

TEPAV Constitution Experts Seminar Series –5
Prof. Andrew Arato
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Assoc. Prof. Levent Gönenç:

Here in TEPAV we did something from 2007 about constitution making process. We arranged conferences and we published many policy papers and some information books about constitution making process and constitutional studies. And in 2007 we arranged a big conference here in TEPAV in which participated at least 200 civil society organizations. And we wanted to produce knowledge for the constitution making here in TEPAV which would bring some benefit for all concerned parties: political parties, parliament and other parties in the constitution making process. We invited some people from Europe and from America – ok – some very good scholars from America and from Europe, to discuss certain constitutional problems from comparative perspective. And today, again, we have a very distinguished guest from America, he's actually Hungarian but he lives in America and teaches political science in American universities, Andrew Arato and he will talk about some constitutional problems, some constitutional making issues from a comparative perspective and he knows Turkey very well, he will make some reference to Turkish process as well and he will make some comments about the situation in Turkey before the general elections. Lastly, maybe we can talk about the prospects of constitution making in Turkey, can we make a constitution or not after the general elections? And he will, I think, say something about it.

So, I would like to give the floor to Professor Arato, after that some questions and answers, we'll take some questions and he will answer them, I will make some comments and we'll go like that, ok. Please...

Prof. Andrew Arato:

Thank you very much...it's really wonderful to be here, and I would like to thank TEPAV and in particular Professor Gönenç and Mehmet Ratip for taking the initiative to bring me here, it's the first time in Ankara, though I have been in Turkey three times before in Istanbul at Bilgi University, Bahçeşehir, Sabancı, Koç, at various functions always speaking about constitutional matters, my involvement goes a little further back than that because in 2008, early, I was asked by Professor Alfred Stepan of Columbia University to participate in a project commenting on a draft being prepared for a new Turkish constitution; my team, led by Professor Özbudun. I never actually saw the draft, only a couple of parts of it, couple of articles were translated by Ahmet Kuru but the conference did take place at Columbia University. I began to study modern Turkish constitutional issues then, two months before the conference. I'm Hungarian, as Professor Gönenç rightly said, and I'm a historian by training and as you may imagine I do have a knowledge of Turkish history, older Turkish histories, especially those 185 years when you were kind enough to occupy most of my country. This part I know, and as you also know, Hungarians have fond memories of this period and we are strong supporters of your entry into the European Union, too. So this is an aspect perhaps of the background: we grow up in Hungary not playing cowboys and Indians, but playing Hungarians and Turks, and Hungarians, of course, always win. But that's not historical reality; it was a great coalition of Western powers that actually won Hungary back from the Ottoman Empire. In any case, modern Turkish history I did not know and I began to study constitutional history then so people who point out that I don't know Turkey are right. All I know is the constitutional issues, and I say that from the outside, that this is all that I have studied but from a comparative point of view and so it is for you to decide whether the comparative point of view has something to offer. I generally think that it does and I've written now two middle-sized articles, maybe three-volume manuscript and three short articles on your problems: whether you think they are good or bad probably depends more on your political affiliations than on your intellectual bent but that is an unfortunate result of the political polarization that Turkey has experienced recently. I myself do not feel any

attachment to any political side here and hopefully that will be clear also from what I have to say. Now, I will speak only for about twenty minutes so that we can have a really good discussion.

When I began to study Turkish constitutional problems, the first thing that occurred to me, since I do these matters comparatively, is that I should find the type of constitutional development that Turkey belongs to because since the Second World War there have been different modalities, different paradigms of constitution making. The one that I tend to think is the most excellent is the one that has been practiced from Spain to South Africa, a two-stage kind of process in which two constitutions are produced and in turn remake a final one. Generally the final one is made by elected assembly for that particular purpose and on both levels consensual requirements, a high level of inclusion are satisfied. This is a path-determined process and it's possible only when a country is transitioning from a dictatorship to a democracy; not relevant to Turkey as you can already see. The Turkish path belongs to another modality, that of long democratic transitions where there is perhaps an authoritarian beginning but steps have been taken at different periods introducing democracy piecemeal. I date the Turkish transition to 1983, not to the constitution as much as the election, you were just speaking about that, I don't think General Evren really imagined what Turgut Özal was going to make with this constitution or what the Turkish electorate was gonna make with this constitution because immediately a mostly authoritarian plan was turned into a semi-democratic one and that was done by the electorate and probably the extremely clever politics of then Prime Minister Turgut Özal. This was not yet formal change, that began in '87, but in any case, that's when a transition for me begins. I know other people will put it differently. I learned from the very excellent articles of Professor Gönenç, Professor Gençkaya, Professor Özbudun and many others what has happened since '87, '93, '95', 2000, 2001 all the way up to 2006 really and what I think is most important about that process is the highly consensual nature which tended to characterize the steps. This for me was important because one of the lessons I took out of this Spanish to South African process is the key to them was always consensus, the inclusion of the main political actors in the business of constitution making. Sometimes that was constrained consensus but in one case, and I want to return to that later on, the Spanish case, it was voluntary. Premier Suarez or President Suarez- because in Spain that's, they use the term President for the Prime Minister-, President Suarez had always the votes to impose a constitution with the Right and chose instead to produce a consensual constitution using also the support and the voice of the socialists and the Catalan nationalists and the communists too. So though he could have made an imposed constitution along right-wing lines, he was not constrained by the party political structure, he chose to make a consensual document. Interestingly enough, in the recent book, Ergun Özbudun and Ömer Faruk Gençkaya, they look to that Spanish process as the model. Right in the beginning of their book in the introduction they refer to a book by Andrea Bonime Blanc concerning the importance of consensus. Bonime Blanc wrote about Spain but in Spain this consensus was voluntarily assumed. Basically the king – you don't have one – and the Prime Minister – you do have one – and keep that in mind for a second because I think this is a very unstable way of getting consensus but Spain showed that it was not impossible. The reason why the Turkish consensus has worked subsequently was for constrained reasons: the electoral system, as you now know since 2002, allows for a majoritarian government, highly majoritarian government, constitution-making majorities even, but between '87 and 2001 you got lucky, and the system produced non-constitution-making majorities and so agreement had to be produced. Correct me if I get the facts wrong, he's the expert and I could get something wrong, as I said I'm not a Turkologist but I think this is right. It was constrained that the old party cause commissions had to be formed because they could not amend the constitution without and sometimes actually the consensus broke down. The Welfare Party, for example, sometimes did its best to make the consensus collapse but in any case most of the time they managed, so it was constrained consensus which I think is better most of the time because, you know, democratic good will, a constitution is good will, self-limitation is not ordinarily available when it comes to political actors. Whether it was or was not empirically one or another case I don't want to talk about

