

**THE UNIVERSITY OF LEEDS**



**FACULTY OF LAW**

**THE ROLE AND TREATMENT OF POLITICAL PARTIES  
IN LIBERAL DEMOCRACIES WITH REFERENCE TO  
THE UNITED KINGDOM, TURKEY AND THE  
EUROPEAN CONVENTION ON HUMAN RIGHTS**

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**TO MY MOTHER AYSE DEMIR AND MY SONS MUSTAFA  
MELIH AND MUHAMMED SENIH**

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## THE ABSTRACT OF THE THESIS

This thesis analyses current situations of political parties in the UK and Turkey with reference to liberal democracy in general and the European Convention on Human Rights in particular. Political parties are essential elements of liberal democracies. In order to function properly, political parties must operate under the rights to freedoms of expression and association, and right to free elections guaranteed by the Convention. However, political parties cannot be left completely unregulated. There must be some rules in order to prevent them from becoming involved in terrorism and political corruption. A balance must be struck according to the Convention.

There is a significant difference between the UK and Turkey regarding the treatment of political parties. Political parties in the UK have always been regarded as purely private organisations and left unregulated. However, due to rising public concerns about political corruption, the current government has taken the initiative to regulate funding and party emblems and names. Even with these changes, the UK still preserves its liberal approach to political parties, and the state does not interfere with the substantive aims and activities of political parties.

In contrast with the UK, political parties in Turkey have been strictly regulated in terms of their organisation, aim and activities. The statist nature of Turkish democracy has left no space for political parties to represent private interests and implement their party policies when they are in government. They are not trusted by the state elite (civil and military bureaucracy), and therefore they have been restricted by Turkish law to protect state's interest against individuals' interests. If Turkey wants to join to the EU, she must change her law according to the principles set out by the EU and particularly by the Convention. Changing the law which regulates political parties might be a good start to achieve a fully working liberal democracy.



## CONTENTS

	Page
Table of Contents	Page
Acknowledgement	i
Abstract	ii
Contents	iii
Chapter One: Introduction	
1.1. Aims of Thesis	1
1.2. General Points	3
1.3. Hypotheses of Thesis	5
1.4. Contribution of the Thesis	6
1.5. Methodology of the Thesis	7
1.6. Chapter Outline	7
Chapter 2: Democracy and Political Parties	
2.1. Introduction	9
2.2. Democracy	9
2.2.1. Models of Democracy	10
2.2.2. Direct Democracy	11
2.2.3. An Overlap between Direct and Indirect Democracies:	15
Referendum and Initiatives	
2.2.4. Representative Democracy	20
2.2.4.1. The Critics of Referendum in Representative Democracy	22
2.2.4.2. Arguments against Representative Democracy	23
2.2.5. Economic and Social Democracy	25
2.2.6. Liberal Democracy	29
2.2.7. The Conditions of Liberal Democracy	35
2.3. Political Parties	37
2.3.1 The Concept of Political Parties	38
2.3.2. Party Organisation	42
2.3.3. Parties and Interest Groups	43
2.3.4. The Emergence of Political Parties and Party Systems	47
2.3.4.1. Institutional Theories	47
2.3.4.2. Historical Crisis Situations Theories	50
2.3.4.3. Modernisation Theories	51
2.3.5. The Functions of Political Parties	52
2.3.5.1. Identification of Goals	52
2.3.5.2. Articulation and Aggregation of Social Interest	53
2.3.5.3. Mobilisation and Socialisation of the General Public within	53
the System	
2.3.5.4. Elite Recruitment	54
2.3.4.5. Structuring the Vote	54
2.3.4.6. The Organisation of Government and the Formation of Policy	55
2.4. Conclusion	57

Chapter 3: Political Rights and Political Parties under the European Convention of Human Rights	
3.1. Introduction	60
3.2. Freedom of Expression	62
3.2.1. Theoretical Basis of Freedom of Expression	63
3.2.2. The Scope of Article 10	65
3.2.2.1. Political Expression	65
3.2.2.2. Limits on Political Expression	69
3.2.2.3. Election Expenditure and the Right to Freedom of Expression	81
3.3. Freedom of Assembly and Association	82
3.3.1. Freedom of Peaceful Assembly	83
3.3.2. Freedom of Association	85
3.3.2.1. The United Communist Party Case	87
3.3.2.2. The Socialist Party (SP) Case	92
3.3.2.3. The Freedom and Democracy Party (ÖZDEP) Case	94
3.3.2.4. Summary of the Cases of Turkish Political Parties	95
3.3.3. The Implications of the European Court's Judgements upon the Abolition of Political Parties in Turkey	96
3.3.4. Restriction on Activities Subversive of Convention Rights by Article 17	100
3.4. Free Elections	103
3.4.1. Article 3 of the First Protocol	104
3.4.1.1. Background of Article 3 of the First Protocol	104
3.4.1.2. The Scope of Article 3 of the First Protocol	105
3.4.2. The Details of Free Elections	109
3.4.2.1. Free Elections	109
3.4.2.2. Secret Ballot	110
3.4.2.3. Equal Vote	110
3.4.2.4. General Vote and Eligibility to Vote and Stand in Elections	111
3.4.3. Electoral Systems	113
3.4.4. Analysis	115
3.5. Conclusion	115
 Chapter 4: The Role of Political Parties in Turkey	
4.1. Introduction	117
4.2. Historical Background of Turkish Political System	120
4.2.1. The Ottoman Era	120
4.2.2. The Republican Era	122
4.2.2.1. The Rule of Ataturk (1923-1938)	123
4.2.2.2. After Ataturk: Single Party Ruling (1938-1946)	124
4.2.2.3. Multi-Party System	125
4.2.2.4. First Military Intervention (1960-1962)	127
4.2.2.5. Politicisation and Polarisation (1970s)	131
4.2.2.6. The Coup d'etat, the 1980s as the New Era	132
4.3. The Developments of Turkish Political Party System	133
4.3.1. The Republican People's Party	134
4.3.2. The Democrat Party, 1946-1960	137

