



• ANALYSIS

Coups and the Limits of Constitutional Legitimacy: The Normative Undoing of the Rights and Liberties Regime

Muharrem Kiliç

**COUPS AND THE LIMITS
OF CONSTITUTIONAL
LEGITIMACY:
The Normative Undoing of
the Rights and
Liberties Regime**

–Reflections on July 15–

MUHARREM KILIÇ

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This analysis approaches the July 15 coup attempt not merely as a *de facto* assault on the constitutional order, but also as a concrete manifestation of the ontopolitical tension between popular sovereignty and naked force.

SUMMARY

The forcible dismantling or suspension of a constitutional order that derives its legal legitimacy from popular sovereignty and the national will constitutes a fundamental question in modern constitutional thought. This analysis reflects on the July 15 coup attempt as an effort at a constitutional rupture directed at the normative undoing of fundamental rights and liberties — an embodiment of ontopolitical tensions. This study grounds constitutional legitimacy in three axes: the relationship between norms and the constituent popular will, the ontopolitical distinction between power and violence, and the principle of pluralism.

Within this theoretical framework, the July 15 resistance is examined through the lens of “constitutional moments theory” and the concept of “constitutional patriotism,” while the destructive nature of coups is analyzed within the framework of the idea of the rule of law and the normative wholeness of the regime of fundamental rights and freedoms.

The constitutional order comes into being within a relational normative wholeness in which popular sovereignty, fundamental rights, the rule of law, and democratic participation mutually enable one another. Within this framework, the July 15 resistance is regarded as an exceptional constitutional moment that renders visible the protective capacity of the constituent will to reconstruct and revive the constitutional order at moments of crisis; and the failure of the coup attempt confirms that the ultimate guarantee of the democratic constitutional order lies in the will of the nation, which acquires continuity within the law.

INTRODUCTION

The forcible dismantling or suspension of a constitutional order that derives its legal legitimacy from popular sovereignty and the national will constitutes a fundamental question in modern constitutional thought. Fundamentally, this question relates to the relationship between the source of state power and the binding nature of the law. It also reflects the notion that constitutional texts represent a normative expression of the people's constituent will. As such, interventions, coups, extraordinary forms of government, and constitutional ruptures constitute fundamental questions of a constitutional debate – that the validity of the law must stem from democratic political legitimacy as opposed to antidemocratic and apolitical power circles.

According to the modern democratic constitutionalism approach, the constitution represents the highest norm within the existing legal order. Essentially, it amounts to a democratic and participatory social contract that guarantees the people's constituent will. In this regard, constitutional legitimacy rests firmly on the processes of “public debate” and “democratic participation.” Indeed, the legitimacy of the constitution emerges from the democratic will that is shaped by the political participation of free and equal citizens. Therefore, military interventions and coups that target a legitimate and/or civilian government effectively eliminate the basis of democratic legitimacy at the origin of the constitutional order. After all, a democracy with rule of law rests on the principle that constitutional norms can only be amended with the methods set forth in the relevant constitution. Any use of armed force, coercion, and collective violence that disregards said

principle must be considered an anti-constitutional force and/or use of force that violates the principle of normative continuity.

At the heart of constitutional legitimacy lies the “political equality” of the people and its right to “collective decision-making.” After all, the constitutional order constitutes an institutional arrangement that guarantees fundamental human rights. At the same time, it ensures the participation of all citizens in public decision-making processes as equal political subjects. Therefore, the forcible seizing of constitutional power, with armed forces and violence, amounts not only to a total violation of all constitutional procedures but also to the elimination of the population’s right and ability to govern itself. Accordingly, due to the structural constituent relationship between “constitutional legitimacy” and “democratic representation,” a coup constitutes an extralegal transfer of power as well as a complete rejection of the principle of “democratic equality.”

The principle of popular sovereignty, in line with the notion of democratic constitutionalism, forms the constituent basis of constitutional legitimacy. In a modern-democratic constitutional order, legal legitimacy becomes possible not just through the existence of norms – but also through their continuity within the “popular constituent will,” “constitutional commitment,” “the rule of law,” and “democratic participation processes.” Within this framework, it is impossible for interventions/coups, which resort to armed violence and illegitimate use of force, or de facto ruptures, which disrupt the constitutional order, to generate democratic politics and legitimacy. After all, an attempt to forcibly replace the constituent will, which is the source of constitutional legitimacy, cannot avoid a lack of legitimacy in the normative sense.

Within the framework of this theoretical background, this analysis treats the July 15 coup attempt not only as a practical assault on the constitutional order but also an embodiment of ontopolitical tensions between “popular sovereignty” and “brute force.” After all, this fascistic coup attempt highlights that the founding principle of constitutional legitimacy is the principle of “popular sovereignty” –which becomes institutionalized and is perpetuated through democratic politics, human rights, and the rule of law– as opposed brute force, coercion, and violence. As such, from the standpoint of the democratic constitutional polity, the July 15 coup attempt represents a historic threshold where the distinction between “the constituent will and coercion,” “the law and violence,” and “legitimacy and force” has become visible. This historic rupture clearly shows that the constitutional order is not just an institutional structure to be defended, but also a normative order of legitimacy being constantly reproduced on the basis of human rights, popular sovereignty, and the national will.

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From the perspective of the democratic constitutional state, the July 15 coup attempt constituted a historical turning point that rendered visible the distinctions between constituent power and coercion, law and violence, and legitimacy and force.

