

PARLIAMENTARISM or PRESEDENTIALISM?

"CONSTITUTIONAL CHOICES FOR TURKEY"

Doç. Dr. Mehmet TURHAN*

The Constitution of 1982 is our fifth constitution; and just as the 1961 Constitution, was a reaction to certain to certain problems faced by the 1924 Constitution, so is the 1982 Constitution. Now the new government in Turkey has proposed amendments to the Constitution in line with the Paris Charter as a reaction to the authoritarian provisions of the 1982 Constitution. The need to modify the Constitution was raised by the former government of the Motherland Party, which is now the main opposition party, on the eve of the general election, held on October 20, 1991. President Turgut Özal has also suggested a short and liberal Constitution containing only the broad outlines of the system. The Social Democrat Populist Party, before becoming the coalition partner in the new government, has already submitted a draft Constitution containing 170 articles.

There are many problems and choices that confront makers of a new and more liberal democratic constitution for Turkey. The choice between parliamentary and presidential forms of government is one of them and has important consequences for establishing a functioning and healthy democracy in Turkey, I believe that the new constitution should include the entire conditions of a participatory democracy as stated in the Paris Charter; along with human rights and the 1961 Constitution, the 1948 Universal Declaration of Human Rights and the Helsinki Final Document could be used. I do not want to elucidate more on this aspect, although it is more important in the way of constitution-making. To the architects of a new constitution, I will try to show that the combination of parliamentarism with moderate proportional representation could be an especially attractive one, with some modifications of the 1982 Constitution.

First of all, we must not forget that well balanced constitutional order should not prevent the dynamism of the political process from leading to constitutionally insoluble

*Rapporteur of the Constitutional Court.

stalemates, either within one and the same or among several power holders¹. In other words, the maximum reciprocal controls assigned to several organs of the state do not necessarily agree with the optimum required for the efficient and stable operation of the political process. For that reason, the excessive sharing of functions (i.e. checks and balances) sometimes may lead to the self-destruction of political processes and constitutional democracy.

For example, under the 1961 Constitution the executive and the legislative organs of the state were arranged in such a way that they could not cooperate in constitutional crises and emergencies. The 1961 Constitution did not provide legal solutions of deadlocks between the executive and the legislature. That is one of the main reasons for the short duration of the 1961 Constitution.

As we all know, the reason behind the military takeover of September 12, 1980, was the growing political violence and terrorism that, between 1975 and 1980, left more than 5.000 people killed and three times as many wounded. The governments of the 1970s were unable to solve this problem, even though martial law was in effect in much of the country. The political violence reflected a growing polarization in the country. The polarizing forces were the authoritarian Nationalist Action Party and the fundamentalist National Salvation Party on the right, and many small radical groups on the left. The justice Party was pulled to the right by its partners in the coalitions, and the Republican People's Party was pulled to the left by the leftist radical groups. However, both major parties have been remained essentially moderate and nonideological; the two major parties together received more than 70 percent of the total vote. Extremist or antisystem parties had never had more than 15 percent of the electorate. Nevertheless, these parties played an important role in the 1970s, and contributed to the destabilization of the political system. The reason why they played so important a role in the political system was the unusual parliamentary calculation that gave them a significant bargaining power²

During the 1970s Turkey became a divided nation and political opinion turned to extreme ideological forms. The result was drastic instability. In the midst of this instability mainly two forms of opinion emerged. The first of these emphasized representation, more participation, accountability, multi-party politics, parliamentary form of government, and defended the Constitution. The second one stressed "law and order," two-party politics, and a semi-presidential form of government as the most cardinal issues in Turkish politics³

As shown by the above mentioned reasons, the underlying objective of the 1982 Constitution was to create a "strong state" and "strong executive". Almost every single departure of the 1982 Constitution can be construed in these terms. At that time, the people in Turkey were longing for authority, and the constitution-makers tried to realize

¹Karl Loewenstein, *Political Power and the Governmental Process* (Chicago: University of Chicago Press, 1965), p. 278-281.

²*Development and Consolidation of Democracy in Turkey* (Ankara: Turkish Democracy Foundation, 1989), p. 11-12.

³Mehmet Turhan, "The Constitutional Consequences of Multi-party Politics in Parliamentary Governments," *Dicle Üniversitesi Hukuk Fakültesi Dergisi* 3 (1985), p.178.

it by creating a strong executive and regulating fundamental rights and liberties in a more restrictive way than in the 1961 Constitution.