4.3.3. The Justice Party	140
4.3.4. The Nationalist Action Party (NAP)	144
4.3.5. The National Order Party (NOP) and The National Salvation Party,	147
4.4. Main Political Parties Established after 1980	148
4.4.1. The Welfare Party (WP) and the Virtue Party (VP)	149
4.4.2. The Motherland Party (MP)	153
4.4.3. The True Path Party (TPP)	156
4.4.4. Democratic Left Party	157
4.4.5. Pro-Kurdish Parties	158
4.5. Conclusion	167
<b>Chapter 5: Legal Status of Political Parties in Turkey</b>	
5.1. Introduction	172
5.2. Organisations, Membership and Finance of Turkish Political Parties	177
5.2.1. Establishing a Political Party	178
5.2.2. Party Membership	178
5.2.3. Party Associations and Central Organisations	182
5.2.4. Democracy in Party Organisations	185
5.2.5. Selection of Parliamentary Candidates	185
5.2.6. The Finance of Political Parties	187
5.2.7. State Aid for Political Parties	191
5.3. Aims and Activities of Turkish Political Parties	194
5.3.1. Indivisible Integrity of the State with its Territory and Nation	195
5.3.2. Principle of Democratic and Secular Republic	197
5.3.3. Prohibition of the Domination of Social Classes	203
5.4. The Abolition of Political Parties	204
5.4.1. The Reasons for Abolition in the Section 4 of the Political Parties	204
Law 1983	
5.4.2. Being A Centre of Illegal Political Activities	207
5.4.3. Other Reasons for Abolition	207
5.4.4. The Situation of the Members of an Abolished Political Party	209
5.5. Conclusion	211
<b>Chapter 6: The Role of Political Parties in the UK</b>	
6.1. Introduction	214
6.2. Historical Background	216
6.2.1. The Growth of the Parties in the 19 <sup>th</sup> Century	216
6.2.2. Early 20 <sup>th</sup> Century Party Politics	220
6.2.3. The Post-war Party System	222
6.3. Major Political Parties in the UK	224
6.3.1. Liberal Party	224
6.3.2. The Conservative Party	229
6.3.3. The Labour Party	236
6.4. Regional Parties	243
6.4.1. Scottish and Welsh Nationalists Parties	243
6.4.2. The Parties of Northern Ireland	246
6.4.2.1. Unionist Parties	248

6.4.2.2. Nationalist Parties	249
6.4.3. Analysis of the Section	252
6.5. Conclusion	253
<b>Chapter 7: Legal Status of Political Parties in the UK</b>	
7.1. Introduction	256
7.2. Organisation and Membership of Political Parties in the UK	258
7.3. Registration of Political Parties	263
7.4. Finance of Political Parties in the UK	268
7.4.1. Background to Party Finance in the UK	268
7.4.2. The Neill Committee and the Recommendations	272
7.4.2.1. Public Disclosure of Donations to Political Parties	276
7.4.2.2. Other Issues Related to Political Donations	280
7.4.2.3. Sources of Funding and Foreign Donations	284
7.4.2.4 State Funding of Political Parties	289
7.4.2.5. Limits on Campaign Expenditure	296
7.4.2.6. Referendums	301
7.4.2.7. Political Broadcasting and Advertising	304
7.4.2.8 Honours	306
7.4.2.9. The Election Commission	307
7.4.3. Government's Response to the Neill Committee Report	308
7.5. Activities of Political Parties	309
7.6. Conclusion	310
<b>Chapter 8: Conclusion</b>	<b>313</b>
<b>Bibliography</b>	<b>322</b>

# CHAPTER ONE

## INTRODUCTION

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### 1.1. Aims of the Thesis

The present study aims to elucidate the principles under which political parties should be allowed to operate in liberal democracies and to identify the problems which may prevent political parties from being effective agencies in advancing democracy in the UK and Turkey by examining the current legal structures which regulate political parties. Specific reference will be given to the principles of liberal democracy and to the European Convention on Human Rights. The reason for referring to the European Convention on Human Rights is that there is a very clear connection between the Convention and liberal democracy. It is observed that principles of liberal democracy are among the underlying values of the Convention.<sup>1</sup> Since both Turkey and the UK are signatory to this binding document, it would be an acceptable approach to apply the principles set out in the Convention while examining the treatment of political parties in the UK and Turkey. The questions of misconduct, fairness, over-spending, civic engagement, party effectiveness and freedom<sup>2</sup> will be applied to the legal structure related to political parties in Turkey and the UK in order to determine these legal frameworks' acceptability and the comparative position of each jurisdiction. These criteria were adopted by the Neill Committee which was a Parliamentary Standing Committee in the UK and was set up to examine funding of political parties in the UK. Since these criteria are universally applicable and address to wider issues regarding political parties and the European Convention does not say much about the conditions which political parties should operate and about party effectiveness, these criteria are very useful to determine the situation in the UK and Turkey.

This study has emerged from the necessity of Turkey to comply with the European Union's democratic standards which are outlined by the Convention. Turkey is a candidate for full membership of the European Union. To become eligible for full

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<sup>1</sup> *Soering v. the UK*, App. No: 14038/88, Series A-161, para. 88

<sup>2</sup> These six criteria were adapted by the Neill Committee which is a British Parliamentary standing committee set up to examine funding of political parties in the UK. See Chapter 7

membership, Turkey has to make necessary arrangements in her legal structure in order to meet with the political requirements of the European Union. That is Turkey has to become a liberal democratic state which is the only political model accepted by the EU. Since all the treaties and declarations related to European Union specifically the Treaty of Amsterdam, the Paris Charter and the Luxembourg Criteria made it clear that to be full member of the Union, the candidate states have to comply with the principles of liberal democracy and make necessary arrangements in their domestic law according to these criteria. However, Turkey faces three main obstacles to achieving liberal democracy. These are the strict secularist perspectives of the state, narrowly interpreted nationalism and the military's interference with politics. To make necessary changes according to liberal democratic values, Turkey needs formative institutions which can represent the society. In this context, political parties could play important role in Turkey's development in terms of democracy. Yet, the current situation does not seem promising. While in Western countries, freedom is the norm and restriction the exception, the Turkish State operates in a totally opposite manner, with restrictions almost the main principle and freedom an exception. Reasons behind this contrast between aspiration and reality will be explained in this thesis. The problems in Turkey are partly originated from strict regulations imposed on political parties. To find out how political parties should be treated in Turkey, it would be useful to compare the current situation with the well-established British democracy and see the differences between them. The reason for this is the existence of some arguments that Turkey should copy the Anglo-Saxon approach regarding political parties or at least refer to them.<sup>3</sup> However, there are significant differences between the UK and Turkey in terms of treatment of political parties.

In the UK, which more clearly following a liberal ideology, political parties have been no concern of law and left unregulated. They have been free to do whatever they wish until recently. This *laissez faire* attitude has created the space for abuse that

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<sup>3</sup> Dr. Sami Sener Selcuk (Head of the independent Judiciary) put forward these idea at the beginning of judiciary year. Many liberal democrat scholars supported him such as Prof. Mehmet Altan and Prof. Mustafa Erdogan. See Selcuk, S.S., (1997), "Dar Ufuklu Demokrasi ile Yetinmenin Bunaltici Dayanilmazligi" (The Unbearability of Ebing Satisfied with A Democracy which has Narrow Horizon), *Turkiye Gunlugu*, Vol.3:17, pp.7-13, and Erdogan, M., (1997), "Turkiye'de Siyasal Sistem and demokrasi" (Political System in Turkey and Demcoracy), *Yeni Turkiye*, Vol.3:17, pp.49-64

political parties will not operate in the public interest but pursue private interests only. That leads the public to lose its trust in political parties and eventually political system. On the other hand, in Turkey, political parties are regulated strictly. There is no space for parties to pursue any private interests or represent the pluralistic structure of the society. Parties are expected by the law to operate for the state's interests rather than private interests.