CONSTITUTIONAL LEGITIMACY: NORMS AND POPULAR SOVEREIGNTY

Constitutions, as the supreme legal norm in the hierarchy of norms, constitute a constituent framework that, beyond regulating state organs, determines the foundation of the political order, the legitimacy of power, and the source of law's validity.¹ In this respect, constitutional texts establish the existential ground of democratic political life. This theoretical approach takes as its basis the mutually constitutive relationship among the normative, political, and social dimensions of the constitution. While the modern constitutional order is a normative structure, it also constitutes an order of legitimacy that comes into being within the constitutive dynamic between "the legal" and "the political." From this perspective, constitutions, as the supreme norm of the legal order, form the foundation of both normative validity and political legitimacy. However, the binding force of the constitutional order that makes democratic political life possible cannot be explained by normative validity alone. For the effectiveness of the legal order is nourished not only by the formal existence of norms but also by the very principles of "social consent, political legitimacy, and institutional continuity" that ground them.² For this reason, all tutelary interventions, coups, and constitutional ruptures demonstrate that constitutions, beyond being legal texts, constitute a legal-political order that exists at the intersection of normative validity and political legitimacy.

According to social contract thought, which defines the constitutional order as the constituent expression of the common consent of free and equal individuals, constitutions determine the horizon of legitimacy of the political community as it is shaped through the principles of "justice, liberty, human rights, equality, and political autonomy."³ In this respect, the fundamental source of the constitutional order is not the existing legal order and/or de facto power, but the constituent popular will that provides the ground of legitimacy for law. In this sense, constituent power must be regarded not as a derivative of positive law but as the fundamental basis of the principle of constitutionality. This constituent will, which achieves its historical construction in democratic societies, represents a political possibility that re-constitutes itself in continuity at moments of "crisis, rupture, and transformation" of constitutional legitimacy.

1 See Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (with a new introduction by A. Javier Treviño) (New York: Routledge, 2005), 115–16, 122, 124–25.

2 Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: The MIT Press, 1996), 38, 135, 448, 461.

3 See John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 109, 110, 113, 115; Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings*, ed. and trans. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), 50, 55, 57–58, 61; Habermas, *Between Facts and Norms*, 449.

Modern constitutional theories ground constitutional legitimacy not merely in the conceptual triad of “norm, sovereignty, and constituent contract,” but within the framework of processes of “democratic communicativeness and public consent.” The legitimacy of political power derives from the transformation of public consent, through constitutional mechanisms of trust and oversight, into a constituent political authority. In line with this perspective, constitutional texts cannot be reduced to the unilateral disposition of a sovereign will alone.⁴ On the contrary, constitutions constitute the institutional form of democratic legitimacy, reproduced along a continuous trajectory through processes of “public deliberation, political equality, and collective decision-making.” For this reason, constitutional legitimacy exists in the context of the people’s right, as free and equal political subjects or political agents, to participate in the formation of the constitutional will. In this sense, constitutions correspond to a relationality that is continuously and uninterruptedly reconstituted through the dynamic dialectic between “norm and democracy” and “law and political participation.”

Constitutional orders, possessing a multilayered structure of existence that cannot be reduced to a single constituent principle, correspond to a dynamic becoming or political possibility that exists at the intersection of “normative validity, constituent will, political legitimacy, and social acceptance.”⁵ For this reason, the constitutional order is not a completed institutional structure but a legal-political process in which the will of the nation and popular sovereignty are ceaselessly reconstructed within the rule of law and continuously reproduce their legitimacy. The fundamental factor establishing the legitimacy of constitutional norms is neither their formal supremacy in the hierarchy of norms nor the effectiveness of de facto power. Rather, the factor that makes constitutionality possible is the capacity of the constituent will to perpetuate its democratic legitimacy through law. In this respect, constitutional texts function as a constituent praxis that establishes the normative horizon and idea of common political existence and reconstructs it anew in each generation.

Within this framework, the July 15 coup attempt was not merely an attempt at coercion and violence directed against the existing constitutional order, but an insurrectionary violence aimed at the constituent meaning of the constitution

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The resistance to the July 15 coup has entered history as a unique and exceptional constitutional experience, demonstrating that the constituent political will, democratic legitimacy, and constitutional patriotism that give the constitutional order its ontopolitical meaning can be dynamically reproduced during moments of constitutional crisis and rupture.

⁴ See Habermas, *Between Facts and Norms*, 104, 186, 442; Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), 101–2, 282–312; Martin Loughlin, *Foundations of Public Law* (New York: Oxford University Press, 2010), 11, 159, 169–70, 228–29.

⁵ See Kelsen, *General Theory of Law and State*, 114–16, 119–20; Loughlin, *Foundations of Public Law*, 159, 227–28, 235.



The July 15 resistance directly revealed, through an unprecedented historical experience, the inability of militaristic violence to generate legitimate political authority.

itself. In this respect, the July 15 coup attempt, which targeted the institutional continuity of the democratic constitutional order, constituted a form of collective violence directed against the idea of a constituent constitutional order that derives its legitimacy from the will of the nation, popular sovereignty, the rule of law, and democratic participation. At this point, the constitutional order is not an antipolitical relation of sovereignty established by tutelary centers of power through de facto force and violence. On the contrary, it is an ethical-political

form of existence that sustains the normative continuity of the people's constituent will within the legal order. Viewed in this light, the suppression of the July 15 coup attempt cannot be explained solely as the effectiveness of the state's security capacity or as the de facto preservation of the constitutional order. For the decisive factor here is that the source of constitutional legitimacy lies not in "force, violence, coercion, and armed domination," but in the free will of the nation embodied in the people's noble resistance, and in the visibility that this will gains through active political participation.

