

The democratic legitimacy hierarchy. The scales to determine authorities' legitimacy in democratic states

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Abstract

The distortion in states' hierarchies causes discussions of legitimacy in inter-institutional and internal relations. The reason of this is the parts of hierarchy that aren't organized according to democratic legitimacy. The purpose of this study is to explain what the democratic legitimacy hierarchy is, how to establish and protect it. Through various visuals, it is specified who should be at the levels of hierarchy, and methods are proposed on how to renew the system if there are people who shouldn't be in those levels. Solution proposals are presented on how to prevent the crimes of authority encroachment that can be experienced in inter-level relations following the placement of legitimate people to the levels. Emphasizing that the main form of democracy is direct democracy, stating that implementation of democratic legitimacy hierarchy system is the first step to reach it, tips on how to progress to reach it in the next stages are given.

Keywords: democratic legitimacy, representative democracy, authority encroachment, principal-agent relation, theory of democracy

Introduction

Political scientists have tried to explain the relations of obedience, power and government between the individual, society and the state on the basis of rights, consent and legitimacy throughout the history.

Authority was defined by Ball (1988, p. 16) as “the recognition and acceptance of the right to rule by the ruled”. Lipson (2005, p. 80) stated that the difference between authority and government stems from the fact that the authority is a legitimate government, and states that when faced with power, the citizen has two options: support or opposition, and when faced with authority, the citizen's duty is to submit. He states that the government is naked, authority is the government in the

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guise of legitimacy and argues that resistance to government is legal and resistance to authority is illegal.

Comparing the distribution of power in the state to a pyramid, Lipson (2005, p. 36) states that the government is located at the top of the pyramid and the people at the base of the pyramid and that the authority can spread from the bottom to the top or from the top to the bottom. In the first case, he states that the government is responsible to the people, and in the second case, the people are accepted as an object by the rulers. In addition, he argues that in addition to where the authority is located in the pyramid, the way the authority is organized is also important, and indicates that power can be concentrated in one point or distributed to different branches at different levels.

Stating that the elite class that holds the power to rule can abuse their power after a few years or generations, Dahl (2019, p. 86) indicates that the history of humanity is full of examples of rulers turning into despots through corruption, favouritism, gain from citizens, and forcing them to obey themselves. Therefore, the ruled class always wanted to influence the decisions of the ruling class. Those who think that the decisions that the society will accept most will be the decisions of the society, argue that the most direct way for the rulers to rule with social consent should be that the rulers should be society itself and they pioneered the birth of today's democracy by spreading this idea.

It has also been very difficult for democracy to be reborn, to develop and to become stable in recent centuries; even today the existence of a well-developed democracy anywhere in the world is a matter of debate. Today, democracy goes through different phases in different geographies. Dahl (2019, p. 8) stated that each phase of this has its own challenges, as follows: "The challenge for non-democratic countries is whether or how they will transition to democracy. For the newly democratized countries, the challenge is how to strengthen new democratic methods and institutions to withstand time, political conflicts, and crises. For the old democracies, the challenge is to perfect and deepen their democracies."

Sartori (2017, p. 31) stated that one of the characteristics of the democracy era is that we no longer know what democracy isn't or make no attempt to explain it. Therefore, those who strive for a better democracy should first say what is wrong / incomplete in the existing democratic principles and practices, then tell how it will be good / complete. In order to achieve these, they must first know democracy correctly and define it clearly.

The definition limits the concept and specifies what the concept refers to, as well as what it doesn't. Arguing that the only way to limit a concept is to define it from its opposite, with its contrary, or its adverse, Sartori (2017, pp. 24-230) emphasizes that in order to define what democracy is, we must reveal what it isn't. Arguing that in the definition of democracy, it is necessary to talk about both the democracy that exists and should be, Sartori states that the ideal of democracy doesn't define the reality of democracy and vice versa. He expresses that democracy

emerges from the interaction and conflict between its ideals and reality. This article is intended to be an idealistic reaction to existing democracies. It is the cry of what should be against what exists.

The purpose of this study is to explain what the democratic legitimacy hierarchy is, how to establish it and how to protect it. In this context, the research question of the study is who should be at the levels of the democratic legitimacy hierarchy and how interpersonal relationships should be at different levels. The answer to this question will indirectly reveal principles and practices in political relations that don't comply with democratic legitimacy. In this study, which is structured as two chapters in this direction; in first chapter, various doctrines related to democratic legitimacy are included and the democratic legitimacy hierarchy is defined and explained. In the second part, this 'theory' is explained by giving examples from the constitutions of various democratic countries.

1. Democratic legitimacy hierarchy

Stating that legitimation justifies the order by giving a normative credibility to the practical commands in the institutional arrangement, Berger and Luckmann (2008, pp. 136-137) mention that legitimation has cognitive elements as well as normative elements and it is not only about values but also always includes knowledge. He argues that legitimization not only tells a person why he should or shouldn't do an action, but also explains why something happens that way, and that knowledge comes before values in legitimizing institutions. Besides that, Weber (1962, p. 71) defines legitimacy as "the search for social approval in a field of justification on which all governments base themselves".

