

## **THE MAIN FOCUS OF THE REFERENDUM TEXTS IN TURKEY: HUMAN RIGHTS OR PUBLIC ADMINISTRATION?**

Research Article

Çağrı ÇOLAK<sup>1</sup>

### ***Abstract***

Referendum texts provide important data on the constitutional and political culture of countries. In general, the texts used in constitutional amendment referendums can provide information on whether the priority of the country in question is, as expected, “human rights” or “public administration.” This study attempts to find an answer to the question of which of the two issues is the focus of referendums in Turkey’s political history. In this qualitative study, in which the methods of document analysis, content analysis, and data coding are used together, the material consists of the wordings in the five constitutional amendment laws submitted to the referendum. The results show that although human rights and the limitation of power form the basis of the constitutional philosophy, issues of public administration related to the organization and activities of the state play a greater role in the referendum texts in Turkey.

**Keywords:** Referendum, Constitution, Constitutional Amendment, Human Rights, Public Administration.

---

<sup>1</sup> Asst. Prof., Trabzon University, Faculty of Economics Administrative and Social Sciences, Department of Political Science and Public Administration, [cagricolak@trabzon.edu.tr](mailto:cagricolak@trabzon.edu.tr), ORCID: [0000-0001-5806-9084]

Makale Gönderim Tarihi: 22 Haziran 2022

Makale Kabul Tarihi: 15 Eylül 2022

# TÜRKİYE'DE REFERANDUM METİNLERİNİN TEMEL ODAĞI: İNSAN HAKLARI MI? KAMU YÖNETİMİ Mİ?

Araştırma Makalesi

Çağrı ÇOLAK

## Özet

Referandum metinleri, ülkelerin anayasal ve politik kültürleri açısından önemli veriler sunmaktadır. Genellikle anayasa değişikliği sürecinde başvuru referandum uygulamalarındaki metinler, söz konusu ülkenin anayasa bağlamındaki önceliğinin beklenildiği gibi “insan hakları” mı, yoksa “kamu yönetimi” mi olduğunun ortaya çıkmasına aracılık etme potansiyeline sahiptir. Bu çalışmada Türk siyasi tarihindeki referandumlarda temel odağın yukarıdakilerden hangisi olduğu sorusuna yanıt aranmaktadır. Doküman analizi, içerik analizi ve veri kodlandırma yöntemlerinin bir arada kullanıldığı bu nitel araştırmada materyali, halkoyuna sunulan beş anayasa değişikliği kanunundaki ifadeler oluşturmaktadır. Ulaşılan bulgular, anayasa felsefesinin temelinde iktidarın sınırlandırılması ve insan hakları olmasına rağmen, Türkiye’deki referandum metinlerinde devletin örgütlenmesi ve faaliyetleri ile ilgili kamu yönetimi konularının daha yoğun olduğunu göstermektedir.

**Anahtar Kelimeler:** Referandum, Anayasa, Anayasa Değişikliği, İnsan Hakları, Kamu Yönetimi.

## **INTRODUCTION**

Democracy has been accepted as one of the most fundamental values of political life. Although it contained a content such as “the rule of the poor majority” in ancient times, it has gained the meaning of “self-government of the people” in modern times (Heywood, 2012: 170). However, representative democracy, which is preferred due to its applicability, harms the participation dimension of the content in question. Various tools of semi-direct democracy are used to reduce this problem. Referendums are the most known and used tool among them.

This method, often used in Western democracies, is also found in Turkish political life. The first referendum in the history of the Republic was held on July 9, 1961, on the constitution that had been drafted after the military coup of 1960. The second referendum was held on November 7, 1982, on the constitution drafted after the 1980 military intervention. Although these two referendums were related to constitution-making, they were referendums in the ratification phase of the constitutions drafted by the main founding powers (TBMM Araştırma Merkezi, 2010: 90).

