

The Kurdish Quest for Self-determination: Looking to Individual Experiences to Administer Differences

by

Azer Ebru Mutlu

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Graduate Department of the Faculty of Law
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Abstract

The issue of Kurdish self-determination within the highly centralized Republic of Turkey has been a controversial issue with its local, national and international dimensions over the years. Without solving this issue, Turkey might not reach the aims of joining the European Union (EU), economic sustainability, literal democracy, pluralism, and peace. After 40 years armed struggle between Kurdish and Turkish sides, two significant suggestions are currently being discussed: a provincial system similar to what the Ottoman Empire accepted with its own multicultural system; second, the current unitary system with more powerful local authorities. This paper analyzes the problem in an inductive method and takes the second approach to evaluate Turkish centralization, modernization, and transformation to French Republicanism. This evaluation concludes with the critique of the French universal citizenship understanding and requirement of more pluralistic, democratic citizenship and administrative model as a solution of minority rights and self-determination problem in Turkey.

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Introduction

Minority rights, freedom, and self-determination are a controversial discussion in the world especially for the nation-states. “Even in stable Western countries, like the United Kingdom and Canada, such ethnic minorities as the Scottish, Welsh, and French-speaking Quebecois still pursue a dream of creating their own independence.”¹ Why minorities have been struggling for their rights is another issue to discuss; however, 21st centuries modern constitutions, administrative systems, and globalism started to adjust national states and their unitary administrative systems within the framework of minority rights and self-determination. The Kurdish quest for self-determination in Turkey is one such issue and the recognition and respect given for such quest might be a good step in solving the problem for Turkey and the rest of the world.

The highly centralized, unitary, and nation state - Turkey - adopted the French Republican system since the later years of the Ottoman Empire. With at least with 17 ethnic groups,² Turkey had several problems in the transformation into a republic and in attempting to respect minority rights. Essentially, the strict republican structuring has created three significant issues: interpretation of republican and unitary system, enforcement of secularism, and the Kurdish question for self-determination. Kurdish self-determination has been a controversial issue under modern Turkey since 1980 with its local, national and international dimensions, and it is at the center of the Turkish politics because of elevating ethnic segregation between dominant Turkish and particularly Kurdish identity. This ethnic problem has been the cause of a civil war between the Turkish government and PKK (Kurdish Workers Party); nearly 40.000 people died, more than 1.000.000 people migrated, and the society was polarized, discontented, and faced the risk of segregation.³

¹ Sabina Ibragimova, “Turkey and the Kurds: An Ongoing Conflict in a Troubled Region” (2008), *Journal of Political Science Brooklyn College, Violence and Politics*, Editors: Jamie Hagen & Shani A. Hines 13 at 18. [Sabina]

² Ayhan Kaya & Ece Harmaneri, “Tolerance and Cultural Diversity Discourses in Turkey,” *Accept Pluralism Working Papers* (2010) MA European Institute Istanbul Bilgi University at:5-8 [Ayhan]

³ E. Fuat Keyman, “Rethinking the ‘Kurdish Question’ in Turkey: Modernity, citizenship, and democracy” (May 2012) *Philosophy & Social Criticism* 38 (4-5) 467 at 468 [Fuat]

The topic has received increasing international attention with Turkey's membership candidacy to the European Union. Failure to solve the Kurdish self-determination issue might have implications for the countries prospect of joining the EU. If Turkey fails to solve this problem, it might not achieve its goal of joining European Union (EU), economic sustainability, liberal democracy, pluralism, and peace. Realising the seriousness of the issue has influenced academics, lawyers, politicians, and the parties to attempt to find solutions to the current problem. International attention especially EU's policies⁴ on minority rights and freedoms and the Union's federal structure have influenced PKK's self-determination desires and its understanding of its role in relation to the Turkish government.⁵ Especially after the arrest of PKK leader Abdullah Ocalan,⁶ Kurdish authorities' declarations have become more international. To the surprise of many,⁷ Kurdish authorities discarded their long time goal of

⁴One of the fundamental policy is European Charter for Regional or Minority Languages, (1992), online: Counsel of Europe <<http://conventions.coe.int/treaty/en/Treaties/Html/148.htm> >

⁵ Especially in 1990s, establishing a separate country and segregation were the dominant goals of the Kurdish movement. Influential Turkish sociologist, critic of Kemalism, and Kurdologist İsmail Besikci who has served 17 years in prison because of his thoughts on Kurdish self-determination in Turkey asserted that Kurdish people have been colonized by Turkish and Arabic governments over years. He argues that Kurds have to realize this and establish a new country: Kurdistan. İsmail Besikci, *PKK üzerine düşünceler: özgürlüğün bedeli* (Istanbul: Melsa, 1992); İsmail Besikci, *International Colony Kurdistan* (Reading: Taderon Press, 2004)

⁶ PKK's arrested leader, Abdullah Ocalan, clearly mentions transformation of PKK and Kurdish people's instauration in his books. He claims that a more democratic and peaceful country depends on Kurdish and Turkish authorities' deep evaluation of the Kurdish self-determination problem in Turkey and the international improvements on regionalism and minority rights have to consider by the Turkish government. Abdullah Ocalan, *Kürt Sorununda Çözüm Ve Çözumsuzlük İkilemi* (İstanbul: Mem Yayınları, 1999) at 16-20, 44-56. His analyst about civilizations and Kurds: Abdullah Ocalan, *Prison Writings: The Roots of Civilization* (London: Pluto Press, 2007)

⁷“A PIAR-GALLUP poll conducted in 1994 with 1,000 respondents representing Turkish public opinion and 500 Kurds from urban and rural areas in the southeast revealed that whereas 6.4 percent of the Kurds surveyed saw the Kurdish issue as a question of gaining autonomy within Turkish borders, only 4.3 percent regarded it as an issue of carving out a separate Kurdish state. 48.8 per cent (a plurality) of Turks see the problem to be caused by a terrorist movement which aims to divide Turkey (PIAR-GALLUP 1994). Another survey, sponsored by a powerful and state-friendly economic interest group, the Union of Turkish Chambers of Commerce and Stock Exchange (TOBB), interviewed 1,267 respondents in six urban centers, and showed that while 42.5% of the respondents opted for a federal administrative structure, only 13% sympathized with the idea of a completely independent Kurdish state. The most recent opinion survey was conducted in August 2009 among 10, 577 respondents in 2,497 centers. This survey once again confirms the existence of a gap between Kurds and non-Kurds in the territorial perception of the Kurdish issue: While 71.3 percent of Turkish respondents thought Kurds wanted to form an independent state, only 30.3 percent of the Kurds answered affirmatively to independent state claims.” Turkiyenin Kurt Sorunu Algisi, (Pollmark, Ankara, July 2009) cited in Ümit Cizre, The Emergence of the 'Government's Perspective on the Kurdish

regional and racial segregation and reached consensus on decentralization, unity and solidarity within Turkey.

In addition to Kurdish instauration on unity and solidarity, currently, the Turkish government admitted that decentralized administrative system is needed mostly in order to find a solution for the Kurdish request for self-determination. Turkish Prime Minister Recep Tayyip Erdogan clearly declared his ideas for a provincial system and for the establishment of more decentralized state system in Turkey.⁸ Since 2002, the Justice and Development Party (Adalet ve Kalkinma Partisi – AKP) has maintained a policy⁹ of minority rights and freedoms regarding education, broadcasting, organization and expression of cultural.¹⁰ The government has started state-based negotiations with the PKK and its arrested leader. On 21 March 2013, the Kurdish Peace and Democracy Party¹¹ (Baris ve Demokrasi Partisi – BDP) organized a Newroz (the Kurdish new year) meeting in Diyarbakir, which was the first time, millions of Kurdish people greeted spring without any official intervention.¹² However, the Kurdish self-determination issue is still identified with violence, terror, and ethno-nationalism.¹³ With international

Issue (2009) 11 (4) Insight Turkey 1-12 at 7 footnote 4, online:
<<http://search.proquest.com/docview/211514664?accountid=14771>>

⁸ Turkey's Prime Minister's announcement the provincial system on a TV channel, CNN Turk, (29 March 2013) online: Güçlü Türkiye eyalet sisteminden korkmamalıdır < <http://video.cnnturk.com/2013/haber/3/29/guclu-turkiye-eyalet-sisteminden-korkmamalidir>> [CNN]

⁹ The party's official website is determined the aim of democratization: "No more redundant bureaucracy: Reforms that we have carried out during our term in office in the last eight and a half years have created an atmosphere of confidence and stability in our country. We have set what we could do as our targets for the next term, as well. Our projects are ready to achieve our goals." (6 June 2013), online: Justice and Development Party <http://www.akparti.org.tr/english/hedefler/demokratiklesme/C263>

¹⁰ Fuat, *supra* note 3 at 469.

¹¹ The Party has 29 deputies in The Grand National Assembly of Turkey, online: The Grand National Assembly of Turkey <http://global.tbmm.gov.tr/index.php/EN/ym/siyasi_parti_gruplari>

¹² Sebnem Arsu, Jailed Leader of the Kurds Offers a Truce With Turkey (21 March 2013) online: The New York Times <<http://www.nytimes.com/2013/03/22/world/europe/kurdish-leader-declares-truce-with-turkey.html>>

¹³ Fuat, *supra* note 3 at 469.

visibility and the current government's intention of provincial system for Kurdish self-determination, a discussion on decentralization in Turkey has been opened.

There are currently two main suggested directions with regard to decentralization in Turkey: first, a provincial system similar to what the Ottoman Empire accepted with its own multicultural system;¹⁴ second, the current unitary system with more powerful local authorities.¹⁵ In addition to these suggestions, when Turkey's constitutional history is evaluated, the effect of French republicanism on Turkish constitutional and administrative law has to be considered in the light of around 100 years of governance under a unitary system. Whether decentralization is better for Turkey's ethnic issues or not, transforming from 100 years of central governance to a completely or mostly decentralized system such as federalism needs a slow transition. Because of this reason, this thesis takes a closer look at the second option - a unitary system with more powerful local authorities - as a stepping stone before moving into a completely decentralized system.

