

# The Effect of Populism on American and Turkish Judiciaries

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## ABSTRACT

In this article, I study the relationship of populism and judicial independence. I argue that populism poses a threat against the latter. Specifically, I use Turkey and the United States as illustrative case studies. First, I explain what an independent judiciary looks like, and proceed to explain the importance of a judiciary in a democracy, defined as a mixed regime. Furthermore, I discuss the threats facing judiciaries in the face of rising populist movements in Turkey and the United States. In Turkey, judges seen as disloyal to President Erdoğan are replaced with judges that will rule in favor of the administration. In the United States, up to 90% of judges are elected, which is problematic for reasons related to the election mechanism's relationship with democracy. Furthermore, there is a history of pressuring the judicial branch to conform to the wishes of the executive branch in America, which will also be examined. Finally, I will relate these pressure tactics to the idea of judicial populism. This notion, which states that courts may alter their opinions to appease a populist executive, has had wide-ranging policy implications. I will examine some of these in the paper.

## **Introduction**

The judicial system plays an important role in any country's democratic system. As Bobbio points out, there are four main constitutional mechanisms that safeguard one's rights in a democratic system. One of these four, which is most important for this paper, is "the ultimate accountability of parliament, in its exercise of ordinary legislative power, *to a jurisdictional court to which is entrusted the entire constitutional aspect of legislation*" (Bobbio, 2005: 13, emphasis is mine). The judicial component of a liberal system is crucial because without it, Dahl's polyarchy of rights would be void. These rights, which include freedom of speech, freedom to run for public office, and others ensure that a true liberal democracy exists (Keman, 2015).

Furthermore, an independent judiciary ensures that the rule of law within a country remains relevant and strong. The rule of law is a significant concept because as stated in the Judicial Reform Strategy, a document produced by Turkey's Ministry of Justice in order to help reform the Turkish judicial system, "there is a structural link between the rule of law and the independence of the judiciary. Ensuring an autonomous judiciary in democracies is a prerequisite for rule of law. This is also a guarantee for the individual rights and freedoms" (Guzel and JRS, 2019). There is also a proven link between the rule of law and the separation of powers, which limits a government's powers. The separation of powers is a concept that will be further discussed later in the paper.

Finally, it is important to note that an independent judiciary is important when dealing with cases against the government. Pressure, usually coming from the executive branch, could put justice in jeopardy, as judges may have to choose between doing the right thing and bending their opinion toward the executive in order to retain their job. Coercion could also incur other costs depending on the political context. As the preamble to the UN Basic Principles on the Independence of the Judiciary states, judges "are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens"; therefore, executive interference in this process should be condemned in the harshest terms possible.

Both Turkey and the United States have strong commitments to the independent judiciaries in their constitutions. Article III of the United States' constitution outlines "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office"(U.S. Const., art. 3, § 1). Likewise, the Turkish constitution of 1982 gives many promises of an independent judiciary that will not have undue stress put on it by any one party or individual (Constitution of the Republic of Turkey, 1982).

However, in recent years, the judiciary has come under attack by right-wing populist movements in both the United States and Turkey. Both Turkish President Recep Erdoğan and former United States president Donald Trump effectively used the center-periphery to 1) build a base of support appealing to those who felt that their views were ignored or did not matter, and 2) "otherize" core institutions such as the judiciary as corrupted.

These populist leaders sought (and in Erdoğan's case, continue to seek) to have their ideology permeate all aspects of government. Hence, the judiciary was no exception to the actions of these two presidents. The thinking of populist leaders is quite simple: as their authority comes from the voters, they have a right to dispose of unelected officials who may stand in their way. This line of thinking, while antidemocratic in nature, gave leaders like President Erdoğan a legal façade for his illiberal actions against judges (Sozen, 2008).

In this article, I explain what an independent judiciary looks like, and proceed to explain the importance of a judiciary in a mixed democracy. I also define the features of a mixed democracy that exist today, even in autocratizing states. From there, I argue that populism is a significant threat to judicial independence and mixed democratic regimes as a whole. I also explore the differences between the Turkish and American judicial systems. I do so by specifically examining how the two countries' efforts line up with international standards on how an independent judiciary should be formed.

