EMPOWERMENT OF THE EXECUTIVE: IMPACT OF DECREES HAVING FORECE OF LAW ON TURKISH POLITICS

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I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of Political Science and Public Administration.

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ABSTRACT

**EMPOWERMENT OF THE EXECUTIVE:
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by
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Supervisor: Ass. Prof.Dr Omer Faruk Genkaya

This study aims at analyzing the trends of empowerment of executive and rationalization of parliament and their instruments.

Executive -legislative relations in different government systems and the concepts like rationalization of parliament, delegative democracy, decline of parliament are elaborated with a particular reference to executive decree authority.

Also the work argues the relation between economic crisis and quest for a powerful executive. And the crux of this study is that it attempts at revealing the role of the decrees having force of law in political systems with a special reference to Turkish case.

ÖZET

YÜRÜTMENIN GÜÇLENDİRİLMESİ: KANUN HÜKMÜNDE KARARNAMELERİN TÜRK SİYASETİNE ETKİSİ

ELİF ARDIÇ

Tez Danışmanı : Ömer Faruk Gençkaya

Bu çalışmada Türkiye'de ve dünyada yürütmenin güçlendirilmesi ve parlamentonun rasyonelleştirilmesi akımı ve bu akımın araçları üzerinde durulmaktadır.

Temsili demokrasilerde değişen yasama yürütme ilişkileri farklı hükümet sistemleri üzerinden incelenmiştir. Bununla beraber parlamentoların rasyonelleştirilmesi, delegasyoncu demokrasi ve parlamentonun önemini yitirmesi ve gerilemesi gibi kavramlar kanun hükmünde kararname uygulaması bağlamında ele alınmaktadır.

Ayrıca bu çalışmada ekonomik krizler ve güçlü yürütme arayışı arasındaki ilişki tartışılmaktadır. Çalışma temel olarak kanun hükmünde kararname yetkisinin farklı siyasal sistemlerde ve özellikle 1980 sonrasi Türk siyasetinde yerini ve etkisini tartışmaktadır.

To my family

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Finally I owe much to my family for loving and believing in me. This study is dedicated to them, who deserve better.

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INTRODUCTION

The empowerment of executive is refers to its superiority to legislative branch in the sense of power and function and also indicates transfer of some of powers of the latter to the executive. In other words political power centralizes in hands of executive.

In parliamentary and semi-presidential systems this trend is called rationalization of parliament, which was first used by Boris Mirkine Guetzevitch (Gozler, 2000:25). After the Second World War some of the constitution–makers attempted to restrict the powers of the parliaments vis a vis the executive. Both the 1949 German Constitution and the 1958 French Constitution providing the mechanisms of rationalization of parliament can be regarded as typical examples.

The main aim of rationalization of parliament is claimed to ensure stability of governments. It has been generally argued that parliamentarism causes government instability in the absence of sufficient majority backing the government. In presidential systems, president is elected for a fixed term and cannot be discharged, except for impeachment. And it is claimed that this guarantees the stability of the executive branch. There is no mechanism, which guarantees the stability of government in parliamentary system. Especially in multi-party systems, where coalition governments considered to be weak governmental instability is more likely (Sartori, 1997).

Governmental stability is not the only aim of the rationalization of parliaments. Also, Council of ministers or prime ministers must be able to govern the country. This requires ability to enact the laws and decrees, which governments deem necessary. That's why there are measures to ease enacting laws

and decrees. For example, the French Constitution brought the package voting procedure with the Article 44. According to the usual procedure, each article of a draft law is discussed by parliament separately. However, the Article 44 of the French Constitution entitles the governments to ask the assembly to vote the law as a whole. Also, the Constitution empowers the government with autonomous decree authority, by which government does not need authorizing law to make regulations (Huber, 1996).

Everywhere in the world, including advanced liberal countries or developing countries; legislative power has experienced a decline whereas executive and administrative institutions have tended to gain grants of substantial legislative power. Legislatures, even in the most stable and robust liberal democracies have undergone a dramatic erosion of political influence in our century (Schuerman, 1999: 14). Most important administrative agencies now exercise significant law-making functions and decrees often take greater *de facto* significance than parliament` s general laws.

This process is not different in presidential systems. It is claimed that modern political systems have been changing from institutionalization to personalization. As the executive gains more power, the president's and the head of the government's power and authority becomes more personalized (Karatepe, 1988: 24). In other words, the future of democracy is left more or less to the initiative and responsibility of the governing elite (Genckaya, 2000: 37-38).

In this thesis the mechanisms, which fasten the decision making process in Turkey are analyzed comparatively. Besides this thesis explores the reasons leading to the empowerment of the executive. Furthermore the thesis attempts to elaborate how these mechanisms weaken accountability of executive branch.

The main research question of the thesis is to what extent mechanisms empowering executive can lead to an effective and efficient government with a special reference to Turkey. In doing this decree having force of law (DFL) is taken as a unit of analysis in comparative perspective including countries where executive decree authority has become a major instrument in decision making process.

By using descriptive - historical method, I attempt to analyze DFLs in Turkish politics. In this respect I classify DFLs by the volume, scope and governmental periods. Also I analyze the Constitutional review process on the DHLs issued by the governments. Data are collected from Official Gazette, Decisions of the Constitutional Court.

The first part of the thesis tries to examine the characteristics of executive legislative relations and exercise of executive decree authority in three different government systems with case countries.

The second chapter provides the legal and constitutional framework of empowerment of executive and rationalization of parliament with particular emphasis on the 1982 Constitution

The third and last chapter of the thesis, problematises the impact and role of decrees having force of law in Turkish politics in the post 1980 period. The DFLs, which were issued in the last two decades, are analyzed with special reference to their scope and enforcement. By doing this major regulation areas of the decrees having force of laws are tried to be revealed

.

In concluding chapter I pointed out some major problems arising from enforcement of decree authority in the light of the analysis provided in the third chapter of the thesis for Turkey.

CHAPTER I

I . EMPOWERMENT OF THE EXECUTIVE AS A TREND

1.1 Reasons of Empowerment of the Executive

Empowering the executive has been an trend starting after the II World War in most of the Western democracies. There are reasons[1] and mechanisms to enable the executive powerful Some of these legal mechanisms include restrictions for legislative power. The others give executive constitutional-based and expanded rights and powers. This is called rationalization of parliament. Scholarly there are arguments about the reasons of the trend of powerful executives.

First of all in parliamentary regimes, levels of party discipline changes the relation between government and parliament. Party discipline refers to the extend to which legislative party leaders can compel legislators to vote as a bloc, even if the individual legislators would prefer voting against their party on specific issues(Shugart and Carey, 1998: 17). In systems where executive is depended on parliamentary support a majority government can easily and inevitably influences and manipulates the parliamentary procedure. It can enact its proposals through parliament. But on the other hand if a government has a weak parliamentary group it will not be able to exercise its powers holding in its hands(Oytan, 1977: 541).

Secondly, legislative branch is frequently slow in its nature whereas the need to implement new policies might be pressing. It is necessary to escape rules

[1] These reasons can be listed as Scientific and Technological developments, state of emergency and its lasting effects, state intervention to the economy, (Ozkol.1969, 56-57) and impact of globalization

of operation of parliament in state of emergency(Tan, 1972:28 also Kuzu, 1985: 179).

Moreover, the existence of an independent judiciary with the authority to rule on the legality and constitutionality of executive regulations should contribute to increase of delegation of decision–making power to executives (Shugart and Carey ,1998).

As political institutions parliaments some times escape from using legislative power. This evasion is consequence of populist policies. Parliaments don't want some laws to be enacted for fear of not to be elected. Thus, the executive branch is given priority and responsibility in decision -making process. Also information about the connections between policy choices and policy outcomes is in choronic short supply in legislators because of a free –rider problem. Individual legislators lack the incentive for gathering information about outcomes of policies (Shugart and Carey , 1998 17-18).

In fact, the most important reason of this trend has been economic and technological development. Reinterpratation of the state's role in the market economy, created very difficult and complicated problems. Because of insufficient knowledge of the parliaments, they cannot foresee in most of part of the economic and technical issues. Lack of policy expertise of legislatures and information shortages are a motivation for delegation of decision-making power to the executive branches(Shugart and Carey , 1998: 18). All of these reasons claim that new economic and political context, in which we live requires strong executive (Tan, 1972 also Ozbudun, 1989). Globalization, information technology and neo-managerialism speeded up the process of government eventually leading to fast decision making authority.

Modern democracies are characterized by shared decision-making of the legislatures and executive branches. But the health of a democracy declines dramatically, when the executive branch excessively dominates the legislature.
In fact, the need for strong legislatures is reflected in the very meaning of democracy. However, many legislatures are, overwhelmingly dominated by the executive branch. This problem is especially prevalent in emerging democracies (Norton, 1993, Olson, 1994).

The type of governmental system under which a country operates fundamentally influences the structure and the tenor of executive legislative relations. Explanation for executive dominance in parliamentary and presidential systems may have different aspects.

Then, how can we understand parliamentary delegation to the Council of ministers and /or the rest of the executive branch? There are mechanisms or institutions, which empowers the executive in various political systems. And explaining the role and impact of these institutions in political decision-making is very important. Yet the poor theoretical understanding of the role of institutions and lack of empirical studies on the role of institutions constitute an obstacle for analysis of political life.

1.2 Economic Perspective of Empowerment of the Executive

The latest developments in institutional thinking may be understood as an intellectual response to the social problems of modernization, Industrialization created an increasingly urban population with no political voice Pressure for such a voice was to result in the widening of the franchise and growth of political parties. Party, thus, came to dominate the electoral and parliamentary processes.

Party leaders occupied the central positions of government and decided what measures were to be laid before the legislature for approval (Keman, 1997: 55.) Thus the locus of the policy making shifted from the legislature to the government.

Industrialization had a further effect. Not only did it generate a mass franchise, it also resulted in a more specialized society. Political social as well as economic interests became more differentiated and more organized. The more specialized government policy became, the more government relied on groups for advice, and co-operation in implementing policy. In the process of law making, legislatures came to be seen as increasingly marginalized. Party or parties dominate in the legislature. The specific measures of public policy are, formulated by government following consultation with affected interests. (Norton, 1993: 3-4) Due to the welfare state intervention, the western societies have overcome the severe problems of large-scale poverty. Nevertheless a new collection of social and economic problems has aroused since the late 1970s (Ozkol, 1969: 56- 57; Keman, 1997). The institutions of welfare state not only regulated the process of economic modernization but also conferred moral and social stability (Keman, 1997: 64). In this respect the rational planning and control is not only based on the assumption of rationalist perspective on decision-making, but also implies the centralization of decision-making (Keman, 1997: 119). And also the recent attempts to roll back the frontiers of the state through *deregulation* and privatization have to some extent been prompted by awareness that excessive state regulation involves giving more and more power to state bureaucrats who enact rules.

The state of economy of each country can be regarded as another factor leading to executive dominance. Under crisis conditions, public is willing to grant

executives wide leeway in formulating and initiating reform programs though the extend of public tolerance will depend on the depth of the crisis. The capacity to manage the political pressures associated with the initiation and consolidation of economic reform is not simply a function of economic circumstance; it also depends on the way new democratic institutions aggregates the preferences of contending social groups and empowered executives to act. Centralized executive authority plays a pivotal role in overcoming the collective action problems and distributive conflicts associated with the initiation of comprehensive economic reforms. The effective promulgation and initial pursuit of the reform strategy will depend on the powers of the executive (Shugart and Carey, 1998).

For example in Latin America, the choice of presidentalism over parliamentarism reflected deeply rooted historical traditions rather than calculations about the ability of executives to initiate or sustain economic reforms. Nonetheless it is important to underline that in a number of crisis cases attempts were made to further buttress executive power over economic decision –making through constitutional provisions that granted presidents expansive legislative powers or decree authority or permitted legislatures to delegate such powers.

The politics of executive power are different in the non-crisis cases though constitutional arrangements can strengthen the hand of the executive by expanding the discretionary power to initiate policy or insulating decision-making from short-term political pressures such mechanisms cannot provide effective basis for policy coordination. To the contrary, strong executive discretion can weaken the incentives for party, legislature and interest groups to provide political support for policy initiatives (Parrish, 1998: 71).

