

CONSTITUTIONAL CRISES AND REFERANDUMS IN TURKEY*

TÜRKİYE'DE ANAYASAL KRİZLER VE REFERANDUMLAR

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ÖZET

Referandumların sayısı son otuz yılda önemli ölçüde artmıştır. Son dönemde Türkiye’de yapılan referandumlar, ciddi değişimlerin yaşandığı ve politik belirsizliğin olduğu dönemlerde referandumların ciddi bir artış gösterdiğini iddia eden görüşleri destekler niteliktedir. Bu çalışmamızda Türkiye’nin 2007 ve 2017 referandumlarına yer verilecektir. Bu bağlamda cevaplanması gereken bazı önemli sorular ortaya çıkmaktadır: Özellikle kriz dönemlerinde referandumlar hangi ölçüde ve nasıl anayasal çözümler sunabilmektedir? Referandumlar anayasal bir krizi başlatabilir mi yahut mevcut bir krizi daha da derinleştirebilir mi? Bu ve benzeri sorulara cevap verebilmek amacıyla, çalışmamızın ilk bölümünde referandumların uygulanmasına ilişkin farklı perspektifleri de içeren kapsamlı bir giriş yapılmaktadır. Devamında, çalışmanın amacı, kapsamı ve önemini ortaya koyan argümanlar sunulacaktır. İkinci bölümde, anayasal kriz nedir ve nasıl kategorize edilir sorularının üzerinde durulacaktır. Üçüncü bölüm Türkiye’de 2007 yılında yapılan referandumu bir kriz-çözücü referandum olarak tasnif edecek ve bu iddiayı gerekçelendirecektir. Takip eden bölümlerde, başkanlık sistemi referandumu, anayasal krizleri derinleştirici referandum olarak kategorize edilecek ve ortaya çıkan sorunlar ele alınacaktır.

Anahtar Kelimeler: Anayasal Kriz, Kriz-Çözücü Referandumlar, Kriz-Tetikleyici Referandumlar, Türk Tipi Başkanlık Sistemi, Delegasyoncu Demokrasi

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ABSTRACT

The number of referendums has significantly increased over the past three decades. Recent referendums held in Turkey support the argument that a sharp increase in the referendum is typical in periods of change and political uncertainties. This article aims to examine the role of referendums in the constitutional crises in Turkey by mainly focusing on Turkey's 2007 and 2017 referendums. At this point, pertinent questions arise: To what extent, and how do referendums provide constitutional solutions to the main issues, particularly during crisis periods? How does a referendum contribute to trigger or deepen a constitutional crisis? To give satisfying answers to these and further questions, Section one provides a comprehensive introduction to the varying perspectives regarding the resort to the referendums. The objective, scope, and significance of the study are also provided. In the second part, the questions of what a constitutional crisis is and how it is categorized will be discussed. The following section examines Turkey's 2007 referendum by classifying it as a crisis-addressing instrument. Section Four discusses Turkey's recent presidential system referendum, which has created significant constitutional crises.

Key Words: *Constitutional Crisis, Crisis-Addressing Referendum, Crisis-Triggering Referendum, Turkish-Style Presidential System, Delegative Democracy.*

1. INTRODUCTION

1.1. Background and Scope of the Study

Referendums are relatively rare events in the politics of the majority of democratic nations.¹ However, in recent years, referendums have significantly proliferated among democratic countries to decide major constitutional issues.² Despite this remarkable proliferation, assessing the role of referendums is a challenge since they are ‘on the fault line of the representative and other forms of democracy.’³ Therefore, the growing popularity of referendums raises several concerns for democratic governance.⁴ First, perhaps most importantly, referendums in some cases generate a conflict between the elected representative body and direct popular votes. This ultimately leads referendums to weaken the ‘prestige and authority of [elected] representatives.’⁵ Another main argument against holding referendums in representative democracies is that ordinary citizens have neither the analytical skills nor the information to make wise decisions.⁶

On the other hand, these concerns may not reflect the whole picture. For instance, those who argue that there is no place for referendums in a democracy would seem to believe that politicians are better able to make decisions on behalf of the people.⁷ The proponents of this ‘expertise argument,’ who are reluctant to give credit to ‘public will’ on the grounds of ignorance of the ordinary people, also fail to explain the logic of ordinary elections and democracy. In other words, the argument that people are ignorant is at odds with democracy itself since ordinary elections are fundamental and indispensable parts of democracy. And ordinary voters, not the elites, submit their views through the ballot papers. In Bogdanor’s words, arguments against the referendum often appear to be arguments against democracy itself.⁸

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- 1 Lawrence Leduc, *The Politics of Direct Democracy: Referendums in Global Perspective*, Broadview Press, Toronto, 2004.
 - 2 Liubomir Topaloff, “Elite Strategy or Populist Weapon?”, *Journal of Democracy*, C. 28, S. 03, 2017, ss.127-140.
 - 3 Katie Ghose, “We need a root and branch review of referendums in the UK”, <http://www.democraticaudit.com/2016/06/29/we-need-a-root-and-branch-review-of-referendums-in-the-uk/>, Accessed: 22.09.2020.
 - 4 Topaloff, “Elite Strategy ...”, s.128.
 - 5 David Butler - Austin Ranney, *Referendums Around the World*, Macmillan, Washington D.C, 1994.
 - 6 Butler - Ranney, *Referendums Around...*, s.17.
 - 7 Stephen Tierney, “Constitutional Referendums: A Theoretical Enquiry”, *Modern Law Review*, C. 72, S. 03, 2009, ss.360-383.
 - 8 Vernon Bogdanor, *The People and the Party System: The Referendum and Electoral Reform in British Politics*, Cambridge University Press, Cambridge, 1981.

Naturally, the arguments for and against referendums are not limited to these discussions. However, the main objective of this study is not to discuss the merits and drawbacks of referendums. Despite its numerous shortcomings, there is no doubt that referendum is a ‘mechanism for strengthening democracy.’⁹ As Tierney spells out, referendums are useful way to engage citizens in processes of constitutional change if they are well designed and regulated.¹⁰ Otherwise, a referendum will highly likely turn into a crisis-triggering, or if a crisis already exists, crisis-deepening mechanism. Butler and Ranney see referendums as crisis instruments¹¹, meaning that a referendum -as a means of direct democracy- plays a crucial role in either addressing or deepening the constitutional crisis.

In the constitutional literature, normally, referendums have had certain forms and functions.¹² These are basically advisory, binding, constitutional, facultative, *ad hoc* and so forth.¹³ However, this article aims to adopt a different and relatively more abstract classification: crisis-addressing and crisis-triggering referendums. In this context, while the result of Turkey’s 2007 referendum, which enables the Turkish citizens to vote directly for the president,¹⁴ constitutes a good example of a crisis-addressing referendum, Turkey’s presidential system referendum in 2017 can be classified as crisis-triggering referendums.

Turkey faced a severe constitutional crisis in 2007, soon after the termination of the tenure of the then-president who has a secularist worldview. The presidency has always been seen as the ‘last bastion of secularism’ by the secularist wing of the republic since a president in the Turkish parliamentary system has significantly more power than one in a classical parliamentary system.¹⁵ The ‘power struggle’ between secularists and the pro-islamist ruling party, the AKP¹⁶, ended

9 Matt Qvortrup, “Direct Democracy”, *Journal of Democracy*, C. 28, S. 03, 2017 s.141-152.

10 House of Commons Public Administration and Constitutional Affairs Committee, “Lessons learned from the EU Referendum: Twelfth Report of Session 2016–17”, <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/496/496.pdf> , Accessed: 21.04.2021.

11 Butler - Ranney, *Referendums Around...* , p.1.

12 Butler - Ranney, *Referendums Around...* , p.1.

13 For a comprehensive classification, See Lawrence, *The Politics of Direct...*, p. 39.

14 Until 2007, Turkey’s Presidents had been elected by the parliament. For a detailed analysis, See Levent Gönenç, “Presidential Elements in Government: Turkey”, *European Constitutional Law Review*, C. 4, S. 03, 2008, pp.488-523.

15 Ergun Özbudun - Ömer Faruk Gençkaya, *Democratization and the Politics of Constitution-making in Turkey*, Central European University Press, Budapest, 2009.

16 The terms of ‘AKP’, ‘AK Party’, ‘Current ruling party’ and ‘JDP’ (Justice and Development Party) can be used interchangeably in this article.

up with a constitutional crisis. The inability of the Turkish parliament to elect a president ultimately led to a stalemate that the ruling party succeeded in ending through a referendum which opened a new era for the presidential elections in Turkey through referendums. Therefore, it can be argued that Turkey's 2007 referendum made a significant contribution to the solution of a constitutional crisis.¹⁷

More recently, Turkey held referenda 2017, paving the way for severe legal and political challenges. Turkey replaced its parliamentary system with the presidential one through a snap election taking place in June 2018. Normally, it should have waited to switch to this new model until the next election, which took place in 2019, since the constitutional package stimulates two years-transitional period for the switch to the presidential system.

In the aftermath of the referendum, Turkey has witnessed heated debates on whether the referendum in question has given rise to more significant problems rather than resolving existing issues.¹⁸ The public is divided simply because the ruling party aimed to replace its long-lasting parliamentary system with a presidential one through a controversial popular vote. Differing from the US-presidential system, Turkey adopted a peculiar system called the 'Turkish-style presidential system'¹⁹, which has considerably deviated from the original version of the presidential system. Since president in the new system is granted enormous and unprecedented constitutional powers, this new system, with the help of referendum, seems to have potential to create serious constitutional crises.

Given all these challenges and pitfalls, Turkey's 2017 referendum should be analyzed in detail along with the previous 2007 referendum. However, since each of these topics has numerous legal, political, and constitutional aspects, thoroughly examining such complicated issues is beyond the scope of any single study. Therefore, this research will focus more on the constitutional characteristics and the implications of these referendums.

17 A possible counterargument would be that although 2007 referendum managed to solve short term constitutional crises, it resulted in more severe crises by introducing popular election of the president in the long run.

