

Part II Democratization and Legislative
Development in the Middle East:
the Case of Turkey,

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Introduction

The new wave of democracy (Huntington, 1991) showed varying degrees of changes in the Middle Eastern countries as well as it led to "revolution" in the former Soviet Union and Eastern Europe (Esposito and Piscat, 1991:429; Ibrahim, 1993 and Hudson, 1991). The Middle - East is culturally rather than geographically a sharply defined region sharing long - lived customs which mainly inherited from the multireligious, multilingual, and multinational Ottoman world as well as Islam (Black and Brown, 1992: *passim.* and Kedourie, 1992: 5 - 8)). Religion, the Islam, has performed various functions for different groups of people in the region (Heper, 1984), but politics has been determined mainly by the administrative structure of the Ottomans.

The Ottoman Empire was based on a strong civilian and military state bureaucracy (the *center*) which was never threatened by the ruled (the *periphery*). Secondly, there was no "civil society," autonomous and intermediary social structures and individual freedom in terms of political equality and participatory rights. In addition, the concept of loyal opposition was and still is rare in the region. Consequently, as a third characteristic, the center and the periphery had their own separate, different and sharp cultures. This cultural dualism probably contributed to cultural divisions among different subjects of the empire. Simultaneously, all non - Muslim communities were given to maintain and develop their own culture independent from the state. This led to disintegration of the subjects of the empire without having had a national unity and identity for many centuries (Black and Brown, 1992:199 - 203. See also Mardin, 1975).

After the independence and modernization processes of the Ottoman successor states in this century, many of them always face problems of identity, legitimacy, penetration, participation, and distribution (Ibid. :216). Although all modernization attempts created anticipations for the changes of the incompetent and illegitimate regimes in the region, especially the author -

itarian Arab - regimes remained stable for many decades (Esposito and Piscat, 1991:428 - 34; Ibrahim, 1993: 15passim.; and Black and Brown, 1992:199 - 218). Most of the political regimes especially in the Arab Middle East are either *personalistic* or *monist* or patrimonial - authoritarian (for detailed analyses see, Hudson, 1979; Long and Reich, 1986; Peretz, 1988; and Andersen, Seibert, and Wagner, 1990). Lack of previous democratic experience and the notion of 'rentier state' analysis lead the idea of unviability of democracy in the Middle East states (Diamond et al., 1989 and Luciani, 1990). Among them, only Lebanon, Yemen, Israel, and Turkey are closer to have a more democratic and pluralist regime in modern sense. However, especially after the 1991 Gulf War some of the developments "in terms of the re - introduction of elections, the removal of bans on political parties and more generally in the sphere of participation" (Deegan, 1993: 9) imply some steps toward liberal democracy in the region.

Viability of democratic regimes in the Middle East always based on some factors which can be interlinked. First of all, it is doubtful whether Arab or non - Arab Middle - Eastern societies desire to have a democratic ethos which can only be promoted by the performance of civil society (Norton, 1993 and Kedourie, 1992: 103 - 5). Second, liberal democratic developments confront the question of whether Islam and democracy are compatible (Esposito and Piscat, 1991:434 - 38). Even though Islam may live with either democracy or monarchy, it has also its own interpretation of democracy, e.g. *shura* (consultation), *ijtihad* (independent reasoning) and *ijma* (consensus), which are very similar to representative institutions of the modern democracy.

 Modern democracy, on the other hand, is a system of government which is based on representation of the governed as a legitimate and just government. The fundamental principles of democracy are the representative government; open, competitive and fair elections (participation to political decision - making process); and guarantee for the human rights and freedoms. In

other words, democracy encourages, in principle, the promotion of individual development within the limits of "rule of law" (Lijphart, 1984: 1 - 2; Powell, 1982:1 - 39; Dahl, 1985: 84 - 110; and Held, 1987: 1 - 139). Contrary to the idea of the secularity of the state, as an indispensable element of popular sovereignty in the Western tradition, the traditional rule in the Middle East is described as Oriental despotism where the state dominates over society (Kedourie, 1992: 5 - 8). Islamic community, the *umma* of Muslims, is based on the *Sharia* in which there is no need for the behavior, procedure, laws and institutions of the Western liberal democracy such as checks and balances, popular sovereignty, elections and representative assemblies (Ibid.).

Finally, as a part of socio-economic structure, the rapid population mobility, the increasing question of refugees, immigration and their implication for citizenship and communal divisions such as Palestinians and Kurds and/or Islam versus Christianity on the one hand, and the centralized political culture, political legitimacy crises as output of autocratic ruling systems and the limited mass participation on the other are additional constraint factors to be considered in the promotion of democracy in the region today (Deegan, 1993: 9 - 14 and Kalaycioglu, 1993b: 82 - 7).

Chapter I Democratization and Legislative Developments in Turkish Politics

In modern times many political systems have been changing from “institutional government” to “personal government” through a democratization process. This transition is also a product of empowerment of the executive vis - à - vis the legislature. Having gained power either through legitimate or illegitimate ways, personal government can be identified with dictatorship beyond a considerable limit (Karatepe, 1988: 24 - 25). As the executive gains more power, the leader’s and/ or the head of government’s power and authority becomes more “personified.” Due to social crisis, the development of mass communication means, breakdown of reliability on partisan ideologies, and parliamentary decline, personification of executive have found an increasing support of politicians and scholars (Tezic, 1986: 365 - 366 ; see also Karatepe, 1988: 26 - 27). In short, contemporary democracies are not “*of people, for people, by people.*” In other words the future of democracy is left more or less to the initiative and the responsibility of governing elite.

The Turkish constitution - makers have naturally been influenced by these developments which have appeared in the Western political system. Although the 1961 Constitution did not authorize the executive with extensive power for governmental activities in the light of the abuse of governmental power during the 1950s, a process of empowering the executive started with the constitutional amendments made in 1971 and 1973. However, the 1982 Constitution (hereafter 1982C) gives the executive with extensive power compared to the lack of state authority especially in the late 1970s. Democratization and legislative developments in Turkish politics went hand in hand with the constitutional developments. Therefore, it will be more explanatory to highlight the Turkish constitutional history.

Chapter II Historical Back - Drop

Including the Ottoman period, Turkish politics has the longest legislative experience in the Middle - East. However this more than a century experience is full of irregularities and anomalies (Tanor, 1991: 139 - 144). It will be more illustrative to highlight the Turkish constitutional history, because democratization and legislative development went hand in hand with it. In traditional Ottoman rule, there existed no separation of powers in the contemporary meaning of the term. Legislative, executive, and judicial powers were concentrated in the hands of the Sultan. The very well established bureaucratic tradition in the central administration and the concentration of political power in the hands of the Sultan and upper bureaucrats were the basic features which obscured the emergence of representative institutions in the empire until the second half of the last century (Ozbudun, 1989b: 190).

However the idea of “consultation” in the governmental matters to an assembly of leading civil, military, and religious officials, especially in times of stress, was an established custom. (Ozbudun, 1987: 329 and 1989b: 190). In other words, representation was realized on the basis of the Islamic principles of *mesveret* and *Shura*, rather than on that of groups’ representation (Karpat, 1972: 262 ; see also Ozbudun, 1987: 329).

The Ottoman state sought for a governmental system which was based on the principle of the “rule of law” toward the mid - 19th century. At the very beginning, the sultans, e.g. Selim III and Mahmud II, attempted to make reforms in relation to the reconciliation of the disputes between the central authority and the peripheral forces (Ayan), e.g. documents like *the Sened - i - Ittifak* (*the Deed of Alliance*) of 1808, *the Tanzimat* (*the Imperial Rescript of Rosechamber*) of 1839, and *the Islahat Fermani* (*the Reform Rescript*) of 1856 (see Inalcik, 1964, Davison, 1963). Although the idea of consultative assembly was institutionalized in 1838 by Mahmud II as the *Meclis - i Vala - yi Ahkam - i Adliye* (*the Supreme Council of Judicial Ordinances*) and later in

the Tanzimat period this de facto legislative body included members from various religious communities (*millet*) and social classes, representation did not base on popular elections (Ozbudun, 1987: 329 - 330).