1.3 Political Perspective of Empowerment of the Executive

After 1970s, in most part of the world the role of the executive has been changing and increasing in decision making process. In most democratic legislatures, the executive branch introduces 90 Per cent of the legislation, which is passed (Olson, 1994: 84). In addition to this fact, delegation of law-making authority from legislatures to the executive is another important issue, which is explained by scholars in different ways

When we think on democracy theories, restrictions for parliaments and delegation of power is seen undemocratic and indicating the usurpation of the legislative power by some scholars. This is because empowerment of executive has two important consequences. One of them is the decline of parliament thesis (see Loewerberg,1971); the other is related to personalization of governments also lack of accountability and popular participation (see Linz, 1994; Przeworski 1991; Mainwaring 1993, Conoghan and Malloy, 1990). For example Przeworzki describes this process in Latin America like:

> Democracy is weakened. The political process is reduced to elections .The government rules by decree in an authoritarian fashion but often without much repression. All the power in the state is concentrated in the executive. People get a regular chance to vote but not to choose

Also Conaghan and Malloy (1990: 27) develop a similar argument

> Executives were capable of acting in decidedly authoritarian mode, despite the formal democratic frameworks within which executive power was formulated and legitimated. These are (Peru, Ecuador, Bolivia) hybrid form of governments in which a formal democratic facade masks a real authoritarian bent

Another usurpation interpretation of this trends is developed by O`Donnell(1994: 59). Acording to O` Donnell delegative democracies are mostly characterized by policy making by executive decree. These are regimes in which

whomever wins elections to the presidency is thereby entitled to govern as he or she fits.

The other group considers these changes in the executive legislative relations as an advantage for legislatures. It is claimed that any delegation of power does not necessarily means usurpation (Shugart and Carey, 1992 and 1998). Also it is argued that the more difficult it is for legislators to build and maintain coalitions capable of passing legislation, the more attractive will be the alternative of providing the executive with decree authority, either delegated or constitutional. Lack of policy expertise relative to executives is another reason legislators might prefer executive decree to standard legislative procedures. Finally, time constraints might impel legislators to prefer executive decree authority to standard legislative procedure (Shugart and Carey, 1998: 17-18).

Although the importance of these theoretical arguments on empowerment of executive it is equally important to examine the special conditions of each country in answering the question of what does executive dominance in decision- making mean for a political system. However we can describe some common aspects for empowerment of executive, existing as a trend in most part of the world after 1970s with special reference to presidential, parliamentary and semi- presidential systems.

1.4 Empowerment of Executive in Different Political Systems

1.4.1 Presidential Systems

In a presidential model the legislative and executive are separated into two distinct branches with their own independent electoral mandate. There are two important

distinctions between parliamentary and presidential systems in this respect. A parliamentary executive holds only those legislative powers that had been delegated to it by the assembly while a presidential executive typically has entrenched legislative powers in addition to powers delegated by the assembly. The second distinction is that because some legislative powers are constitutionally given to the president there is a variation among presidential systems in terms of how much legislative power their executives hold (Shugart and Carey, 1992: 130-132).

Moreover a presidential system does not clearly exhibit what represents delegation of authority and what represents an executive simply circumventing the assembly, while the assembly abdicates its own authority.

The authority of legislatures as forums for deliberation and compromise among diverse political forces is widely acknowledged (Lijphart, 1984; Prezeworski, 1991). Authority within the executive on the other hand, is usually more centralized. In presidential systems executives tend to be controlled by single parties and some times even by individuals with weak or no connections to political parties (Linz, 1994: 30). At this point it is argued that legislatures are being marginalized and democratic institutions are ineffectual (Carey and Shugart, 1998: 2).

To understand the meaning of decline of parliaments, emergence of presidential systems in most part of the world and empowerment of executive within the parliamentary systems one should examine political system of the each country case. Below most important mechanism of this process, executive decree authority in parliamentary and presidential systems will be elaborated as an indicator of decline and/or rationalization of parliaments thesis.

Legis is the genitive of lex, meaning law; lator means carrier or proposer. Legislatures have thus by definition, been treated as bodies for carrying or making law. It was the very task that gave them their name and justified their existence (Olson, 1994: 10). Now and since 1970s executives are using decree power (delegated legislation) frequently. Does it mean that executives are becoming the legislator of new political systems or does this process have another meaning?

Among others Latin American presidencies have demonstrated very powerful presidents. However despite their power it is argued that these regimes have less successful records of democratic longevity than other types of presidential systems (Shugart; Carey, 1992: 13-15). Also widespread use of delegated legislation is often seen as a symptom of the malaise of presidentalism. First, because, it suggests that in a presidential system, the Congress tends to abdicate its responsibilities out of apathy frustration, or simply because presidents often tend to stretch their delegated powers beyond the limits set by the enabling act. But the proliferation of delegated legislation is not a practice found only presidential systems, it is a widespread practice that raises important issues about the nature of democracy and state power in modern complex societies.

In presidential systems executive decree authority uncovers a great deal of variation in the degree to which different presidents are endowed with constitutional decree authority Carey and Shugart (1998) point out that constitutional decree authority alone does not allow president to set a policy unilaterally. Delegated legislation is different from the constitutional decree authority in presidential systems.[2]

 Delegated legislation requires an authorization law, but the concept of constitutional decree authority indicates that executives are authorized by the Constitution. There are two types of Constitutional decree authority. The first type is emergency decree authority; the second one is

On the other hand executive orders are mechanisms used by presidents to circumvent the constitutionally prescribed policy-making process. The executive order also allows presidents strategically enabling them to pursue policy goals in an efficient and alternative manner.

Another case country for presidential systems is United States of America (USA). The role of the executive orders in USA is very important in the legislative process. Generally executive orders are used to circumvent a hostile congress. This is the conventional wisdom on executive decrees in United States. As a president's legislative success declines in each chamber, they will be more inclined to issue executive orders as a means to circumvent the legislative process. But some scholars challenge this view and claim that presidents issue more decrees under unified than divided government (Shull and Gomez, 1997, 103). This means executive orders are primarily a vehicle for reinforcing legislative victories rather than circumventing a hostile congress. But the more accepted fact is that presidents issue more executive orders as their public support falls.

Executive decrees have been used widely in Latin America after 1980s Chile is one of these countries. The military coup of September 11, 1973 brought to an end to one of the longest periods of democratic rule in South America. In a decree law issued on September 24, 1973 the Congress was dissolved and all legislative functions were indefinitely transferred to the governing Junta (Valenzuela, 1990: 67).

The constitution of 1980 drafted by the authoritarian government and approved in a national plebiscite. In addition to the creation of a strong executive

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standard decree authority. Emergency decree authority is generally subject to strict legislative approval and their aim is restricted to restore the public order. But especially through standard constitutional decree authority executives set broad policies.

military authority also sought to devise an electoral system that would fundamentally transform the fractious Chilean multiparty system (Siavelis,1992 : 321-322).

After 1980s, delegated legislation was widely used in Chile. This type of legislative enactment was known as decrees having force of law, DFL. DFLs were generally used to consolidate and systematize rules in areas where the Congress had either approved legislative norms. For example they were enforced in areas such as housing, economic regulation, social security and industrial relations (Faundez, 1992: 315-317). Besides, the Article 62 of constitution states that the president of the Republic holds the exclusive initiative for proposal of law related to changes in the political or administrative division of the country.

Like in many Latin American countries, the issuing of decrees plays an important role in policy making in Chile. In practice decrees can undermine the effectiveness of congressional veto players and consequently lower the barriers to policy change in presidential systems (Faundez, 1992: 319).

The use of decrees raises the question the extent to which Congress in such systems maintains a role in the legislative process. In much of the Latin America *decretismo* became the normal mechanism of government. Technically *decretismo* includes and extends to executive acts that do not have the form of law. But in its non-technical meaning *decretismo* points to the excessive use, indeed abuse of legislating by decree. It is claimed that decretismo is a dysfunctional response of or to non-functioning system. (Parrish, 1998) This argument has parallelism to the argument that under crisis conditions powerful executive is necessary.

Another important country case of the delegated legislation is Russia. Since the introduction of an independently elected president in Russia in May 1991,

presidential decrees have played a central role in the political development of the country. The president has been granted significant constitutional decree authority and in the first Russian Republic (1991-93) the assembly delegated sweeping powers to President Boris Yeltsin. President Yeltsin 's use of decrees has often been termed autocratic. Although, some Western analysists have seen Russia as a paradigmatic case of delegative democracy, in which the president rules by decree and this usurps or at least marginalizes the powers and function of assembly (Linz, 1994; O'Donnell, 1994)[3] .

Such a democracy these critics hold, is less representative of the popular will than one in which an assembly plays a major role and it is also more prone to breakdown

Russia is also an example of dysfunctional response to non-functioning systems. Between 1991-93 Yeltsin demanded and received extra-ordinary powers from the parliament to cope with the country's economic problems. In October 1991 he was given the power to carry out his radical economic program by decree from the Russian Congress of People's Deputies (Remington, 1994: 43-45). He submitted a bill allowing him to issue decrees having force of law even if they contradicted existing legislation. He also requested authority to form a government without approval by the Congress (Remington, 1994: 50).

Urgency played a major role in this delegation decision. Yeltsin subsequently exercised this decree authority to influence almost every aspect of Russian society although his decrees were sometimes overturned by Constitutional Court that was independent of the executive. In the area of industrial reform,

 O' Donnell's delegative democracy is not the same term delegated decree authority. O'Donnell's concept is much broader and it is intended to characterize the political system as whole, not just the delegation of decree powers to the executive by the assembly (Parrish, 1998, 73)

presidential decrees laid out both the basic framework of privatization program and specific mechanisms for its implementation (Remington, 1994: 53-54).

1.4 .2 Semi-Presidential Systems

The recent process of democratization in Central and East Europe and the former USSR has generated a considerable amount of interest in the subject of constitution –building. These states have had to adopt a new constitution and choose a particular set of political institutions. First, many countries actually adopted semi-presidential regimes. It has been increasingly a popular form of government.

Semi-presidential regimes can be found in Austria, Ireland, Finland, France and Portugal also in East Europe including Bulgaria, Poland, and Romania. By definition all of these countries share a similar set of basic constitutional features, a directly elected fixed term president and a prime minister, who is responsible to parliament. But the exercise of political power varies greatly from one to another. In France, for example the president is a powerful political actor. In other countries such as Finland, there is sometimes uneasy balance of power between the president and prime minister. And in the other countries including Austria, Ireland the president is merely a figurehead and the prime minister dominates the decision-making process (See Shugart and Carey 1992).

The term semi-presidentialism was first scholarly elaborated by Maurice Duverger (1980). He provided the first definition of semi-presidentialism and stated that a semi-presidential regime was characterized by the fact that the head of state is directly elected and he possesses certain powers, which exceed those of a

head of state in normal parliamentary regime. A prime minister and ministers can stay in office so long as they have the confidence of the parliament. Afterwards Duverger altered his definition stating that a semi-presidential system exhibited three characteristics (1) the president is elected by universal suffrage (2) opposite him, there is a prime minister and ministers who can only govern with the confidence of parliament (3) the president can dissolve the parliament (Quoted in Shugart and Carey, 1992).

However the concept of semi-presidentialism has received significant critiques. Shugart and Carey found use of the concept to be misleading and instead preferred to formulate the concept of *premier- presidentialism*. It is claimed that semi-presidentialism cannot be applied for the regime types except for the regimes seen in the Finland and France. Because despite popular election the presidents in the other European countries like Austria, Iceland and Ireland are not powerful, it is much more reasonable to consider these regimes as operating largely according to parliamentary model (Lijphart, 1984: 88). It is also claimed that Duverger conceptualizes Semi-presidential regimes are alternating regimes from presidential to parliamentary regimes. Concept of Premier-presidential does not indicate neither intermediate nor alternating regimes. It indicates the primacy of the premier as well as the presence of a president with significant powers (Shugart; Carey, 1992: 15-16).

The most typical example related to our discussion about empowerment of executive in semi-presidential regimes is France. In France, the National Assembly does not play an important role in policy making. Political factors and in particular the presence of stable coherent majorities are essential in impotence of the legislature. There are restrictions to rationalize the parliament in the French

Constitution. . The Article 28 of the French Constitution restricts how often the National Assembly can meet. Besides the Article 44 states that the government can oppose consideration of any amendments that have not been previously debated in the committee (Huber, 1998: 20-25).

The founders of the fifth Republic substantially increased the powers of the executive branch and curtailed the prerogatives of parliament. The French Constitution of 1958 creates a two-headed executive with a president and a prime minister.

The president has the power to dissolve the parliament. However the president has few institutional means for influencing legislative outcomes. The president has no formal opportunity to propose policies alter the agenda or amend policies in Parliament. In contrast to the United States the French President cannot veto bills that have been adapted by the legislature (Huber, 1998: 26).