The referendums held thereafter include constitutional amendments made by the secondary founding power. The first referendum in this context was held on September 6, 1987, on the question of whether to lift the ten-year or five-year political prohibitions established by provisional Article 4 of the 1982 Constitution. The second took place on September 25, 1988, when the issue was whether or not local elections should be held a year earlier. The third is the referendum held on October 21, 2007, when three issues were voted on, including the popular election of the president. The fourth referendum was held on September 12, 2010, on the constitutional amendment package, which mainly provides for reforms in the judiciary. The last referendum took place on April 16, 2017. Although it is identified by the public with the theme of “changing the model of government,” there are many different issues in the content of this referendum.

The issues voted on in the referendums reflect the constitutional and political cultures of the countries. For example, the limitation of power and the importance of human rights indicate a liberal political culture, while the issues related to state organization, political institutions, and public administration indicate a conservative and etatist political culture. This study seeks an answer to the question of whether the focus of referendums in Turkish political history is on “human rights” or “public administration.” In this qualitative study, in which the methods of document analysis, content analysis, and data coding are used together, the material consists of the wordings in the five constitutional amendment laws submitted to the referendum.

The study first presented information about the “referendum” and then mentioned the “constitution” and its basic philosophy, starting from the dichotomy human rights - public administration. Then the information about the material and the method of the study is listed. In the following section, the results

of the study are presented. Finally, the results are evaluated in the discussion and conclusion section.

## **1. Conceptual Framework**

The referendum is a method that some important decisions are made directly by the people and not by elites or representatives. This mechanism, first used in Switzerland in the 15th century, paved the way for voters to make political decisions without intermediaries on some issues of national, regional, and local nature (Zimmerman, 2011: 437). In this regard, a referendum can be defined as a type of vote in which voters express their opinion on a specific public policy (Heywood, 2012: 295).

This method is used, for example, when drafting a new constitution, amending some articles of the constitution, passing laws, dismissing an elected official, joining or leaving a supranational organization (Öztürk, 2019: 181). Thus, the crisis of representation in representative democracies is minimized. In other words, the legitimacy of the decisions made is increased. Nowadays, many countries hold a referendum to change national or state constitutions. These amendments usually focus on issues that can be examined in the context of public administration, such as the form of government, the model of government, or the term of office of members of parliament. However, issues that can be evaluated in the context of human rights in the individual sphere have also been referred directly to voters rather than to the people's representatives in the legislature (Robertson, 2004: 421). The advantages of the referendum can be enumerated as follows: Incorporating the opinion of the people, not representatives; checking on government between election periods; increased political participation; creating an informed electorate; and that constitutions provide opportunities to solve fundamental problems (Heywood, 2012: 297).

Looking at the history of referendums in Turkey, it can be said that the issues related to the fundamental problems of the constitution come to the fore. However, it is necessary to analyze the referendum texts in order to determine which function of the constitution is brought to the fore in the issues that take center stage. Before proceeding to this analysis, it is useful to mention two basic functions of the Constitution. One of them is the "power map of the state" (Hague & Harrop, 2004: 210). That is, the Constitution establishes the functions and powers of the legislative, executive, and judicial branches. It specifies the way they are to be used and operated. The Constitution distributes state power among state organs. It regulates the relations between the organs of the state. It specifies how laws are made (Yayla, 2015: 245).

The other function is to "define the limits of state power". The Constitution primarily regulates the relations between the state and the citizens. It sets limits to the state power in favor of the rights and freedoms of the citizens. This is also the idea underlying the practical and intellectual tradition of constitutional government. Constitutional government obligates the state to act in a sphere that

limits its power and authority over individuals (Yayla, 2015: 244). It is human rights that will limit the power of the state.