Turkey's executive-centric constitution puts undue stress on the judiciary. After the Justice and Development Party's (AKP) took power of all levers of government power, judges have been put under duress for opposing any government policies. Since then, judicial intimidation and unannounced relocations of judges have become rampant. The head of government, President Erdoğan, has also taken it upon himself to create new judiciaries to punish political opponents. These are all dangerous trends for both citizens and judges committed to the rule of law. On the other hand, the United States has two alternative ways of putting judges on the bench. The first is through direct election, and the second is through appointment by elected officials. The former, when paired with an increased level of polarization in the country, has led to special interest groups compromising the independence of popularly elected justices. Even in the latter case, judges are not immune to outside pressures. I will examine two methods in this paper. The first is intimidation through direct pressure, as evidenced by President Trump and his numerous statements on court decisions. A second option is through pressure of diluting the power of existing justices, which was best demonstrated by President Franklin Roosevelt through the Judicial Procedures Reform Bill of 1937. These tactics have mixed results, which I will outline later in this article.

Finally, I will argue that judicial populism is the undergirding philosophy behind the decline of both Turkish and American judiciaries. Judicial populism is defined as when "courts might change their own decisions in order to show empathy toward the public or the populist political branch." (DEMOS 2021) This philosophy can apply to all types of judges—Turkish or American, unelected and elected. While the literature thus far has focused on the actions of the executive branch on eroding the judicial branch's independence, this article takes the additional step of analyzing how the judiciary responds to these populist movements.

The rationale for choosing the United States and Turkey for this comparative study is quite simple: each has experienced a backsliding in its respective democratic institutions and norms in recent years. As the report *Autocracy Goes Viral* points out, Turkey had the third highest rate of autocratization from the years 2010 to 2020 (V-Dem Institute). To add, Freedom House reported an 11 point decline in the United States' democracy during the same time frame (Freedom House).

To extend the argument, Turkey has slid farther down the slope of autocratization than the United States. The same reports cited above marked the two respective countries at a democracy score of .40 and .94 in 2010, and .11 and .83 respectively one decade later. Hence, Turkey serves as a model as to what a declining American judicial system could look like in years to come. There are some obvious differences between the two countries, such as the differing usage of common and code law, but the decline in democratic and judicial norms are evident in both cases.

## An Ideal Independent Judiciary

It is critical, before discussing the case studies of the United States and Turkey, to see what an ideal judicial system would look like. With many judiciaries around the world, it may seem impossible to find a truly perfect system. However, there are several documents that provide an ideal framework through which a judicial system could be constructed. Furthermore, it is important to discuss the importance of an independent judiciary in a country.

One such document that lays the foundation for an independent judiciary is the aptly titled “Basic Principles on the Independence of the Judiciary”. It contains 20 clauses pertaining to the judiciary, including immunity, freedom of association, and training (“OHCHR | Basic Principles on the Independence of the Judiciary” 2019). For this article, and for comparisons between Turkey and the United States, I have highlighted five articles to showcase the main components of a judiciary that is free from undue influence

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

It is important to note before beginning the paper that in both the Turkish and American cases, neither one has a truly independent judiciary. Flaws exist within each system that make each case study unique. These weaknesses will become important later on as I discuss these weaknesses, which have been exploited by populist leaders.

## Democracy As A Mixed Regime

Democracy means many things to many people. Indeed, with over half the world’s population living in a flawed democracy or better (Intelligence Unit 2020), democracy has become synonymous with a slew of terms. These range from the right to vote, to rights outlined in the United States’ Bill of Rights, and even institutions such as the presidency. Due to this, the definition of democracy as a mixed regime has been lost. The aforementioned loss of knowledge is important because before any rights can be given to the people, a thorough understanding of what type of democracy one lives in is critical. The distinctions between democracies can help students of government understand what weaknesses their particular brand of democracy may run into in the future.

A mixed regime can be defined as a form of government in which the ideas of democracy, oligarchy, and monarchy are merged. In this sense, “democracy” means a form of government where the legislators and judges are either elected through a popular vote or through lots (in the Athenian form of democracy). The idea behind this theory is the notion

that no one group will be able to abuse the others; hence, the lack of conflict will lead to a more harmonious government and society (Miller 2017). As Henry Brougham wrote in his book *Of Democracy*, “It thus appears that all pure forms of government (aristocracy, oligarchy, and democracy) are liable to this serious objection (no checks on other groups in a pure system). As long as men are clothed with human infirmities, they in whose hands power is placed will abuse it; and if the power has some unavoidable restraints and limits, their effort will be to shake off the restraints and pass the limit as much as they can” (Brougham, Henry, and Society For The Diffusion Of Useful Knowledge (Great Britain. 1846. *Political Philosophy*. London, C. Knight & Co.)). The emphasis of playing branches off each other was a radical notion at the time. However, the battle between branches of government is a crucial element to a mixed democracy. People’s rights, which could easily be taken away by a purer form of government, are subjected to many veto players. This concept makes it exceedingly difficult for people’s rights to be infringed upon.