In this context, the following questions are to be answered in this thesis: should political parties be treated as completely private organisations with no interference or should they be regulated strictly? How may a balance between these two approaches be provided? Imposing undemocratic restrictions upon political parties is obviously contrary to the basic values of liberal democracy. In order to function properly and operate as channels between State and public, political parties should have their private spheres. However, they should not be left so completely unregulated as to allow corruption and political malfunction.

Overall, how are the political parties regulated in Turkey and in the UK? How well do they perform their functions and duties under the respective legal structures? Are these regulations in compliance with the principle of liberal democracy, particularly with the European Convention on Human Rights? What could be done to improve the situation regarding political parties in Turkey as an attempt to achieve liberal democracy, especially in the light of the UK experiences.?

## 1.2. General Points

Liberal democratic theory argues that the active participation of citizens is not only good in itself, but is also necessary for the success of a liberal democracy.<sup>4</sup> Citizens are consumers of political participation and representation. There are two main features in this participation. One of them is that citizens have a choice of whether to participate in politics. The other is that they are concerned about what particular forms of participation may be offered to them as individuals. Participation may take various

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<sup>4</sup> See Ware, A., (1987), *Citizens, Parties and the State*, Princeton, New Jersey: Princeton University Press, Schumpeter, J., (ed.1976), *Capitalism, Socialism, and Democracy*, London: George Allen and Unwin, Dahl, R. A., (1956), *A Preface to Democratic Theory*, Chicago: Chicago University Press, Sartori, G.,

forms, but the most accepted and common one is to participate in elections. The common model of liberal democracy<sup>5</sup> emphasises the importance of elections, the sovereignty of the legislature and the role of political parties as both channels of participation and linkage or representational structures in society.<sup>6</sup> However, political parties are by no means the only means of representation available to citizens who want to influence the policy process. Interest groups and trade unions are some of other means of representation.<sup>7</sup> Since political parties are the only organisations which are directly involved in elections by putting up parliamentary candidates under their name and which directly affect legislation via party discipline in Parliament, they will be the main focus of this thesis.

“During the modern era, the political party has been the formative instrument behind all the western world’s governing systems, ranging from totalitarian regimes through assorted brands of oligarchic, authoritarian or paternalistic rule to the less well defined democratic cadences of developing mass democracies. One can postulate the axiom that a country determines its place on the totalitarian-democratic spectrum more by the composition and character of its political parties than any other institutional factor.”<sup>8</sup>

Therefore, the existence and performance of political parties are essential for citizens and for a democracy. In order to achieve an effective liberal democracy in the mass sense, a balance must be provided between the decisiveness of governmental leadership, the will of the people and the prudence of parliamentarianism. Political parties are the essential link between these three conflicting factors. Therefore, liberal democracy is unthinkable without political parties.<sup>9</sup> In emerging democracies, political parties play an essential role while consolidating the new regimes.<sup>10</sup> The question is how well political parties do actually perform these functions? This may vary from one country to another in accordance with their legal and political system. In many countries, law determines to

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(1987), *Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers, Riker, W. H., (1982), *Liberalism Against Populism*, San Francisco: W.H Freeman

<sup>5</sup> The model adopted in this thesis is the one which European Union Treaties and European Convention on Human Rights aim. Basically the democratic system European Union accepts as the political democracy or liberal democracy.

<sup>6</sup> Wolinetz, S. B., (1988), *Parties and Party Systems in Liberal Democracies*, London: Routledge, p.5

<sup>7</sup> Differences between pressure groups and political parties are examined in Chapter 2.

<sup>8</sup> Ellis, T., (1999), “Two Cheers for Party”, *Political Quarterly*, Vol.70:2 p.161

<sup>9</sup> Schattschneider, E. E., (c1942), *Party Government*, New York: Farrar and Rinehart, p.1

<sup>10</sup> Mainwaring, S., (1995), “Political Parties and Democratisation in Brazil and the Southern Cone”, *Journal of Inter American Studies and World Affairs*, Vol.37:11, pp.113-179



what extent citizens can participate in politics and under what conditions political parties will compete with each other, and also to what extent they can implement their party policies while they are in government.

In order to establish the role and treatment of political parties in liberal democracies, first it is necessary to clarify what is understood by “liberal democracy” and political parties. This is especially important because a distinct democratic debate exists.<sup>11</sup> There are different types of democracies such as direct democracy, social and economic democracy, representative democracy and liberal democracy. These debates are examined in Chapter 2.

In a mature democracy such as the UK, political parties have been basically private organisations until recently.<sup>12</sup> As Ewing states, it has been the case that they are “truly autonomous in the sense that there is no direct statutory regulation of their affairs.”<sup>13</sup> Therefore, who joins and by what rules the party conducts its affairs are matters left mainly to the parties themselves. Parties are dependent for most of their funds and labour upon private and voluntary involvement.

In contrast, Turkish political parties are extremely restricted regarding their organisations, statutes and activities by the Turkish legal system. Since the law regarding political parties has become almost a common constitution for political parties, there is no alternative for Turkish political parties but to observe it. If political parties have to produce alternative policies for the solution of problems existing in Turkish society which go beyond the frame drawn by the State (the establishment) not only by their acts but also by their ideas, they face abolition as punishment.

### 1.3. Hypotheses of the Thesis

This thesis presumes that liberal democracy is important and good way to run a society and political parties are essential elements of liberal democracy. Therefore, the conditions in society which allow proper functioning of society should be set.

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<sup>11</sup> see Chapter 2 and for more information see the overviews in Held, D., (1993), *Prospects of Democracy*, Oxford: Polity Press, Dahl, R., (1989), *Democracy and its Critics*, London and New Haven: Yale University Press, Sartori, G., (1987), *Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers

<sup>12</sup> It is changing now. See Chapter 7

Aspirations of Turkish political state have always been to be seen as liberal democracy and particularly to join the European Union. The European Union requires liberal democracy, therefore Turkey has to set conditions which achieve liberal democracy. Political parties can play an important role in advancing liberal democracies, but this role of political parties is affected greatly by the treatment of political parties by the state. Parties should be free to act in accordance with their constitutions and implement their policies when they are in government. However, that does not mean that there should not be any limit on them. Without necessary but minimum regulations regarding parties, a political system may lose its legitimacy.