but in any case it was constrained and it worked. But, as you know, the election was in 2001 or 2002? 2001 ..2002, the 2002 election thanks to General Evren of course we have to always say the one who gave you this wonderful gift was, it was General Evren who gave you the 10% threshold. It just didn't work out that way before but thanks to General Evren, his great gift to Turkish people, the 10% threshold finally produced what it was supposed to produce, namely a two-party parliament, I mean what was its purpose, right? To eliminate parties. I mean who wanted partocracy? One wanted a system which was a controlled democracy and a controlled democracy is one with very few parties' governability, the neo-conservative thesis. Well, finally it happened, ok, and so you had two parties. Basically I know you know that, through the independent candidates, some of the Motherland Party's still sneaked in – not correct? – when it's not correct you tell me later, but in any case, as far as I could read the numbers, the Justice and Development party, I use the English term for it so I don't want to get into any trouble with terminology, the Justice and Development party almost had two-thirds, if I'm not mistaken, on a basis of 32, 33 percent of the vote and the Republican People's Party had pretty big parliamentary representation too and there were some small elements in there but basically two parties. This is new. Now what is striking, pretty striking if you think about it in retrospect, some people here are young and no longer probably even remember, is that in spite of that, consensus continues until 2006 basically. To a foreigner like me who comes in to this late, the most striking example of that is that the constitutional amendment achieved to elect the current Prime Minister but then excluded from politics through the exclusion of the Welfare Party back into politics, that is the CHP votes to remove that through constitutional amendments the President vetos it the over-rider veto is back. I would think that's a pretty big thing but I don't know what people would think about that now in retrospect. Some of you think, we shouldn't have done it, and some of you think, ah so what. I don't know what you're thinking but in any case I think that from the outside it's a pretty big thing especially given the fact that he is already known to be extremely popular. So he's back but other things are down also until 2006. Then, 2007, this has gotta be indisputable because in fact the consensual process breaks down. I don't wanna go back now and say who is to blame because we don't wanna have a fight, I just want to in order to set the record straight mention that there are three court constitutional court decisions not one in this period, people only mention one which has to do with the quorum problem, which goes against the Justice and Development Party but there are two other ones also, which allow the referendum and the presidency to take place and after referendum, validate the referendum and these go against the Republican People's Party. I just say this because I find that the discussion of that record is sometimes pretty one-sided by some authors. But however you adjudicate this, you know, some people can say well the quorum decision is an outrage and the other ones where it's so necessary that one wouldn't even wanna give a credit to the constitutional court or one could say the opposite, the court was weak in the first instance and the second instance they did something absolutely right or one can say a third thing, whatever one says, it's pretty obvious that from this period on there is no consensus in the system and so there is a constitution-making on the horizon but without any real repair in prospect for it. In spite of all of that Professor Özbudun and Professor Gençkaya conclude their book published –in English at least, I don't know about the Turkish edition – was 2009, still with the lines that the only hope for the future will be a consensual process of constitution making. Now let me again go back to my distinction between constrained and unconstrained forms of consensus. I can see two ways of constraining – let's assume for the moment that everybody believes that Turkey still needs a new constitution, maybe not everyone believes that but let's just assume that, I actually think it would be a good idea not to continue with amendment packages but just to do a new constitution anyway. Turkey's European partners also want this, many civil society groups have been suggesting the passing of a new constitution for a long time so there seems to be a tremendous amount of desire to do this, so there is I think at least large opinion outside and inside of Turkey that there should be a new constitution, the parties are not promising even, so let's assume for the moment that there is a need for a new constitution and that it should be consensual. There are constrained and unconstrained ways of making a new

constitution so what would be some constrained ways of making a consensual constitution, what would constrain consensus? Let me say first that the voters even in this electoral system, well – let me back-track – the electoral system could constrain it. Number One: what electoral system? Well a different one than this one, for a constitution making assembly to have a 10% threshold is a really grave abuse from a normative point of view. Even Evren was not producing a constitution making assembly, he was producing a normal assembly and a process of governability. He made a constitution through an extremely bad process by the way, a terrible process. You could call it a constituent assembly in Turkey. The term constituent assembly is used extremely loosely by very famous authors even but whatever it was that they had was over and done with and what he wanted was to produce was a normal assembly and the 10% percent was for normal assemblies. So a 10% threshold is very unusual for a constitution making assembly. If the parties want a constitution making assembly the threshold should have been lowered. I know that this is already perhaps spilled milk or I don't know what the Turkish proverb would be that would indicate this because the election is in June and the electoral rule is still here so probably the 10% threshold is what you're going to be voting under but I still think it's worthwhile to say it should have been changed. It's an abuse, it's there, but it's wrong, you're doing it by the way, there is a way that the parties could fight against it but they're also not doing it. One way of doing it would be is for all the opposition parties to unite but they're also not doing that. Ok, so this is the first way of making sure that there would be constraint: change the electoral rule, they didn't do that. The second way of doing it the Turkish people still have a choice. They can do what the parties didn't do and vote in such a way that no one gets even three-fifths. That is of course up to the Turkish people and it's very hard of course to reason collectively but, you know, if you read the polls and you see that someone is getting a very high vote, you could vote for somebody else and not for somebody small. I mean rational voting would be not to vote for the biggest, vote for the next two and not for anybody small. That would be also the rational strategy that any voter could have in order to produce more consensus; voting for a small party is like wasting your vote, voting for the big one is majoritarian. I'm just talking about not about any other issue now in Turkish society but just the one issue that I'm interested in: how to produce consensus. So vote for the second and the third party don't vote for anybody small and don't vote for the biggest. If somebody thinks I'm doing politics, I'm not, I'm just doing arithmetic, ok? The third consensus producing device would have been the constitutional court, would have been, maybe still is. Why the constitutional court? Because contrary to the opinion of some people, I could mention their names in a discussion if you want, the election is for a normal grand national assembly and a normal grand national assembly under the current constitution can create a new constitution because there's no limit to that under the current constitution but it can only do so under article 175 and articles 1, 2 and 3 as entrenched by 4 which means that the constitutional court retains its ability which it also repeated in the last decision in the referendum to supervise this process and so that could be a consensus constraining device. Why a consensus constraining device? Because it takes 110 deputies to go to the constitutional court, if you don't have 110 deputies you can't go to the court so if you had a consensus – how many 550 in a parliament? 550 altogether, right? – so if you have a consensus of 441 deputies whoever they are, the court is out, ok? That's a consensus-producing move. It's still there in the system. Is it still there in the system after the court has been packed? What do you mean the court has been packed? Well from my point of view reading comparative constitutional history from President Roosevelt's failed attempt to D. F. Malan's successful attempt in 1950 to Indira Gandhi's efforts in 1970 to the very contemporary efforts of Hungarian Prime Minister Viktor Orban I would say your court has been packed and has been packed immediately with four substitute members whose identity the government knew and then two other members who they had to pick from a complicated process; not only that but the voting rule has been changed from three fifths to two thirds so the chances of a constitutional amendment being judged unconstitutional have been, I would say, just as a statistician, reduced. I don't know any judge. I never met a Turkish constitutional judge. I don't know who they are. I don't know anything about their politics if they have any. Of course they have none which is always a