PARLIAMENTARY AND PRESIDENTIAL FORMS OF GOVERNMENT

In constitutional democracies mainly two forms of government are adopted : either presidential or parliamentary. There is also one more type of government which we call assembly government. In the assembly form of government, the power concentrates in the assembly, and, at least in theory, there is no separate executive⁴. However, assembly government is not frequently applied in modern nations.

Parliamentary government is the form of constitutional democracy in which the executive emerges from the legislature and is responsible to it. Two points are crucial to the concept: First, decisions of a cabinet are meant to be collective and not of a single person. Ministers are bound to support publicly all the decisions taken by the cabinet. The cabinet acts as a political tie between the executive and the legislature. In other words, ministers are answerable to the parliament. Parliamentarism differs from the arrangement of independently elected executive and legislative organs found in the United States and Latin American countries. The government of the United States is presidential in the sense that its presidency is elected by the people and enjoys the essential position and occupies the cardinal place among other public institutions. Parliamentary government denotes a form of government in which, at least constitutionally, parliament is supreme and the executive emerges from it; in practice, despite the continued increase in executive power in all the nations of the world, it exercises considerable influence in political affairs. The reasons for this influence are the union of executive and legislative organs, and the constitutional principle of legislative supremacy⁵.

There is also one more form of government which may be called semi-presidential system. The term semi-presidential system was first used by the French political scientist Maurice Duverger⁶ to designate a political system, such as that of the French Fifth Republic since 1962, in which a President of the Republic elected by the people coexists with a prime minister and a cabinet responsible (answerable) to the parliament. In semi-presidential system, the president has important powers. For that reason, the constitutions of Finland, France, Austria, Iceland, Ireland, Portugal and now Sri Lanka are hybrids rather than true presidential or parliamentary systems. At first sight, such a system seems to be a synthesis of the presidential and parliamentary models of government, but the reality is different. The semi-presidential system can under certain circumstances operate according to the logic of a presidential system, or it can work

⁴Douglas V. Verney, *The Analysis of Political System* (London: Routledge and Kegan Paul Ltd., 1959), p. 57-74.

⁵Leon D. Epstein, "Parliamentary Government," *International Encyclopedia of the Social Sciences*, Vol. 11, David L. Sills (ed.) (New York: The Macmillan and the Free Press, 1968), p. 419; Patrick Weller, "Cabinet/Cabinet Government," *The Blackwell Encyclopedia of Political Institutions*, Vernon Bogdanor (ed.) (Oxford:Blackwell, 1987),p.66-69.

⁶Maurice Duverger, "A New Political System Model: Semi-Presidential Government," *European journal of Political Science* 8 (June 1980).

according to the logic of a parliamentary system; sometimes, there can be a division of powers within the executive so that president and prime minister own extensive powers within particular spheres-as for example, in France under Mitterand (following the legislative elections of 1986) when a president of the left faced a parliamentary majority of the right; this may be called **cohabitation**⁷.

What model, then, to follow? First we must note that the great majority of the stable democracies in the world are parliamentary regimes; the only presidential democracy with a long history of constitutional continuity is the United States. Presidential form of government has served well in the United States but poorly in Latin America.

As Linz says, two characteristics are central to presidential systems: The first is the president's strong claim to democratic legitimacy; the second is his fixed term in office. The office of president is two-dimensional and for that reason very ambiguous: On the one hand, the president is the head of state and representative of the whole nation; on the other hand he is the head of government and stands for a clearly partisan political choice. In parliamentary systems the executive splits into two: the prime minister becomes the head of government, and the monarch or president becomes the head of state. Although the head of state appoints the head of government, the prime minister and his cabinet must have the support of the legislature⁸.

In presidential systems, the president may find it difficult to combine his role as the head of state with that of the head of government. In other words, it is very hard to be the deferential or symbolic aspect of the polity and, at the same time, to be an effective chief executive and partisan leader fighting for his party and its program. In a modern democracy, in order to be elected, presidential candidates have to represent a political party or a political thought, or at least they will be under the surety of one or more political parties. Guy Carcassonne says: "... by a strange reversal, the 'regime of parties' which de Gaulle tried to avoid by means of the election of the President by direct universal suffrage, has returned. In place of the kind of unanimous president that de Gaulle hoped for-an incarnation of the nation as a whole-the reality is that never have parties been more indispensable, more powerful, and never have the French had to face so bipolar an electoral situation"⁹. Those who defend the election of the President by direct suffrage, and the impartiality of the presidency cannot escape from this fact¹⁰. Briefly, a presidential or semi-presidential system, as opposed to a parliamentary system, does not permit a neat differentiation of roles.