First, this thesis will briefly explain the Turkish unitary constitutional and administrative system within the framework of the Kurdish self-determination problem to analyze how a strict centralized system can create a serious self-determination problem. Secondly, the modernization and transformation process from the late Ottoman Empire to the new Turkish Republic will be discussed. In this discussion, the reasons for the Ottoman rejection of the Anglo Saxon system will also be examined to understand the transformation of decentralization to centralization. Lastly, there will be a comparison of the French republicanism with the Turkish republicanism in order to understand how the centralized system resulted in an ethnic

¹⁴ When Ottoman Empire become to conquer western lands, the empire's non-Muslim population reasonable increased. This obligation caused to regulate non-Muslim legal statues in the Empire. Mehmed II or Sultan Mehmed the Conqueror was the first empire, who systematized the millet system at Ottoman Empire in 15th century. The millet system describes the nation with its religious characteristic was accepted because of growing non-Muslim population and Islam's philosophy which stipulates the Islamic state not to intervene non-Muslims' religious freedom. With millet system, non-Muslims had their own court and some specific rights. M. Macit Kenanoglu, *Osmanli Millet Sistemi Mit ve Gercek*, (Istanbul, Turkey: Klasik Yayinevi, Mart 2004) ; Halil İnalcık, *The Ottoman Empire, The Classical Age 1300-1600*, (Worcester and London, Great Britain: The Trinity Press, 1973) Translated by Norman Itzkowitz and Coin Imber

¹⁵ Some suggested steps to strengthen local governments: *A Roadmap for a Solution to the Kurdish Question: Policy Proposals from the Region for the Government* (Istanbul: TESEV, 2008) at 37-38, online: The Turkish Economic and Social Studies Foundation (TESEV) <<http://www.tesev.org.tr/Upload/Publication/d947a015-9505-421c-ae1d-c1c058e7d4a7/Report%20on%20Kurdish%20Question.pdf>>

problem in Turkey. This discussion will be essential to analyze that the self-determination issue is related with the republicanism or how the republicanism has been evaluated such as nation building process and understanding of citizenship.

Chapter 1

Description of the Problem: The Kurdish Ethnic Problem of Self-Determination in Turkey

As stated earlier, the Kurdish ethnic problem has lasted for decades in Turkey where the administrative system is based on nationalist centralization i.e. unitary system. Even though Kurdish people have their own specific culture and language as other ethnic groups in Turkey, the Turkish Constitution only recognizes Turkish identification and language.¹⁶ The constitution does not welcome criticism of its proposal for a unitary system.¹⁷ This becomes more important when seen in the context of Turkish diversity, which includes more than 17 different ethnic groups.¹⁸ Especially, the Kurdish armed resistance is what leads Turkey to suppress their culture and identity and enforce a unitary state as opposed to multiculturalism.

¹⁶ Preamble of 1982 Turkish Constitution; “In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Atatürk, the immortal leader and the unrivalled hero, this Constitution, which affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish state, embodies; ... The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism...” ; Unamendable Section 3: 'The Turkish state, with its territory and nation, is an indivisible entity. Its language is Turkish. ' online: Anayasa, http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

¹⁷ IV. Irrevocable Provisions, ARTICLE 4. “The provision of Article 1 of the Constitution establishing the form of the state as a Republic, the provisions in Article 2 on the characteristics of the Republic, and the provision of Article 3 shall not be amended, nor shall their amendment be proposed.”

¹⁸“Turkey's key minority groups include ethnic, linguistic and religious minorities. The number of people in each group is unknown since the state does not ask citizens to declare their ethnic, religious or other origin in censuses. There is no scientific research on minorities in Turkey. The list below is non-exhaustive; it includes the main minority groups, irrespective of whether they self-identify as 'minorities', and non-conclusive information about each. The quantitative estimates below should be read with caution. Main ethnicities: Caucasians, (Y) Ezidis, Kurds, Laz, Roma, Turks; Main languages: Arabic, Kirmanji and Zaza Kurdish, Laz and Turkish – the only official language; Main religions: Alevism, Armenian, Assyrian and Greek (Rum) Christianity, (Sunni) Islam and Judaism. Officially, the government still only recognizes Armenians, Jews and Rum Christians as minorities (see below), but as used in Turkey, this term denotes clear second-class status.” Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Turkey : Overview (November 2011) online: <<http://www.refworld.org/docid/4954ce3fc.html>>

However, basically minorities' freedom and rights and specifically Kurdish self-determination become an issue with the Ottoman Empire's centralization process and republican Turkey's nationalist unitary administrative system's establishment. After almost 600 years of absolute monarchy in the Ottoman Empire, the first constitution was enacted by the Ottoman Parliament in 1876. This westernized constitution was slightly influenced by the European Revolution 1848 which began in France and spread to most parts of Europe. As a transition from absolute monarchy to the constitutional monarchy occurred, the constitution of 1876 was abolished by the first republican constitution in Turkey in 1924. Before declaring the republican system in 1923, the framework constitution of 1921¹⁹ was prepared as a decentralized constitution, however; instead of the suggested decentralized structure in the framework constitution of 1921, the French republican administrative model that was adopted by some deputies and intellectuals eliminated the decentralized model and led to the Turkish Nationalist State. The decentralized administrative system disappeared and the centralized structure was adapted with the constitution of 1924.

The decentralized approaches did not work in Turkey²⁰ because of French republican system²¹ and a national, unitary state was structured instead of a potential decentralized, multicultural, and multilingual system. This nationalist understanding created its constitution of 1924 legalizing every citizen of Turkey as Turkish. After a while this Turkish cultural domination developed into a racist understanding and was adopted by the state. In this manner, the Kurdish identity has been ignored by the state and Turkish people. This strict nationalist centralization has created several development problems between the Western and Eastern parts of Turkey over years. The Western part of Turkey is relatively developed, while the Eastern part – predominantly populated with Kurdish people - is underdeveloped and in an unrecognized civil war between PKK and the

¹⁹ Taha Parla claims that the constitution of 1921 is prepared in a federalist understanding. Especially article 11 which describes the relationship between central and local government states self-administration of local governments stronger than other republican constitutions. Taha Parla, *Türkiye 'de Anayasalar* (Istanbul: İletişim Yayınları, 2002) at 21 [Taha]. Ozbudun argues that the 1921 constitution's standing of decentralization was unique and more respectful to participatory democracy. Ergun Ozbudun, *1921 Anayasası* (Ankara, Turkey, Atatürk Kültür, Dil ve Tarih Yüksek Kurumu, 1992) at 43-44 [Ergun 1921 Anayasası]

²⁰ Decentralized Ottoman Empire became to be a centralized republican state. Ottoman multiculturalism was eliminated by Turkish nationalists and French republicanism has been adapted to the state, the Republic of Turkey. As a result of French model, the Ottoman decentralized system transformed to the nationalist, centralized, unitary system in Turkey. See chapter 2.

²¹ The influences of the French Model will discuss in chapter 3.

Turkish army. This serious ethnic problem awaits permanent solution from the Turkish government, Kurdish authorities and the international community.

1 Basics of the Turkish unitary constitutional and administrative system

Explaining what the Turkish unitary constitutional and administrative system means and outlining the governmental structure in the Turkish constitution is essential to fully understanding the problem of centralization and its effects on self-determination of minorities in Turkey.

1.1 Turkish Constitutionalism and the commitment of Ataturk to Nationalism

Turkey's history of constitutionalism is considerably long and after the first Ottoman constitution of 1876, Turkey has adopted four constitutions, 1921, 1924, 1961, and 1982 (currently in force).²² The 1924, 1961, and 1982 constitutions are all republican constitutions. However, Ozbudun emphasizes that "this -long history- has been marred by periods of absolute monarchy (1876-1908), de facto authoritarian single-party regime (1913-1918), established single party regime (1925-1946), and military interventions (1960, 1971, 1980, 1997). These interruptions are perhaps key reasons for Turkey's failure to consolidate a liberal democracy."²³ The basic characteristics of the 1982 Constitution also reflect the state's strict unitary, centralized and nationalist understanding which is the main concern of the self-determination problem.

The military adopted constitution of 1982 has been amended 17 times by 2010, however, its nationalist and centralized understanding still remains. Before the 1995 amendment, the constitution's authoritarian perspective against the citizens, tutelary character, and statist

²² Ergun Ozbudun, *The Constitutional System of Turkey, 1876 to the Present*, 1st ed (New York, Palgrave Macmillan, October 2011) at 1, 17 [Ergun The Constitutional System]

²³ *Ibid* at 17

mentality of civil rights and freedoms were stronger than the present version.²⁴ Currently, the un-amendable article 2²⁵ states the characteristics of the republic: democratic state, secular, committed to Ataturk nationalism, the rule of law, and social state. A brief discussion of the commitment to Ataturk's nationalism is essential to determine the unitary and nationalist spirit of Turkey's constitutionalism and constitutional structure.

Even though, most academics²⁶ and the Turkish Constitutional Court²⁷ describe the commitment to Ataturk nationalism as “nonracist, non-chauvinistic, and non-irredentist”,²⁸ this commitment symbolizes the Turkish nationalist state. As characteristic of the state, commitment to Ataturk's nationalism²⁹ continued to be used instead of the term “national state” found in the preamble and other sections of the 1961 constitution.³⁰ The impact of the commitment to Ataturk nationalism illustrates itself in several articles of the constitution. Article 3 of the constitution states that the state of Turkey is an indivisible whole and the official language is Turkish. Article 66 stresses that everyone attached to the Turkish state through citizenship is a Turk. Article 42 prohibits education in another language except Turkish.³¹

Before the 2001 amendment, articles 26³² and 28³³ used to authorize or justify the legal ban on the use of other languages. The National Security Council³⁴ banned the public use of Kurdish

²⁴ Ergun *The Constitutional System*, *supra* note 22 at 19.

²⁵“Characteristics of the Republic Article 2. “The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble”.

²⁶Such as Ergun Ozbudun and Bulent Tanor. Tanor argues that this commitment is the reflection of ‘constitutional nationalism’ and the definition of Turk is a legal definition, it is not a nationalist item. Bulent Tanor & Necmi Yuzbasicioglu, *1982 Anayasasina gore Turk Anayasa Hukuku*, 1st ed (Istanbul, Turkey, Yapi Kredi Yayinlari, Subat 2001) at 77 [Bulent]

²⁷ See sample decisions; *Ibid* at 78 footnote 34.

²⁸ Ergun *The Constitutional System*, *supra* note 22 at 32.

²⁹ See Taha Parla's critique on Kemalist ideology and corporative political theory. Taha , *supra* note 19 at 34-40.

³⁰ Preamble of the 1962 Constitution: “[a]ll Turkish citizens are united in national honour and pride, national joy and grief, their rights and duties toward the national entity, blessing and burdens, in every manifestation of national life.” Ergun *The Constitutional System*, *supra* note 22 at 32

³¹ *Ibid* at 33.

³² Article 26. (As amended on October 17, 2001) Freedom of Expression and Dissemination of Thought

language in 1983 (Law no: 2932). This banning was repealed in 1991 and articles 26 and 28 were rearranged in 2001. Additionally, interpretation of this law affected international relationships with multi-linguistic countries such as Iraq which has two official languages: Arabic and Kurdish. These previous enforcements have caused intense criticism of Turkish nationalism and stressed the protection of ethnic identity and cultural rights of other ethnic groups, especially Kurds - the largest ethnic and linguistic group.³⁵

The commitment of the Turkish constitution to Ataturk's nationalism has also been interpreted by the Turkish Constitutional Court. The law on Political Parties³⁶ has been implemented several times particularly for the ethnic parties.³⁷ Ozbudun describes the court's stand on the commitment to Ataturk nationalism as "an exceedingly rigid understanding of Turkish nationalism".³⁸ For the court, Ataturk's nationalism refuses religious communities and social classes. Secularism and Turkish national values are superior and necessary for the society's unity. Minorities and minority interests do not exist and self-determination of the minorities cannot be discussed. The court's jurisprudence on the Ataturk's nationalism is clear: 'The state is unitary, whole its territory and nation, and the nation is only one.'³⁹

³³ Article 28. (As amended on October 17, 2001) Freedom of the Press

³⁴ Milli Guvenlik Kurulu (Turkish) National Security Council, ARTICLE 118. (As amended on October 17, 2001)

³⁵ *Ergun, The Constitutional System, supra* note 22 at 33.