Among these constitutional developments, whereas the Tanzimat was indeed an instrument of centralization and bureaucratization of the Ottoman state, the Islahat Fermani brought new ideas like legality, equality, and constitutionalism. In other words, all these reforms gave way for the constitutionalist currents of the late 19th Century's political instability conjoined with the failure of the Tanzimat in economic and social realms, external factors and arbitrary and repressive government which reemerged after 1870 provided a ground for a new constitutional current in the Ottoman state.

Later the First (1876 - 1878) and the Second (1908 - 1918) Constitutional periods witnessed a transformation from “absolute monarchy” toward a “constitutional governmental system.” The Young Ottomans whose target was to create a new identity for Ottoman subjects and loyalty to its government played a vital role in the first Ottoman constitutional experiment of 1876 - 1878. First Constitutional Period started with the pronouncement of the 1876 *Kanun -i Esasi* (Constitution). The Constitution was regarded as an attempt of the bureaucracy to limit the Sultan’s power (Devereux, 1963: 31). The Constitution created the legislative assembly and defined its functions. A bicameral *Meclis -i Umumi* (General Assembly) was opened on March 19, 1877 and prorogued by the Sultan Abdulhamid II on February 14, 1878. Members of the *Heyet -i Mebusan* (Chamber of Deputies) were elected by the administrative councils and the election committee in the provincial capitals, sanjaks and districts. The *Heyet -i Ayan* (Senate), the upper house, was appointed by the sultan and had limited influence in the legislative process. The Sultan was recognized as the head of the executive and empowered with the rights to appoint and dismiss the ministers. Indeed this document preserved the monarchical nature of the government. So that, the Sultan was empowered with great authority over governmental process. The Grand Vizier, the

ministers and the *Sheikh - ul - Islam* were selected and appointed by the Sultan. Members of the *Heyet - i Ayan* were directly appointed by him. However the *Heyet - i Mebusan* which was elected by general vote had also limited power. Moreover the Council of Ministers was not responsible to the *Meclis - i Umumi*, but to the Sultan himself. Furthermore the Sultan had the right to dissolve the *Heyet - i Mebusan*. Besides the executive was able to govern the society by decrees having force of law when the Assembly was not in sitting. In short it is clear that the executive was made extremely powerful vis - à - vis the legislative, and the Sultan, who was also the sacred and irresponsible" was given the superiority in the executive branch.

The first Ottoman Assembly was opened on March 19, 1877 and remained in sitting totally for less than five months. As a result of internal discontent and the external factors, the Russian War, this "puppet" assembly was closed by the Sultan in February 14, 1878 and never called for convening again until *the Young Turk Revolution* of 1908 (Devereux, 1963: 126 - 148; Ozbudun, 1987: 332 - 333 and 1989b: 191 - 192).

Despite the fact that the *Kanun - i Esasi* had some negative and halting features, it remained as a symbol of political modernization of Turkey in terms of the establishment of parliamentarism (Kili, 1968: 10). Although the sultan eventually closed the assembly, the mass political mobilization had already started. Failure of the Pan - Islamist and Ottomanist ideals led by the Young Ottomans made nationalism a unique alternative for survival and modernization of the society. In this respect, a secret association of new intellectuals, the Young Turks - middle - class military - civilian intelligentsia - emerged as an effective opposition to the autocratic system of Abdülhamid II.

In the beginning of the 1900s, mass movements were very wide spread everywhere. A branch of the Young Turk movement, the *Ittihat ve Terakki* (the Union and Progress) first revolted against the Sultanate and required from the Sultan to put the 1876 Constitution into effect and to call the Assembly to convene. Eventually, the Union and Progress (for an analysis see Ahmad,

1969) declared the liberation in Macedonian provinces (Salonica - Manastir) on July 23, 1908. Increasing opposition in Rumeli region led the Sultan to pronounce the Second Constitutional Period. This new era witnessed the uprising of the power of the Council of Ministers and the Assembly vis - à - vis the Sultan's power.

After a short curtailment period, the Assembly began to legislate following the dismissal of the Sultan Abdulhamid II on April 27, 1909. With the amendments of the *Kanun -i Esasi* of 1876, in 1909, a real constitutional and limited monarchical governmental system was introduced (Ozbudun, 1978: 47). The Sultan lost his power over the executive and legislative branches; the Council of Ministers began to exercise the essential executive power and became responsible to the Assembly. Moreover the dissolution of the Assembly was bounded with the existence of more difficult conditions. Thus, the 1909 document brought about democratic executive and legislative branches, a flexible separation of powers based on cooperation of the branches, but included some provisions protecting the legislative more than the executive. These are the typical features of the parliamentary governmental system.

Contrary to these positive signs of modernization in the state apparatus, the Second Constitutional Period had some negative developments in terms of political modernization and democratization. Sooner the Union and Progress became the unique monopoly of the political power. Following the suppression of the reactionary uprising of *31 Mart Vak'ası* (31 March Incident) in Istanbul in 1909, the system turned into a dictatorship of the dominant party. Although the Union and Progress applied authoritarian measures against its opponents (Ibid.: 47), electoral results of 1908 and 1912 gave way to an effective opposition in the Assembly. Although it was ousted from power for about six months (July 1912 - January 1913), it returned to power by a coup d'état on January 10, 1913. Then it secured the majority in the election of 1914 and established a one - party regime until the end of the First World War (Ibid.: 47 - 8 and Ozbudun, 1987: 335). The Defeat of the Ottoman State in the 1st

World War resulted in the dissolution of the Party and the Sultanate recaptured the political power. Upon these developments, the Sultan abolished the Assembly on December 21, 1918 for political reasons without calling new elections. The last Ottoman assembly was convened on January 12, 1920 and dissolved itself as a reaction to the Allied occupation forces in Istanbul (Tanor, 1990:140).

However the emergence of the national independence movement in Anatolia and its success in the Independence War facilitated the abolishment of the Sultanate in 1922. The national liberation and independence movement led by Mustafa Kemal established the Grand National Assembly of Turkey on April 23, 1920. Following this development, a very important change in the understanding of the essence of the sovereignty and its exercise happened. For the first time the principle of *national sovereignty* became important. In the 1921 Constitution, the assembly was empowered to exercise all three powers as superior organs. However partially due to the extraordinary conditions of the Independence War of 1920 - 1922, the prevailing status of the speaker of the Assembly, Mustafa Kemal, in exercising these powers was one of the striking elements. Although his and the Council of Ministers' authority vis - à - vis the Assembly was obvious, the National Government never ignored the importance of the Assembly (Ozbudun, 1978: 49, see also Tanor, 1990:142 - 3).

Soon after the establishment of the Turkish Republic in 1923, a new Constitution was drafted and approved. In the 1924 Constitution executive was separated from legislative to some extent, but not equipped with necessary powers that would make it independent. Although it was stated that (Article 5) "legislative and executive powers shall be vested in the hands of the GNA," it was emphasized that (Article 7) "executive power shall be exercised through the President of the Republic and the Council of Ministers." Thus the separation of functions was secured by the 1924 Constitution. But "this was a 'majoritarian' or *Rousseauistic* concept of democracy, rather than a 'liberal'

democracy based on an intricate system of checks and balances" (Ibid.: 50). Another important element which implied the existence of a parliamentary system was the principle of "collective responsibility of the Council of Ministers (Article 46). Therefore this system stood in between the "assembly government" and the "parliamentary system."