18 Douglas-Scott Sionaidh, "Sionaidh Douglas-Scott: Brexit, the Referendum and the UK Parliament: Some Questions about Sovereignty", <https://ukconstitutionallaw.org/2016/06/28/sionaidh-douglas-scott-brexit-the-referendum-and-the-uk-parliament-some-questions-about-sovereignty/>, Accessed: 05.18.2019.

19 This concept was adopted by both opponents and proponents of the system in a different manner and context. The supporters claim the idea that 'there is no transportation without transformation.' Therefore, Turkey's experience of system transplant inherently may include some 'Turkish character.' On the other hand, opponents argue that this system does not reflect the core values of the original US Presidential version. Therefore, they use this concept as they believe that it has a negative understanding and meaning.

In addition, the negative and positive roles of referendums in constitutional crisis will be evaluated. By doing so, the referendums in question will first be categorized as crisis-resolving or crisis-triggering mechanisms. Then, the underlying factors behind the constitutional crises and the political and legal landscape of the country will be examined. This will be followed by an analysis of critical issues and notions including, delegative democracy, the Turkish-style presidential system, and so forth.

Despite being a democratic and secular country in the Islamic world, Turkey has not received sufficient attention from the academic world. While Turkish parliamentary elections have attracted much attention among academic circles, the literature has so far disregarded Turkish referenda, despite their significant roles in Turkey's legal and political history.²⁰

2. CONSTITUTIONAL CRISES

In the literature, there are few attempts to clarify the meaning of a crisis. A crisis is a phenomenon in which ‘everybody knows when one happens.’²¹ As for constitutional crisis, it is tricky to come up with a definition of a constitutional crisis.²² According to Ristroph, if the concept is interpreted narrowly enough, nearly no incident falls within the constitutional crisis domain. Similarly, if we adopt a broad approach then, almost everything might qualify as a crisis.²³ Therefore, there is a need to strike a balance between these two extreme points. According to a common interpretation, a constitutional crisis arises when there is a ‘serious danger that a constitution is about to fail at its central task.’²⁴ The central task of a constitution is to enable political actors to deal with disagreements within the boundaries of the constitution. When the political actors decide to go beyond the limits of the constitution, there is a risk of a failure of the constitution, resulting in a crisis.

It is argued that people tend to classify heated disputes within politics as a crisis. When people disapprove of their governments' actions, they often call these

20 Ece Özlem Atıkcın - Kerem Öge, “Referendum Campaigns in Polarized Societies: The Case of Turkey”, *Turkish Studies*, C. 13, S. 03, 2012, pp.449-470.

21 Keith E. Whittington, “Yet Another Constitutional Crisis?”, *43 WM. & MARY L. REV.* nn.2-3, 2002, p. 2096.

22 Alice Ristroph, “Is Law - Constitutional Crisis and Existential Anxiety”, *25(3) Const. Comment* 431, 2009, p. 439.

23 *Ibid.*, p. 439.

24 Jack M. Balkin, “Constitutional Crisis and Constitutional Rot”, *Constitutional Democracy in Crisis?*, (Ed.: Mark A. Graber, Sanford Levinson, Mark Tushnet).

actions a constitutional crisis.²⁵ Yet, as Balkin points out, most issues people call constitutional crisis do not have genuine characteristics of a constitutional failure.²⁶ Indeed, these actions are far from being a constitutional crisis because ‘there is no real danger that the constitution is about to break down.’²⁷ It is important to point out that regular conflicts and disagreements in a constitutional system ‘is not a bug but it is a feature.’²⁸ Whittington pays attention to this matter, arguing that it would damage the constitutional system to easily lower the threshold of a crisis.²⁹ In other words, overuse of crisis language would prevent us from distinguishing genuine constitutional crises from others. Additionally, constitutional crises might require and justify ‘extraconstitutional, and perhaps even unconstitutional actions,’ which ultimately gives rise to a real constitutional crisis.³⁰

In the constitutional crisis literature, scholars use different sorts of classifications. For example, Levinson and Balkin develop a schema that involves three different crises: type one, type two, and type three crises.³¹ According to this classification, type one crisis arises when political actors make it clear that they will no longer obey the constitution.³² Whittington calls this fidelity crisis. Type one crisis is probably the easiest one to grasp. This type of crisis arises when politicians either threaten not to abide by the constitutional norms or they ‘systematically contradict constitutional proscriptions.’³³ For instance, it would amount to triggering a constitutional crisis if politicians publicly defy a judicial order.³⁴ However, it is important to note that constitutional violations per se do not precipitate a crisis of fidelity.³⁵

For a crisis of fidelity, the announcement of political actors that they will no longer play by the book is a prerequisite. This means that even if people do not obey the constitution, it does not have to result in a fidelity crisis. Therefore, an explicit intention of violation of the constitution is required to precipitate a fidel-

25 Ibid, p. 15.

26 Ibid, p. 16.

27 Ibid, p. 15.

28 Sanford Levinson - Jack M. Balkin, “Constitutional Crises” *University of Pennsylvania Law Review* 157, 2009, pp. 707–754, p. 711.

29 Whittington, “Yet Another...”, p. 2147.

30 Ibid, p. 2143.

31 Levinson - Balkin, “Constitutional...”, p. 721.

32 Balkin, “Constitutional Crisis and...”, p. 14.

33 Whittington, “Yet Another...”, p. 2109.

34 Balkin, “Constitutional Crisis and...”, p. 14.

35 Whittington, “Yet Another...”, p. 2111.

ity crisis. In these crises, politicians show their willingness to resolve the problems. However, they believe that the constitution provides very limited options in the constitutional system to cope with the issues.³⁶ This leads them to exceed the limits of constitutional constraints. Consequently, they self-consciously violate the constitutional norms in the name of the state.³⁷ Yet, this type of crisis is rare because political actors do not want to cast a shadow over their legitimacy by implying that they will violate the constitution. Therefore, even if they choose to breach the constitution, there is no reason for them to announce that they will do so explicitly.

In Levinson and Balkin's classification, type two crises arise when people comply with the existing constitutional framework.³⁸ Yet, this compliance does not contribute to the resolution of a political crisis.³⁹ Instead, it ends up with a disaster. This sort of crisis corresponds to 'operation crisis' in the schema of Whittington.⁴⁰ Unlike type one crises, actors are willing to abide by the constitution. A crisis emerges from this compliance because the constitution has structural flaws. With the words of Levinson and Balkin, 'If type one crises feature actors who publicly depart from fidelity to Constitution, type two crises arise from excess fidelity.'⁴¹ This excessive compliance with the flawed constitution exacerbates the existing situation. In this case, the constitution turns into a problem triggering instrument rather than it helps us address them.⁴² One can argue that there is a relation between these two categories. Indeed, the perception that the existing regulatory framework has significant flaws and maladies might justify a violation of this flawed mechanism.⁴³ In this scenario, a type two crisis -an operation crisis- might give rise to a type one -fidelity- crisis. Finally, problems stemmed from a flawed constitution might provide incentives for politicians to come up with 'creative interpretations,'⁴⁴ which we will see later in the chapter of the 2007 presidential election.

Unlike Whittington's schema, Balkin and Levinson add another category: radical disagreements among political actors about their constitutional powers. Ac-

36 Levinson - Balkin, "Constitutional...", p. 721.

37 Ibid.

38 Ibid. p. 721.

39 Ristroph, "Is Law – Constitutional...", p. 440.

40 Whittington, "Yet Another...", p. 2109.

41 Levinson - Balkin, "Constitutional...", p. 729.

42 Ibid, p. 737.

43 Ibid.

44 Ibid, p. 747.

According to the authors, a type three crisis arises when disagreements about the constitution give rise to the extraordinary form of protest among political actors.⁴⁵ In this case, extraordinary means that it is well beyond the usual disagreements and protests. The military force, mass demonstrations, civil disobedience all are hallmarks of the type three crisis. In this case, the constitutional system fails because people are no longer willing to obey it. The riots in the streets, the secessionist movement’s actions to leave the union, or the army’s resistance to the civil authority demonstrate that the type three crisis occurs.⁴⁶ In type three constitutional crisis, politicians accuse their opponents of breaching the constitution.⁴⁷ In other words, each side claim that their rivals are precipitating a fidelity crisis. Yet, they all believe that they are acting within the limits of the constitution.

In the following sections, the 2007 and 2017 referendums will be analyzed. In that sense, it will be argued that the 2007 referendum atmosphere proves that there was a type two and type three crisis. Type two crises was on the table because the then constitution had problematic norms concerning the presidential election procedures. Since the constitutional text had severe flaws, it leads the political actors -specifically veto powers- to have problematic text interpretations. Additionally, there was type three crisis, too. The political atmosphere proved that people were not willing to obey the constitutional norms. The veto players -the military for example- stepped in and announced that it would not hesitate to take action in the presidential election process. In addition, mass demonstration showed that people who took to the streets were not willing to approve the presidency of parliamentary elected president. In this case, the argument will be that the 2007 referendum managed to address the existing disorders. Therefore, the 2007 referendum can be categorized as a crisis-addressing instrument. On the other hand, the 2017 presidential system referendum already took place in a crisis atmosphere. In the aftermath of a failed coup attempt, the referendum was held under state of emergency conditions. Yet, the referendum did not provide any solutions to the existing crises. Rather, it exacerbates the situation by bringing about type two and type three crises. Therefore, 2017 referendum will be categorised as crisis triggering instrument. The reasons for these crises will be given under respective sections.

45 Levinson - Balkin, “Constitutional...”, p. 714.

46 Balkin, “Constitutional Crisis and...”, p. 14.

47 Levinson - Balkin, “Constitutional...”, p. 738.

3. TURKEY'S 2007 REFERENDUM: AS A CONSTITUTIONAL CRISIS-ADDRESSING MECHANISM

3.1. Introduction

A brief examination of the benefits and drawbacks of referendums has been highlighted in the introduction. This section will analyze the 2007 referendum experience of Turkey by classifying it as a constitutional crisis-addressing instrument. Butler and Ranney argue that ‘referendums are not panaceas, not universal remedies for all the ills of democracy.’⁴⁸ However, they have been helpful in ameliorating some crises and in resolving some questions that established representative institutions could not manage.⁴⁹ Similarly, Turkey’s established institutions, including its parliament, failed to address its crisis regarding the presidential election process and procedure, which ultimately ended up with a referendum in 2007.