In this sense, the July 15 resistance has gone down in history as a unique and exceptional constitutional experience, demonstrating that the constituent political will, democratic legitimacy, and constitutional patriotism that give the constitutional order its ontopolitical meaning can be dynamically reproduced at moments of crisis and rupture.⁶ At this point, the principle of "constitutional patriotism" emerges as a constitutional-democratic conception of political allegiance that locates the source of political legitimacy and collective belonging in a shared normative attachment to the constitutional principles embodying "liberty, equality, human dignity, and the rule of law." The failure of the coup attempt confirms that the fundamental guarantee of the democratic constitutional order is inherent not in the balance of armed force and the capacity for active violence, but in the social acceptance of constitutional patriotism and the dynamic reproduction of popular sovereignty through legal forms.

In this respect, the July 15 resistance constitutes a concrete confirmation of the constitutional idea that the legitimacy of power arises from normative acceptance of human rights and democratic political life. Precisely for this reason, the futility of the fascistic July 15 coup attempt is grounded not in the constitutional state's monopolization of the instruments of coercion and violence, but in its very capacity to preserve the relation of democratic legitimacy that binds political power to law. Thus, the July 15 popular resistance should be characterized as a constituent constitutional experience that demonstrates its reliance on the

⁶ Jan-Werner Müller, *Constitutional Patriotism* (Princeton, NJ: Princeton University Press, 2007), 1, 3, 56–57.

normative power of popular sovereignty, which constructs, revives, and indeed reproduces the constitutional order. This noble historical experience confirms that the true foundation of the constitutional order is not naked force and violence but the concretization of collective political will within law, and thus that constitutional legitimacy is legally organized “democratic consent.”

CONSTITUTIONAL LEGITIMACY: THE POWER-VIOLENCE DISTINCTION

The ontopolitical distinction between constitutional legitimacy and de facto power constitutes one of the fundamental questions of modern constitutional theories. Accordingly, political authority and the power of governance are a relational form of existence that arises not from the capacity for coercion and violence but from “public deliberation, social consent, and shared praxis.”⁷ Correspondingly, the constitutional order corresponds not to institutionalized violence but to the institutionalized expression of the capacity and possibility of establishing an ethical-political social universe. At this point, power constitutes the ontological foundation of the constitutional order as the constituent reason of the shared political will, while coercion and violence correspond merely to an instrumental form of force serving particular ends. For this reason, while acts of coercion and violence may produce a temporary state of obedience through force and pressure, it is impossible for them to generate legitimate governing power. On the contrary, acts of coercion and violence can sustain their counter-constitutional and antipolitical existence only by eroding power and destroying the constitutional ground. For at this point, violence is an instrumental intervention that does not constitute the political but rather ruptures its very conditions of existence.

Within this framework, although tutelary and juntaist interventions and military coups may establish de facto dominance over the constitutional order and institutions, it is impossible for them to produce constitutional legitimacy (*legimitas constitutionalis*). For the element of coercion and violence, being incapable of substituting for the constituent political will, can only suspend the constitutional order through the principle of “exceptional governmentality.” In this respect, coups correspond to a constitutional rupture that interrupts, through organized violence, the constitutional order which in its ideal sense constitutes the institutionalized form of the shared political will. The legitimate democratic constitutional order exists not through the presence or effectiveness of coercive force, but within the continuity, on the normative plane, of the

⁷ See Hannah Arendt, *The Human Condition*, 2nd ed. (with a new introduction by Danielle Allen) (Chicago: University of Chicago Press, 2018), 198, 200–202, 244–45.

⁸ Hannah Arendt, *On Violence* (New York: Harcourt, Brace & World, 1970), 41, 44, 49, 51, 53.

nation's "free, equal, and pluralistic" will. Thus, coups in all their types and forms must be seen not merely as the transfer of political power through force and violence, but as an intervention directed at the very ontological ground of constitutional legitimacy.

Assessed on the basis of the distinction between power and violence, the July 15 coup attempt emerges not as a manifestation of constituent political authority within the democratic constitutional order, but, on the contrary, as



The resistance to the July 15 coup demonstrated that constituent power and political authority are not merely historical moments confined to the founding of a constitutional order; rather, they constitute a protective political capacity capable of reconstructing and revitalizing the constitutional order in times of crisis when it is threatened.

a practice of violence carrying the potential to annihilate the political as such. The seizure of power through "armed coercion, hierarchical force, and instrumental domination," in place of public deliberation, shared praxis, and the constituent will of the people, structurally deprives this attempt of any capacity to generate constitutional legitimacy.⁹ For political authority and legitimate governing power disclose their existence on the ground of a purposive political embodiment and integral praxis. The violent terror directed at this ontopolitical embodiment suspends the political sphere, along with all its actors and dynamics, by rupturing this very ground. For this reason, no antipolitical, exceptional form of power sought to be established through force and violence can be conceived of as substituting for the constituent will that derives from the people's shared political existence. In this sense, force and violence do not produce legitimate political authority or governing power; they function only as a substitutive mechanism — a tutelary apparatus that appears solely in the elimination or absence of legitimate political authority.