The 1924 Constitution was in practice for about 37 years during both the single-party regime led by the Cumhuriyet Halk Partisi (Republican People's Party, CHP) and early in the multi-party era. Under the CHP rule there were two attempts to establish multi-party politics in Turkey which quickly failed.¹⁾ For almost two decades "a theoretically all-powerful GNA" was controlled by the CHP and institutionalized under its tutelage (Ozbudun, 1987: 339).

During the 1924 Constitution period, the legislative, which was generally dominated by the political leadership of CHP (Karpat, 1959:37 - 56), was superior to executive at first, then executive undermined the legislative as having a majority support in the Assembly in the 1950s. However it cannot be argued that a separate executive existed constitutionally during this period. The principle of "assembly supremacy" was interpreted differently as the "government - opposition" dichotomy emerged in the late 1940s. According to this new understanding, parliamentary majority was made equal to an abstract conception of *national sovereignty*. Consequently, the GNA, which was dominated by the majority party, the Demokrat Parti (Democrat Party, DP) became ineffective in terms of deliberation and supervision. Though some heavy clashes occurred between the DP and CHP leaders and deputies over the major issues of the day (Ibid.: 408 - 411) the GNA was used by the DP as a means of undermining the importance of the opposition for a well-functioning democracy.

Actually, one of the most striking developments in Turkish politics is that the transition from one-party regime to a competitive, multi-party democracy "without a sudden or violent break with the existing institutional

arrangements, such as a revolution, civil war, foreign occupation, or military coup" (Turkish Democracy Foundation, 1989: 10). Democratization process ended in the electoral victory of the DP on 14 May 1950. The DP also won the 1954 and 1957 national elections and remained in power for a decade until it was ousted by the military takeover on 27 May 1960 (Ozbudun, 1989b: 199). Although the ideological distance between the majority party (DP) and the main opposition party (CHP) was not so great, the two major parties followed antagonistic policies toward each other. Anti-democratic measures taken by the DP against the opposition members, the increasing economic constraints, and the deteriorating relations between the government and the public bureaucracy convinced the military officers to intervene (Ibid.: 201).

In the Turkish Constitutional developments, the 1961 Constitution can be regarded as a reaction against the constitutional deficiencies and governmental abuses that prevailed during the years 1950 - 60. Therefore, the parliamentary form of government with a separation of powers, rejection of principle of "assembly supremacy," a bicameral system, the supremacy of the judiciary - judicial review of the constitutionality of laws - were the new institutions and the ways adopted by the 1961 Constitution to prevent the occurrence of the omnipotence of the assembly with an overwhelming majority government from which Turkey had previously suffered much (Turhan, 1983: 137 and Kalaycioglu, 1993a:2).

In the 1961 Constitution, the power of the executive, the Council of Ministers, based on an elected parliament by general suffrage and majority in the parliament was limited by the understanding of pluralist and liberal society. The state system of the 1961 Constitution was based on a "flexible separation of powers." However within the parliamentary system this means "separation of duties" rather than separation of powers. Some scholars (Ozbudun, 1989a: 149 - 154) put counter arguments to the widely accepted notion that while the 1924 Constitution introduced a "fusion of powers" and "diffusion of functions," a "flexible separation of powers" philosophy was dominant in the

1961 Constitution. According to this understanding, in both cases there was no difference between the understanding of separation of powers with respect to executive and legislative.

In both the 1924 and the 1961 Constitutions, the executive power was exercised by the President of the Republic and the Council of Minister appointed by him. Although the executive was not authorized by these Constitutions to enact special laws by these constitutions, there was some deviance, among these the most important being the 1971 amendments to the 1961 Constitution by which the Council of Ministers was given the power to enact decrees having the force of law. On the other hand it is argued that the 1961 Constitution weakened the position of the executive vis - à - vis legislative power. Actually one of the novelties of the 1961 Constitution was to establish some "autonomous" institutions, namely the universities and the Turkiye Radyo ve Televizyon Kurumu (Radio and Television Agency, TRT); these were authorized to share the sovereignty with the aim of an open society in terms of separation of powers (Ibid.: 22 and Kalaycioglu, ibid.). Therefore, this argument follows that sharing the sovereignty with "autonomous" organizations has weakened the legislative power and consequently the executive authority. Indeed, although the 1961 Constitution had tried to establish a stable and effective executive through a system of balances in favor of the executive, in practice weak executives followed each other as a result of parliamentary distribution of seats. While the 1961 Constitution theoretically rejected the supremacy of the parliament, the executive and legislative organs of the state were so evenly matched that they could not cooperate in the governmental crises in Turkey (Turhan, 1983: 140 footnote 13).

One of the important deficiencies of the 1961 Constitution was that it did not provide any constitutional solutions to deadlocks between the executive and legislative powers. Especially renewal of the general elections was subject to the existence of several factors (Ibid.: 171 and Tanor, 1986: 93). Indeed, except for the period of 1965 - 71, during when a majority government was in

office, coalitions based on weak and floating parliamentary majority, minority governments, rapid governmental changes led governments to be less effective than they actually are. However most of these issues were products of electoral and party system (for details, see Parla, 1986: 13 - 32 and Tanor, 1986: 19 - 24).

After the 1960 military intervention parliamentary experience of the 1960s under the 1961 Constitution indicated a more liberal, plural, and democratic development with considerable limitations in terms of democratic political culture both at the mass and elite level. However this development was affected adversely by the economic deterioration and increasing civil disobedience prior to the 1970s. Consequently the civilian government was dismissed by a military *communiqué* on March 12, 1971. This pronunciamento underlined that if some amendments were not done, the GNA would be dissolved. Then a quasi-military and quasi-parliamentary regime began to exercise political power until 1973 (Tanor, 1991: 141). This period monitored the trend toward a more powerful executive began to be established through amendment of some Articles of the 1961 Constitution.²⁾

The GNA was forced to make necessary amendments under an “above-party” government, and the former did approve the amendments, except on decrees having force of law, and repressive laws under this military intimidation. We may summarize the main features of these amendments with respect to the organization of the state power as follows (*Ibid.*: 54 - 60):

- (1). Military authority obtained new privileges from the civilians (Articles 140 / last; 124 / 1, and 138 / 2; 127 / 3).
- (2). A more flexible judicial review over the administration (Articles 147 / 1; 149; 114; 140 / last);
- (3). Empowering the executive and weakening the legislative (Articles 64 / 2; 89); and
- (4). Expansion of the state authority over individual and social rights and freedoms (Articles 11; 15, 22, 29, 46 / 1, 26, 60, 124 / 1, 46, 119, 120, 19 /

last, 22 / 3, 30, 138 / 1, 24 / 1, 136, 140 / last, 32).

With these partial amendments it was supposed that state authority, political stability and national integrity would be restored. However societal dynamics which are often overlooked by the elites would undermine this new framework and this half-way reformation towards a powerful executive would require further amendments by the end of 1980s (Tanor, 1991:144). Meanwhile, the GNA has indicated some instances of independence vis - à - vis the military. A civil - military confrontation occurred over the presidential election of 1973 and the GNA reconciled the situation by electing an ex - chief - commander of navy, Fahri Koruturk, as the President of the Republic (Nye, 1977 and Tanor, 1991: 144). Similar instances would occur in the late 1980s for various reasons.

Chapter III September 12, 1980 Coup and its Aftermath

Especially, in the second half of the 1970s, Turkey was faced with severe political instability at the mass and elite levels (Heper, 1980; Karpat, 1981; Sayari, 1981; Barkey, 1990: 177). During the same period social and economic changes in the society accelerated stratification and gave rise to pluralism especially in the political sphere. Historical center - periphery cleavages were transformed into social - economic cleavages. These developments also augmented political polarization and ideological fragmentation both at the mass and elite level.

