, decades-long conflict with the Kurdistan Workers’ Party (“*Partiya Karheran Kurdistan*”) (“PKK”), which is

1 William J. Broad, *Nobel Prize in Chemistry Awarded to Thomas Lindahl, Paul Modrich, and Aziz Sancar for DNA Studies*, N.Y. TIMES (Oct. 7, 2015), <http://www.nytimes.com/2015/10/08/science/tomas-lindahl-paul-modrich-aziz-sancarn-nobel-chemistry.html?version=meter+at+6&module=meter-Links&pgtype=article&contentId=&mediaId=&referrer=&priority=true&action=click&contentCollection=meter-links-click>.

2 *Id.*

3 *Aziz Sancar – Interview*, NOBELPRIZE.ORG (Oct. 30, 2016), http://www.nobelprize.org/nobel_prizes/chemistry/laureates/2015/sancar-interview.html.

4 *Id.*

5 Tim Arango, *Deadly Ankara Attack Not Enough to Unify a Polarized Turkey*, N.Y. TIMES (Oct. 12, 2015), <http://www.nytimes.com/2015/10/13/world/europe/ankara-terror-attack-turkey-nobel-prize-chemistry.html>.

6 *Id.*

7 *Aziz Sancar’ın Etnik Kökeni*, EKŞİ SÖZLÜK (last visited Oct. 30, 2016), <https://eksisozluk.com/aziz-sancarin-etnik-kokeni--4932491>.

8 CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, TURKEY (May 30, 2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

9 Demote Y. Mousseau, *An Inquiry into the Linkage Among Nationalizing Policies, Democratization, and Ethno-nationalist Conflict: The Kurdish Case in Turkey*, 40 NATIONALITIES PAPERS 45, 51 (2012).

10 Dogu Ergil, *The Kurdish Question in Turkey*, 11 J. DEMOCRACY 122, 122 (2000).

designated as a terrorist organization by the European Union¹¹ and the United States.¹² Peace talks with the PKK, which began in 2013, were effectively derailed when the government intensified its attacks against the PKK in the summer of 2015, fomenting reprisals and a resurgence of the terrorism that plagued Turkey in the 1980s and 1990s. Incumbent political elites have added fuel to the fire by accusing Kurdish politicians of supporting terrorism.¹³ In May 2016, this political alienation culminated in a measure stripping the Kurdish deputies of their parliamentary immunity, followed by their arrests in November 2016.¹⁴

This societal fight is also taking place on constitutional grounds. Turkey's current Constitution, drafted after a military coup in 1980, is thoroughly nationalist and contains repeated references to the Turkish language, people, and culture.¹⁵ Most relevant for the purposes of citizenship, an ambiguous and controversial Article 66 declares that "[e]veryone bound to the Turkish State through the bond of citizenship is a Turk."¹⁶ Many Kurds interpret this provision as an imposition of an ethnic identity—of being a Turk—that they vehemently reject. Others view Turkishness, and the citizenship provision, in terms of nationality: Turkish citizens are called Turks, regardless of ethnicity.

Kurds are undoubtedly Turkish citizens if citizenship is defined narrowly to mean nationality. But where citizenship is defined broadly to include ancillary rights—such as freedoms of expression, association, and education—Kurds have been relegated to a second-tier citizenship: assigned its duties but denied many of its benefits. When it comes to Turkish citizenship, just as some animals in George Orwell's dystopian novel *Animal Farm* are more equal than others, some Turks are more Turkish than others.

11 Council Decision 2001/931/CFSP of the High Representative of the Union for Foreign Affairs and Security Policy, 2001 O.J. L 32/21 (Jan. 27, 2017), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0154&from=EN>.

12 U.S. Dep't of State, Bureau of Counterterrorism, *Foreign Terrorist Organizations*, <https://www.state.gov/j/ct/rls/other/des/123085.htm> (Last visited June 11, 2017).

13 Sophia Jones, *A Witch Hunt For Kurdish Politicians is Brewing in Turkey: Hostile Rhetoric from President Erdoğan Suggests a Clash is Coming*, HUFFINGTON POST (July 28, 2015, 12:47 PM), http://www.huffingtonpost.com/entry/kurdish-politicians-turkey_us_55b77edbe4b0224d8833c39b.

14 Ceylan Yeginsu & Safak Timur, *Turkey's Post-Coup Crackdown Targets Kurdish Politicians*, N.Y. TIMES (Nov. 4, 2016), <https://www.nytimes.com/2016/11/05/world/europe/turkey-coup-crackdown-kurdish-politicians.html>.

15 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), preamble, art. 2–3, art. 5, art. 66 (as amended in 2001) (Turk.).

16 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 66 (as amended in 2001) (Turk.).

The Kurdish question also has an external dimension. Bordering states of Syria and Iraq are home to substantial Kurdish populations.¹⁷ The Turkish government's domestic approach to the Kurdish minority affects the government's relationship with the Kurds who reside in northern Iraq and Syria. Turkey's relationship with its Kurdish minority also has implications for Turkey's accession process to the European Union, which has repeatedly exerted pressure on the Turkish government to bolster its rights protections for ethnic minorities, including the Kurds.¹⁸

This Article proceeds as follows. In Part I, I provide a brief historical background on the Kurdish question. Next, Part II turns to the 1982 Turkish Constitution and examines the provisions relevant to citizenship and other related rights. Part III examines how these constitutional provisions were interpreted and enforced in the 1980s and 1990s. Part IV details the rise to power of the Justice and Development Party (*Adalet ve Kalkınma Partisi*) in the early 2000s and the resulting developments on the Kurdish question. Part V analyzes the hybrid legal-political understanding of Turkish citizenship that has emerged from these developments. Part VI concludes by discussing the external dimensions of the Kurdish question.

Before I proceed, two introductory caveats are in order. First, Kurds are not the only minorities in Turkey that could be characterized as alien citizens. There are many other minority religious, ethnic, and linguistic communities in Turkey—including Armenians, Christians, Jews, Romas, Alevi, Circassians, and Arabs¹⁹—who have suffered discriminatory treatment by the state. For the purposes of this Article, however, I discuss citizenship by focusing only on the largest ethnic minority in Turkey, the Kurds. Second, given the topic of the symposium, I will focus primarily on citizenship rights under the Turkish Constitution and refer only briefly to laws that reinforce the constitutional provisions.

II. HISTORICAL BACKGROUND

The Republic of Turkey was established in 1923 after the collapse of the Ottoman Empire. The Empire lost World War I alongside Germany and was compelled to ratify the Treaty of Sevres. The Treaty divided the Ottoman Empire largely along ethnic lines.²⁰ Dubbed the “Sevres

17 CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, IRAQ & SYRIA (May 30, 2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>. (Iraq's Kurdish: 15%-20%, Syria: Kurdish, Armenian, and other 9.7%).

18 Thomas Hammarberg, *Report on Human Rights of Minorities*, COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE (Oct. 1, 2009), <https://rm.coe.int/16806db8ac>.

19 Dilek Kurban, *Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey's Path to the European Union*, 35 COLUM. HUM. RTS. L. REV. 151, 179 (2003).

20 Ergil, *supra* note 10, at 123.

syndrome,” the break-up of the Empire created a pervasive fear in Turkey of Western-backed territorial disintegration into ethnic pieces.²¹

To a former Ottoman General named Mustafa Kemal, the Treaty of Sevres was unacceptable. Along with other officers from the Ottoman Army, he launched an uprising against the Empire, as well as the occupying Allied forces, seeking to undo the Treaty of Sevres and carve out a Turkish Republic from the ashes of the Ottoman Empire.²² Against all odds, Mustafa Kemal’s fledgling army emerged victorious. He was later given the surname Ataturk—meaning the Father of all Turks—by the first Turkish parliament.

The Treaty of Lausanne, signed on July 24, 1923, marked the end of the War between Turkey and the Allies, and superseded the Treaty of Sevres.²³ During treaty negotiations, the Allies were pre-occupied with the protection of non-Muslim minorities in the new Turkish Republic, having witnessed the slaughter of Armenians and Greeks under the Ottoman Empire.²⁴ To that end, the Treaty protected the rights of non-Muslim minorities in Turkey, but excluded ethnic and linguistic Muslim minorities, including the Kurds, from its scope.²⁵ In addition, the Turkish representatives assured the Allies, in the words of one Allied delegate, that Muslim minorities “required no protection, and were quite satisfied with their lot under Turkish rule.”²⁶

The Treaty’s framework for protecting only non-Muslim minorities was derived in part from the Ottoman Empire’s “*millet*” (nation) system. That system defined nationality in terms of religion, not ethnicity—such as the Armenians (*Ermeni Milleti*), Greeks (*Rum Milleti*), and Jews (*Yahudi Milleti*).²⁷ Turks were considered part of the nation of Islam, so being a “Turk” was not a political or civic phenomenon.²⁸

Although the Treaty of Lausanne did not protect Muslim minorities, the founders of the Republic did not envision an ethnically homogenous state within the Muslim majority. Rather, “Ataturk made it clear that he was seeking statehood for the multicultural entity” of Turkey, the successor to the Ottoman State, and “did not emphasize ethnic Turkishness as the basis of the new nation.”²⁹ To that end, the founders of Turkey chose a geographical reference for the name of their new

21 Betigul Ercan Argun, *Universal Citizenship Rights and Turkey’s Kurdish Question*, 19 J. MUSLIM MINORITY AFF. 85, 89–90 (1999) (U.K.).