little unbelievable, but all I know is governments don't do these things for nothing but when they do it they do it because they think that it matters. It's a lot of effort to go into putting this amendment in the midst of that beautiful package of 25 with all those nice good things. So if you do that, you do it because it matters especially when you just got some adverse decisions on issues that matter to your constituency. So the court is a packed one as far as I can see and the likelihood that even if there are 111 deputies to go to them that something will be turned down in a new constitution are not big, so I would say something of this aspect that there is constrained consensus in the Turkish system. I would say there is very little of that now. Of course the voters can change that situation. Of course even a packed court can behave differently than its packers can expect but, on the whole, the constraints are weak toward consensus. What about voluntary, and I end with this, the example of Prime Minister Suarez and the king. After all there is some reason not just moral and intellectual why a party that has the majority would still prefer consensus. Do you want a constitution to be made for one season only? Do you want the next majority to do to you what you did to them. Do you want a conflict over this for the indefinite future? Do you want your partners abroad to say you've really done it well and this is a great job which allows you to be a full member of all the international communities that you wanna be a member of? I mean do you want international legitimacy for your product? Do you want to achieve peace with those small constituencies, Kurdish, Alevite, who may not get their voice in unless there is consensus in the process? I mean there are a lot of things that you may be able to get by via consensus. Assuming even that yourself are enlightened enough to represent Kurdish and Alevite interests, maybe your own party is not so, you can say, "well I don't wanna really do it but these other people who are in the process, these Kurdish deputies, or these CHP deputies are so tied to the Alevites, they're making me do it, I don't want to, I don't like these people but they're making me and now it's part of the process, the process is making me do it," so you can actually do the right thing that you actually want without having to take responsibility for it in the eyes of your own most radical followers. This gives you advantages, you can do better if you follow the consensual method. So there are real advantages, this is what Suarez wanted, because Suarez didn't want to be the prisoner of his Francist radicals who were also in his party. He wanted to do the right thing but he couldn't have done the right thing on the basis of the right-wing majority so he could do the right thing only by turning over to moderates in other parties and making alliances across and without the consensual method this was impossible so voluntary consensus too is possible and could be achieved even when it is not constrained by structural elements of the system. Would it be better had it been constrained? But I think, since 2007, there has been an intense effort to eliminate those structural elements, so now I think those who have that majority, or will have it, after the elections, if they will have it, have to think about it. Do they actually... will they really benefit from using that majoritarian power like the Prime Minister in Hungary just did, overriding every other interest in society, producing a purely majority constitution which may be 30% of the country strongly identifying with and ramming it down the throats of everybody else and opening up the future to untold problems which no one knows how they will be managed. So I think, even in that case, even if there are no constraining elements in the system, it would be a good idea to choose a consensual path. Thank you very much.

Gönenç:

Thank you very much Professor Arato. Ok Professor Arato talked about a very important concept: consensus and consensual constitution making and he talked about two different types of consensus - constrained consensus and unconstrained consensus, and he listed three important elements of making a consensus in real political life- an electoral system, rational vote strategy and constitutional court, and in conclusion he said that in Turkey constraints are weak for consensus. So maybe to open the discussion maybe you will have some questions and I will take these questions but before that maybe Professor Arato can clarify consensual making devices and maybe he can talk about the role of civil society organizations in this consensual process a little bit and then we can continue.

Arato:

Even as I was speaking I knew I left some really important out. And again thanks to General Evren your party system is damaged and as one of my students says Turkey has three conservative parties. Very rare, but this is in effect the case, if you compare even CHP next to activists, CHP has become a more conservative party. Government parties even call themselves 'parties of the right', conservative parties, now of course there are lots of other parties in Turkey but they're not in parliament so since the electoral threshold has not been dropped, right away there's a party exclusion you know you could interpret consensus in just such a way that you will consult with the other two parties and I mean who knows if the Nationalist Action Party will even be in parliament, so two parties. Well that would be very narrow consensus. You know, political scientists speak about the disproportionality index. You could have the highest in the world like forty, fifty that's what you had between 2002-2007. It's a little lower now 40, 50 % excluded from parliament. Turkish people lose that voice to that extent it's remarkable. The other 40, 50 % make a constitution for that. It's dramatically unfair but one can do something about it and not just by adding party inclusion to the scheme, so you are absolutely right in turning the discussion where you turned it, but I proposed a scheme which corresponds to some aspects of TÜSİAD's scheme, too, of using a purely proportional scheme for a constitutional assembly that could then be combined with the grand national assembly in some way that it would be a partial corrective. Of course it's not gonna happen but even that would only bring in parties and Turkey's very rich civil society. Evren interestingly perhaps too may even be connected to this. Evren has dramatically made the life of parties difficult, the field opened up to civil society, the country's economically powerful and I would say comparatively quite rich -there are a lot of poor people in Turkey but it's a rich country internationally- and that creates a foundation for civil organizations of all kinds. So you have a very rich multi-textured, multilayered civil society which then takes up also a lot of political roles. I mean you see these proposals from the trade unions, bar associations, TÜSİAD ... and many others that I can't even mention, because I'm not a reader of Turkish, in this area or other areas and to participate in these political issues in a way that parties could very well be weaker than you are. So I think to really extend pluralism here and consensus one really ought to figure out ways of bringing all this participation in and I think first of all you are already doing it without being asked since you are proposing these programs but I think there is, if we're talking about what voluntarily can be done it's certainly not gonna be constrained in any way but what can be voluntary done by parliament they can do quite a lot to open the field to actual interaction, this means, this would mean that the channels could really be made open. First of all, they can call for that participation in a more formal way. Secondly, establish a structure of hearings and discussions in which the results would be fed into the parliamentary process, they could organize electronic ways, websites by which the results of the parliamentary discussion and the civil discussion could be interchangeable and both sides could learn about the other at these levels. I think that a formal voice, in other words a voting power, would be probably resisted and may not be even necessary. I'm not sure how I feel about this as a normative matter, because, after all, there is always the electoral legitimacy that deputies have which civil organizations do not have but I think the influence that one could have on a large number of political parties could be all the same very significant. We spoke over lunch over public education programs which could be of extreme importance to really begin to organize as soon as the constitutional process is really launched, a kind of program that would penetrate all localities and institutions of the country each on its own level. This could be done on a very level as in South Africa and it could also be done at a very sophisticated level at universities and institutions of higher learning. This would be a more civil responsibility than it is a parliamentary one. I think all these things would be very good to launch and coordinate and to get some formal way to include them in the parliamentary process. I think it's probably too late already to get some formal way of getting a vote or an input at this level though I think parliamentary committees could actually establish a relationship to a civil umbrella organization that itself would select the most important documents and the most important inputs coming from below and go through them and seriously consider them. I