The Constitution is the set of rules and procedures that provide the framework for public policy (Yayla, 2015: 240). In this context, constitutional law is a branch of jurisprudence that studies the establishment and functioning of the main organs of the state, such as the legislative, executive and judicial branches, the mutual relations between these organs, as well as the legal rules that regulate the fundamental rights and freedoms of citizens vis-à-vis the state (Gözler, 2008: 8). Thus, the subject of constitutional law is, on the one hand, the establishment, functioning and mutual relations of the legislative, executive and judicial branches, which are the main organs of the state, and, on the other hand, the fundamental rights and freedoms of citizens vis-à-vis the state.

The first part is about the basic political principles that determine issues such as the formation of the legislative, executive and judicial branches of the state, their authority and functioning, the appointment of officials and the structure of authority, expression and mediation bodies (Scruton, 2007: 135). It can be evaluated in the context of public administration in a broader sense. In fact, public administration refers to all organizations and activities related to the creation and execution of public policies (Eryılmaz, 2020: 10). Although public administration is defined in a narrow sense as all institutions and activities of the state related to the executive branch, excluding the legislative and judicial branches, in a broader sense it appears as a broad concept that encompasses the organization and functioning of public power in societies (Özer et al., 2019: 14). In this respect, public administration is, by its very nature, the application of public law. Any application of a general law is necessarily an act of government. Without this legal basis, public administration cannot exist (Shafritz et al., 2017: 11). In the second point, fundamental rights and freedoms are guaranteed against the power of the state and power is limited in favor of individual rights.

In summary, the main priority in referendums where constitutional amendment proposals are voted on is public administration or human rights. Which of these is dominant can be understood through the expressions in the referendum texts.

## **2. Material and Method**

The subject of the study are the referendum texts in Turkish political history. The main material is therefore the legislative texts of the seven referendums in question. However, the two referendums (1961 and 1982) were not included in the sample because they involved the holistic adoption of new constitutions created by the constituent power and not constitutional amendments.

From this point of view, there are five referendum texts in the study sample (Table 1).

**Table 1:** Sample of the Study (Referendum Texts)

<i>Law No</i>	<i>Law Title</i>	<i>Acceptance Date of Law</i>	<i>Date of Referendum</i>
3361	The Law Amending Articles 67, 75 and 175 of the Constitution of the Republic of Turkey and Repealing Provisional Article 4	May 17, 1987	September 6, 1987
3467	The Law Amending the Third Paragraph of Article 127 of the Constitution of the Republic of Turkey and Adding a Provisional Article	August 6, 1988	September 25, 1988
5678	The Law on Amending Some Articles of the Constitution of the Republic of Turkey	May 31, 2007	October 21, 2007
5982	The Law on Amending Some Articles of the Constitution of the Republic of Turkey	May 7, 2010	September 12, 2010
6771	The Law on Amending Some Articles of the Constitution of the Republic of Turkey	January 21, 2017	April 16, 2017

In this study, a qualitative research method was preferred, which aimed to identify the focal points in the referendum texts. This is because designing and conducting qualitative research offers flexibility to the researcher. In addition, a characteristic of the qualitative method is that it is exploratory. Such research is very useful and helpful in shedding light on the less studied issues (Neuman, 2012: 228).

In this context, document analysis was used first. Providing data by analyzing written documents that contain information about facts and events related to the topic studied in the research is called document analysis. This method, like other analytical methods in qualitative research, requires the examination and interpretation of data in order to make sense, gain understanding, and develop empirical knowledge (Bowen, 2009: 27). Since the

focus of the study was on the referendums, the legislative texts listed in Table 1 were examined as documents containing the referendum texts.

A content analysis was then conducted. Content analysis is a research technique used to draw reproducible and valid inferences from data to their context (Krippendorff, 1980: 18). The main purpose of content analysis is to identify the concepts and relationships that help explain the data collected. The data obtained during the review of the documents were subjected to in-depth processing with the help of content analysis and new concepts were discovered. The basic process of content analysis is to collect similar data within the framework of certain concepts and themes and interpret them so that the reader can understand them (Yıldırım & Şimşek, 2008: 227; Neuman, 2012: 663). Content analysis is useful for this research, which aims to identify the main points of the referendum texts. In this way, the legal articles of the same text are interpreted within the framework of specific themes. However, they also need to be categorized.