The prime minister is normally a member of parliament; he always remains a part of the larger body. He has to meet fellow legislators upon terms of equality. In presidential systems, the president, by contrast, leads an independent branch of government, and meets with members of the legislature on his own terms. For that

⁷Vernon Bogdanor, "Semi-presidential Systems," *The Blackwell Encyclopedia of Political Institutions*, Vernon Bogdanor (ed.) (Oxford:Blackwell, 1987), p. 561-562.

⁸Juan Linz, "The Perils of Presidentialism," *Journal of Democracy* 1(Winter 1990),p. 61.

⁹Guy Carcassonne, "France (1958): The Fifth Republic After Thirty Years," *Constitutions in Democratic Politics*, Vernon Bogdanor,(ed.) (Aldershot:Gower, 1988),p.246-247.

¹⁰*Gereğçeli Anayasa Önerisi* (Ankara:A.Ü. Siyasal Bilgiler Fakültesi Yayını, 1982),p.209.

reason, presidential systems lack the moderating power of a monarch or a president of the state; this deprives the system of flexibility, and of means of restraining power.¹¹

Presidential systems are based on dual legitimacy, and there is no democratic principle to resolve disputes between the executive and the legislature. Both the legislature and the executive may claim the democratic legitimacy. It is likely that the political and social outlook of the legislature may differ from that held by the president and his supporters. The basic problem of competing claims to democratic legitimacy of presidents and legislatures, the resulting potential for conflict between the executive and the legislature is the most important danger emerging from this sort of regime. For example, for a democrat-controlled Congress to cooperate with a republican administration usually means to aid the election of future Republican candidates. Conversely, a president whose party has the majority in Congress will seek to change the situation and, as Linz says, "he will play the 'blame game' "¹². It is apparent that presidentialism does not provide for effective government¹³.

In presidential systems, government crises and ministerial changes of parliamentary regimes are impossible to happen because of the fixed term a president enjoys. This stability is attained at the price of great rigidity. Replacing a president who has lost the confidence of his people or his party is extremely difficult, almost impossible, except by way of impeachment. Impeachment is an uncertain and time consuming process, and completely different from the parliamentary vote of no-confidence. If, in parliamentary systems, the prime minister loses the support of his party, then the majority in the parliament can unseat him without creating a constitutional crisis. For that reason, prime ministers are very careful not to lose their majority in the parliament. The basic difference of the flexibility of parliamentarism and the rigidity of presidentialism is a very important factor¹⁴.

Linz suggests that presidential candidates in plurality systems encourage the growth of the political extremes in order to secure help from them, thus granting the extremes a certain influence they are denied in a parliamentary system. As Horowitz has pointed out it may be possible to ease the problems of presidentialism by requiring that a president be elected with a stated minimum of support from different groups. However, the solution to the problem suggested by Horowitz cannot be compared with the advantages of a truly collective and comprehensive executive. The structural differences between parliamentarism and presidentialism must be acknowledged¹⁵

¹¹Linz, op. cit., p.62.

¹²Linz says: "The American system works or has worked in spite of, rather than because of, the presidential Constitution of the United States." Juan Linz, "The Virtues of Parliamentarism," *Journal of Democracy* 1(Fall 1990), p.89.

¹³In other words, division of powers, united with a presidential veto, can produce arrested government, that is unresponsive to its citizens. For these reasons, legal advisers are recommending a parliamentary regime along West European lines to East European countries. John Elson, "Road Maps for the Future," *Time* (March 11 1991), p.71.

¹⁴Linz, "The Perils of Presidentialism," p.55.

¹⁵Donald L. Horowitz, "Comparing Democratic Systems," *Journal of Democracy* 1 (Fall 1990), p.76-77. Arend Lijphart, "Constitutional Choices for New Democracies," *Journal of Democracy* 2 (Winter 1991), p.81.

We have to remember that presidentialism works according to the rule of "winner-take-all". This arrangement tends to make democratic politics a "zero-sum-game". In parliamentary elections power-sharing and coalition-forming are fairly common; and if parliamentary elections can produce an absolute majority for a single party, often the representation is exercised by a number of parties. The president, in presidential systems, may misunderstand and misuse his power and mission because of an independent authority and a popular mandate¹⁶.

If, in ethnically divided societies, a president belongs to one ethnic group, then the situation will be more hazardous. Ethnically divided societies need peaceful coexistence among contending groups. This requires compromise and conciliation. For that reason, it is absolutely necessary for representatives of these groups to be included in the decision-making process. However, in presidential systems, because of the rule of "winner-take-all," consensus and power-sharing mechanisms cannot work¹⁷.