While focusing on this issue, this section will first highlight the political and legal landscape of the country. ‘Centre-periphery dichotomy’ will be the focal point in the analysis of its political landscape.⁵⁰ Then, along with the political actors and institutions, influential veto players within judiciary and military, and their battle for the last bastion -the presidency- will be examined in detail. Finally, the role of the referendum in ending the deadlock will be discussed.

3.2. Political Landscape in Turkey and Centre-Periphery Conflicts

Turkey’s political landscape has always been shaped by perception and fear of ‘enemy.’⁵¹ This enemy figure has both had external and internal elements.⁵² In the past, the former was mainly western states engaged in fierce rivalries over Turkey’s national interest; the latter was conceived as Islamic and ethnic minority groups. To a great extent, the external threat was eliminated through the War of Independence in the 1920s. It was then to suppress the ‘internal threats’, including Islamic, sectarian, conservative cliques on the one hand and pro-Kurdish groups

48 Butler/Ranney, *Referendums Around...* , s.263

49 Butler/Ranney, *Referendums Around...* , s.263

50 Serif Mardin, “Center-Periphery Relations: A Key to Turkish Politics?”, *Daedalus*, C. 102, S. 01, 1973, pp.169–190. For the role of current ruling JDP’s role in the periphery-central conflict in Turkey See Graham Fuller, *The New Turkish Republic: Turkey as a Pivotal State in the Muslim World*, Chapter 6: The Reemergence of Turkish Islam, ss. 49-66.

51 This is illustrated by an adage, “the only friend of a Turk is a Turk.”

52 Yıldız Atasoy, *Turkey, Islamists, and Democracy: Transition and Globalization in a Muslim State*, London: I.B. Tauris, London, 2005, p.44.

on the other.⁵³

Historically, Turkish cultural perceptions of “the enemy,” both internal and external, have led conflicting social cleavages to emerge, namely ‘the center establishment and periphery.’⁵⁴ The framework of this cleavage was introduced by Serif Mardin⁵⁵, arguing that ‘the confrontation between center and periphery was the most important social cleavage’ underlying Turkish politics that seems to have survived more than a century of modernization, meaning that this conflict has its roots since the late Ottomans.⁵⁶ A detailed historical analysis of this conflict is beyond the scope of this study. However, a brief examination of such disputes and the characteristics of conflicting groups would help us better understand the current flaws and crises of Turkish democracy and constitutional system.

In the early Turkish republic, while the Republican People’s Party (CHP- the first and single party until 1946) represented the bureaucratic and secularist center, Democratic Party (DP-1950 and 1960) represented the ‘democratic’ and conservative periphery in Turkish political life.⁵⁷ When the *coup d’état* took place against the democratically elected Democratic Party in 1960, this military intervention underlined the conflicts among the conservatives and secularists -the latter chose to stand by the coup plotters to get power again and maintain the status quo.⁵⁸

More recently, military intervention in 1997 against a pro-Islamist political party, Welfare Party (*Refah Partisi*), paved the way for the emergence of the current ruling Justice and Development Party (AKP) in the early 2000s, which has represented religious, conservative, and alienated middle class.⁵⁹ The AKP’s clash with the secular and militarist groups, including bureaucracy, military, and judiciary, has proved that Mardin’s center-periphery thesis remains valid in Turkey. The attempts of the AKP to push the periphery towards the center of the society have escalated tension between these two bitter rivals.⁶⁰

53 Kemal Ciftci “The Kemalist Hegemony in Turkey and the Justice and Development Party (AKP) as an ‘Other’”, *L’Europe en formation*, Centre international de formation européenne, C. 367, S. 01, 2013, pp.143-169.

54 While the central establishment, which has had more dominant power in Turkish politics, refers to the secularists wing of the country, the periphery consists of pro-Islamist political groups.

55 Şerif Mardin, *Religion, Society, and Modernity in Turkey: Modern Intellectual and Political History of the Middle East*, Syracuse University Press, London, 2006.

56 Selman Yılmaz, “Social Mobility and Its Discontents: The Center-Periphery Cleavage of Turkey”, *TAKSAD*, C. 03, S. 02, 2014, pp.28-44.

57 Yılmaz, “Social Mobility...”, p. 35.

58 Mardin, *Religion, Society...*

59 Ibid.

60 Yılmaz, “Social Mobility...”, p.34

The power struggle between these two groups mainly derives from the center's desire to maintain and extend its previous privileges and the periphery's determination to become a greater part of social, cultural, and economic life.⁶¹ When the AKP won a landslide victory in 2002 parliamentary elections in Turkey, the center representing the elites who possess economic and political power started to lose power on the state level⁶² Therefore, the presidential post has been conceived as the 'last citadel of secular Republic' which should not be surrendered to an Islamist at all costs.⁶³ The previous elites see the presidency as a guarantee against anti-secular tendencies.

At this point, one may ask how a president in a parliamentary system would be so powerful. The most plausible answer would be that Turkey's 1982 constitution has granted significant legislative, executive, and judicial powers to the president.⁶⁴ Therefore, the unprecedented nature of Turkey's parliamentary system provides for considerably more power with the president than a ceremonial figure in a classical parliamentary system. The secularist's conception of the presidency is an 'office of tutelage or mechanism of checks and balances over elected politicians on behalf of state elites.'⁶⁵ This stems from the idea that, unlike the drafters of the 1961 Constitution, those of the 1982 Constitution no longer trusted civilian and political elements. These figures had been perceived as highly fragmented and had vulnerable and radical views.⁶⁶ The inability of political figures to stop the street war between rightist and leftist fractions in the late 1970s paved the way for military intervention in 1980. Kissane explains the driving force behind the military's involvement by referring to the conceptions of democracy that have shaped Turkey's constitutional life, arguing that the most significant issue stems from the distrust of governing majorities and the following constraint of these

61 Selman Yılmaz, *State, Politics, and Religion: Effects of Political and Social Change on the Relationship Between State and Religion in Turkey, 2002-2012*, (Unpublished Doctoral Dissertation), University of Pittsburgh, 2013.

62 Yılmaz, "Social Mobility..." , p. 42.

63 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 102.

64 For comparison of president's unprecedented power, See both the constitutions of 1961 and 1982.

65 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 102.

66 The drafters of the 1982 constitution blamed the leniency of the previous 1961 constitution for violators of the constitution. The fight between leftist and rightist groups resulted in thousands of deaths between 1977 and 1980. Therefore, political parties of the 1960s, including the Justice Party, claimed that the liberal 1961 constitution was a "luxury" that made governance of the country impossible. Therefore, the drafters of 1982 no longer trusted a 'lenient and liberal' constitution.

through the guardianship system.⁶⁷

For that reason, compared to the other political and constitutional institutions, the country’s presidency was supposed to be given much more critical powers ranging from the appointment of high-court judges to university administrators.⁶⁸ In short, the 1982 constitution was designed to maintain the military as the ultimate guardian of the political system through a strengthened presidency.⁶⁹ Until the year 2007, this guardianship role of the presidency had worked well from the perspective of ‘protectors’ of the country from the ‘internal enemy.’ However, the efforts of the AKP to nominate one of its prominent figures, Abdullah Gul, for the presidency provoked a constitutional crisis that year. Secular circles declared psychological war on the ruling party to keep their presidential leverage in their hands by inviting all ‘veto powers’ to the game. The battle among the veto powers and their roles in this constitutional crisis will be analyzed in the following section.

3.3. Presidency: A battlefield for the Veto Powers

In the early 2000s, when the AKP came to power, it declared that it had nothing to do with the previous Islamic Nationalist Party.⁷⁰ What is more, the leader of the party, Erdogan said that he had ‘removed his Islamic National Outlook shirt.’⁷¹ However, the AKP and its leader were both accused of having a ‘hidden agenda.’⁷², as they failed to convince the public.⁷³ Tensions between rival factions in Turkey reached one of their highest levels during the 2007 presidential election process. Gul’s candidacy was considered a ‘symbol of both Islamism and backwardness’ because of his roots in Islamic movements and his previous comments on secularism.⁷⁴ Furthermore, his wife’s headscarf sparked fierce debates across

67 Bill Kissane, “What Is at Stake in the What is at Stake in the Turkish Constitutional Referendum?”, *The Foundation for Law, Justice and Society*, 2017, pp. 1-12.

68 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 21.

69 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 21-22.

70 Welfare Party was closed by the Constitutional Court, claiming that it had Islamic sentiments.

71 Deborah Sontag, “The Erdogan Experiment”, <https://www.nytimes.com/2003/05/11/magazine/the-erdogan-experiment.html> ,Accessed: 30.11.2020.

72 Lucie Drechselova, “Turkey: AKP’s Hidden Agenda or a Different Vision of Secularism?”, <http://www.nouvelle-europe.eu/en/turkey-akp-s-hidden-agenda-or-different-vision-secularism>, Accessed: 20.10.2019.

73 Yilmaz, 2014, s.31

74 Jonathan Rugman, “Turkish Islamists Aim for Power”, *The Guardian* 27 November 1995 noting that “This is the end of the republican period....then the secular system has failed

the country, turning ultimately into ‘an emotional fight for the state’s identity.’⁷⁵

In the middle of such an environment of political turmoil, parliament gathered for the first round of the presidential election on 27 April in 2007, in which the constitutional crisis emerged. Firstly, the main opposition party, CHP, boycotted the first round of the election to render it invalid.⁷⁶ Gul received 357 out of 550 votes, which was the highest number ever achieved in presidential elections following the adoption of the 1982 Constitution of the country.⁷⁷ Then, CHP applied to the Constitutional Court for the annulment of the parliamentary decision on the grounds that the required quorum for meeting had not been met. However, the constitution clearly described the process and procedure of the presidential election.⁷⁸ The relevant article made it clear that the decisional quorum was two-thirds of the total number of deputies on the first and second rounds, meaning that it required 367 out of 550 MPs. The conditions at this time stipulated that unless parliament reached that quorum in the first and second rounds, the absolute majority of the total number of the parliament -276 MPs- on the third and fourth rounds would be sufficient to elect the president.

