

Turkey's Proposed Presidential System: An Assessment of Context and Criticisms

AHMET İYİMAYA*

ABSTRACT Debates over presidential, semi-presidential and parliamentary government systems have continued unabated in Turkey for almost 50 years. However, the future of Turkey's system of government no longer constitutes a ground for theoretical argument, but, rather, is a political reality shaping the agenda of the country. This commentary proposes a historical examination of the debates and also aims to present a clear perspective on the nature of the present ground of debate over the presidential system.

Introduction

In recent years, Turkey has discussed the issue of its system of government at both intellectual and political levels. Debates over presidential, semi-presidential and parliamentary government systems have continued unabated in Turkey for almost 50 years; however, the future of Turkey's system of government no longer constitutes a ground for theoretical argument, but, rather, is a political reality shaping the agenda of the country, especially in the wake of the election of the president by the public on August 10, 2014. Consequently, a substantial amount of literature has accumulated about

which system of government is better for Turkey, in general, and about the merits or drawbacks of presidential system specifically.

Conversely to the ongoing debates and analyses about the structural properties of various government systems, and their pluses and minuses, this analysis will evaluate the current transformation already under way in Turkey. The actual socio-political process in which the presidential system is discussed, and within which these discussions are framed, provides a logical basis from which to pass judgements on prospective changes to Turkey's political system. Hence, the following analysis pro-

* Member of Parliament, Turkey

Insight Turkey
Vol. 18 / No. 4 /
2016, pp. 29-40



President Erdoğan delivers his speech in a symposium about the presidential system organized by SETA Foundation, on May 25, 2015.

AA PHOTO / KAYHAN ÖZER

poses a historical examination of the debates and practices relevant to any such discussion. The analysis also aims to present a clear perspective on the nature of the present ground of debate over the presidential system.

Unearthing the Process

In order to better understand the current ground of the issue, it is critical to briefly touch upon the systems of government, or the system practices, in Turkey through the lens of perceptions of and debates on the system. In this sense, the analysis concentrates on observations based on data, not on the course of the process, or rather, not on the tomography of the issue, so to speak. Of course, one cannot say that observations are not open to discussion, or that more observations are impossible. The obser-

vations made and the results based on them can be discussed under the following headings:

The Two-Constitution Reality and the De Facto Presidential System

Until recently, Turkey has had two constitutions simultaneously in effect: One is the official thread, written, yet not applied in difficult times, the other is the *de facto* version, applied during tough times. It may not be totally wrong to evaluate the period of 1920-1950 as a *de facto* presidential system, if we regard the presidential system as “a type of structure in which the president has the executive power.” The 1921 Constitution envisaged the conventional system of government (*le système conventionnel*) and the 1924 Constitution proposed the parliamentary system. That, however, could not prevent the presidents of both periods from exer-

cising super presidential authority. It may be said that the “presidential system” was practiced in a period even when the parliamentary system was the law.

De facto presidentialism was the case as well during Turkey’s post-coup periods and near transition out of them. For instance, on legal ground the parliamentary system was in effect for about three years after the September 11, 1980 military *coup d’état*, but in practice the president pretty much held all the executive power. The problem with these historical practices is not solely that they differed from the written law, but the fact that such practices lacked the most critical foundation of a democratic system, that is, electoral legitimacy.

The Prevention of Maturation of Existing Systems of Government by the Tutelage Regime

The tutelage regime has existed to a certain extent throughout Turkey’s history, reaching a peak of influence during coup periods, and laid waste to Turkey’s entire system of government and constitution. In this regard, it would not be inaccurate to claim that the 1961 and the 1982 Constitutions in Turkey included transitional exit and tutelary terms. The history of the tutelage regimes is written on the axes of institutions and processes, and the analyses of these regimes will be educational and dissuasive for Turkey.