³⁶ Especially article 78 and so on state about the ban and abolishment of the political parties.

³⁷ Ethnic, religious, and leftist (communist) parties were abolished 27 times by the Turkish Constitutional Court between 1963 and 2010. 7 Kurdish Parties have been closed until 2009. Seyida Erkek, *Turkiye de ve Avrupa da Parti Kapatmalari, Bilgi Raporu, Konya Ticaret Odasi Etut Arastirma Servisi*, (21.03.2008) online: The Konya Chamber of Commerce (KTO) <http://www.kto.org.tr/d/file/parti_kapatma_rapor.pdf>

³⁸ *Ergun, The Constitutional System, supra* note 22 at 33.

³⁹ *Bulent, supra* note 26 at 78-79. See decisions of the Turkish Constitutional Court, *Ibid*, footnotes 34-41.

1.2 Administrative System

The republic of Turkey has had a highly centralized administrative system since its establishment. The basics of administration are central administration and decentralized administrations that are mostly under the central hierarchy. Mainly, several ministers and many semi-autonomous public corporations depended on those minister or/and the Prime Minister.⁴⁰ The Prime Minister and ministers have the highest hierarchical authority and political responsibility⁴¹ to administrate the state. Ministries are staffed with civil servants whose statuses are assessed by the article 129⁴² and the Civil Service Law (Law no: 657). Ministers' hierarchical authority in the centralized administration is to follow the civil servants' act and activities when they serve and civil servants have to obey this authority as a compulsory mission.

Public utilities are provided throughout the entire country by local divisions of the central administration. Provinces⁴³ are the main local units in the central administrative system. Article 126 states that “ In terms of central administrative structure, Turkey is divided into provinces on the basis of geographical situation and economic conditions, and public service requirements;⁴⁴ provinces are further divided into lower levels of administrative districts. The administration of the provinces is based on the principle of devolution of wider powers. Central administrative organizations comprising several provinces may be established to ensure efficiency and the

⁴⁰ *Ergun The Constitutional System, supra* note 22 at 85.

⁴¹ “Functions and Political Responsibilities Article 112. The Prime Minister, as Chairman of the Council of Ministers, shall ensure cooperation among the ministers, and supervise the implementation of the government's general policy. The members of the Council of Ministers are jointly responsible for the implementation of this policy. Each minister shall be responsible to the Prime Minister and shall also be responsible for the conduct of affairs under his or her jurisdiction and for the acts and activities of his or her subordinates. The Prime Minister shall ensure that the ministers exercise their functions in accordance with the Constitution and the laws and shall take corrective measures to this end.”

⁴² Duties and Responsibilities, and Guarantees during Disciplinary Proceedings ARTICLE 129. Public servants and other public employees are obliged to carry out their duties with loyalty to the Constitution and the laws.

⁴³ 81 provinces and 30 metropolitan municipalities exist in Turkey.

⁴⁴ Besides these geographical, economic, and regional divisions, Turkey is also divided 7 geographical regions: Aegean Region, Black Sea Region, Central Anatolia Region, Eastern Anatolia Region, Marmara Region, Mediterranean Region, and Southeastern Anatolia Region. Most of Kurdish Population has been living in Eastern and Southeastern Anatolia regions. Prime Minister Erdogan was suggesting a decentralized and provincial system in Turkey depends on this geographical division. See *CNN, supra* note 8.

coordination of public services. The functions and powers of these organizations shall be regulated by law”. The Law No. 5442 dated June 10, 1949 divides the cities to counties and sub-counties.

The governor of the province is appointed by the President of Republic and represents the state, the government, and every minister in the province except military and judicial authorities. Under the hierarchical supervision of the provincial governor, the head of the county’s administration is the county governor (*kaymakam*) appointed by the Minister of Interior, the Prime minister, and the President of the Republic. The provincial governor may take certain decision; however, he/she uses the discretionary power on behalf of the central administration “deconcentration.”⁴⁵ The governor of the province and the county’s governor are powerful representatives of the central administration in provinces.

Article 127⁴⁶ of the Constitution divides the local administrative bodies to three types: provinces, municipalities and villages. As discussed above, provinces are both central administration representatives and the unit of the local government, which is province’s special administrations (*il ozel idareleri*) and highest decision-making body of the provincial local government. Interestingly, these provincial local administration units are still governed by an Ottoman period law dated 1913.⁴⁷ The second type of the local administration unit is municipalities which its mayor and the municipal council are elected by public vote every five years. Metropolitan municipal governments were established in 1984, which describes more than 750.000 members of the population needs a metropolitan municipality and lower-level municipality bodies. In the 1980s, some adjustments were made to increase the financial source of the municipalities. However, as provincial local governments, municipalities are governed by a law dated April 3, 1930. Additionally, village administrations which are the council of elders and the village

⁴⁵Ergun *The Constitutional System*, supra note 22 at 87.

⁴⁶ Article 127 that deals with Local Administrations (As amended on July 23, 1995) states “Local administrative bodies are public corporate entities established to meet the common local needs of the inhabitants of provinces, municipal districts and villages, whose decision-making organs are elected by the electorate as described in law, and whose principles of structure are also determined by law.”

⁴⁷Ergun, *The Constitutional System*, supra note 22 at 88states “An attempt was made in 2004 by passing a law (Law No. 5197, dated June 24, 2004) broadening provincial local administrations power and increasing their resources. However, the was returned to Parliament by President Sezer for reconsideration has never been debated again”

headman are voted by the village association and regulated by an ‘archaic’ law No. 442, dated March 18, 1924.⁴⁸

Law and regulations for local governments in Turkey are out of the contemporary standards. As mentioned, all regulations for the local administrations have been governed from Ottoman times or the early republican – single party period. The lack of local democracy creates a wide tutelary power for the agencies of the central administration over local authorities as expressed in the article 127 (administrative tutelage). Some attempts to financially and autonomously improve municipalities’ statutes in 2004 have failed. Those attempts were evaluated as a concession of strict centralized administrative system and to reform and democratize the local governments is indefinitely suspended by the central states elites.⁴⁹ On the other hand, under the article 127,⁵⁰ elected bodies of local administration have a judicial guarantee not to forfeit their status except by the Minister of Interior’s authority on suspending these bodies for a criminal offense.

Beside territorial decentralization, highly specialized public institutions have served utilities in Turkey which need a certain authorization of the central administration to serve. Turkish Radio and Television Corporation, the Academia of Sciences, General Directorate of State, the Highways Administration, and state universities⁵¹ are some of these public institutions. In the 1990s, a new type of functional decentralized institution for economic activities named ‘independent administrative authorities’ were introduced such as the Capital Market Council, Banking Regulations and Supervision Council, Sugar Council, and Energy Market Regulation Council.⁵² Even though these authorities’ names are independent administrative authorities, they

⁴⁸ Law No: 1580. ‘The attempt to improve municipalities status by a law No. 5215, adopted on July 9. 2004 failed because of the presidential veto, as in the case of the Law concerning provincial special administration.’ *Ergun The Constitutional System, supra* note 22 at 88.

⁴⁹ *Ibid* 89.

⁵⁰ Article 127 reads: “The procedures dealing with objections to the acquisition by elected organs of local government or their status as an organ, and their loss of such status, shall be resolved by the judiciary. However, as a provisional measure, the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom investigation or prosecution has been initiated on grounds of offences related to their duties, pending judgment.”

⁵¹ The Turkish constitution of 1982, article 130, 131, 132.

⁵² *Ergun, The Constitutional System, supra* note 22 at 90.

are subject to the administrative tutelage of the central administration⁵³ and in general, administrative courts, instead of civil courts, are authorized to review the activities of such authorities.⁵⁴ As territorial decentralization, functional decentralization is also under the control of strict central administration's authority in Turkey.

Finally, hierarchal control, administrative tutelage, and the judicial control of the administration are three main ways⁵⁵ that the government supervises the administrative structure. Firstly, hierarchal control authorizes the superior administrator to give order and/or control their subordinate through legal and disciplinary measures. As mentioned, all local administrations, functionally decentralized bodies, and ministries are under the hierarchal control by the central administration beside within themselves. Second, administrative tutelage basically comes from the principle of administration's unity is stated in article 123⁵⁶ and 127. Apart from the hierarchal control, as an exceptional authority, administrative tutelage has to be based on authorization by laws to approve, annul, or postpone the local administrative bodies' acts.⁵⁷ Giving such orders is not acceptable for administrative tutelage and local administrative bodies can bring decisions to administrative court for review in spite of giving in to hierarchical control. Provincial governors and sub-provincial governors are authorized to apply the administrative tutelage on the provisional special administrations and municipalities. The last point of supervision over the administrative activities is judicial control which is independent and three part judiciary as is common in most Continental European countries: Constitutional Court, Court

⁵³ *Ibid.* Additionally, other public professional organizations as stated under article 135 such as bar associations, medical association, the chambers of agriculture, and the chambers of commerce and industry are subject to the administrative tutelage of central administrative authorities and the judicial review of the administrative court.

⁵⁴ *Ibid.*

⁵⁵ The fourth way to supervise the administrative actions and acts is the ombudsman (*kamu denetçiligi*) which is added in the constitution by 2010 amendment, article 74. For more *see* Didem Buhari Gulmez, "Ombudsmanship and Turkey's Europeanization in 'World Society'" (2011) 19\4 Journal of Contemporary European Studies at 201

⁵⁶ "Administration / Fundamentals of the Administration/ Integral Unity and Public Legal Personality of the Administration/ Article 123. The administration forms a whole with regard to its structure and functions, and shall be regulated by law. The organization and functions of the administration are based on the principles of centralization and local administration. Public corporate bodies shall be established only by law, or by the authority expressly granted by law."

⁵⁷ Ergun *The Constitutional System*, *supra* note 22 at 92.

of Appeals, and Council of the State.⁵⁸ Similar to the French Council d'Etat, the Council of State has both administrative and judicial function. Its administrative function is the opinion it gives regarding the activities of the central government and ministries.

2 The centralized Turkish state and Kurdish local self-governance

After the First World War, the nation states and homogenous societies that were created as a consequence became a vital self-governance challenge for minorities. Such as minority rights, cultural autonomy, ethnic nationalism, global citizenship, and international human rights are currently on the agenda because of economic and political dimension of globalization.