The original version of the 1982 constitution stipulated that there should be no special quorum rule for the assembly’s meeting. Therefore, the general provision should apply, meaning that a third of the total number of deputies in assembly would meet the required number.⁷⁹ Özbudun clarifies this picture by arguing that ‘the parliamentary arithmetic then gave the JDP [AKP] the power to elect the president alone on the third or fourth rounds. Thus, there seemed to be no constitutional obstacle to the election of a JDP [AKP] candidate’.⁸⁰ However, secularists were not willing to conceive the defeat easily. To save their last bastion, a retired chief of prosecutor came up with an interpretation that the general provision of the constitution for the ‘quorum of meeting’ cannot be applied to this specific case.⁸¹ To be more precise, the lack of 367 MPs in the opening session in parliament will

and we definitely want to change it.”

75 Carol Migdalovitz, “Turkey’s 2007 Elections: Crisis of Identity and Power” (11 July 2007) 5

76 Ibid

77 Nurhan Sural, “Islamic Outfits in the Workplace in Turkey, a Muslim Majority Country”, *Comparative Labor Law & Policy Journal*, C. 30, S. 03, pp. 569-596.

78 The Constitution of the Republic of Turkey, *accepted 1982*, Article 102.

79 It means that to get 184 out of 550 Members of Parliament’s votes is required for the ‘quorum of the meeting.’

80 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 97.

81 Sural, “Islamic Outfits...”, p. 577.

automatically nullify the election.⁸²

The main problem with this argument is that it was not in line with either the spirit or the constitution’s wording.⁸³ Until 2007, all former presidents were elected in accordance with the relevant provisions of the constitutions. Therefore, the presidential election in 2007 broke with the precedent of the required process for the sake of ‘protection of secularism.’ Accordingly, having embraced this new interpretation, the main opposition party applied to the constitutional court for the annulment of the parliamentary decision claiming that the ruling party violated the rule for the quorum of the meeting.⁸⁴ It seems that the opposition party chose to take the side of veto power, the constitutional court, to defeat the government instead of nominating its own presidential candidate.⁸⁵

27 April in 2007 was perhaps one of the longest days of Turkey’s political and constitutional history. The military of the country and the highest court, two mighty veto powers, stepped in the process.⁸⁶ Shortly before midnight, the army intervened in the presidential election discussions through an e-memorandum on its website. It stated that the military would not hesitate to take a side in this debate to ensure that the next president would dedicate himself to the fundamental values of the republic, including secularism, ‘not only in words but also in substance.’⁸⁷ Suddenly, the constitutional crisis turned into a political one as another powerful veto player, the military, joined the game. Indeed, Turkey’s history proves that this is a very dangerous game that might ultimately culminate in a bloody coup that the country has witnessed three times in its short history, along with a recent failed attempt in 2016.⁸⁸

82 From this perspective, as only 361 of 550 MPs were present in the first round of the presidential election, the ballot cannot be considered valid.

83 It is not in line with the constitution’s wording since the constitution has a general provision that does not necessitate a two-thirds quorum for the meeting in the assembly. Therefore, if a specific requirement does not exist, the general provision should have been applied. Moreover, it is not in line with the spirit of the constitution. This means that the requirement of at least two-thirds quorum encourages the boycott and consequently a deadlock in the parliament, as it would be quite difficult to have at least 367 MPs in the parliament for a political party.

84 Levent Gönenç, “Presidential Elements in Government: Turkey”, *European Constitutional Law Review*, C. 4, S. 03, 2008 p. 519–520.

85 Migdalovitz, “Turkey’s 2007 Elections...”, p.5.

86 Gönenç, “Presidential Elements...”, p. 520.

87 Gönenç, “Presidential Elements...”, p. 518.

88 Turkey witnessed three coups taking place in 1960, 1980, and 1997 during its history together with a recent failed attempt in 2016.

Yet, such a crisis can be regarded as the litmus test of the genuineness of actors and institutions in Turkey. Some secularist circles, including the main opposition party, NGOs, academics, and even some prominent constitutional law experts, openly supported the military intervention and suggested that a democratically elected government is better to resign. However, unlike previous governing parties, the AKP did not bow down under military pressure.⁸⁹ The political figures of the government dared to condemn the military because it attempted to intervene in a constitutional issue.⁹⁰ Additionally, the AKP regarded the warnings of the military as an attempt to influence the constitutional court.⁹¹

Soon after the military's memorandum, the court, in its highly controversial ruling, regrettably endorsed the claim of unconstitutionality of the first round of the presidential election.⁹² This ruling was considered 'inconsistent with the literal, teleological, and historical interpretations of the Constitution by a majority of constitutional lawyers, and described as based on political rather than legal considerations.'⁹³ The then prime minister Erdogan described the ruling of the court as a 'bullet aimed at democracy', adding that the government would respect the decision, though.⁹⁴

To end the deadlock, the government took two critical steps. First, as soon as Mr. Gul withdrew his candidacy for the presidency because of the court's ruling, the AKP called for early elections as required by the constitution.⁹⁵ Secondly, it proposed a package of constitutional amendments which consist of, among other

89 In the past, Turkish governments used to resign in response to such warnings. Indeed, there has not been even one single example of resistance by a democratically elected party to the military intervention.

90 The government spokesman reacted strongly to what he described as the "inappropriate" General Staff statement. He declared, "The General Staff is an establishment under the Prime Minister's Office. It would be inconceivable if the General Staff in a democracy upholding the rule of law made a statement critical of the government about any issue..." For a detailed analysis of military intervention and ruling party's reaction, See Hale William / Özbudun Ergun, *Islamism, Democracy and Liberalism in Turkey: The Case of the AKP*, Routledge, Florence, 2010.

91 Migdalovitz, "Turkey's 2007 Elections...", p. 7.

92 Constitutional Court's decision, E. 2007/45. K. 2007/54, 1 May 2007, Resmi Gazete [Official Gazette], 27 June 2007, No. 26565.

93 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 98.atikkan

94 For similar discussions, See the decision of the US Supreme Court regarding the presidential election race between Al Gore and George W. Bush. Some have compared the Constitutional Court's decision in Turkey and the controversy over the US Supreme Court ruling in the 2000 presidential race in the USA.

95 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 98.

things, popular election of the president and a clarification of the quorum of the assembly to bypass similar deadlocks in the future.⁹⁶ Once the parliament passed the amendments, the then president referred the legislative package to the referendum vote.

3.4. The Referendum and Its Role in The Battle

The snap election gave the AKP a strong mandate with over 46 % of votes and 340 out of 550 MPs.⁹⁷ The public showed its willingness to decrease the influence of veto players in daily politics through both a remarkable high turnout rate and significant support to the ruling party compared to previous elections. The public also punished the political parties that boycotted the assembly to prevent the presidential election in parliament by leaving them under 10 percent of the national threshold.⁹⁸ However, given the constitutional court’s decision, the new government was still in trouble to elect the president.

At this point, the second-largest opposition party, MHP, took a different position by attending the parliamentary sessions to refrain from another constitutional crisis.⁹⁹ Following Gul’s election as president by parliament, the constitutional amendment package was adopted by referendum with over 67 percent of the total votes enabling the following president candidates to be elected through a direct popular vote.

The 2007 presidential election has several precious lessons for Turkish constitutional and political history. First, this referendum seems to have a crisis-addressing aspect as it achieved to preclude possible future conflicts regarding the process and procedure of the presidential election. Moreover, although the snap election seemed in itself to resolve this crisis before the referendum was held, it

96 Atıkcın - Öge, “Referendum Campaigns...”, p. 454.

97 Interestingly, although the ruling party significantly increased its proportion of votes from 34% to 46%, its seats in parliament decreased from 357 to 340 in the aftermath of the 2007 election. This stems from the maladies of the Turkish election system, which has a 10% national election threshold. Therefore, in 2002 when the AKP came to power, only two political parties exceeded the threshold. Though votes cast for all other parties constituted about half of the total votes, these votes were wasted. However, in 2007 another political party managed to exceed the threshold, which led to the AKP and CHP decreasing the number of their seats in the assembly.

98 The existence of %10 of the national threshold is another indicator of conflict between the center and periphery. The drafters of the 1982 constitution aimed to leave these ‘marginal political parties representing religious, conservative, and nationalist cliques’ below the high threshold.

99 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 101.

can be argued that the upcoming 2007 referendum indirectly contributed to the solution of this crisis since it hung like a sword of Damocles over the political parties.¹⁰⁰ This means that the opposition parties and even powerful veto players finally could understand that even if the new parliament resists electing the president by boycotting the assembly again or resorting to other means, the public will address the problem by taking side with the government through the endorsement of the proposal in the referendum.

More importantly, the referendum process and the renewal of the parliament through a snap election render the physical interference of the military more difficult compared to the *coup d'état* in 1980. Özbudun argues that the main reason for the coup in 1980 was the inability of the Turkish parliament to elect a president of the republic.¹⁰¹ The six-month-old deadlock in the parliament ended with the military coup of 1980.¹⁰² Therefore, either direct or indirect, Turkey's 2007 referendum should be considered a crisis-addressing instrument as it also succeeded in precluding a similar coup attempt at that time.

With regards to the opponents of the proposal, opposition parties encountered a profound paradox during the referendum campaign. On the one hand, the opponents of this constitutional package were aware that the vote potential of secularists is just over 30%, whereas the conservative and religious wing of the public dominates well over 60% of the total votes. Therefore, the presidential election through popular vote makes it almost impossible for a secular candidate to become president in this arithmetic.

On the other hand, those endorsing the *status quo* were also aware that carrying out a campaign against this electoral reform seems to mean that the opposition lacked trust in both the public and themselves because they accept the reality in advance that they are doubtful to win this election even if it is free and fair. This paradox, therefore, weakened their position in this contest. What is more, the popular vote will also render the veto powers' intervention in the election process more difficult since this crisis has proved that manipulation of the public has seemed to be more complicated than that of its representatives in the assembly.