For constitutional legitimacy is an ontopolitical form of existence constructed within the continuity of "human rights, public liberty, collective subjectivation, and popular sovereignty."

Assessed on this theoretical plane, the July 15 coup attempt must be seen as a historical point of concentration of the legal-political distinction between democratic power/authority and violence. For the malevolent will to destroy the constitutional order through armed force, coercion, and violence suspends the shared democratic ground of action that constitutes the political as such. The democratic consolidation that asserted itself against the collective violence of the coup plotters has demonstrated, in the witness of history, that the source of legitimacy is not force and violence but shared political existence. For this reason, the July 15 resistance has laid bare, through a unique historical experience, the incapacity of militaristic violence to generate political power. At this point, force and

⁹ See Arendt, *The Human Condition*, 200–202, 222, 228.

violence appear not as a constitutive power/authority but merely as a destructive external intervention that ruptures political integrity.

CONSTITUTIONAL LEGITIMACY: THE PRINCIPLE OF PLURALISM

Constitutional legitimacy points to an ontopolitical structure grounded in democratic political life itself. Within this framework, the political order comes into being through individuals' participation, as equal rights-bearing subjects, in processes of public reasoning and collective decision-making. At this point, the principles of "the right to participate in the formation of political will, deliberation, parliamentary representation, and pluralism" constitute the constitutive conditions of popular sovereignty and the will of the nation.¹⁰ For this reason, constitutions derive their legitimacy not from an external normative authority but from the immanent dynamic of sustained democratic participation and the ongoing production of collective will. When this ontopolitical dynamic is ruptured, it is not only the institutional structure but political equality and the very capacity for collective decision-making that are eliminated.

Coups, in this respect, represent not merely an external violation of the constitutional order but the suspension of the very processes that constitute the conditions of democratic political legitimacy. Accordingly, "the disabling of the right to free suffrage," "the elimination of spaces for deliberation," and "the incapacitation of parliament" result in the dissolution of political plurality into a single will. Coups thus amount to the elimination of the pluralistic ground of production of the political sphere. The structures of "exception" that emerge where such antipolitical practices and antagonistic forms of struggle take hold become a form of anti-constitutionalist domination whose capacity to produce constitutional democratic legitimacy has been ruptured. Within this framework, coups signify not only the interruption of the constitutional order but the elimination of the democratic rationality and the principle of equal political agency that make it possible. Where the mechanisms of "deliberation, suffrage, and representation" are disabled through coercion, the political order, ceasing to be the product of a shared social will, wholly loses its capacity to generate democratic legitimacy.¹¹ For this reason, coups do not amount to the establishment of a substitute normative order but to the elimination of the democratic process that constitutes the source of legitimacy itself.

The July 15 coup attempt must be assessed not merely as an intervention targeting the constitutional order at the institutional level, but as an attempt

¹⁰ See Habermas, *Between Facts and Norms*, 182, 186; Waldron, *Law and Disagreement*, 69–72, 101–2, 159–60, 255–56.

¹¹ See Waldron, *Law and Disagreement*, 15–16, 69, 102, 232–33; Habermas, *Between Facts and Norms*, 38, 170, 186, 449.

aimed at eliminating the principle of “free and equal political agency” that constitutes the constitutive condition of democratic constitutionality. For constitutional legitimacy rests on a principle of “democratic rationality” arising from the uninterrupted and effective participation of the people, as equal political subjects, in decision-making processes. The suspension of this democratic participation through coercion signifies not merely the transformation of political power but the dissolution and collapse of the constitutive normative ground and democratic values that make the constitutional order possible. In this respect, the coup attempt must be seen as a political rupture directed at the regime of constitutional legitimacy that operates on the basis of “pluralism, political equality, and public reasoning.” The failure of this attempt, in turn, demonstrated the reflex of popular sovereignty — the bearer of the constitutional order — to preserve, at moments of crisis, its capacity for shared political reasoning, the production of collective will, and democratic participation.

CONSTITUTIONAL MOMENTS: THE CONSTRUCTION AND REVIVAL OF THE CONSTITUTIONAL ORDER

Constitutional moments manifest themselves performatively as a dynamic practice of sovereignty through the ruptures between “constituent politics” and “ordinary politics.” In this respect, constitutions correspond not to a fixed systemic structure or system of norms but to an ethical-political process of becoming in which the collective social will reconstructs itself at particular historical thresholds. Constitutional moments correspond to a political dynamic that is reconstituted at historical thresholds and that produces its meaning within uninterrupted public deliberation. The constitutional order brought into being by this momentum continuously reproduces itself through the constitutive deliberations that successive generations conduct over their shared destiny and political identity. In this respect, constitutional texts emerge not as a closed structure transmitting the legacy of the past to the future, but as a dynamic form of political existence through which each generation reopens the horizon of legitimacy.¹²

As a dynamic form of political existence that constructs itself through historical ruptures and moments, the constitutional order manifests its functionality, in ordinary periods, through routinized procedural decision-making mechanisms. Yet by virtue of its immanent existential dynamic, this order, at certain constitutive thresholds and historical moments, interrupts routine continuity to render the principle of “popular sovereignty and the will of the nation” directly visible,

¹² See Bruce Ackerman, *We the People: Volume 1: Foundations* (Cambridge, MA: Belknap Press of Harvard University Press, 1991), 6, 7, 9, 19, 23, 34; Loughlin, *Foundations of Public Law*, 227, 301, 311.

thereby enabling the redefinition of the constitutional framework. Constitutional legitimacy thus reveals itself as a “political construction” reproduced not only through continuity and routine but also through “historical ruptures, moments, and structural breaks.”