The idea was popularized as the checks and balances system we know today, with the term being coined by Montesquieu. One of the most popular ideas in the history of political science, it was put into practice in both the Turkish and American constitutions. The degree to which it would be implemented was fiercely debated on both sides of the Atlantic and gave clues as to how each country’s judicial system would work (or falter) in years to come. Checks and balances were initially implemented to protect the citizenry from government overreach; other weaknesses in the two countries’ constitutions and institutions would prove decisive in how they respectively dealt with populism.

## Case Study Turkey

Turkey, once a tutelary democracy (Sozen, 2008), is no longer remotely close to this form of governance. It has transformed into an autocracy, largely due to President Erdoğan and his Justice and Development Party (Adalet ve Kalkınma Partisi, from now on, it will be referred to as the AKP) (Bermeo, 2016). There are clear reasons for the democratic backsliding. Populists like Erdoğan see the ballot box as the sole democratic institution, and the people as the sole source of legitimacy. Any other institutions, such as the judiciary, must be eliminated, for as Juan Peron (an Argentinian authoritarian) once said, “it (the courts of justice) may place justice at odds with the will of the people” (Sozen, 2019).

The AKP went about weakening the judicial system in many ways. First, it undermined the credibility and independence of the judiciary during the rule of the Kemalists, the party that was committed to the ideals and principles of Mustafa Kemal Atatürk. Then, President Erdoğan took advantage of the executive-centric framework of Turkey in order to increase his own influence within the judiciary. Finally, the raids of December 17-25 2013 and the attempted coup of 2016 prompted many events that decreased the autonomy of the judiciary. Two of the most important were the purging of several judges and the emergency powers Erdoğan granted himself days after the attempted overthrow. In the early 2000s, most political battles were fought between the AKP, a neoconservative, populist, Islamist party, headed by a charismatic leader named Recep Erdoğan, and the Kemalists. As the AKP rose in popularity and power during the mid-2000s, Kemalists used their positions in key posts, like the judiciary, to stop Erdoğan’s party from truly governing the country (Sozen, 2008). The obstruction gave the AKP the fuel to attack the judiciary as corrupted and out of touch with the common citizen. Thus, the party won over some hesitant supporters, who may have been uneasy with the Islamist rhetoric of the AKP, but were also disenchanted by the undue interference of the court system in governing the country. The coalition of religious conservatives and tepid liberals gave the AKP the votes it needed to become a burgeoning force in Turkish politics.

The AKP’s position on the judiciary led to some seeing the AKP as a democratizing, not autocratizing, force. The true intentions of the AKP were never to make the judicial system more free and independent. Those in the AKP’s leadership wanted to replace it with judges and decision makers explicitly endorsed by the Parliament (the supposed voice of the people). This cover gave the AKP the excuse it needed to radically change the independence of the judiciary.

In addition, President Erdoğan took advantage of the strong executive power granted to him by the Turkish constitution. As Sozen points out, a strong executive branch, made up of the president and his cabinet, was initially

balanced out by a strong military (Sozen, 2019). However, as the military turned to other matters such as the Kurdish situation (Sozen, 2008), the president was allowed to gain an enormous amount of power in the vacuum left by the military. The increase in power for the executive was combined with the fact that the AKP had increased its vote share in every election since 2002. The increase in power and support “provided the infrastructure for the ‘quiet revolution’ that Erdoğan promised his supporters...media freedoms and judicial autonomy became prime sites for democratic backsliding” (Bermeo, 2016). The ruling party’s trend towards authoritarianism was finally coming to light by a majority of scholars, albeit at a later date than some prescient scholars (Sozen 2008).

If these two things were bad enough, nearly two dozen referendums passed since 2010 have further undermined the judiciary. The revolution has had dire consequences for an independent judiciary; the executive branch, made up of both the president and his cabinet, have sole power to appoint several judges, and there are limited opportunities for the legislature to assert its authority over these picks. Even if it could, not much could be done to seriously stop executive picks, as the AKP and associated parties control the legislature. Then again, anybody who participated in “ideological and anarchistic activities”, according to the 2017 constitutional reform, cannot participate in the legislature. The ambiguity may mean more limits on opposition to the government, especially in light of the attempted coup in 2016 (“Grand National Assembly | All about Turkey.” n.d.). The attempted uprising helped to push Erdoğan’s narrative that the people (and the people alone) have the absolute right to control all facets of government.