International attention to minority rights and multicultural practices have increased over years such as the 1992 Declaration of the United Nations on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the 1992 European Charter for Regional or Minority Languages Charter; and the 1995 Framework Convention of the Council of Europe, and various Recommendations of the OSCE's High Commissioner on National Minorities (1996, 1998, 1999).⁵⁹ Turkey's attempts to join European Union, and Kurdish radicalization over forty years in Turkey, require forced the Turkish government to focus on the Kurdish quest self-determination. Kurdish people's and other minorities' do not have satisfactory accommodation in the highly centralized and nationalist Turkish state and this problem is essential to determine if we are to adopt a contemporary, democratic, and multicultural citizenship model.

Considering Kurdish self-determination with the Ottoman Empire's collapsing, the Treaty of Serves, signed on 20 August, 1920 occupies an important position for Kurdish and Armenian local autonomy. According to article 62, local self-determination was promised to Kurdish people. However, after Ataturk's victory against Greece and establishing the new Turkish state, the Treaty of Lausanne was signed and rescinded the Kurdish peoples' autonomy and self-

⁵⁸ Court of Accounts, article 160 and Military courts, article 145 also exist in Turkey's judiciary system.

⁵⁹ Will Kymlica, "Multiculturalism and Minority Rights: West and East" (2002) 4 *Queen's University, Canada, and Central European University, Budapest, Hungary* at 2.

determination.⁶⁰ With the Turkish process of modernity, a nation state was built by Ataturk and as a result, self-determination have been a controversial issue for Turkey over years. Before the radicalization PKK, other Kurdish movements took important place in Turkey's history. The bloody Shaikh Said rebellion⁶¹ in 1925 and Dersim- Seyit Riza rebellion in 1937 were forcefully suppressed by the Turkish state. The Turkish government became discriminatory in its dealings with its citizens who were against the nation building and modernization process of Turkish Republic.⁶²

The Turkish westernized modernization is described as a revolution and the reforms are explained as republicanism, nationalism, etatism, secularism, popularilism, and revolutionism-reformism.⁶³ The Kemalist ideology and its elite followers had the aim of reaching the contemporary level of civilization which meant - westernization. Establishing an independent nation state, supporting capitalist industrialization, and creating a new secular and modern national society with an elaborated homogenous structure have been the prerequisites of Turkish modernity.⁶⁴ It was understood that it was mostly impossible to build a new secular and modern national society in the contemporary western context with such multicultural structure.

Kurdish feudal, tribal, and religious characteristics of society have also been an objection for the elite circle's aims and westernization process as Okem cited by Besikci.⁶⁵ In the later years this feudal characteristic has been rising as a vital development problem between the eastern and western part of Turkey. The government attempted to construct a homogenous and unitary state

⁶⁰ Steven C. Roach, *Cultural Autonomy, Minority Rights and Globalization*, (Burlington: Aldershot, Hampshire, VT : Ashgate, c2005) at 17. [Steven]

⁶¹ The rebellion was described as an anti-secularist Islamic rebellion against to Republic of Turkey.

⁶² *Sabina, supra* note 1 at 16.

⁶³ *Fuat, supra* note 3 at 470.

⁶⁴ *Ibid.*

⁶⁵ Mekin Mustafa Kemal Okem, *Turkish Modernity and Kurdish Ethno-Nationalism* (PHD Thesis Submitted tt Graduate School Social Sciences of Middle East Technical University, Ankara, Turkey) at 102-105 [Mekin]

that adopted a superior Turkish nationality.⁶⁶ Kurdish self-determination and minority rights have been disappearing and were constantly ignored under this homogeneous nationalist structure. As a result of the Turkish nationalization and extant Kurdish self-nationalist and feudal characteristic, Kurdish self-determination problem and radicalization has been increased in reaction to the rise of Turkish nationalism on the issues of ethnicity and language.⁶⁷ Kurdishness, tribal resistance or regional backwardness has been disregarded as an ethnic question by the creators of the modernity project.⁶⁸

The Turkish nation state was reconstructed in a highly centralized form of administration with its elite circle, secular, homogenous and bureaucratic structure. Recognizing the society's multi-ethnic, multi-religious, multi-linguistic, and multi-cultural constitution would mean a decentralized administration. Self-determination and rights of the minorities has not perceived as an ethnic problem especially between 1920s and 1980s. In other words, instead of this recognition, the state centric, assertively secular, and homogenous idea of modernity and national identity failed to consider Kurdish question as a serious ethnic issue.⁶⁹ Until PKK's armed resistance in 1980's, the Kurdish ethnic problem was only considered as a regional and development challenge in the eastern part of Turkey. This unrecognized ethnic problem was exacerbated over years under the highly centralized and homogenous nation state.

⁶⁶ *Ayhan, supra* note 2 at 6 states “In the years to come following the formation of the Republic, assimilationist and/or exclusionary policies of the state elite, which sought to erase social and cultural diversity, continued to render the national identity based on Sunni Islam and Turkishness a dominant role in social and political spheres. The social forces affiliated with diverse religious, ethnic and cultural values were frequently faced with and suppressed by the homogenising policies such as the nationalist Turkish history thesis of 1932, the Sun Language Theory of 1936, the unitarian nationalist education policies (Tevhid-i Tedrisat Kanunu, 1924), banning the use of mother tongue and of ethnic minority names, discriminatory settlement policies put in effect on the exchange minorities and new migrants (İskan Kanunu, 1934), discriminatory citizenship laws granting citizenship exclusively to Muslim origin migrants, the imposition of Wealth Tax in 1942, especially on non-Muslims, and the forced migration of Kurds in the east and southeast of Turkey. Ethno-cultural minorities adopted different means to cope with the challenge of the state's homogenising policies. They generated their own individual identities in accordance with these assimilationist and/or exclusionary policies. Within the framework of the majority nationalism, ethnic and cultural minorities chose to be involved in the project of the construction of a homogenous Turkish nation, disguised their ethnic identities in the public, and identified themselves as a constitutive element of the Turkish nation.”

⁶⁷ *Sabina, supra* note 1 at 16.

⁶⁸ *Fuat, supra* note 3 at 471.

⁶⁹ *Ibid.*

The Turkish government harshly repressed the Kurdish rebellion in the 1920s and 1930s which resulted in the absence of Kurdish opposition until 1970s. In 1974 the PKK was established with it propaganda against to Turkish government. When the Turkish army, after the coup of 1980, drafted the 1982 constitution, it had disregarded most minority rights and its consequence was the further radicalization of the already extreme PKK. This process of radicalization caused clashes that lasted over 30 years resulting in the death of nearly 40.000 people; displacing close to 1 million; making the society polarized, discontented, and faced with the risk of segregation.⁷⁰ The Kurdish nationalist movement with its violent history started in the eastern part of Turkey. Both PKK and the Turkish government used violent methods which peaked in 1990s. As stated earlier, the Kurdish quest for self-determination was brought to the fore as a result of the process of globalization and EU's attention to the topic. Therefore, the previously disregarded ethnic quest for self-determination becomes a vital issue for the Republic of Turkey locally, nationally, and internationally.⁷¹

In the early 1990s, Turgut Ozal, the 8th president of Turkey suggested the adoption of a USA-style federal system for the Kurds in northern Iraq and Turkey during the Gulf War.⁷² This first suggestion of decentralization was opposed by Ozal's own political party and the opponents. Even though Ozal was alone on his proposal within Turkey, he pursued his position with the support of Iraqi Kurdish leader Talabani. Ozal's liberalization attempts on the issue were focused on freedom of expression, freedom of religion, and enterprise. In Ozal's view, such freedoms are reflected in the Ottoman Empire's past including cultural pluralism and are important to undermine PKK's violent policy in the region and its popularity among Kurdish people.⁷³ Teaching Kurdish language in public schools and celebrating the Kurdish New Year were Ozal's political initiatives and his statements were the first serious mentioning of minority rights protection in Turkey.⁷⁴ While Ozal's liberalization attempts failed in the 90s, those attempts have

⁷⁰ *Ibid* at 468.

⁷¹ *Mekin, supra* note 67 at 241.

⁷² *Ibid* at 239-240.

⁷³ *Steven, supra* note 62 at 108.

⁷⁴ *Ibid.*

pioneered to realise Kurdish self-determination, minority rights in Turkey, and the importance of decentralization for the country.

After Ozal's questionable death in 1993, the economic status of the Kurdish people become a fundamental issue for Turkey as a whole. Military investments, regional development problems, lack of cultural diversity and a process of privatization that is not well thought out have aggravated the difficulties on the issue. The rising violence of the unrecognized civil war in the eastern part of Turkey legitimized the army's increased power and this dominant existence of the military resulted in more intense nationalism and radicalization of both sides. Although the development gap between the eastern and western part of Turkey increased day by day over the years, army investments were perceived as necessary and to the state's national benefits that would result in unity. Kurdish self-determination, minority rights, modernization, and centralization problems become more aggravated than before the 1980s because of economic and politic standing of the Turkish nation state.

Consequently, after the First World War, followers of Kemalism and elites establish a nation that is secular, modern, and westernized with a homogenous society and a highly centralized, constitutional and administrative system in Turkey. Under such system, self-determination and minority rights were not tolerated and Ataturk's nationalistic views were intensively pronounced in the constitution. Although, the early republican period witnessed a bloody Kurdish rebellious movement, the movement did not take central stage until the 1980s when the Kurdish Workers Party started its armed resistance. Violence on both the Kurdish and Turkish side increased in 1990s and the issue continued being debating locally, nationally, and internationally. As stated earlier, Turgut Ozal recommended a US-style federation as a solution of Kurdish self-determination in the region in the early 1990s. However, neither self-determination nor minority rights have been discussed sufficiently in Turkey. Currently, the government has been leading a democratic program for decentralization and minority rights in Turkey as a result of the international attention towards the Kurdish self-determination movement. This is especially important when seen in the context of Turkey's candidacy to EU, and EU's regional policies. Examining the Turkish nation state and its unitary structure is perceived as the first step towards fulfilling minority rights' and towards achieving Kurdish self-determination in Turkey.

Chapter 2

Transformation from Ottoman Decentralization to Turkish Centralization

The process of Turkish modernization has a significant role on minorities' freedom, rights, and self-determination in the country. As base for modern Turkey the Ottoman modernization attempts at the end of the 19th century and the beginning of the 20th century led the new Turkey into French republicanism. Instead of Ottoman's decentralized model "adem-i merkeziyetcilik", the priority of the government of modern Turkey and elites became building a nation state with homogenous society. This republican model needs more attention to understand the basics of minorities' rights and self-determination problem in Turkey. Therefore, first, Ottoman's decentralized model and its modernization process which led Turkish republicans to the French model will be briefly discussed. A comparison of the French republicanism with the general view of Anglo Saxon Republicanism will follow in order to understand why the Ottoman Empire did not adapt Anglo Saxon Republicanism which seems to include more a diverse structuring in it.