mean, I would hope that a sufficiently plural representation at a party political level would be also some kind of guarantee for a civil organization to find channels by which they can influence the different political parties. I think that is hard here because of the very reduction of the party political framework, but hearings, public hearings and public discussions would at least involve some soft constraint. I think probably the electoral system is already pretty much prejudged who will be formally represented and that, I think, is a problem of the processes so you would need a lot of mobilization to effect that and constitutional matters rarely produce a lot of mobilizations but I think still having many events, having a lot of public education, having websites and trying to get parliament to formalize some of the connection would be extremely worthwhile.

Gönenç:

Ok, thank you very much. Now we can continue questions from the audience. Please.

Guest:

Professor Arato, thank you very much for your presentation. I'm an engineer and I'm a retired politician. I would like to measure the things as an engineer. Do you have any specific definition of consensus for Turkey, at least the consensus of all 100% of voters or consensus of all the necessities, or consensus of all parties or what? What is consensus? Do you have any definition for Turkey?

Arato:

Well, you know it's not a question of definition because someone could define it as unanimity and someone could define it as a number so, for example, people talk about this, why does your constitution say three-fifths and two-thirds, why didn't they say some other fractions? It wished to say more than 50% plus one and less than unanimity, right? So, divide consensus by three-fifths plus the president, plus the referendum, that was one definition your constitution gave, and another definition was two thirds plus the president, so the current Turkish constitution has two definitions. Those are two definitions of consensus under your law; not my law, it's your law. Why does the constitution do that? Because it does not want to have two things, right? It does not want the same majority that legislates also make the rules under which legislation occurs, so if you legislate under 50% plus 1, you don't want that number to be the number by which the rules of legislation themselves can be changed. So, consensus must be more than majority, right? Ok? Must be more... Because if it's not more than that, then you have a situation in which a parliament could say "Ok by pure majority I will make our term 10 years rather than 4." This happened in 18th century United Kingdom; the American Revolution considered this to be one of the great abuses; constitutions were invented to avoid that abuse. I don't know if you ever heard of the liberum veto, that's an institution of Poland. The Polish have one of the oldest assemblies of the world and an institution by which I don't know 7-800 noblemen... this was the body. One could veto any legislation, then he had to have a horse right outside the assembly and he jumped on the horse and he rode away quickly so that the rest would not lynch him. So that's the other limit. It should not be unanimity because if there is unanimity then even one person can stop anybody from doing anything so, consensus, in modern constitutional terms, must be between majority and unanimity, ok? So it could be done anywhere, it's a political matter of where it is put, it's a political matter. Why was, what you're asking could be, ... amendments 10 and 42 not sufficient consensus? After all it was two thirds; MHP and AKP or Justice and Development Party both agreed to it, so it's only one party that didn't, well it was not sufficient consensus in quite technical terms, they left out 111 deputies and that was, under those circumstances, not sufficient consensus in that kind of matter. Higher consensus was needed in that kind of matter because they were touching arguably on secularism as one side understood this. Not everybody understood secularism to be involved in it but one party understood secularism to be involved. If secularism is involved for one party already, then they need that party to agree, so they didn't have it, ... In the Turkish constitution, consensus

can mean two or even three different things but how you can say what it is, now, at the next, what - your question is reasonable - when the next parliament is elected, who decides what is sufficient consensus? That has to be decided by the parties themselves and it's gonna be a political decision. I can't attach a number to it, that number will be sufficient consensus that will include a sufficient part of the Turkish population so the thing will have legitimacy in the eyes of all those elements who are important enough for Turkish life. What did the Grundgesetz, the makers of the Grundgesetz, choose in Chiemsee in 1948? Think of a number, anybody know the number? 80%! It's a pretty high number, they picked 80%. What did the framers of the -you know it's a high number, why did they pick a high number? Because they want everybody to vote for it, everybody in the end voted for it. Did everybody vote it by the way? Bavaria didn't vote for it, they never voted for it, so does everybody have to vote for it? But 80% did vote for it. Now, is this a matter of definition? No, because in some other constitution the number could be somewhat different but it has to be sufficiently high so that, in the eyes of most, it works. In this country I think that if you don't get AKP and CHP to agree it's not sufficient and that's my view, my personal view. But you know I could be wrong but I think that that would be my working operation rule but it's not a normative principle. Why these two? Why not some other two? I just think that this is the way things are in Turkey but I think I would like to include many more. I would want the left. There's no left in this. I would want the Turkish left to like it because I'm actually leftist myself and would be good if this thing had much more social element than these two parties would put in but at the minimum would these two parties agree because otherwise you're gonna have the same thing continuing and the thing will not work beyond this, you know, adhoc political situation that you currently have. But it's a great question, that's why the answer is so long.

Guest:

Your explanations that any kind of constitution that we're going to have in the future next year or the year after next year so it's a kind of constitution; constrained constitution as your explanations – constrained.