The two other important developments were the raids of December 17-25 2013 and the attempted coup of 2016. The raids, which were carried out by police forces, targeted 52 people associated with the AKP. Threatened, President Erdoğan scapegoated the Gülen movement, a group that had previously been praised by government officials, but now was designated as a “terrorist organization” (Platform for Peace and Justice, 2018). The fight against “the parallel state”, as the Gülen movement was termed (referred to as FETO for the rest of the article), resulted in the establishment of Criminal Peace Judgeships.

These Criminal Peace Judgeships were established to weed out those who may be aiding “the parallel state”. These judges have the power to detain political opponents and imprison citizens on flimsy evidence. For instance, the usage of ByLock (a secure messaging app) was considered enough evidence to detain somebody. Due to its secure nature, it was suspected as a prime area for Gülenists to communicate without government interference (Platform for Peace and Justice 2018). This, however, was not necessarily true; the Turkish government admitted that up to half of detained suspects could have been accused falsely (Welle, n.d.).

Although the government ultimately prevailed in the 2016 attempted coup, it was used as an excuse for President Erdoğan to deploy his emergency powers (“Turkey Declares ‘State of Emergency’ After Failed Coup”, 2016). This allowed the president to rule by decree for a set period of time, initially three months. However, President Erdoğan kept this power for over two years, a period in which he added to his power by passing through a new constitution in 2017 and won reelection (Sozen, 2019). This, coupled with a legislative majority in parliament, ensured that one party (or one man) rule would soon wreak havoc on what independence the judiciary still had. These events have led to a disturbing decrease in the autonomy of the judicial court system in Turkey.

It is worthwhile to note that this power grab took place under constitutional guises, as most populist power grabs do. As previously mentioned, the constitution of Turkey was set up in a way to give more power to the executive than to other branches of government. In this sense, Turkey was a weak mixed democracy, with more power going to one branch of government than to others. The monarchical portion of the mixed democracy was exploited with the rise of President Erdoğan, just as Brougham predicted when one branch was given more power than the others.

President Erdoğan’s actions, as outlined above, provide a clear example of what judicial populism looks like in practice. In line with his populist instincts, Erdoğan saw his authority, and his alone, as legitimately from the people. This line of reasoning can be extended to the argument that judges who rule against the government rule against the will of the people. This gave President Erdoğan the justification to dismiss and reassign hundreds of judges. The result of this intimidation can also be seen in the rulings of Criminal Peace Judgeships and newly appointed judges. Barely

any rulings have contradicted the ruling administration. This is an example of judicial populism in an illiberal democracy. This type of populism also manifests itself in liberal democracies such as the United States—this will be evaluated later in this paper.

As a result of these attacks on an independent Turkish judiciary, it is not surprising to see that Turkey ranks very low on several indices relating to an independent judiciary and the rule of law. Of 128 countries surveyed by the World Justice Project, Turkey ranks 107th on its commitment to the rule of law, which, explained earlier, has a tight connection with how independent a judiciary is (WJP Rule of Law Index, 2020). Likewise, Freedom House says that “The appointment of thousands of loyalist judges, the potential professional costs of ruling against the executive in a major case, and the effects of the post coup purge have all severely weakened judicial independence in Turkey” (Turkey, 2019). These quotes prove that a combination of the many actions taken by the Erdoğan administration have severely damaged the independence of the Turkish judiciary. From this, I will now contrast this case study with the United States to expose flaws in the United States’ own judicial system.

## Case Study United States

The United States, in stark contrast to Turkey, has never emphasized the role of the executive. While it is an integral part of the separation of powers, the executive always has had limited control over what can be done. This can be traced back to the Founding Fathers’ fears of centralization of power into one executive, as had been the case under the colonies’ rule by King George III. Hence, the original constitution, the Articles of Confederation, provided for some very weak rule by the federal government and devolved most power to states. However, when the Articles were scrapped in favor of the Constitution we know today, a federal government with increased powers had increased checks on it, especially on the executive branch.