Another striking lesson that can be learned from this crisis is that Turkey has a

100 The political parties that boycotted the assembly in the first round of the presidential election failed to exceed % ten national thresholds in the next election held in 2007. Therefore, most claimed that these parties were punished by their constituencies simply because they cause the constitutional crisis.

101 Ergun Özbudun, *Contemporary Turkish Politics: Challenges to a Democratic Consolidation*, Lynne Rienner Publishers, London, 2000, p. 37.

102 Özbudun, *Contemporary Turkish...*, p. 37-38.

casuistic, written constitution that regulates almost every single issue in detail.¹⁰³ However, the constitution was interpreted in a way that does not align with its wording and spirit despite its clear and detailed provisions. This means that it was bent for the sake of the interests of state elites.¹⁰⁴ The whole crisis period demonstrated that even a well-designed norm might not guarantee a well-functioning system, nor does it guarantee the preclusion of such crises in a country where people are willing to bend and violate the constitution whenever there is a conflict between their interests and the norms set out by the constitution.

Naturally, the opposition groups had a reasonable point that the ruling party had already controlled both the government and parliament. When an authority achieves control of both legislative and either wing of the executive (Prime Ministry and Presidency) in a country that has failed to ‘consolidate its democracy,’ it is highly likely that this will jeopardize the principle of separation of powers.¹⁰⁵ Once this principle is undermined, the risk of adopting authoritarian tendencies, by its very nature, will increase.

However, such concerns do not change the reality that the opposition groups, including political parties and veto powers, chose to disregard the constitutional and legal framework of the country by resorting to undemocratic means for the sake of ‘democracy’ itself. This crisis showed that for some, ‘democracy still is not the only game in town.’¹⁰⁶ At this point, it would be prudent to ask how democracy could be consolidated by those who never hesitate to violate the constitution itself when they encounter the risk of losing their privileges *vis à vis* their ‘enemies’. There is no doubt that such approaches would only encourage and

103 Yavuz Atar, “The Main Features of 1982 Turkish Constitution and Recent Constitutional Changes in Turkey”, *Selcuk University Law Faculty Review*, C. 9, S. 1, 2001, pp. 215-235.

104 For a similar and interesting discussion See House of Cards (a tv series) “The constitution was bent but not broken.”

105 Juan J. Linz - Alfred Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America, and Post-Communist Europe*, Johns Hopkins University Press, London, 1996.

Linz and Stepan argue that “in addition to a functioning state, there are five more interconnected and mutually reinforcing conditions for a ‘consolidated democracy.’ First, the conditions must exist for the development of a free and lively civil society. Second, there must be a relatively autonomous and valued political society. Third, there must be the rule of law to ensure legal guarantees...Fourth, there must be a state bureaucracy that is usable by the new democratic government. Fifth, there must be institutionalized economic society.”

106 Tanel Demirel, “Lessons of Military Regimes and Democracy: The Turkish Case in a Comparative Perspective”, *Armed Forces & Society*, C. 31, S.02, 2005, pp. 245-271.

justify undemocratic means, including coup attempts.¹⁰⁷

The power struggle over the country's significant institutions has led many to propose that Turkey first needs to be protected from its 'protectors.' The pervasive problem of "who will guard the guardians?" has always been at the heart of civil-military and bureaucracy relations.¹⁰⁸ Once the country succeeds in getting rid of its guardians, protectors, and heroes, it will manage to address its crises in a smooth and democratic way.

Before moving on to the 2017 referendum, we need to explain how 2007 referendum contributed to the resolution of the constitutional crisis. A political crisis might turn into a constitutional crisis. In this case, not only a particular political actor or an institution is put at risk, but also the constitutional mechanism is tested.¹⁰⁹ Sometimes, political disputes and disagreements cannot be resolved within the constitutional framework. In this scenario, politicians might go beyond the constitutional framework to achieve the desired ends.¹¹⁰ According to Whittington, the political attempts to look outside of that framework give rise to the operational crisis.¹¹¹ Naturally, suppose political actors such as the judiciary can deal with the contradicting interpretations of the constitutional text without resort to extraordinary and unconstitutional means. In that case, there is no need to face a constitutional crisis.¹¹²

Yet, in the aftermath of the 2007 parliamentary elections, the military decided to get involved in the election discussions. It made it clear that the army would not hesitate to take action against a democratically elected government if the presidential candidate does not comply with a secular profile. Thus, the use of military force or the existence of a severe threat of military force is a 'common sign of a type three crisis.'¹¹³ The highly controversial decision of the constitutional court just came out after the military's intervention. This created a perception that the constitutional court was affected by the military's position in its verdict, meaning that veto powers, including the judiciary and army, resorted to extraordinary and unconstitutional measures. Thus, the 2007 election process demonstrated that it

107 Turkey has gone through a bloody failed attempt in 2016, leading to over 250 civilian deaths.

108 Hakkı Taş, "Turkey's Ergenekon Imbroglıo and Academia's Apathy", *Insight Turkey*, C. 16, S. 01, 2014, pp .163-179.

109 Whittington, "Yet Another...", p. 2098.

110 Ibid, p. 2134.

111 Ibid, p. 2101.

112 Ristroph, "Is Law - Constitutional...", p. 439.

113 Levinson - Balkin, "Constitutional...", p. 740.

had almost every mark of a type three crisis. The military got involved in the process, and people took to the streets in order to show their disapproval of the presidential election. These parameters prove that the country entered constitutionally extraordinary times.¹¹⁴

2007 election also proved that the then constitution has significant flaws, bringing the type two crisis to the fore. There were heated debates about the quorum of the constitution. The rival sides interpreted the constitutional text in a contradicting way. The governing party argues that different rules apply in terms of decisional quorum and quorum of meeting to elect the president in the parliament. This was a common interpretation until the 2007 election. All the previous presidential election procedures were held according to this interpretation. Yet, the opposition insisted that there is a need for a qualified majority under both scenarios, which means that the assembly might gather and reach a decision with two-thirds of the majority.

These contradicting approaches stemmed from different and inconsistent interpretations of the constitution. Additionally, the crisis proved that the constitutional text had severe maladies. Through the 2007 referendum, this ambiguity was resolved. In that sense, it can be argued that the referendum succeeded in addressing the existing flaws of the constitution. A potential counterargument would be that although the 2007 referendum played a significant role in solving short-term related issues, it contributed to more significant problems in the long run by enabling the political actors to replace the long-lasting parliamentary system with a flawed presidential system via another referendum which took place in 2017. The following section will examine an example of a constitutional crisis-triggering mechanism: Turkey’s presidential system referendum in 2017.

4. TURKEY’S 2017 REFERENDUM: AS A CONSTITUTIONAL CRISIS-TRIGGERING INSTRUMENT

4.1. Introduction

The previous section has examined Turkey’s 2007 referendum as a crisis-resolving instrument. This section will consider Turkey’s 2017 referendum as a crisis-triggering mechanism, which replaced its long-lasting parliamentary system with a flawed version of the presidential model. Doing so will first discuss the country’s political, legal, and constitutional landscape, particularly after 2007, which has paved the way for a flawed system that lacks check-and-balance mech-

114 Ibid, p. 741

anisms. Then, the concept of ‘Turkish-style-presidential-system’¹¹⁵ will be analyzed. It will be suggested that it is a significant deviation from the original US presidential model. Moreover, it will be discussed how and in what ways this malicious system has triggered constitutional crises in Turkey. The focus will be the misinterpreted concept; Separation of Power and the increasing powers of the executive *vis-à-vis* parliament and the judiciary. Then, Turkey’s eclectic method will be discussed to prove that this new model aims to accumulate the strongest aspects of both the parliamentary and presidential systems. This will be followed by the examination of the notions of “democracy with adjectives” and “delegative democracy” in particular. Finally, this section will attempt to answer how Turkey has strengthened its place in the ‘league of delegative democracies’ with the help of the presidential referendum held in 2017.

4.2. Political and Legal Landscape of Turkey within Recent Decade

From about 2007 onwards, Turkey has gone through several constitutional, legal, domestic, and foreign crises. According to a common belief among Turkish citizens, such decade-long crises in Turkey would last more than a century in a Nordic country. Because of the intense agenda of the country, an extensive evaluation of even constitutional crises *per se* falls outside the scope of any single study. However, it seems that the dramatic transformation that Turkey has undergone during the AKP’s second and third terms cannot be understood without an understanding of recent political, legal, and constitutional developments in Turkey.

Following the presidential election crisis in 2007, Turkey encountered massive trials against military personnel, which aimed at getting rid of military tutelage through a purge of Turkish organized crime gangs known as ‘Turkish Gladio’ or ‘Ergenekon.’¹¹⁶ In the context of these trials, former generals and active duty high-level figures of the military, which represented the ‘protectors of the republic and secularism,’ were charged with being a covert terrorist organization aiming to bring the legitimate government down.¹¹⁷

115 Yeni Şafak, “Erdoğan Insists on Turkish-Style Presidential System”, <https://www.yenisafak.com/en/news/erdo%C4%9Fan-insists-on-turkish-style-presidential-system-2089945>.

Accessed: 03.10.2019. Turkish President Erdogan said that a Turkish-style presidential system can be built by picking the best features of different presidential systems in the world. “There are different presidential systems in the United States, Mexico, Cuba, Russia, and France,” he said, and added that Turkey might as well adopt such a system.