TURKEY'S NEW CONSTITUTION (1982) : SOME LESSONS IN CONSTITUTIONAL ENGINEERING

As Douglas V. Verney has pointed out, in the Western European countries monarchical power democratized in two ways: First, most of the monarch's personal political prerogatives were taken away and his cabinet was made responsible to the popularly elected legislature. In this way, a parliamentary system was created. Secondly, the monarch was removed and substituted by a new and popularly elected president. This was the way the United States followed; thus was created a presidential system¹⁸. In Turkey, the Sultan's political prerogatives were taken away by setting up a new Assembly "with extraordinary powers," called the Grand National Assembly of Turkey; it differed from the Ottoman Parliament in that it held both legislative and executive powers. It was a constituent and revolutionary assembly, not bound by the Ottoman Constitution. The Grand National Assembly chose an "assembly type of government".

Whether a presidential system in which the president is elected directly by the popular vote will be suitable for Turkey can be evaluated by looking to our political experiences. We may easily understand that presidentialism is completely at variance with the historical development of our constitutional system. Our system of government began as an assembly government, based on the unity or concentration of the legislative and the executive powers, ending in the 1982 Constitution as a parliamentary system. Our constitutional traditions and conventions, for that reason, require a harmony between the President of the Republic and the legislature. We are used to live under the principle of the supremacy of parliament.

For Turkey, the inappropriateness of a popularly elected president has very important reasons: First of all, in the Ottoman Empire individuals lived in a society in which the Sultan had absolute powers with no tradition concerning the limitation of political power. It is not very difficult to predict what will happen if the president is

¹⁶Linz, *op. cit.*, p.56.

¹⁷Lijphart, *op. cit.*, p.81.

¹⁸Verney, *op. cit.*, p. 18-23; 42-43.

elected popularly and represents the same majority in the legislature. In this situation the security and fundamental rights of the individuals will be in jeopardy. And if the president lacks a parliamentary majority the conflict between the legislature and the executive will be very grave because of the absence of tradition of compromise and conciliation; this, too, would be inimical to democracy¹⁹. Our traditions cannot accept the uncompromising conflict or the complete integration of the president and the legislature²⁰. Turkish society wants an impartial person to fill the office of presidency.

For the above mentioned reasons, I think we must not introduce presidentialism which is completely foreign to us. This does not mean that we have not to modify the 1982 Constitution. However, before amending the Constitution it is important to remember that the 1970s were marked by severe political, social, and economic crises, and that it was the period of coalitions. It is this correlation which annoys us. The 1982 Constitution is a reaction to the instability and has some very important provisions regarding a stabilization process. For example, ministers can be dismissed by the President of the Republic on the proposal of the Prime Minister. This provision grants important power to the Prime Minister, especially in coalition governments. According to Article 112, the Prime Minister is the chairman of the Council of Ministers, and the members of the Council of Ministers are jointly responsible for the implementation of the government's policy. This was the same in the 1961 Constitution; but in addition, now each minister is also responsible to the Prime Minister. In this way, the Prime Minister's primacy is emphasized in the Constitution²¹. The vote of confidence following the formation of the Council of ministers does not require more than an ordinary majority, but a vote of censure (either at the end of interpellation debates or as a result of a request of confidence by the Prime Minister) requires an absolute majority. In the vote of confidence following the interpellation debates only negative votes are counted. All these provisions aimed at strengthening the position of the cabinet.

A much more important novelty of the 1982 Constitution, designed to solve governmental instability, concerns the power of dissolution. According to the 1961 Constitution, the power to call new elections was only in the hands of the Prime Minister under conditions very difficult to realize: The Prime Minister could not request from the President of the Republic to call new elections, unless the Council of Ministers had been unseated twice by a vote of no-confidence within a period of 18 months and, after that, if the Council of Ministers was subject to a vote of no confidence for a third time (Art.108). From that it can be understood that the Prime Minister's right to dissolve

¹⁹*Gerekçeli Anayasa Önerisi*, p.211-212.

²⁰Most Turks think that the President should not intervene in governmental affairs. The public opinion poll conducted by the Daily News shows clearly that the people do not approve of the intervention of the President. Most of them are of the opinion that, if success or failure belongs to the government, the power should belong to the government as well. See:*Turkish Daily News*, January 13,1992.

