

The debate in the UK about codifying our constitution is now less fractious: but looking overseas can help us to understand why this discussion should continue

The Select Committee on Political and Constitutional Reform is currently running an inquiry on mapping the pathway to codifying the UK constitution. As part of its research, the committee has taken evidence from experts on major constitutional changes that have taken place or are about to take place in other European countries. [Bill Kissane](#) appeared before the Committee at the start of July, and here reflects how the countries he gave evidence on, Ireland and Turkey, are relevant to the UK case.



When I was asked to give evidence to the Political and Constitutional Reform committee (PCRC) focusing on Ireland and Turkey, I considered their relevance to British politics. Both have had written constitutions since independence, and their constitutional orders have been the focus of party political conflict in a way not really true for the UK since 1914. Perhaps for the committee, their importance lay in their ability to engage mass publics in debates about constitutional reform. Ireland is also relevant since its current debate extends to issues (the centralised nature of the state, executive dominance of the first chamber, and an anomalous second House), bound up with its Westminster legacy. Turkey is of interest since the concentration of power there far exceeds anything found in Britain, and needs to find a stronger system of checks and balances to deal with the increasing dominance of the Justice and Development Party (the AKP). The problem is that when it tried to check dominant party politics before, through the adoption of a very democratic constitution in 1961, this resulted in worse instability. Almost four decades after the 1982 constitution was passed, which tried to 'guide' the development of Turkish democracy under military tutelage, most people feel that constitution is too 'tight' for the society that has since emerged.

In both countries major constitutional changes are underway. The thrashing of the dominant Fianna Fáil party at the February 2011 election in Ireland saw the establishment of a Fine Gael Labour coalition, whose Programme of Government committed them to systematic constitutional change, including the establishment of a Constitutional Convention which will consider further areas for change. Conversely, in Turkey an increasingly dominant party with a guiding ideology is using the huge mandate it got at the June election to introduce a new civil constitution. In both countries the procedure for legitimizing these changes will be the referendum. In Ireland all constitutional changes require ratification by referendum, and the AKP do not have sufficient members of the GNA (Grand National Assembly) to introduce a constitution by parliamentary means alone. My prediction is that a more democratic constitution will be adopted in Turkey, and that Ireland will pass a succession of constitutional amendments in the next decade.

During the election campaigns there was cross-party support for these changes, but the party politics, consensual in Ireland, are very polarised in Turkey. No Irish political party wants to be associated with the economic collapse or the Catholic Church, and even Sinn Féin has joined the constitutional bandwagon, by proposing a new constitution by the anniversary of the Proclamation of the Republic in 1916. In Turkey consensus is low, attitudes are polarised, and no one knows what the AKP really intends. Because of polarisation between more and less secular Turks, and the ongoing Kurdish conflict, trust is at a premium. Nonetheless, the last constitutional draft the AKP tentatively sponsored (in 2007) was very democratic. Many believe there is a clear connection between the manner in which the new constitution will be drafted and its chances of success. The trick is to find a process which will galvanise a general commitment to democratization, and produce a constitution not seen as the expression of the AKP's entrenchment in power. Yet we know that enduring constitutions have often been passed as *fait accompli*. This includes the current Irish constitution adopted in 1937.

I was surprised at the committee to be asked so many questions about Turkey, but the members were well-informed about both cases. The session made me reflect about what constitutional reform can actually achieve. In Ireland the mood for change is a product of a general feeling that the political system failed the public during the economic downturn, and that left to their own devices, politicians will shelve the reform agenda. In Turkey the question is whether a new civil constitution can represent a breakthrough for Turkish democracy in a way that no previous document has done in Turkish history. I began my presentation by stressing that if there is a romance to constitution-making, there is also a need to depress expectations.

I am un-persuaded of the connection between economic revival and political reform in Ireland, and doubtful

that Turkish politics will be tamed by a new constitution. Two interesting questions were posed. If the Irish had made the changes they are now proposing before 2008, would they have avoided such a catastrophic crisis? My answer was no, and indeed any politician that stood for re-election in 2007 saying such a crisis was imminent, and that we needed to reform institutions to avoid it, would have been laughed at. The second question was whether Turkey's constitutional moment would be much more promising now had the EU continued to take it seriously as a potential member. My answer is that the constitution would have been more a win win for all sections of Turkish society under such conditions. The EU has played a very maladroit role in Turkey, and largely demoralised those liberals who were first impressed by the AKP's reform project.

I was asked by Graham Allen, chair of the committee, whether mine was then 'a counsel of despair'. Not at all. If the Programme of Government is implemented in Ireland, it will strengthen the consensual basis of politics, renew the public sphere, and add to a debate about the meaning of the Republic in the run up to the 100th anniversary of independence in 2021. In Turkey the new constitution may well be a *fait accompli*, but its authors will be elected politicians, not those behind the 1980 military coup. Democratization in Turkey is not just a governmental process in any case, but it needs to be anchored in something like the EU accession process, or constitution-making. The need is for strong independent institutions, and the question is how they can be created when power is becoming so concentrated that the current Turkish Prime Minister favours a Presidential system.

In comparative perspective, Britain, Ireland and Turkey have all seen single-party dominance create debate about the nature of constitutionalism. On the one hand, they are at very different points in their evolution. In Britain where single-party dominance no longer seems possible, the debate is less fractious than in the 1980s. The Irish are in an era of constant coalitions, but the machinery of government remains rooted in a past when single-government was the norm. The test of its current debate will be whether it can address institutional as well as value questions. The Turks have needed dominant parties to shift the ground away from the military, but their institutions have not always withstood the polarisation which comes with this. Either way, globalisation provides the backdrop to the debates in all three countries, and like it or not, many people increasingly engage with their constitution through a cultural prism. This was a point also made to the committee with regard to France and Hungary. As British society and Britishness change, old models must be adapted. The Irish want to update their values *and* create a state that can compete economically in the twenty first century. The Turks are emerging as a major power, but since both political Islam and the westernisation of its young population have been boosted by globalisation, the debate will continue long after any new constitution is passed. In all three the romance of constitutionalism looks set to continue.