22 Ergil, *supra* note 10, at 123.

23 Lausanne Treaty, July 24, 1923, 28 L.N.T.S. 11.

24 Kurban, *supra* note 19, at 167–68.

25 Mousseau, *supra* note 9, at 50.

26 Philip Robins, *The Overlord State: Turkish Policy and the Kurdish Issue*, 69 INT’L AFF. 657, 660 n. 12 (1993) (U.K.).

27 Kurban, *supra* note 19, at 168.

28 Ergil, *supra* note 10, at 123.

29 *Id.* at 123–24.

republic—The Republic of Turkey (*Türkiye Cumhuriyeti*)—rather than describe it in ethnic terms.³⁰

It was this commitment to a multiethnic society that convinced the Kurds in Turkey to join the Independence War against the Allies.³¹ Most Kurds lent their support to the War and the resulting Turkish government, even though the Treaty of Sevres had offered Kurds the possibility of their own homeland.³² Kurds did not need special protection, they believed, because they were an integral part of the Republic's founding people.³³ They stood on equal footing with the ethnic Turks.³⁴

Although the new nation was to be multiethnic, Atatürk and his co-founders also envisioned certain unifying features. Most important, the new Republic of Turkey would be modern and secular.³⁵ To that end, the Sultanate was abolished in 1923, followed by the Caliphate in 1924.³⁶ The Arabic script was replaced with a new Turkish alphabet, the Islamic calendar abandoned, and even the fez—the traditional Ottoman cap—was replaced with the modern, Western hat. With these Islamic vestiges discarded, religion could no longer serve as a cohesive agent for the nation. As a result, religion was replaced with a national identity based on civic citizenship.³⁷ This new identity was summarized in one of Atatürk's most famous statements: “*Ne Mutlu Türküm Diyene,*” or “How happy is the one who says ‘I am Turkish.’”³⁸

Atatürk's ideal of civic citizenship was codified into Turkey's first Constitution, which was ratified in 1924. It declared: “Everyone who belongs to the Turkish society regardless of religion or race is considered a Turk.”³⁹ The drafting history makes it clear that the drafters did not intend the term “Turk” to have ethnic connotations. Rather, it was used to establish the status of nationality and to describe the relationship between the individual and the state.⁴⁰ And the provision of citizenship “regardless of religion or race” was consistent with the founders' vision of a heterogeneous republic.

Following the Constitution's ratification, the relatively neutral, civic constitutional definition of citizenship quickly assumed more ethnic

30 *Id.* at 124.

31 *Id.*

32 *Id.*

33 Kurban, *supra* note 19, at 186.

34 *Id.*

35 Mousseau, *supra* note 9, at 50.

36 ABRAHAM BODURGIL, ATATÜRK AND TURKEY: A BIBLIOGRAPHY, 1919–1938 (1974).

37 Argun, *supra* note 21, at 90.

38 Mustafa Kemal Atatürk, Turkish President, Speech Delivered for the 10th Anniversary of the Republic of Turkey (Oct. 29, 1933).

39 Türkiye Cumhuriyeti Anayasası (Turkish Constitution), art. 88 5 (1924) (Turk.).

40 SEREF GOZUBUYUK & ZEKAI SEZGIN, 1924 ANAYASASI HAKKINDAKI MECLIS GORUSMELERI, 436–41 (1957).

overtones.⁴¹ The transformative social revolution that Atatürk sought to undertake required unification. The changes he envisioned uprooted centuries of Ottoman tradition and replaced them with modern, secular ones. Unification, according to the founders, required uniformity. Through a series of swift reforms, the ideal Turk emerged: secular, progressive, Western in political ideology, Turkish in language and nationality, and obedient to the state and its ideals.⁴² In this unification process, the preservation of ethnic identities became at best a secondary concern, and at worst a roadblock to the successful transformation of the nation from the top down.

Kurdish leaders began to view this transformative social agenda as a threat to their distinct culture. As a result, they launched their first major rebellion in 1925.⁴³ From the perspective of the Turkish government, this rebellion was the last nail in the coffin for multiculturalism.⁴⁴ Ethnic divisions were now beginning to threaten the newfound nation's territorial integrity⁴⁵ and invite administrative decentralization. This was an unacceptable threat to Atatürk's modernization agenda, which required a strong central state.

As a result, the term "minority" (*azınlık*) quickly began to develop a negative connotation. The previously-disparate ethnic and linguistic identities were cobbled together and subsumed under the umbrella of Turkishness.⁴⁶ After the 1925 Kurdish rebellion, official references to the multiethnic "peoples of Turkey" were abandoned.⁴⁷ With the exception of non-Muslims, which fell within the protections of the Treaty of Lausanne, everyone would be expected to assimilate into the new Turkish culture.⁴⁸ The government banned the use of Kurdish in schools and courts and removed the words "Kurds" and "Kurdistan" from history books and other publications.⁴⁹ A 1928 law⁵⁰ obligated public institutions, private companies, and organizations to "adopt Turkish script in their writings

41 Kurban, *supra* note 19, at 176 n.121.

42 Ergil, *supra* note 10, at 123.

43 Robert W. Olson & William F. Tucker. *The Sheikh Said Rebellion in Turkey (1925): A Study in the Consolidation of a Developed Uninstitutionalized Nationalism and the Rise of Incipient (Kurdish) Nationalism*, 18 DIE WELT DES ISLAM, 195 (1978) (Neth).

44 See, Ergil, *supra* note 10, at 124.

45 Ziya Onis, *Turkey, Europe, and Paradoxes of Identity: Perspectives on the International Context of Democratization*, 10 MEDITERRANEAN Q. 107, 132 (1999).

46 Robins, *supra* note 26, at 660-61.

47 Ergil, *supra* note 10, at 125.

48 *Id.*

49 CATHERINE PIERSE, CULTURAL AND LANGUAGE RIGHTS OF THE KURDS: A STUDY OF THE TREATMENT OF MINORITIES UNDER INTERNATIONAL LAW IN TURKEY, IRAQ, IRAN AND SYRIA IN LIGHT OF INTERNATIONAL HUMAN RIGHTS STANDARDS 6 (1997).

50 Law Concerning Adoption and Application of Turkish Script, Law No. 1353, OFFICIAL GAZETTE (Turk.) Nov. 3, 1928 at No. 1030.

and apply that script in their dealings.”⁵¹ Later, in 1934, Kurds were prohibited from giving Kurdish names to their children.⁵² Another 1934 law permitted on-demand refugee status for people of “Turkish descent and culture.”⁵³ According to its legislative history, the law was intended to ensure that “the Turkish state would not any more have to suspect the Turkishness of any Turk.”⁵⁴ According to Turkish political scientist Kemal Kirisci, “Turkishness” at the time was understood as “not solely Turkish ethnicity but the ability and willingness to adopt the Turkish language and to be members of Muslim Sunni ethnic groups closely associated with past Ottoman rule.”⁵⁵ Citizenship was thus defined in terms of a monolithic Turkish identity. As a result, the Republic of Turkey became a Turkish state.

But the Kurds continued to resist. Unrest and rebellions shook the country throughout the 1930s.⁵⁶ These resistance attempts provoked an authoritarian reaction by the Turkish state.⁵⁷ Stability and territorial integrity were to be defended above all else,⁵⁸ so the Kurds’ demands for pluralism were met with the state’s iron fist. Basic citizenship rights were mere collateral damage.