Fragmentation and polarization of the system within a limited pluralism was one, but not the only reason which made the Turkish party system unworkable (Sayari, 1978 and 1981; Sunar and Sayari, 1986: 179; see also Ozbudun, 1981). Due to multi - polar political structure parliamentarism suffered from a rationale and lost its legitimacy in the eyes of public. This political atomization and multi - polarity led the polity to an impasse (Karpat, 1981 and Yucekok, 1983: 249). Thus it can be seen that the causes of breakdown of democracy in Turkey on September 12, 1980 were multifaceted. At the political level "increasing political polarization and fragmentation in the party system; rapid escalation of political violence and terrorism; growing militancy of anti - systemic forces at both extremes of the political spectrum; rising ministerial instability with short lived coalition or minority governments; and frequent lapses into parliamentary deadlock and policy immobilism" were the basic issues (Hale, 1980; Sayari, 1981: 1; Ozbudun, 1988: 23 - 25). Lack of consensus on the fundamentals of the system and in the absence of quality of individual leadership further assisted to the breakdown of democratic regime (see also Linz and Stephan, 1978; Weiker, 1981: 150; Turhan, 1983: 142; Sunar and Sayari, 1986: 175). Although the GNA performed its dual role as an institution of legitimization of political decisions and as an arena of conflict in 1970s (Kalaycioglu, 1993a:2), it has failed to select the President

of the Republic for more than six months in 1980s. On the other hand, the continuous economic crises, e.g. high inflation rate; unsolvable international issues, e.g. Cyprus case; politicization of bureaucratic cadres led to “inefficiency” and “ineffectiveness” of the governmental structures and eventually to the legitimacy crises of the regime (Ozbudun, 1988:25 and Dodd, 1983: 23-41).

Following a joint letter to the major political parties leaders in 1979, and then to the President of the Republic, and to the Speakership of the GNA in 1980, the Turkish Armed Forces under the leadership of the Chief of the Staff General Kenan Evren overthrew the civilian regime on September 12, 1980, on the basis of the Article 11 of the Internal Service Law (also used as justification for intervention in 1960 and 1971). Within the last three decade, all the three successive interventions in 1960, 1971, and 1980 the military³⁾ promised to modify and reestablish democracy and then returned to the barracks. However after 1971 the role of the military in the daily politics was enhanced through many ways, such as increasing number of military members in the National Security Council (NSC). So that, the military

has taken upon itself the duty of offering advice and has delivered stiff warnings as soon as the political situation has shown signals. On the other hand it remained sensitive to the need to rule by consent, and with extensive civil advice and through civilian cabinets. (Dodd, 1983: 23)

People's considerable passivism toward the September 12 Movement can be explained by different factors. First of all the military has traditionally had a special importance in Turkish history and political culture (see Weiker, 1963; Harris, 1965 and 1988; and TUSIAD, 1991:23). More importantly great dissatisfaction with the existing situation at that time created a similar sympathy factor for the Movement.

After abolishing the GNA, General Evren, was automatically appointed

as the Head of State and his five fellow force commanders as the member of the NSC as instituting power during the first stage of the transition period (Tanor, 1983: 77 and Barkey, 1990: 178). The NSC took over the legislative power on the basis of the Law of Constitutional Order dated 27 October 1980, and appointed a new cabinet consisting of civilian experts and technocrats under the head of a retired ex - chief admiral, Bulend Ulusu. This lasted from September 20, 1980 until December 13, 1983 when the first civilian government was formed under Turgut Ozal. The NSC proclaimed its determination to return Turkey to normality multiparty civilian rule under a revised constitution and reformed institutions. In other words, the NSC engaged with a "planned,"⁴ rapid, and consensual and/or controlled re-transition to democracy (Barkey, 1990: 177; Sunar and Sayari, 1986: 185). Transferring the daily routine of governmental affairs to an extra - parliamentary cabinet, preparing a new Constitution and an Election Law and the establishment of new political parties were the main stages of this constitutionalization and institutionalization process (Barkey, 1990: 178 and see also Tanor, 1983).

The most immediate and primary task of the military "power," the NSC, was the restoration of order, and then the restructuring of the political system within a new constitutional framework. However the first task was to stabilize the social and political order. For this the military government took extensive measures at the micro and macro levels concerning political, social, and economic life. These measures included the closing the GNA, banning the political parties, arresting - under detention and jail - leaders of political parties and trade unions as responsible for pre - September 12 developments, sartorial (dress) regulations for the bureaucracy, academic staff and students, such as 'no beard' rule, to maintaining the economic stabilization measures taken on January 24, 1980 (for a summary of these measures see, Dodd, 1983: 42 - 54). During the same period the military power had to confront intensive European criticism on human rights, especially trial and tortures, minority issues, namely the Kurdish problem, and disputes with

Greece by Europeans.

Then, to set up a new legal and political framework which “would ensure the stability of the regime” (Tanor, 1983: 75), a Consultative Assembly was appointed by the NSC on July 1, 1981. After revision by the NSC, the new draft Constitution, which was prepared by the Constitution Committee, was submitted to a referendum on November 9, 1982. As a result of the country-wide intensive supportive speeches of the President Evren, it was accepted by an unprecedented majority of 91 percent of the valid votes. Participation in the referendum was compulsory and those who did not go to vote would pay a fine. Also “pink” papers meant “yes” and “blue” papers, which could be easily detectable by careful eyes in almost a transparent envelope, meant “no.”

General Evren, the Chairman of the NSC and the Head of State, was designated as President of the Republic as a result of the link between the constitutional referendum and the plebiscite, in which participation was compulsory, (provisional Article 1) and the members of the NSC became the members of the Presidential Council, which had been dissolved in late 1989 after Evren’s resignation from the Presidency, following the convening and commencement of the functioning of the GNA, in December 1983, (provisional Article 2) as an “upper” body to supervise the legislative and administration (Tanor, 1983: 84). The members of the council enjoyed the rights and parliamentary immunity provided for parliamentarians as stated in the Constitution. Compared to recent history, however, this military power has entrenched itself in power for a period too long to be acceptable after restoring parliamentary democracy (Tuncay, 1984: 429).

Chapter IV Executive - Legislative Relations under the 1982 Constitution

In the 1982 Constitution (hereafter 1982C) the executive is organized as a power equipped with the necessary authority to fulfill the duties given by the laws (Heper, 1988:9; Kalaycioglu, 1985:19 - 21 and 1988:61 - 62; and Ozbudun, 1989: 275 - 330). The articles which empower the executive can be grouped under five titles: those related to the empowerment of the executive, those empowering the President of the Republic, those expanding regulative authority, those empowering the executive within itself, those empowering the executive by limiting judicial review (Karatepe, 1988: 35).

The empowerment of the executive is attempted by rationalization of the legislative process, too. In the 1982C, some provisions aim at speeding up the parliamentary process, and making it more efficient. Among these I can count the following: law-making process is reduced; a unicameral parliament is established; legislative period is expanded in order to let the executive accomplish its main tasks; party group's authority over the deputies is enlarged in order to prevent the negative impact of the delaying tactics of the opposition; and the quorum for decisions is reduced to one third of the total number of the deputies. These provisions are aimed at the efficient working of the legislature and indirectly empowered majority governments (Soysal, 1984: 16; Karatepe, 1988: 36).

The 1982 Constitution also expanded the scope of the legislation by the executive, among the most important decrees having the force of law. Executive was given the right to enact *sui generis* decrees having the force of law, in an emergency situation. This was a major change compared to the 1961 in terms of legislative authority (Karatepe, 1988: 36 - 37; Duran, 1988; Tezic; 1989; Ozbudun, 1989a: 150 - 151, 199; and Saglam, 1984).