Assessed from this perspective, systemic crises constitute a political threshold at which the constituent potential of the constitutional order is disclosed and sovereignty is re-concentrated. In this sense, constitutional texts construct a dynamic political order continuously reconstituted at the intersection of “social mobilization, public consciousness, and collective will.” Indeed, as a form of sovereignty that reproduces itself through the constitutive and protective dynamic disclosed at moments of crisis, constitutions emerge, at moments of historical rupture, as a legal-political existential space of the nation’s will.

Within this framework, the resistance against the July 15 coup attempt appears not as a “state of exception” positioned outside the constitutional order, but as a counter-constitutional moment that renders visible the capacity of the political society that is itself the owner of that order to preserve and reconstitute itself. For the citizens who resisted the attempt to suspend the constitutional order mobilized into public spaces in order to protect the democratic political order. This noble resistance — which, oriented toward sustaining constitutional purposiveness, may be defined as an exercise of the “right to active resistance” — demonstrated the political dynamism that popular sovereignty reproduces at moments of crisis in order to preserve constitutional legitimacy.¹³ The right of resistance that citizens exercised through public mobilization and civic consciousness did not constitute a state of anti-constitutionality in which the purposive functioning of the constitutional order was interrupted. On the contrary, this resistance came into being, within the framework of the principle of “constitutional patriotism,” as a constitutive threshold at which the constitutional order was reaffirmed on the basis of the will of the people. Ultimately, this demonstrates that the continuity of the constitutional order rests not only on institutional norms but on the noble collective political practice disclosed at moments of crisis.

The July 15 resistance, which must be recorded as an exceptional constitutional moment and threshold in Turkish political history, emerged as an embodiment of the constitutive and protective will of the democratic political subject.

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The July 15 coup attempt, which targeted democratic constitutional governance, represented not only an assault on specific rights and freedoms but also an attack on the normative and institutional foundations upon which fundamental rights themselves depend.

¹³ See Locke, *Two Treatises of Government*, 109, 115; Burcu Değirmencioğlu, *John Locke’un İhtilal Teorisi Bağlamında ‘Arap Baharı’ Sürecinin Değerlendirilmesi* [“An Evaluation of the ‘Arab Spring’ Process in the Context of John Locke’s Theory of Revolution”] (Ankara: Adalet Yayınevi, 2016), 58.

This unique historical experience demonstrated that the ultimate foundation of constitutional legitimacy lies not in *de facto* force but in the constitutive character of popular sovereignty, rendered visible anew at moments of crisis. In this respect, the July 15 resistance proved that constituent will and power are not a historical moment confined solely to the inception of constitutionality, but rather a protective political capacity that reconstructs and revives the constitutional order at the very moments of rupture that threaten it. The constitutional order has thus been a living normative political order that continuously reproduces its democratic legitimacy through the effective political participation of the people, constitutional patriotism, and a shared sense of collective responsibility.

THE PRINCIPLE OF THE RULE OF LAW AND COUPS

Constitutional legitimacy also encompasses the normative qualities that a legal order in force must inevitably possess. From this perspective, the legal order corresponds not merely to a body of rules in effect but to a normative order that acquires meaning through criteria such as “generality, predictability, consistency, institutional continuity, and principled coherence.” Accordingly, the idea of the rule of law is not a technocratic formality that merely secures the legality of *de facto* power, but rather a constitutive principle of legitimacy that limits political power through law and safeguards individuals’ fundamental rights and freedoms. For this reason, legal validity and legitimacy depend not merely on the being-in-force of norms but on their carrying the internal rationality and ethical-political integrity that make the rule of law possible.¹⁴

In this respect, coups are not merely apolitical and antidemocratic interventions that interrupt the constitutional order, but also emerge as constitutional ruptures that eliminate the normative conditions of existence of the legal order. Although the anti-legalistic order established through the use of coercion and violence may formally produce norms, it is incapable of generating constitutional legitimacy, since it suspends the constitutive qualities of the rule of law — “predictability, legal security, institutional continuity, and principled consistency.” For this reason, the structures that emerge after a coup bring about the collapse of the normative fabric, the ethical-political ground, and the institutional structure that constitute the legal order. For the fundamental factor that constitutes the constitutional order consists of the principles of “democratic political life, constitutional legitimacy, and the rule of law” that uninterruptedly reproduce the principle of the rule of law.

¹⁴ Ronald Dworkin, *Law's Empire* (Cambridge, MA: Belknap Press of Harvard University Press, 1986), 93, 95–96.