The Article 16 of the Constitution, however, gives the president the right to declare a state of emergency. Upon making such a declaration, the president obtains unlimited power to take measures by decree in response to emergency (Huber, 1996: 33-35).

There are two types of decree authority in France. The first one is the emergency decree authority of the president. Emergency decrees have not played a prominent role in the politics of the Fifth Republic as only one emergency has been declared since 1958 (Huber, 1998:255).

Another type of decree is passive decree authority or regulatory rule making. The framers of the constitution carefully delineated the domain of law in article 34 so that it would be possible to establish broader authority for the government allowing it more leeway to issue regulatory measures by decree than

had been possible in Fourth Republic. The government's rule making authority emerges from the Article 34, 37 and 41. The Article 37 states that, every thing, which is not within the domain of law, is considered to be in the "domain of regulation". The Article 41 guarantees that only the government can take actions on matters failing within the domain of regulation (Huber, 1998; Soyarslan 1995).

Two procedures that permit members of the government to make take it or leave it policy proposals in parliament compromise the last two forms of decree authority in the constitution as "package vote" or "confidence vote". The package vote procedure is used to preserve bargains between political parties during coalition and majority government especially on dimensionally complex issues. And the confidence vote procedure is used primarily as a tool by which parties can communicate issue positions and political responsibility during minority government (Huber, 1996: 56-57).

In France governments make regulatory decrees on an almost daily basis making it impossible to examine whether utilization of this decree authority is consistent.

1.4.3 Parliamentary Systems

Scholarly debate between advocates of parliamentary and presidential democracy initially focused on which institutional arrangement better contained political conflict and provided democratic stability. And this reflected the condition in the 1980s when many countries were emerging from periods of non-democratic rule and choosing between two options. But afterwards the debate shifted to policy outcomes of these systems

It is difficult to pinpoint exactly what is meant when we talk about a parliamentary system. In most cases fundamental distinctions between and presidentialism tend to wash out. For example, separation of powers may create more potential for veto players to obstruct policy change than is common in parliamentary systems. However the use of multiparty coalitions in parliamentary systems serves to internalize veto points in the Council of ministers and executive decrees in practice undermine the performance of legislators as veto players in many presidential systems. Tsebelis (1995) notes that policy-making in parliamentary systems governed by multiparty coalitions shares features with presidential system, including a greater number of veto points and greater obstacles to policy change. According to Tsebelis:

> A veto player is an individual or collective actor whose agreement is required for a policy decision, in presidential systems separately elected veto players hold fixed terms and enjoy separate sources of democratic legitimacy. Among parliamentary systems the logic of veto point suggest that multiparty coalitions will yield a higher number of veto players than single party dominant systems. (Tsebelis, 1995: 290-293)

It may be useful to put a discussion about the role and possibilities of parliaments in parliamentary systems. According to some scholars the European parliaments are in decline, Vis a Vis the executive and other actors in society (Bryce, 1921; King, 1981). Factors such as the percentage of legislation coming from the executive, role of the media as a central forum where political debates takes place instead of Parliament and the practice of consensual politics, in which social organizations play an important role all confirm that parliaments are not predominant on the political scene. (Heringa, 1994: 103)

In the area of law making many dissimilarities exist between various counties. In the United Kingdom in which first the parliamentary system emerged,

an Act of parliament can do or undo anything. It is claimed that the British concept of sovereignty of parliament is an outdated formal description of parliamentarism (Smith, 1981). British parliamentary system is described as an "elective dictatorship": Parliament being governed by the majority, the majority of the parliament being ruled by the cabinet, and the cabinet being ruled by the Prime Minister. Actually accuracy of this description does vary according to the political situation and the strength of the position of the Prime Minister (Heringa, 1994: 105).

Decrees having force of law as an institution is a delegated legislation of the executive .But it is different in Anglo-Saxon law because in United Kingdom legislative authority gives up regulation power for a certain field and time .In Turkey, according to the 1982 Constitution legislative authority enables the executive to change or abolish the legislation or make rules. But at the same time the parliament can also make regulations in the same field simultaneously. (Ozkol, 1969; Karahanogullari,1998)

There are some other institutions in Anglo-Saxon law which are used as synonym of decrees having force of law: *Subordinate legislation, indirect legislation, secondary legislation* etc. But all of these notions indicates that it is a legislation power of the executive (Karhanogullari, 1998: 250).

Another case country in relation to decree authority and its expanded implementation is a parliamentary regime, Italy. Decrees rather than being exceptional measures have become a usual instrument of the legislative process in Italy, too. It is claimed that the Italian governments have relied on constitutional decree authority because of a lack of dependable support in a highly fragmented and undisciplined parliament. Decrees in Italy are a sign of government weakness

rather than strength. That's why decrees have remained an essential feature of decision-making in Italy despite attempts throughout the 1980s to strengthen the executive (Volcansek, 1999: 99).

There are two legal bases for the uses of decrees in the Italian legislative process: The Constitution and ordinary legislation, which are enacted largely within the framework of the parliamentary rules of procedure. In Italy parliament in addition to just rejecting or accepting a decree law, amend the original decree. Consequently some decrees were converted, some not approved, some died from lack of action and others were approved but altered by amendments. Reissueance is also a debatable issue in Italian politics. As fewer decree laws are converted more are reissued as governments persist in their determination to achieve passage. Parliamentary refusal to consider the policy of the decree is not read by the government as defeat but rather as a signal to persevere (Kreppel and Sala, 1998 also Kreppel 1997).

The Italian governments have endured a period of political fragmentation in a legal framework that, despite recent changes has not favored their legislative agendas and programs. Legislative decrees have become one of the few responses that governments may resort to in an attempt to buttress their fragile legal and political bases in the legislative process (Kreppel and Sala, 1998: 184).

There has been a gradual shift since the early 1980s. This shift has returned some control of the agenda to the government or at least to the leadership offices in Parliament. This change represents an important shift because the government position, which had no standing prior to 1990, is given a weight equal to that of parliamentary groups (Krappel, and Sala, 1998: 178).

Kreppel (1997) claims that the issuance of decrees alone does not signify the expropriation of legislative powers by the executive branch. The Italian case demonstrates the relative weakness of the executive in the legislating process and relative futility of increased decree usage as a means to equalizing the legislative power between the executive and legislature.

After this short elaboration of empowerment of executive in different governmental systems with a particular reference to executive decree authority we can look at the Turkish case. First of all legal base of executive decree in Turkey will be elaborated in the second chapter.

CHAPTER II

2. EMPOWERMENT OF EXECUTIVE IN TURKEY

2.1 Historical Background

In traditional Ottoman rule , there existed no “separation of powers” in the contemporary meaning of the concept. All three powers, namely executive legislative and judicial powers were concentrated in the hands of the Sultan. Later the first (1876-1878) and the second (1908-1918) Constitutional periods witnessed a transformation from absolute monarchy toward a constitutional government (Genckaya,1990). The Constitution created the assembly and defined its functions. A bicameral assembly (Meclis-i Umumi) was established by the 1876 Constitution. Members of the Chamber of Deputies (Heyet-i Mebusan) were elected by the administrative councils and the election committee in the provincial capitals sandjacks and districts. The Senate (Heyet-i Ayan) having limited influence in decision –making process was appointed by the Sultan .

The Sultan was defined as the head of the excutive having rights to appoint and dismiss the ministers. The Sultan was given superiority in the excutive branch. Later the amendments of 1876 Constitution in 1909 brought a constitutional and limited monarchical governmental system (Ozbudun,1978; Tanor, 1992). During late Ottoman rule executive also exercised executive decree authority.

Executive decree authority , which is a initial part of the analysis of rationalization of parliament was first introduced to the Ottoman-Turkish politics by the Article 36 of 1876 Constitution. According to the article if the general

assembly is not convened and time is not enough to summone the Assembly to enact law, which is necessary to protect violation of public order ,the Council of ministers can enact decrees with the approval of the Sultan. These decrees cannot be in violation of Constitution and will be in effect until the decision of Assembly (Ozbudun,1993).

After the defeat of Ottoman Empire in the I. World War the national independence movement started and GNA of Turkey was established under the leadership of Ataturk on April 23, 1920. In the 1921 Constitution , the assembly was empowered to exercise all three powers as superior organ. Due to the war conditions the speaker of the assembly was one of the striking elements (Genckaya, 1990: 45).

Following the establisment of Turkish Republic, a new Constitution, 1924 Constitution, was drafted and approved. In the 1924 Constitution the Grand National Assembly of Turkey was entitled as the sole body to exercise the national sovergenity. Executive and legislative powers belonged to the Assembly. The Assembly exercised legislative power directly. It also exercised executive power by means of the President and the Council of ministers, which was elected by the President himself. Compared to the 1921 Constitution the executive was separated from legislative to some extend, but equipped with necessary powers that would make it independent(Ozbudun, 1978 : 50). Both the 1921 and 1924 Constitutions established the GNA as the main pillar of the system.

President was defined as the head of the state having no responsibility in parliament or executive. Power` s of the President in the system of 1924 Constitution was symbolic. But charisma and historical personality of the Presidents, Ataturk and Inonu made them powerful in the system, Also politics

with no opposition and hegemony of single party reflected the parliamentary procedure. From 1923 to 1950 the power, which dominated the Turkish political structure was Republican Peoples party and its social base, military-bureaucratic elite. The 1924 Constitution was in practice for about 37 years during both the single party regime led by the Republican People's Party and early in the multi-party era. For almost two decades a " theoretically all-powerful GNA" was controlled by RPP and institutionalized under its tutelage (Ozbudun, 1987: 39).

During the single party years there were steps towards a multi-party regime. But until 1946 it was not achieved During the 1940s, particularly during war years , Inonu acted like national chief . There were of course parliament and Council of ministers but in actual fact, with few ministers himself conducted foreign policy. Inonu was also close in certain domestic issues that he considered important for the contry. The transition to democracy was going gradual and initially it was to be kept within certain limits. (Erogul,1970: 123) This meant that despite some significant steps towards democratization were initiated the political power was still concentrated in the hands of the party elite.

The successive parliaments of the newly established multi-party regime were dominated by majority of Democrat Party, which was established by Celal Bayar in 1946. For this period until the entrance of executive decree in to the Turkish lawin 1971 the executive authority could issue a special kind of decree which was called "norm creating decree" (kaide kararname). The most typical examples of these decrees were issued in framework of the Act for Maintaining the Value of Turkish Currency (Turk Parasinin Kiymetinin Korunmasi Hakkinda Kanun) and The National Defence Law (Milli Korunma Kanunu)
(Karahanogullari, 1998: 42).

The National Defence Law was passed in 1940 ,giving the government almost unlimited powers to fix prices. This law responded to the need of regulation, which War conditions required. And the social life was regulated by these decrees. Turkey managed to remain neutral and stay out of the war until the very end , but in order to do so she increased her army. Feeding and equipping this army brought tremendous economic strains. The government used its powers given by this law during the Second World War to control prices (Ahmad, 1993: 209-210).

However, Democrat Party (DP) came to the power firmly convinced that free competition without any restraints from the government would produce rapid economic growth. The prime minister Adnan Menderes, the champion of a laissez-faire system, was forced to reintroduce this law, one of the most interventionist laws of the Republic. In the late 1950s authoritarian politics of DP prepared road to the 1960 intervention, which followed by a new Constitution. The anti-democratic measures taken by the DP against the opposition members, increasing economic constraints, and the deteriorating relations between the government and the public bureaucracy convinced the military officers to intervene (Ozbudun, 1989: 201).

The 1961 Constitution brought a flexible separation of powers. In a parliamentary system executive and legislative brances coexist and the former needs the latter's continuous confidence and support. The former normally emerges from and is responsible to the latter. This is what flexible separation of powers means. According to the Constitution, the executive branch had two heads, both emerging from the legislature. The president is the head of the state and is equipped with rather symbolic powers. For the 1924 and 1961 Constitutions

essential union of executive and legislative branches is accompanied by the constitutional principle that parliament is supreme. Like other parliamentary systems in Turkey supremacy of parliament is theorethical and the Council of ministers holds a centrality in the politics (Yucekok, 1983: 205). Actually the Turkish constitution makers did not want to authorize the executive with extensive power for governmental activities as a reaction to the of abuse of governmental power during 1950s In a parliamentary regime there must be a division of labor and flexible separation of power. In the 1924 and the 1961 Constitutions the supremacy of the parliament and was the major principle, therefore the 1924 and the 1961 Constitutions did not include executive decree as an institution.