The data coding method is necessary to categorize the data interpreted under the specific themes. In the data coding method, the information is analyzed and divided into meaningful categories, and the conceptual meaning of each category is determined. These categories can sometimes be a word, sometimes a sentence or paragraph, or sometimes a whole page. The naming or coding of these categories, which in themselves form a meaningful part, is called the data coding method (Neuman, 2012: 668). Indeed, data coding is part of our understanding of observed reality (Murtagh, 2005: 1). Based on the codes that emerge, themes are then found that can explain the data at a general level, and the codes are grouped under specific categories. To do this, the codes are first merged and analyzed, and an attempt is made to find common aspects. In a sense, this is a thematic coding process. Finally, the data obtained according to this system is ordered, and in this way it is possible to define and interpret the data according to certain findings (Yıldırım & Şimşek, 2008: 238).

The three methods applied are highly functional qualitative methods in fields with strong verbal content such as law, public administration and political science. Thanks to these methods, the relationships between legal texts and political objectives are analyzed successfully.

In this research, a total of five documents (law or referendum text) were examined. Then, a total of 46 articles were identified in the five laws. These articles were first categorized by the data coding method, and then the thematic coding method identified the appropriate topics (human rights or public administration) for the articles. Finally, the research question was answered based on the resulting distributions.

### **3. The Research Finding**

Seven referendums have been held in Turkey so far. The first two involve ratification of the new constitutions created after the military coups. In the other five referendums, the vote was on individual or multiple articles on the motion to

amend the constitution, and with the exception of the 1988 referendum, the decision in all referendums was “yes.” Moreover, the five referendums in question were held when one political party alone was in power in the country. The 1987 and 1988 referendums were held for the Motherland Party (ANAP); the 2007, 2010, and 2017 referendums were held when the Justice and Development Party (AK PARTY) was in power.

The thematic coding of the articles in the referendum texts is shown in Table 2.

**Table 2:** *Thematic Coding of the Articles in the Referendum Texts*

<i>Year</i>	<i>Topic</i>	<i>Human Rights</i>	<i>Public Administration</i>
1987	Lifting of political prohibitions	✓	
1988	Helding of local elections date		✓
2007	Reduction of the legislative period from five to four years		✓
	That the quorum for a meeting is in any case 1/3 of the total number of members for legislative activities		✓
	Modification of the election, term, and number of terms of the President		✓
	That affirmative action against some disadvantaged groups is not considered contrary to equality	✓	
	Establishment of principles and procedures for the protection of personal data	✓	
	Restricting the freedom to go abroad, subject to investigation and prosecution	✓	
	Taking protective measures for children against abuse and violence	✓	
	Promotion of freedom of association	✓	
	Expanding the scope of collective bargaining rights and including civil servants in this scope	✓	
	Reducing restrictions on the right to strike and lock out	✓	
	Establishment of an ombudsman		✓