116 Akin H. Ünver, “Turkey’s “Deep-State” and the Ergenekon Conundrum”, *The Middle East Institute*, 2009, pp.1-25.

117 Tas, “Turkey’s Ergenekon...”, p. 163.

However, at the end of the six-year-trial process, this atmosphere completely changed. From 2013 onwards, the concept of ally and foe reversed. It emerged that a hidden group - known as Gulenists¹¹⁸- within state mechanism conducted the probes against the secularist wing of the republic by abusing its powers to purge the secularists from significant posts of the state and put its own adherents to these positions. What is more, in 2013, the AKP blamed this group for having a secret plan to bring down the legitimate government using trumped-up evidence of bribery and corruption.¹¹⁹ Following these operations against the government, Gulenists have been first labeled as a ‘state within the state,’ or a ‘parallel state’ then officially been recognized as a terrorist organization by the government, since the group had succeeded in penetrating into almost all important state institutions including; judiciary, police department, and the military.¹²⁰ The tension between the state and the ‘parallel state’ reached its highest point in 2016 through a failed coup attempt.¹²¹

The reason for touching upon all these issues in this study has more to do with the discussions on the presidential system preference of the country. In the aftermath of the failed coup attempt, the constitutional package regarding the replacement of a long-lasting parliamentary system with a presidential one was brought before the fore by the ruling party. According to the proponents of the presidential system, Turkey has suffered a lot from all these crises, including the recent coup attempt because of its weak parliamentary system. However, the opponents of the system argue that the driving force behind such problems is that the current ruling party has been turning into a more authoritarian regime, particularly after constitutional amendments held in 2007.¹²²

It can be truly argued that the collapse of the tutelary system and the adoption of the principle of popular election of the president raised some concerns as to whether a new system of constitutional checks and balances could be estab-

118 For a comprehensive analysis, See Scott T. Fitzgerald, “Conceptualizing and Understanding the Gülen Movement”, *Sociology Compass*, C. 11, S. 03, 2017.

119 Kıvanç Ulusoy, “Turkey’s Fight Against Corruption: A Critical Assessment”, *Sabancı University IPC*, 2014, pp. 1-5.

120 Galip Dalay, “Turkey’s parallel state strikes back”, <https://www.aljazeera.com/indepth/opinion/2014/01/turkey-parallel-state-strikes-back-20141545517864901.html>, Accessed: 27.07.2019.

121 There have been several indicators that this Gulenist organization is behind the bloody coup attempt.

122 Ersin Kalaycıoğlu, “Turkish Popular Presidential Elections: Deepening Legitimacy Issues and Looming Regime Change”, *South European Society and Politics*, C. 20, S. 02, 2015, ss.157-179. Noting that “Turkey moved from a parliamentary president to a new but extra-constitutional presidential practice.”

lished.¹²³ Since the guardianship of the army, the courts, and the bureaucracy is no longer a ‘danger,’ the risk of ‘pure majoritarian understanding of democracy’ has emerged.¹²⁴ Moreover, the president’s election through a popular vote, by its very nature, includes the risk of ‘double-headedness between the president and Prime Minister.’¹²⁵

This semi presidential-like system adopted in 2007 has proved that it can ‘harbour the seeds of instability’, particularly during the ‘cohabitation period’ in which the president and parliamentary majority have different worldviews and are coming from antagonistic political parties.¹²⁶ Interestingly, the last years of President Gul demonstrated that the ‘dualist nature of semi-presidential regime might provoke a struggle between the political figures, even if they are the members of the same party.’¹²⁷ Therefore, as Gönenç points out, the principle of popular election of the president involves the risk of exacerbation of conflicts and frictions within the executive.¹²⁸

It seems that the problem with the popular election of the president is that this system means a ‘departure from the parliamentary government system without adopting the main features of a presidential or semi-presidential system.’^{129,130} Therefore, it is a mechanism “with no example or practice.”¹³¹ In this context, one may argue that although the 2007 referendum succeeded in addressing some short-term related constitutional crises, it seems that it triggered more severe issues in the long run and ultimately resulted in a more controversial referendum in 2017. Within a decade, Turkey changed its system again and adopted a presidential system that deviates, to a great extent, from the original US version. That is why it is called Turkish-Style Presidential System.¹³²

123 Kissane, “What Is at Stake...”, p. 4.

124 Kissane, “What Is at Stake...”, p. 4. Noting that “There are two notorious conceptions of Turkish constitutional life namely, National Will and Tutelary System.”

125 Kalaycıoğlu, “Turkish Popular Presidential...”, p. 161.

126 Gönenç, “Presidential Elements...”, p. 522-523.

127 Gönenç, “Presidential Elements...”, p. 523.

128 Gönenç, “Presidential Elements...”, p. 522-523.

129 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 99.

130 This critic is also valid for the current Turkish-Style Presidential System as it lacks the main features of the original US version.

131 Özbudun - Gençkaya, *Democratization and the Politics...*, p. 99.

132 This concept is adopted by both opponents and proponents of the system in a different manner and context. The supporters claim that ‘there is no transportation without transformation.’ Therefore, Turkey’s experience of system transplant inherently may include some ‘Turkish character.’ On the other hand, opponents argue that this system

4.3. Turkish-Style Presidential System

Turkey has adopted and implemented a parliamentary system throughout its over the 90-year-old history of democracy. However, it has been struggling with coups, democratic consolidation issues, and economic maladies. Although Frey points out that ‘Turkish politics are party politics’¹³³, the organizational strength of political parties had declined.¹³⁴ What is more, Turkey faced severe volatility, fragmentation, and polarisation during coalition government periods.¹³⁵ Therefore, the proponents of the presidential system have made the parliamentary model the scapegoat for all the challenges in question.¹³⁶ Moreover, they believe that the presidential system is much more compatible with Turkish history and tradition on the grounds that the US presidency, which Horwitz has dubbed the “republican monarchy”¹³⁷, reflects the main characteristics of Ottoman Empire Monarch understanding. Because of these similarities, the idea is that Turkey can adopt one that is already in place, rather than building its own system.

In addition, the supporters of the presidential system also rely on the motto that ‘other constitutions have been built, that of England has been allowed to grow.’¹³⁸ The underlying rationale behind this explanation is not to focus on the growing nature of the British parliamentary system, instead to focus on the building nature of the US presidential model. To be more precise, although the US constitution and presidential system is a building, not a growing product, the US system is seen as the longest enduring democratic presidential system in the world.¹³⁹ Therefore, from this perspective, there is no reason for the failure of this new system in Turkey.

These approaches have proved that the proponents of the presidential model have both misunderstood and misinterpreted the transplanted US system and

does not reflect the core values of the original US Presidential version. Therefore, they use this concept as they believe that it has a negative understanding and meaning.

133 Frey Frederick W, *The Turkish Political Elite*, MIT Press, Cambridge, 1965. (<<https://www.amazon.com/Turkish-political-elite-Frederick-Frey/dp/B000OQCZKS>, Accessed: 21.03.2018)

134 Özbudun, *Contemporary Turkish...*, p. 17.

135 Özbudun, *Contemporary Turkish...*, p. 17.

136 See Serdar Güleler - Nebi Miş “Constitutional Framework of Executive Presidency in Turkey”, *SETA*, C. 29, S.12, 2017, pp. 1-34.

137 Morton J. Horwitz, “Constitutional Transplants”, *Theoretical Inquiries in Law*, C. 10, S. 02, 2009, pp. 535-560.

138 Vernon Bogdanor, “A Codified Constitution”, *Politics Review*, C. 18, S. 01, 2008, pp. 2-7.

139 Jose Antonio Cheibub et al., “Latin American Presidentialism in Comparative and Historical Perspective”, *Texas Law Review*, C. 89, S. 07, 2011, ss.1707-1739.

its indispensable component; separation of power. Turkish constitutional amendments confer significantly more power on the president. Moreover, Turkey's new system includes substantially fewer checks and balances between the executive, legislature, and judiciary than the original US system.¹⁴⁰ Therefore, there is little similarity between Turkey's constitutional amendments and the political regime of the US.

The constitutional referendum held in 2017 proposed a new "partisan presidential system," meaning that the president can retain his/her links with a political party.¹⁴¹ The removal of the provision that the president is required to sever his links with a political party enables him to control the parliament when his party manages to gain an absolute majority in parliament. Another striking consequence of the referendum is that the president may 'issue presidential decrees on matters relating to executive powers.'¹⁴² The Venice Commission's Opinion on the Referendum underlines the threat that the vague formulation of the provision would justify all presidential decrees because there are hardly any matters that would not somehow 'relate' to executive power.¹⁴³

This, without doubt, completely changed the balance of powers between the president and the legislature in favor of the former. Over three year's experience of this new system indicates that the president, through the executive decrees, has had the opportunity to govern the country by bypassing the assembly.¹⁴⁴ The parliament, despite its limited function, had the check and balance mechanisms before the referendum. However, the adoption of sweeping powers for the president has turned the assembly into a 'rubber-stamp institution.'¹⁴⁵ What is more, the president can declare a further state of emergency and has the power to dissolve parliament and call elections.

A broader and probably more significant issue that deserves closer attention is that the constitutional amendments pose a significant threat to the independence

140 Andre Demunter, "Turkey at a Historic Crossroads: Turkey: The Venice Commission's Opinion on the Amendments to the Turkish Constitution to be Submitted to a National Referendum on 16 April 2017", 2017, pp. 1-11.

141 Md. Mudassir Quamar, "The Turkish Referendum, 2017", *Contemporary Review of the Middle East*, C. 4 S.3, 2017, pp. 319-321.

142 Demunter, "Turkey at a Historic...", p. 9.

143 Council of Europe, "Venice Commission Opinion Turkey: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017", p. 19.

144 Berk Esen - Şebnem Gümüşçü, "A Small Yes for Presidentialism: The Turkish Constitutional Referendum of April 2017", *South European Society and Politics*, C. 22, S. 03, 2017, pp. 303-326.