Arato:

Now what you put in the constitution one should be careful with that. The current Hungarian one is a travesty because it has been imposed by Mr. Orban. If you read the papers you will see how he did it. He was not... I know him... I lectured when he was still a very young man at the collegium where all the FIDESZ activists were there; very handsome, very nice young man, he's become very right-wing since then, but it doesn't matter. The constitution was imposed in a radical way because they had two thirds at a parliamentary vote, no referendum, it wasn't even announced that they were making a constitution. The constitution now is full of consensus-producing devices so it was made without consensus but it is full of consensus-producing devices. Now, what is good for constitution making may not be good for governing. I actually like Dworkin's distinction between principle and policy. It's not that it's always easy to distinguish but there are a lot of things that should be decided by majority rule. You elect a government, the government should be accountable, it should be responsible for its policy and it should be able to adopt to budget, it should be able to choose its political officers as it wishes and if it does a bad job then it should be punished at the next election. It should not be able to, of course, transform the constitution in the same way. It certainly should not be able to abolish fundamental rights very easily, it should be an even more difficult thing to do, but I think that putting in too much constraint and too much consensus into the text could also be a problem so one has to figure out what is the constitution going to protect? What is it going to protect in an extra serious way? Is it going to have eternity clauses like you- you have three right now, I'm actually not for eternity clauses myself, I like the Spanish, Bulgarian solution which it creates an extra difficult level but it doesn't have to be eternity but that's the constitution contents; that's a different matter. When you make a constitution that should be done by people who represent as wide an opinion of society as possible and it should not be done by one party, so I distinguish between the making of a constitution and how a constitution functions and yes I would constrain the future

constitution maker when it comes to changing the fundamental rights or if you have some new elements that you want to really protect, like secularism, or the nature of the republic, then you may want to even make extra protections for those things but that doesn't mean that the budgets should be passed by consociational arrangements or consensual arrangements, that you have to have AKP CHP and all the other parties agree to the budgets. I think that would be a terrible system; let the government pass its own budget, let the government pass its own developmental goals and let it be responsible for them.

Gönenç:

One more question, do you have?

Guest:

Professor Arato, welcome to Ankara. As an outcome of what you have said, basically I have the feeling that you basically say that with a parliament coming out of an electoral system of 10 % threshold doesn't really have the legitimate right to make a new constitution. Is that what you are basically saying? Let me continue with a few more lines please. Yesterday the Prime Minister on one of his election trips, upon a question, he said that for the next elections in Turkey which will be in 2015 they may consider reducing the threshold by 1 or 2 points only and that doesn't give me very much hope for the future basically. What would you comment on this? Thank you.

Arato:

Yeah, I basically agree with what you just said, 95%. But there is the other desideratum, namely, a new constitution, so legitimation problems - I follow Max Weber in this, not the ordinary way lawyers understand the problems which is almost always identified the legality. Of course, the parliament has the legal right to make a constitution because article 175 does not have constraints except to article 1, 2 and 3, so it actually cannot make a completely new constitution, I don't think, because it has to leave 1, 2 and 3, and 4 too... Because 4 is self-entrenching if you interpret it properly, I don't know if people are interested in these technical questions, I can go into them if somebody is. But aside from those things the parliament can do anything, can make a constitution completely new legally, but you're asking about legitimacy. Now legitimacy, there's a serious problem with this ... threshold, on the other hand, there is a need and so I think that the way to address the need is the way, we were discussing it, is to try to make up for that legitimacy lack some other way. One way would have been is to not use the threshold for a recommending body, that was my suggestion, it's in an English article and there was a Turkish translation that Fuat Keyman did, but somehow didn't see, it wasn't published in Turkish, I don't know really why, but you see I'd had another proposal for electing a recommending body, a convention not too different than mine, I think my advantage, the advantage of mine was that would be easier to coordinate the two bodies but this wasn't done, none of these things were done, so now you do have this new body and so the question is, is it possible to correct the legitimation problem? As I said I'm Weberian, one kind of legitimacy lack can be redressed by enhancing legitimacy some other way, so you bring in more civil organizations, you have more public participation, more openness, you have more internet access, you have more public discussion, public education; all this enhances the public awareness and the public input and then, in the end, whoever the parties are in parliament, I mean, let's assume now that we will have, you will have three parties plus the Kurdish party that will get in to the independent candidacy, so you will have four parties; if these four parties are given a very strong voice in the committee that will decide, I would say, by a consensus of 4, in that case, perhaps, you know, having a double majority system where each of them has four or five candidates and three parties have to agree and twenty- out of twenty deputies, maybe seventeen have to agree, so maybe a minority of a party can disagree but the parties' majority has to agree some kind of system of very high level of consensus, if that approves it, then I think this would raise the level of legitimacy a lot, and I think that, under the current circumstances, would improve things. Now, I think, one of the marks of a good constitution would be that it would get rid of Evren's

constitution, and what is the most important thing about Evren's constitution today but the 10 % threshold? I think now the military preservation has been in large part eliminated; maybe there are a few more things; I think, it will be gone. The 10% threshold reduced to 8 is a serious continuity with the past, I think 5 % is where illegitimate alternative begins and so I think anything above 5% would be a serious flaw and so I think anybody who participates in this process, the Kurdish party, I don't know what their overall number is, some of you probably know, they're not getting in on it so who cares, right? But they are getting some number, probably around 5%, 5-6%. I mean that would be not a bad guess but there are left-wing parties, small left-wing parties, one round you get 3 %. Think of how the German greens got into parliament, they got in gradually. Now there are around 10, so I think lowering this thing to 4%, 5% would enable lots of parties too; well not a lot, but two or three more parties to get in. That would be a huge step and I think there is the legitimacy of a product is also enhanced by the nature of the product, not just by the process, but by the nature of the product. And if you lower the threshold to 5% constitutionally, I don't believe CHP should agree to it, I don't believe the Kurds should agree to it unless it's 5% and I don't even think that the nationalist party should agree to it because, look, they are in danger of not getting in now; why should they agree? I mean I don't understand them they're not raising it as an issue but they're in danger of not getting in so this is, you know, potentially a death sentence to them. So this should be a minimum condition for everybody, I mean, in a way, CHP is appealing to other parties here because they will get in anyway but the principle issue is "get rid of this." I mean, civil organization almost always should begin, almost every civil demand should begin, "get rid of the 10% threshold, 5% is the maximum we can accept". I don't see how anybody can make that anything but number 1 of demands because it deforms the political system so radically-

Gönenç:

-Maybe here we should point out that 10% threshold is not in the constitution it's in the electoral law so AKP can change it easily by itself -

Arato:

-But not for the next electoral seat

Gönenç:

-Only for the next election because there is a constitutional provision – because, yeah - I would like to clarify because there is a constitution provision says that you can make changes in the electoral law for the next- for this election so you have to make it for the next election but one party or the AKP government could have done that or the other parties-

Arato:

-They have done it once before, right? Once before they changed it for that electoral-

Gönenç:

-They could have done that but they didn't. Ok, so we- one more question... You, yeah, please

Guest:

Thank you, Larry Wright from TOBB University Law School. I find it an interesting discussion that we're always discussing a threshold. why not changing the system so that the people of an area vote for a person as opposed to a party; because an argument could be made that voting for parties actually disfranchises the voters, thank you.