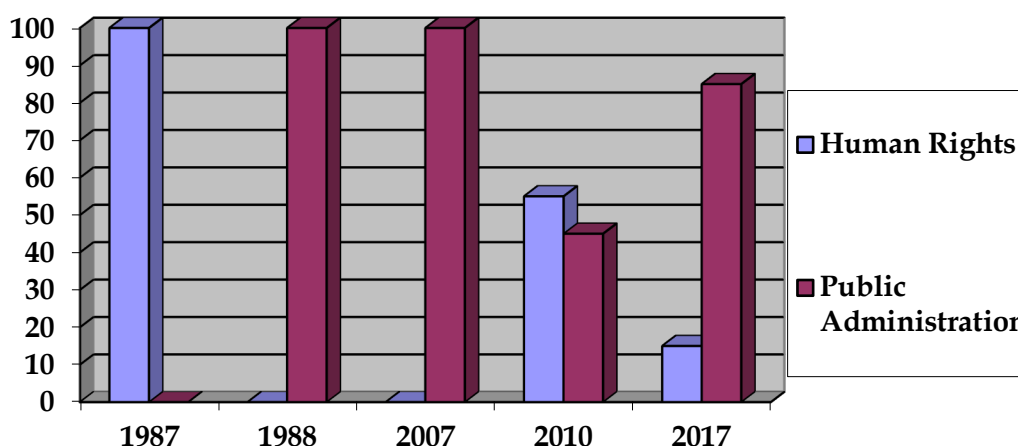


2010	Non-removal from office of deputies of those who have caused the closure of their party	✓	
	Modification of Elections and term for the Presidential Council of the Grand National Assembly of Turkey		✓
	Opening an appeal against the decisions of the Supreme Military Council	✓	
	Opening judicial review of caution and reprimand sentences against public officials	✓	
	Organizing the supervision of judicial services and prosecutors		✓
	Limiting the scope of application of the military justice system		✓
	Regulating the number of members and the composition of the Constitutional Court		✓
	Limitation of the term of office of the members of the Constitutional Court		✓
	Regulation of the right of individual appeal to the Constitutional Court	✓	
	Regulation of the working procedures of the Constitutional Court		✓
	Introduction of the guarantee of judges for the Supreme Military Administrative Court		✓
	Regulation of the number of members and the composition of the Supreme Council of Judges and Prosecutors		✓
	Inclusion of the Economic and Social Council within the scope of the Constitution		✓
	Enabling the prosecution of the coup plotters	✓	
Impartiality of the courts	✓		
Increase in the number of deputies		✓	

	Age to be elected as deputy	✓	
	Extension of the legislative term to five years and holding parliamentary and presidential elections on the same day		✓
	Abolishing the power of the Council of Ministers to enact decree		✓
	Adoption by an absolute majority of Parliament of laws that have been vetoed		✓
	Establishing the modalities for Parliament's power of control over the executive branch		✓
	Establishment of modalities for the nomination of presidential candidates, and being possible for the president to be a member of any political party		✓
	Abolition of the Prime Ministership and modification of the conditions for presidential candidacy		✓
2017	Establishment of voting quotas for proceedings against the president		✓
	Determining the voting shares for the procedure against the vice presidents and ministers and regulating the power of attorney for the president.		✓
	Regulation of the president's power to impose a state of emergency		✓
	Opening a legal remedy against all acts of the president	✓	
	Abolishing the establishment of military courts, with some exceptions		✓
	Reducing the number of members of the Constitutional Court		✓
	Changing the number of members of the Supreme Council of Judges and Prosecutors		✓

Modification of the procedures of the Budget Law	✓
Regulation of the power to establish legal entities under public law	✓
Setting of the election date	✓

Table 2 shows that in the first two referendums, only one item was voted on, while in the other referendums, more than one article was put before the public. Three articles in 2007, 22 articles in 2010, and 19 articles in 2017 were included in the referendum texts.



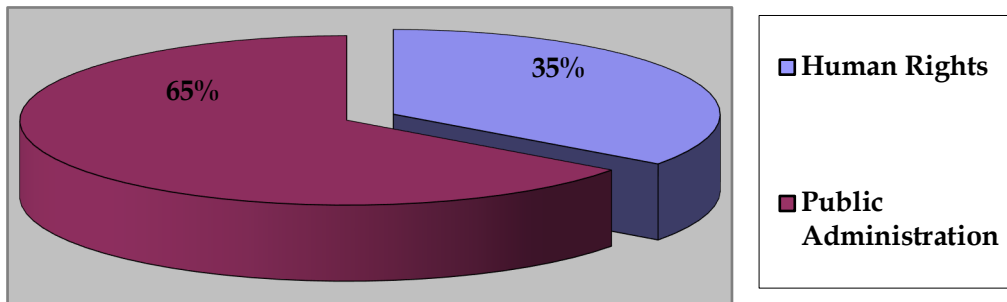
**Figure 1:** Focus Distribution in Each Referendum Text