Until now Turkey and the UK have represented the two contrasting examples regarding the way political parties are treated by the State. Therefore, it may be beneficial to compare these two countries in terms of role and treatment of political parties. Some lessons and conclusions may be derived from these comparisons to make some recommendations in order to help in designing a normative and legal framework in which parties operate. The European Convention on Human Rights will be a criterion for the both countries and will be used to evaluate the situation in terms of political parties regarding the existence of freedoms of expression and associations.

#### **1.4. Contribution of the Thesis**

Many scholars have emphasised the cardinal role of political parties in advancing democracies.<sup>14</sup> The success of political parties depends on legal structures, political culture and institutions along with the people's attitude towards preserving or advancing democracies. This thesis will contribute to the current literature and discussion related to Turkey's democratic development by showing how the legal structures and political culture have affected political parties in terms of advancing democracy and representing people in Turkey .

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<sup>13</sup> Ewing, K., (1987), *The Funding of Political Parties in the UK* Cambridge; Cambridge University Press, p.7

<sup>14</sup> See Wolinetz, S. B., (1988), *Parties and Party Systems in Liberal Democracies*, London: Routledge and Mainwaring, S., (1995), "Political Parties and Democratisation in Brazil and the Southern Cone", *Journal of Inter American Studies and World Affairs*, Vol.37:11, pp.113-179, Ware, A., (1987), *Citizens, Parties and the State*, Princeton, New Jersey: Princeton University Press

## **1.5. Methodology of the Thesis**

The methodology of the study is based on the analysis of both primary and secondary documentation and literature including the following; current laws, party programmes, official publications such as command papers, parliamentary debates, national court cases, the cases of European Court of Human Rights, academic texts, articles, newspaper and news. This study is a critical analysis. Accordingly, Turkish and British political parties and their legal structure are examined regarding their roles and treatments by the laws.

## **1.6. Chapter Outline**

Chapter 2 reviews the ideas of democracy and the concept of political parties, their historical developments and functions. The aim of this chapter is to detail ideas about democracy and the principles underlying liberal democracies, and role of political parties in democracies

Chapter 3 focuses on relevant political rights outlined in the European Convention on Human Rights. The reasons for this are that the Convention and its interoperations through the European Court and Commission is a concrete example to define scope of these rights. It examines the rights to freedom of expression, freedom of association and free elections. In order to present the subject clearly, the cases of the European Court of Human Rights related to the mentioned rights are studied in this chapter.

In chapter 4, political parties in Turkey and their role are examined. The historical development of Turkish political system is explained in detail. The statist nature of Turkish democracy and the reasons behind them are focused on as well as the structures, functions of Turkish political parties.

Chapter 5 looks at the current legal structure in Turkey regarding political parties in order to understand how effective democracy is. The aim of chapter 5 is to examine critically constitutional and legal restrictions upon the Turkish political systems in order to understand to what extent Turkish democracy and political parties can perform and Turkish citizens can participate in politics.

Chapter 6 focuses on political parties in the UK. It examines their histories, structure and policies in order to establish their role in the UK democracy and in the society.

Chapter 7 looks critically at current law and recent proposals regarding changes in law in the UK related to political parties.

Chapter 8 derives conclusions from the whole study and makes some recommendations regarding legal systems related to political parties.

## CHAPTER 2

# DEMOCRACY AND POLITICAL PARTIES

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### 2.1. Introduction

As a part of the study of the role and treatment of political parties in liberal democracies, the concept of democracy and democratic theories should be examined along with political parties and their functions. This may give the reader the benefit of clear understanding of what is meant by democracy and from what perspective political parties are looked at. Furthermore, if the view of these democratic theories about representation and participation is known, it will be easier to establish the role and treatment of political parties in different types of democracies. It must be noted that the main aim here is to establish the role and treatment of parties in liberal democracies, especially with regard to political participation and representation. Therefore, the classification of the types of democracy will be made mainly according to these concerns. However, when it comes to liberal democratic theory, the concepts of equality and liberty cannot be ignored.

### 2.2. Democracy

The first democracy was discussed and organised in Athens in the fourth and fifth centuries BC.<sup>1</sup> Many changes and improvements have occurred since then. The term 'democracy' in its modern sense came into use during the course of nineteenth century to describe a system of representative government in which the representatives are chosen by free competitive elections.<sup>2</sup> One of the most difficult questions to answer satisfactorily is: what is democracy? Not only is there no agreed definition, but some definitions are so vague as to be virtually useless and others so specific as to be obviously incomplete. Democracy does not consist of a single unique set of institutions.

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<sup>1</sup> Dunn, J., (ed. 1992), *Democracy: the Unfinished Journey 508BD to AD 1993*, Oxford: Oxford University Press, p.8

<sup>2</sup> Bobbio, N., (1989), *Democracy and Dictatorship*, Oxford: Polity Press, p.144

There are many types of democracy, and their various practices bring about a similarly assorted set of effects.

Democracy has a very broad content in terms of time, culture and background and there is no agreement on the best way of delimiting this, hence the variety of democratic systems.

While explaining the nature of democracy, Ware mentions three elements. These are “interest optimisation”, “the exercise of control” and “civic orientation”.<sup>3</sup> According to Ware, “for a process or system to be democratic, then, the rules and procedures employed must bring about results that optimally promote or defend the interests of the largest number of people in the relevant arena”.<sup>4</sup> It is through democracy that people have the opportunity to exercise control over certain aspects of a regime or organisation. The question is what the citizen has control over. At this point, democratic theorists vary very widely, some of them such as Schumpeter,<sup>5</sup> Dahl,<sup>6</sup> Sartori,<sup>7</sup> and Riker<sup>8</sup>, emphasise that only a very limited type of control is available, and democracy is a matter of voters having the right at periodical intervals, to remove from office governments which they have come to dislike. Some critics argue that elections and other devices must give choices to citizens as a means of controlling those who make decisions on their behalf when direct decision making by the people is impossible or inappropriate.<sup>9</sup>

### 2.2.1. Models of Democracy

The question of whether democracy should mean some kind of direct popular power or an indirect aid to decision making has given rise to three main types of democracy. These are direct or participatory democracy, liberal or representative democracy and economic or social democracy (usually based on a one party model).<sup>10</sup>

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<sup>3</sup> Ware, A., (1987), *Citizens, Parties and the State*, Princeton, New Jersey: Princeton University Press, p.7

<sup>4</sup> *Ibid.*, p.8

<sup>5</sup> See Schumpeter, J., (ed.1976), *Capitalism, Socialism, and Democracy*, London: George Allen and Unwin

<sup>6</sup> See Dahl, R. A., (1956), *A Preface to Democratic Theory*, Chicago: Chicago University Press

<sup>7</sup> See Sartori, G., (1987), *Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers

<sup>8</sup> See Riker, W. H., (1982), *Liberalism Against Populism*, San Francisco: W.H Freeman