The principle of the rule of law grounds legal legitimacy not merely in the being-in-force of norms but in the capacity of law for “predictability, institutional commitment, an independent judiciary, principled consistency, and the ability to guide individual conduct through law.” In line with this understanding, the legal order corresponds not to an instrument subject to the instrumentalization of political power but to a constitutive normative order that limits it. Legal validity therefore arises not from the will of de facto power but from the legal order’s own “internal rationality, institutional continuity, and principled integrity.” Correspondingly, the legitimacy of the legal order likewise exists and acquires meaning only insofar as it is able to preserve this integrity.¹⁵

At this point, constitutional legitimacy rests not only on the source of the constituent will but also on law’s capacity to sustain its own normative integrity. For this reason, no apolitical structure established through coercion and violence, however many norms it enacts, can reconstruct the ontopolitical and ethical-political ground of the legal order. For coups destroy all the ideational and formal normative conditions of existence that make the legal order possible on the basis of legitimacy. From this perspective, the July 15 coup attempt must be seen not merely as an attempt to seize constitutional power, but also as an attempted constitutional rupture directed at the normative and institutional ground that makes the rule of law possible. For armed intervention reduces law from a constitutive principle to a mere instrumental element of an apolitical exercise of naked force. Whereas the democratic constitutional order is able to sustain its dynamic existence within the normative continuity through which the rule of law and popular sovereignty mutually generate one another. For this reason, the July 15 coup attempt acquires meaning as a historical threshold at which the ontopolitical distinction between law and naked force became visible. This historical threshold makes clear that the source of constitutional legitimacy lies in the preservation of the normative integrity and democratic institutionality that make the rule of law possible.

DEMOCRATIC POLITICAL LIFE AND HUMAN RIGHTS

The July 15 coup attempt corresponds to a historical threshold moment at which theoretical axes such as “norm, sovereignty, constituent power, the power-violence distinction, the rule of law, and democratic legitimacy” moved out of the abstract plane and into a concrete field of testing. In this respect, the July 15 coup attempt, which cannot be assessed within the scope of classical definitions

¹⁵ See Joseph Raz, *Between Authority and Interpretation: On the Theory of Law and Practical Reason* (Oxford: Oxford University Press, 2009), 233–34, 332–35; Dworkin, *Law’s Empire*, 95–96, 134, 166.

of a coup, must be seen at its root as a comprehensive “attempt at suspension” directed at the constitutive principles of the constitutional order. This coup attempt acquires meaning not merely as a forcible reorganization of power but as a historical rupture-moment in which the structural relationship among “norm, power/authority, and legitimacy” was suspended. Indeed, the July 15 coup attempt possessed neither the capacity to generate normative validity nor the power to constitute a constituent political decision. For this coup attempt appears as an external “moment of coercion-violence” that ruptures the immanent continuity of legal procedures.

Whereas political authority or legitimate power corresponds to a relational capacity arising from “the continuity of shared action and public consent,” acts of coercion and violence fracture this very ground, reducing the political to the level of instrumental force.¹⁶ Within this framework, the July 15 coup attempt must be recognized not as the generation of public power but as an intervention in the constitutional order by organized violence seeking to substitute for it. Similarly, viewed from the perspective of the rule of law, this intervention or attempt produced a structural rupture that simultaneously suspended the fundamental conditions of the rule of law — “predictability, continuity, principled consistency, and normative integrity.” This rupture thus also targeted the very constitutive ground that makes the normative integrity of the legal order possible. The suspension of the existing constitutional order by coup attempts, or the withdrawal of the normative in favor of the exception, interrupts the continuity of the public decision-making processes on which democratic equality rests, removing the political from the domain of collective subjectivation and reducing it to the plane of relations of force.

Yet democratic political life and constitutional legitimacy acquire meaning not from *de facto* force but on the plane of the normative wholeness formed by “the rule of law, fundamental rights, democratic participation, and popular sovereignty.” This wholeness demonstrates that the constitutional order is not merely an institutional structure but also a continuously reproduced political and normative relationality.¹⁷ For this reason, the July 15 coup attempt, as a rupture-threshold targeting this constitutive wholeness, renders visible the fact that the true foundation of the constitution is not supremacy based on armed force but the normative authority of popular sovereignty, sustained in continuity within law. Thus, the preservation of the constitutional order emerges as a domain of political responsibility in which the regime of freedoms and democratic political life are continuously reconstituted.

¹⁶ Arendt, *The Human Condition*, 200–202, 228–30.

¹⁷ Loughlin, *Foundations of Public Law*, 156, 159, 186, 229–30.

The July 15 coup attempt, directed against democratic political life, was an attempt aimed not only at violating particular rights but also at destroying the normative and institutional ground on which fundamental rights come into being. For fundamental rights — such as “the right to life, personal liberty, the right to security, freedom of expression, and political participation” — emerge not as abstract and individual attributes but as relational normative structures that can attain reality only within the context of the rule of law, constitutional stability, and institutionalized public order.¹⁸ In this respect, coups or armed interventions, prior even to targeting the substantive content of the regime of fundamental rights and freedoms, eliminate the “ground and horizon of applicability” of rights by rupturing the political and legalistic continuity that makes them possible. Ultimately, this goes beyond violating fundamental rights to destroy the shared political habitat, or democratic universe, within which rights can be exercised effectively and meaningfully.

Within this framework, human rights signify not only the individual’s protected and secured domain vis-à-vis public authority but also a “performative and normative” relationality continuously reproduced within democratic publicness. All interventions and/or coups directed against the democratic political sphere, by fracturing the public order that constitutes this relationality, produce a zone of uncertainty and insecurity that strips the individual of status as a “rights-bearing subject.” Fundamental human rights are thereby severed from their normative regime of guarantee and exposed to relations of de facto force and acts of collective violence.