The first referendum in the sample of the research is a vote for people who were prevented from doing politics after the 1980 military coup so that they can do politics again. In this regard, it is clear that the article in question should be evaluated in the category of human rights. However, the second referendum, held a year later and aimed at postponing local elections, can be evaluated under public administration and not human rights. Since only one article was voted on in these two referendums, the proportional distribution was 0% - 100%. Although more than one article was voted on in the 2007 referendum, the distribution was similar to the first two referendums. Two articles dealing with the legislative term and the quorum for meetings, and the single article regulating the election of the president, his term of office and the number of terms, fall thematically into the category of public administration. In the last two referendums, the distribution was different from the first three, as a large number of issues were voted on. 12 of the 22 articles (55%) in 2010 and only 3 of the 19 articles (16%) in 2017 fell into the category of human rights. From this perspective, the distribution of focus in each referendum text is shown in Figure 1.

As can be seen from Figure 1, there is only one referendum in which human rights were clearly the focus: 1987. That said, the 55% focus in the 2010 referendum is a remarkable rate. However, the fact that it was 16% in 2017 and zero in the 1988 and 2007 referendums supports the claim that the focus in the referendum texts is on public administration.

The 1987 and 1988 one-article referendums were originally referendums measuring the legitimacy of the leader (Turgut Özal) and the ANAP as a power. The first referendum was coded as a human rights referendum because it was about lifting the ban on politics against leaders who might compete with Özal, and the other was included in the public administration group because it was related to the political conflicts of the time. Although the 2007 referendum came at a time when human rights and public administration reforms were in full swing in Turkey as part of the European Union's (EU) harmonization policy, human rights issues were not included.

However, the first of the last two referendums (2010 and 2017) bears traces of the liberal winds of the AK PARTY's first period in power. During this period, the AK PARTY took reform initiatives in line with the EU in both the public administration and the judiciary. Therefore, unlike other referendums, the emphasis on human rights in a referendum that voted on more than twenty articles becomes meaningful when evaluated over the period of EU harmonization and liberal-conservative political orientation. It can be argued that the last referendum prioritized public administration because it took place after the coup attempt of July 15, 2016, when the said political orientation was abandoned and more protectionist policies were on the rise (Gözler, 2017: 92-93; Çoban Oran, 2018: 438-439).



**Figure 2:** Total Focus Distribution in All Referendum Articles

Finally, it was found that 16 of the 46 articles in five different referendums were related to human rights and 30 were related to public administration. This indicates that the distribution of emphasis is 35% human rights and 65% public administration (Figure 2).

## CONCLUSION

Constitutions have two basic functions: one is to map the power of the state, which can be coded as "public administration," and the other is to limit the state in favor of the individual, which can be coded as "human rights." Constitutional amendments are expected to focus on these functions. In this research, qualitative methods were used to examine which of these functions are focused on in Turkey.

Looking at the distribution of focus of the referendums, there is only one referendum (1987) that did not focus on public administration. It can be seen that public administration issues appeared in all other four referendums in varying degrees. While this rate was 45% in the 2010 judicial reform referendum, it was 84% in the 2017 referendum on changing the model of government. In the 1988 and 2007 referendums, it was determined that only public administration issues were included with one and three items, respectively (100%).

The political orientations during the referendum may also shed light on the reasons for the more focused element (human rights or public administration). For example, looking at the last two referendums with the most articles (22 and 19), in the 2010 referendum a government was very willing to take action on human rights and public administration reform as part of an EU-focused policy. In the 2017 referendum, the same ruling party abandoned its intention to join the EU and focused on the fight against terrorist organizations. Thus, while the first referendum placed more emphasis on human rights, the second referendum was the opposite.