From one point of view, it is clear that the 1982 Constitution empowers the executive, especially the President's status, vis-à-vis the legislative. Similarly, it is obvious that the President and the Prime Minister with the

Council of Ministers will exercise some functions, but precisely what functions are these is ambiguous. Some argue that this two-tiered status of the executive aims to enhance the state authority rather than the executive alone (Ozbudun, 1989a: 199; Karatepe, 1988: 38 - 39). Within this framework, some subordinate state institutions, such as the State Supervisory Council, the Institute of Higher Education were reorganized under a hierarchical structure. The NSC was given more distinguished and effective status in the state structure.

According to the 1982C “sovereignty is vested in the nation without reservation or condition” (Article 7). Although the executive was defined as a “duty” in the former Constitution, the 1982 Constitution organizes the executive as a “power” and “duty.” It is not a reasonable argument that since the 1961 Constitution has accepted the executive as the “duty”, the governments having less political authority have come to power in the 1970s. It is also not acceptable to reformulate the position of the executive on the basis of this argument of the new Constitution. However this new status of the executive leads to some legal consequences (Ozbudun, 1989a: 155 - 156). Except for two provisions, the formulation of separation of powers stated in the 1982 Constitution is almost the same as in the 1924 and 1961 Constitutions. These exceptions are ‘issuing decrees having force of law on matters made imperative by the state of emergency’ (1982C Article 121), and ‘by the state of martial law’ (1982C Article 122) and ‘the regulation of the establishment, the principles of organization and functioning, and the appointment of personnel of the General Secretariat of the Presidency of the Republic by Presidential decrees’ (1982C Article 107).

One of the most striking arguments about the 1982 Constitution with respect to executive legislative relations concerns, is the present status of the President of the Republic. Essentially the new Turkish Constitution followed a similar rule in the parliamentary tradition and ensured the impartiality of the President. However under the 1982C the President is allowed to be more

active and powerful with distinctive ‘political and appointive functions’ than was the case in the 1961 Constitution (Ozbudun, 1988: 37). Impartiality rule is guaranteed - at least in formwriting - by the electoral system for the President (1982C Article 102). This rule also includes solution for parliamentary dead-lock caused by the inability to elect a President.

On the other hand, with respect to executive matters, the President is not authorized, as a rule, to act alone. “All presidential decrees must be counter-signed by the Prime Minister and the ministers concerned, who will bear political responsibility for such decrees (1982C Article 105). What is crucial between the two successive Constitutions’ content on the President’s status is the substantially extended scope of the presidential powers in legislative, executive, and judicial functions (1982C Article 104). While he must exercise many of them together with the Prime Minister and the ministers concerned, in case of a limited number of his functions (though not of limited importance) he may act individually without any responsibility and judicial review, including that of the Constitutional Court (for details, see Ozbudun, 1988: 38-40 and Parla, 1986: 80-85).

As was stated earlier, one of the main arguments against the 1961 Constitution was that it created a weak executive surrounded by autonomous state organs which exercise sovereignty with the three branches of the government. A similar view was shared by the head of the military regime saying that “the sole purpose of the powers invested in the president and the council of ministers under the new Constitution is to enable the executive branch of the government, which was rendered powerless by the 1961 Constitution, to function efficiently and purposefully” (Evren, 1982). It has been argued elsewhere, however, that the Constitution was not the unique reason and that weakness of the executive was due to various factors. One of the conflicts between the military and civilian officers, which is called the least, was the means and principles of executing state of emergency and martial law.

Surprisingly enough, this confrontation resulted in a zero-sum output in

the 1982 Constitution. The composition of the NSC prescribed in the 1982C implies one further step towards more autonomous/effective military power in the state organization. To ensure that, civilians will never obtain the majority even the President of the Republic is a civilian (see Tanor, 1986: 121 - 122). To enable the executive 'to function efficiently and purposefully' the 1982C relies heavily on the powers of the President of the Republic, which earlier used to be a symbolic office, and the Council of Ministers which forms the executive power. The former is empowered with greater authority than the latter. Among other important powers, the President may call for new elections under particular conditions (1982C, Articles 99 and 111). Moreover, the President cannot be held accountable for his actions connected with his duties. Thus the presidential office is given real power rather than symbolic (Turhan, 1983: 146 - 147). In short, according to the present Turkish constitutional system, the President can neither act completely independently from the government (the Council of Ministers) nor can he impose a program upon the government or lead its main policies (Erdogan, 1990: 62). But, in recent instances, ex - President Ozal was the founder of the governing Anavatan (Motherland, ANAP) party, he openly directed the economic and social policies as a trustee. This development, on the one hand, focuses more attention on the debates concerning the establishment of a presidential and/or semi-presidential system (Duverger, 1980), and on the other causes the parliamentary system to lose its legitimacy. Probably the current regime is parliamentary, but which functions belonged to which branch is unclear (Turan, 1989).

According to the 1982C, the GNA mainly exercises legislative power and may have an influence upon the activities of the Council of Ministers through its power of control, such as parliamentary questions, parliamentary inquiry, parliamentary investigations and interpellations (Article 98; see also Ozbudun, 1989a: 276 - 282). However, under the 1982C, it became more difficult to dismiss a government by interpellation. On the one hand, governments are based on a working majority in parliament as a result of the electoral

system. On the other, the motion of interpellation shall be made either in the name of a political party consisting of at least 20 members or upon the signatures of at least twenty members (earlier ten members had been sufficiently enough). Although the parliament elects the president, it cannot supervise him because of the lack of accountability of the president's actions. Meanwhile, the president exercises some duties and signs important documents without any legal responsibility. Thus, both a Council of Ministers ("political power") responsible to the GNA and an irresponsible President ("state power") with expanded powers were created in the 1982 Constitution (Duran, 1988: 51; see also Heper, 1990: *passim*).

This complex structure of the executive in the Third Turkish Republic causes an important dilemma for the institutionalization of political regime which lies in the relationship between the President of the Republic and the Prime Minister on the one hand and the Council of Ministers on the other (Erdogan, 1989). Both the conflictual and harmonious relationship between two sides of the executive will undermine the legislative power and its importance in the system. Probably parliaments in Turkey have "never had power that they could later lose" (Heper, 1990: 316), but they have played some critical role in the governmental processes in the 1970s, such as the presidential elections of 1973 and 1980. The first one was a good example of compromise between the political groups and the second became the *raison d'être* for the subsequent military intervention.

The experiences of the last decade proved that strengthening the executive can lead to "personal power" rather than a "strong executive" and eventually to "arbitrary rule" (Duran, 1988: 68 - 69). In the last instance,⁵⁾ when the presidential power was obtained by the former prime minister Ozal, he began to act not only being the head of the state, but also the natural leader of the political apparatus compared to his contemporary examples (for a comparison of the present Turkish system with the French system, see Ozbudun, 1989a: 43 - 45; Turhan, 1988; Tanor, 1986).

Chapter V Parties, Elections and Parliament: the Post - 1983 Development

After accomplishing the first two stages of the planned transition toward democracy, Turkey was introduced to the third stage: the 1983 national elections.⁶⁾ Although the NSC had attempted to reshape the Turkish political system within a short term, some important, but unintended consequences emerged (Erguder and Hofferbert, 1988: 115). When the NSC was encapsulating the governing rules of political parties and the rules of election, it had ‘a very specific vision of the disengagement period’ (Barkey, 1990: 179 - 180). In order to curb the proliferation of small parties, the NSC decided to set up at - two - party system. Constitutionally, the leading persons andmembers of the GNA on January 1, 1980 and afterwards (subject only to the formers) were banned from participation for periods varying from five to ten years (1982C provisional Article 4). Moreover, to end fragmentation of the party system which was such a malaise of Turkish politics in the 1980s, under the Election Law a party was required to obtain a minimum of 10 percent of the votes both at the level of constituencies and at the national level (Erguder, 1988: 127).⁷⁾ In practice, a “dominant military party”, the Milliyetci Demokrasi Partisi (Nationalist Democracy Party, MDP), was organized under ex - army general Turgut Sunalp to follow up the philosophy of the “September 12 Movement.” The other party, loyal opposition, was the Halkci Parti (Populist Party, HP) under an ex - undersecretary at the Prime Minister’s office, Necdet Calp.