For this reason, the significance of the July 15 coup attempt for human rights lies in how it renders visible the way in which the violent suspension of the constitutional and political wholeness that carries the regime of rights and freedoms renders fragile the very ontopolitical ground that makes human rights possible. Indeed, to the extent that this coup attempt sought to suspend the constitutional order, it produced a profound political rupture that damaged both the capacity for rights to be protected and their exercisability in the public sphere. This rupture also demonstrates that human rights are not a static system of norms but a dynamic horizon of legitimacy continuously reconstituted through processes of social and political subjectivation. For this reason, the July 15 coup attempt constitutes a philosophical limit-experience that lays bare the bond between the conditions of existence of human rights and the political order that makes them possible. In this limit-experience, which posed a threat of insecurity, the meaning of human rights becomes newly clarified.

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The July 15 resistance stands as a historical watershed, demonstrating that the preservation of the constitutional order simultaneously entails the protection of human rights, the rule of law, and the continuity of democratic legitimacy.

18 See Dworkin, *Law’s Empire*, 93, 166; Raz, *Between Authority and Interpretation*, 192–93, 234–35.

COUPS: THE NORMATIVE DESTRUCTION OF THE REGIME OF FUNDAMENTAL RIGHTS AND FREEDOMS

Constitutional democracy manifests itself as a tension-laden legal order founded on the normative priority of fundamental rights and freedoms over the unlimited sovereignty of majority will. Within this order, constitutions constitute not an instrument that creates political power but a constitutive normative ground that continuously limits it and determines the framework of legitimacy on the basis of fundamental rights and freedoms. The distinction between legal validity and the principle of legitimacy points to the tension between the formal validity of positive law and the democratic legitimacy and normative validity of political power. That a given legal norm has been duly enacted does not mean that norm possesses “an orientation toward justice” and normative legitimacy. Similarly, majority will cannot be the source of constitutional legitimacy unless it is limited by the principles of “constitutional boundaries, fundamental rights, and the rule of law.”¹⁹ For this reason, in constitutional democracies the principle of legitimacy arises not from majority will alone but from the limitation of that will within universal principles of fundamental rights and constitutional normativity. Accordingly, the constitutional order acquires a democratic character to the extent that rights are secured, and a legal character to the extent that democratic participation continues. At this point, the regime of fundamental rights and freedoms is not a constitutive reflection or necessary extension of this order but constitutes the constitutive precondition that makes it possible.

Within this framework, coups correspond to a structural rupture that eliminates the normative ground of the regime of fundamental rights and freedoms. Through the paralyzing effect that coups have on the political sphere, the suspension of the constitutional order weakens judicial oversight, ruptures the principle of parliamentary representation, and effectively nullifies the guarantees of fundamental rights and freedoms.²⁰ The legal order thereby loses its protective, rights-and-freedoms-based character and is transformed into an instrumental apparatus of power. This destructive transformation signifies the dissolution not only of constitutional democracy’s institutional plane but simultaneously of its normative wholeness. For this reason, coups function as a process of normative destruction that eliminates the rights-and-freedoms-based structure of legitimacy of the legal order and ruptures constitutional continuity.

The elimination of the matrix of constitutional legitimacy — which appears as the constitutive horizon of legitimacy that makes possible the normative exis-

¹⁹ Dworkin, *Law’s Empire*, 93, 96, 166.

²⁰ Waldron, *Law and Disagreement*, 69–70, 243–44.

tence of the regime of fundamental rights and freedoms — signifies the fragmentation of the legal ground and normative wholeness on which that regime rests. For fundamental rights and freedoms are not essences capable of sustaining an independent existence outside the constitutional structure that secures them, but rather normative entities and performative acts that acquire meaning and validity only within the dynamic body of that structure. For this reason, constitutional rupture signifies not merely a singular political transformation but the dissolution of the inner structure of the order of legitimacy that constitutes the very condition of existence of rights. The constitutional institutions that reinforce this regime of rights and produce its guarantees function not as merely technical limits preventing violation of the constitutive constitutional principles by political power, but as structural necessities constituting the very condition of existence of legitimacy itself.²¹

Constitutional politics, which secures the regime of fundamental rights and freedoms, emerges as a political process of becoming that itself performatively enacts the production of constituent will. In this context, fundamental rights acquire meaning not as pre-established fixed norms but as constitutive acts continuously reconstructed and revived within the deliberative practice of public reason. For this reason, rights-and-freedoms-based constitutional politics exists as a dynamic horizon of legitimacy that dialectically reopens and reconstitutes itself across historical time. Within this framework, coups, on the one hand, signify the forcible overthrow of political power, and on the other, produce a twofold rupture that, through the suspension of the rights regime, erodes the normative character of law. With the collapse of the constitutional order, the regime of rights and freedoms loses its protective framework, and legal legitimacy gives way to relations of naked force. At this point, constitutional democracy emerges as the very name of the totality of normative conditions that make possible the existence of the regime of fundamental rights.²² The collapse or dissolution of these normative conditions signifies, more than the formal existence of law, the disappearance of the very ground of legitimacy that makes it possible.