3 From Ottoman to the Republic of Turkey: Modernization Process

3.1 Ottoman decentralized model, modernization requirements and attempts towards to the Republic of Turkey

The analysis of the Turkish process of modernization and unitary nation state building requires discussion of the Ottoman modernization process before considering French republicanism. In the time between the Ottoman administration to the new republic of Turkey, Ottoman modernization process was dominated by the French influences in the administration of the state. Contrary to Turkish republican modernization, Ottoman modernization was not a social requirement; it was an unsuccessful attempt to avert the end of the empire. The Emperor's ambition for his sustained power and intervention of foreign countries on the empire's internal

affairs shaped the basic legitimacy of the Ottoman process of modernization.⁷⁵ The Turkish republican modernists who were faithful followers of French republicanism⁷⁶ and higher officials of the empire focused on the welfare of the state and its continued existence.⁷⁷

Beside the fact that the Ottoman modernization was oriented toward more decentralized administrative system, determining main characteristic of the Ottoman administration is essential to recognize the administrative transformation that took place. Ottoman administrative system was based on provincial distinction with its own ethnicity and religion classification. Even though highly powerful central administration was leading the state, mostly decentralized local governments were basic of the administration. Centralization and decentralization were periodically changing depending on the empire's rate of growth and power; however, both systems occurred until the collapse the empire. With the Ottoman modernization process in the end of 19th century and begin of 20th century the centralization become dominant to maintain whatever was left of the empire.

The administrative division of the Ottoman Empire required decentralization because of its high population, land coverage and cultural diversity. From late 14th century until the late of 19th century, provincial system was Ottoman's solution to govern the empire which resulted in the existence of the empire on three continents. The Emperor, rule maker was the head of central-monarchical government and local leaders were appointed by him. Those leaders were acting in an extensive authority on his territory on behalf of the emperor. For almost five centuries, the provincial system was sufficient to govern Ottoman's diverse society.

The Ottoman Empire succeeded in governing such a diverse society because it allowed for freedoms, rights and self-determination. Additionally, as currently discussed and proposed as an adequate model for Kurdish self-determination in Turkey, *adem-i merkeziyetçilik* has been debated in the light of federalism. However, essentially, as a highly centralized state in Turkey,

⁷⁵ Fikret Celik, *Cumhuriyetçiliğin Donusumu: Fransa ve Türkiye Üzerine Karsilastirmali Bir Analiz* (PHD Thesis, Türkiye Cumhuriyeti Sakarya Üniversitesi, Sosyal Bilimler Enstitüsü, March 2010) at 129. [Fikret]

⁷⁶ İlber Ortaylı argues that the French influences on the Ottoman modernization was not only as a result of admiration, but it was also necessary during the decline of the Ottoman Empire. İlber Ortaylı, *İmparatorluğum en uzun yüzyılı* (İstanbul: Hil Yayın, 1983) at 20-21.

⁷⁷ Fikret, *supra* note 77 at 129.

emphasizing Ottoman decentralization has been rejected by the Turkish elite until current times. Even though the term itself - adem-i merkeziyetçilik - means the absence of central administration⁷⁸, this decentralized model of Ottoman has been denied and differently processed into Turkish academia.⁷⁹ The Ottoman adem-i merkeziyetçilik has been arguing for decentralization and/or absence of centralization with in its success to administer a society as diverse as the Ottoman Empire.

While Ottoman decentralization model has been discussed in different dimensions, Ottoman Empire's modernization process started with compromising decentralized administration. The Empire became more centralized than before the late of 19th century. Abolishing provincial system and adapting 'Vilayet' system⁸⁰ was the significant change for the Ottoman administration. From the Classic Ottoman Period of 16th century to the Reorganization Period 19th century, the Ottoman administrative system run parallel with judicial system.⁸¹ Because of this parallelism, the Ottomans founded a new court system, Nizamiye courts, as part of the judicial and administrative reforms which was adapted from French model.⁸² The transformation to the French system was unavoidable because of the new idea of popular sovereignty among

⁷⁸ Cenk Reyhan, *Osmanlı'da iki tarz-ı idare: merkeziyetçilik-adem-i merkeziyetçilik* (Ankara: İmge Kitabevi, 2007) at 65.

⁷⁹ Gorel asserts that adem-i merkeziyetçilik is the basic of federal system. Administration is divided multi-central structure; however, every state's scope of authority is determined and such as military defense, international affairs, and commerce is still federal governments' basic duties. According to writer, as a unitary state in Turkey, adem-i merkeziyetçilik is not a suitable model to strength the local authorities because of Turkey's unitary system. Birgül Ayman Goreli, "Yerel Yönetimleri Güçlendirmek mi? Adem-i merkeziyetçilik mi?" (2000) 9\2 Çağdaş Yerel Yönetimler 14-29 at 22.

Tascier argues that adem-i merkeziyetçilik is not a local administration system depended on the central administration. Contrary to unitary, centralized states' administrations, this system also is not close to federalist system. Adem-i merkeziyetçilik means to be independent from the central administration. Either unitary or federalist system requires a central. Ali Mert Tascier, *Türkiye' de Ulus Devletinin Kuruluşu Esnasında, Merkezi Yönetim- Yerel Yönetim İlişkileri* (Master Thesis, Mersin Üniversitesi Sosyal Bilimler Enstitüsü, Mersin, Turkey, 2009) at 8-10.

⁸⁰ With Teskil-i Vilayet Nizamnamesi, dated 21st January 1861, the Ottoman Empire became centralized to maintain the emperor's power and empire's territorial integrity. The state divided to vilayets where governors were more dependent to central administration than before.

⁸¹ Ekrem Buğra Ekinci, *Osmanlı mahkemeleri : Tanzimat ve sonrası* (Cağaloğlu, İst. : Arı Sanat, 2004) at 57.

⁸² "The Ottoman reformers never meant to replicate the French judicial system in their own domains; rather, they consciously developed their own version of modern law, which combined French and Islamic legal text on the level of positive law, and amalgamated borrowed and local practices." Avi Rubin, *Ottoman Nizamiye courts : law and modernity* (New York : Palgrave Macmillan, 2011) at 7. [Avi Nizamiye]

Ottomans intellectuals who had education in France. Building a nation state from the empire's leftovers was the main target for essential component of the society, Turkish and Muslim group.⁸³

Starting with economic crises and military failures and continuing until the empire's collapsing, the empire's concerns on sovereignty and continuity mainly forced the empire to fundamental changes such as administrative and judicial. In the first half of the 19th century, Ottoman Empire's integration to the capitalist world economy increased the level of relationship with European countries. Westernization became a desire for the Ottoman reformists. Ottomans' enterprises, the business world and the empire's resources required a new westernized commercial law which was adapted from France.⁸⁴ Industrial revolution in Europe, unequal exchanges which were conferring rights and privileges in the Ottoman domains⁸⁵ to the European countries, especially to France, and crucial economic recessions required urgent reform of the empire.

Administrative, judicial, and economic changes in the Ottoman Empire brought the empire from decentralization to centralization, multicultural state to national state, and integration to homogenization.⁸⁶ In the beginning of the 20th century, the Committee of Union and Progress also known as Young Turks a Turkish, nationalist and secular party was assimilating 'Turkification' policy to rescue of the empire. The party was established in 1889; was in power

⁸³ *Fikret, supra* note 77 at 129-130.

⁸⁴ The adoption of the commercial codes set French, rather than British, law as the preferable judicial model to be followed. The Ottoman inclination toward the former was guided by practical reasons. The availability of an homogenous code divided into numbered articles promised a relatively smooth process of legal transplantation, in addition to the fact that commercial justice in England was perceived as inadequate at the time, causing the British mercantile community to push for a comprehensive reform of the British commercial law. Professional commercial courts were established in England as late as 1895. Avi Rubin, "British Perceptions of Ottoman Judicial Reform in the Late Nineteenth Century: Some Preliminary Insights" (Fall 2011) 37\4 *Law & Social Inquiry*, *Journal of the American Bar Foundation* 991-1012 at 997. [Avi British Perception]

⁸⁵ Edhem Eldem, "Ottoman financial integration with Europe: foreign loans, the Ottoman Bank and the Ottoman public debt" (July 2005) 13\3 *European Review* 431-445 at 433-36. See also a dramatic example about the Baghdad Railway and intervention of the Ottoman economic domain by France and Germany. "The Future of Turkey", *New York Times [1857-192]*(Sep 22, 1913) at 8, online: ProQuest Historical Newspapers: The New York Times (1851-2009).

⁸⁶ Erol Ulker, "Contextualizing 'Turkification': nation-building in the late Ottoman empire, 1908-18" (2005) 11\4 *Nations and nationalism* 613-636. See specifically Kurds and Kurdistan during the Turkification process, *ibid* at 613. [Erol]

between 1908 and 1918, and its founders were mostly educated in France. According to Ulker, the modernization of Ottoman Empire and Young Turks' 'Turkification' process pioneered the Republic of Turkey's centralized administration system and this 'Turkification' process pursued in two significant ways: creating a geographical nationalism and creating a homogenous society besides disclaiming Ottoman's decentralized administration and its cultural diversity.⁸⁷

As Ulker emphasizes⁸⁸, Young Turks' nation building project's first dimension was the geographical nationalism which classified the areas in accordance with imperial thinking. Anatolia where the core of imperialist approach was applied by mostly Turkish Muslims has being the perfect homeland for the nation state. Anatolia became the base of the Turkish nationalist movement. Transforming multi-ethnic society to nation based society was the second dimension of the nation building project. The core of empire was dominated by Turkish Muslims. From diversity to assimilation and from decentralization to centralization were the basis of the nation building project by the Young Turks which affected the Republic of Turkey's future administration system.

Consequently, Turkish unitary nation state building process cannot be fully evaluated without understanding the Ottoman administrative transformation from provincial system to Vilayet system; judicial transformation, and the ottoman modernization process in 19th century and the beginning of the 20th century. Economic and military failures in the empire; fundamental economic changes and developments in Europe; attempts to protect the emperor's power and to provide the empire's continuity forced Ottomans to modernize and westernize their administrative and judicial system. Centralization, homogenization, and dissimilation became the focus of the nation state building process. Ottoman modernization process lead the Turkish modernization process toward more centralized, westernized, and homogenized state. Young Turks' 'Turkification' process which was influenced by the French system transformed the culturally diverse and decentralized state in to unitary and nation state.

⁸⁷ *Ibid* at 628-630.

⁸⁸ *Ibid* at 615-17.