As all restrictions were gradually lifted new political parties emerged side by side with the military - sponsored parties especially in spring 1983. As a quick response to this challenge, the NSC used its veto power⁸⁾ against unwanted persons. The principal victims of this procedure were the Sosyal Demokrasi Partisi (Social Democracy Party, SODEP) under Erdal Inonu, the son of the ex - president of the former CHP, and the Buyuk Turkiye Partisi (Great Turkey Party, BTP) of Süleyman Demirel’s followers (Barkey,

1990: 180; Erguder, 1988: 126 - 127; Hale, 1988: 171 - 173; Tanor, 1983: 85) which was disbanded on May 30, 1983. As a late start, the Dogru Yol Partisi (True Path Party, DYP) was founded on June 23, 1983 and was not able to organize in nation - wide within that short time which is required by the legal prescriptions as a precondition to participate in the election. Neither could the SODEP do so. Meanwhile the ex - deputy prime minister and state minister Turgut Ozal was trying to form the ANAP which

was an agglomeration of a variety of political groups. ...that they represented all four tendencies that had existed prior to the coup: the Republicans, the Justice Party supporters, the Islamists, and the neofascists. (Barkey, 1990: 181; see also Erguder, 1991:153)

Thus, on November 6, 1983, all these three “approved” parties⁹) and a few independents who were qualified to be elected participated in the general election in a country in which martial law continued to be in force (Tanor, 1983: 85; McFadden, 1985: 77).

For the November 1983 Elections, the simple d'Hondt system was introduced. This brought about a moderate left - right party system with the predominant position of the ANAP in the GNA. In the election the ANAP received 45.1 percent of the total vote and gained 211 seats out of 400 in the parliament.¹⁰) The HP followed the ANAP with 30.5 percent of the votes but only 117 seats as a result of the electoral system. The MDP became the third party with 23.3 percent of the vote and 71 seats despite the NSC's open and intensive supports.¹¹) The most important result of the election was that the military's projections for the last stage of transition contained some errors. The overconfidence of the NSC members and their misjudgment about “depoliticised” people weakened its position and the scheduled two party system was still-born.

These political developments proved that each system has its own dy-

namics. First of all the modernization of party system hypothesis (Erguder and Hofferbert, 1987: 19) was rejected. Only the three political parties were allowed to compete in the 1983 elections and the result was naturally less fragmentation. Temporary disappearance of the radical right parties in the political sphere also caused a pseudo - effect. During the course of this transition period some of the radical right - wing parties, especially the religious one, have chosen to remain under cover, but having influence within the major party's cadre. Moreover each political system has its own dynamics. Elites may be replaced by counter elites even through anti democratic ways, but electorates' orientation remains stable for a longer period than normally suggested.

Later on, the 1984 local administration elections indicated that except for ANAP, which received 43.2 percent of vote, the other parliamentary parties lost their popular support and were, in a sense, replaced by the SODEP (24.8 %) and the DYP (11.8 %) which had no parliamentary seat. The presence of this overwhelming opposition at the local level brought a constitutional provision to the agenda; Article 84 of the 1982 Constitution that unabled the members to change their party ties.¹²⁾ Contrary to the extensive optimism at the very beginning, real forces began to play the game and the Turkish party system, especially the right wing, appeared to be moving toward a fragmentation as in the 1970s (Erguder, 1988: 130 - 132; see also Turan, 1988b). At the same time the DYP was eagerly insisting on an early election and lifting the bans would be a good indication of democratization before applying for the EEC membership (Abadan - Unat, 1989: 26).

Besides Ozal's liberalization policy, especially privatization of the Kamu Iktisadi Kuruluslari (State Economic Enterprises) on the one hand, and allegations of human rights violations and the trial of members of the Devrimci Isci Sendikalari Konfederasyonu (Confederation of Revolutionary Labor Unions, DISK) made a free election inevitable. Thus the controversy between the parliamentary party system and party system out of parliament resulted

in the reinterpretation of Article 84 which was imposed by the military rule. Actually this provision was simply not implemented. The 17th GNA had the greatest number of party changes in its history. Actually, the ANAP was an important beneficiary from the demise of the military - sponsored parties, so that Ozal did not enforce the law.

Different solutions were formulated and applied at either sides. While the MDP was dissolving itself and letting its members join either to the Huriyetci Demokrasi Partisi (Liberal Democrat Party, HDP), the ANAP, and later the DYP, the HP and SODEP eventually merged and then was renamed as the Sosyal Demokrat Halkçı Parti (Social Democratic Populist Party, SHP). Thus parties outside the GNA became able to form a party group within the GNA. Especially the period of May - December 1986 witnessed the highest rate of party changes in Turkish politics (Genckaya, 1990: 52 - 4). Meanwhile some old political parties were established under different names such as the Refah Partisi (Prosperity Party, RP; former National Salvation Party) and the Milliyetci Calisma Partisi (Nationalist Work Party, MCP; former Nationalist Action Party) (see Abadan - Unat, 1989: 24 - 26; Erguder, 1988: 126 - 132; Hulusi, 1986).

Ten on the right and two on the left - twelve political parties in all - participated in the by - election of September 28, 1986. In this stage of democratization the ANAP won 6 seats with 32.1 percent votes caste, the DYP 4 seats with 23.5 percent votes caste, and the SHP 1 seat with 22.7 percent votes caste. The most significant indication of the 1986 by - election was that the multi - party system fragmented to an unprecedented extent. It is argued that this fragmentation will result in a new period of coalition governments (Kalaycioglu, 1986b: 20). As a result of these developments and the results of the by - election in September 1986, the ban on the former politicians was finally lifted following in a referendum on September 6, 1987: 50.16 percent of valid votes said "yes" to lifting political bans and 49.84 percent "no". With this tiny majority all those pre - 1980 political leaders were restored to contest the next elections.

This was a crucial landmark in redemocratizing Turkish political system (Rustow, 1991:21 and Erguder, 1991:157).

However, just before the referendum on the constitutional amendments which was held in May 1987 the government introduced a draft ¹³⁾ into parliament amending some articles of the Election Law (Ozbudun, 1989a:236 - 9; Erdogan, 1992; and Erguder, 1991:167 f.16). According to this draft, a double threshold system - general and constituency - was established. Encouraged by the referendum results Ozal, surprisingly, announced an early election for 1 November. This date was altered to 29 November when the opposition parties successfully appealed to the Constitutional Court, which ruled that Ozal had acted unconstitutionally in prohibiting the organization of party primaries to choose electoral candidates. Side by side with these critical changes at the party organizational level, the political climate was also heated by the intensive western - type election campaigns, especially through television (Ibid.: 158). With the d'Hondt system with restricted options and double barrier, the ANAP received 36.31 percent of the vote, but obtained 64 percent of the parliamentary seats in the 1987 early elections. The SHP gained 24.75 percent of the valid votes, while the DYP had 19.14 percent vote. Another left-wing party the Demokratik Sol Parti (Democratic Left Party, DSP) of Ecevit failed to beat the national threshold with only 8.53 percent of the vote.