Stating that legitimacy and authority are intertwined and they explain each other, Sartori (2017, p. 237) argues that this is the reason for establishing a relationship between authority and spontaneously obeyed leadership, while stating that the authority proposes or wants something to be done based on righteousness, not order. Stating that the validity of commanding authority can be expressed within the system of rational rules, Weber (2012, pp. 319-320) expresses that these rules are determined by the administration and when such obedience is expected by it, they are obeyed as binding norms. He emphasizes that everyone who has the authority to command is legitimized by this system of rational norms and is legitimate as long as their power is in line with the norms, so obedience is given to norms rather than people. In the words of Rousseau (2019, p. 7), "power doesn't create rights and man must submit to just power".

While explaining the meaning of the term 'to agree not to agree' in democracy, Sartori (2017, p. 123) argues that we must first agree on the rules for the resolution of disputes, and that the disagreements within such rules are disagreements that democracy protects and develops. He also emphasizes that confirmation on resolution rules for disputes is a necessity, even a precondition for democracy.

Weber (2012, pp. 142-143) states that an order will be referred as ‘customary practices’ when protected by the possibility that those who deviate from it within a determined group will encounter a general disapproval response; when protected by the possibility of psychological or physical coercion by officials to punish violations or to ensure obedience, it will be referred as ‘law’. While he mentions that a person who breaks a customary rule will often be sanctioned by members of the status group in an informal but extremely harsh and effective manner, by boycott and reprimand, he emphasizes that this can be harsher than any legal sanction. He states that the customary guarantee closest to the legal guarantee is the formal and organized boycott practice and that this will be seen as a form of legal imposition in terms of terminology. In Rousseau’s (2019, p. 17) words, “In order for the social contract not to stand null, it must automatically include this connection that reinforces all other connections: Whoever tries to ignore the general will, the whole community will force him to respect.”

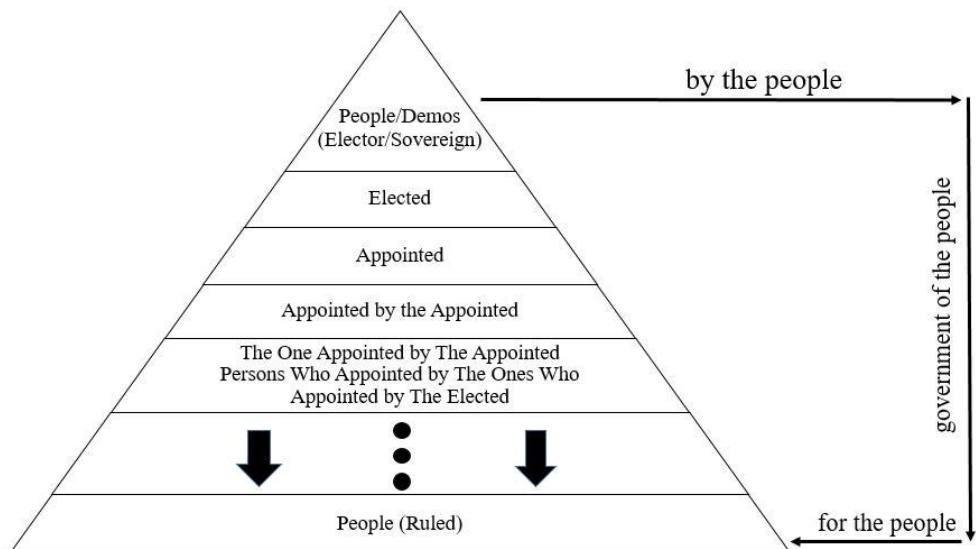
In governments where direct democracy is implemented, it can be said that there is only one great source of legitimacy, and this is the people (demos), since all the authorities are gathered by the people and can make urgent decisions about the current situations in frequent meetings. Stating that the people generally give discretionary powers regarding very important decisions in administrations where representative democracy is implemented, Dahl (2019, p. 128) explains that the public delegates these powers not only to the representatives they elect, but indirectly to administrators, bureaucrats, judges and, more indirectly, to international organizations. On this basis, it can be said that in representative democracies, without forgetting the fact that the biggest and main source of legitimacy is the people, there are legitimacy sources aligned in different fields of governments from the highest to the lowest.

If democracy is compared to a waterfall and the decisions taken are likened to flowing water; it can be assumed that direct democracy is a high waterfall that flows from a single center and very violently, whereas representative democracy is a wide waterfall that splits into different branches and gradually begins to flow to the lower rung after filling in the upper rung, and therefore the water flows more gently. Just as in such a waterfall, it can’t be expected that there will be water in the lower level before the water is completely filled on the upper level, in order for the decisions taken to be legitimate the authority must be taken from the higher authorities. Here, the hierarchy that determines the lower-upper relationship is the democratic legitimacy hierarchy. If we symbolize this hierarchy in the form of a pyramid, the people (demos) are at the top, since the main source of legitimacy and the greatest authority is the people. As the authorities are given and the decisions are taken, the pyramid descends from top to bottom, and this descent is the administrative (kratos) actions of states. Since the state ultimately rules the whole country and the people, there is also the people at the point where the government action ends and the pyramid reaches the base. As Abraham Lincoln summarized in his words: “The

government of the people, by the people, for the people” (Sartori, 2017, p. 55), the democratic government is a process that begins and ends with the people.

In representative democracies practiced today, all major decisions other than those taken by the people through referendum or general suffrage are taken by representatives elected by the people. Representatives make appointments to lower positions, and those appointed then appoint someone to lower positions than them. In this way, the democratic legitimacy hierarchy descends from the top of the pyramid in the form of the elector (people / demos), elected, appointed, appointed by the appointed, appointed by the appointed one. In the pyramid in Figure 1, the governing cycle and stages in representative democracy are shown.