When arguing in favor of the new Constitution, Alexander Hamilton stated that the judiciary would be the weakest branch (Jay et al, 2019). The courts do not have the “purse” of the legislature (referring to the ability of Congress to control the budget) or the “sword” of the executive branch (known as the ability to wage war). The judiciary’s opinions cannot be enforced—one only has to look at Andrew Jackson ignoring the ruling of John Marshall’s court in the case *Worcester vs. Georgia* and his famous phrase “John Marshall has made his decision; now let him enforce it” (Sustain Atlanta, 2015).

Despite this weakness, the judiciary was made stronger and more independent with the idea of judges being appointed for life tenure. This ensured that administrations could not simply “clean house” at the beginning of their term and appoint judges favorable to them. Hamilton also, harkening back to his view of a mixed democratic regime, believed that few men (and only men at the time) would be able to comprehend and understand how to interpret the law. “Few people... will have the knowledge and the integrity to judge the law, and those deemed adequate to the office must be retained rather than replaced” (Law JRank, n.d). Hamilton’s view is Aristotle’s theory exemplified in the young republic

This implementation did not mean that all the Founding Fathers were on the same page when it came to the topic of judicial independence. In fact, Thomas Jefferson took more of a contrarian view on the issue. He believed that while the yeoman may not have the capabilities to be a judge, he could have sound judgement when electing judges. “In this, as in many other elections, they (voters) would be guided by reputation, which would not err oftener, perhaps, than the present mode of appointment” (Jed Handelsman Shugerman 2012). Jefferson makes a valid argument, especially in light of his own political philosophy. However, as I shall show, the United States’ judicial system has now become a place for hot button issues and policies to be upheld or struck down. This development has thrown out any desire for many citizens to vote for candidates who have more experience or qualifications than their opponent. The issue of how partisanship became so bitter in the United States is not the focus of this paper; it is merely an accepted fact. One potential cause of this is the notion that legislatures (both state and federal) began passing controversial issues to courts instead of dealing with them through legislation (Gorsuch, Nitze, and Feder, 2019). These

issues, such as environmental and abortion policy, could have been dealt with in statehouses across the country. However, it was not due to representatives' fears of not being able to win additional terms. Courthouses became the new battleground for these legislative aims.

This has resulted in millions of dollars being poured into high profile judgeships. As Shugerman points out in his book The People's Courts, business interests have spent tremendous sums of money on candidates who will be more likely to side with them in important cases. For example, Don Blankenship (an energy executive) bought over \$3 million in ads and resources for Brent Benjamin, a candidate for a judgeship. This influx of resources was dumped into Benjamin despite the fact that he had no previous bench experience and his opponent, Judge McGraw, was a veteran of the court system. When voters went to the polls, the results directly contradicted Jefferson's interpretation of events: Judge Warren McGraw—seasoned, well-respected, and independent—was defeated (Shugerman 2012). This is disheartening, as positions meant for independent judges have turned into partisan brawls.

In Wisconsin, contests for the state's supreme court have seen an increase in the amount of funds being funneled to candidates. Last year, a record breaking \$10 million was spent on this race, beating the previous record set the year before (PRESS 2020). As a bellwether for Wisconsin politics, these elections have become a crystal ball of sorts for upcoming state and national elections (Heck 2019). Therefore, each side spends exorbitant amounts of money to secure a victory. In the words of one elected judge, "I never felt so much like a hooker down by the bus station...as I did in a judicial race. Everyone interested in contributing has very specific interests. They mean to be buying a vote" (Shugerman 2012). This form of populism has enfeebled the independence of elected judges. Instead of being faithful to state constitutions, judges must instead be loyal to the groups and donors that got them elected. This is one ramification of the presence of populism in judiciaries across the United States.

Despite this populist impulse, not all judges are elected in the United States. In the most important federal posts, the President of the United States appoints judges. Throughout American history, the independence of these judges and their rulings have been tested. For instance, Justice Samuel Chase was impeached by the House of Representatives in 1804. The rationale was not because he was unfit for office: impeachment managers justified the move because of Chase's political opinions, which were not in line with Democratic-Republicans, who controlled both houses of Congress and the presidency (Impeachment, 2021). While Democratic-Republicans may have failed, this proved to be a pivotal moment in the history of judicial independence in America. Never again would a federal judge be tried for impeachment due to his or her political beliefs. This unwritten rule would help keep politics out of the judicial realm on one front.