Coups and military memoranda corrupt and rot all democratic structures. Coups and the order of tute-

The tutelage regime has existed to a certain extent throughout Turkey’s history, reaching a peak of influence during coup periods, and laid waste to Turkey’s entire system of government and constitution

lage first of all distract the military away from its legitimate purpose and mission, and corruption in other institutions follows. In this sense, the spoiling effect of tutelage may be observed in the underachievements and performance weaknesses of Turkey’s democracy, its systems of government and political institutions. Certainly, systems of government and tutelage regimes thrive at each other’s expense.

The Constitution Reform of 2010 significantly downgraded the tutelage regime and laid a rational ground for democratic systems of government to be preferred. Attendantly, recent legal changes (e.g. removing the legal foundations of the military’s influence over politics, electing the president by popular vote, etc.) eliminated the tutelary structures which had set the most important obstacles in the way of the proper functioning of Turkey’s democratic system following the transition to democracy; therefore, the possibility of practicing a presidential system extra-democratically was removed.

The perception that Turkey has a system of parliamentary government does not comply with the reality. The fact of the matter in Turkey is that no system of government stands a chance of being practiced in Turkey in its simplest/purest form despite constitutional constructs

The Existence of an Intellectual Reaction to the Presidential System of Government

There is an intellectual reaction against a presidential system in Turkey. This reaction has been nurtured by the practice of the *de facto* presidential system and the deeply rooted imperial tradition (sultanate). It may also be said that prejudices related to lack of knowledge about the presidential system, and the opposition bloc that formed against the elements of the political arena that favor a presidential system, have also contributed to the same reaction.

Despite the abovementioned intellectual reaction, the State tradition in Turkey's history has been shaped by strong executive power. This historical and anthropological datum was particularly avoided in the parliamentary system adopted in the 1961 Constitution, an avoidance, which eventually necessitated constitutional amendments to strength-

en the executive branch through amendments in 1971 and 1973. Subsequent amendments, and even the 1982 Constitution, strengthened the executive branch, a development that may be considered a semi-voluntary expedition towards a presidential government model. Great transformations, now and then, may take a long time.

Recent debates and assessments over the presidential system – the July 15 failed occupation attempt in particular – have changed the erstwhile intellectual reaction in favor of the presidential system. Social psychology mostly subscribes to a presidential system at present.

Social Indifference toward Systems of Government

The debate over systems of government, including presidential systems, has not yet started at the societal level despite being long on the agenda of the country. Despite lively intellectual debate, there is no social interest, opinion and demand for a debate on systems of government as of yet.

In this context, the most critical question that begs an answer is: “Does the fact that channels of social contemplation are preoccupied more with the conjuncture – security dominated atmosphere in the country – play a role in this lack of interest, opinion, and demand?” It may be predicted that if the presidential system becomes the norm, it will initiate a strong demand for information by society. Recent developments such as the coup attempt and terrorist attacks

in Turkey have also transformed public apathy towards the presidential system, and interest in the subject among large segments of society has begun to increase as well.

Some CHP Supporters Demanded a Presidential System Erstwhile

Predominantly, ruling powers open and dominate the discussion on systems of government mostly because stability and effective service are issues of rulership. However, opposition parties do not feel the same acute need for stability and effective service, so they, in general, incline to resist a presidential system. The reason for the main opposition Republican People's Party's (CHP) objection to a presidential system is closely related to such a structural attitude.

The CHP has never come to power – except in coalition governments – since Turkey's transition to a multi-party democracy. In other words, the CHP has not experienced any problems of rulership; therefore, it has not had sufficient experience to talk about a need for a presidential or similar system. Accordingly, we may presume that if the CHP were to have remained in power for a long time, it – like other political parties – could have demanded a presidential system, or a similar system of government in the face of the stability problems Turkey has suffered. We have data in hand to even partially support this presumption. For instance, upon the fall of the CHP-MSP coalition government in the 1970s, some CHP members demanded a transition to a presidential system. In the face of intense reac-

tions, however, their demands could not transform into a decision of the party.

All Systems of Government Are Democratic

In democratic countries, simple or hybrid, all systems of government – including the presidential system – are definitely intra-democratic structures. The presidential system was originally initiated to prevent British despotism in particular and render untouchable the sphere of fundamental rights by means of hard separation of powers. Ergo, arguing that a presidential system does not comply with democracy, and that it will pave the way for a regime problem are mere exaggerations.