Another turning - point of the post - 1983 electoral politics was the early local elections of March 26, 1989. While the ANAP was able to secure 21.8 percent of the vote, the DYP became the leader of the right wing and an alternative to the former with 25 percent of vote (Ibid.: 161 - 2). Although there was a split in the left wing vote between the SHP and DSP, the former increase the share of the total votes by only 4 percent to 28 percent and controlled of the 40 out of 67 provincial municipalities, including the largest cities (Mango, 1991:179 - 180).

With this slight electoral success, the opposition parties started to claim the ANAP government as having no popular support. Political agenda was

mainly determined by these claims of unpopularity and call for early elections. Thus, the post-1987 developments, especially the lifting the ban on the former politicians and more liberalization resulted in a greater political competition and polarization. Under these circumstances the ANAP governments had to follow an electoral political economy that ended with growing inflation along side increasing external debt for the sake of economic growth. This, of course, cause the public dissatisfaction with the ANAP (Er-guder, 1991:165). Ozal's selection as President by the ANAP's votes as the opposition boycotted the election created a new "legitimacy crisis" in Turkish politics. The election was constitutional, but the unpopularity of ANAP, which had been trounced in the local elections of 1989, gave the opposition an excuse to boycott Ozal in his office until Demirel was appointed as Prime-Minister after the 1991 early election.

In this period, the most significant step toward democratization was the lift of September 1983 Law on restricting the use of languages other than Turkish by the Council of Ministers in January 26, 1991. Meanwhile the intra-party competition for leadership ended with more fragmentations and resignations and Mesut Yilmaz's victory in the party congress on June 16, 1991. Increasing political and economic issues and the opposition's claims on the illegitimacy of "political power" led Yilmaz to announce an early election in late 1991.

Although it is argued that five years later a synthesis of the old and the new parties emerged (Turan, 1988a: 80), the Turkish party system is still building up. Since the 1987 elections, new parties have been established. This restructuring of the party system was mainly a result of the splits from major political parties. Some radical factions formed the Halkin Emek Partisi (People's Labor Party, HEP) and a small split of the ANAP joined the Merkez Demokrat Parti (Center Democrat Party, DMP). These developments naturally resulted in more fractionalization in the parliamentary party system than before.

After a long ruling period between 1983 - 1991, the ANAP faced a clear loss in the early - general elections of 20 October 1991.¹⁴⁾ The ANAP votes fallen down to 24 percent while the alternative center - right, DYP, increased its votes up to 27 percent as the first party among others. Moreover this election also indicated that the parliamentary party system was becoming more and more fragmented as contrary to what the 1982C - maker, the ANAP governments and some scholars (Erguder, 1988:130 - 32; Erguder and Hofferbert, 1987:19; and Turan, 1988) anticipated. Furthermore, the minor political parties either alone, like DSP, or as an alliance, like RP - MCP - Islahatci Demokrasi Partisi (Reformist Democracy Party, IDP) Alliance, became able to cheat the electoral law and surpass the 10 percent national threshold and gained seats in the GNA. Besides SHP made an alliance with HEP in some of the south - east provinces and controlled 20 percent of the overall votes.

Suleyman Demirel, who was ousted from power by the military on September 12, 1980, was officially restored to the office of prime minister on November 20, 1991. He left as the head of a minority administration formed by his Justice Party which was soon to be dissolved by the military along with all other political parties. He has returned at the head of a coalition government, in which his party, DYP, was the senior, and the SHP, junior.

Chapter VI Democratization Package of the DYP - SHP Coalition Government

In the Coalition Protocol, which was signed between the DYP and the SHP on November 19, 1991, it was stated that the coalition government will be guided by certain political views and aims among them one can count the followings as the most important:

- There will be a free, co-operative and fully democratic regime;
- Turkey needs a contemporary constitution that will adhere the principle of the supremacy of law, and create a fully democratic and pluralistic system;
- We propose that such a constitution be prepared with the consensus of the related institutions, starting with the political parties;
- Basic human rights principles enshrined in the Paris Charter and preceding related documents are viewed as vital to our state, society, and Turkish democracy;
- Human rights practices in Turkey will be brought up to par with our country's international commitments, its political system, and its will to integrate with the Western world; and
- The Government... will swiftly abolish those legal constraints and practices stemming from the "September 12, 1980 Law."

In the Annex I of the Coalition Protocol, the "Democratization Proposals" were explained in details. After stating the fundamental principles of the Proposals, the laws under consideration were also listed such as Law on Political Parties and Election, ratification of ILO Agreements, Penal Code and the Code of Criminal Court Procedure, and the TRT Law. Similar views were also emphasized in the Coalition Government's Program of 25 November 1991:

Turkey will review its legal system to integrate with the world, update it,

and make it comprehensive as part of the new world order, as a result of new global developments, and in line with the requirements of the CSCE process and the Paris Charter of November 20, 1990, to which Turkey is signatory.

The political manifesto of the new government represented a counter-revolution or rather a counter-coup. It is inspired by the belief that what is good enough for the democratic West is good for Turkey, too. The more important reforms prepared by the new government required constitutional amendments. The simplest way would be to scrap the 1982C with all its debated provisions and substitute for it a much shorter statement of general principles as ex - President Ozal proposed in November 1990.

President Ozal's sudden death on April 17, 1993 led to some stalemate in Turkish politics for about one month. Prime minister Demirel was elected 9th president of the Turkish republic on May 16, 1993. Tansu Ciller, former state minister, was elected as the new party leader at the 2nd extra-ordinary party congress of the DYP, and she was appointed to form the new government. The new DYP - SHP coalition government received the vote of confidence on July 5, 1993 until then all political process was dead.

The present coalition government also promised further development toward democratization in its program:

A new constitution is needed that reflects Turkey's political, social and economic level. It must include all the conditions of participatory democracy, human rights, individual rights and trade unions rights laid down in the Paris Charter and integrate Turkey with the world.

In any case, the discussion and eventual enactment of political reforms would have to be accompanied by action to bring down inflation and pacify the south - east Anatolia issue. In these circumstances, the limits of the de-

mocratization proposal of the first and second DYP - SHP coalition government could be tested by some crucial cases before the GNA. These are: Law on Amending Some Provisions of the Code of Criminal Court Procedure and the Law on Establishment and Prosecution Procedure of the State Security Courts (Law Nr. 3841, 18 November 1992); the approval of the ILO Conventions of 59, 87, 135, 142, 144, 151, 158; and the amendment of the Article 133 of the 1982C which entrusted the state - run TRT with the establishment and administration of all radio and tv channels in the country.

First of all, the "judicial reform" bill was introduced by the DYP - SHP coalition government in April 1992. After the committee and general assembly debates, the GNA adopted it without any change in late May 1992. However, the ex - president Turgut Ozal vetoed it for some reasons underlined by the NSC members just before its adoption by the GNA. Meanwhile, the bill became a problem between the coalition parties. While the DYP deputies were taking the reaction of the NSC and the security authorities into consideration, the SHP deputies objected to any change in its content. Second re - examination began in late August 1992 in an extra - ordinary meeting, but ended in further impasse as a result of deadlock in the general assembly (*Ibid.*). Later on the bill was slightly revised from its original form, but some minor provisions were made subsequent to the presidential veto (Genckaya, 1994). The third re - examination of the bill was held on November 18, 1992 and it was readopted, "not as a judicial reform, but simply as a compromise on what is 'terror crime' and what is not (*Ibid.*). This case indicated that on the one hand, the lasting terrorism in the south - east Anatolia and the nationalist - etatist ("hawks") bureaucratic - parliamentary groups ("concealed coalition"), on the other, are the main obstacles for further democratization in Turkey (*Ibid.*)

Following the passage through the GNA of the so - called judicial reform bill, the coalition government gave another examination of democraticness by approving the ILO conventions on November 19 - 26, 1992. The conventions

in question upheld the freedom of unions and the right of all employees to organize, declared the rights of public employees to unionize and bargain over working conditions, protected workers' representatives in enterprises and entitled them to various conveniences. This, indeed, was a novel development for the Turkish parliament to approve international conventions which are out of line with national law without making reservations.