<sup>9</sup> Ware, A., (1987), *op. cit.*, p.11

<sup>10</sup> Held, D., (1993), *Prospects of Democracy*, Cambridge: Polity Press, p.15

However, Pickles separate representative and liberal democracy from each other and argues that there are four kind of democracy:

1. Direct democracy
2. Representative democracy
3. Political democracy which may be called liberal democracy
4. 'Economic' and 'social' democracy<sup>11</sup>

Pickles's classification will be taken as an example here to examine the types of democracy. The reason for this is that it seems to the author that this classification is the simplest and most suitable one to determine what kind of participation and representation exists in different democratic theories. The three criteria ( interest optimisation, exercise of control and civic orientation) mentioned by Ware could also be easily applied in this classification. It may be worth noting that first two in this classification look at the process of democracy. Their concern is mostly how people participate in politics and decision-making process rather than the output of democracy. On the other hand, the last two look at the ends of this process. Liberal and social democracies' concerns are what the outputs are and they see democracy not only a participation process in decision-making, but also as a way of life in society. Therefore, it can be seen that liberal and social democracies have some features of direct and representative democracies.

### **2.2.2. Direct Democracy**

A direct democracy is a political system in which the electorate directly makes the policy decisions. Before going any further, the concept of electorate should be clarified, since throughout the history it meant different things. However, after reaching the universal suffrage (i.e. the rights of all adults to vote) when one mentions the electorate, it should be understood to mean every citizen of who is qualified by age to vote.

It is difficult to apply direct democracy in modern industrialised societies with universal suffrage. However, it should be noted that modern technology has transformed direct democracy's prospects of realisation in the contemporary world. Although

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<sup>11</sup> See Pickles, D., (1971), *Democracy*, London: Methuen

citizens of modern states cannot meet directly together, they can communicate at a distance and in complex networks by electronic means. Therefore, there are some ideas suggesting that due to technological developments, direct democracy can be applied or at least some devices such as referendums should be used in order to provide people's direct participation in politics.<sup>12</sup>

Direct democracy can be described as a system in which the population as a whole votes on the most important political decisions. In other words, the electorate votes directly on most of the matters on which, in representative democracies, Parliament votes. The direct-democracy school is led by such classical theorist as Jean-Jacques Rousseau<sup>13</sup> and the English Levellers<sup>14</sup> and such modern theorists as Benjamin Barber and Carole Pateman.<sup>15</sup> They argue that the only truly democratic way to make decisions on matters of public policy is by the full, direct, and unmediated participation of all citizens. The citizens, they declare, should set the agenda, discuss the issues and determine the policies.

J.J. Rousseau absolutely denies the possibility of representation at all on the grounds of that the representative would merely be substituting one's will for that of the people. However, he admits that it was inescapable not to have any assembly if democracy was to achieve. Under such circumstances, as he explains in his *Consideration on The Government of Poland*, in order to avoid the corruption of representatives that they should be bound to follow their instruction exactly, and should be required to make frequent reports to their constituents to show that they had acted accordingly.<sup>16</sup> Rousseau is worried by the idea of representatives. He stated that "The English people thinks it is free; it is very much mistaken. It is free only when it is electing members of parliament; as soon as they are elected, it is enslaved and reduced to

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<sup>12</sup> Budge, I.(1993), "Direct Democracy: Setting Appropriate Terms of Debate" in Held, D., *Prospects of Democracy*, Cambridge: Polity Press, p.137

<sup>13</sup> See Rousseau, J.J., (1950), *The Social Contract and Discourses*, (Translated by G.D.H. Cole), New York: E. P. Dutton

<sup>14</sup> For more information about English Levellers, see Brailsford, H. N & Hill, C., (1976), *The Levellers and the English Revolution*, Nottingham: Bertrand Russell Peace Foundation for Spokesman Books

<sup>15</sup> For more information see, Pateman, C., ( 1970), *Participation and Democratic Theory*, London: Cambridge University Press

<sup>16</sup> Vaughan, C. E., (1962), *The Political Writings of Jean-Jacques Rousseau*, Oxford: Blackwell, pp.459-461



nothing.”<sup>17</sup> He finds it contrary to natural order that the majority should govern and the minority should be governed.<sup>18</sup> According to him, men could develop the qualities essential for their greatest happiness only by active participation in the government of their society.<sup>19</sup>

Barber, in his book *Strong Democracy* suggests a new form of direct democracy. He defines “strong democracy” as a regime that has the particular virtue of responding directly to the dilemmas posed by the political condition. This condition occurs when there is a necessity for public action, and thus for reasonable public choice, in the presence of conflict and in the absence of private or independent grounds for judgement. It is also defined as politics in the participatory process of ongoing, proximate self-legislation and the creation of a political community capable of transforming dependent, private, individuals into free citizens, and partial and private interests into public goods.<sup>20</sup>

In Barber's strong democracy model, participation and community are aspects of one single mode of social being: citizenship. He argues that

“the idea of participation has an intrinsically normative dimension -a dimension that is circumscribed by citizenship. Masses make noises, citizens deliberate; masses behave, citizens act; masses collide and intersect, citizens engage, share and contribute. At the moment when 'masses' start deliberating, acting, sharing, and contributing, they cease to be masses and become citizens. Only then they 'participate.’”<sup>21</sup>

Barber defines strong democracy in the participatory mode:

“it is literally self-government by citizens rather than representative government in the name of citizens. Active citizens govern themselves directly here, not necessarily at every level and in every instance, but frequently enough and in particular when basic policies are being decided and when significant power is being deployed. Self-government is carried on through institutions designed to facilitate ongoing civic participation in agenda setting, deliberation, legislation, and policy implementation (in the form of common work).”<sup>22</sup>

According to Barber, unmediated self-government by an engaged citizenry is one of the requirements of strong democracy. He claims that the central idea of strong democracy is the “will” instead of “choice” and the main tool is “democratic talk”

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<sup>17</sup> Rousseau, J.J., (1953), *Political Writings*, (Tr. and Ed. by Watkins, F. ), New York: Nelson, p.105

<sup>18</sup> See Vaughan, C. E., (1962), *The Political Writings of Jean-Jacques Rousseau*, Oxford: Blackwell

<sup>19</sup> Mayo, H.B., (1960), *An Introduction to Democratic Theory*, New York: Oxford University Press, p.94

<sup>20</sup> Barber, B., (c1984), *Strong Democracy: Participatory Politics for a New Age*, London: University of California Press, pp.131-132

<sup>21</sup> *Ibid.*, p.140

instead of “vote”. He adds that strong democracy needs establishments where individuals would be involved at both the neighbourhood and the national level in common talk, common decision-making and political judgement, and common action.<sup>23</sup> In this way, direct democracy is unmediated popular voting. In such a system all political executives would have more or less of a routine administration role. There would be no political parties, no advisory bodies and no secure rights. Politics would be an endless referendum where sovereign people were urged to vote for or against variety of issues.