The success, i.e. performance power, of a preferred system depends not only on the system but also on other variables, which are, in turn transformable by the system itself; and that is almost a scientific law.

The Existence of a Strong (yet Questionable) Perception that the Current Government Model in Effect in Our Country Is that of a Parliamentary System

Parliament is a *sine quo non* for all government models all around the world. Notwithstanding, the existence of a parliament is not a sufficient condition to define a government model as “a parliamentary system.” The perception that Turkey has a system of parliamentary government does not comply with the reality. The fact of the matter in Turkey is that no system of government stands

Turkey's history of democracy and politics will note down the September 12, 2010 reform as the birthday of the country's freedom from tutelage. The reform for electing the president by popular vote must be valued as the most critical step that complemented this historic development

a chance of being practiced in Turkey in its simplest/purest form despite constitutional constructs.

The dominant model in Turkey has been one of “ideocracy and bureaucratic tutelage.” Periods of coups and military memoranda, in particular, let alone the current government system, have poisoned Turkey's democracy itself. Such strict dominance on the part of the military has transformed Turkey's parliament and government into a remotely controlled secondary mechanism until the AK Party's recent reforms regarding civil-military relations. No controlled system can create its own traditions, and all fail to complete institutionalization. This narrative does not deny the *acquis communautaire* generated despite tutelages, but emphasizes the degree of how sound this *acquis* is. For instance, one must not forget that the original model of our current

Constitution was also qualified as “a semi-presidential system” during the founding debates.

Today is the perfect time in Turkey to discuss potential systems of government, as tutelage has evaporated in all its explicit and implicit ways. Turkey's history of democracy and politics will note down the September 12, 2010 reform as the birthday of the country's freedom from tutelage. The reform for electing the president by popular vote must be valued as the most critical step that complemented this historic development.

The Election of President Directly by the Public – Irrespective of the Preferred System – Is a Requisite of Turkish Democracy

The history of presidency in Turkey is one of intensive tutelage. Presidential election periods – irrespective of the system of government currently in effect – have been periods of full bureaucracy and quarter-democracy. The tutelary network regarded the Presidency as a position/status that must be held by one of their own, so they built their strategies to that end. Among their more unsavory tactics were: Holding a gun to a presidential candidate's mouth, encircling the Parliament with tanks, post-modern scenarios forcing their interpretation of the Constitution by coercing the Constitutional Court to legislate the required quorum in the Parliament to start the process of electing the President in Parliament. The only mechanism tutelage cannot easily penetrate is the public's ballot box. Irrespective of the system of gov-



The Constitutional Commission of the Turkish Parliament convenes to discuss the draft of the constitutional amendment, on December 20, 2016.

AA PHOTO /
ABDÜLHAMİD HOŞBAŞ

ernment, then, the election of President directly by the People of Turkey must be taken as a constitutional cornerstone.¹

In the face of Turkey's reality, and the lessons of its history, the intentions to take away the People's right to elect the President by leaning on the argument that "the requirement of a pure parliamentary system is something else" is a kind of democratic myopia. Popular election of the president may be seen in parliamentary systems as well. Besides, rational thought does not need a precedent; it may itself set a precedent.

Continuation of Party Membership of Heads of States or Presidents

Neither empirical nor theoretical data endorse a principle of incompatibility according to which heads of state or Presidents cannot be political party members. Only the last

two Turkish Constitutions (The 1961 Constitution, Article 95 and the 1982 Constitution, Article 101) state that "If the President-elect is a member of a party, his/her relationship with his/her party shall be severed." In fact, Turkey's tradition of constitution was based on a judgement that allowed the President to be a member, even the chairman, of a political party. Furthermore, the Turkish Presidency was able to be member of the parliament simultaneously (the period of the 1924 Constitution; examples of Mustafa Kemal Atatürk, the founder of the Republic of Turkey, and İsmet İnönü, the 2nd President of the Republic of Turkey). The Democratic Party (DP), historically, followed the opposition stance that the president should not be a party chairman; therefore, Celal Bayar, the 3rd President of the Republic of Turkey, resigned from party chairmanship, yet remained a DP member.