145 Esen - Gümüşçü, "A Small Yes...", p. 315.

of the judiciary, which is a prerequisite for the separation of power. Increasing control over the Council of Judges and Prosecutors (CJP) presents an excellent example of how the referendum weakened an ‘already inadequate system of judicial oversight of the executive.’¹⁴⁶ The CJP is a body that oversees the appointment, promotion, transfer, disciplining, and dismissal of judges and public prosecutors.¹⁴⁷ Therefore, ‘getting control over this body means getting control over judges and prosecutors,’ particularly in a country where the dismissal of the judicial figures is so frequent.¹⁴⁸ To explain the driving force behind the amendments, Kissane refers to the doctrine of Carl Schmitt, claiming that an effective government requires robust authoritarian governing mechanisms to free the executive from legal restraints.¹⁴⁹ In other words, countries that resort to the Schmittian doctrine seem to believe that the judiciary is a burden over the government policies.¹⁵⁰

Apart from the pitfalls and deficiencies of the judicial institutions under the new constitutional system, a highly vague and problematic amendment has become part of the new constitution, stipulating that the president is entitled to appoint and dismissed “high levels of state officials.”¹⁵¹ Unlike the previous text, the new provision does not contain an enumerative list of those appointed and dismissed by the president. It is at the behest of the president to ‘determine which positions fall under the notion.’¹⁵² Suppose the president adopts an extensive interpretation of the concept. In that case, he/she will gain enormous power on the determination of important posts and the appointment and dismissal of the holders of these posts. Under such a scenario, the president is both a legislator and executor at the same time.¹⁵³

At this point, for the sake of comparison, it would be prudent to note that the president of the US has no power to unilaterally appoint the judges of the Supreme Court or other federal judges. All high-profile judges must be nominated

146 Esen - Gümüüşçü, “A Small Yes...”, p. 314.

147 Esen - Gümüüşçü, “A Small Yes...”.

148 Esen - Gümüüşçü, “A Small Yes...”, p. 315.

149 Kissane, “What Is at Stake...”, p. 6.

150 To understand the relationship between legitimacy and authoritarian regimes See Kelly Duncan, “Carl Schmitt’s Political Theory of Dictatorship”, *The Oxford Handbook of Carl Schmitt*, (Ed.: Jens Meierhenrich, Oliver Simons and Duncan Kelly), Oxford University Press, C. 01, 2013, pp. 218-237.

151 The constitution of the Republic of Turkey, Article 123.

152 Demunter, “Turkey at a Historic...”, p. 8–9.

153 Demunter, “Turkey at a Historic...”, p. 9.

by the president and approved by the US Senate.¹⁵⁴ In addition to the judicial constraints, the president is unable to dissolve the assembly.¹⁵⁵ Further, the president lacks explicit law-making powers and has no constitutional power of executive decree in the original presidential system.

Given the fundamental features of the original system, it can be concluded that Turkey has deviated, to a great extent, from the original version of the presidential system. Moe and Caldwell point out that ‘presidential and parliamentary systems come with their own baggage.’¹⁵⁶ However, this argument does not seem sound because the origin and recipient country cannot be expected to have the same social, economic, and cultural characteristics, backgrounds, and expectations. Therefore, this does not mean that when adopted by Turkey, presidentialism was supposed to be taken as a package deal. It is true that there cannot be any ‘transportation without transformation.’¹⁵⁷ However, the point here is that the transformation should not undermine the essence and main characteristics of the original form of the system.

However, Turkey has already crossed this line as the transformation is far from having the core of the original system. Therefore, the presidential system will highly likely encounter the risk of being a failed system when the long-term impacts of the system arise. These concerns were shared by even the backbenchers of the ruling party along with the opposition, stating that Turkey needs to learn lessons from countries with misleading presidency experience, such as those of Latin America.¹⁵⁸ As some of these countries’ constitutions, unlike the original US system, are uniquely ‘inclined to empower presidents to decree laws, initiate legislative proposals, and exert powers in emergency conditions’¹⁵⁹, they enable the ‘tyranny that has so frequently surfaced in these countries’.¹⁶⁰ Thus, the significant deviations from the original form of the presidency have resulted in the emergence of degenerated systems of very different types, such as Latin American-style presidential systems.

154 U.S. Const., art. II, sec. 2, cl. 2

155 Burhan Kuzu, *Her Yönüyle Başkanlık Sistemi*, BKY, 2011.

156 Terry M. Moe - Michael Caldwell, “The Institutional Foundations of Democratic Government: A Comparison of Presidential and Parliamentary Systems”, *Journal of Institutional and Theoretical Economics (JITE)*, C. 150, S. 01, 1994, pp .171-195.

157 Siems Mathias, *Comparative law*, Cambridge University Press, Cambridge, 2014.

158 Kuzu, *Her Yönüyle Başkanlık...* Interestingly, despite his previous concerns and warnings, he then changed his position and supported the recent amendments that involve a risk to turn the country into an authoritarian regime.

159 Cheibub et al., “Latin American Presidentialism...”, p. 3.

160 Kuzu, *Her Yönüyle Başkanlık...*

Alan Sionoff, in his comparative presidential systems analysis, categorizes several countries by giving numbers to them in terms of a set of criteria including; mode of election of a president, the existence of a legislative veto, of decree powers, the role of president in government formation, foreign policy and so forth.¹⁶¹ The powers of presidents, in this analysis, are scored on a scale ranging from 0 to 7.¹⁶² He puts the US as the typical presidential system at one end of the scale with a seven, whereas Germany, a typical parliamentary system, has been put on the other end of the scale with a zero.¹⁶³ Within this framework, Turkey's score is two under the constitution of 1961 and three under that of 1982.¹⁶⁴ Siaroff's study clearly demonstrates that Turkish presidents have substantially had more power than the presidents in classical parliamentary systems. However, this analysis has not reflected Turkey's recent constitutional transformation that it has undergone within the last decade.

Along with constitutional amendments of 2007 and 2017, Turkey's place on Sionoff's scale has shown an unprecedented move towards the point of seven. In this context, given the current president's major legislative, executive and judicial powers that the US presidents do not have, one can go further and argue that Turkey has already fallen outside of this scale and should be scored over seven. Indeed, the current presidential system of Turkey is much closer to the Russian-Style Super-Presidential System than the original version of the US.¹⁶⁵

Lastly, the cohabitation risk still exists in this system. The ruling party achieved to convince the public again that the semi-presidential-like system adopted in 2007 should be regarded as a transitional tool since it inherently involved a risk of confrontation between the president and parliamentary majority, particularly during 'cohabitation periods.'¹⁶⁶ The cohabitation scenario would most likely generate a gridlock in parliament and might trigger further constitutional crises be-

161 Alan Siaroff, "Comparative Presidencies: The Inadequacy of the Presidential, Semi-presidential and Parliamentary Distinction", *Eur. J. Political Res.*, C. 42, S. 03, 2003, pp. 287-312.

162 Gönenç, "Presidential Elements..." , p. 524.

163 Siaroff, "Comparative....".

164 The reason for the increase of Turkey's score is that the protectors of the secularist system in the 1980s increased the powers of the president to provide a guardianship role to the president against particularly 'internal enemies.'

165 Mustafa Akyol, "Why does Erdoğan want a 'presidential system?'" <https://www.hurriyetdailynews.com/opinion/mustafa-akyol/why-does-erdogan-want-a-presidential-system--78004>, Accessed: 12.09.2018.

166 The period in which the president and parliamentary majority come from different political parties and follow different worldviews. See Levent Gönenç, "Presidential Elements..." , p. 522.

tween the legitimate powers, as recently seen in Venezuela.¹⁶⁷ However, the ruling party leaders have avoided discussing the potential cohabitation risk and gridlock of the current presidential system if the government could not get sufficient votes to form a majority government in parliament.¹⁶⁸ This risk passed for now because the AKP won a landslide victory in June 2018 snap election. Yet, the conflict scenario between legitimate powers will remain for future elections.

4.4. The Implications of Turkey’s ‘Eclectic’ Model Transplantation

Turkey’s transportation experience of a new system or code from abroad is not a recent phenomenon. When the republic was established after the Ottoman Empire collapsed in the 1920s, the founders of the new republic preferred to adopt an eclectic method in its legal transplants journey: the civil code from Switzerland, the criminal law from Italy, the commercial code from Germany, the parliamentary system from the UK. We can now add semi-presidential and presidential system transplantations within the last 15 years to this picture. Harvey resorts to ‘breakfast analogy’¹⁶⁹ to explain such eclectic attempts. He basically argues that Turkey’s current law structure resembles a breakfast whose products come from different provinces of the world.¹⁷⁰ However, this description may be overly benign, and the new system might be better described as a form of cultural as well as political transplantation.

There are numerous views in the literature about whether and to what extent a system or code can be transplanted from the original country and then adapted to the recipient country with different historical, geographical, cultural, economic, and sociological elements and characteristics. Alan Watson¹⁷¹, for instance, takes the view that ‘legal rules are not devised for the particular society in which they operate,’ and therefore they can be adopted and implemented by any country.¹⁷² At the other end of the spectrum, Montesquieu argues that it is ‘a great coinci-

167 Esen - Gümüştü, “A Small Yes...”, p. 321.

168 Esen - Gümüştü, “A Small Yes...”, p. 307.

169 David Harvey, “Editorial: A Breakfast Vision”, *Geographical Review*, C. 03, S. 01, 1989. Cited by Siems, 2015.

170 “*The coffee was from Costa Rica, the flour probably from Canada, the oranges from Spain, those in the orange juice came from Morocco and the sugar came from Barbados. The machinery from Germany, the fertiliser from the United States, the oil from Saudi Arabia...*”

171 Known as the founding father of the legal transplant.

172 Alan Watson, *Legal Transplants: An Approach to Comparative Law*, University of Georgia Press, Athens, 1993.

dence' if the law or a system of one nation actually suited another.¹⁷³ However, these extreme views do not reflect the accurate picture because they either overestimate or disregard the dynamics of society. Thus, it would be prudent for a recipient country to change the original transplanted idea and even keep some aspects of its own system instead of a complete overhaul.

With regards to the presidential system transplantation, Turkey has adopted this practice by deciding to keep some instruments of the parliamentary regime that strengthen the executive branch.¹⁷⁴ It also rejected to take some principles of the original system that guarantee check and balance between the presidency and other branches of the state. For example, although the president's appointment of a supreme court judge is subjected to the approval of the senate in the USA to ensure the independence of the judiciary, Turkey has intentionally ignored this requirement. Therefore, one can claim that the new system combines the strongest aspects of the parliamentary and presidential models to increase executive power.

The problem with Turkey's understanding of the transplanted system is that the political elites seem they have not preferred to make some alterations to the original system for the needs of the Turkish society. Instead, they adopted a cherry-picking method to empower the executive by keeping the most vital elements of both the old and new system. 'The wheels of constitutional machinery turn more slowly' in Turkey because of this a-la-cart method that Turkey adopted.¹⁷⁵ This, regrettably, has consolidated Turkey's place in the league of 'delegative democracies' instead of establishing and consolidating a well-functioning democracy.

