

EXTENDED SUMMARY

This study examines the phenomenon of silent constitutional changes and the scope and limits of constitutional review, with a particular focus on the Turkish context. The concept of “silent constitutional change” refers to a transformation of the constitutional order without the formal amendment procedures explicitly prescribed by the constitution. Unlike formal amendments, these changes occur incrementally, often through judicial interpretation, political practice, or executive action, thereby altering the practical functioning of the constitutional system without an explicit textual revision.

The central problem addressed in this paper is the challenge that such silent transformations pose for constitutional law and democratic governance. Constitutional systems are designed to maintain both stability and adaptability. Formal amendment procedures, typically requiring broad consensus, ensure that any change reflects the will of the polity. However, when constitutional change occurs through informal or extra-textual means, it bypasses these democratic safeguards, potentially undermining both the legitimacy of the constitutional order and the role of constitutional adjudication.

In the theoretical framework, the paper draws on comparative constitutional scholarship, particularly the works of Bruce Ackerman, Richard Albert and David Landau. These scholars have examined various forms of constitutional change, including abusive constitutionalism, constitutional retrogression and unconstitutional constitutional amendments. Within this framework, silent constitutional change emerges as a distinct phenomenon — less visible than formal amendments, but equally capable of reshaping the constitutional order. The Anglo-American literature occasionally uses the term “silent constitutional change” yet this paper adopts “silent constitutional change” to emphasize the informal and incremental nature of the process.

The Turkish case presents a particularly compelling illustration of this phenomenon. The constitutional history of Turkey reveals multiple instances where constitutional practice has diverged significantly from the written text, often in the absence of formal amendments. For example, shifts in the separation of powers, the scope of judicial review and the independence of the judiciary have frequently been the result of political practice and judicial interpretation rather than explicit constitutional change. The 2017 constitutional

amendments, which formally transformed Turkey from a parliamentary to a presidential system, were preceded by years of gradual, practice-based changes that effectively redefined the powers of the presidency.

The study also explores the role of the Constitutional Court in responding to or facilitating silent constitutional change. In theory, constitutional review functions as a safeguard against unconstitutional alterations of the constitutional order. However, in practice, courts may contribute to such changes by adopting interpretations that depart from established constitutional norms or by refraining from reviewing certain political actions. This raises the question: where should the limits of constitutional adjudication be drawn in order to prevent a gradual erosion of constitutional principles?

The analysis engages with the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) as a comparative case. The BVerfG has developed doctrines—such as the protection of constitutional identity under Article 79(3) of the Basic Law—that act as barriers against both formal and informal constitutional changes that threaten the fundamental structure of the constitution. Key decisions, including the Lisbon, UPC and PSPP cases, illustrate how the Court has sought to balance democratic flexibility with constitutional stability. These examples provide valuable lessons for the Turkish Constitutional Court, especially in contexts where political actors seek to alter the constitutional balance without formal amendment procedures.

From a methodological perspective, the study employs both doctrinal analysis and comparative constitutional law. It reviews relevant case law from the Turkish Constitutional Court, the European Court of Human Rights and the German Federal Constitutional Court, alongside political science literature on democratic backsliding. The sources include both primary legal materials (judgments, constitutional provisions) and secondary scholarly works, ensuring a comprehensive understanding of the phenomenon.

The findings reveal several patterns. First, silent constitutional change often arises in periods of political crisis or transition, when institutional checks are weakened and political actors exploit ambiguities in constitutional text. Second, constitutional courts, depending on their interpretive approach and political context, can either serve as bulwarks against such change or inadvertently facilitate it. Third, once silent constitutional change takes root, it

becomes difficult to reverse, as it reshapes political expectations, institutional roles and public perceptions of constitutional norms.

The Turkish experience also highlights the interplay between silent constitutional change and broader processes of constitutional erosion. Informal changes often accumulate alongside formal amendments, reinforcing shifts in power distribution and weakening democratic accountability. For example, changes in the functioning of the judiciary, including the composition and powers of Republic of Türkiye Council of Judges and Prosecutors (HSK), have been both the product of explicit legal reforms and informal practices that erode judicial independence. Similarly, the increasing reliance on presidential decrees has altered the legislative-executive balance beyond the scope envisaged in the constitutional text.

The comparative analysis underscores that while silent constitutional change is not inherently illegitimate—it can, in some contexts, adapt constitutional practice to new social realities without the rigidity of formal amendment—its democratic legitimacy depends on transparency, public debate and adherence to constitutional fundamentals. When conducted without these safeguards, it risks becoming a tool for democratic backsliding.

In conclusion, the paper argues that constitutional courts should develop explicit doctrines to identify and limit silent constitutional changes that undermine the core principles of the constitutional order. This requires a robust understanding of constitutional identity, an awareness of political realities and a willingness to engage in principled constitutional interpretation. In the Turkish case, strengthening the Constitutional Court's capacity to monitor and address informal changes could serve as a vital check on the erosion of democratic governance.

The study's contribution lies in its articulation of silent constitutional change as a distinct analytical category within constitutional theory and its demonstration—through the Turkish and German cases—of how constitutional adjudication can either safeguard or subvert constitutional stability. By situating the Turkish experience within a broader comparative context, it provides both a theoretical framework and practical recommendations for addressing the challenges posed by this subtle yet profound form of constitutional transformation.