During the1961-1965 period it was the first time a coalition government established in Turkish parliamentary experience a coalitions period started in Turkish parliamentary experience. In this era the executive branch was not independent from control of the parliament Altoughthe legislative branch was given supremacy by the Constitution, due to the fact that the political parties remained cohesive and had inner discipline the executive was effective on the parliament (Yucekok, 1983: 208).

One of the important deficiencies of the 1961 Constitution is claimed to be not providing any constitutional solutions to deadlocks which arose between the executive and legislative powers.(Turhan,1983: 171 also Tanor,1992: 93) Indeed, except for the period of 1965-1971 during when a majority government was in force, coalitions based on weak and floating parliamentary majority, minority governments , rapid governmental changes led governments to be less effective than they actually are (Genckaya, 1994 :93 also Tanor,1992:19-24).

The process of empowering the executive in Turkish politics started with the constitutional amendments made in 1971 and 1973. The 1971 amendments brought the institution of decrees having force of law to the Article 64 of 1961 Constitution. According to the statement of reasons of the amendment, in a parliamentary regime law-making requires long time because of procedures, which must be adopted by parliament. As a result of modern state understanding some rules must be adopted outside of these procedures as a consequence of changing economic and social conditions.

This trend appears to weaken the parliaments being as decision –makers and reduce their role to supervise the executive branch, which has been getting stronger. Tanilli (1990) calls these developments as parliamentarism with no parliament accompanies with no demos.

2.2 Empowerment of Executive under the 1982 Constitution

Following the military intervention the executive was enabled powerful in Turkey, like most of the Latin American countries 1980 military intervention had the intention to create a strong executive . They had come to identify the pre-1980 ills with the weakness of the executive resulting from 1961 Constitution. The intention of the intervening generals was to establish all mechanisms necessary to ensure the orderly and harmonious functioning of the system so as not to feel compelled to intervene once again (Heper, 1987, 57).

Kenan Evren, the head of the National Security Council underlined this point and explained the solution when he was addressing to the nation:

> "That the executive , which carried the whole load of the state and everyday life was, despite all its vital significance pushed to the back and was made unworkable. As long as the executive was left to that from being like a man one leg absent and walk with a stick"(quoted in Ozbudun, 1993: 39)

This speech explains why the executive no longer defined in terms of "function" or "duty" only as in the 1961 Constitution but also of power in the Article 8 of 1982 Constitution. Morover in the statement of reason of the Article 8, it is written that

According to the regulation of 1961 Constitution the executive branch was subject to the legislature. But actually in modern life, the executive is the brain of the state and engine of the action power. So that executive power and legislative power are regulated in the 1982 Constitution as such having almost equal weight (Dickol and Akad , 1998, 250).

According to Ozbudun (1993) it is not a reasonable argument that since the 1961 Constitution accepted the executive as the duty, the governments exercised less political authority in the 1970s. It is not acceptable to reformulate the position of the executive on the basis of this argument of the new Constitution. Therefore the wording of the Constitution has no political consequence.

When the Consultative Assembly and National Security Council were preparing the 1982 Constitution, they thought the weakness of the executive was reason for the acts of violence before the coup detat. In order to prevent these actions and terrorism, the constitutive power decided to create a powerful executive. But what they did was different from the wave in Western democracies. In Western parliamentary regimes the government especially the prime minister was enabled powerful.

As it is said before in parliamentary regimes the executive has two heads. The president is the head of the state and is equipped with rather symbolic powers and represents the politically and impartial wing of the executive branch. The actions, which he or she undertakes requires approval by the prime minister and ministers. This is called the principle of counter signature (Turhan, 1989: 51-52).

Contrary to the western democracies in 1982 Constitution the president is empowered to share the executive power and duty. The list of the powers given to the president shows that 1982 Constitution in comparison to 1961 Constitution created a stronger presidential office.

The strengthening within the structure of the executive branch in general, and of the office of the president in particular, while remaining loyal to the " spirit of parliamentary government" was the generals` main aim. But this aim denotes a paradoxical novelty. On the one hand, the creation of a stronger president is a deviation from parliamentarism, on the other hand however, the executive and legislative agencies have been redefined on the basis of the equality and in a way to ensure their cooperation (Turhan, 1989: 93-101).

2.2.1 The Constitutional Power` s of the Turkish President

The president in his capacity as the head of the state is given the duty to represent the Republic of Turkey and unity of the nation. He oversees the implementation of the Constitution and the regular and harmonious functioning of the branchs of the state (Article 104) Besides these symbolic powers of the president thre are some more significant powers the president was entitled to exercise.

According to the Article 105, there are decisions stated in the Constitution and in relevant laws that the president may undertake unilaterally without need for counter signature. For example, the president does not need counter signature when he or she dissolves the parliament when the conditions in the Article 116 exists.

The system is no longer plainly parliamentary because the president does not need counter signature when he summons the Assembly into session during recess; when he or she deems it necessary appeals to the Constitutional Court for the annulment of laws, DFL; submits to a referendum legislation regarding the amendment of the Constitution. He exercises all these powers as the chief of the state, and not as the chief of the executive yet neither is symbolic nor ceremonial (Guler,1994: 24). Also, according to Article 121 of the Constitution the Council of ministers meeting under the chairmanship of the President of the Republic is granted power to issue decrees on matters made imperative by the state of martial law. Besides the President of the Republic is entitled to regulate the establishment, the Principles of organization, functioning and appointment of the General Secretariat of the Presidency of Republic by presidential decrees (Article 107). And no application is possible to be made judicial authorities including Constitutional Court for those decisions and orders, which the president signs on his own initiative.

Another article is very vital to understand the role of the presidents in the post-1980 period is Article 89 according to which the president shall refer to the Turkish Grand National Assembly (TGNA) for further consideration the laws, which he deems unsuitable for promulgation together with a statement of his or her reasons. With this power the president can warn the parliament to reconsider a law

before the promulgation. But this is not a veto power. Because in constitutional law veto means right of the president not to approve a law. The right to return laws is related to legislative duties of the president. But it does not mean that the president shares the legislative power. And it is not a law proposal too (Aliefendioglu, 1988, 15).

Especially in Kenan Evren`s presidency this power used very frequently. 18 laws referred back in this era and parliament amended most of the laws referred back according to Evren`s statement of reason (Aliefendioglu, 1988: 18).

However, the exercise of this power can cause conflict between the president and the parliament. The president should have the right to appeal the Constitutional Court for laws to oversee the implementation of the constitution. Morover, giving such a right to an impartial and irresponsible agency is contrary to the logic of parliamentarism and goes beyond the balance of power in a parliamentary democracy.

Before making a whole assessment of the executive within the system of 1982 Constitution, it may be useful to deal with the politically responsible wing of the executive, namely the council of ministers.

2.2.2 The Council of Ministers under 1982 Constitution

The council of ministers is composed of the prime minister and a number of Ministers. In the 1982 Constitution , it is evident that the prime minister , real head of the executive has also been strengthened.

According to the Article 109, the ministers shall be nominated by the prime minister and appointed by the President of the Republic. And they can be dismissed by the President of the Republic upon the proposal of the prime minister

when deemed necessary. Since the prime minister can dismiss the ministers he is no longer *primus inter pares*, which is to say that the system of the government established by the Constitution is a deviation from the classical parliamentary theory. This provision grants important power especially in coalition governments.

According to the Article 112, the prime minister is the chairman of the council of ministers, and the members of the council of ministers are jointly responsible for the implementation of the government policy. This was the same in the previous Constitution but in addition now each minister is also responsible to the prime minister. In this way, prime minister` s primacy is emphasized in the Constitution (Turhan, 1990:159).

Does the 1982 Constitution give executive the right to regulate an area, which has not been regulated by law before? There are various articles in the Constitution, which give executive power as a founding authority. Real importance of defining executive as power appears in the state of emergency and martial law. During the state of emergency, the council of ministers meeting under the chairmanship of the President may issue decrees having force of law on matters necessitated by the state of emergency. Also the council of ministers has the power to change the exemption, rates of obligations like tax, impost and expenses determined by laws. Act for Maintaining the Value of Turkish Currency is the typical example of this type of power, which is given to the government.

The frequent use of decrees after 1980s caused a new constitutional dilemma. It is claimed that Grand National Assembly has been a state of lack of legacy. Because, it became dysfunctional with its law-making duty.

2.3 Legal Statue of the DFLs

There are two basic views about the legal statue of the decrees having force of law in the Turkish constitutional and administrative law. The first view sees decrees originating from the extra-ordinary regulatory power of the executive branch. The second view sees decrees formally (organically) executive regulation, but functionally legislative regulations.

Regulative acts of executive (düzenleyici işlem) are the administrative regulations, which put general and abstract rules. If we use the organic criterion we have to characterize decrees as administrative acts. Because, this criterion considers the branch, which makes the rule. But decrees have the power to change laws and this prevents to see them as regulative acts (Karatepe, 1995 120-125).
The Executive branch legislates by decrees. It is claimed that the term legislator used in Constitution now includes not only Assembly but also executive branch.

Both in the 1961 and 1982 Constitutions the authority to issue decrees belongs to the council of ministers. The difference of these two Constitutions is that according to the 1982 Constitution there is not an obligation to show which laws shall be abolished by decrees in authorization law. But the authorization law shall define whether more than one decree will be issued within the same period. And if the authorization law does not define the purpose, scope, principles and operative period of the decree having force of law, this law will be in violation of Constitution. Decrees having force of law, which are based on these laws must be considered as contrary to Constitution even if they don't have any article, which is contrary to Constitution. But Constitutional Court does not give a conclusive decision about the effect of annulment of authorization law on decrees, which are based on that law (Ozbudun, 1993).

Authorization law designates the scope of the decree. TGNA can only give authority to issue decree for a specific area. It cannot authorize the Council of ministers to regulate every area. And the subject of decree cannot go beyond the scope, which is defined in authorization law.

The Constitution also designates the areas, which cannot be regulated by decrees. Fundamental rights, individual rights and duties included in the first and second chapter of the second part of the Constitution and the political rights and duties listed in the fourth chapter cannot be regulated by decrees having force of law except during periods of martial law and states of emergency.

Fazıl Sağlam (1984) at this point claims that regulation is a concept, which is different from and broader than restriction. There are regulations, which can strengthen the rights. Most of the social and economic rights and duties require the state to take measures and establish necessary organizations. That's why these rights could be regulated by decrees having force of law.

During the recent years the Constitutional Court added new requirements like necessity, importance and urgency in relation to subject of decrees. According to Constitutional Court issuing decrees is a power, which can only be used in urgent and necessary situations. Ozbudun (1989) claims that the source of necessity to authorize executive branch to issue decree is not only urgency but also in most time technical hardship of the regulations for legislatures. The Constitutional Court reduces the scope of authority of executive to issue decrees through interpretation. And he claims that enlargement of executive regulations cannot be considered as an anti-democratic process. Parliaments have the power to control the process of regulation by decrees.

Authorization law and DFLs, which were issued accordingly, shall be discussed in the committees and in the plenary session of the Turkish Grand National Assembly with priority and urgency. But the 1982 Constitution does not designate a forcible time period to discuss and decide about these decrees.

DFL in Turkish system as an ordinary law is subject to both parliamentary approval and constitutional review When parliament enables the executive through authorizing law, the executive can issue decrees in the framework of this given power. Scholars often argue that the parliamentary control of the decrees is slow and insufficient. As important as the accountability issue, whether or not this power increases the effectiveness of the executive branch and policy stability of the political system in Turkey needs to be elaborated.

For a whole analysis two control player, namely the Constitutional Court and the parliament must be considered together in this decision making process. However it should be noted that control of the executive can be operated by few actor.

For example the president promulgates the laws adopted by the TGNA within fifteen days. He shall within the same period refer to the TGNA for further consideration laws, which he deems unsuitable for promulgation. As we said before it is not a veto power. But there is no regulation related to promulgation of decrees having force of law. Since there is no forcible time or obligation for the promulgation procedure of the DFLs the president can veto the decrees having force of laws. Then president becomes another control player, which is not stated in the Constitution. The other ways of control of executive decrees will be elaborated in the third chapter of the thesis with special reference to Constitutional Court's decisions.