Within this framework, the July 15 coup attempt constituted a multilayered rupture directed at the normative wholeness of the regime of fundamental rights and freedoms and at the constitutive ground of constitutional legitimacy. For constitutional democracy constructs a constitutive normative order that places fundamental rights — such as “human dignity, liberty, equality, and legal security” — above every form of apolitical disposition. For this reason, coups or armed interventions deny the principle of legitimacy by suspending the constitutional framework that constitutes the essential condition of existence of the regime of

²¹ Dworkin, *Law's Empire*, 93, 95–96.

²² Ackerman, *We the People*, 9–10.

fundamental rights and freedoms.²³ In this respect, the July 15 resistance demonstrated that constitutional democracy is a normative wholeness that secures the ontopolitical guarantee of the regime of fundamental rights and freedoms. This resistance stands as a historical threshold demonstrating that the preservation of the constitutional order also signifies the continuity of human rights, the rule of law, and democratic legitimacy.

IN LIEU OF A CONCLUSION

For Turkish political history, the July 15 coup attempt has emerged as a limit-experience that renders visible the fundamental tensions of modern constitutional thought. The distinctions between “norm and violence,” “law and coercion,” “constituent will and organized force,” and “the principle of legitimacy and de facto power” ceased, at this historical moment, to be abstract theoretical distinctions and became concretized directly within the frame of political reality. This juntaist coup attempt, which sought to eliminate the constitutional order through “coercion and violence,” also bears the character of a constitutive intellectual threshold in that it laid bare the very principles on which the conditions of existence of the constitutional order rest.

The common ground of these diverse theoretical approaches demonstrates that constitutional legitimacy can in no way be derived from sheer de facto force, capacity for coercion, or the seizure of power alone. This diverse intellectual trajectory — extending from theories of constituent power to approaches to democratic legitimacy, from the power-violence distinction to conceptions of the rule of law and theories of human rights — shows that the fundamental element constituting the essence of the constitutional order is a normative-political wholeness. This normative wholeness exists as a relational structure in which “popular sovereignty, fundamental rights, the rule of law, and democratic participation” mutually enable one another.

At this point, the most fundamental theoretical finding that July 15 has brought to light is that the constitution is not merely a textual fabric or institutional structure but a relation of legitimacy continuously reproduced within a dynamic continuity. In this respect, the constitutional order can sustain its own particular existence only within this relational wholeness. Absent this, the legal order, severed from its normative content, acquires a merely formal or technical appearance. The preservation of the constitutional state therefore signifies not merely the maintenance of existing institutions but the continuous reconstruction of the “democratic, ethical-political, and legal-political” ground that makes these institutions possible. As a historical threshold that renders visible both the

²³ Ackerman, *We the People*, 7, 34.

fragility and the resilience of this ground, July 15 demonstrates that the ultimate foundation of constitutional legitimacy is not *de facto* force but the normative authority of popular sovereignty, sustained in continuity within law.

In conclusion, July 15 demonstrated that the constitutional order sustains its existence not through coercion but through the normative authority of law and the legitimacy-generating power of the will of the nation. For the constitution corresponds not merely to a positive text organizing state power but also to a horizon of legitimacy that makes possible the shared existence of the political community. For this reason, July 15 acquires meaning as a constitutive constitutional experience confirming that the ultimate guarantee of the democratic constitutional order lies in the will of the nation, embodied within the legal order. The July 15 resistance was not merely the repelling of an attempt at betrayal, but a constitutive threshold at which the nation's historical memory, will, and state-founding capacity were reaffirmed. This process, grounded in constitutional patriotism, enabled the purging of the public structure from elements of tutelary, juntaist, and organizational domination, thereby making possible the reconstruction of the bond of legitimacy between the state and the nation. The national will (*irade-i milliye*) that rose in vital reflex on July 15 has taken its place in memory not merely as a heroic resistance, but as a historic manifestation, in this ancient geography, of the consciousness of nationhood and the determination to construct a shared future.²⁴

24 Muharrem Kılıç, "15 Temmuz: İrade-i Milliye Davası" ["July 15: The Case of the National Will"], Türkiye, July 13, 2017.

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Coups and the Limits of Constitutional Legitimacy: The Normative Undoing of the Rights and Liberties Regime

Muharrem Kılıç

LThe forcible dismantling or suspension of a constitutional order that derives its legal legitimacy from popular sovereignty and the national will constitutes a fundamental question in modern constitutional thought. This analysis reflects on the July 15 coup attempt as an effort at a constitutional rupture directed at the normative undoing of fundamental rights and liberties — an embodiment of ontopolitical tensions. This study grounds constitutional legitimacy in three axes: the relationship between norms and the constituent popular will, the ontopolitical distinction between power and violence, and the principle of pluralism.

Within this theoretical framework, the July 15 resistance is examined through the lens of “constitutional moments theory” and the concept of “constitutional patriotism,” while the destructive nature of coups is analyzed within the framework of the idea of the rule of law and the normative wholeness of the regime of fundamental rights and freedoms.

The constitutional order comes into being within a relational normative wholeness in which popular sovereignty, fundamental rights, the rule of law, and democratic participation mutually enable one another. Within this framework, the July 15 resistance is regarded as an exceptional constitutional moment that renders visible the protective capacity of the constituent will to reconstruct and revive the constitutional order at moments of crisis; and the failure of the coup attempt confirms that the ultimate guarantee of the democratic constitutional order lies in the will of the nation, which acquires continuity within the law.



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