Figure 1. Governing cycle and stages in representative democracy

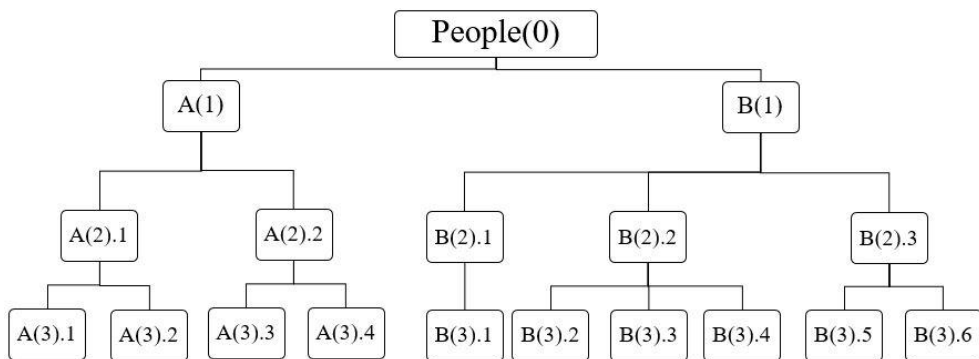


Source: Author's representation

Democracy indeed has only one function. All other functions are included in that function. That function is: democracy eliminates the difference between the words 'government' and 'people'. In democracies, the government and the people are the same things. In the 'idea' of democracy, the whole pyramid consists of the people. However, in representative democracy, the representatives that entering to the pyramid through the middle and the bureaucracy formed by their appointments, started from the middle of the pyramid and gradually expand and compress the 'people' by pushing them to the top and bottom of the pyramid. In fact, the root of all the discomfort that the people feel about the 'representative democracy' method in democratic countries is the discomfort caused by this stuckness.

Because of hierarchical decision-making mechanisms build a bureaucratic order in the state, they may be subject to various criticisms. However, Mill (2020, p. 103) argued that “There couldn’t be a moment’s hesitation between representative government, among a people in any degree ripe for it, and the most perfect imaginable bureaucracy”. Further, in Weber’s (2012, p. 342) opinion “Experience tends to show universally that the purely bureaucratic type of administrative organization, that is, the monocratic kind of bureaucracy, can achieve the highest degree of efficiency from a purely technical point of view, and in this sense is known as the most rational means of authority over people. It is certainly superior to any other form in its stability, rigidity of discipline and reliability. Thus, it makes possible a particularly high degree of calculability of results for the heads of the organization and those who act in conjunction with them. This ultimately is superior in both the intensive efficiency and the scope of its operations, and is officially applicable to all types of administrative tasks.” The democratic legitimacy hierarchy in a state can be described in bureaucratic steps as in Figure 2.

Figure 2. Degrees of democratic legitimacy are shown in brackets



Source: Author’s representation

The people are at the top by the nature of democracy, and because they represent the starting point of decision-making mechanism in the state, just like the point of origin in the coordinate system, the degree of democratic legitimacy of them can be determined as zero (0). As shown in the pyramid shape, at the next layer there are the elected ones. If it is explained by increasing the degree of each next layer by 1, the degree of the elected ones is 1. Many different positions are established in the state by the separation of branches in accordance with the principle of separation of powers and the division of each power into branches related to subjects that require expertise in itself. The persons chosen by the people in 2 different areas shown as A and B in Figure 2 are shown as A(1) and B(1) because their degree of democratic legitimacy is 1. The person selected in field A, namely A(1), appoints someone to the head of the sub-units within the institution related to that field. The democratic

legitimacy degree of those appointed because they come after the elected ones is 2. Two persons appointed by A(1), namely A(2).1 and A(2).2, appoint someone to the subordinate authorities of their units. The democratic legitimacy degrees of the persons appointed by the appointed one are 3. The 2 persons appointed by A(2).1 are A(3).1 and A(3).2. These two people are in the A(3) category, as they work in the A field in the state, 3 degrees below the people in terms of legitimacy. On this basis, it is seen that B(2).2 is an ‘appointed’ person in the B field and B(3).5 is an “appointed person by the appointed one” in the B field. There may be intermediate authorities in this rating that can’t be expressed with integers. These authorities are the authorities of those persons who are approved for appointment by a higher authority than the supreme authority appointing them. For example, since the person appointed by a person of the 2nd degree office and whose decision of appointment is approved by someone in the 1st degree office, because he is accepted by a higher authority than other persons appointed by someone in the 2nd degree authority (3rd degree office), it can be said that its democratic legitimacy is at a level that can be expressed as a number greater than 2 and less than 3. There is no limit to the degrees of democratic legitimacy in a state, because a state can be institutionalized in as many different fields as it wants and an institution can be divided into as many sub-units as it wants. For example, there may be an officer in the category Z(100).