Unfortunately, American judges have never been fully immune from political calculations. One of the earliest ways that judicial independence was threatened was through the addition or subtraction of Supreme Court justices. For example, Federalists eliminated one Supreme Court seat in 1800, denying the Democratic-Republicans an opportunity to make their own selection. The move, however, was for pure political purposes. Federalists did not have a mandate from the people to eliminate the seat. Ironically, they attempted to eliminate the seat during a lame-duck session of Congress before they lost power. Hence, this is not an example of judicial populism. However, the actions of President Franklin Roosevelt in 1937 demonstrate judicial populism in practice.

While Roosevelt won with strong majorities in both the 1932 and 1936 elections, many of his New Deal programs were struck down by the Supreme Court. Their rulings aggravated Roosevelt, who believed that his measures were necessary to combat the worst of the Great Depression. Straight off his victory in 1936, where President Roosevelt won an astounding 60.8% of the vote, the president introduced the Judicial Procedures Reform Bill of 1937. In effect, the "court-packing" bill would give control of the Supreme Court to Roosevelt, aiding his efforts to control all three branches of government.

The bill ultimately failed due to intense opposition from Democrats and Republicans alike. Nevertheless, the episode was a perfect example of judicial populism. President Roosevelt saw the Supreme Court as an impediment to his plans for the country. Based on the popularity of both himself and his programs, Roosevelt decided to resolve the Supreme Court issue in a way that was democratic in theory, yet thoroughly anti-democratic in nature (in the sense of

the mixed democracy). In this instance, distinct similarities can be drawn between the thinking of both President Roosevelt and Erdoğan.

The other way that judicial populism permeates the thinking of appointed judges is through intimidation. This method is far more common than the way described above. In the aftermath of the battle over the Judicial Procedures Reform Bill of 1937, the Supreme Court began ruling in favor of the administration on many agency issues. The makeup of the Court had not changed, but the mindset of judges sitting on the Court did. They ruled in a way that would not hinder the administration's agenda for the remainder of Roosevelt's time in office. Even in the case of *Korematsu vs. United States*, which clearly showcased the discrimination Japanese-Americans faced in internment camps, the Supreme Court upheld the administration's decision as legal.

The phenomenon was also distinctly present in recent years. The tweets Donald Trump sent out criticizing "Obama judges" for overturning policies he enacted while in office are yet another example of presidents trying to influence policy making in another branch (Haslett and McGraw 2018). His comments led to a rebuke from Supreme Court Chief Justice John Roberts, who said "We do not have Obama judges or Trump judges, Clinton judges or Bush judges. What we have is an extraordinary group of dedicated judges doing their level best to give equal rights to those appearing before them" (Haslett and McGraw 2018). Although Roberts' words were considered a powerful rebuke, Trump continued bashing the independent court system, calling for judges who may oppose him to recuse themselves and decrying "judicial activism" from certain court circuits ("In His Own Words: The President's Attacks on the Courts | Brennan Center for Justice." 2020).

These trends, coupled with popular elections for judgeships, have intensified the pressure for justices to become politically active in their decisions. The United States' judicial system ranked 21st in the world for independence ("WJP Rule of Law Index" 2020). It should be noted, however, that the ranking has dropped since 2015 (the rise of Donald Trump's candidacy for President of the United States). Although the decrease has been minimal (.02 points), the trend is disturbing. The metric is another piece of evidence to prove that populism can take a toll on any country, even one that has heralded itself as a beacon of freedom for many across the world.

## Conclusion

This paper examined the judicial aspect of mixed democracy theory and its real world applications to Turkey and the United States. While there are many differences between the two cases, there are strands of populism that run through both analyses. In both countries, populism has been shown to threaten the true independence of judiciaries, albeit through different means.

In the Turkish case, it was through the "singularization of elections" that, in the eyes of the Erdoğan government, gave it the necessary legitimacy to move or fire judges who ruled against the government.. It was also through the implicit approval these elections gave to the government that President Erdoğan saw the validity of setting up Turkish Criminal Peace Judgeships. These courts represent a grave threat not only to independent judges (and provide a classic example of judicial populism), but political dissidents as well.

In the case of the United States, popular elections for judges have been proven to become a partisan battleground for hot button issues. The jobs of these judges are complicated by factors including money for re-election, the need for key endorsements from state and local officials, and being faithful to the law itself. The role of populism in the national discourse in regards to the justice system was discussed as well. Political figures that have promised policies deemed unconstitutional by the court may see their initiatives struck down. These decisions, in turn, may lead to undemocratic attacks on judges. These criticisms, which may take direct or indirect forms, nevertheless have an impact on how judges rule in cases and how they are viewed by the public.

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