CHAPTHER III

ANALYSIS OF THE DFLs IN THE POST_1980 PERIOD

The causes of breakdown of democracy in Turkey on September 12, 1980 were multi-faced. World economic crisis, inward oriented development policies, which were implemented during 60s and 70s by Turkey were the economic factors accelerating the breakdown of democracy in Turkey in the end of 70s. Political polarization and fragmentation also played an important role in the crisis, which Turkey experienced during this period.

The decline of industrial production and pressure of foreign dept were only few of the many problems Turkey was facing in the seventies. Like other oil importing states, Turkey developed substantial resource gap following the oil price increases during the late 70s. High government spending, stagnant domestic savings, the inward-oriented development strategies, poor dept management and political unrest were the crucial internal factors lead to crisis of industrialization in Turkey (Yeşilada and Fisunoğlu, 1992, 185).

Political instability was a defining element of this period. Five elections were held but no party achieved a parliamentary majority. Power shifted back and forth a half dozen times between two major parties which were able to govern only after entering fragile coalitions with Turkey's many small splinter parties. Political support in Turkey during 1970s was very much at premium. Each party had little concern for the longer-term consequences of its policies. Not surprisingly brought segments of the Turkish population gradually lost confidence in all politicians.

The year 1980 was a turning point in the political economy of Turkish politics. The structural change in Turkish economy started with the package of January 24, 1980. There was a movement to replace ISI (import substitution industrialization) with an export-oriented model. Although the new economic policies were tried to be implemented at the beginning of 1980s before the coup Justice Party government could not follow an effective and resolute course (Hale, 1981: 34).

In September 1980 the chief of the general staff and five top armed forces' commanders seized the power. This new regime followed the economic reform policies, which were not put into effect before the coup. However during this period the commanders left the decisions on the economic policies to the Prime Minister's office. This new economic program, January 24 package, was under the responsibility of the Deputy Prime Minister Özal (Ildan, 1991, 17).

In January 24 package there were regulations, which ensure centralization of economic decision making channels. Committee of Money and Credit (Para Kredi Kurulu) was established through a cabinet decision (8/166). The chairman of this committee (Para Kredi Kurulu) was permanent under secretary of Prime Minister's Office. Also Foreign Capital Department regulated again as subsidiary department of Prime Minister's Office (Ekzen, 1984:180). These regulations gathered the decision making power in a one hand. Like Latin American countries also in Turkey rulers of 1980s realized that emergency management of the economy demands concentration of power in the executive.

Political and economic instability and social unrest and violence were the characteristics and reasons lead to the 1980 military intervention. Political and

economic crisis have been initial determining factors in Turkish politics. Crisis does not mean only a destruction or disorganization; they are at the same time instruments for new regulations. New regimes and institutions are generally established by means of crisis. What determines the formation of political – constitutional systems and institutions is a dialectical reaction to the crisis (Caglar, 1989: 90).

As an important mechanism to ensure the concentration of power in the executive decrees having force of law was introduced to our law following a crisis. And another crisis caused the frequent use of this way of legislation. After 1980s it can be observed that there is a sharp increase in the number of the decrees issued by the governments. To reveal the role of DFLs in post 1980s Turkish politics I am going to deal with the major areas regulated by decrees. Militay rule, Ozal era and Ciller era will be my unit of analysis in which executive decree authority exercised very frequently.

3.1 Major Areas Regulated by DFLs

3.1.1The military rule (21. 09.1980- 13.12. 1983)

During the military rule five authorization laws were enacted and 91 decrees having force of law issued accordingly.

The law no. 2578 (Official Gazette (O.G.), 13.1.1982) concerned with money brokers and bankers who were in financial difficulty. The 13 decrees were issued related to this matter and these decrees established legislation for the de facto situation.

The law no. 2680(O.G, 19.6.1982) concerned with the regulation of public institutions and foundations. The 108 decrees having force of law issued according

to the permission and limit of the authorization law[4]. The Board of Higher Education, the ministries, the State Economic Enterprises like Emlak Bank, Halk Bank, the Turkish Electricity Institution were the most regulated areas trough these decrees. The military regime established the Board of Higher Education. The disciplining of the universities was influenced by the past experience of politicization and polarization. The military planned not only appointments and promotions, but also day-to-day working of the universities (Heper, 1985: 143).

The 18 decrees issued based on authorization law no. 2767(O.G., 3.12.1983) concerning the profession chambers. Also 4 decrees issued related to Money and Capital markets based on the authorization law no 2810. Act of Banks, Act of Central Bank and Act of Capital market were amended by these decrees. Government explained its aim as supervising capital and money markets in an efficient and immediate way through these decrees. These decrees are also indicators of concentration of decision–making power related to economy, which was a policy implemented starting with the January 24 decisions. (Decree no. 90(O.G., 6.10.1983) regulated the process of lending money, the decree 91 (O.G.6.10.1983) subjected markets of portfolio, which had been established or shall be established. The decree 92 (O.G.6.10.1983) regulated the functions and powers of the Central Bank and amended the article 40 of the act, which concerns the legal collaterals)

The last authorization law concerned state of emergency and 20 decrees were issued based on this authorization law no 2935.

 The following government, Ozal Government, also used this authority given by this authorization law. Ozal government issued 52 decrees based on this law according to the Article 91 of the 1982 Constitution

3.1.2 Turgut Ozal Era (1983-1991)

After transition to civilian politics in November 1983, the military allowed Turgut Ozal and his party to participate in the elections when Ozal won the majority of the votes in the 6 November 1983 elections the military let him form the government, too. The philosophy of the Motherland Party, which was the champion of the economic adjustment program, was state's retreat from the economy in the course of liberalization and privatization. Also shrinking of the state was another policy implemented through this era. Reconstruction of economy was achieved mostly by decrees having force of laws.

The first authorization law promulgated was related to reduction of red tape in this era. The aim of this law was explained as promotion of efficiency and reduction of the cost of public services. (Law no, 2977 O.G. 8.2.1984) the duration of this law was extended two times through new authorization laws.

The second authorization law granted permission to amend the acts related to public servants and other public employees. Especially the fiscal and social rights of the public servants were regulated by these decrees

The Law no. 3268(O.G. 19.3.1986) also amended the Act of Public Servants and Law of Turkish Military, Act of Higher Education Council, Act of Judges and Prosecutors. The Government issued decrees concerning public foundations, public institutions and their organization, cadres, functions and powers. Another authorization law no, 3347 (O.G. 17.4 1987) granted the government to regulate the same domain, latter.

In 1983, the Motherland Party government first attempted to change the administrative structure of the state and then followed the policies to adopt the administration to the free market economy. The Ozal government's policies rooted

from the military rule. In the late months of 1980, the civilian government submitted its program to National Security Council. In that program, the civil bureaucracy was mentioned as constituting an obstacle to economic development (Heper, 1990, 220). The government followed a similar program and attempted to restructure the bureaucracy. As the new strategy of development placed greater emphasis on the market forces the bureaucracy had to be taken out of the decision making process.

Ministries were the first administrative department, which have been regulated by decrees. For example the authority of the Ministry of Finance were separated. The responsibility of treasury was given to the Undersecretary of Prime Ministers Office. Then the Ozal government reduced the number of ministries and some of the ministries were united by the decree no. 178 (O.G. 14.12.1983) Finance and Customs Ministries were joined by this decree and the decree no. 185 combined the Industry and Trade Ministries.

The Undersecretary of Treasury and Foreign Trade were established and affiliated to the Prime Ministry according to the decree no. 188. (O.G., 14.12.1983) This also contributed to the centralization of power in the hands of the Prime Minister's Office in economic and financial sectors. Consequently the Prime Ministry started to serve for economic and fiscal administration of the country through its increased affiliated and subsidiary institutions in charge of economic affairs.

The State Planning Organization (SPO), which has originally been affiliated to the Prime Ministry, was regulated by decree no. 233 (O.G.18.6. 1984,18435). The prime minister could use this administrative power by means of a minister without portfolio. According to this decree, the superior decision agent

of the SPO was the Supreme Planning Board. By including more higher bureaucrats having signature power into the SPO the red tape was lessened through these regulations, because the procedures were taking time for investors. The government made this power more prevalent. And also procedures regulating the Encouragement Measures were made simpler and faster for investors.

The policies, which were implemented by Ozal first required the shrinking of the state. Following the serious attempts at privatization the government took several steps to prepare the legal institutional framework, which was not regulated by the Turkish Constitution

3.1.2.1Privatization

Privatization is normally one of several parallel policies in the context of structural readjustment or systemic transition (Luciani, 1997: 115). Privatization includes all types and increments of transfer of ownership, partial or complete from the government to the private sector. But the defense industries and electricity generation and distribution are typical examples of state monopoly sectors, even in many advanced capitalist societies. In a majority of cases, privatization is a policy, which is first considered at times when the government is facing a fiscal crisis.

The sale of state enterprises to private buyers in the 1980s and 1990s was the newest policy to rescue national economies as diverse as slow growth advanced industrial countries of the west, Latin America and East Europe.

In Turkey the first regulation on privatization policies was a decree having force of law, which was put into force in May 1983(no: 60, O.G. 20.5.1983). This regulation became an act in September 1983 (2983, Act of Promotion of Savings

and Acceleration of Public Investment). In mid-1984 the Motherland Party government amended this act and the DFL no. 233, came into force. But this DFL was not quite different from the philosophy of the law no. 2929. According to the DFL no. 233 a State Economic Enterprise or subsidiary corporation can be established through decision of council of ministers, but can be abolished only by Economic Affairs Coordination Committee. This committee consists of eleven ministers and four bureaucrats. Also sharing and transferring decisions of the SEEs left to the Economic Affairs Coordination Committee.

The DFL no 233 increased supervision of the Prime Minister's office. According to this DFL, pricing of goods, which were produced by the State Economic Enterprises (SEE) can be determined by the council of ministers ,when deemed necessary. This means intervention authority of central government is preserved.

This decree also excluded subsidiary institutions from the definition of the SEE; as a result of these fact subsidiary institutions excluded from the targets of the five-year development plans.

During the 1980s the legal and constitutional vacuum created an obstacle for privatization actions. The Constitutional Court annulled most of the decrees and laws concerning privatization. (see the part on the Constitutional Courts review in chapter 3)

3.1.2.2 Public Employment (Shrinking of the State)

The decree no. 60 and 233 and the law no. 2929 all stated that legislation concerning employees of State Economic Enterprises must be made through law. However the first regulation for this area was not a law. A decision of the Supreme

Planning Board canceled the vacant cadres of the SEEs and stated that the need of employee shall be satisfied through contracting employees.

The first regulation promulgated in accordance with the decree no. 233 was a decree having force of law issued on 5. 1. 1988. (Decree no. 308). The decree no. 331 (O.G.30.6.1988, no.19873) according to which all public services shall be carried out by contracting employees in the SEEs amended this decree (Except for the workers). Later the Constitutional Court annulled this decree having force law (22 .12. 1988, 88/55).

Following the annulment decision the decree no. 399 went into force on 22.01. 1990. This decree also concerned personnel regime of the State Economic Enterprises. Later Constitutional Court also annulled some the articles of this decree (4.4.1991, 91/7).

The government issued another decree in accordance with the statement of reason of the annulment decision. The decree no. 453(O.G., 16.9.1991,no.20993) brought the principle that Act of Public Servants shall be implemented for the contracting employees in case the decree does not include any regulation.

Differences among the statues of the employees gave way to ensure different facilities to the doers of the same or similar jobs. The budget laws introduced in Ozal era, decrees having force of law and by-laws brought restrictions for the number of the employees in the SEEs. It is almost impossible to hire new personnel in place of the personnel who resigns or retires.

There is a continuous decline in the number of the employees of Sees. The approximate number of the employee in 1994 was 643.940 and this number decreased in five years period % 17.9 per cent (KIT Genel Raporu, 2000: 150-160).

This decrease was both a result of privatization and the restrictions for employing new personnel in place of the retired personnel. But this application did not help to solve the problem of inefficiency in the SEEs. Because, while reducing the number of the employees; sub-contracting became a new type of employment for ensuring of public services (KIT Genel Raporu, 2000: 161).

Another regulation, which was made in this era about the cadres of public employees, stated that creation of new cadres could be possible only through parliament's initiative. The total number of present public servants could only be increased through the will of representatives. (Uras, 1993: 93)

3.1.2.3 Finance and Insurance

According to the decree no. 303 (O.G.21.12.1987) the regulative authority and powers, related to the insurance company services transferred from the Ministry of Trade and Industry to the Prime Minister's Office and it was also stated that prime minister could use this power by means of a minister without portfolio.