What is important here is that the greater (farther from 0 (the people)) the degree of democratic legitimacy hierarchy, the less democratic legitimacy it provides. Because the lower the person’s layer in the democratic legitimacy hierarchy pyramid that takes a decision, the more indirectly that decision is taken by the people. Due to the nature of democracy, decisions that the people don’t take themselves should be taken by those who are closest to the people as much as possible. To this respect, it can be argued that it is contrary to the nature of democracy for someone in a less legitimate office to interfere with, or prevent, or even slow down the decision of someone in a more legitimate office. Because if one compromise is made on this issue, it paves the way for the A(1) or B(1) or even officers from lower levels in the example interfere with the powers of the people(0). Military coups can be cited as an example of such authority encroachments. Furthermore, it can be argued that it is harmful in terms of democratic legitimacy for persons holding positions in different fields (such as A and B) to interfere in the affairs of each others, regardless of their degree. Because if one compromise is made on this issue, it paves the way for A(1) to interfere with the affairs of B(1). This can be regarded as ‘not recognizing’ the right of the people to give the 1st degree powers related to the B field to someone, and it indirectly means ‘not recognizing’ that the people are above the 1st degree, that is they are at 0th degree. Therefore, it can be argued that in the democratic legitimacy hierarchy, no horizontal and vertical authority encroachment should be compromised, otherwise the system could become inoperable or even disappear.

Al Capone, the famous American mafia leader of Italian origin, used the following statements about his childhood years when he started committing crimes:

“When I was a kid I used to pray every night for a new bicycle. Then I realized that the Lord doesn’t work that way so I stole one and asked Him to forgive me.”

In democratic states, if we compare the representatives to servants and the people to God, when the representatives do something that the people don’t want or don’t do something that the people want to be done, they know to apologize with fancy words, and the very merciful people like God, even if they can do it again, often forgive their servants, in other words, their representatives. The self-indulgent servants who are accustomed to this are motivated to commit new sins, just as rulers who aren’t dismissed despite their unauthorized actions find courage to commit authority encroachment crimes.

Hobbes (2021, p. 185) stated that those who have jurisdiction are also public officials, because in the courts they represent the personality of the sovereign and their judgment is the judgment of the sovereign; because all jurisdiction is essentially dependent on the sovereign, therefore all other judges are the agents of the person or persons who have the sovereignty power.

The most fundamental judgement in a country is the conscience of the people and the priority of being the spokesperson of this general conscience belongs to the parliamentarians, who are directly elected representatives of the people. They have both the authority to make and interpret the laws and, in fact, the priority to implement them. So why are there courts? Representatives from the judicial organization “while preparing the constitution” so that it can deal with judicial affairs on behalf of the people, and also to determine how it will be organized and work. Judicial and administrative courts carry out judging processes. However, it can be argued that, since the judges don’t have the right to make a decision contrary to the conscience of the people, when such a situation occurs, with the title “the highest court/the highest judgement institution” the legislature, as “the representative of people’s conscience”, has the right to be involved in any judicial process and overturning a decision of any court.

Hobbes (2021, p. 207) stated that the essence of a law isn’t its wording, but the purpose or intention when it was made, that is, the actual meaning of the law (which is the meaning the legislator gives it). Therefore, the interpretation of laws belongs to the sovereign power and the interpreters can’t be other than those appointed by the sovereign power. Otherwise, with the cunning of an interpreter, the law could be given an opposite meaning to the intention of the sovereign, and the interpreter would thus have taken the place of the legislator.

Whoever prepares a constitution can know the meaning of it and interpret its articles best. In order for the people to be really effective in the jurisdiction (as in all

state issues), constitutional courts should be abolished, and the legislature accepted as “the highest court/the highest judgement institution”. In fact, democratic governments don’t have 3 branches: legislative, executive and judicial; they have 2 branches: legislative and executive. In democracies, institutions that aren’t directly elected by the people can’t be considered as “a branch of government”. These sentences may seem too harsh, but don’t the truths seem like this, anyway?

Aristotle (2020, p. 126) stated that correcting a current constitution is more difficult than making a new one; likewise, it is easier to learn something from the beginning than to forget what has been learned. Making a new constitution according to the democratic legitimacy hierarchy is easier than making the changes in constitutions that will make it appropriate for the democratic legitimacy hierarchy. This can stand here as an advice.

Montesquieu (2020, p. 204) stated that if the executive power is entrusted to a certain number of people elected by the legislature, there doesn’t remain anything as freedom. For, sometimes those who have both powers and those who can join both powers whenever they want will always be the same people, so the two powers are united. In the parliamentary system, the executive power is elected by the legislature (1). This is against the separation of powers and also against the democratic legitimacy hierarchy. Therefore, in democratic states, the executive power should be elected directly by people. Maybe this claim will also seem harsh, but the presidential system is the only government system that can be accepted as democratic.

Everyone/all citizens in a country are affected by the general/holistic condition of it. What happens in one part of the country also affects the rest of the country. For example, if the activities that will provide economic benefit are done less in a region, but the expenditures that will cause waste are done more, the tax revenues obtained from that region decrease and the resources allocated for the expenses are not used effectively. Therefore, this region becomes an economic burden on other regions. However, no one has the right to be a burden to anyone. A society of a region in a country can’t say “we will decide for ourselves what to do in our region”, because that region doesn’t belong just to them, it belongs to the whole society of that country; and what happens in that region affects not just itself but also other regions.

It shouldn’t be forgotten that the golden motto of democracy is “everyone has a say over the political decisions that affect their life”. In every issue that can benefit or harm society, through their elected representatives, the whole people should have a say, otherwise the processes won’t be democratic. There is no such thing as a regional benefit or harm in a country. While even the events occurring outside a country affect that country significantly, it can’t be thought that the events in a region within that country won’t affect the whole country on the short or long term. Therefore, it can be said that there should be no local election in democracies and that one of the indispensable conditions for a country to be democratic is to have a unitary state structure.