²¹In the Federal Republic of Germany the chancellor is solely responsible for the selection and removal of cabinet ministers. Cabinet ministers are accountable to the chancellor. For the Federal Republic of Germany: "A System of Chancellor Government," *Cabinets in Western Europe*, Jean Blondel and Ferdinand Müller-Rommel (eds.) (London : Macmillan, 1988), p. 151-166; Kurt Sontheimer, "The Federal Republic of Germany (1949):Restoring the Rechtsstaat," *Constitutions in Democratic Politics*, Vernon Bogdanor (Ed.) (Aldershot: Gower, 1988), p.229-240.

the Parliament was practically ineffective and was never used in the period of the 1961 Constitution²². The Constitution of 1982 empowers the President to call new elections under two sets of circumstances:(1) in cases where the council of Ministers fails to receive a vote of confidence or is compelled to resign by a vote of no-confidence, and if a new Council of Ministers cannot be formed within forty-five days or the new Council of Ministers fails to receive a vote of confidence; (2) if a new Council of Ministers cannot be formed within forty-five days after the resignation of the Prime Minister without having been defeated by a vote of confidence, or within forty-five days of the elections for the Bureau of the Speaker of a newly elected Assembly. In either case, the President, after consultation with the Speaker of the Assembly, may call new elections (Art. 116). The power thus granted to the President aims at the protection of the government from being at the mercy of the Assembly, and to ensure governmental stability.

All those above explained provisions are intended to rationalize the parliamentary system in Turkey. They may be very helpful in multi-party situations; for that reason we have to preserve them. If the Constitution is modified one more measure may be added. We know that usually cabinets are brought down by negative majorities in the parliament. In order to oppose the effect of this source of cabinet instability, a "constructive vote of no-confidence," e.g. of the Federal Republic of Germany, can be added. In Germany, Article 67 of the Basic Law provides that no chancellor may be removed unless a majority is able to name a successor²³. A similar arrangement is included in the new democratic Constitution of Spain, which was adopted in 1978. Also in Spain, in order to be passed, the motion of no-confidence has to obtain an absolute majority in the House and the name of an alternative candidate for the Prime Minister must be adopted²⁴. The procedure allows minority governments to survive, because it is almost impossible for the parliament to defeat the cabinet.

The main difficulty or disadvantage that might cause trouble concerns the role and status of the President of the Republic. To ensure the effective functioning of the executive, the 1982 Constitution relies heavily on the powers of the President, which has been a ceremonial office before. According to the Constitution, the President "shall ensure the implementation of the Constitution, and the regular and harmonic functioning of the organs of the State" (Art. 104). As Bülent Tanör pointed out, the provision may mean the President can be everywhere and can do everything²⁵.

²²For the debates on the renewal of the elections according to the 1961 Constitution see: Bedi N. Feyzioğlu, "Cumhurbaşkanının Meclisi Fesih Yetkisi," *Milliyet*, October 28, 1974; Mümtaz Soysal, "Seçime Yollamak," *Milliyet* December 3, 1974; Bahri Savcı, "Fesih Hakkına Başka Bir Bakış," *Cumhuriyet* December 7, 1974; Fazıl Sağlam, "Bunalım ve Bir Öneri," *Cumhuriyet*, March 1, 1975; Hikmet Sami Türk, "Parlementoyu Fesih Hakkı," *Milliyet*, March 15, 1975; Muammer Aksoy, *Muammer Aksoy'un Hükümet Bunalımlarının Anayasal Çözüm Yolları* (Ankara Türk Hukuk Kurumu Yayını, 1975).

²³Carl-Christoph Schweitzer, "Parliamentary Democracy: the Bundestag," *Politics and Government in the Federal Republic of Germany*, C.C. Schweitzer, D. Karsten, R. Spencer, R.T. Cole, D.P. Kommers, and A.J. Nicholls (eds) (Leamington, Spa: Berg, 1984), p. 25,41.

²⁴Antonio Bar, "Spain," *Cabinets in Western Europe*, Jean Blondel (ed.) (London: Macmillan, 1988), p. 111.

²⁵Bülent Tanör, *İki Anayasa:1961-1982* (İstanbul:Beta, 1986), p. 120. However, the Weimar conception of the Presidency was that of a "guardian of the Constitution, "which should not

In parliamentary systems presidents or monarchs cannot be held responsible, but all presidential decrees must be signed by the prime minister and the ministers concerned. And also according to our Constitution the President is not responsible for his actions connected with his official functions. No political responsibility means: the president cannot act alone. According to Article 105, all presidential decrees except those which the President is empowered to enact by himself, not requiring the signatures of the Prime Minister and the ministers concerned, must be signed by the Prime Minister and the ministers. Of course for those decrees only the Prime Minister and the ministers concerned are accountable²⁶. Because only the members of the Council of Ministers are jointly responsible and accountable to the Assembly.