Subsequent governments compounded this policy. State officials refused to even acknowledge the existence of Kurds within Turkish borders. According to the government, all citizens in Turkey were Turks, Kurds were not a minority, and Kurdish was not a language distinct from Turkish, but merely an esoteric border dialect.⁵⁹ Until the 1990s, the Kurds were officially referred to as “eastern Turks” or “mountain Turks,” and Kurdish was referred to as an “unknown language” in official records.⁶⁰ For example, when a criminal defendant spoke in Kurdish during a criminal trial, the judge would customarily instruct the court reporter to note that the “defendant is speaking in an ‘unknown language,’” which “the court doesn’t understand.”⁶¹ As recently as 2003, the website of the

51 DILEK KURBAN & YILMAZ ENSAROGLU, TOWARD A SOLUTION TO THE KURDISH QUESTION: CONSTITUTIONAL AND LEGAL RECOMMENDATIONS 47 (2010).

52 PIERSE, *supra* note 49, at 6–7; Surname Regulations, No. 2/1759, Official Gazette, Dec. 27, 1934 2891, Dec. 24, 1934.

53 Council of Ministers’ Decree, No. 2/1777, Dec. 27, 1934, Supporting Law No. 2510, Official Gazette, June 14, 1934 No. 2898, enacted May 11, 1935.

54 Kemal Kirisci, *Asylum, Immigration and National Identity: Challenges to Turkish Harmonization of Policy and Practice with that of the EU*, in TOWARDS ACCESSION NEGOTIATIONS: TURKEY’S DOMESTIC AND FOREIGN POLICY CHALLENGES AHEAD 107, 112 (Nathalie Tocci & Ahmet Evin eds., 2004) (quoting TBMM, 1934, p. 8).

55 *Id.* at 111.

56 Ergil, *supra* note 10, at 125.

57 *Id.*

58 *Id.*

59 *Id.* at 126.

60 Kurban, *supra* note 19, at 188.

61 ANF News, *Turkish Court Says Kurdish is an “Unknown Language:” The Dilemma Continues*, EKURD DAILY (Nov. 8, 2010), <http://ekurd.net/mismas/articles/misc2010/11/turkey3040.htm>

Turkish Foreign Ministry stated Turkey's official position on the Kurdish minority as follows: "The status of minorities in Turkey has been internationally certified by the 1923 Treaty of Lausanne, according to which there are only non-Muslim minorities in Turkey. It is wrong, according to this definition, to refer to our citizens of Kurdish descent as a 'Kurdish minority.'"⁶²

The state's reluctance to acknowledge the existence of Kurds is also evinced by the official census. There are no reliable figures for the number of Kurds in Turkey because the government refuses to count them.⁶³ Doing so, the thinking goes, would require the official acknowledgement of their existence.

In response to the escalating repression of Kurds, the PKK was established in 1978 to engage in a violent secessionist struggle against the Turkish state.⁶⁴ Its first terrorist attack came in 1984 and claimed the lives of more than a dozen people.⁶⁵ The PKK's size and popularity grew rapidly, with young disenfranchised Kurds joining the PKK's ranks in droves.⁶⁶

As the PKK was growing in popularity, elsewhere, Turkish leftist and rightist groups were roiled in a violent conflict that the government was unable to quell. This conflict fomented a military coup in 1980 to bring stability and unity to Turkey. Concerned that ethnic demands by Kurds could further divide an already-divided country, the coup leaders bolstered the state's already-strong preference for forced integration over accommodation. Among other things, they required Kurdish families to give Turkish names to their children, prohibited the use of Kurdish in public, changed the names of Kurdish towns to Turkish, banned Kurdish publications, restricted political and organizational activity based on ethnicity, and declared states of emergency and martial law across the Southeast where the PKK was conducting most of its armed attacks.⁶⁷

In line with the coup makers' vision, the new Constitution, ratified in 1982 and still in force today, established a strong, indivisible central state. And just as the new state was to be unitary, so was the Turkish citizen.

III. CITIZENSHIP IN THE 1982 TURKISH CONSTITUTION

A casual observer leafing through the 1982 Turkish Constitution will immediately note a strong nationalist theme. Peppered throughout the

62 Kurban, *supra* note 19, at 177.

63 Ergil, *supra* note 10, at 125.

64 Mousseau, *supra* note 9, at 53.

65 Ergil, *supra* note 10, at 126–27.

66 Mousseau, *supra* note 9, at 53.

67 Ergil, *supra* note 10, at 126–27; Kurban, *supra* note 19, at 189; Mousseau, *supra* note 9, at 53–54.

document are references to the “Turkish homeland and nation,” “the supreme Turkish state,” “Turkish nation,” “Turkish society,” “all Turks,” “Turkish citizen,” “Turkish language,” “Turkish culture,” and “Turkish history.”⁶⁸ The very first line of the Constitution affirms the “eternal existence of the Turkish motherland and nation and the indivisible unity of the sublime Turkish state.”⁶⁹ Article 2, an unamendable provision, underscores that the country is “loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble.”⁷⁰ Article 3, another unamendable provision, highlights that Turkey “with its territory and nation, is an indivisible entity” and declares that “[i]ts language is Turkish.”⁷¹

The clause on the Turkish language requires a separate note. Many other constitutions do not establish an official language,⁷² recognize a language to be the official language without prejudice to others,⁷³ or establish more than one official language.⁷⁴ The Turkish provision stands in stark contrast to these global counter-examples. It implies that Turkish is the only language—not merely the official language—spoken in the country.⁷⁵

Article 66 addresses citizenship. It declares that “[e]veryone bound to the Turkish State through the bond of citizenship is a Turk.”⁷⁶ Recall from the previous Part that this provision made its first appearance in the 1924 Constitution, albeit in a different form, in declaring that “Everyone who belongs to the Turkish society *regardless of religion or race* is considered a

68 HÜSNÜ ÖNDÜL, KOPENHAG SIYASI KRITERLERİ [COPENHAGEN POLITICAL CRITERIA] 36. Similar references exist in a wide variety of legislation, which use controversial terms with ethnic connotations, such as such as “Turk”, “of Turkish descent”, “Turkish identity”, “Turkish line”, “of Turkish blood”, and “Turkish race.” HÜSNÜ ÖNDÜL, KOPENHAG SIYASI KRITERLERİ VE TÜRKİYE (MEVZUAT TARAMASI), (KOPENHAGEN POLITICAL CRITERIA AND TURKEY (A REVIEW OF THE LEGISLATION)) 31 (1st ed. 2000), http://www.ihd.org.tr/images/pdf/kopenhag_siyasi_kriterleri_ve_turkiye_mevzuat_taramasi.pdf.

69 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), preamble (as amended in 1995) (Turk.).

70 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 2 (1982) (Turk.).

71 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 3 (1982) (Turk.).

72 For example, there is no official language in the U.S. Constitution.

73 For example, the Spanish Constitution states:

(1) Castilian is the official language of the state. All Spaniards have the duty to know it and the right to use it.

(2) The other languages of Spain will also be official in the respective autonomous communities, in accordance with their Statutes.

Constitución Española de 1978 (Spanish Constitution of 1978), art. 3 (1978) (Spain).

74 For example, the Irish Constitution recognizes Irish as the “first official language” and English as the “second official language.” Constitution of Ireland, art. 8 (1937) (Ir.).

75 Kurban, *supra* note 19, at 195.

76 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), preamble, art. 2–3, art. 5, art. 66 (as amended in 2001) (Turk.).

Turk.”⁷⁷ The italicized portion was excised in the 1961 Constitution⁷⁸ and retained in that form in the 1982 Constitution.⁷⁹

This provision raises more questions than it answers. First, what significance does the excision of the phrase “regardless of religion or race” have? The Turkish Constitutional Court has not ascribed any significance to this omission. Rather, despite its excision, the Court has continued to interpret the Article to reject any racial or religious litmus tests for citizenship. In several cases, the Court declared that all ethnicities are eligible for citizenship, and all citizens have equal rights under the Constitution.⁸⁰ Yet, contradicting its own interpretation of the Clause, the Court has dissolved political parties for championing the Kurdish cause—an issue that I address in further detail below.

Second, the term Turk is ambiguous. Who exactly is a Turk? And who is a citizen? Are the two concepts synonymous or do they signify different statuses?

The term “Turk” can have two competing meanings. It can refer to nationality in the same sense that “American” refers to people with American citizenship. Interpreted in that light, a “Turk” is anyone—regardless of ethnicity—bound to the Republic of Turkey through a common pluralistic citizenship bond.

Yet others view “Turk” in ethnic terms. The term “Turk,” they argue, refers to people of Turkish ethnic origin. From the perspective of many Kurds, the constitutionalization of Turkishness has imposed on them an ethnic identity that has curbed pluralism and denied Kurds their basic freedoms, enjoyed by other citizens, since the Republic’s founding.⁸¹

Several cultural and political rights associated with basic citizenship rights have served as particular points of concern for the Kurds.⁸² First, Article 26—somewhat ironically titled “Freedom of Expression and Dissemination of Thought”—contains several limitations on these rights: “No language prohibited by law shall be used in the expression and

77 Türkiye Cumhuriyeti Anayasası (Turkish Constitution), preamble, art. 88 (1924) (Turk.).

78 Türkiye Cumhuriyeti Anayasası (Turkish Constitution), preamble, art. 66 (1961) (Turk.).

79 Article 66 does not determine itself acquisition and loss of citizenship circumstances and delegates this question to the legislature. Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 66 (1982) (Turk.).