It can be said that those who are elected at the local level should be seen lower in terms of democratic legitimacy than the person with the lowest authority in the overall hierarchy. Because if the will of the local people of a region surpasses even the tiniest part of the general will of the country, the general will on which the social contract theory is based and which is the basis of democracy is fragmented. If the smallest nook in the state that the general will can't rule is left, the sovereignty of the state - that is, the people's sovereignty will be limited and the power of the state will be weakened. For sovereignty can never be divided, the part of sovereignty that is separated from the whole is now a new sovereign. On this matter, Rousseau (2019, p. 83) states that "The same situation happens when members of the government individually take over the state power they have to use together. This is a thorough opposition to the law and leads to great confusion. At that time, the more governors there are, the more rulers there are, and the state that isn't inferior to the government in disintegration either disappears or changes form". Since there can't be more than one sovereign in a region, it can be argued that autonomous governments within the state determined by local elections are unacceptable in terms of democratic legitimacy. To this respect, it can be argued that the autonomy of local governments should be abolished and they should be turned into sub-units of the central government. Officials appointed from the center should be the head of these institutions; or even if there is a local election, the elected person should be approved by the central government, which is the ambassador of the general will. Additionally, when the decisions of that local administrator and the central government conflict, central government's decision should be taken as a basis and implemented.

The integration of the state around the central government also facilitates the control of the legitimacy of both its whole and its parts. Glencross (2009, pp. 5, 25-26), who mentioned that integrative projects at the national level develop democratic legitimacy without enlarging the hierarchy, states that it is a necessity for the states to desire a transition to direct democracy, while emphasizing that building a hierarchy of democratic legitimacy is a precondition for better government.

The applicability of direct democracy is currently a topic of discussion. Constant (1970, p. 61), while arguing that when we leave a principle free of mediating principles in the middle of a society of people and try to adapt it to our own situation, great confusion will arise and this principle will have destructive effects; he states that this isn't the fault of the principle, the fault lies with us who do not know what the mediating principles are. The democratic legitimacy hierarchy is the first of these mediating principles, because it reminds us the precondition of direct democracy that "all powers should be concentrated in the people and no one can usurp even the tiniest part of the power of the people".

If the situations contradictory to the democratic legitimacy hierarchy are explained with examples, they can be understood more easily and mental practice is made with the solution proposals presented through examples.

2. Examples from constitutions

It can be said that there are regulations that are contradictory to the democratic legitimacy hierarchy in many issues about determining the legislature and executive, constitutional amendments, inequalities between branches of a government, dissolution of the legislature and executive, relations between parliaments in bicameral states.

For instance, in Article 146 of the Constitution of Türkiye¹, it is stated that 3 of the 15 members of the Constitutional Court will be selected by the Grand National Assembly of Türkiye, while 12 indicated will be selected by the President. In Article 105, the authority to dismiss the President of the Republic is given to the Constitutional Court. It is stated in Article 101 that the President will be directly elected by the people. It can be argued that, in terms of democratic legitimacy, those appointed by the first-degree authorities, such as the case of the Constitutional Court with the second-degree office dismissing the first-degree President is against the democratic legitimacy hierarchy. If no one objects when the judges elected by the President dismiss the President, when the President dismisses the people who elected him/her and declares his/her tyranny, on what grounds will it be objected? Authorized persons should never be able to dismiss authorizers and the democratic legitimacy hierarchy shouldn't be disrupted.

The dismissal of the president of the United States is different from the method in Türkiye. In Section 2 of Article 1 of US Constitution², it is stated that the House of Representatives elected by the people has the authority to impeach the President. It is stated that the jurisdiction of the President being accused of something belongs to the Senate elected by the people according to Section 3 of Article 1 and in the same section it is stated that the Senate can remove the President from office. It can be said this is appropriate in terms of democratic legitimacy hierarchy: the President, who isn't elected by the people directly according to Section 1 of Article 2, and elected by the electors who were elected by states' legislatures, can be removed from office by the Senate elected by the people directly.

Regarding the determination of the legislature, it is stated in Section 3 of Article 1 of the US Constitution that 1/3 of the senate members elected for 6 years will be re-elected every 2 years and in the statement section, it is mentioned that this practice makes the Senate a continuous institution unlike the House of Representatives. In addition, with the 17th amendment made in the Constitution, members of the Senate are elected by people, so the duty of senators is to represent the will of the people. However, the members of the Senate elected every 2 years can be considered to be in a more legitimate position than other members, as they

¹ Constitution of Republic of Türkiye, https://www.tbmm.gov.tr/anayasa/anayasa_2018.pdf

² Constitution of United States of America, <https://photos.state.gov/libraries/turkey/231771/PDFs/abd-anayasasi.pdf>

represent the more current state of people's will. Therefore, it can be argued that this gradual election practice should be abandoned and an election system should be introduced, in which all members of the Senate are determined at the same time for avoiding legitimacy imbalances between senators. In addition, in the 23rd amendment of the Constitution and its statement, it is specified that the people of the Washington, DC region, which is the central region, can vote in presidential elections, but they don't have the right to vote in Congress elections. As explained in the form of the pyramid, people who are affected by all decisions and actions of the administration because of being at the lowest level, have the right to be governor at the top level. However, in this case, while people living in Washington, D.C. are at the base of the pyramid, they are restricted from being present at the top. Therefore, it can be argued that this practice is against the democratic legitimacy hierarchy and that the people there should have the same political rights as the people in other regions and should be able to vote in Congress elections.