The decree no. 344 (O.G., 25.10.1988) also amended the articles of act of Insurance Supervision related to the members of Committee of Supervision. With decree no. 368 (O.G., 14.6.1989) all processes related to insurance transferred to the Prime Minister's Office. Another important bank established in this era was Eximbank. (Turkish Export Credit Bank) which was in accordance with the philosophy of the economic adjustment program.

Decree no. 13 established the State Industry and Workers Bank (SIWB). Decrees 165(O.G.14.11.1983) and 329 (O.G., 15.7.1988) regulated the structure of

this bank later. Decree no. 329 gathered two banks Promotion of Tourism Bank and SIWB under the roof of a new bank, Turkish Development Bank. This Bank was founded to help private sector programs in financial areas, giving investment and management loans to private sector organizations In Turkish Development Bank share of the treasury was 49 %. The decree no.401 stated that the capital of this bank could be increased by decision of Council of Ministers. But government shouldn't have had such an administrative power on this bank simply because share of the government was limited and this bank should not have been subject to public law. This regulation shows the governments initiation for regulating all parts of the economy in accordance with its policies. A similar government initiative was seen in the area of natural gas. According to the decree 350 (O.G., 9.12.1988) BOTAS or private companies would be authorized for allocation and purchase of gas. But Prime Minister would approve shares of the private companies. The decree 397 (O.G.9.12.1990) amended this decree and gave the authority to the Council of ministers. This shows that most of the decrees issued in this era gave power of decision or ratification to the Prime Ministry related to economic affairs. That's why the power, functions and organization of Prime Ministry became very huge because of these regulations.

3.1.3 Tansu Ciller Era (1993-1996)

The Prime Minister Tansu Ciller came to power after Suleyman Demirel was elected to the presidency in 1993. She formed a coalition government with the Social Democrat Populist Party and later the Republican Peoples Party under the leadership of Deniz Baykal.

Privatization was one of the primary considerations of the government programs despite some opposition from the leading RPP deputies, namely Mumtaz Soysal. Ciller governments attempted to regulate the establishment and operation of privatization, banking, public employees and profession chambers. For example decree no. 527(O.G., 20.5 1994, 21939) entitled the government to open new cadres in the public sector. Court evaluated this decree contrary to the articles 87, 160 and 161 of the Constitution.

During this period, most of the authorization laws were annulled by the Court and DFLs, which were issued on the basis of these authorization laws. Were also found unconstitutional accordingly the Court` s decisions. The major areas regulated by decrees in this era will be elaborated in the following part by Constitutional Court` s decisions.

3.2 Constitutional Review of the DFLs

According to the Article 148 of the 1982 Constitution the Constitutional Court examines the constitutionality in respect of both form and substance of laws, decrees having force of laws and the rules of procedure of the TGNA. Constitutional amendments is examined and verified only with regard to their form. However, no action can be brought before the Constitutional Court alleging the unconstitutionality as the form or substance of decrees having force of law, issued during a state of emergency, martial law or in the of war.

None of the political actors appealed to Constitutional Court until 1989, so that we do not count any annulment decision until this year. But after 1990 there is a sharp increase in the number of annulment decisions of the Court. This can be explained through the Court's changing interpretation on DFLs after 1990s.

The Constitutional Court brought a new interpretation and additional criteria related to decrees having force of law by its two decisions ruled out on February, 1.1990 and February, 6.1990 and in its following decisions the court strengthened and improved its former stand and interpretation by annulling the DFLs on the same ground. On 1.2.1990 the Constitutional Court for the first time listed this new conditions and used them as statement of reasons of annulment decision[5]. Before this decision the Court also stated a similar interpretation in a different decision. But it did not stated as the reason of annulment [6]

According to the Constitutional Court issuing decrees having force of law is a subsidiary authority. The executive cannot use it frequently, because this leads to delegation of legislative power.

3.2.1. **Constitutional Court's new Criteria Concerning DFLs** :

It is necessary to elaborate the Court` s new criteria on DFls in detail. Because after 1990s the Court has become a important check and limitation player for the enforcement of decree authority of the governments.

1. Urgency, Necessity and Frequency.

According to Constitutional Court issuing decrees having force of law is only possible when an important situation occurs and necessitates urgent regulation.

On February 2, 1990 Constitutional Court decided that law on public servants couldn't be considered as an urgent area to be regulated by DFL and the DFls was annulled accordingly.

[5] (Substance 1988/64. Decision 1990/2. Date of Decision, 1.2.1990 AMKD volume 26 pp.51-94)
[6] S. 1989/4 D 1989/4, DD 16.5.1989 AMKD vol. 25 pp .231-267

Moreover, the Court also introduced a new criterion the same issue as "frequency". It was explained that decrees having force of law couldn't be issued to regulate the same area frequently. The Court evaluates the "frequency" principle for the DFLs according to the number of the authorization laws, not as to the number of decrees having force of law. Indeed extension of duration of authorization laws also indicates the frequent use of this authority (Karahanoğullari, 1996:126).

In its decision made on July 5, 1995 the Court decided that the issues related to public servants and their organization have been regulated by DFLs frequently. And this situation exceeds the aim of decrees having force of law as an institution and means usurpation of legislative power, for the reason that, the "exception rule" (decrees having force of law), was transformed into "usual" procedure [7].

2. Being Short-term.

According to the Constitutional Court DFL can only be issued for short terms. A decision made on February 6, 1990 by Constitutional Court annulled an authorization law, which was granted for two-years by considering that two years were two long.[8]

These decisions indicate that according to the Constitutional Court the principal and usual way of legislation is law-making by the parliament. The Court put a limit the executive's authority to issue DFL through its interpretation. Thus

[7] (S. 1994/50. D. 1994 44/2. DD.5.7.1994. O.G. 24.2.1995 vol. 22212 pp.38)

[8] S. 1988/62 D. 1990/3. DD 6.2.1990 AMKD vol 26 p.105.

the Court evaluated DFL as an exceptional procedure that can be used in somehow emergency or urgent situations.

It is argued that Constitutional Court restated the honor of parliament, which had lost before. And the democratic legitimacy of this decisions lays here (Çağlar, 1990, 119)

The other annulment decisions also indicated the negative attitude of the Court to the decrees. There is a change in the rationality and interpretation of the Court after 1990s.

3.2.2Annulment Decisions Related to Authorization laws:

It will be explanatory to demonstrate the Court` s important role, limiting the authority of issuing DFls of the governments after 1990s

1. Law no.3481[9] Act For Reregulation of Administrative Procedures and Acts

This authorization law can be regarded as continuation of the law no. 2977, which was extended two times. The objective of the law was to reduce red tape. However the Constitutional Court in its annulment decision stated that there was no correspondence between this objective and the following articles of this law. This authorization law granted the government not only to amend the formal rules but also to reformulate substance of the regulations and procedures.

As the statement of reason the Court basically pointed out that this law grants unlimited power to government. Most of the decrees, which were issued based on the law no. 2977 and 3481, amended various laws, which were not related to formal procedures. The Court decided that, the law was unconstitutional

[9] 21.4. 1990, AMKD 1990/2, Vol. 3 pp.513

as being contrary to the articles 87 and 91 of the Constitution and also to the principle of democratic- state, which is a characteristic of the Republic.

2. Law no, 3755 Authorization law About Fiscal and Social Rights of Public Servants and Other Public Employees[10]

This law granted the government to issue decrees in various areas related to banking, insurance, social security, privatization and purchasing public real estate. The Constitutional Court decided on December 12, 1991 stating a similar argument to which was expressed for the annulment decision of law no. 3481. The Court` s decision underlined the fact that the laws offers unlimited authority to the government in legislation. Besides the scope of legislation was considered too large to be regulated by the executive.

3. Law no. 3390 Authorization law Concerning the Rights of the Public Servants and Public Employees[11]

This authorization law authorized government to issue decrees related to public servants, organization of public administration and some other general areas.

The Constitutional Court considered that the first three articles of the law had similar content of law no. 3479 and 3755, which were annulled before. Moreover it was also mentioned that the law also granted the government to issue decrees amending the Act of Customs, Act of Promotion of Tourism and Act of Building Site Office. This was the first time these areas were opened to the authority of executive rule making.

[10] 12. 2, 1991 AMKD, 1991/50 Vol. 4 pp.426

By considering the fact that the scope of the law was unlimited, the Court stated that executive becomes superior to the legislative branch through usurpation of legislation. The Court also repeated the three criteria, which were mentioned before for the use of decrees having force of law.

4. Law no. 3911 Authorization law concerning the Acts on Public Servants and Public Employees and 3987 Authorization law Concerning the Regulation of Privatization Process.[12]

These two authorization laws granted the government to regulate privatization process.

The annulment of the law no. 3911 was based on the lack of aim scope and principle of authorization law. It was considered by the Court that absence of this proper procedure meant delegation of legislative authority. In this respect, the Constitutional Court initially states that the aim and scope of the authorization laws must be limited and definite.

The aim of the law no. 3987 is stated as

> "The objective of this law is reduction of the number of the authorized branches for carrying out privatization policies. Through this the government aims at promoting speed and productivity of the privatization policies. That is why the government is authorized to make the necessary amendments in legislation which constitutes the base of privatization policies".

The Law no. 3987 includes privatization of the State Economic Enterprises, public establishments and partnerships in which more than half of the capital directly or indirectly belongs to the state.

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[11] 5.7.1994 AMKD, 1994/44-2 Vol.5 pp.507

Moreover, the law under consideration made the Privatization Fund out of the control of the parliament and subject to supervision of the Council of High Supervision, which belongs to the prime ministry. The revenues, which would be gained out of privatization, would be gathered in this fund. The Constitutional Court evaluated that the supervision method, which the laws introduced, was contrary to the Articles 160 and 165 of Constitution.

The Constitutional Court indicated the low level of domestic capital accumulation and pointed out the probability of foreign ownership: "the foreign ownership of strategic public services like telecommunication and electricity has drawbacks for national security, protection and independence."

Also, the annulment decision for the law no. 3991, based on the indefinite and large scale of authority granted to the government. The Court again evaluated the authorization law as contrary to the Articles 87 and 91 of the Constitution. The Court pointed out that a total of 80 articles related to the Act of Banking and Insurance Supervision to be regulated by DFL went beyond the purpose.

4. Law no. 4109 Authorization Law Concerning the Establishment of New Provinces and Districts[13]

The aim of this authorization law was determined as to establish new provinces and districts according to the necessities of public services and economic conditions of the country.

The Constitutional Court considered that no criterion was determined by the law, according to which, the government entitle districts as province and towns

[12] 8.10.1993 AMKD 1993/28, Vol. 4 pp. 426 and 10.9 1994 AMKD 1994/45-2 Vol.5 pp. 507
[13] 6.7.1995 AMKD 1995/26 , Vol.5 pp.557

as districts and also establish new administrative departments. The Court interpreted the law contrary to the prohibition of delegation of legislative power and principle of democratic-state. The Court stated that the aim, scope and principles of the law were not definite and limited. Though the law was considered to be unconstitutional on the basis of the lack of principles, which were stated in the Article 91 of the Constitution.

The Court mentioned that the law was also unconstitutional on the base of the article 127 of the Constitution. According to article 127 the formation, duties and powers of the local administration shall be regulated by law in accordance with the principle of local administration.

5. Law no. 4113 Authorization Law Concerning TOBB, the Act of Commerce, Geographical Marks and Signs, The Act of Capital Market[14]

Another authorization law, which was annulled by the Constitutional Court, granted the government to issue DFL to amend almost everything related to Act of Capital Market

In the annulment decision the Court again based on the lack of aim and indefiniteness of principles of the authorization law. The Court evaluated the authorization law contrary to the articles of 7,11 and 91 of the Constitution.

These annulment decisions show the attitude of the Constitutional Court to the decrees having force of law. The Court initially states that the scope and principles of the authorization law must be definite and in most of the decisions the Court gives reference to the Article 7 of the Constitution, which is related to the prohibition of the delegation of legislative power.

[14] 3.11.1995 AMKD 1995/44, vol. 5 pp.568

The Court's reasons give preference to legislate by law than decrees having force of law. It does not welcome the use of decrees by government frequently.

VI CONCLUSION

The trend of empowerment of executive and rationalization of parliaments starting after World War II, which has been reinvented after 1980s with the impact of global market economy, can be considered as an outcome of the redefinition of states` role in the global context.