3.2 French- Continental European Republicanism and the Atlantic- Anglo Saxon Republicanism

In the late of 19th century, the elite in the Ottoman Empire emphasized the requirement of westernization for modernization. Economic reasons, attempt to maintain the empire's continuity, and the emperor's desire to save his power were the major rationales for the transformation. The elite circle of the Ottoman era who were educated in France argued that judicial, administrative, and economic adaptation from France will be more efficient than other systems. There were several reasons for this understanding. First, the empire was about to collapse and the state urgently needed solutions. Second, France was quite powerful in Europe and its legal system was based on written documents which made it easy for transplantation. Third, especially the fear of losing whole empire's domain directed to Young Turks to the Turkification process which was basically nation building in the center of the empire and the adoption of French republicanism.

However, republicanism might divide two significant models: the Atlantic- Anglo Saxon Republicanism⁸⁹ established by the US in 1776 and the Continental European - French Republicanism established in 1792. Because of the reasons mentioned above, the modernization process resulted with a centralized, national, and unitary state - the Republic of Turkey. Although the Continental European - French Republicanism was adopted by the Turkish republic, it is important to mention the Atlantic- Anglo Saxon Republicanism- The USA federalism in the light of current discussions in Turkey on Kurdish self-determination. As a result, briefly comparing the Atlantic- Anglo Saxon Republicanism and the Continental European - French Republicanism might help to better understand the French and Turkish republicanism.

3.2.1.1 The Atlantic- Anglo Saxon- American Republicanism

After the Declaration of Independence in 1776, as a result of anti-federalist and federalist discussion which resulted with federalist approach of pluralist democracy, the Atlantic- Anglo Saxon Republicanism appeared in 1787 Constitution of the United States of America. Historical,

⁸⁹J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, N.J: Princeton University Press, 2003) cited in *Fikret, supra* note 77 at 39 , footnote 1

social, and political preferences shaped this model politically and ideologically different than the Continental European - French Republicanism.⁹⁰ The idea of territorial ownership provides freedom to citizens and they can be independent. These people can participate in the administrative process. Contrary to the Continental European Republicanism, Anglo Saxon Republicanism does not have a monarchical background. The basic of the Anglo Saxon Republicanism is individual freedom and rights which lead the society into democracy.

Federalist⁹¹ understandings describe the basis of American republicanism. Economic liberalism was equated to individual satisfaction which is not the same in the Continental European Republicanism. Different than the Anglo Saxon republican model, the interventionist state attempts to control the economy in the Continental European republicanism. Furthermore, the constitutional theory of the federalists defends that the representatives should not have only power in the administration. The constitution which is a set of fundamental principles or established precedents according to the state is not superior or un-amendable, pluralist participation by public is one of the ways to change the constitution. Representative democracy might make sense for the sovereignty of the people and is more practical than direct democracy; however, the public has a control mechanism over the state. This understanding of the Atlantic-Anglo Saxon Republicanism shows more flexibility on the sovereignty of the people more than the Continental European Republicanism which is certain about defending the rules, decisions, and ideas itself. Furthermore, English experiences on democracy and organizational flexibility of the British colonization are contained in the Atlantic- Anglo Saxon Republicanism. Consideration of the people's sovereignty and participatory democracy in the Atlantic- Anglo Saxon Republicanism is comparatively different than the Continental European Republicanism because of the constitutional theory on plural participation in administration.⁹²

⁹⁰ *Fikret, supra* note 77 at 40.

⁹¹ The Federalist Papers written by Hamilton, Madison, and Jay includes 85 essays which are accepted as the core of the USA's organization's philosophy. The essays mention the basic characteristic of the American constitutionalism and representation of liberal constitutional democracy. Pluralistic social structure is emphasized as the difference of American Republicanism. Alexander Hamilton, James Madison, & John Jay, *The Federalist Papers* (New Haven, Conn.; London : Yale University Press, c2009) eds. and with an introduction by Ian Shapiro with essays by John Dunn, Donald L. Horowitz, Eileen Hunt Botting.

⁹² *Fikret, supra* note 77 at 46.

The Anglo Saxon republican understanding of management created its customs based on freedoms and liberal thinking are significant part of it. The point of defending the rights of all groups in society for the common interest is the goal of politics. While this virtue respects the common interest of the society, it also provides equality and stability. In consequence of this equality and stability, the first period of French revolutionary and destructive republicanism is not based on the understanding of the Atlantic- Anglo Saxon Republicanism.⁹³ The basic part of the Atlantic- Anglo Saxon Republicanism and plural democracy anticipates liberal and democratic state which has been applied in the USA with states under federalism.

3.2.1.2 The Continental European- French Republicanism

Duty based citizenship is the basic of the classical Continental European republican custom to determine the border of the republic and its continuity.⁹⁴ Becoming a nation and patriotism are shown as opponents to tyranny and despotism. Such republicanism is against heterogeneity which means it is against separation of people based on their social, political, and intellectual views. The modern nation state clearly distinguishes ethnic roots and cultural differences and the republic is characterized as the nation's cultural and intangible integrity.⁹⁵ The continental European republicanism focuses on duty based citizenship which is properly acceptable in a nation state.

The continental European republicanism' central organization is vertically structured to solve the social inequalities. Besides this vertical structure, bureaucracy and hierarchy are highly applied in the system.⁹⁶ With the French Revolution in 1789, Declaration of Human and Civil Rights was the fundamental step to transform a monarchy in to the sovereignty of people. In 1792, the republican system was officially decelerated in France. Besides the monarch, the parliament was

⁹³ Nicholas Greenwood Onuf, *The Republican Legacy in International Thought* (New York: Cambridge University Press, 1998) at 41 cited in *Fikret*, *supra* note 77 at 50.

⁹⁴ *The Blackwell encyclopedia of political thought*, edited by David Miller; advisory editors, Janet Coleman, William Connolly, Alan Ryan (Oxford ; New York : B. Blackwell, 1987) cited in *Fikret*, *supra* note 77 at 52.

⁹⁵ Maurizio Viroli, *For love of country: an essay on patriotism and nationalism* (Oxford: Clarendon Press; New York : Oxford University Press, 1995) at 13.

⁹⁶ Jean Jacques Rousseau, *Toplum Sozlesmesi*, (Ankara, Turkey: Oteki Yayinlari, 1999) Translated by Alpogut Erenulug cited in *Fikret*, *supra* note 77 at 53

included in the administrative system. Vertically structured centralization system with its background of monarchy has shaped the continental European republicanism.

The Continental European- French republicanism's transformation from monarchy to the republican system is its fundamental difference from the Atlantic- Anglo Saxon Republicanism. This highly centralized system's expectation from its citizens also has been developed differently than the Atlantic- Anglo Saxon Republicanism. With the age of enlightenment in western societies, being a loyal citizen to the republic became to be clearly emphasized. The loyal citizen's freedoms and duties were evaluated together and the sovereignty of public was secured with the understanding of loyal citizenry.⁹⁷ Every citizen has individual interests and common interests; however, the concept of individual interests in the state administration lost ground in the Continental European- French republicanism.

Defending status quo is also perceived as defending a significant right in the administration. Status quo symbolizes the stabilization in the state. Because of this understanding, the Continental European- French republicanism has been focused on the state's stabilization more than liberal individualism. Additionally, the state is located at the center of the administration and the public according to this status quo view.⁹⁸ As a result, the state's position has mostly been more powerful than the public and status quo continues to provide the state's stabilization.

To sum up, the Atlantic- Anglo Saxon Republicanism's values are liberal individualism, pluralistic democracy, evolutionist and traditional. On the other hand, the Continental European- French republicanism's values are collectivism, responsibility, revolutionist, and duty. Being a loyal citizen and prioritizing the state's power are other basic characteristics of the Continental European- French republicanism. Comparatively, both systems have different backgrounds and consequences; however, the Atlantic- Anglo Saxon Republicanism which is adopted by the US federalist system is known for its decentralized nature. Basically, for multicultural societies, federalism can be evaluated as a suitable model; even though every administrative system needs a central administration at some level, the less central a system the more satisfaction that local

⁹⁷ Claude Nicolet, Nicolet, Claude. *L'idée Républicaine En France, 1789-1924: Essai D'histoire Critique*. (Paris: Gallimard, 1982) cited in Fikret, *supra* note 77 at 55

⁹⁸ *Fikret, supra* note 77 at 55

communities will gain. However, the fear of Ottoman Empire's collapse, forced the elite who were educated and mostly influenced by the French to modernize and transform the state to French model of republicanism.

Chapter 3

The Characteristics of Turkish Republicanism

4 The Comparison between French and Turkish Republicanism

The Kurdish self-determination problem has several dimensions to discuss; however, the Turkish unitary and highly centralized administrative system is highly important to understand the systematic and legal dimensions of the problem. The process from Ottoman modernization to the Turkish modernization, in other words from Ottoman decentralization to Turkish centralization, the French influences on the administrative system of the Republic of Turkey is undeniable. Analyzing and comparing French and Turkish republican model might help to cognize the basis of the Kurdish self-determination issue in Turkey and might help clarify the Republic of Turkey's characteristics which have been seen as a challenge for the enjoyment of minority rights, freedoms, and self-determination.

Both France and Turkey's historical, social, intellectual and cultural backgrounds are inherently different from each other. However, there are significant reasons to explain why Turkish republicanism and administrative system are influenced by France model. First of all, cultural and intellectual background of the both system is essential to determine. Differently, France republicanism was inspired by ancient Roman republicanism and understanding of citizenship. The Age of Enlightenment and French revolution reinforced the French republicanism thinking. Being against to the monarch, the rule of people has structured on citizenship approach. This understanding created modern citizenship and individualism in the French republicanism. The idea of solidarity is fundamental for regime's continuity which is based on the enlightenment.⁹⁹

During the decline the Empire, the solution for the collapse was determined as westernization and modernization by the elite who were educated in France. These two rationales for following French republicanism were comparatively different than French republicans' rationales and these differences created a dilemma among the founding generation of the Turkish Republic who

⁹⁹ *Fikret, supra* note 77 at 241.

focused on ‘conservatism and progressivism’.¹⁰⁰ At a later time, this dilemma became quite problematic in Turkish modernization process in areas such as enforcement of secularism and enforcement of minority rights. Capitalist evolution, the effects of the Enlightenment, scientific and technological developments in Europe, and cultural and legal transformation in western societies constituted the westernized cultural frame. The absolute imitation of this frame was the basic of Turkish modernization and the Republic of Turkey. The elite in general and one of them in particular- Mustafa Kemal Atatürk - founded the Turkish Republic on these incomplete understandings of westernization which Ottomans could not properly adopt.

When the values of the Continental European- French republicanism occurred in Europe, Turkish elite merely read the intellectual, theoretical and practical background of the French Republicanism after several years. For instance, the conception of French citizenship in the nation-state developed over the years; however, Turkish understanding of citizenship started with only a legal regulation after the pressure of external states on the Ottoman Empire at the end of 19th century.¹⁰¹ Furthermore, this inadequate transformation of citizenship has not been localized in society which caused a major confusion between the concept of republicanism and democracy. French social recovery over years could not match with the late Ottoman and new Turkish Republic elite’s aim to rescue the Empire and to create a new nation-state.