After the elections held on October 20, the President refused to sign some governmental decrees. The Prime Minister has said that the President has the right to study these decrees, but that the government will not consult him before taking actions(s). The Council of Ministers announced that if the President continued to block decrees on appointments and other cabinet decisions, the government would "by-pass" him through various methods. The leader of the True Path Party and Prime Minister, Süleyman Demirel, said if the President blocks, the government would pass it as a law from parliament and he would be forced to approve it. He also added that he would change the system of appointments whereby state officials would be named through decrees to be signed by a minister and the Prime Minister, not requiring the signature of the President²⁷.

As Prime Minister Süleyman Demirel has conceded that whoever is asked to sign something, it is very normal for that person to take into consideration what he should sign. If that person has some reservations, then it is normal for him not to sign. So it would be a mistake to assume that every decree should automatically be signed by the President. However, a presidential office holder who has no responsibility towards the people does not have to approve any decree. Decrees must be signed by the Prime Minister and the minister concerned means that the executive function is exercised by the politically accountable component of the executive branch. Counter signature has its use in parliamentary systems as a last resort to prevent the head of state from acting unconstitutionally²⁸.

be confused with the same term as used in Turkey. In Turkey the President has no power to play the role of a "guardian of the constitution" in the sense of the Weimar Presidency. In the Weimar Republic the guardianship of the President was emerging from his dictatorial powers, which he could utilize in times of constitutional crises. See: Christian Rumpf, "The Military, the Presidency, and the Constitution," *State, Democracy and the Military: Turkey in the 1980s*, Metin Heper and Ahmet Evin (eds.) (Berlin: Walter de Gruyter, 1988), 231-232.

²⁶It is one of the fundamental rules of public law that authority and responsibility must go hand in hand. See: Ergun Özbudun, "The Status of the President of the Republic under the Turkish Constitution of 1982," *State, Democracy and the Military: Turkey in the 1980s*, Metin Heper and Ahmet Evin (eds.) (Berlin: Walter de Gruyter, 1988), p. 38.

²⁷Turkish newspapers (Hürriyet, Cumhuriyet, Sabah, and Turkish Daily News) published in December 1991 and January 1992.

²⁸Verney, op. cit., p. 30. After the elections, the President said that he would no longer interfere in the way the government was run. He said he did this in the past because he was

The problem that we face in Turkey can be solved by creating a constitutional convention. A convention can be defined simply as a "generally accepted political practice, usually with a record of successful applications or precedents"²⁹ In England almost every aspect of the cabinet government is regulated by constitutional conventions. Political leaders of Turkey have to accept as a convention that the prevailing political mood of the electorate should be given the fullest means of expression. So the President must not put obstacles in the way of the government, because the government expresses the current temper of the electorate. Or, in other words, if democracy is going to be maintained then the will of the majority must run the country.

However, the Constitution of 1982 differs from its predecessors in the scope of the presidential powers. The Constitution expanded these powers substantially. The Constitution contains a long list of such powers; but some of these powers are formal in the sense that the President may exercise them only upon the proposal of the cabinet. Some others foresee that the President may act independently without the participation of the Prime Minister and the ministers concerned. The powers of the President must be reduced to an acceptable level, as is the case in other parliamentary regimes. This would be the best way to solve the potential crises between the President and the cabinet. In parliamentary systems the sovereign must be neutral in political matters and above party battle. Impartiality of the presidency is the cardinal principle of parliamentarism³⁰.

As Horowitz has pointed out, the electoral system is an equally important element in a democratic constitutional design³¹. In Turkey, when the Motherland Party obtained a sixty-four percent majority in the Grand National Assembly with a thirty-six percent of the national vote, the electoral system, after that event, continually and constantly was argued about. This uneven distribution of parliamentary seats had two consequences: First it encouraged the executive to be negligent and careless in appealing to the legislative process in making laws. This situation was criticized as the habit of ruling the country with decrees and it was said that the government had taken over the duties and powers of parliament. The opposition parties said that they would change the relations in accordance with the principle of the separation of powers. Secondly, it deepened the tension between the governing and opposition parties. Following that, opposition parties called for early elections and invariably debated the legitimacy of the rule of party in

the founder of the Motherland Party, being in power at that time, and thus felt obliged to see in what way the country was being administered.