Especially newly established democracies after 1980s preferred presidential systems, in which the presidents are central policy making actors. In presidential systems the executives tends to be controlled by single parties and sometimes even by individuals with weak or no connections to political parties (Linz, 1994). Executive decrees are the regular and frequently used policy making mechanism is in these systems. It is evident that legislatures are being marginalized. It is a tool sometimes systematically used by executives to implement policies for which they lack legislative support.

The argument supporting empowerment of executive gives emphasize on fastening the decision-making process. Legislative procedures are frequently slow, whereas the need to implement new policies, which global economy requires might be pressing. Presidential decrees have played a central role in most of the Latin American countries also in Russia during economic adjustment period. Some of the issues, which have heavy social costs are regulated through decrees as we have said parliaments have fear of not to be elected.

It is also the case that where executives exercise influence over the process of constitution building and amending, they tend to secure greater constitutional

decree authority than when assemblies dominates constitution building, such executives institutionalize greater discretion over policy relative to legislatures (Carey and Shugart, 1998).

In parliamentary systems, too empowerization of executives occurs. It is claimed that where executives appear strong or even dominant in parliamentary systems it is almost always because of consistent, disciplined party support in the legislatures. But this argument ignores the growing emergency powers given to the executives. To use such powers executives do not need authorization from parliaments. A vast range of open-ended emergency delegation of power to the executive concerned not only war preparedness and natural disasters but also many areas of economic regulation. These developments considered being present ills of the liberal democracies. Rule by exceptional power indicates no ongoing relationship exists between those who make decisions and those who live under them (Schuerman, 1999). This is the major output of the process of empowerment of executive and /or rationalization of the parliaments in relation to democratic theory

In the Turkish political system, DFLs despite their widespread use they do not have an impact as in the presidential systems to define or change the character of the political system. However, as it is mentioned before executive decree authority is used by the executives either president or government has important effect in decision- making process. The executives take control of important regulation areas and set a broad policy. And it is claimed that these developments threaten the representative government systems (Prezeworski, 1991, Linz, 1994, Schuerman, 1999).

In relation to the main research question of this thesis, which is impact of decrees having force of law in Turkish politics, there are problems deriving from enforcement of DFLs by the governments. The first problem is that governments issued DFLs following one another and regulating the same domain. As a result before the discussion of a DFL in the parliament, another DFL replaces it or amends its articles. This enforcement prevents the parliament to imply its initiative on the DFLs. (Tan, 1995). Another problem is that the principles and rules, which are defined by the Constitution for DFLs are not properly exercised. Although the clear statement of the Article 91 of the Constitution DLS and authorization laws are not discussed in the committees and in the plenary session of the Turkish Grand National Assembly with priority and urgency. The widespread use of DFLs cannot be explained by the difficulties in the law-making process. Because, we see the frequent use of DFLs during majority government periods. This means that governments have the adequate parliamentary support to legislate through law. Because of the fact that, governments escape from the parliamentary control by legislating through DFLs this way of rule –making is preferred. Governments take control of the decision making process by means of improper exercise of rules regulating DFLs. Finally as the Constitutional Court states the exceptional way of rule making becomes the usual way.

As we have stated in the third chapter of the thesis Constitutional Court developed new criteria on the constitutionality of the DFLs. By its new interpretation the Court presented its negative attitude to the enforcement of the DFLs in rule-making process. The Court` s annulment decisions can be considered as a response to the improper exercise of parliamentary control over the DFLs. However, by annulling almost all of the decrees, which came before it, the

Constitutional Court restricted the authority of issuing DFL by the governments. The Court has been an important *control player* and its interpretation has determined the enforcement of decree authority in the post -1990s period.

As it is mentioned before the president can also became a *control player* for the promulgation of the DFLs. Because unlike the promulgation of laws, the regulation of the Constitution, concerning the DFLs does not determine a forcible time period for the promulgation of them. As an outcome of this regulation the president can become a veto player for the DFLs, which can cause a conflict between the two heads of the executive.

As a conclusion it can be claimed that in Turkish political system, like the other parliamentary regimes, where decree authority exists, impact of DFLs depend on the balance of power among the different institutions of the system. Turkish case demonstrated that even majority governments could prefer to legislate by DFLs rather than general laws. In the light of the analysis made in the third chapter of the thesis we can say that governments frequently used DFLs to ensure the centralization of power in the executive, more specifically in the hands of the Prime Ministry. Especially the DFls, which were issued in the Turgut Ozal period, gathered the powers on the economic affairs in the prime ministry.

Nevertheless due to the fact that the 1982 Constitution created a powerful presidential office and the Constitutional Court customarily give preference to legislate by general laws; impact of DFLs in the decision making process can differ according to the balance of power among these institutions.

Table 1.1

Types of Decrees				
Country	Agent	Scope	Supervision	Time restriction
Argentina CDA	President	Public emergency	Supreme court	Limited time period for its effectiveness
Argentina DDA	President	All issues except for penal ,fiscal and political party matters	Supreme court and Congress (pass a special act by the positive vote of the majority will determine the proceedings and effects of the congress on decrees)	Ten days for submission.
Russia DDA	President	Any subject as long as they don't contradict existing law or the Constitution	Constitutional Court	No time restriction
Russia CDA	President	Any subject as long as they don't contradict existing legislation	Constitutional Court (do not require any confirmation by assembly)	No time restriction
Venezuela CDA	President	Extraordinary measures on issues of economics and finance in cases of emergency and creation of new public services	Congress(in case the measures are limited to detention of the relevant individuals must be submitted to the consideration of Congress within ten days)	No time restriction
Venezuela DDA	Président	Any subject	Constitutional Court	No time restriction

Table 1.2

Country	Agent	Scope	Supervision	Time restriction
France DDA	Government	The domain out of the article 34 of the Constitution. (Constitution defines the law-making area)	Supreme Court of Administration	No time restriction, authorizing law defines the time for submission
France CDA	President	emergency		No time restriction
Italy (CDA)	Government	The areas required by necessity and urgency	Assembly	Decrees lose effect if they are not converted into law in 60 days after their publication (but governments issue recycled versions of earlier decrees that expired after 60 days)
Italy DDA	Government	No restriction Authorizing law determines the regulation areas	Assembly Constitutional court	No defined time restriction
Turkey DDA	Government	Fundamental rights, individual rights and duties and the political rights and duties cannot be regulated by decrees having force of law	Assembly Constitutional Court	Submission to Assembly on the day of issuance

Turkey CDA	Government under the chairmanship of the President	No restriction	Assembly	30 days for discussion

Sources of Table 1: Shugart and Carey (1998) **Executive Decree Authority**, Cambridge, Cambridge University Press pp 300-320

Explanations:
CDA: Constitutional Decree Authority

DDA: Delegated Decree Authority

EDA: Emergency Decree Authority

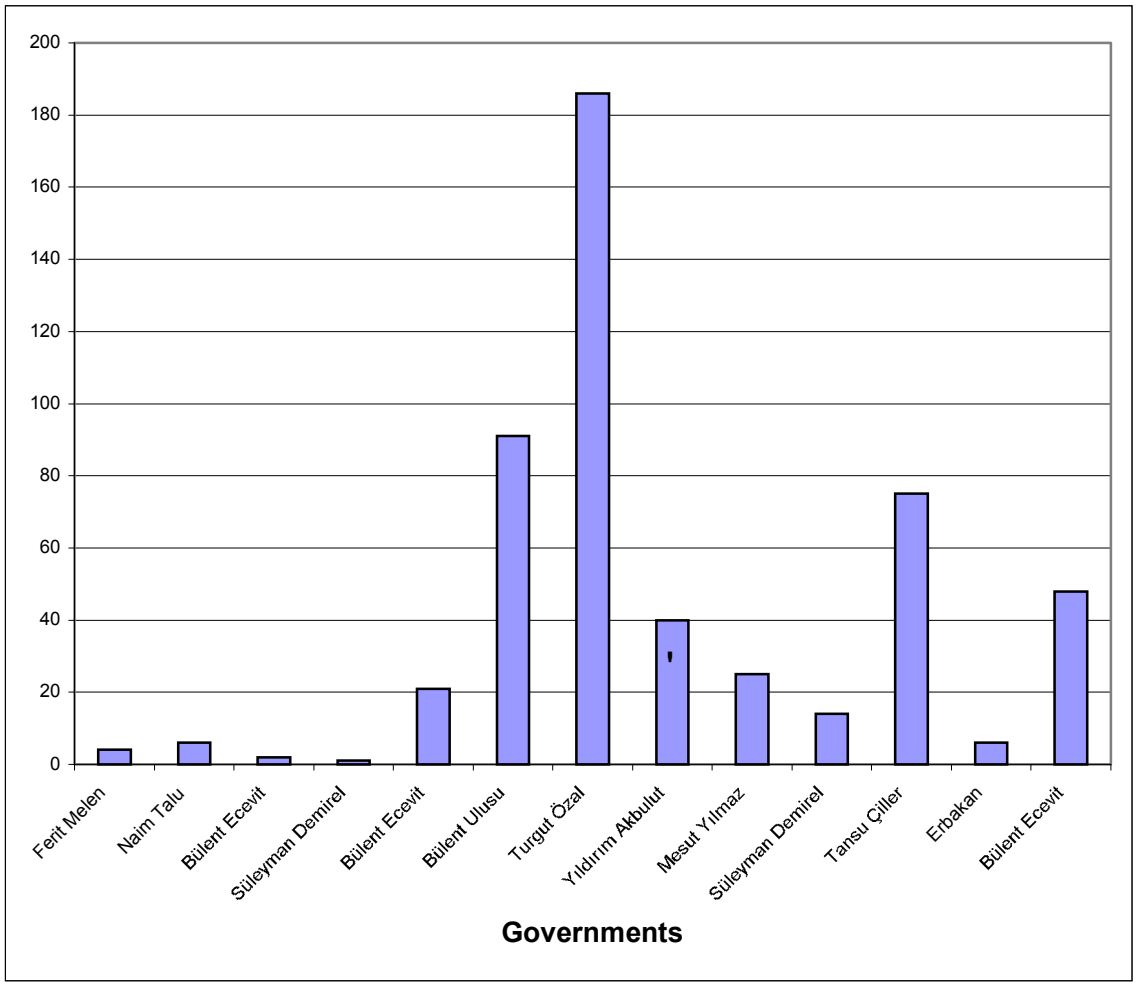
Table 2

Regulation areas of the decrees having force of law			
Subject	Authorization law	Decrees issued	Decrees enacted
Fiscal and social rights of public employees	1589 2171 2999 3268 3755 3911 3990 4066	12 5 4 53 14 7 1 5	1 1 - 7 2 - - -
Organization and cadres	1877 2171 2680 3268 3755 3911 3390 4004 4109	1 1 108 64 23 29 5 6 1	- - 37 13 4 2 - - -
Economic and fiscal provisions for public administration	2171 3987	15 5	5 -
Administrative regulations and processes	2977 3481 4113	29 3 12	23 1 -
Money brokers and bankers	2578	13	12
Profession chambers	2767	18	14
Money and capital	2810 3991 4113	4 3 1	2 - -
State of emergency	2935	20	3
Natural gas	3378	3	1

Source: Kanun Hukmunde Kararnameler Kulliyati vol 1, 2, 3, 4,5

Figure 1

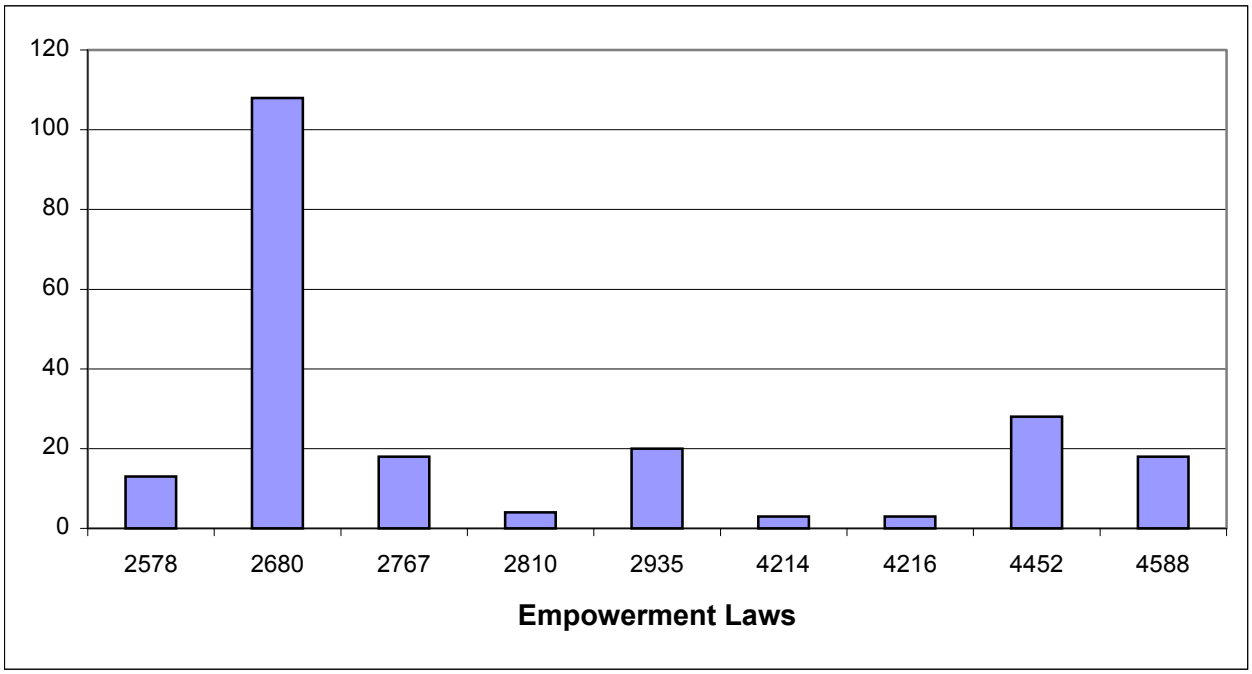
The number of decrees issued by governments