Arato:

I think that's a very disproportional system, in other words, under Turkish conditions you would get exactly the same thing as you get now. I would think you would get I think in heavily Kurdish regions you would get Kurdish deputies elected that way and the rest would be elected AKP, CHP. I don't if there would be any MHP deputies elected that way, you can

always look at previous elections, district by district, you know electoral specialists - I sometimes do this, I didn't do it for Turkey- can study previous elections and game out what would be the result but mostly the result would be similar. The only thing about it is that it's not democratic formal, not undemocratic in a formal sense so you gain an enormous advantage because everybody has an equal chance this way on a basis of statistical outcomes. It's not equal chance but it is a dramatically undemocratic system in its result, I mean, think about it the English greens always get 10 % 11% and never get a single MP so they're as bad a position as all the Turkish parties who don't get in, so I think that this is - I don't see the point - proportional representation has problems too. Its party bureaucrats choose the deputies so if you really wanna be very creative you choose open lists, open lists are proportional but the voters decide who of the list actually gets a front, in other words, you create a list but you don't number them, the voters also put down a name and so the names get up front who get the most votes and the bureaucrats don't decide who gets up front, they only decide who gets on a list at all, they make a big list with all kinds of names and then the voters decide. Electoral laws are very, you know, if you really want something nice, the German system is perfect, it chooses half your way and half proportional but the cadre is proportional, in other words, you get half the deputies chosen first past the post but the overall structure works in terms of compensation, so the result is proportional, I think that would be another way of making sure that you both get deputies who are not chosen by the party, half the deputies, and you get the other half who then make the proportional outcome. By the way there are studies, which study in Germany, whether the behaviour of the direct elected one is any different than the one who is elected on the list and what do you think the answer is? It is not. Their behavior is exactly the same as the proportionally elected member they are just as much a machine in the hands of - an instrument in the hands of the party machine as a proportional one so their behaviour is no better. Look at the UK, they are also instruments in the hands of the party leaders to whip. The only country where they are not is the United States and of course that's a presidential system anyway you can see how lamentable that system works. Mr. Obama's problems of the last year or so indicate both A) you should not have a presidential system and B) that the combination of presidential system and first past the post makes certain senators blackmailers-in-chief that are capable of shipwrecking national policy in quite disastrous ways so I think, you know, if it's a question of... I don't know if most people are lawyers or political scientists... but political scientists have had ways of looking at all these things and I don't know how you feel about Germany, I'm Hungarian so, you know, they occupied my country from March 1944 to February 'til the Russians, fortunately, got there so that's not 185 years which was your achievement but the few months were a lot worse than your 185 years and so I would say that being a fair judge is that their constitutional system is really good, they really have an extremely good electoral system, they solve the problems of parliamentarism, they have a very weak presidency, which is just perfect, they have a great constitutional court so if you can do any better, just think that Grundgesetz, and it will be just ok. I'm kidding, because every country must make its own, but the Grundgesetz is very good and electoral laws also good, yeah I think it's... Don't think about the fifth republic; don't think about the US; definitely not the US; this 18th century constitution is a real mess and you're not a federal country anyway. Germany, yes that's also federal, but I think that makes no difference, German constitution Grundgesetz is good model and the electoral law - they have a 5% threshold but you know even that they only made because they had communists and Nazis at the end of the war and the Nazis were, of course - you had to make sure that no matter what they can't get back in; that would have been a tremendous embarrassment and they certainly would have gotten 5%, probably more, and the communists, though they loyally participated in the making of the Grundgesetz, the problem was East Germany, so the 5% threshold basically got rid of the communists and the Nazis, that was its purpose and since that time people imitate this threshold and then General Evren thought well 5 - you know it's like your question about the number, you know, 2, 3, 4, 5 well why not 10? Why not 100? Why not 80? You know, I mean the 10% is really profoundly undemocratic- profoundly- whatever else one can say about it, it's anti-democratic. He was not a democrat, I don't think the idea of trying him now is such a

great idea but to get rid of his electoral rule it's a very good idea, I don't see why people are not worried about that. Why are you worried about trying him? He's an old man, let him paint, that's what he does, right? He's sitting around painting, let him paint; just get rid of his electoral rule.

Gönenç:

Ok, thank you. So one question from the back.

Guest:

Thank you Professor Arato. I know that you are not a lawyer as such at the same time a political scientist and quite well known in terms of your contributions to political theory. So the discussion so far seem to be in terms of we were discussing the matters in terms of the procedural aspects of democratic rule, regimes. There are the substantive aspects and that relates not only the procedural aspects of consensual making but the objectives of it at the same time and the contents of it. So how are you going to sort of establish basic premises in that sense because what has actually changed from '61 constitution to '82 constitution ... is not simply a matter of certain procedures solidifying certain majorities as such but ... certain democratic rights and liberties for important sections of the society [which] not necessarily imply at the time ethnic or religious cleavages which emerge in due course, so the - actually the democratic rights and liberties of working people at least in the context of the '61 constitution should be brought into the picture, if you really want a democratic constitution and how are you going to establish a consensual process for that is first point. Second one, recently there has been this argument being aired increasingly about whether or not it should be plausible to put into the agenda the so-called initial 4 articles of the '82 constitution. So is it possible to consider that as part of that consensual procedure as well, two different questions thank you.