173 Charles de Secondat Montesquieu et al., *The Spirit of the Laws*, Cambridge University Press, Cambridge, 1989. Cited by Graziadei Michele, "Comparative Law as the Study of Transplants and Receptions", *The Oxford Handbook of Comparative Law*, (Ed.: Zimmermann Reinhard Reimann Mathias), Oxford University Press, 2006, pp. 442-474.

174 Günter Frankenberg, "Comparative Constitutional Law", *The Cambridge Companion to Comparative Law*, (Ed.: Mauro Bussani and Ugo Mattei), Cambridge University Press, Cambridge, 2012, pp. 171-190. Noting that this process involves a great deal of bricolage and selective imitation.

175 For a similar discussion in the USA, See David Eastwood, "Trump and Brexit have triggered two deep constitutional crises", <https://mg.co.za/article/2018-01-30-trump-and-brexite-have-triggered-two-deep-constitutional-crises>, Accessed: 19.09.2018). Noting that "the checks and balances of the US constitution that were designed to prevent the abuse of power now themselves check one another. With the same party controlling Congress and the White House – and nominating justices to the Supreme Court – the wheels of the constitutional machine turn slowly."

4.5. Turkey: As a ‘Delegative Democracy’

Collier and Levitsky have defined flawed systems by referring to them as ‘democracy with “adjectives”’.¹⁷⁶ Such flawed democracies can be described as democracies that have failed to succeed in being a ‘normal’ democracy in a full sense.¹⁷⁷ According to the authors, the literature has revealed over 550 such examples of ‘democracy with adjectives’, including fragile, unconsolidated, tutelary, authoritarian, military-dominated, delegative, and so forth.¹⁷⁸ Ironically, current political elites in the ruling party see Turkey as an ‘advanced democracy,’ claiming that Turkey has managed to exceed the standards of liberal western democracies.¹⁷⁹

The notion of ‘delegative democracy’ mainly reflects the characteristics of Turkey’s flawed democracy.¹⁸⁰ The phrase was coined by Argentinian Political Scientist Guillermo O’Donnell and could equally be applied to Turkey. Özbudun argues that Turkey’s democracy has several and remarkable commonalities with the delegative democracies of Latin America.¹⁸¹ It is important to note that O’Donnell’s analysis demonstrates that delegative democracies are associated with presidential regimes. Indeed, there are sufficient ‘theoretical and empirical reasons’ for linking such flawed democracies with presidentialism.¹⁸² This system refers to ‘neither consolidated/institutionalized nor prone to the danger of imminent collapse.’¹⁸³ Therefore, Turkey’s presidential system can be a local version of delegative democracy because a strong president ‘uses his or her direct mandate

176 David Collier - Steven Levitsky, “Democracy with Adjectives: Conceptual Innovation in Comparative Research”, *World Pol*, C. 49, S.03, 1997, pp. 430-451.

177 Even the word ‘normal’ should be seen as redundant since it is still an adjective in this context.

178 Steven Levitsky - David Collier, *Democracy ‘with adjectives’: Conceptual Innovation in Comparative Research*, Kellogg Institute ed, 1996.

179 Başak Alpan, “From AKP’s ‘Conservative Democracy’ to ‘Advanced Democracy’: Shifts and Challenges in the Debate on ‘Europe’”, *South European Society and Politics*, C. 21, S. 01, 2016, pp. 15-28.

180 Özbudun, *Contemporary Turkish...*, p. 151-152. Nothing that “The type of democracy that best seems to fit the Turkish case is Guillermo O’Donnell’s notion of a “Delegative Democracy,” which he believes constitutes a “new species.”

181 Although it has been almost two decades since Özbudun published his precious book, Turkey failed to change its place. Instead, it sadly guaranteed its place in the league of delegative democracies.

182 Özbudun, *Contemporary Turkish...*, p. 151-152. Noting that “Normally, a prime minister, no matter how popular, cannot ignore the parliament and political parties the way an elected president can.”

183 Özbudun, *Contemporary Turkish...*, p. 152.

to rule in the name of the nation and at the expense of the rule of law.’¹⁸⁴

A defining element of delegative democracies is the ‘absence of horizontal accountability,’ meaning that the president is so strong that he/she does not feel accountable to other autonomous institutions such as parliament and the judiciary.¹⁸⁵ Along with a lack of horizontal accountability, weak political institutions combined with an extremely personalistic leadership style are the chief characteristics of such democracy.¹⁸⁶ Unlike representative democracies, the presidents make policy by executive decrees without consulting other legitimate actors, including political parties, legislators, or relevant interests groups.¹⁸⁷ What is more, delegative democracies are not only non-institutional but also anti-institutional.¹⁸⁸ In other words, along with their operation in the absence of strong check-and-balance mechanisms, they hinder the development of democratic institutions, as ‘delegative presidents consider them “unnecessary encumbrances to their missions”’.¹⁸⁹

Regarding the constitutional crisis categorization, the argument is that the 2017 presidential system referendum precipitated type two and type three crises. As Balkin points out, the democratic constitutional system faces the risk of failure when political figures resort to measures to enrich themselves and when democratic rules and standards are pushed aside.¹⁹⁰ Unlike the Turkish context, the Founders of the US constitution made wise decisions. First, they decided to create a weak presidency with minimal legislative powers because they did not trust presidential powers.¹⁹¹ They understood that a broad executive decree authority might end up conflict and deadlock, resulting in a type three crisis. Additionally, they were aware of the danger that expansive presidential powers would probably lead to authoritarian tendencies.¹⁹²

The separation of powers might create vulnerable conditions for an operational

184 Kissane, “What Is at Stake...”, p. 5.

185 Özbudun, *Contemporary Turkish...*, p. 11.

186 Collier - Levitsky, “Democracy with...”, p. 430.

187 Özbudun, *Contemporary Turkish...*, p. 152. Claiming that “All powerful political leaders, during the history of Turkish politic, tried to “bypass parliament through the use of law-amending executive decrees.”

188 Hakkı Taş, “Turkey – From Tutelary to Delegative Democracy”, *Third World Quarterly*, C. 36, S. 04, 2015, ss.776-791.

189 Taş, “Turkey – From...”, p. 778.

190 Balkin, “Constitutional Crisis and...”, p. 26.

191 Whittington, “Yet Another...”, p. 2144.

192 Whittington, “Yet Another...”, p. 2145.

crisis. Although presidential systems are defined and discussed in terms of separation of powers, it might be misleading because the founding fathers aimed to ‘create a government of separated institutions sharing powers.’¹⁹³ Whittington pays attention to this point, arguing that the overlap in powers creates a check and balance mechanism, but at the same time, this overlap has the potential to create operational crises.¹⁹⁴ Because institutions and political figures share similar powers, coordination failures might arise. For example, with the recent amendments, the Turkish president has executive decree powers. Therefore, the shared powers with the legislative authority might create a stalemate and conflict between the two authorities.

In some cases, constitutional crises might arise as regime crisis. Although it is not a prerequisite, a regime crisis might threaten to turn a democratic regime into an authoritarian one.¹⁹⁵ The 2017 referendum gave extraordinary power to the executive without sufficient checks and balances. According to Whittington, this danger per se is enough to declare that the regime is at risk of constitutional failure.¹⁹⁶ Like a type three crisis, the bad design of a constitutional system can precipitate a type two crisis. But, according to the author, the American constitutional system does not suffer an operational crisis simply because it has a relatively good design.¹⁹⁷

When it comes to the Turkish presidential system, the original version of the constitution was established based on a parliamentary system. Then, it adopted a presidential system without amending the entire constitutional mechanism. Therefore, the current constitution of Turkey has elements and features of both parliamentary and presidential systems. For example, the constitution stipulates that the president shall act impartially and independently. Yet, with the recent amendments, the constitutional norm, which stipulates that the president should sever their ties with their political party, is no longer applicable. This created a constitution with contradicting norms and standards. Therefore, potential conflicts and stalemates in the political arena are inevitable in the long run. Moreover, such contradicting provisions exacerbate already bad-designed constitutional text, resulting in a type two crisis.

In short, the eclectic method that the current administration has adopted to strengthen the executive branch, together with recent constitutional amendments

193 Whittington, “Yet Another...”, p. 2127.

194 Ibid, p. 2127.

195 Ibid, p. 2100.

196 Ibid, p. 2100.

197 Ibid, p. 2143.

that have aimed to replace the long-lasting parliamentary regime with a Turkish-style presidential system, have resulted in constitutional crises instead of contributing to its democratic developments.

5. CONCLUDING REMARKS

This study has analyzed the role of referendums in constitutional crises. It has focused on the 2007 and 2017 referendums of Turkey by classifying them as crisis-triggering or crisis-addressing instruments. In 2007, Turkey’s prominent figures and institutions failed to conduct the presidential election in accordance with the constitutional requirements and precedents. The conflict between center and periphery escalated the tension. The veto powers, including the bureaucracy, the military, and the constitutional court, did not hesitate to go beyond the limits of the constitution. They infringed the provisions of the constitution for the sake of the ‘protection of democracy’ itself. A snap election and referendum played a significant role in breaking the deadlock.

This article then has examined Turkey’s most recent referendum held in 2017. It has discussed how the flawed model -known as the Turkish-style presidential system- has triggered constitutional crises. The increasing power of the executive, the absence of judicial independence, the eclectic method that Turkey has adopted, and the misunderstanding of the legal transplantation have been given as an example of significant deviation from the original presidential model. Turkey’s ways of strengthening its place in the league of delegative democracies with the help of the 2017 referendum have been analyzed, and the notion of the ‘democracies with adjectives’ has been discussed. Turkey regrettably has consolidated its place as a delegative democracy in the categorization of ‘democracies with adjectives.’

In this context, one can oppose that it might be misleading or oversimplification to classify referendums as crisis-triggering or crisis-addressing instruments. Indeed, it can be admitted that although Turkey’s 2007 referendum contributed to the solution of constitutional crisis in the short run, it paved the way for further and more complicated crises that culminated in a highly contentious presidential referendum in 2017.

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