Unmediated voting of the kind described above is usually focused upon by opponents as though it were the only possible institutional characteristic of direct democracy. There are some other ways that direct democracy could be institutionalised such as party-based direct democracy.<sup>24</sup> It can be understood why both supporters and critics of direct democracy inherently identify with the unmediated system described above. “If the impulse towards direct participation is impatience with institutions, which obstruct and direct the popular will from directly expressing itself, the natural response is to sweep them all away as impediments to popular sovereignty.”<sup>25</sup> However, within the more pragmatic approach to direct democracy, there is no reason why parties should not function as policy initiating and clarifying bodies substantially as they do today. Nor is there any good reason why parties should not adopt substantially the same role in guiding and organising popular voting as they do today for legislative voting.

Nevertheless, parties surely cannot function entirely in the same way in regard to the population as they do now in relation to Parliament. It could not be argued that a change from representative democracy to direct democracy would not affect parties. Their stance might be midway between the one they adopt at elections and the one they adopt inside Parliament. A type of direct democracy could be visualised in which there is a party-based government chosen by elections in exactly the way they function in practice today. This government would put important legislative bills and other political

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<sup>22</sup> *Ibid.*, p.151

<sup>23</sup> *Ibid.*, p.261

<sup>24</sup> Budge, I.(1993), “Direct Democracy: Setting Appropriate Terms of Debate” in Held, D., *Prospects of Democracy*, Cambridge: Polity Press, p.139

<sup>25</sup> *Ibid.*, p.139

decisions to popular votes as it does with legislative votes under representative democracy.

Direct democracy gives greater power to electorate than any other kind of democracy in regarding exercise control over executives. It also encourages civic participation and orientation. However the question arises whether it is the best way for interest optimisation or not. It is feared that popular majorities would not limit themselves, so minorities would be disregarded and even suppressed before they had the opportunity to become majorities in the future.<sup>26</sup> Pure democracies, according to Madison, have always been intolerant, unjust and unstable. By contrast representative government overcomes the excesses of pure democracy because regular elections force a clarification of public issues, and the elected few, able to withstand the political process, are likely to be competent and capable of discerning the true interest of their country.<sup>27</sup>

### **2.2.3. An Overlap between Direct and Indirect Democracies: Referendums and Initiatives**

After having examined some ideas about direct democracy, it may be beneficial to look at Lijphart's ideas which suggest some methods to make the electorate more powerful in representative democracies. Some of these proposals are direct democracy devices. Lijphart proposes four methods to strengthen the voters' influence and to make the democratic system more direct and less representative: (i) the introduction of the direct election of the executive by the voters instead of selection by the legislative. This method of introducing a greater degree of direct democracy, he argues, means a shift from parliamentary to presidential government as in USA, France, and Finland; (ii) the popular referendum: instead of leaving power to make law entirely to the legislature, the electorate may also be called on to have a say about proposed laws; (iii) the recall is another device which strengthens voters' power over the representatives. The recall means that electorate have power to recall their representatives in elected bodies if they think the representative is not efficiently representing their interests. However this kind

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<sup>26</sup> Sartori, S., (1987), *The Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers, pp.115-120

<sup>27</sup> Madison, J., (ed. 1966), *The Federalist Papers*, (ed. By Fairfield, R.), New York Doubleday, No: 10 p.20

of device can only work in a proportional electoral system,<sup>28</sup> (iv) direct primary elections give the selection of candidates to the entire electorate instead of leaving it to the party organisations and their formal leadership.<sup>29</sup>

There is an increasing pattern in using referendums as supplements to representative democracy. Most advocates of referendums see them as supplements rather than as alternative to representative democracy. They agree with the representationists that representative government must and should be the basic institutional form of democracy in any densely populated community, such as a modern nation-state. On the other hand, they believe that representative democracy can be improved by permitting under certain conditions, the direct votes of citizens to confirm, or reject or even make laws.

The main advantage of the referendum as a supplement to representative democracy is that it maximises the legitimacy of the government and laws. It also emphasises the participation of the people. Many political commentators believe that participation in politics is a central issue. They presume or declare that one of the prime goals of democracy is to maximise the potential for civic virtue in all of its citizens and direct participation in the making of public decisions is the best way to develop everyone's potential. The subject matter of the referendum falls into four main categories, according to Butler: constitutional issues, territorial issues, moral issues and other issues.<sup>30</sup> He reaches this classification by examining the referendums which have been held around the world. It is an empirical conclusion rather than theoretical.

Referendums may be classified in another way as follows;

(i) Referendums are those, which relate to alterations of the constitution or to a partial renunciation of national sovereignty e.g. European Union Membership. This category may involve a mandatory referendum that cannot be avoided because it is constitutionally required. For instance, referendums in some cases are required by the constitution in Turkey. According to Article 175 of the Turkish Constitution, the President of the Republic may refer the laws related to the Constitutional amendments

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<sup>28</sup> See, Cronin, T., (1989), *Direct Democracy, The Politics of Initiative, Referendum and Recall*, Cambridge, Mass London: Harvard University Press

<sup>29</sup> Lijpart, A., (1984), *Democracies*, New Haven and London: Yale Univ. Press, pp.199-201

<sup>30</sup> Butler, D. and Ranney, A., (1994), *Referendums Around the World*, London: Macmillan, pp.2-3

for further consideration. If the Assembly adopts the draft law referred by the President by a two-thirds majority, the President may submit the law to referendum. If a law is adopted by a three-fifths or less than two-thirds majority of the total number of votes of the Assembly and is not referred by the President for further consideration, it will be published in the Official Gazette and shall be submitted to referendum.

(ii) Referendums include those, which governments or parliaments freely organise as part of a political strategy especially to resolve party conflict, such as the referendum in the UK on EC membership, or to legitimise a position already taken, as on the issue of Northern Ireland.

(iii) Referendums include those, in which the impulse comes from the citizens themselves, a certain number of whom demand a popular vote that will be binding for the authorities. This kind of referendum is a process outside the control of political establishment. In order to determine the extent to which referendums really serve the function of increasing direct popular influence. Smith proposes two main aspects. One of them is the degree to which the authorities control the process, and the other one is the actual result whether the referendum's consequences are "supportive or detrimental to a regime."<sup>31</sup> These referenda tools, which are deemed to encourage bottom-up political pressure, are widely used at national level in Switzerland, but also elsewhere like the state of California.