In the aftermath of the July 15 failed coup attempt, both the AK Party and the MHP joined efforts to produce a draft of partial amendments to the Constitution. Their efforts will bring a reasonable and permanent solution to the issue of the system of government in Turkey

The Constitutional maxim on the incongruity of party membership with the Presidency is viewed as a product of social engineering performed by constituent assemblies of coups. Such a structure stemmed from a construct of the tutelage regime, and a lack of faith in people and democracy.

In systems of government in which Heads of State and Presidents are elected by the people, they are naturally party members and party leaders. In order to appear before the public eye on behalf of the State, fulfill election promises, undertake election organizations, and authorize substantial expenditures, an organized “party” structure is necessary. Parliamentary systems with a president, semi-presidential systems, and presidential systems operate via this practice and rationale. No data exists to suggest that party membership of a president is not compatible with a parliamentary system. Such a claim of incompatibility cannot be justified

by the principle of “neutrality.” The impartiality is a matter of personality and culture. A technology to wipe out ties of affection, so to speak, has not been discovered yet.

The Turkish government system in effect – regardless of its nature – is based on the election of the President by popular vote. In this frame, President’s being a party member or a party leader is natural.

The Meaning of the Presidential System Initiative Introduced by the MHP and Opportunities Presented

Turkey averted an ontological danger, which could have ended with the occupation of the country, on the night of the July 15, 2016. The failed coup attempt on that night, nurtured by the system’s negligence and chain of tolerances, was repelled by the acumen of many on the front lines, the political leadership of President Recep Tayyip Erdoğan, and the patriotism of vast segments of Turkish society.

The Nationalist Action Party (MHP), accurately reading the most recent developments, introduced an initiative to put the constitutionalization of the Presidential System to a national referendum vote. In the aftermath of the July 15 failed coup, both the AK Party and the MHP joined efforts to produce a draft of partial amendments to the Constitution. Their efforts will bring a reasonable and permanent solution to the is-

sue of the system of government in Turkey.

In the current climate, the two parties have agreed on putting the draft to popular vote if the resolution is approved by Turkey's Grand National Assembly (TBMM). The opposition's criticisms of and contributions to the draft will help bring a healthier design to the political system in Turkey. Members of the Parliamentary Constitutional Commission and the General Assembly are thus faced with a powerful opportunity. The question of "What kind of a presidential system would be best for Turkey?" will be aired; earlier suggestions will be assessed and in-depth discussions will be held over the relevant, prospective motions in the Grand Assembly.

A Close Look at Some Criticisms Directed to the Model of Presidency Proposed by the AK Party

The Justice and Development Party (AK Party) has opted for a presidential system accompanied by hard separation of powers, based on the lessons learned from Turkey's chronic problems in the context of stability and effectiveness. The AK Party is fully cognizant of the virtues, advantages and risks involved in this choice. The ruling party has an understanding of resisting the risks itself and sharing the benefits with the People. It is beyond the AK Party's power to put this system into force alone, however, and our Glorious Nation has the final say.

Let us assess some solid criticisms about the model we have suggested² and will suggest:

Our General Approach to Criticisms

We have worked diligently and expended great intellectual effort on the model we are proposing. Of course, we do not claim to be perfect. To the contrary, the intensity, scope, and variety of criticisms being brought to bear on the model will help us bring the proposal to maturity. As political scientists put it, "off-path" solutions (dialogical solutions during the process) obviously harbor more difficulties than "on-path" solutions (top-down solutions). In this respect, we take criticism, and the period of criticism, as part of a constructive, solution-finding dynamic.