80 Türkiye Cumhuriyeti Anayasa Mahkemesi [Turkish Constitutional Court], Esas no.1971/3, Karas no. 1971/3. This decision was decided on July 29, 1971 and published in the Official Gazette (Resmi Gazete, Issue no. 14064) on Jan. 1, 1972.

81 Murat Somer & Evangelos G. Liaras, *Turkey’s New Kurdish Opening: Religious Values Versus Secular Values*, 17 MIDDLE EAST POL’Y 152, 158 (2010).

82 The constitutional recognition of a Kurdish state—demanded by some Kurdish nationalists—goes far beyond the recognition of citizenship rights, and is therefore beyond the scope of this Article.

dissemination of thought.”⁸³ In similar fashion, Article 28 on the freedom of press prohibits the use of publications in languages prohibited by law.⁸⁴

In 1983, one year after the ratification of the Constitution, a law put these provisions into effect. It prohibited the “declaration, circulation, and publication of ideas in a language which is not the first official language of a State recognized by Turkey.”⁸⁵ This coded language impliedly prohibited the use of Kurdish because Kurdish is not “the first official language” of any country recognized by Turkey.

Another constitutional provision restricted the use of Kurdish in education. Article 42 of the Constitution prohibits the teaching of languages other than Turkish “as a mother tongue to Turkish citizens at any institution of education.”⁸⁶ Article 42 further declares: “Foreign languages to be taught in institutions of education and the rules to be followed by schools conducting education in a foreign language shall be determined by law. The provisions of international treaties are reserved.”⁸⁷ With the last sentence, the Constitution reaffirmed the rights of non-Muslim minorities, recognized by the Treaty of Lausanne, to education in their own mother tongue.⁸⁸ But it denied the same right to other minorities, including the Kurds. As a result of this restriction, Kurdish was taught primarily within the home, with parents passing on their language to their children.⁸⁹ Because they learned Kurdish in the household, a substantial number of Kurdish children did not speak Turkish when they began school, which, in turn, hampered their educational prospects.⁹⁰

In practice, the government allowed the teaching of many foreign languages other than Kurdish. Under its constitutional authority to regulate the teaching of foreign languages, the Council of Ministers decided in 1992 that “English, French, German, Russian, Italian, Spanish, Arabic, Japanese, and Chinese”⁹¹ may be taught in educational institutions. Both before and after this decision, numerous reputable educational institutions in Turkey offered language instruction in foreign languages. English was the official language of instruction in the high school I

83 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 26 (as amended in 2001) (Turk.).

84 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 28 (as amended in 2001) (Turk.).

85 Türkçeden Baska Dillerle Yapılacak Yayınlar Hakkında Kanun [Law Concerning Publications and Broadcasts in Languages Other Than Turkish]. No. 2932 R.G. [Resmi Gazete = Official Gazette], 22 Oct. 1983 No. 18199 at 27-28 (enacted Oct. 19, 1983). *See also*, Christopher Panico, Turkey: Violations of Free Speech in Turkey 94 (Human Rights Watch, 1999).

86 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 42 (1982) (Turk.).

87 Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 42 (1982) (Turk.).

88 KURBAN & ENSAROGLU, *supra* note 51, at 27.

89 Ergil, *supra* note 10, at 126.

90 KURBAN & ENSAROGLU, *supra* note 51, at 28.

91 Decision No. 92/2788, Official Gazette, March 20, 1992 (Turk.), *translated in* CHRISTOPHER PANICO, TURKEY: VIOLATIONS OF FREE SPEECH IN TURKEY 96 (Human Rights Watch, 1999).

attended, and students during their first year of English instruction were penalized for speaking Turkish to their classmates. Likewise, the private school Galatasaray—also the name of Turkey’s most prominent soccer club—provides French education from preschool until graduate education.⁹²

The restrictions imposed on Kurdish language are fairly obvious violations of the Constitution’s equality provisions. Article 10 prohibits discrimination on the grounds of “language, race, color, sex, political opinion, philosophical belief, religion and sect.”⁹³ Yet this provision was virtually ignored in practice, and Kurdish language and culture was sacrificed for the sake of national unity.

The repression of individual rights in the name of national unity is expressly condoned by the Constitution.⁹⁴ In part because the Constitution was drafted amidst a violent conflict between leftists and rightists, the Constitution reflects an overarching focus on unity, stability, national security, and the indivisibility of the state. These principles reign supreme over all others, including individual rights and liberties. Article 14 makes this hierarchy clear:

None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights.⁹⁵

These trump cards—particularly the “indivisible integrity of the State”—were broadly interpreted by political and judicial actors to condone restrictions on Kurds’ rights.⁹⁶ For example, a public agency charged with regulating television and radio broadcasts suspended a radio station called Earth Radio for broadcasting a cultural and music program in Kurdish.⁹⁷ Even though the radio provided for simultaneous translation in Turkish, the agency asserted that the broadcast violated “the principle of the existence and independence of Turkish Republic and its indivisible territorial and national integrity.”⁹⁸ Likewise, in 1991, the Court dissolved the United Communist Party of Turkey in part for its party constitution,

⁹² Kurban, *supra* note 19, at 199 n.243.

⁹³ Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 10 (as amended in 2001) (Turk.).

⁹⁴ Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 14 (as amended in 2001) (Turk.).

⁹⁵ Türkiye Cumhuriyeti 1982 Anayasası (Turkish Constitution of 1982), art. 14 (as amended in 2001) (Turk.).

⁹⁶ Kurban, *supra* note 19, at 192.

⁹⁷ *Id.* at 204.

⁹⁸ *Id.*

which acknowledged the existence of Kurds in Turkey.⁹⁹ In its decision, the Court declared that there are no “minorities” in Turkey other than those expressly recognized by international agreements, impliedly referring to the Treaty of Lausanne. As a result, “the proposals in the party constitution covering support for non-Turkish languages and cultures were intended to create minorities, to the detriment of the unity of the Turkish nation.”¹⁰⁰ In 1998, the Court dissolved the Socialist Party for advocating the recognition of Kurds’ cultural and political rights and the calling of a referendum to determine whether a federal system should be established in Turkey.¹⁰¹

The provisions of the Constitution that place restrictions on political parties deserve special mention. The new Constitution empowered the Constitutional Court with the authority to permanently dissolve political parties whose “statutes, programs, and activities” do not “conform to the principles of a democratic and secular republic, based on human rights and liberties, and to the fundamental principle of the State’s territorial and national integrity.”¹⁰² The authority to bring a case for party dissolution was provided to the Chief Public Prosecutor of the Republic, a democratically unaccountable lawyer appointed by the President from a short list of nominees prepared by other prosecutors. After its establishment, the Court exercised its authority with zeal, particularly against Islamist parties and Kurdish parties.

Kurdish political parties were dissolved by the Constitutional Court almost as quickly as they were opened. The primary ground for dissolution was supporting separatist activities contrary to “the State’s territorial and national integrity.”¹⁰³ The first Kurdish political party, People’s Labor Party (HEP), was founded in 1990 and banned three years later in 1993.¹⁰⁴ The members of HEP then founded Freedom and Democracy Party (ÖZDEP) in May 1993,¹⁰⁵ which was banned in November 1993 and succeeded by the Democracy Party (DEP).¹⁰⁶ In 1994, strategically before the municipal elections, Prime Minister Tansu Ciller alleged that DEP was the PKK’s political wing.¹⁰⁷ This prompted the Parliament to revoke the legislative immunity for some DEP members, leading to the prosecution

99 *United Communist Party of Turkey v. Turkey*, 1998-I Eur. Ct. H.R. 1, 9.

100 *Id.* at 6.

101 *Socialist Party v. Turkey*, 75 Euro. Ct. H.R. 1233 (1998).

102 *Türkiye Cumhuriyeti 1982 Anayasası* (Turkish Constitution of 1982), art. 68 (1982) (Turk.).

103 Mousseau, *supra* note 9, at 54–55.

104 *Türkiye Cumhuriyeti Anayasa Mahkemesi* [Turkish Constitutional Court], Esas no.1992/1, Karas no. 1993/1.

105 *History of Kurdish Political Parties in Turkey*, HDP EUR. (last visited Oct. 30, 2016), http://en.hdpeurope.com/?page_id=537.