The Ottoman’s minorities’ regime and millet system were not enabling the building of a homogenous society like the French.¹⁰² Even though both countries’ historical, social, intellectual and cultural backgrounds are differently shaped; the Turkish elite evaluated the French citizenship understanding as the key to creating a homogenous society to provide social integrity in the new Turkish Republic. The Turkish citizenship understanding covered as an ideal and this ideal was described as the defining characteristic of Turkish modernization. In this manner, this ideal has been taken place in the center of national sovereignty. Different than the understanding of French universal citizenship which is criticized that as a nation state and

¹⁰⁰ *Fikret*, *supra* note 77 at 241.

¹⁰¹ Banu Sit, “Modern Vatandaslik Kavramina Bir Bakis” (2008) 76 TBB Dergisi 64 at 70-71, online: *Turkiye Barolar Birligi Dergisi* <<http://tbbdergisi.barobirlik.org.tr/m2008-76-420>>

¹⁰² Dominique Schnapper, *Community of citizens: on the modern idea of nationality* (New Brunswick, N.J.: Transaction Publishers, c1998) at 30-31 translated from the French by Séverine Rosée. [Schnapper]

homogenous society France cannot be a proper example for the universal citizenship model, this ideal, the Turkish citizenship understanding, imposed on the created homogenous Turkish society as a common interest of the nation-state.¹⁰³

Second type of the comparison between both republican models is ideological and political backgrounds. Every periods of French Republicanism has its own acquisition such as territory for first period of the republic, having liberty of choice for second period, national consciousness and school for the third period.¹⁰⁴ Especially with the third period of the republic, the requirements for a nation state attempted to create within the framework of positivism, secularism, and patriotism. Nationalism understood as political and legal identity in the republic.¹⁰⁵ Centralization is aimed as the basic of the constitutional state which prioritizes the public interests. Founders of the French republic inspired from the ancient Rome and its understanding about popular sovereignty and the theory of republicanism.¹⁰⁶ As a result of this inspiration, French republicans denied a significant part of their traditional values, history, and the monarch.

Turkish republicans, authoritarian single-party regime's elite in particular, influenced the third period of French Republicanism.¹⁰⁷ The Turkish identity is taken as the core of the nation state. The roots of the Turkish political and social reforms were founded upon the Turkish army and republicanism is perceived as a pure ideology. Appreciation to France and France institutions and commonly using the France language by the Ottoman and Turkish elite also shaped the Turkish republicanism towards to French model.¹⁰⁸ Starting with the Ottoman modernization at the end of the 19th century, central state has been blessed. Especially the 'Turkification'

¹⁰³ Schnapper, *supra* note 104 at 30-31.

¹⁰⁴ Füsün Üstel, "*Makbul vatandaş'ın peşinde : II. Meşrutiyet'ten bugüne Türkiye'de vatandaş eğitimi*", 1st ed. (Cağaloğlu, İstanbul : İletişim, 2004) at 18-19 [Fusun]

¹⁰⁵ *Ibid.*

¹⁰⁶ The Blackwell encyclopedia of political thought, edited by David Miller ; advisory editors, Janet Coleman, William Connolly, Alan Ryan (Oxford ; New York : B. Blackwell, 1987) cited in *Fikret, supra* note 77 at 52.

¹⁰⁷ *Fikret, supra* note 77 at 250.

¹⁰⁸ Robert F. Spencer, "Culture Process and Intellectual Current: Durkheim and Atatürk" (Aug., 1958) 60\4 American Anthropologist, New Series, Wiley on behalf of the American Anthropological Association, 640 at 643.

process denied the values of the Ottoman Empire such as multicultural society, history, Islamic leadership, and empire.

The most visible elements adopted from the French republicanism are found in the Turkish constitution's fundamental articles. Secularism, indivisibility, and social states are accepted as ideological and political principles of the republicanism. Article 1 of the 1958 French Constitution states that "France shall be an indivisible, secular, democratic and social Republic".¹⁰⁹ Similarly, the 1982 Turkish Constitution Article 2 states that "The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice...". The almost identical wording in both constitutions emphasizing national state and centralization is a clear evidence of the considerable influence of the French legal system.

Third comparison between French and Turkish republicanism is social and economic one. The Modernization process in the western world and the Ottoman Empire progressed differently because of the social adoption of the capitalist economy. The fact that France had a feudal economy before the revolution became a burden to transform into a capitalist economy.¹¹⁰ However, the revolution had changed social life and with this social change France had attempted to create economic stability. As a result, the Ottoman Empire's economy stayed away from western values and capitalist system. This problem gradually increased and the empire's devolution became vital. The economic inconsistency and incoherent administrative transformation forced the empire to decline.¹¹¹ Economic improvements in France after the revolution did not occur in the Ottoman Empire which affected both countries' modernization process differently.

The Ottoman financial collapse affected the society's participation in social improvements in the state. Differently from the French society, economic crises, unending wars, and incoherent political strategies created a society that does not react to the state's actions under Ottoman rule.

¹⁰⁹ The French National Assembly (21 August 2013) online: <<http://www.assemblee-nationale.fr/english/#I>>

¹¹⁰ *Fikret*, *supra* note 77 at 258.

¹¹¹ K. Kivanç Karaman & Şevket Pamuk, "Ottoman State Finances in European Perspective, 1500–1914" (September 2010), 70/3 *The Journal of Economic History* 593 at 597.

Except the few religious and bureaucratic elites, the public were not involved in the local and central administration. This lack of communication between the state and the public continued with the new Turkish state and the society could not cognize the values of the republic which were adopted from France and applied without consultation with the society.¹¹² This ignorance of the people resulted in a more centralized administration in the late period of the Ottoman Empire and the Turkish Republic.

Since late 20th century, transformation of the French economy from agriculture based to neo liberal policies created a bourgeoisie class in France. This bourgeoisie class constituted the republic and the society was involved in the process. The regime itself evolved over the years with the society's participation. However, neither the Ottoman Empire nor the Republic of Turkey could transform their economies until late of 1980s. As a result of this delay, bourgeoisie class could not be formed in the Turkish republic. The society was not assimilated properly with the regime and the political elite uses the regime as a tool to gain political power.¹¹³ When the French republicanism as a progressive movement depends on the regime's transformation and evolution, Turkish republicanism did not succeed in evolving to fit its time. Mainly secularism, participatory democracy, minority rights and self-determination become vital issues in Turkey because of the problem of institutionalization.

The last point of the social and economic comparison between the two countries' republicanism is the importance of education in the nation building process. The idea of national education system became an ideal with the Enlightenment in France. The republic's values are taught to the public starting from elementary school and this educational process is compulsory for every citizen. Similarly, schools appeared as the center of the nation building and centralization processes since 19th century in the Ottoman Empire and Turkish Republic.¹¹⁴ The ideals of the republican regime and citizenship were taught in public schools as a primary goal. To illustrate, the prohibition of wearing headscarf¹¹⁵ in schools and universities in Turkey is aimed at

¹¹² *Fikret, supra* note 77 at 259.

¹¹³ *Ibid* at 262-63.

¹¹⁴ *Fusun, supra* note 106 at 30-31.

¹¹⁵ In 1989 three girls were excluded from the local college in France because of their headscarf. The issue moved to the Conseil d'Etat. The courts regulations dated November 1989, 12 June 2001, and 15 March 2004 are about

highlighting secularism and to impose this value on the public. Both countries used school as a tool of their national building project and spread the values of the republic.

In conclusion, modernization process and administrative, judicial, economic transformation from the Ottoman Empire to the Republic of Turkey brought French republicanism to Turkey. Even though both countries historical, social, intellectual, and cultural backgrounds are differently formed over years, the Turkish modernization and transformation is not yet completed. French republicanism was incorrectly perceived as a way of avoiding the collapse of the Ottoman Empire. The hundred years of progress that preceded the French legal system has not preceded its Turkish counterpart and the society could not respond to transformations such as secularism. Besides this fact, the highly centralized Turkish national state with its homogenous society did not fit well with the multi structured society. This disharmony created several problems one of which is the Kurdish self-determination problem.

5 From Universal Citizenship to Individual Autonomy

Besides the problems of Turkish modernization and transformation in to the French republican model, transformation to modern republicanism was also problematic for France. As a member of the EU, immigrants' position in France has been a controversial issue in the light of the homogenous social structure in France and EU's multicultural understanding. Particularly, in the French citizenship law, second generation of immigrants became a French citizen and this sharp change required politic, social and economic transformation in the French society. However, the 20th century understanding of the universal citizenship model is not sufficient for the current French social structure. This insufficient model has been criticized based on the EU's multicultural policies and modern republicanism.

The meaning of a nation in the concept of the French legal system has been described as a legal asset since the 20th century and the understanding of citizenship has been a fundamental step in creating a nation state. However, this national approach with in the nation state currently needs a

renewed description. In other words, the historical project of creating a French nation with loyal citizens will need to change substantially to a form of multicultural French society in 21st century. Almost 10% of the total population in France is immigrant and the country hosts the crowded Muslim society in Europe.¹¹⁶ Transformation of the nation and citizenship understanding is an important agenda in France and respect to the current postmodern multicultural society is important.

The French ideal of a homogenous society and the understanding of a nation state caused assimilation, otherization, ghettoization, and inter-culturalism¹¹⁷ over the years in France. Additionally, the feeling of belongingness has not been improved with the understanding of duty based citizenship because the French model of citizenship is based on assimilation of the citizens in to the homogenous French culture. With its policy of assimilation, the French nation could not reach the aim of creating a democratic society.¹¹⁸ The tension between the republic and the society has increased and the republican view of popular sovereignty is not properly accepted by the public. Lack of democracy creates social and economic problems and multiculturalism is understood as the concern of immigrant in France.¹¹⁹ Instead of providing a pluralist integration for immigrants in the French society, ethnic and religion conflicts are emphasized by the republican regime.¹²⁰ This Jacobin, monotype, constructionist republicanism could not follow

¹¹⁶ France National Institute of Statistics and Economic Studies, (2008), available online: http://www.insee.fr/fr/themes/detail.asp?reg_id=0&ref_id=pop-immigree-pop-etrangere-2008

¹¹⁷ From Taylor's perspective, interculturalism is more visible in certain European nation states and the writer compares English and French Canadian understanding about the multiculturalism and separates Quebecers' approach from Anglo-normative, English Canadians' perspective. In the light of emphasizing ancestral culture and identity, for English Canadians, removing inequalities and accepting different nations are easier than Quebecers who are threat of assimilation and have dominant language and culture themselves. False consciousness about multiculturalism, phenomena of ghettoization and alienation of immigrants make Quebecers espouse of integration. Interculturalism does not mean that normalization is equality, unless it means normalization is interaction to dominant French culture. Charles Taylor, "Interculturalism or multiculturalism?", (May 2012) *Philosophy & Social Criticism*, 38 (4-5) at 413-423

¹¹⁸ Alain Touraine, *Can we live together?: equality and difference* (Cambridge, UK: Polity Press, 2000) at 195-196

¹¹⁹ Accepting multiculturalism has been a controversial issue for nation states under the EU such as France and Germany. "Angela Merkel declares death of German multiculturalism" (28 August 2013), online: [The Guardian <http://www.theguardian.com/world/2010/oct/17/angela-merkel-germany-multiculturalism-failures>](http://www.theguardian.com/world/2010/oct/17/angela-merkel-germany-multiculturalism-failures)

¹²⁰ Riva Kastoryano, *Negotiating Identities: States and Immigrants in France and Germany* (Princeton: Princeton University Press, 2002) at 20-26 [Kastoryano]

the postmodern improvements and the issue of adaptability to a multicultural society has been growing within the immigrant society in France.