Acceptance of laws in Russia can be shown as an example of inter-parliamentary relations in bicameral states. Article 105 of the Russian Constitution³ states that federal laws accepted by the State Duma by the majority of its members will be submitted to the Federation Council for its opinion; if the Federation Council rejects the law, it is stated that the law will be deemed to be accepted when the 2/3 majority is achieved in a second vote in the State Duma on acceptance of the law. The fact that the law, which is rejected by the Federation Council with 50% majority, can be enacted if it is accepted by State Duma with a majority of 66.6%, makes the Federation Council seem to be superior to State Duma in terms of democratic legitimacy. However; in Article 95 it is stated that the Federation Council will be formed by the participation of two representatives of each federal element of the Russian Federation and one representative from the legislative and executive organs; the State Duma will consist of deputies determined by general election. Considering that both councils consist of representatives elected by people and that the Federation Council consists of representatives elected at the local level, despite the fact that members of State Duma are elected by the whole people by general elections, it can be said that the Federation Council isn't superior to the State Duma in terms of democratic legitimacy. In fact, the State Duma is superior. Therefore, it can be argued that the rejection of a law (which is accepted by majority of the State Duma) by the Federation Council in a way that makes its re-acceptance more difficult is against the democratic legitimacy hierarchy.

Also, here I would like to give a couple of examples of criticisms of bicameral systems. Despite the criticism that unicameral systems may fail to capture and accurately represent the diversity of contemporary societies, Apahideanu (2014, pp. 68-69) answers; "States cannot or should not invent a new parliament chamber for each of the innumerable cleavages occurring in contemporary society". Then he

³ Constitution of Russian Federation, <https://www.anayasa.gen.tr/rusyaanayasasi.htm>.

stated that representation of minorities doesn't require another parliament chamber, representing them in a unicameral parliament can be arranged by systems of proportional representation and quotas. Also, please remember Benjamin Franklin's well-known word "legislative body divided into two branches is like a carriage drawn by one horse in front and one behind pulling in opposite direction".

As an example of inequality between branches of government, again in Russia, the President's approval of laws can be shown. When the President, determined by general elections according to Article 81 of the Constitution, rejects the laws accepted by the State Duma, which is determined by general elections, it is stated that if the law is accepted again by the State Duma and the Federation Council by 2/3 majority, it will be signed by the President. The same issue regarding the acceptance of laws between the two parliaments is also between them and the President. However, the democratic legitimacy of the State Duma isn't lower than that of the President, as both are determined by people through general elections. Therefore, it can be said that the rejection of a law accepted by the State Duma with a 50% majority by making terms of its acceptance difficult by the President is against the democratic legitimacy hierarchy. It can be argued that these constitutional articles should be amended in order for the law, which was accepted with majority by the State Duma twice, to become law without any rejection. Article 74 of the Constitution of Italy and Article 89 of the Constitution of Türkiye state that a law rejected by the president will become law if it is accepted again by parliament in the same way. It can be said that these practices are more suitable for democratic legitimacy hierarchy.

I should also add the following arguments about the fact that such a complicating veto power of the president can lead to authoritarianism. According to Article 90 of the Constitution of Russia, the President can issue decrees (which do not contradict the Constitution and federal laws). Parrish (1998, p. 79) stated that "the unitary executive now faces a divided legislature, meaning that other things remaining equal, it is more difficult to overturn presidential decrees than it would have been under a unicameral system... Hence the president needs only the support of one-third of one house of the Federal Assembly to avoid having his decrees superseded by new legislation, which is the only way for the Assembly to block such presidential initiatives." Also, Weisman (1995, pp. 1379-1380) stated that "Since the President retains the power to rule by decree, any legislation which is passed effectively chips away at the President's authority to decide the issue in the future without parliamentary interference. Therefore, the President maintains an interest in vetoing legislation in order to preserve maximum executive power". This authority of the president can indeed lead to such a negativity. However, as suggested in this work, if the 2/3 veto condition is removed and 50%+1 that is absolute majority is stipulated, this possibility will decrease and the president's authoritarianism will be made more difficult, and this is positive for democracy. For example, according to the article 104 of the Constitution of Türkiye, when the Parliament passes a decision

with a %50+1 majority on a matter regulated by the president by decree, the decree becomes void and the President cannot veto this decision in a way that makes it difficult to be re-accepted with the same majority. This is appropriate for the democratic legitimacy hierarchy, but the Russia's is not.

The fact that those who have %50+1 majority in a parliament can pass the laws they want without any veto obstacles may raise concerns that it may lead to the tyranny of the majority. However, in line with these concerns, there are many names who state that it is not right to apply the complicating veto rule and that it is natural for the majority to rule by their own will. For example, John Locke (2020, pp. 166-167) argued that:

“For, when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community, being only the consent of the individuals of it, and it being one body, must move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so everyone is bound by that consent to be concluded by the majority... And thus, every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it... For where the majority cannot conclude the rest, there they cannot act as one body, and consequently will be immediately dissolved again... Whosoever, therefore, out of a state of Nature unite into a community must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community unless they expressly agreed in any number greater than the majority... And this is that, and that only, which did or could give beginning to any lawful government in the world.”

It can be easily understood without the need for other examples, that the rule of the majority in politics is the ‘only’ natural and legitimate way.