106 Ergil, *supra* note 10, at 129.

107 *Id.*

and conviction of several for treason and affiliation with the PKK.¹⁰⁸ Others went into self-exile.¹⁰⁹ In June 1994, the Constitutional Court delivered the coup de grâce to DEP by banning it.¹¹⁰ DEP was succeeded in 1994 by the People's Democracy Party (HADEP), which turned out to have a much longer life span than its predecessors. It remained in existence for nine years until 2003, when it was dissolved by the Constitutional Court.¹¹¹ The Court also banned HADEP's successor—the Democratic Society Party (DTP)—in 2009.

In this game of acronym soup and musical chairs, Kurds were cut off from democratic and constitutional discourse. Although they were Turkish citizens under the Constitution, the government, with the backing of the integrationist constitutional provisions discussed above, continued to deny them basic citizenship rights.

IV. THE 1980S AND 1990S: TWO STEPS FORWARD, ONE STEP BACKWARD

The state's repression of Kurds' rights played into the PKK's propaganda machine. Because Kurds were left out of the democratic marketplace, the PKK asserted that violence was the only avenue for achieving their demands.¹¹²

In response to rapidly escalating PKK violence, in July 1987, the government declared a state of emergency in numerous cities throughout Turkey's Kurdish-dominated Southeastern provinces.¹¹³ To enforce the state of emergency, a special regional governor with sweeping powers was appointed.¹¹⁴ This reinforced the two tiers of citizenship in Turkey: Kurds living in the emergency zone with limited liberties and all other Turks enjoying the full scope of rights protected in the constitution.¹¹⁵ Kurds were often tried in State Security Courts (*Devlet Güvenlik Mahkemeleri*), notorious for handing out swift and brutal punishments, whereas regular civil courts tried other citizens.¹¹⁶ According to the U.S. Department of State's 1996 Country Reports on Human Rights Practices, the Turkish

108 *Id.*

109 *Id.*

110 *Id.*

111 *History of Kurdish Political Parties in Turkey*, *supra* note 104.

112 Ergil, *supra* note 10, at 129.

113 KURBAN & ENSAROGLU, *supra* note 51, at 52.

114 Kurban, *supra* note 19, at 189–90.

115 *Id.* at 190.

116 *Id.* at 192.

government evacuated or destroyed 2,297 villages suspected of assisting the PKK, displacing 2 million Kurds from their homes.¹¹⁷

The problem, depending on how one perceives the issue, was named respectively the “terror problem,” “the Kurdish question,” or, for politicians for whom the word Kurd still remained taboo, “the Southeast question.”¹¹⁸ While the society focused on eradicating the violence unleashed by the PKK, the larger political significance of the Kurds’ plight for equal liberties was sidelined.¹¹⁹

Following the turbulence of the 1980s, the 1990s saw some positive developments. In 1991, the law that prohibited the use of Kurdish in public was repealed, allowing the publication of Kurdish newspapers, magazines, and music.¹²⁰ Yet, most publications in Kurdish still received close government scrutiny.¹²¹ The police routinely raided events relating to Kurdish culture and seized materials published in Kurdish.¹²² And the teaching of Kurdish in schools, as well as Kurdish radio and television, remained prohibited.¹²³

Turkey’s accession process to the European Union prompted a series of legal and constitutional reforms. Turkey officially became a candidate country in 1999.¹²⁴ Full membership required bringing Turkey’s human rights laws up to European standards.¹²⁵ These reforms began with a constitutional amendment package in 2001 and continued with several additional reform packages that made substantial strides—at least on paper—toward bolstering minority rights.¹²⁶ The 2001 constitutional amendment package repealed the restriction on the use of “languages prohibited by law” in the constitutional provisions relating to free press and free expression and dissemination of thought.¹²⁷ As a result of these amendments, Kurds obtained the right to speak and broadcast in their own language.¹²⁸

Yet, several restrictions were placed on these new constitutional freedoms. Laws implementing these rights allowed their exercise only if they did not threaten “the indivisibility of the state together with its

117 Ergil, *supra* note 10, at 128 (citing U.S. DEPARTMENT OF STATE, TURKEY COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1996 (1997), http://www.state.gov/www/global/human_rights/1996_hrp_report/turkey.html).

118 Argun, *supra* note 21, at 89.

119 *Id.* at 89–90.

120 Kurban, *supra* note 19, at 190.

121 Ergil, *supra* note 10, at 126.

122 Kurban, *supra* note 19, at 190.

123 Ergil, *supra* note 10, at 126.

124 Edel Hughes, *The European Union Accession Process: Ensuring the Protection of Turkey’s Minorities?*, 17 INT’L J. ON MINORITY & GROUP RTS. 561, 572 (2010).

125 *Id.*

126 Kurban, *supra* note 19, at 151–52.

127 *Id.* at 194.

128 Mousseau, *supra* note 9, at 58.

territory and its nation.”¹²⁹ Recall that this phrase had been interpreted broadly by government actors in Turkey to restrict minority rights. In the area of broadcasting, the implementing regulations¹³⁰ provided a monopoly to a public television station controlled by the state for broadcasting in “languages and dialects traditionally used by Turkish citizens,”¹³¹ which impliedly included Kurdish. Broadcasting in these languages would be limited to the “areas of news, music, and culture,” and the “teaching of such language and dialects” was expressly prohibited.¹³² The regulations restricted radio broadcasts in these “languages and dialects” to four hours per week and television broadcasts to two hours per week.¹³³ Moreover, the regulations gave unfettered discretion to a government agency—the Supreme Board of Radio and Television (*Radyo ve Televizyon Ust Kurulu*)—to make “the decisions regarding the language and dialect or languages and dialects of broadcasting, the area of coverage, the profile of viewers and listeners.”¹³⁴

A 2002 law, also motivated by the EU accession process, permitted the teaching in private—not public—courses of “different languages and dialects traditionally used by Turkish citizens in their daily lives.”¹³⁵ Several features of this law are noteworthy. As is customary, this coded language did not refer to Kurdish expressly, but appeared to permit its teaching only implicitly. Yet, for several reasons, even this implied permission was a legal bait-and-switch. As an initial matter, the law was subject to the usual condition that the teaching of non-Turkish languages could not hamper the “indivisible integrity of the State.”

What’s more, the regulations implementing the law made it prohibitively difficult to teach Kurdish.¹³⁶ For example, the regulations cited a law that requires teachers of language education to have a bachelor’s degree in education of the language that they teach.¹³⁷ Although this appears to be a reasonable requirement, it significantly curtailed the teaching of Kurdish for two reasons. First, at the time the law was passed,

129 Law Concerning Amendments to Certain Laws, Law No. 4771, Official Gazette, August 3, 2002 No. 24841 art. 8, August 9, 2002.

130 Regulation on Radio and Television Broadcasts in Different Languages and Dialects Used Traditionally by Turkish Citizens in Their Daily Lives, Official Gazette No. 25357, Jan. 20, 2004.

131 “Broadcasting in different traditional languages and dialects Turkish citizens use in their daily lives shall be made by the Turkish Radio-Television Corporation.” *Radyo ve Televizyon Yayinlarinin Dili Hakkinda Yonetmelik* [Regulation about the Language of Radio and Television Broadcasting], art. 5(2), implementing Law No. 4771, Dec. 18, 2002.

132 *Id.* art. 5(3).

133 *Id.* art. 5(6).

134 *Id.* art. 7(1).

135 *Yabancı Dil Egitimi ve Ogretimi ile Turk Vatandaslarinin Farkli Dil ve Lechelvrinin Ogrenilmesi Hakkinda Kanun* [Law Relating to the Education and Teaching of Foreign Languages, and to the Learning of Different Languages and Dialects of Turkish Citizens], Law No. 2923, Official Gazette No. 25307, Oct. 23, 1983.

136 Kurban, *supra* note 19, at 201.

137 *Id.*

no Turkish university had a Kurdish language department, which meant that the Kurdish language instructor must have obtained a bachelor's degree in Kurdish education from a foreign institution. To close that loophole, the regulation required Turkish citizenship for instructors of private courses, which in turn banned foreign Kurdish linguists from teaching Kurdish in Turkey.¹³⁸ As a result, only Turkish citizens who had obtained a bachelor's degree in Kurdish education from a foreign institution were eligible to teach private courses in Kurdish.