Arato:

Well, generally my perspective is that as a foreigner I should certainly not talk about substance much so even though I have very strong ideas about secularism and what it should be. I don't think I should be telling Turks how to do that. I tend to think that for example the US first amendment, two clauses, and the establishment and free exercise are good but I'm not gonna say to Turks "do that or the French way", you know... I don't particularly like the way the Turkish thing works but it's not my business to get into that, you know, so when it comes to these kinds of substantial matters, I tend to defer to Turkish friends and I just say, solve it among yourselves, you should be able to, this country is not-you know, people on the street are not killing each other over this. I see people, friends walking, one has a headscarf, the other doesn't, they're not fighting, they are good friends, people are not killing each other over that, it seems to be working it's not a- doesn't seem to be impossible to solve among Turks. It's the politicians, the political elite that is fighting. But I think, you know, as you're asking me, I do think that the '60 constitution was better than the one made in '80 and it was better because in '45, you know, amazingly enough, the republic did open up multi-party competition but it did not yet create constitutionalism, checks and balances, and a new constitution then really did that. It wasn't made in a perfect way but was made in a somewhat better way also with more elections and more consultations than the '80 constitution and the referendum was a somewhat better one, too. So I think the process was somewhat better, too, although I would not say it's a classical constituent assembly, it had problems too, but the national security council played less role than later so the process was somewhat better. But the result certainly was better, and so I think, in some ways, some of the values of that constitution, I think, represent values to return to. And the constitutional court of that period, by the way, as I learned from Ceren Belge's very interesting article, was not just an instrument of the military but for the military regime a lot of points and some of the amendments at the time were made to restrict the constitutional court. So this was not a bad tradition and in the end it was reduced in many ways subsequently. Now whether this is what you wanna return to or you want to go other ways, I mean, this is for you. But I think you're

right that this was they had many advantages and the electoral rule was better too, by the way, I don't know, you had no threshold at that time, I don't think, right? So that, too, was more positive. Turkey has some constitutional traditions that could be revived. The idea of a unchangeable provision was already in that constitution but not three articles, just one, as entrenched by a second one and this is now extended by the Evren constitution, some people say it's not the 10% threshold that is the heritage of Evren, but these three as entrenched by the fourth. I think that those articles are more the heritage of the republic. I don't see those articles as particularly- Evren might, even the secularism thing which is a new addition is something that is probably more Kemal than Evren. I mean, let's remember that the repressive force of the Evren regime was first and foremost not directed against religion but against the left. And religious organizations, if you think about prayer, if you think about schools, if you think about religious education, the conversion of the religious instruction in schools from a course about religion to a Sunni course, this occurs in this period. So I think that the conflict of that regime with religion comes only later with the strengthening of the Welfare Party when it became very strong and then the conflict does emerge. So I think the secularism clause is not so much- but it doesn't matter so much, because now these are in the constitution, and your question is, are they inevitably in it? There are people who take the position that a Turkish Grand National Assembly is by definition a constituent assembly. That's the position of Professor Yazici, that's the position of Professor Özbudun, that's the position of Osman Can and probably many others. I- just reading the text, I say, no, a Grand National Assembly that has these three articles is not a constituent assembly because it's constrained and those constraints exist unless one removes them in a process that would have to be quasi-revolutionary. It's true that revolution can be only a revolution in a legal sense; it doesn't have to be a revolution with bloodshed and huge messes on the street but nevertheless it has to be a legal revolution. It's not enough like Orban in Hungary now saying, "from this day on the parliament is a constituent assembly". You can't just rename a parliament and say, "from now on, what I decide is true," two thirds are decided by majority rule; it's just not a question of nomenclature, you have say to the electorate, at the very least, "if you're electing a constituent assembly for the purpose of making a new constitution and that's its primary purpose" and no one said that to the Turkish electorate now, they said, well yes we'll make a constitution, it's part of our program, but this is not the basic project now. So I think... And besides that, people who have said, "well if you are a constituent assembly then 10% threshold would be unacceptable anyway" and I think that's right if this were a constituent assembly that would not obey the three articles, then why- then you can't really have this threshold which is so much part of a normal Grand National Assembly. So I think that the Grand National Assembly would be under that threshold, it will actually be forced to obey those three articles and will not be able to, with any kind of vote, abolish them. Now there are people who say that -this is the technical point, maybe this is what Osman Can says, I don't know, I haven't read everybody on this but somebody must have thought of this. I'm sure, I bet on this, someone thought of this- is that even though four entrenches 1, 2 and 3 -you tell me if somebody wrote this- 4 is not entrenched...

Gönenç:

Yeah, that's right

Arato:

See somebody always thinks of this, 4 itself is not entrenched. So what can parliament do? It would use 175 to take out 4, they take out 4 by 175 it's not entrenched, now 4 is gone... Voila! So 1, 2 and 3 are no longer protected, now you take out 1, 2 and 3. Miracle, right? This is the so-called two step method... I think it's nonsense. The whole thing has no meaning, if it says, if you reduce the meaning of 4 to "parliament cannot change 1, 2 and 3 except when it changes by two thirds," that's what it would mean if you did it in a two-step method. There would be a meaningless proposition that "parliament cannot change 1, 2, and 3 except when it does do it by two thirds." So you can't go and change 4 by two thirds and then go back and

change 1, 2 and 3 also by two thirds. Then the whole things has no meaning, so a constitutional court, even a packed one, should not be able to say "you did that legally" if it's done that way. So I think, whatever anybody wrote, whether its Osman Can or Serap Yazıcı - I don't think Özbudun would write this but some people may write this- if they write that the two-step method is possible, I think that's wrong. Think of, for example, the Grundgesetz 79/3. It's not self-entrenched so that means that human dignity can be removed by first changing 79/3 by two thirds of the Bundestag and the upper chamber and then you can take out human dignity, too, by two thirds. I mean, this is nonsense, you can't do that. Now it's better to self-entrench, so if you ask me as an advisor for your Grand National Assembly next time and you want to create a higher rule, it doesn't even have to be eternity, just higher, I would say, do what the South African constitution makers did and say, in the place of article 4, the following thing: articles 1, 2 and 3 cannot be changed or can only be changed by four fifths and this article, too, can only be changed by four fifths, that would be better, that's called self-reference. They forgot but I say that even when it's not written in, it's implied because if it's not implied then they're writing nonsense, and you can't assume that even Evren's team was writing nonsense, they were writing lots of nonsense but you see if you assume the constitution contains nonsense then it's the duty of the constitutional court to interpret it according to the first thing that makes sense. That's an elementary legal premise, right? Some of you may even be a judge in the room, right? Or some of you have been judges, or some of you have been in front of the court so the court gets a line which is nonsensical, so what is it going to do? It has to interpret it according to the first thing that makes sense. You can't assume the constitution is full of all kinds of nonsense. You know, 18th century in the United States, a long time ago, things that are in it which no one even understands anymore, well you have to interpret it according to what would make sense, the first thing that makes sense, so article 4 makes sense only if you read it according to implicit self-entrenchment. So it can't be done, and yes, well, of course, today's parliament can make a revolution if it wishes, then it depends on who has how many guns, I think they probably have the guns now, but that's a matter of guns, it's not a matter of law, I mean by guns you can do anything, by guns you could make me caliph. If you have enough guns, you know, you can make me caliph of Turkey. Or Sultan, I shouldn't use a religious term, I should use a political term. So if you have enough guns then you know you can put me into whichever palace and make me Sultan; enough guns can do anything, but if you're not talking about guns, you're talking about law, then you can't do it, it's as simple as that.