Source Kanun Hukmunde Kararnameler Kulliyati Vol 1, 2, 3, 4,5
Official Gazette (1996-2000)

Figure 2

Decrees according to their authorization laws



Sources Kanun Hukmunde Kararnameler Kulliyati vol 1,2,3,4,5
Official Gazette (1996-2000)

BIBLIOGRAPHY

Ahmad, Feroz .1993.*The Making of Modern Turkey*, London ,Routledge Press

Akad, Mehmet and Dinckol A . 1998. *1982 Anayasasi ve Gerekceleri* (1982 Constitution and Its Statement of Reasons), Ankara, Alkim Press

Aliefendioglu, Yılmaz .1988. "Yasalarin Cumhurbaskaninca Geri Gonderilmesi" (Return of Laws by President*) Amme Idaresi Dergisi* Vol 21 pp 5-38

Barkey,Henry .1990.*The State and The Industrialization Crisis in Turkey Boulder* Westview Press

Boratav,Korkut .1999. " Turkiye`de Ozellestirme" .(Privatization in Turkey) in *75 Yilda Carklardan Chiplere Ankara ,*Tarih Vakfi Press

Bryce, Lord . 1990. " Decline of Parliaments, 1921" in *Legislatures* edit Philip Norton, New York , Oxford University Press

,

Carey, Matthew. ; Shugart , M .1998. "Callingout the Thanks or Filling Out the Forms" in *Executive Decree Authority* edit. Carey; Shugart ,New York Cambridge University Press,

Celasun, Melih .1983. *Sources of Industrial Growth And Structural Change , Washington* WorldBank Press,

Collier, David .1979. "Overview of the Bureaucratic Authoritarian Model" *New Authoritarianism In Latin America,* New Jersey,Princeton University Press,

Çağlar , Bakır.1989. *Anayasa Bilimi (Science of Constitution) Istanbul* BFS Press,

---------- .1990. "Anayasa Mahkemesi Kararlarinda Demokrasi" (Democracy in Decisions of Constitutional Court) *Anayasa Yargisi ,* Constitutional Court vol.7 pp.53-127

Çoker, Fahri .1988. " KHK`ler" (DFL)*Parlemento Dergisi ,* February pp.12-20

Diamond, Larry .1995. *Economic Reform and Democracy,* Baltimore John Hopkins University Press,

Duran, Lutfi . 1975. « KHK » (DFL) *Amme Idaresi Dergisi* vol. 8, pp.3-19

Duverger, Maurice. 1980. « A New Model Political System : semi- presidential Government », *European Journal of Political Research,* vol 8 165-187

Ekzen, Nazif .1984. « 1980 Stabilizasyon Paketi » (1980 Stabilization Package)*Turkiye`de ve Dunyada Yasanan Ekonomik Bunalim*, Ankara Yurt Press

Erdoğan Mustafa .1999. *Türkiye`de Anayasalar ve Siyaset*, (Constitutions and Politics in Turkey) Ankara Liberte Press

---------- .2000. « Türkiye`de Siyasal Sistem Arayisi » (Search for Political System In Turkey) *Siyasal Rejim Tartismalari*, Istanbul TESEV Press

Erogul, Cem .1970. *Demokrat Parti Tarihi ve Ideolojisi* (Democrat Party its History and Ideology), Ankara, Ankara Universitesi

Evans, Linda.1997. "The Eclipse of the State" *World Politics*, vol.50, pp.62-67

Faundez, Julio .1992. " In Defense of Presidentialism : Caseof Chile" in *Presidents and Assemblies* edit Shugart and Carey , Cambridge, Cambridge University Press

Garreton M Alex .1999. " Social and Economic Transformations in Latin America"in *Market and Democracy in Latin America* edit, Oxhorn and Starr, Boulder,Lynne Riedel Press

Gelisen Turkiye`de Hukumetin Alti Yillik Icraati : Basbakanlik ve Bagli kuruluslar, (Six year policies implemented: Prime Ministry and Subsidiary Institutions in developing Turkey), 1989. Ankara, Basbakanlik Press

Gençkaya, Ömer Faruk. .1994. "Democratization and Legislative Development in theMiddle East Case of Turkey" in *Democratization in the Middle East*, Tokyo,IDE Press

----------.1999."Reforming Parliamentary Procedure" *Aspects of Democratization in Turkey, Tokyo* IDE Press

Gözler, Kemal .2000. "Hukumetlere Nasil Etkinlik ve Istikrar Kazandirlir" (How to Ensure Stability and Efficiency of Governments), *Turkiye Gunlugu*, no.62 pp.25-48

----------.2000 Kanun Hukmunde Karanamelerin Hukuki Rejimi (Legal Statue of Decrees Having Force of Laws)Istanbul, Ekin Press

Güler, Sait. .1994. *The Post 1989 Experience with the Presidency in Turkey*, Unpublished thesis, Ankara, Bilkent University

Hale William. .1981. *The Political and Economic Development of Turkey,* New York Greenwood Press

Heper, Metin. .1990. "Turkish Case" *Public Administration in Third World New York,* Greenwood Press,

Heringa, William. 1994. " The Evolving role of The Parliaments in Europe" *The Evolving Role of the Parliaments* edit Flinterman**;** Heringa,Tilburg Maklu, Nomas Press

Hondu, Selçuk .1988. « Kanun Hukmunde Kararnameler ve Uygulamasi » (Decrees Having Force of Law And Its Implementation)*Danistay Dergisi***,** vol, 70, pp.33-46

Huber, John. .1996. *Rationalizing Parliament*, New York, Cambridge University Press

---------.1998 "Executive Decree Authority in France" in *Executive Decree Authority* edit, Carey; Shugart,New York, Cambridge University Press

Ildan, Ümit .1991. *Turgut Ozal`s View on the Relation between Politics and Economy,* Ankara, Bilkent University Press

Inkeles, Alex .1991. *Measuring Democracy,* New Brunswick, Transaction Press

Kabaoğlu, İbrahim .1994. *Anayasa Yargisi* (Constitutional review) Ankara, Imge

Kamu Yonetimi Arastirmasi .1992. Ankara, TODAIE

Karahanoğulları, Onur. 1996. *Yapisal olarak KHK ve Demokratik Ilkelerde Yipratici Etkileri* (DFL as a structure and its effects on Democratic Principles) unpublished thesis, Ankara, AU Hukuk Fakultesi

----------1998. « Ingiliz Hukukunda Ikincil Yasama» (Subsidiary Legislation in British Law) *AU SBF Dergisi, Turan Gunes Armagani ,* Vol 50 no 3-4 pp

Karatepe Şükrü. .1988. « Bati demokrasilerinde yurutmenin guclendirilmesi egilimleri ve 1982 Anayasasina etkileri (Trend toward empowerization of the executive in western democracies and its impact on the 1982 Constitution), *Akademik Arastirmalar Dergisi* vol 1 1-44

----------. 1995 *Idare Hukuku*,(Administration Law) Izmir Universite Kitaplari,

Keman, Hans .1997. « Approaches to the Analysis of Institutions » *Political Institutions and Public Policy,* edit Steunenberg Kluwer, Dardrecht

King Anthony . 1981 " How to Strengthen Legislatures" in *The Role of the Legislature in Western Democracies* edit Norman Ornstein, Washington, American Institute Press

KIT Genel Raporu .2000. Basbakanlik Yuksek Denetleme Kurumu,Ankara. Basbakanlik

Kreppel, Ammie . 1997. "The impact of parties in Government on Legislative Output in Italy" *European Journal of Political Research* vol 31 pp.327-350

Kreppel Ammie and Sala, Vincent. 1998. “Dancing Without a Lead: Legislative Decrees in Italy” in *Executive Decree Authority* edit, Carey; Shugart, New York, Cambridge University Press

Kuruç, Bilsay.1998. *Suna Kili`ye Armagan : Cumhuriyete Adanan Bir Yasam,* Istanbul, Bogazici Universitesi

Kuzu Burhan, .1985. Turk *Anayasa Hukukunda KHK`ler* (Decrees Having Force Of Law in Turkish Law) Istanbul, Ucdal

Lane, Jane. E. .1997. *Public Sector Reform,* London, Sage Press

Linz, Stephan. 1994. *The Failure of Presidential Democracy*, Baltimore, John HopkinsUniversity Press,

Luciani, G. .1997.”Privatization as a Policy for Development” in *Economic Transitions in Middle East, edit*. Handoussa Cairo,US University of Cairo Press,

Mainwaring, Scott and Valenzuela .1998. *Politics, Society and Democracy ,* Oxford, Westview Press

Nelson, David .1995. “ Case of Turkey” in *The Political Economy of Democratic Transition edits*. Haggart, Princeton, Princeton University Press

Norton, Philip. .1993. *Does Parliament Matter*, Harvester Weatsheaf, Hemel Hempstead Press

O`Donnell, Guilermo. .1978. “Reflections on the Pattern of Change in BureaucraticAuthoritarian State*” Latin American Research Review,* Vol13, no.1 pp.3-38

Olsen David. ;Mezey, M. .1990. *Legislatures in the Policy Process*, Cambridge, Cambridge University Press

Olson, David .1994**.** *Democratic Legislative Institutions***,** New York, Armonk

Oytan Muammer .1977. " Fransa, Almanya ve Türkiye`de Yasama Yetkisinin Devredilmesi ve Yurutme Branchinin KHK Cikarma Yetkisi" (Delegation of Legislative power and Enabling Executive For Issuing Decree) *Onar Armagani , pp.541-616*

----------. 1984. " 1982 Anayasasinda Yasama ve Yargi Erkleri Karsisinda Guclendirilmis Yurutme Branchi ve Guclendirilme Nedenleri" (The empowered Executive Branch in comparison to Legislative and Judicial Branchs in 1982 Constitution) *Turk Idare Dergisi***,** September Vol.364 pp.1-35

Öniş, Ziya.; Riedel,H. .1996. *Economic Crises and Long Term Growth In Turkey*, TheWorld Bank,Washington

Özbudun Ergun. . 1986. " 1961 ve 1982 Anayasalarinda Kanun Hukmunde Kararnameler » (DFL in 1961 and 1982 Constitutions)*Anayasa Yargi***si**, Anayasa Mahkemesi, vol.2 pp.227-238

----------.1989. " Turkey: Crisis, Interruptions and Reequilibrations" in Lary Diamond, Juan Linz and Seymouer Martin Lipset edit. *Democracy in Developing Countries,* Lynne Rienner. Boulder

----------. 1993. *Turk Anayasa Hukuku (Turkish Constitutional Law)* Yetkin, Ankara

Pamuk, Şevket; Owen R. 1998. *A History of Middle East Economies*, London Tauris&Co.Ltd Press

Parish, Scott .1998. "Presidential Decrees In Russia" in *Executive Decree Authority* edits Carey and Shugart, New York, Cambridge University Press

Pierre, John and Peters,G .2000. *Governance, Politics and The State*, St. Martin`s, NewYork

Przeworski, Adam. .1991. *Democracy and Market: Political and Economic Reform* in *East Europe***,** Cambridge, Cambridge University Press