Although the EU accession process fomented reforms to some problematic constitutional provisions, others were left intact. For example, the Constitution continued to declare that Turkish is the language of the State.¹³⁹ It also retained a restriction that allowed the curbing of rights and freedoms for the purpose of, among other things, "safeguarding the indivisible integrity of the State with its territory and nation."¹⁴⁰ Article 42, which prohibits the teaching of languages other than Turkish as the "mother tongue" in public education, also remained in place.¹⁴¹

There was also some regression, particularly in the area of freedom of expression, which disproportionately affected Kurdish interests. Civil society activists and politicians who voiced concerns about the plight of Turkey's Kurdish minority were subject to criminal prosecutions under a plethora of legislation.¹⁴² Several deserve particular mention.

On June 1, 2005, the now-notorious Turkish Criminal Code Article 301 came into force.¹⁴³ Under the law, any person who "publicly denigrates the Turkish Nation, the State of the Turkish Republic or the Grand National Assembly of Turkey and the judicial institutions of the State" is subject to conviction and imprisonment for up to two years.¹⁴⁴ The initial version of the law made it a crime to insult the undefined phenomenon of "Turkishness," but under domestic and global pressure, the law was amended to change "Turkishness" to the equally vague "Turkish nation."¹⁴⁵

Numerous high-profile prosecutions were brought under the law. Perhaps the most high-profile indictment was against Turkish writer and

138 *Id.*

139 *Id.* at 195.

140 *Id.* at 194.

141 *Id.* at 195.

142 Eur. Comm'n, *Turkey 2014 Progress Report* 51 (Commission Staff Working Document, SWD(2014) 307 final), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0307&from=en> (noting that criminal cases continue as recently as 2014 "against writers, lawyers, academics, students and journalists writing and working on the Kurdish issue.").

143 Turkish Penal Code art. 301, Law No. 5237, Official Gazette, Oct. 12, 2004 No. 25611, enacted Sept. 26, 2004.

144 *Id.*

145 Hughes, *supra* note 124, at 577.

Nobel laureate Orhan Pamuk. He was charged with violating Article 301 after stating during an interview that “Thirty thousand Kurds have been killed here, and a million Armenians. And almost nobody dares to mention that. So I do.”¹⁴⁶ Following a global outcry, the charges against Pamuk were dropped.

Turkey’s anti-terror laws are some of the broadest of their kind.¹⁴⁷ They have proven to be a popular tool for public prosecutors against Kurdish activists, as well as journalists, lawyers, and human rights activists who support the Kurdish cause.¹⁴⁸ Charges are often brought alleging that the defendant has propagandized in favor of the PKK or is a member of the PKK.¹⁴⁹ Most recently, in January 2016, numerous academics were detained and subjected to administrative sanctions (including dismissal) for signing a “petition for peace” advocating the end of the violent struggle with the PKK and demanding a political solution to the conflict.¹⁵⁰

V. THE KURDISH OPENING (AND CLOSING)

When the Justice and Development Party (*Adalet ve Kalkınma Partisi*) (AKP) assumed power in 2002, many were optimistic for progress on Kurdish rights.¹⁵¹ Reforms were already underway as part of the European Union accession process, and the PKK had declared a ceasefire.¹⁵²

The AKP was arguably in an ideal position to achieve rapprochement with the Kurdish minority. AKP’s base, like the Kurdish constituency, was disenchanted with Turkey’s secular establishment. AKP touted itself as a mainstream conservative party that represented a rising rural, pious middle class that challenged the status quo and the secular elite that championed it. What’s more, AKP’s predecessors—the Welfare Party (*Refah Partisi*) and the Virtue Party (*Fazilet Partisi*)—had suffered the same fate as their Kurdish counterparts and had been dissolved by the Turkish Constitutional Court. A rapprochement with the Kurds would also bolster Turkey’s democratic credentials in its quest to join the European Union—

146 Peer Teuwsen, *Der meistgehasste Türke*, TAGES ANZEIGER (Feb. 5, 2005), <https://web.archive.org/web/20090116123035/http://sc.tagesanzeiger.ch:80/dyn/news/kultur/560264.html>.

147 Meltem Aslan, *Secure State, Insecure People: Turkey’s Freedom of Expression Problem*, 15 FINNISH Y.B. INT’L L. 177, 199 (2004); Scott Crosby, *Trials against Lawyers and Journalists and Writers in Turkey*, 4 NEW J. EUR. CRIM. L. 510, 519 (2013).

148 *Turkey: Strengthen Law Reform Bill*, HUM. RTS. WATCH (Mar. 25, 2013), <https://www.hrw.org/news/2013/03/25/turkey-strengthen-law-reform-bill>.

149 *Id.*

150 Beyza Kural, *Kocaeli Dayanışma Akademisi Şölenle Açıldı*, BARIŞ İÇİN AKADEMİSYENLER (Sept. 28, 2016), <https://barisicinakademisyenler.net/node/335>.

151 Somer & Liaras, *supra* note 81, at 154.

152 *Id.*

a major campaign promise of the AKP—and boost Turkey’s status as a power broker in the Middle East, where many Kurds live.¹⁵³

But most importantly, a possible Kurdish rapprochement would bolster AKP’s popularity in the Kurdish stronghold of the Turkish Southeast. To lure the Kurds, then Prime-Minister and now-President Erdoğan deftly appealed to the common religious bond between Turks and Kurds: “The sun heats everybody and the rain is God’s grace for everybody,” he argued in August 2005 in a historic conciliatory speech in the Southeastern province of Diyarbakir.¹⁵⁴ Kurds and Turks should live together as co-equals, he argued.

These political overtures paid off. AKP obtained strong support from the Kurdish constituency in both the July 2007 parliamentary elections and a subsequent constitutional referendum.¹⁵⁵ But in the March 2009 municipal elections, AKP lost much of its Kurdish constituency to the Democratic Society Party (DTP), a party formed by Kurdish deputies.¹⁵⁶

To fend off its political competition from the DTP, AKP increased its advances to the Kurds and announced a comprehensive plan that commentators dubbed the “Kurdish opening.” For public relations purposes, AKP preferred “domestic opening” or even better “national unity plan,” invoking that catchphrase echoed in so many constitutional and legal provisions.¹⁵⁷ Some proposals within this plan included a generous amnesty for PKK rebels who put down their arms, public instruction in Kurdish at the university level, and a new constitution that better respected Kurds’ citizenship rights.¹⁵⁸ This ambitious plan prompted backlash and skepticism across a broad political spectrum.¹⁵⁹ Turkish nationalists accused AKP of treason, whereas the pro-Kurdish DTP called AKP’s plan “just another attempt to sideline the Kurdish opposition.”¹⁶⁰

Undeterred, AKP marched ahead. In 2009, the first public channel broadcasting in Kurdish was launched.¹⁶¹ A private Kurdish television channel, Earth TV, followed suit in 2010.¹⁶² In 2011, the content and time restrictions on the broadcasting of minority languages were lifted.¹⁶³ In the late 2000s and early 2010s, a handful of universities opened faculties in

153 *Id.* at 156.

154 *Id.* at 154.

155 *Id.*

156 *Id.* at 155.

157 *Id.*

158 *Id.*

159 *Id.*

160 *Id.*

161 *Id.*

162 DERYA BAYIR, *MINORITIES AND NATIONALISM IN TURKISH LAW* 170 (2013).

163 *Id.*

Kurdish language and literature.¹⁶⁴ Public state universities also began to offer electives in Kurdish.¹⁶⁵ In 2010, political campaigns in languages other than Turkish were permitted.¹⁶⁶ Even outside political campaigns, the use of Kurdish in public activities generally escaped punishment.¹⁶⁷ To promote a more pluralistic political marketplace, the government extended state funding to political parties that receive more than 3% of the vote (reduced from 7%), and abolished criminal penalties for the use of non-Turkish script, which in turn permitted the use of Kurdish letters X, Q, and W.¹⁶⁸ Several villages that were forced to change their Kurdish names to Turkish were permitted to revert to their original names.¹⁶⁹ A June 2014 law legalized the ongoing peace process with the PKK.¹⁷⁰ It adopted measures, among other things, to encourage PKK members to abandon the group and lay down their arms, and provided immunity to those who followed the specified procedures.¹⁷¹

The magnitude of these reforms may give the impression that AKP was uniformly pro-Kurdish. But that is not so. AKP favored reforms on Kurds' rights when it benefited its political hegemony but rejected others that posed a threat.

Consider, for example, the Turkish electoral threshold, which, at 10%, is the highest in the world.¹⁷² To obtain representation in the Parliament, a political party must obtain at least 10% of the popular votes in the general parliamentary elections.¹⁷³ The electoral threshold was implemented in the early 1980s for the purpose of bolstering legislative stability following two decades of weak coalition governments.¹⁷⁴ But the threshold has also had the effect of significantly skewing parliamentary representation in Turkey and keeping pro-Kurdish parties out of the Parliament.