²⁹John P. Mackintosh, *The British Cabinet* (London: Stevens, 1977), p. 17.

³⁰Vernon Bogdanor, *Multi-party Politics and the Constitution* (London: Cambridge University Press, 1983), p. 87. Normally the President, in Turkey, is elected by the Assembly; but in case the Assembly should fail to elect a President according to the procedure and the time limit specified in Article 102, then the said Assembly will be dissolved. In that case, I think the neutrality of the President in party politics will then be in danger. See: Christian Rumpf, *op. cit.*, p. 230.

³¹Horowitz, *op. cit.*, p. 76-77.

government³². For that reason, we have to take into account of the nature of electoral systems while discussing the suitable form of government for Turkey.

The electoral system in Turkey is a modified version of d'Hondt proportional representation with two thresholds. One is the national threshold according to which political parties that obtain less than 10 percent of the valid votes cast nationally cannot be assigned any seats in the Assembly; other is the local threshold³³. In addition to these modifications, for contingency districts some deputies are elected by plurality elections. In short, we may safely say that the system penalizes minor parties.

The reason for the modified version of d'Hondt is the entertaining of doubts about coalitions. Because in our parliamentary history coalitions have always been a failure, this has led to a common belief that such form of government is not suited to the nation. Yet among the Turkish people, in general, there is also a widespread consensus about the legitimacy of government deriving from a popular mandate; this mandate should get at least more than forty percent of the national vote.

We know that proportional representation is able to grant greater proportionality and minority representation; on the contrary, plurality promotes two-party systems and one-party executives. The defenders of proportional representation attach more importance to the *representativeness of government*, whereas pluralists support the view of the *capacity to govern* as the more vital consideration³⁴. Since these two values taken together are important, we have to find an electoral system that is able to combine them. Although it is very difficult to write any prescription on this subject, we may say that extreme proportional representation is not very suitable, but moderate proportional representation, limiting the influence of minor parties through such means as applying proportional representation in small districts and requiring parties to receive a minimum percentage of the vote in order to gain representation is more appropriate for Turkey. We must learn a lesson from the history of weak and unstable coalitions in the 1960s and 1970s. Stable and effective governments will certainly ease the consolidation of democracy in Turkey.

In spite of a modified d'Hondt system with two thresholds, the elections of October 20 have denied a parliamentary majority to any party, and thus we are again in the era of coalition governments. In coalition governments, reaching a decision is often a difficult

³²Ersin Kalaycıoğlu, "The Grand National Assembly of the Post 1983 Multi-Party Era, *Perspectives on Democracy in Turkey* (Ankara: Turkish Political Science Association, 1988), p. 163.

³³The district threshold became 25 percent, except for those districts with five seats, one being the contingency candidate, where it will be 20 percent of the valid votes cast in that district. Law No. 3757. *Resmi Gazete*, August 26, 1991.

³⁴Lijphart, op.cit., p. 76. The political parties in Israel receive seats in the country's parliament, the Knesset, in direct proportion to the number of votes cast for them in nationwide elections. The result is chronic political paralysis. No single party in the country's history has ever got a majority of the Knesset's 120 seats. Recently, however, the Knesset passed a modest reform package. From now on, a party will need to win at least 1.5 percent of the national vote to be seated in the Knesset. And it will take at least two members to form a breakaway party. No one expects the changes to eliminate the political crises in the country. See: *Newsweek*, January 27, 1992, p. 13.

task. Any government decision should be a product of consensus, at least, between the partners of the coalition. In order to be successful the coalition must be based on coexistence and cohabitation of different people, ideologies, and approaches. However, this togetherness should also be based on a common denominator.

The crisis of democracy in Turkey in the late 1970s was due to, at least in some measure, to fragmentation of the party system and to the resulting fact that parliamentary balance was held by small anti-system parties³⁵. Turkey needs a united government that can act steadily and comprehensively on the macroeconomic problems. In foreign policy the need is more imperative. For all these reasons, an electoral system that would weaken the capacity to govern should be opposed. Turkey needs strong and stable governments based on popular support. Of course, governments should work in the frame of a constitutional democracy, but it should be created by a living catalogue of human rights, not by the weakening of governments.

CONCLUSION

Transitions to democracy, after breakdowns, may provide opportunities for working out functioning compromises among political elite groups. Unfortunately Turkey missed two such opportunities, after the 1960 and the 1980 military coups. The degree to which political elites will put a higher value on compromise and accommodation will be very important in determining the chances of democratic consolidation³⁶. There now seems to be greater awareness among political elites of a sharing in their destinies and common interests. If the newly elected Assembly could create a new democratic constitution based on the consensus of the politicians, then maybe we will not have to discuss constitutional issues and problems in the future³⁷.