The Federal Council, one of the legislative branches of Germany, can be given as an example regarding the restriction of legislative power. Article 50 of the Constitution of Germany⁴ states that states will participate in legislative affairs of the Federation through the Federal Council; in Article 51 it states that the Federal Council will consist of members appointed by states’ governments and that the votes

⁴ Constitution of Federal Republic of Germany, <https://www.btg-bestellservice.de/pdf/80207000.pdf>.

of a state, however, can be used in one direction. It is natural for people of a state to have different opinions on federal issues. However, it can be said that if their representatives are forced to cast their votes in one direction, people's will can't really reflect on the governance. In representative democracies, in order for people's will to be reflected correctly in governance, besides the fact that the representatives who will make decisions should be elected by people, they must also be free to take decisions in the direction they want. It can be said that these regulations in the Constitution of Germany restrict will of representatives elected by the people of German states; in fact, both partially restrict people's will and reduce the legitimacy of the Council. Based on this, it can be argued that the abolition of 'one-way voting' requirement in Article 51 of the Constitution of Germany is a requirement of democratic legitimacy hierarchy.

Appointment of members to the Senate by the President in Italy can be shown as an example of the usurpation of people's administrative authority. In Article 59 of the Italian Constitution⁵, it is stated that the President can appoint 5 citizens who have achieved success in fields of science, art and literary and earned honour to the country as senators for life. In Article 58, it is stated that the Senate is determined by general election. Article 83 states that the President is elected by National Assembly and Senate at the joint session of the Parliament. By stating that the persons (3) appointed by the ones (2) who elected by the persons (1) elected by people (0), are becoming members of Senate, it would mean that those whose democratic legitimacy degree is 3 are in an office where the ones whose democratic legitimacy degree is 1, and this situation contradicts the democratic legitimacy hierarchy. Therefore, it can be argued that the President's right to appoint members to Senate should be removed from the Constitution.

The National Assembly in France can be given as an example for the dissolution of legislature. Article 6 of the Constitution of France⁶ states that the President shall be elected by direct universal suffrage. In Article 24, it is stated that the members of National Assembly shall be elected by direct suffrage. In Article 12, it is stated that the President may declare the National Assembly dissolved. Also, it is stated that no further dissolution shall take place within a year following the election, after that dissolution in Article 12. In Article 50, it is stated that when the National Assembly passes a resolution of no-confidence, or when it fails to endorse the government program or general policy statement, the Prime Minister shall tender the resignation of the government to the President. However, there is no statement in the Constitution of France that the National Assembly can dismiss the President. This may give courage to the President to become an insensitive despot, so there should be a precaution. But how can a precaution be taken without any non-

⁵ Constitution of Republic of Italy, <http://dergiler.ankara.edu.tr/dergiler/38/275/2915.pdf>

⁶ Constitution of Republic of France, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf.

democratic practice? There is a difference between dismissing an elected person and taking decision for a new election. In dismissing the elected ones, they may lose their authority, but in case a new election decision has been taken, the elected ones continue to use their authorities until the day of the election. If the people want an elected one to continue in office, they vote for him/her again; if they don't want, the people don't vote for him/her and thus he/she doesn't get re-elected. If the elected one becomes elected again, he/she continues to use his/her present authorities; if people don't elect him/her again, he/she loses those authorities. This is the people's dismissing of elected ones and according to democratic legitimacy hierarchy this is the only democratically legitimate way of the elected ones to be dismissed. No elected ones should be able to dismiss each other, but they can ask the people (0) to dismiss an elected (1) one. Because both branches of government are directly elected by people, it is expected that both branches work in line with the people's will. However, agents aren't clones of their principals. Sometimes they can take initiative and put forward their own personal ideas. In order to protect the system against the possibility that these situations may cause danger, the authority to take decision of a new election should be given to both branches at least once during the term of office as a life-saving 'backup parachute', in case legislature and executive branches may make some attempts to make each other non-effective. But here is something that should also be mentioned. In the Article 116 of the Constitution of Türkiye, it is stated that when the legislative or executive branch decides to renew elections of each other, the elections of both are held together. It can be argued that this will reduce the courage of both sides to take decision for a new election. Therefore, it can be argued that it is necessary to make arrangements that make it possible to take the election renewal decisions unilaterally.

Sartori (2017, p.30) states that the basic condition for a democratic system to survive is comprehensibility. The examples in this part of the study are used for an easier understanding of the democratic legitimacy hierarchy. There are many other examples that contradict the democratic legitimacy hierarchy in constitutions, laws and practices of countries that are said to be democratic. For understanding the subject better, further studies would be welcome, also enlarging these examples and visuals at the global level or at the level of a single country, even at the level of a single government branch or institution of a state.

Conclusions

In this study, what the democratic legitimacy hierarchy is and how it can be established is explained with the help of various images, scientific doctrines and different constitutions examples. The factors that can disrupt it are described and examples from the constitutions of various states are given. Since states are institutionalized in various ways, it is difficult to find parts in each of them

individually that go against the democratic legitimacy hierarchy. However, there is also a need to explain the basic issues that are objectionable in principle.

The democratic legitimacy hierarchy is the skeleton of the ideal of democracy. The stronger the skeleton, the stronger and more beautiful the body. The body may be tilted in one direction due to skeletal defects; just as the concentration of more power than it should be in an office of a state causes that authority to dominate other authorities and decisions to be taken in the direction desired by the authority. The slow operation of the system when the authority of an office in a state is less than other offices of the same degree can be compared to the limping of the body because one of the foot bones in the skeleton is shorter than the other. In this respect, it can be argued that the democratic legitimacy hierarchy should be seen as an ideal that should be established and protected for the democracy to be strong.