The November 2002 parliamentary elections are illustrative. Out of the approximately 32 million votes cast, AKP obtained approximately 11 million votes and the primary opposition party, Republican People's Party (*Cumhuriyet Halk Partisi*), received approximately six million votes.¹⁷⁵ The remaining 15 million votes were cast for parties that could not clear the 10% threshold.¹⁷⁶ For example, the Democratic People's Party

164 Eur. Comm'n, Turkey 2015 Report 69 (Commission Staff Working Document, SWD (2015) 216 final).

165 *Id.*

166 Somer & Liaras, *supra* note 81, at 152.

167 Eur. Comm'n, *supra* note 142, at 61. (2014).

168 *Id.* at 16. (2014).

169 *Id.* at 61. (2014).

170 *Id.* at 5. (2014).

171 *Id.* at 5–6. (2014).

172 Cem Tokar, *Why Is Turkey Bugged Down?*, 7 *TURK. POL'Y Q.* 25, 27 (2008).

173 *Id.*

174 *Id.*

175 *Id.*

176 *Id.*

(Demokratik Halk Partisi), which represented Kurdish interests, obtained 6.2% of the electoral vote. As a result, it was completely excluded from the Parliament. The 15 million votes cast for parties that could not clear the threshold were then reallocated between the parties that cleared the threshold, landing the AKP 64% of the parliamentary seats with only 34% of the popular vote.¹⁷⁷ AKP gained significant leverage from the threshold and thus had little motive for lowering it.

Pro-Kurdish political parties were in a significant bind. They were either dissolved by the Constitutional Court, or, when allowed to compete, they could not clear the high electoral threshold. To escape this bind, many pro-Kurdish political parties fielded their candidates as independents.

But the June 2015 parliamentary elections produced an unusual result. The pro-Kurdish party, People's Democratic Party (*Halkların Demokrasi Partisi*) (HDP), ran for Parliament as a political party. Despite serious doubts about its ability to clear the 10% threshold, it refused to field its candidates as independents. HDP's political gamble paid off as it obtained 13.12% of the vote, giving it 80 seats in the Parliament. As expected, HDP obtained the support of the Kurdish minority in Turkey, but its appeal went beyond this core base. It also included non-Kurdish liberal intellectuals who identify with the plight of the Kurds, and the progressive, egalitarian message that HDP espoused.

HDP's success came at AKP's expense. In part because HDP managed to clear the electoral threshold, AKP lost the parliamentary majority it had held for over a decade. This spelled trouble for AKP's ambitious political agenda, including a new constitution to switch to a presidential system and bolster the powers of President Erdoğan. As a result, AKP soon began to sing a different tune toward the HDP.

With no party claiming a parliamentary majority, the June 2015 elections resulted in a hung parliament and coalition negotiations failed. President Erdoğan then called a snap election, to be held in November 2015. Between the June and November elections, the AKP deftly increased its appeal to nationalist voters by ramping up attacks against the PKK. The ceasefire between the government and the PKK collapsed in July 2015, resulting in the resumption of a decades-long conflict. Kurdish towns in Southeastern Turkey were placed under intermittent curfew, with tanks strolling the streets and residents forced to flee.¹⁷⁸ President Erdoğan vowed to continue military operations in Kurdish towns until they are "cleansed of terrorists." "You will be annihilated in those houses, those buildings, those ditches which you have dug," he continued.¹⁷⁹ Suicide

¹⁷⁷ *Id.* at 28.

¹⁷⁸ Abdullah Demirbas, *Undoing Years of Progress in Turkey*, N.Y. TIMES (Jan. 26, 2016), http://www.nytimes.com/2016/01/25/opinion/undoing-years-of-progress-in-turkey.html?_r=2.

¹⁷⁹ *Id.*

bombings, some of which were attributed to the PKK, began to rock the country. This decreased the appeal of HDP, particularly following rumors—similar to those instigated for other pro-Kurdish parties throughout Turkey’s history—that the HDP was the political wing of the PKK. The economic and political turmoil the country experienced in the interim period sent voters flocking back to the promise of stability under a majority AKP government. AKP emerged victorious from the November 2015 snap elections, claiming 317 of the 550 parliamentary seats. HDP obtained 10.67% of the vote, barely crossing the 10% electoral threshold.

Following the elections, relations between the AKP and Kurds soured. The Kurdish opening that AKP had instigated slowly began to close. HDP had proven to be a threat to AKP’s political hegemony. What’s more, HDP’s charismatic co-president, Selahattin Demirtas (known as the “Kurdish Obama”), had publicly voiced his opposition to AKP’s proposed presidential system, calling it a “one-man system,” impliedly referring to President Erdoğan.¹⁸⁰

As a result, there would be a price to pay. Shortly after the elections, then-Prime Minister Davutoğlu cancelled a meeting it had scheduled with HDP leaders to discuss the drafting of the new constitution. He accused HDP of fomenting violence and polarizing the country by supporting the PKK. Most recently, in May 2016, the Parliament voted to temporarily lift the parliamentary immunity of its members who are under indictment for allegedly committing a criminal activity.¹⁸¹ Although the measure also covered non-HDP deputies,¹⁸² the stated basis for the measure was advocacy of terrorism by parliamentary deputies,¹⁸³ and HDP deputies were disproportionately affected, with at least 50 of its 59 deputies now subject to criminal prosecution.¹⁸⁴ “This is a historic vote,” President Erdoğan announced following its approval.¹⁸⁵ “My people do not want to see guilty lawmakers in this Parliament, especially the supporters of the separatist terrorist organization,” he added.¹⁸⁶ In November 2016, the two joint leaders of HDP, along with at least 10 HDP deputies, were arrested

180 Letter from HDP Co-Chairs Mr. Demirtas and Ms. Yuksekdog on AKP’s Move to Lift Immunities of MPs (May 6, 2016). <https://www.hdp.org.tr/en/en/news/from-hdp/letter-from-hdp-co-chairs-mr-demirtas-and-ms-yuksekdag-on-akps-move-to-lift-immunities-of-mps/8868>.

181 Giriş Tarihi, ‘*Dokunulmazlık Kanunu*’ Resmi Gazete’de, SABAH (June 8, 2016) <http://www.sabah.com.tr/gundem/2016/06/08/dokunulmazlik-kanunu-resmi-gazetede>

182 For example, several members of CHP, the main opposition party, may also face criminal charges for insulting President Erdoğan.

183 *AKP Dokunulmazlık Teklifini Meclis’e Sundu*, CUMHURİYET (Apr. 12, 2016), http://www.cumhuriyet.com.tr/haber/siyaset/514558/AKP_dokunulmazlik_teklifini_Meclis_e_sundu.html.

184 Ceylan Yeginsu, *Turkish Parliament Approves Stripping Lawmakers of Their Immunity*, N.Y. TIMES (May 20, 2016), http://www.nytimes.com/2016/05/21/world/europe/turkey-parliament-immunity-kurds.html?_r=0.

185 *Id.*

186 *Id.*

“because of their reluctance to give testimony for crimes linked to ‘terrorist propaganda.’”¹⁸⁷

As the political bickering continues, Kurds’ rights and Turkey’s democracy hang in the balance. The next Section considers the implications of the Kurdish question on the definition and future of citizenship in Turkey.

VI. HYBRID LEGAL-POLITICAL CONCEPTION OF TURKISH CITIZENSHIP

For legal and practical purposes, Kurds are Turkish citizens. They have the same Turkish passports and identification cards as the rest of the citizenry. They are subject to the same obligations such as military service and payment of taxes. Kurds have even attained prominent positions in the Republic, including service as generals, cabinet ministers, and President.¹⁸⁸ Roughly one in four of all parliamentary deputies since the foundation of the Republic have been Kurds.¹⁸⁹ As long as they did not publicly tout their Kurdish ethnicity, they were treated as equals.¹⁹⁰

Yet Kurds were also denied many of the benefits accorded to other citizens. They were denied the right to speak and broadcast in Kurdish and obtain a Kurdish education. Although some Kurds achieved political prominence, they were ejected from their seats the moment they began to advocate for the Kurdish cause.

The problem is often attributed to the nationalist 1982 Constitution that created a strong, central state and elevated national unity over individualism. To be sure, the Constitution has plenty of problematic provisions in need of revision, some of which were discussed in Part II. Several scholars have proposed revising the Constitution to remove references to potentially ethnic terms—such as “Turk” in the citizenship clause—and replacing them with provisions that make it clear that citizenship is a civic, not ethnic, phenomenon.¹⁹¹

But this debate mistakes symptom for disease. The constitutional definition of citizenship is a symptom, not a cause, of the problem.¹⁹²

¹⁸⁷ Kareem Shaheen, *Turkey arrests pro-Kurdish party leaders amid claims of internet shutdown*, THE GUARDIAN (Nov. 4, 2016), <https://www.theguardian.com/world/2016/nov/04/turkey-arrests-pro-kurdish-party-leaders-mps>.