According to Papadopoulos, there are two processes of referendums, which can be distinguished on an analytical level. Firstly, the right to veto laws that allow a group of citizens to request to express their will on an already made decision. Secondly, the citizens themselves have the ability to suggest legislative change and submit them to referendum vote. There is room for overlap here, and California provides an example where the processes combine in the form of an initiative right to abrogate existing legislation.<sup>32</sup> The first one could be qualified as a deliberative consultation, and the second one as a prepositional consultation

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<sup>31</sup> Smith, G., (1976), "The Functional Properties of the Referendum", *European Journal of Political Research*, Vol.4:1 pp.1-25

<sup>32</sup> Papadopoulos, Y., (1995), "Analysis of Functions and Dysfunction of Direct Democracy: Top-Down and Bottom-Up Perspectives", *Politics and Society*, Vol.23, p.422

Papadopoulos asserts that direct democracy is a means whereby the extent of people's concerns can be measured against the way in these matters are seen by the governing body. The problem between such a political system is that the limits have to be drawn between the rule of the authorities and the checks and accountability restraints placed by the citizens. He claims that advocates of direct democracy tend to abstain from this problem. He argues that the parliamentary system allows for more opportunities for mutual persuasion and exchange. "Horse trading" takes its place within the parliamentary process in which concessions are given by one side to another in the hope that such actions will lead to similar treatment from the opposition at a later date or on a different matter. None of these processes of compromise takes place in a referendum campaign, the result of a referendum can either be a yes or no. Furthermore, in relation to referendums the citizen can neither expect incentives or punishment from the political authorities for his actions whether they were co-operative or not.<sup>33</sup>

Parliament and the government formally determine the agenda in a representative democracy and external influences may find it difficult to represent their views within such a system. Some specific groups may find it easier to take part in the decision-making process due to their substantial organised position. It is argued that all such groups within this position may collaborate to form a cartel<sup>34</sup>

The right to put initiatives is undoubtedly the most important pluralising element among direct democracy mechanism. The authorities have less control over this competence than over the deliberative one, because in the latter, a decision must already have been taken, whereas in the former legislation is brought in from outsiders.

In other words, the right to call a referendum or an initiative is an opportunity for the citizens to break through the political framework which is set by the ruling elite and it enables them to break the representational monopoly held by the political parties and powerful organised interests; it can modify the political agenda, change the order of priorities, it can transform in to political issues problems which the parties and other

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<sup>33</sup> *Ibid.*, p.426

<sup>34</sup> Tollison, R. D., (1982), "Rent-Seeking: A Survey", *Kyklos*, Vol.35, pp.575-602

powerful pressure groups have left in the background either on purpose or through lack of time or interest.<sup>35</sup>

Although direct democracy mechanisms at large are powerful in the hands of vested interests, there could be a redistribution of power in favour of groups that may be underrepresented in political arenas due to direct democracy.

It could be argued that the authorities who accept the role of initiatives, are forced to take action to avoid the situation that people put initiatives to overrule the already made decisions of the authorities. Having the right to call a referendum may result in power of exercise if not only over the initiative agenda but also over the legislative proposal as well.<sup>36</sup> A referendum democracy might consequently alienate unorganised citizens at the benefit of organised interests groups. The political system in Switzerland is argued to be dominated by pressure groups as those in control of legislation take the views and interests of such groups into account at an extremely early stage.<sup>37</sup> However, by looking at European democracies in a wider context, it could also be argued that pressure groups play an equally important role in deciding in what form the issues should be presented to parliament.<sup>38</sup>

Critics of direct democratic devices argue that there is unhealthy bias towards larger and financially more proficient groups within direct democracies who are more able and in a better position to initiate favourable policies.<sup>39</sup> However, practically speaking the Swiss political system suggests that it is not always the case that if all the prominent pressure groups agree with the political elite they will get their way.

It is important which group defines the issues to be considered. The controlling group is in an advantageous position as it decides which propositions are voted on and their order of importance.<sup>40</sup> It should also be taken into account that those who determine

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<sup>35</sup> See Magleby, D.B., (1984), *Direct Legislation Voting on Ballot Propositions in the United States*, Baltimore-London: John Hopkins University Press

<sup>36</sup> *Ibid.*, p.192

<sup>37</sup> *Ibid.*, p.29

<sup>38</sup> Bohnet, I and Frey, B. S., (1994), "Direct-Democratic Rules: The Role of Discussion", *Kyklos*, Vol.47:3, pp.341-354

<sup>39</sup> Bobbio, N, (1987), *The Future of Democracy*, Oxford: Polity Press, p.5

<sup>40</sup> Denzau, A. T., (1977), "Constitutional Change and Agenda Control", *Public Choice*, Vol.35, pp.1-11

the rules of a structure and present the arguments in a manner of favourable to them have a considerable advantage in determining the results.<sup>41</sup>

Unlike initiatives, referenda do not put new alternatives on to the political agenda but they change the agenda setting process of the parliament and the government. Representatives have to take into account that the final decision may be taken by either an obligatory or an optional referendum. When discussing a certain subject representatives cannot only invest in political advertising but must consider citizens' interests in order not to be overruled by a referendum.<sup>42</sup>

Popular initiatives and referenda are no longer substitutes for institutions of representative democracy such as parliaments and governments but rather supplement them. The principle of agenda setting, however, must remain with the citizens who ultimately decide which part of the agenda and when and how it will be delegated to the representative level.<sup>43</sup> Otherwise, it will be the elite who decide on policies and who govern instead of people. This may contradict the principle that people should have the power to govern, or simply it may be contrary to the government of people, for the people and by the people.

#### 2.2.4. Representative Democracy

Representative democracy is an indirect form of democracy. All supporters of a representative democracy can agree on the principle that the citizens within a modern political democracy should act through their elected representatives who, in turn, hold accountable the ruling elite.<sup>44</sup> Both democratic and non-democratic political systems have rulers. However, a democratic political system can be distinguished by the fact that the ruler occupies not only a specialised authoritative role but also has the ability to give the legitimate commands to others. It is important to note the conditions under which the rulers came to power and the accountability structures. This is usually related to the

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<sup>41</sup> Kahneman, D. and Tversky, A., (1994), "Choices, Values, and Frames", *American Psychologist*, Vol.39, pp.341-350

<sup>42</sup> Bohnet, I and Frey, B S., (1994), *loc. cit.*, p.350

<sup>43</sup> See, Cronin, T., (1989), *Direct Democracy, The Politics of Initiative, Referendum and Recall*, Cambridge, London: Harvard University Press

<sup>44</sup> Schumpeter, J., (1943), *Capitalism, Socialism, and Democracy*, London: George Allen and Unwin, p.269



holding of fair elections.<sup>45</sup> The people elect other people to represent themselves and act on their behalf according to published standpoints and specific opinions.