The conventions were adopted with no greater problem than critiques from the ANAP spokesman. The procedural issue in the general assembly was that the number of 'Yes' votes was less than an overall majority in the 450 seat Assembly. But the approval of these conventions created heavy opposition from the business circles. Refik Baydur, head of the Turkiye Isveren Sendikalari Konfederasyonu (Turkish Employer's Federation, TISK) described the case as a "circumcising enterprise, employment and investments." This illustrated the lack of consensus on labor rights being part and parcel of the desired social structure. Later on, President Ozal, by supporting the idea of the businessmen and public sector employees, vetoed Nr. 158 convention on "Termination of Employment at the Initiative of the Employer." Ozal's statement of reason was that ratification of this convention, which was approved only by France, Sweden and Spain in Europe, would create new conflicts between employers and employee and decrease the employment opportunity. Indeed, ratification of these conventions has no meaning than a written document unless relevant regulations were made by the government. Since then, this convention has been waiting to be approved by the GNA.

Until recently the state had the constitutional legal monopoly of broadcasting in Turkey. Allowing private television and radio channels to broadcast on a state's territory can be regarded as an indication of an open society and liberal democracy. In other words, the freedom of both press and broadcasting are indispensable elements of modern democracy. In this respect, the first private television company, Magic Box (presently Star 1), which was owned by the big son of the ex - president Ozal, was given permission by the

ANAP government. Flourishing of the private tv and radio channels in the late 1980s proved the inappropriateness of the Article 133 of the 1982C which gave the ultimate right to operate tv and radio broadcasts to the state. Both the DYP and SHP also promised voters during the electoral campaign of 1991 that they would surely “legitimize this *de facto* illegal stations.”

However, the Transport Ministry of the DYP - SHP coalition government issued a circular dated January 22, 1993 and demanded from the local administrations immediate ban on all private radio and tv stations in Turkey, except for those broadcasting from abroad via satellite. This action was met with people's discontent. As the first circular failed, the ministry issued a second one on March 15, 1993 upon which all stations operating in defiance of the official monopoly of the TRT were finally closed down by the force at the end of March. Parliamentary party groups agreed on the adoption of the Article 133 of the 1982C. The GNA did not convene because of the presence of the insufficient number of member on April 15, 1993 and debates were postponed until April, 21. Ozal's sudden death further postponed the amendment until a new president and new government were in office. In early June, just after the appointment of Ciller as prime Minister, joint - Constitution Committee revised the amendment text, but again because of the fact that quorum required for decisions was not present in the general assembly, the debates were frozen until sometime. Under the head of the Speaker Husamettin Cin-doruk, the party groups' representatives of DYP, ANAP, SHP, and newly opened CHP were met and finalized the draft text on July 2, 1993 with some restrictions which were heavily criticized by the RP and DSP. After Ciller government received the vote of confidence on July 5, 1993, the Article 133 of the 1982C was amended by the GNA on July 6. According to the Article 175 of the 1982C, the adopted amendment was voted for a second time and approved by the GNA without submitting it to referendum. Thus, state monopoly over broadcasting was abolished and “radio and television stations may be established and run freely subject to conditions to be laid down by law.”

The law which will regulate the private stations and channels was submitted to the GNA in early November 1993. After a week debate over the first 24 articles of the proposal, the examination of the rest of it was postponed until early April 1994. It is argued that lobby of the private stations and channels owners became very effective on this. Moreover, while financial matters were liberalized, the content of broadcasting was still controlled by the state censorship with various considerations which are open to different interpretations, such as “to broadcast according to social order and Turkish family structure.”

Following the local election, which was held in March 27, 1994 and indicated the rise of RP in majority of the provinces, the pro-fundamentalist and pro-nationalist violent demonstrations in Ankara and Istanbul caused by the false reports on the use of chemical warfare against the Bosnian Muslims in Goradze finally led the major parliamentary parties to agree on the law (Briefing, April 18, 1994:7). Indeed, for a long time and especially during the local election campaign the Turkish public was frustrated by the irresponsibility of the media on the societal values and integrity and bloody competition between the private tv channels for ratings. While the law which was approved by the GNA, despite the RP’s opposition, made hundreds of tv and radio channels legal, it also imposed the both editorial and financial control over the media. Thus the law became both a consensus document of the DYP, ANAP, SHP, MHP and some independents and of public and political reaction (Baydar, 1994). Except for the financial limitations, there are two important articles (Article 6 and 25) which indicate the anti-democratic dimensions of the law. First of all, a supreme council is to be constructed to supervise and judge the regulation of broadcasting. The Supreme Board of Broadcasting will consist of nine members, five of whom to be nominated by the government, and the rest by the parliamentary opposition parties and then the GNA will approve the nominations. It is argued that this will cause an unfair and unbalanced majority in favor of the government party and the

GNA's authority over the board will lead to an executive - legislative conflict. Secondly, the prime - minister is authorized to cut or stop broadcasting in case "national security or public order is judged to be under threat." Also, all the private channels will be obliged to transmit the official declarations of the president an/or the government, concerning matters of national security, public order, general health and morality. This statement, which is against privatization and liberalization in principle, will also subordinate the private channels to the government. It is the genclarg argument that the better to have a law than having none.

Conclusion

Although democracy has been interrupted by the three military interventions in the last three decades, reestablishment of parliamentary democracy became the ultimate goal of the military officers in Turkey.

Since the late 1920s, the Turkish experience with democratic consolidation and parliamentary institutionalization has followed a cyclical pattern.

The scarcity of senior deputies, the overwhelming control by the party leaders and executive committees of the procedures of the TGNA, the lack of knowledge about even the established practices of the previous Turkish parliaments among the TGNA deputies of especially the 1983 Parliament, the lack of legislative autonomy of executive control and the absence of principles and norms that constrain the executive in its interactions with the legislative branch of government are all the indicators of the nascent institutionalization and the submissive nature of the post-1983 TGNA. (Kalaycioglu, 1990:215)

Traditionally the party elite and leadership and party groups with strong party discipline are the main features of the Turkish legislative system. However, especially recently party group and discipline have become less influential. In this respect, presence of maverick deputies, fractionalization and splits are very widespread in the GNA (Kalaycioglu, 1993a:18). On the other hand, there is indeed a very disciplined majority ("concealed coalition") from the ranks of the DYP, ANAP, MHP, and RP, whose primary task is to show a veto bloc especially for re-democratization (Kalaycioglu: ibid. and Genckaya, 1994).

The above-mentioned case studies also indicated that redemocratization in Turkey can not be achieved in Turkey without convincing traditional state elite. In this respect, political parties and political elites have the main re-

sponsibility to balance the civilian - military bureaucratic alliance in the center. This mainly depends on whether the political actors have taken their lessons from the past experience (Heper, 1991:6).

In this respect, vertical democracy as well as horizontal one needs to be promoted. Moreover, development of civil society will also contribute positively to democratization in Turkey. In other words, tutelary democracy should be replaced by grassroots democracy, at large. This also requires a redefinition of state - society relations in Turkish politics. Constitutional and legal amendments would be a landmark but became insufficient.

It is obvious that continuous terrorism or civil - war in the South - east Turkey seems to be the major obstacle before consolidation of democracy. Content of the anti - terrorist measures for integrity and security of Turkey hinders and retards further redemocratization. As if, democracy at large is indexed to the extent of terrorism in Turkey. To overcome this vicious circle, a political leadership with strong initiative and reconciliatory abilities seems to be necessary. Only can this leadership organize the various dynamic groups in Turkey come together and make a consensus document on the common issues of the Turkish society, such as laicism, which have been waiting to be resolved for many years.