¹⁸⁸ Ergil, *supra* note 10, at 126.

¹⁸⁹ *Id.*

¹⁹⁰ See *id.*

¹⁹¹ Ersan Şen, *Türk Milleti* [Turkish Nation], HABER7 (Feb. 1, 2013), <http://www.haber7.com/yazarlar/prof-dr-ersan-sen/984425-turk-milleti> (summarizing and critiquing the proposals).

¹⁹² To be sure, semantics can matter. I do not mean to discount the symbolic significance a clarification in the citizenship definition would have for many Kurds who believe that the clause

Citizenship has become as much a cultural phenomenon in Turkey, driven by politics, as it is a constitutional-legal concept. In Turkey, as in other polities, constitutional law and politics go hand in hand. And in the context of Turkish citizenship, and Kurds' place within Turkey, politics has shaped, transformed, and at times, trumped the law. Here's why.

For historical reasons, Turks have been skeptical of rights claims by ethnic minorities, particularly when the claims are backed by Western powers. This harkens back to World War I, when the Allies fomented ethnic nationalism and attempted to split up the Ottoman Empire into ethnic bits.¹⁹³ Turks also love a good conspiracy theory. Modern Western-backed attempts to bolster Kurdish rights are viewed as a continuation of the same post-World War I plot by Christian powers to divide and conquer Turkey. Paradoxically, then, international pressures on Turkey to do more on the Kurdish question have had the counterintuitive effect of boosting domestic opposition to Kurdish rights.

The war against the PKK also provoked significant anti-Kurdish sentiment in Turkey. Violent clashes between the PKK and Turkish armed forces have claimed the lives of as many as 40,000 people.¹⁹⁴ When I was growing up in Istanbul in the 1980s and 1990s, PKK attacks on civilian targets—including movie theaters and shopping malls that my friends and I frequented as teenagers—were commonplace. Many people in Turkey know someone who has fallen victim to PKK violence, particularly because conscription is mandatory for all men. Turkey sent millions of young recruits fresh out of high school or university to fight the PKK. Thousands never returned home.

With the bans on Kurdish political parties, publications, and broadcast, PKK rebels camping out in Turkey's southeast mountains became the most visible spokespeople for the Kurds. The PKK's violence against civilians and demands for an independent, autonomous Kurdistan also played into the official stereotype of Kurds as "mountain Turks" seeking to divide the Republic.

Over time, the PKK's illegitimate terrorism against Turks became synonymous with Kurds' legitimate demands for equal citizenship rights. To many Turks, heeding the Kurds' demands for inclusion would amount to accepting the legitimacy of the PKK's terrorist cause—a political and social anathema. Politicians and activists supporting the Kurdish cause were unsuccessful at convincing the public to disaggregate the two. And when Kurdish politicians were allowed to assume office, they failed to

imposes on them an identity that they reject. But if the primary problem is the unequal distribution of citizenship burdens and benefits, the polity's limited time and energy is better placed elsewhere.

¹⁹³ Somer & Liaras, *supra* note 81, at 157.

¹⁹⁴ *Id.* at 153.

adequately distance themselves from the PKK in the public eye and chart an autonomous political path.

Turkish politicians are also to blame for the impasse. Many derive benefits from perpetuating the false claim that the PKK's illegitimate war and Kurds' demands for equality are one and the same. In the 1990s, as Dogu Ergil explains, "it was widely believed that each body bag bringing a soldier home from the east brought added votes" to the Nationalist Movement Party (*Milliyetçi Hareket Partisi*) (MHP).¹⁹⁵ The escalating PKK violence in the 1990s significantly boosted MHP's popularity, handing MHP a historical second-place finish in the 1999 elections with 18.6% of the vote.¹⁹⁶

Recall from the previous Part that the AKP also used the Kurdish question for political gains. AKP's leaders initially appealed to the Kurds, seeing them as an organic part of their conservative, pious base. But after the pro-Kurdish party HDP began to present a political threat to AKP's hegemony, the AKP altered its course. It dropped the ongoing peace negotiations with the PKK, stepped up attacks against PKK targets, and spearheaded an effort to paint the HDP as bedfellows with the PKK.

The rapid expansion of the Turkish polity also disturbed the simplicity of the ideal Turk. The Turkish polity looks very different than it did at its founding. Following rights reforms for minorities, diversity has partially displaced state-imposed uniformity. Ethnic, cultural, and religious minorities have been more willing to display their heterogeneous characteristics in public. With increasing societal acceptance of homosexuality, LGBT groups have also achieved more prominence. During the Syrian civilian war, nearly two million refugees flooded Turkey and have become residents. As a result, Turkey is now more like a salad bowl than the melting pot its founders envisioned.

As these societal differences come to the surface, the malaise bubbles underneath. As the definition of Turkishness becomes more complex and outsiders turn into insiders, those on the inside have begun to push back and vilify those who do not fit. Ethnic Turkish nationalism has been on the rise since the 1990s,¹⁹⁷ fueled by PKK attacks against civilian populations. Although these Turkish nationalists oppose xenophobia against Turks living in Europe, they practice the same against the Kurds at home.

To be sure, many progressives in Turkey now support Kurds' demands for inclusion. This support is evinced by HDP's popularity among many liberal non-Kurds during the June 2015 elections. Yet, others remain agnostic or skeptical, in part because they suspect ties between the HDP

¹⁹⁵ Ergil, *supra* note 10, at 131.

¹⁹⁶ *Id.*

¹⁹⁷ Somer & Liaras, *supra* note 81, at 158.

and the PKK. In addition, Turkish politicians' use of the Kurdish question for political gain foments cynicism among the voters. When, for example, the AKP champions Kurdish rights, AKP's opponents tend to view the proposed reforms as political ploys to win more votes.¹⁹⁸ As a result, some progressives opposed AKP's Kurdish opening—not because of its substance—but because of its source.

For the time being, these cultural and political tensions have shown no signs of abating. If anything, they have gotten worse. At the time of this writing, Turkey is more divided than it has ever been in recent history, much of which is fueled by President Erdoğan himself. He often uses abrasive rhetoric, particularly during election campaigns, to paint opposition parties as traitors or terrorists and energize his base. The coup attempt on July 15, 2016, provided further fodder to President Erdoğan to conduct massive purges against his political opponents, including deputies from HDP.

In this polarized and crisis-ridden environment, meaningful progress on bolstering Kurds' rights has proven elusive. Progress requires consensus, and consensus requires compromise and some level of trust between negotiating parties. These elements are absent from the current political discourse. As a result, negotiations between the political parties to write a new Constitution unraveled almost as quickly as they began in early 2016. At least in the near future, it will be exceedingly difficult for Turkish society to move beyond the paralyzing social and political tensions currently roiling the country and achieve meaningful progress on Kurdish rights.

VII. CONCLUSION

Although the focus of this paper has been on Turkey, alien citizenship is a universal phenomenon that spans history and geography. Numerous countries—too many to recount here—have suppressed basic citizenship rights of minority groups in the name of unity and stability.

At the moment of this writing, we are experiencing a significant global resurgence of this phenomenon. As Syrian refugees flood Europe, as xenophobes in the United States feed on the public's misconceptions about Muslims, and as the Islamic State spews lies about non-Muslims, many insiders cling for comfort to their national identity. But with rapid globalization and the resulting demographic changes in many polities, a uniform national identity is becoming increasingly more elusive. The newcomers are viewed as harbingers of trouble and instability. With their sacrosanct national identity under perceived attack, some insiders find

¹⁹⁸ *Id.* at 163.

comfort in the embrace of fear-mongers. The Orbans, Erdoğan, and Le Pens of the world thrive on these fears and add fuel to the fire, scaring the public into taking radical and short-sighted actions. Britain votes to exit the European Union, France bans the wearing of Burqas, Turkey prohibits publications in Kurdish, and Swiss voters approve a ban on the construction of new minarets.

As exemplified by the Turkish case, alien citizenship is not a sustainable model. Newton's third law applies here as well: For every action, there is an equal and opposite reaction. The forced integration of minority groups leads to their banishment to the fringes of society, which causes an opposite reaction in the form of resentment, separatism, and violence. In the end, these consequences are far more pernicious for national solidarity than a magazine printed in Kurdish, minarets in Switzerland, or the image of women in burqas strolling the streets of Paris.

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