With these improvements in France, highlighting the necessity of liberal individualism in the multicultural society is being considered by scholars. The integration of immigrants to the French society in the light of the French universal citizenship is hard without reviewing the republican model. Recognizing participatory citizenship rights and cultural identities are a fundamental requirement to involve immigrants to the French society. Achieving the aim of a new citizenship model that covers the entire society and community reconciliation in France might help to transform the strict republican model to participatory democratic system in France.¹²¹ The inclusion of immigrants into the system and encouraging social harmony will strengthen the connection between the public and the state.

One of the EU's strategies for achieving its unity is establishing a system containing more participatory democracy in candidate countries. The union's influence on the candidate nation states forces these countries to question their administrative system including such things as the integration of minorities and immigrant. Furthermore, the EU citizenship, The Council of Europe, and the European Court of Human Rights are alternative ways for immigrants to voice their concerns if oppressed.¹²² Because discussion and improvements of minority rights in the Union discomforts the nation states under the Union, redefinition of civil rights and identity in the light of multiculturalism became controversial. Historical nation states such as France¹²³ do not want to compromise their values as this will create problems based on the interests, ideology, and identity for minorities.¹²⁴ This nationally valued approach is criticized by the EU as it purports to respect minority rights.

¹²¹ Schnapper, *supra* note 104 at 159-166.

¹²² Kastoryano, *supra* note 122 at 165-166.

¹²³ To illustrate, France did sign The European Charter for Regional or Minority Languages (ECRML); however, with the claim that there is no minority in the territory, France has not confirm the Charter. France did not sign the Framework Convention for the Protection of National Minorities (FCNM). Erol Kurubas, *Asimilasyondan tanınmaya: uluslararası alanda azınlık sorunları ve Avrupa yaklaşımı* (Ankara: Asil Yayın., 2004) at 264-266.

¹²⁴ Claus Offe, " "Homogeneity" and Constitutional Democracy: Coping with Identity Conflicts through Group Rights" (1998) 6\2 The Journal of Political Philosophy 113 at 119.

Beside the fact that France's universal citizenship understanding might transform to participatory citizenship model after determining immigrants' integration to French society; similarly, Kurdish self-determination problem in Turkey also seems to be going through a similar direction because participatory approach is being discussed currently. Both societies are described as homogenous societies. As a national state, with its multicultural structure and at least 17 different ethnic groups, democratization of republican regime and the understanding of citizenship have to be analyzed critically in Turkey. Kurdish radicalization and development problems show that lack of the individual and society's political expressions substantially affect the state's economic and social welfare.

Incorrect assessment in the republican regime and modernization by the republican elite in Turkey caused legal, political, and militarist interventions to the democratic life. The elite's ambition for their sustained power, especially after the 1980 military coup, resulted in the isolation of the society from Turkish politics. The Turkish society feels the pressure of being outside the circle of globalization and liberal capitalist economy, which in part is caused by the government's policies on multiculturalism. The Kurdish nationalist movement in the 1980s began as reaction to the nation state building and homogenization in Turkey. The difference between the society and state evolved into an unrecognized civil war. The 8th president of Turkey, Turgut Ozal's initiatives to transform the Turkey's economy to liberal economy, conflict between leftist and rightist people, and resulted in the rising support to Islamic ideologies and the transformation of the society to what it is now.¹²⁵

Constitutional liberal democracy is reflected to the society as only a representative authority and political inefficiency caused several social crises in Turkey. The social problems could not be solved properly; the society was not involved in the decision making process. Unaccomplished social-economic transformation has obstructed the democratization process in Turkey. Additionally, bureaucratic and civil republican elite's prioritizing the ethnic and religious differences has affected democratic developments. The oppressed society could not solve its

¹²⁵ Opposition groups such as women, LGBTQs, ethnicities, environmentalists, students, and non-governmental organizations have radicalized in Turkey last 40 years. The last illustration for the freedom of expression in Turkey has been happening while this dissertation was in progress. The 2013 Turkey Gezi Protests started on 28 May 2013 is defined as a revolution in Turkey by the foreign press. See also Kerem Oktem, "Turkey, from Tahrir to Taksim" (7 June 2013), online: Open Democracy <<http://www.opendemocracy.net/kerem-oktem/turkey-from-tahrir-to-taksim>>

problems with its political choices and the transformation in to the republican model has not been occurred in Turkey's 100 years history with the concept.

Furthermore, as a result of the westernization policies of the Ottoman Empire and the Republic of Turkey since 18th century, joining the EU is one of the major strategies of the Turkish government. The country's candidacy changes Turkey's legal, administrative, and political views into conformity with the EU system. The EU's emphasis on multiculturalism and minority rights has forced Turkey to review its understanding of citizenship. However, military coups which are aimed to 'educate' the public about the nation state building postponed the process of Turkey's candidacy to the EU. Besides to military interventions, the Turkish system could not be assimilated to the values of the EU as the country is has not yet completed its modernization process. Distinguishing nation and citizenship and creating an alternative citizenship model which includes multi structured Turkey are fundamental expectations of the EU from Turkey.

Consequently, both France and Turkey have to improve the perception of a system which can handle difference without being perceived as a threat to society. Creating a compromised understanding of the state and civil society in a more developed democracy should be the main these countries. Democratization of the republican system could be possible with the establishment of a public control mechanism over the state. Re-evaluation of the individual, state, and social relations, considering the EU's norms, constitutional citizenship, and realistic secularism might simplify to create a participatory structure for France and Turkey.

Conclusion

The Kurdish quest for self-determination has been discussed in the light of several dimensions over years without any concrete step for solution. Contrary to the society's thousands of years multi structured origin, a highly centralized, monotype, homogenous, and nationalist administrative and constitutional system has been imposed on the society. This imposition has oppressed a multicultural society since 18th century and as a result minority rights became a pressing issue in Turkey causing an unrecognized civil war. After 1980s, Kurdish radicalization attracted the international and national authorities' attention. Turkey's potential candidacy to the European Union and increasing global attention to minority rights force the Turkish authorities to analyze and attempt to solve problems of self-determination in the country.

Starting with the Ottoman modernization process at 18th century, transformation of Ottoman decentralized administrative system into a highly centralized French Republican System was considered necessary. The decline of the Empire needed an emergency plan and the Turkish elite started its nation building process on two fronts: geographical nationalism and the creation of a homogenous society. The core constituents of the Empire, Muslim Turks, established the republic in the current day Turkey. Because of the elite's admiration of the French administrative system; because of France's economic, social, and legal dominance in Europe and its monarch background, the highly centralized French administrative and constitutional system was considered to be suitable model for the establishment of a new nation state in Turkey. The French codified law also provided a quick transformation from the Ottoman Empire to the Republic of Turkey.

At this point, examining the origin of Turkish republicanism is important to understand the reasons for these incomplete processes. Contrary to France's 21st century multicultural society, France's cultural, intellectual, social, political, legal, and economic background was acceptable to create a nation state with a homogenous society. However, with limited time caused by the imminent collapse of the empire, the Turkish elites did not fully study and understand France's hundred years experiences on republicanism. The modernization and transformation process was not been complete and the society could not assimilate properly these fundamental changes in Turkey. Not only did the elites fail to transform Turkey from decentralization to centralization,

integration to assimilation, and multiculturalism to homogeneity, but in the process, they also oppressed minority rights, resulting in the Kurdish quest for self-determination.

Currently, the Turkey's Prime Minister, suggested the adoption of a more decentralized and pluralistic system such as the Ottoman Empire's provincial system or the USA federalism for the problem of Kurdish self-determination. However, without critically analyzing and deeply understanding the current economic and legal systems in Turkey and the state of the world, contemporary legal and/or social models might not create a satisfactory solution. Being aware of the capitalist system's desire to create new markets regarding consumerism might be the first step to analyze what self-determination, cultural difference, and pluralism means. Provocation of specifically cultural, ethnic, and religious differences in multi-structured societies is nation states' policy over years to reinforcement their power. As faithful supporters of the each other in the system, these consumerist understanding and nationalist reinforcement have been misrepresenting the people's differences as unsolvable problems. Without realizing this misleading information and adopting a new understanding of cultural differences and autonomy, creating any kind of legal and/or social model will be result in an ineffective process and might fail to solve the minority rights' problem in Turkey.

Reviewing the republican system's characteristics and compromising the centralization in the light of pluralism might create a more tolerable constitutional, administrative, and social structure in Turkey. While giving literal meaning to pluralism, re-evaluation of nation and citizenship without emphasizing any national, religious, and ethnic group might be the fundamental priority for a democratic country. Strengthening the connection between the public and the state might decrease the tension of minorities. Only an open and autonomous society can feel the sense of belongingness with a state. This will strengthen the bond of the state and the individual. Turkey's current unitary system with more powerful local authorities could provide the slow transition into a pluralistic administrative structure which can create a sense of belonging to the state.

The Current system in Turkey with a pluralistic consciousness might be successful in ending conflicts of the self-determination. Republican values with a pluralistic understanding of the nation and citizenship should be used without any attachment to a nation or religious group. To illustrate, respecting the republic's hundred years customs, the school could be the first place to

teach pluralism. Absolute secularism can characterize the new pluralistic way of administration while giving space for cultural differences. The nation building process has been collapsing because of the resistance from minorities such as Kurds. This is similar to France attempt to establish homogeneity that has been challenged by the inflow of immigrants and the European Unions' multicultural policies. Transforming the Turkey's centralized system to more pluralistic and decentralized system needs a slow transition not to repeat historical mistakes in respecting minority rights.

The Kurdish quest for self-determination in Turkey and similar issues in the rest of the world are basically problems of balance between assimilation and pluralism. In reality, even if there are differences which can be described or classified in several ways, societies do living together. Politics, laws, administrative systems, and models can be discussed or created; however, evaluating the individuals experience on living together and reflecting these experiences while adopting the law will help to establish literally democratic and pluralistic society. Respecting pluralism and legitimization of a flexible law, although it might not solve everything, is a good start to administer differences.

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