Gönetç:

So this would be the last question because we're running out of time. Please..

Guest:

(TÜRKÇE) Sayın Profesör, ülkemize hoş geldiniz. Soruma geçmeden önce şunu belirteyim: Biz insan hakları savunucuları Kenan Evren'in mutlaka yargılanmasını göreceğiz. O konuda kararlıyız, ve mutlaka bir yargı önüne çıkaracağız. Çünkü yaptıkları yanına kâr kalmamalıdır. Sorum şu: Türkiye'de hala bir silahlı çatışma riski var. Kürt meselesinde gelinen süreçte silahlar bir türlü susmadı ve şu aralar ortam oldukça gergin. Dolayısıyla çatışma süreçlerinin devam ettiği bir toplumda ve toplumsal barışın tesis edilemediği bir ülkede nasıl bir anayasa yapacağız? Bu anayasa yapılabilir mi? Bu konudaki önerileriniz neler olacaktır?

Arato:

Well I will not, if you do it, I will not give him any legal help, I'm not a lawyer anyway, so I'm not permitted, so this is your business, if you want to do it, and of course it's not just him. I tended to be against political justice in Hungary. You know, we have had atrocities after 1956 and I thought that it is better to have something like truth reconciliation where you uncover the past, but to start trying people who are tied up with a lot of other people and so on and it means, you know, an old cycle begins again and so I was not for it. You know there is a real division on this subject and even in South Africa which had an exemplary process, there was a division. Even a famous case, the AZAPO case which Steve Biko's family lost in the

constitutional court, so I think it's a fair and important distinction. I would say, minimally, you need good law to try somebody, so I'm against revolutionary justice of any kind. Revolutionary justice for people's tribunals, kangaroo courts, political trials, show trials, I'm against all that. If you have a good law from the time without running into the statute of limitations, then it's really up to your own legal system to process it and so on. So I'll leave that up to you. That's again a question that I should not solve. I still say it's important to get rid of the threshold the 10% which is his gift to you than to deal with his personal fate but I don't want to prejudge that matter. Now the Turkish military's role in current Turkey you know is a question which I can't answer because I'm not a political sociologist of Turkey, so I can't evaluate how strong they are and what they can do and how much they can actually deform the process. I think they are weaker than they were in the 1980s or I would say even the late 1990s at the time of the so-called post-modern coups when they were able to force the resignation of the government, and so on. They had made declarations subsequently, for example during the Presidential crisis, and they lost, they wanted to stop delegates election and they lost, and they had to accept it and so on. So how strong they are, how can they deform the process still is up to you to evaluate, I can't judge it. I don't know what the effect of the Ergenekon trials is, I don't know what the current relations of government and military really are or how much a role they can still play so I would say this is something for you to really consider and it remains an issue. I would just say that in the previous coups attempts, the successful coups had military – they had foreign support, I don't wanna say foreign sponsors without being able to really document it and I'm not a student of those international relations, I do not believe they have that now. I think that both the EU and especially the United States are very happy about the current development of Turkey and think that Turkey can play in its present political trend a very important role for the West in the world and so I would not think that there would be foreign support for such a thing but again I'm not an international relations expert so this would be something I would just say that that's a big difference. The United States is no longer in the coups business in the way that it used to be. Anyhow, that's more true under Obama than before, I don't think the Libya intervention to be that sort of thing at all. Much more I would say is to preserve their bona fides in the Arab world and to say that they are strongly supporting the Arab revolts than being in the coups business. Gaddafi was just fine for them, from the point of view of geopolitics, so I think that's an important factor and I would say the other factor is that military dominance is not the only monolithic force in the world and so it's also important to think about not to replace one monolithic force by another. So in the process of pluralizing your system because of the fear and heritage of one type of monolithic force it's important to make sure that the system remains plural, full of checks and balances. I would say that the role of the constitutional court was central in this. Let me perhaps end with this: people assumed that the constitutional court is like a fifth column of the military. I'm sure there are a lot of people in this room who thought so, probably a majority. I would say that quite a number of those people still think that it is even now and let me just mention some counterevidence, which I see again, some of it I already mentioned. First of all, in a presidentialism crisis... Well, first of all, the record of the seventies where the military and the court conflicted over and over again. Secondly the presidentialism crisis where two out of three decisions went for the AKP. Third, in the case of the two major decisions of 2008. The AKP was not dissolved, significant factor, now you could say six judges still went against it but it wasn't dissolved. So the court was already badly split on this question. The financial cost to the AKP was, you know, I'm sure even one supporter could pay that right off from his or her pocket; that was insignificant. So one major decision went against them, the headscarf, but the AKP decision went for them. But finally the real question when the stake was the court itself, the referendum when the court was itself packed, the court actually went with the AKP and allowed itself to be packed, so either the court is a Kemalist force but is a paper tiger or it is no longer a Kemalist force but is trying to somehow decide each case as it comes along; you take your pick. But now that it is packed, it is even more of one of those two things, right? Because once you pack the court, if it was a paper tiger before, well it's more of a paper tiger now. And if it is a court which is even and tries to do the law well, it would be even more so now that it has

more judges that have come in this way. So I would say that whatever you used to think about the subject of the court, this becomes one of the most important institutions to protect at all costs starting now and you know what? Your protection is extremely important for that court because as everybody who studies these things knows, such courts are as strong as civil society makes them. For them to be out there and attacked by the democratic part of Turkey, because you know there are really three fields here as I feel it: there is the old Kemalist milieu among intellectuals now; there is now a new milieu around AKP; and there is the democrats who are all kinds of people very different from- where they are coming from and on the whole, they have been really very hostile, I think, this milieu to the court and I think that has something to do with this last decision where I actually was much more favoring, as some of you may know from the press, a 'no' decision on the part of the court but it doesn't matter, that's gone. I think that if you want that court to be a strong antidote to majoritarianism from now on, it will also depend on you and civil society and I think there's a chance for that and now you can't say it's a Kemalist machine, I mean it's been even packed, new people and they're gonna put in more new people and it will be a majority decision that will put in even more new people. So at least this court ought to be now an instrument of Turkish society, a democratic channel, if not the last one. Thank you.

Gönenç:

Ok, thank you very much Professor Arato. Ok, I close the session, thank you very much everybody.