When the system of the democratic legitimacy hierarchy -which can be used as a scales between the sides discussing the democratic legitimacy- is made a constitutional principle; it can be said that it will provide a basis of legitimacy to the state and every part of it by functioning as a reference point for both the reorganization of the powers of existing institutions and how the new institutions to be established should be formed according to the powers they are thought to have. John Adams states that “whoever establishes a state and makes laws to govern it must assume that man is inherently bad” (Adams, as cited in Colhoun, 2019, pp. 37-38). When humankind gains power - perhaps because their survival instinct whispers to them that they can achieve that if they become the strongest – they are constantly willing to increase that power. Therefore, it can be thought that a person who gains authority in a state and the power to do something would want to have more authority to increase his/her power.

An ambitious person who can't obtain this authority through legitimate ways may commit various authority encroachment crimes in order to use the powers belonging to others by not obeying the democratic legitimacy hierarchy. Prevention of such crimes is necessary to protect the democratic legitimacy hierarchy. It can be claimed that if the system of democratic legitimacy hierarchy is disrupted, the democratic legitimacy cannot be determined, therefore, the democratic system will be disrupted by the participation of people whose authority doesn't stem from the “demos” in “kratos” activities. Based on this, in order to protect the system of democratic legitimacy hierarchy which protects democracy, it can be argued that deterrence should be created with laws that promise to impose severe sanctions on those who violate it.

In addition, the following criticism may come in this regard; relying on one single democratic hierarchy could result in something even worse. It turns it into a mono-archy, meaning a single hierarchical order which fails entirely if the initial link between ‘people’ and ‘elected’ (figure 1) fails. If the level of the elected consists of one branch, the risk can be high. But thanks to the separation of powers, that level consist of two branches. If one of their links with the people fails, the other tries to

fix the link; even it possibly prevents this problem before it happens. However, there is still a low but serious risk. Both of them can disconnect their links with the people or another group can try to break these links - a coup attempt can be given as an example for this.

The right and sanction of the people to “revolt” when faced with these risks are always in the people’s hands. In the deepest background, the main protector of democracy is the people. Helmke and Rosenbluth (2009, pp. 351-352) stated that “in the developing world, where formal institutions are routinely ignored, public support for rights is more reliably than formal institutional provisions”. If the people’s commitment to democracy is strong, when someone or a group tries to break this commitment, people revolt and take over the sovereignty again; just as in the example of the people stopping the coup attempt in Türkiye on the night of 15 July 2016 by going out to the streets and standing in front of the tanks. Toelstede (2020, p. 344) stated that “The longer the principal-agent chains are, the more fragile they become in terms of adverse selection and moral hazard. Furthermore, with the growing social hierarchy (institutional punishment), the power asymmetries increase, though power asymmetries and principal agent chains should be in balance. Otherwise, the society increasingly depends on the political agents’ benevolence not to usurp the power rather than a strong accountability link with the civil principals”. So what needs to be done to reduce this risk? In Rousseau’s (2019, pp. 37-41) words, “Just as, before putting up a large building, the architect surveys and sounds the site to see if it will bear the weight, the wise legislator does not begin by laying down laws good in themselves, but by investigating the fitness of the people, for which they are destined, to receive them”.

Even if it is for the benefit of the people, the people don’t accept that the system they are used to being turned upside down, they don’t want their order to be disturbed. Trying to correct everything at once, against the democratic legitimacy hierarchy in a state, requires enormous changes and may be resisted by the people. Besides, if the changes are started from the base of the pyramid upwards, the authorization changes in the hierarchy must be made in opposite direction of the authority flow. This is like rowing against the current and tires the rower, that is the rulers who are trying to establish the democratic legitimacy hierarchy. However, it can be said that if the changes are started from the top of the pyramid downwards, they will proceed much easier and faster with the support of the authority flow. Therefore, it can be argued that in the hierarchy, it is necessary to first determine who should be directly elected (1) by the people (0), then to eliminate any deficiencies related to the authorities they should have in their field of duty, and then to determine and enact the types and amounts of criminal sanctions related to violations of authority that may be experienced at that level. It can be argued that if these arrangement methods (which are proposed to be applied between 0th layer and 1st layer in the hierarchy) are applied also between the next layers, the system can be changed without encountering the resistance of the people as much.

As mentioned in this study, the democratic legitimacy hierarchy opens the way to direct democracy. It can be claimed that later, what needs to be done in order to get closer to this goal is that people in the center of the decision-making mechanism (that is 0th degree) should be approached by reducing the number of layers in the hierarchy. Therefore, it can be argued that the decisions taken by elected representatives in a state should be taken directly by the people as much as possible and that the public's approval should be obtained for the people appointed by the elected ones as much as possible. It can be thought that as the technological possibilities develop in the future, the people will have the opportunity to directly elect even persons who are in lower degrees of the hierarchy. With the awareness that the main form of democracy is direct democracy; when 'reaching to it' or 'approaching to it as close as possible, even if it can't be reached' is idealized; it can be said that this ideal will have a locomotive effect on the way to democracy. It can be thought that the system of democratic legitimacy hierarchy is the rail system on which this train is moving and it won't reach its destination if the train derails.

For those who, after reading all these arguments and recommendations still think that they cannot be applied in real life, let the great master respond: "If a painter draws a picture of the most beautiful person that can be seen, but with no faults; if he isn't able to prove that such a man can exist, would the artist's value be diminished because of this? Isn't what we are doing drawing a perfect state with words?" (Plato, 2018, p. 181).

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