It was found that in one of the five referendums, the focus was exclusively on human rights, and in two, it was on public administration. In the remaining two referendums, both can be assumed to have a relatively focus. However, when one of these referendums is publicly credited with reforming the organization of the judiciary and the other with changing the model of government, this suggests that public administration plays a greater role.

When a holistic evaluation is made, it has been observed that 46 amendments were voted in five different referendums and the theme of human rights was intense in 16 of them and public administration in 30 of them. Therefore, in Turkey, it has been proven with a rate of 65% that the constitutional function regarding the power map of the state (public administration) has priority.

## **BIBLIOGRAPHY**

- Bowen, Glenn A. (2009), "Document Analysis as a Qualitative Research Method", *Qualitative Research Journal*, Volume: 9, Number: 2, pp. 27-40.
- Çoban Oran, Filiz (2018), "Türkiye-AB İlişkilerinde Yeniden Canlanmadan 'Hedef Değişimine' Doğru", *Yönetim Bilimleri Dergisi*, Cilt: 16, Sayı: 31, pp. 427-442.
- Eryılmaz, Bilal (2020), *Kamu Yönetimi: Düşünceler, Yapılar, Fonksiyonlar, Politikalar*, Umuttepe Yayınları, Kocaeli.
- Gözler, Kemal (2008), *Anayasa Hukukuna Giriş*, Ekin Yayınları, Bursa.
- Gözler, Kemal (2017), *Elveda Anayasa: 16 Nisan 2017'de Oylayacağımız Anayasa Değişikliği Hakkında Eleştiriler*, Ekin Yayınları, Bursa.
- Hague, Rod & Harrop, Martin (2004), *Comparative Government and Politics: An Introduction*, Palgrave Macmillan, New York.
- Heywood, Andrew (2012), *Siyasetin Temel Kavramları*, Adres Yayınları, Ankara.

- Krippendorff, Klaus (1980), *Content Analysis: An Introduction to Its Methodology*, Sage Publications, London.
- Murtagh, Fionn (2005), *Correspondence Analysis and Data Coding with Java and R*, CRC Press, Boca Raton.
- Neuman, W. Lawrence (2012), *Toplumsal Araştırma Yöntemleri: Nicel ve Nitel Yaklaşımlar*, Yayın Odası Yayınları, İstanbul.
- Özer, Mehmet Akif & Akçakaya, Murat & Yaylı, Hasan & Batmaz, Nazlı Yücel (2019), *Kamu Yönetimi Klasik (Yapı ve Süreçler)*, Gazi Kitabevi, Ankara.
- Öztürk, Namık Kemal (2019), *Anayasa Hukuku*, Seçkin Yayıncılık, Ankara.
- Robertson, David (2004), *The Routledge Dictionary of Politics*, Routledge, London.
- Scruton, Roger (2007), *The Palgrave Macmillan Dictionary of Political Thought*, Palgrave Macmillan, New York.
- Shafritz, Jay M. & Russell, Edward W. & Borick, Christopher P. & Hyde, Albert C. (2017), *Introducing Public Administration*, Routledge, New York.
- TBMM Araştırma Merkezi (2010), *Bir Doğrudan Demokrasi Aracı Olarak Referandum Uygulama Örnekleri: Türkiye - ABD - Avrupa Ülkeleri*, Türkiye Büyük Millet Meclisi Araştırma Merkezi Yayınları, Ankara.
- Yayla, Atilla (2015), *Siyaset Bilimi*, Adres Yayınları, Ankara.
- Yıldırım, Ali & Şimşek, Hasan (2008), *Sosyal Bilimlerde Nitel Araştırma Yöntemleri*, Seçkin Yayıncılık, Ankara.
- Zimmerman, Joseph Francis (2011), *Direct Democracy*, (Editor; George Thomas Kurian, *The Encyclopedia of Political Science*), CQ Press, Washington, pp. 436-438.