The fundamental choice between parliamentary system and presidential forms of government is not the only institutional choice that the makers of a new constitution are faced with. The important decisions concerning institutional arrangements that the drafters face are the difference between unicameralism and bicameralism, the degree of government centralization, rules for constitutional amendment, and judicial review of the constitutionality of laws.

³⁵Ergun Özbudun, "Development and Consolidation of Democracy in Turkey," *Turkey in the Year 2000* (Ankara: Turkish Political Science Association, 1989), p. 16.

³⁶Özbudun, *ibid.*, p. 21.

³⁷I think there are hopeful signs for Turkey. For example, although the True Path Party is conservative and the Social Democrat Populist Party has social-democratic features, they could form a coalition government very quickly after the October elections. In the discussions on the coalition program, great importance was attached to expressing different views, and debates maintained at a certain level in the Assembly. Juan Linz says: "Oversimplifying somewhat, we can say that a regime's unsolvable problems are often the work of its elites." Juan Linz, "Crisis, Breakdown, and Reequilibration," *The Breakdown of Democratic Regimes*, Juan Linz and Alfred Stephan (eds.) (Baltimore: The John Hopkins University Press, 1978), p. 51. Perhaps Turkey will be able to repair her bad image which started on September 12, 1980, and has reached a crisis point later. Now European political circles feel hope and enthusiasm for the first time. If politicians make good use of this historic opportunity and further the criteria which contemporary societies apply, Turkey will gain a lot.

To sum up, we may say that a parliamentary plus moderate proportional representation form of democracy is certainly of greater value than the other alternatives for Turkey. Parliamentary government grants different districts more access to the political decision-making process than they would in presidential systems. This arrangement binds different districts to the polity. Under a presidential government, those opposed to the president and his party may feel alienated for the reason that in presidential systems authority and responsibility are entrusted to a single person. It is mainly for this reason that the presidential type of government is inherently unstable.

Nevertheless, sometimes, as in the Weimar Republic, the Third and the Fourth French Republic or Turkey in the 1970s, if no party has a majority, cabinets may be weak and unstable. In this situation the need to call new elections is the only solution to the problem. In order to solve the cabinet crisis, the elections must produce a workable government, either by a majority or by a coalition. Extreme proportional representation is not very suitable in creating stable cabinets.

To combine the parliamentary system with the presidential system may not lead to satisfactory consequences. For example, the Weimar Republic was a parliamentary democracy in general design, because the federal cabinet ministers were to resign if they lost the confidence of the Reichstag. Nevertheless, the office of the Reichpresident was structured in a way to permit him to be a strong figure in the polity. One of the main characteristics of the Republic's subsequent constitutional evolution was the tension between the Weimar's parliamentary design and the expansion of presidential power. The independence of the Reichpresident was promoted by the manner of his appointment. The President was elected directly by the people, and the Constitution provided that he appointed the Chancellor; through the ability to nominate and dismiss he determined the selection of the Chancellor's cabinet. The Constitution also gave the President the power to dissolve the Reichstag. By these provisions the Weimar's parliamentary democracy was transformed into a presidential government. In short, we may say that the Weimar Constitution reflected an uneasy compromise between parliamentary and presidential government³⁸. In Turkey we must be careful not to combine parliamentarism with presidentialism, because it will inevitably lead to tensions and difficulties.

The above mentioned factors are not all which can be said concerning the problem. Institutional factors are not the only and the most important ones having to be considered in creating a stable democracy. The effect of economic, historical, and cultural factors on democracy are more important than the institutional ones. As Lipset has pointed out it is difficult, if not impossible, to change culture. In other words, historical legacies do not disappear overnight. Socioeconomic development cannot be achieved easily and quickly. Nevertheless, it is much easier to modify political institutions³⁹. The choice between parliamentarism and presidentialism is only one factor that may help to build a stable and healthy democracy. The resulting conclusion might be formulated as follows: A certain

³⁸John E. Finn, *Constitutions in Crisis: Political Violence and the Rule of Law* (New York: Oxford University Press, 1991), p. 142.

³⁹Seymour Martin Lipset, "The Centrality of Political Culture," *Journal of Democracy* 1 (Fall 1990), p. 83.

type of parliamentary system with moderate proportional representation is most likely to be helpful in solving the important and difficult problems of Turkey.

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