The Criticism that the Presidential Model Proposed Has No Similarity with Other Examples in the World

This criticism is being voiced by our very distinguished constitution experts; and in fact, it exposes a social and intellectual malady of ours. Does Turkey always have to seek precedents? Can Turkey not be an example? Can Turkey not generate precedents? The malady underlying the criticism involves our understanding of the West as superior to Turkey (a kind of inferiority complex); therefore, the criticism is problematic. Whether such criticism is on target depends on the quality of contents in our proposal. Furthermore, although not identical to it, the presidential model we propose may be rationalized on the basis of the American experience.

The Criticism that President Is Granted the Power to Annul the Parliament

In the American prototype, the President does not have the power to annul Congress. There is no mechanism to resolve inaction and stubbornness in case of a gridlock. When the out-going President of the United States Barack Obama was elected for his second term, he underlined, in his inauguration speech, the necessity for reform in the system on the matter.

A mechanism to end a state of inaction and a system crisis is built into our system as a check-and-balance at the source. That is, if the President exercises the power to annul the Parliament, not only the Parliament but also his/her Presidency will also be annulled automatically. This model, which we may call “mutual termination” or “defunct-effective annulment,” is the first ever and an authentic feature for a presidential system. Both powers will prefer to resolve the crisis (inaction) rather than to risk annulment and go to simultaneous early elections. Still, the necessity to seek mutual-annulment implies not the annihilation of a system but a recourse to “public arbitration” which exists for most democratic systems. In fact, similar approaches have been proposed by prominent Constitution Engineers.³

The Criticism of Simultaneous Elections

One of the biggest dilemmas of the presidential system is the possibility that the majority of people that elect the president (or the party of the president) and the party or parties forming the majority in the Par-

liament may be of different political platforms. The presidential system’s characteristics of converting multipolarity into dipolarity and resulting in a two-party system are well known. Instead of a two-party system that cannot be achieved by the Constitution Engineers in Turkey, we witness the construction of a dominant party model by the people of Turkey on the axis of the great performance shown by the AK Party. If a two or, as the late President Turgut Özal put it, two-and-a-half party model democracy is desired in Turkey – which is what I prefer – the presidential system is an inevitable alternative before us.

However, the representation of adverse majorities by the President and Parliament is regarded as a forewarning sign of the ups and downs of an incipient crisis period. Simultaneous elections of the President and the Parliament will eliminate problems stemming from adverse majorities. Besides, a two-party structure will lead to a power change with regard to party or platform within three terms at the latest, and that will provide a great deal of impetus for the consolidation of Turkey’s democracy. The objection that similar tendencies will simultaneously consolidate the hold of ruling power is a way of thinking that is ignorable in the presence of open democratic systems and periodic elections. The sustainability of a mindset that will prefer a power fetishism (authoritarianism) rather than political stability and service effectiveness is unimaginable. Indeed, Sartori, proposes simultaneous elections as a “remedy” to such contingencies.⁴

Criticisms about the Institution of Executive Order

The President's power of "executive order" is a limited and exceptional authority, but is essential for the president to be able to execute his duties, and deliver his/her service to the people and the country. According to the AK Party's proposal, the President cannot issue an executive order about issues for which legislation already exists. In other words, for the issuance of a presidential decree, the existence of a genuine or deliberate gap in the law is imperative, and the need to regulate must exist when there exists no relevant law. On the other hand, the legislative body always has the authority to pass a law to void any presidential order or decree. Any conflict between the law and the decree will be resolved by giving precedence to the law. Furthermore, the President cannot issue executive orders in areas relating to fundamental rights and freedoms and political freedoms; these are under the jurisprudence of the legislative body. Moreover, decrees are subject to a review of norms, i.e. a constitutional judicial review. It may therefore be said that the criticisms are baseless considering the essence and the purpose of presidential decrees.

Conclusions

First of all, the history of modern Turkey is, in a way, a history of tutelage. The tutelary system has prevented the development of both the political system in general and democracy in particular. It has also curbed the development, and rationalization of

A new Constitution is imperative in terms of social demand and democratic standards. Partial constitutional amendments on the presidential system and its reverberations will not suffice

Turkey's system of government, rendering it a sub-system of the tutelage regime. The constitution reforms carried into effect in 2007 and 2010 minimized the tutelage regime; therefore, the democratic process has returned to normal functioning since then.

Second, the presidential model proposed by the AK Party is a rationalized and developed model, which has taken into account the shortfalls of the American prototype. Third, irrespective of the type and characteristic of the commonly accepted system, the election of the President "by popular vote" is not a requirement of the system but of the regime, given our historical circumstances.

Fourth, under the proposal at hand, the Head of State or President may maintain his/her membership in a political party, in accordance with the practiced norm in the world. The continuation of the president's party membership is natural in all systems of government that elect the president by popular vote. The requirement of resignation from party membership,

as adopted in the last two Constitutions in Turkey, may be abandoned. If the election of the president by the public remains in force, the continuation of party membership (or at least not banning the President from party membership) is, *a fortiori*, required.

Fifth, a new Constitution is imperative in terms of social demand and democratic standards. Partial constitutional amendments on the presidential system and its reverberations will not suffice. Without a doubt, the transition to a Presidential System is a reform that will trigger other transitions and help our journey of civilization gain momentum. What really matters is to accomplish the transition to a democratic constitution from a flawed, anti-democratic constitution designed by a coup-regime. The political establishments have failed to pay their debt to the history and the nation. The reality of not having a brand new constitution, or having a flawed/shameful one, is no longer sustainable, and must not be sustained. ■

Endnotes

1. See: The Constitution of the Republic of Turkey, Article 101/1.
2. For the draft of the Presidential System Model we presented, on behalf of AK Party, to the Interparties Constitutional Reconciliation Commission in 2011, see: https://anayasa.tbmm.gov.tr/calismalara_iliskin_belgeler.aspx.
3. Georges Vedel says exactly the following: Lastly but most importantly, the danger of gridlock in the system must be reduced, even its elimination (must be considered). In reality, the compatibility that is a must between the President and the Congress is accomplished via endless unofficial dialogues and compromises between the two bodies behind doors in the hallways of the powers. However, especially in a young democ-

racy, the adverseness between the legislative and executive bodies can possibly harden to lead to a deadlock because of the inability of the President to annul the Congress, and the inability of the Congress to annul the President and remove the cabinet members. In order to avoid this situation, the rule can be established which would enable the President to annul the Congress under the condition that both the Congressional and Presidential elections be renewed simultaneously and enable the Congress to annul the Presidency under the condition to renew simultaneously both the Congressional and Presidential elections.

This solution has two advantages: The first is that the People will be the arbitrator in case of an unresolvable incompatibility between the two bodies. But, this view is quite theoretical in reality. The real wisdom of the approach is its dissuasive effect on the opposing sides. Either one of the bodies will hesitate to risk its own existence and prefer to reach a compromise on differences that divide them. This, in a way, will be a kind of (political) terror balancing act. See: Georges Vedel, "Temel Hukuki Seçenekler, BDT Ülkelerinde Demokrasiye Geçiş ve Anayasa Yapımı" Joint Conference Organized by the European Commission for Democracy through Law (Venice Commission) and the Turkish Democracy Foundation, Translated into Turkish by Ergun Özbudun and Levent Köker, (Ankara: 1993), p. 101.

4. The conclusive statements by Sartori in *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, dedicates a special section to the matter: In conclusion, let me return to the following question: Under what conditions does a Presidential System function best? My answer is that a two-party system is more functional than a multi-party system and as ideological differences shrink, the following conditions will facilitate a bi-polar simplification if not a bi-partisan one: i) central position of presidency, that is, effectiveness of the President's power; ii) existence of parties as major competitors for presidency; iii) simple majority to win the presidency (two-round election); iv) simultaneous elections for Parliament and President. What happens if all these cannot be realized? Then, a hopeless presidential system must seriously consider a change either for a semi-presidential system or for an intermittent presidential system. See: Giovanni Sartori, *Karşılaştırmalı Anayasa Mühendisliği: Yapılar, Özendiriciler ve Sonuçlar Üzerine Bir İnceleme – Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, Translated into Turkish by Ergun Özbudun, (Ankara: 1997), pp. 231-232.