Classic liberal thinkers were suspicious about extending the franchise to everybody. One of the most important liberal thinkers John Stuart Mill, in his work on representative democracy, in order to answer the question of what is the best form of government, said that the best form of government is, in fact, representative democracy, which constitutes at any rate in those nations that have advanced to a certain level of civilisation, so that the natural development of any state guarantees the maximum freedom for its citizens. However, while he believed all should have equal rights, and opposed the unearned privilege of inherited wealth, or discrimination on grounds of sex, creed or colour, this did not extend to a commitment to giving everyone an equal say in government.<sup>46</sup>

According to Abraham Lincoln's famous definition, the word "democracy" simply means government of the people, by the people, and for the people.<sup>47</sup> Yet, no political system at any time, democratic or not, has ever provided for all the people to choose the government, much less to exercise governmental power. Democracy is a political system as Macpherson points out, in which the whole people, positively and negatively, make and are entitled to make the basic determining decisions on important matters of public policy.<sup>48</sup>

On the other hand, elitist theory does not agree that people have the capability to reach the common good (if there is any). They see democracy rather in institutional and procedural terms.<sup>49</sup> One of the elitist theorists is Schumpeter. He has an empirical approach to the definition of democracy. He says that it would seem that more or less any kind of political system in which governmental power depends on winning competitive elections could be counted as a democracy. He continues by stating that

<sup>45</sup> Schmitter, P. C. & Karl, T. L., (1991), "What Democracy is . and is not", *Journal of Democracy*, Vol.2:3, p.76

<sup>46</sup> Mill, J.S., (1964), *Utilitarianism, Liberty, Representative Government*, London: Dent, p.283

<sup>47</sup> See, Dunn, J., (1992), *Democracy: The Unfinished Journey 508BD to AD1990's*, Oxford: Oxford University Press

<sup>48</sup> Macpherson, C.B., (1966), *The Real World of Democracy*, Oxford: Clarendon Press, p.5

<sup>49</sup> See, Schumpeter, J., (ed.1976), *Capitalism, Socialism, and Democracy*, London: George Allen and Unwin

democratic system of government is best identified in institutional and procedural terms, rather than in terms of the ideals which democracy is supposed to serve.<sup>50</sup> He defines democratic method as “institutional arrangements for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people’s vote.”<sup>51</sup> He claims that democracy is simply a method of decision-making that cannot itself function as an ideal.<sup>52</sup> This definition places an elite very firmly at the heart of democracy by virtue of its division between individuals in power and the people. He argues against what he calls the classical doctrine of democracy. He objects that there can be no common good which people can be persuaded to agree on.<sup>53</sup>

The indirect democratic process works in such a way that representatives agree that those who achieve a greater degree of electoral support would not hinder the losers from taking office or exerting influence in the future and in turn, the losing representatives will respect the rights of the victors to formulate and bind policy. Sartori asserts that “if we have a majority that cannot be turned into a minority, then, we are no longer dealing with a democratic majority - that is, within a system whose rule of the game is the majority principle-”<sup>54</sup>.

On the other hand, it is stressed by others that the norms of democracy dictate inclusive citizenship and political equality,<sup>55</sup> and it is not only a matter of popular sovereignty as some argue.<sup>56</sup>

#### **2.2.4.1. The Critics of Referendums in Representative Democracy**

Since it is noted that most people see referendums as supplements of a representative system, therefore, it may be beneficial to mention the main argument against holding referendums in representative democracies before going any further.

<sup>49</sup> See Dahl, R. A., (1956), *A Preface to Democratic Theory*, Chicago: Chicago University Press, Sartori, G., (1987), *Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers and Riker, W. H., (1982), *Liberalism Against Populism*, San Francisco: W.H Freeman

<sup>50</sup> See, Schumpeter, J. A., (1942), *Capitalism, Socialism and Democracy*, Harper: New York

<sup>51</sup> Ricci, D. M., (1970), “Democracy Attenuated: Schumpeter, The Process Theory and American Democratic Thought”, *The Journal of Politics*, Vol.32:2, pp.239-267

<sup>52</sup> *Ibid.*, p.242

<sup>53</sup> *Ibid.*, p.251

<sup>54</sup> Sartori, G., (1987), *Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers

<sup>55</sup> Lively, J., (1975), *Democracy*, Blackwell: Oxford, pp.49-51

<sup>56</sup> Holden, B. (1988), *Understanding Liberal Democracy*, Oxford and New Jersey: Philip Allan, p.6

These are: (i) ordinary citizens have neither the analytical skills nor the information to make wise decisions; (ii) decisions made by representatives are more likely to protect the rights of minorities; (iii) decisions by elected officials involve evaluating the intensity of preferences and melding the legitimate interests of many groups into policies that will give all groups something of what they want; (iv) by allowing elected officials to be bypassed and by encouraging officials to evade divisive issues by passing them onto voters, referendums weaken the prestige of the legislative and executive bodies.

In the countries where referendums are held frequently, political parties become less important. Italy provides an example that where due to the use of referendums, the party system is significantly weakened.<sup>57</sup> However, even in direct democracy, the necessity and importance of political parties cannot be denied. Citizens as individuals may have difficulty in proposing laws, and they need to be informed by organised groups, which form opinions on the political issues. Furthermore, if freedom of information and freedom of speech are not provided to the public, referendums will become a tool for the governments to legitimate their decisions and claim that they have public support, as has happened in Turkey. After the military intervention in 1980, the Military Coup put the new constitution to referendum, which was obviously prepared without consensus. During the referendum campaign, opponents of the draft were forbidden to express their views. The Constitution, in the end, was accepted by 92% support of the electorate. Citizens should have free access to the information and should be well informed. Therefore, the issues which will be asked to the electorate could be discussed openly and without any restriction on any opponent's opinion. These conditions did not apply in Turkey.

#### **2.2.4.2. Arguments against Representative Democracy**

Having briefly examined the role of referendums in representative democracy, it may be beneficial to look at some criticisms of representative democracy itself.

Limited participation is an institutional characteristic of mass democracy and not merely a failing due to specific circumstances, according to Hirst. Mass electorate and

mass parties mean a low level of active participation by the citizens. At best, he argues, such a democracy permits the masses to vote in periodic and relatively infrequent elections. Active and continued participation in politics is the choice of the small minority who join political parties and other campaigning organisations. Democratisation must rely on something other than a higher level of mass participation at regular intervals.<sup>58</sup>

It may also be argued that representative democracy has been eroded to the point where the people have literally nothing to say about government. Partisan political powers, pre-selected candidates, special interests and the money behind them have completely undermined democracy.

Barber likewise claims that there are three weaknesses of representative democracy. First, under a representative government the voter is free only on the day he casts his ballot. Yet even this act may have dubious consequences in a system where citizens use the franchise only to select an executive or judicial or legislative elite that in turn exercises every other duty of civic importance. To exercise the franchise is unhappily to renounce it. The representative principle steals from individuals the ultimate responsibility for their values, beliefs and actions. Representation is incompatible with freedom because it delegates and thus alienates political will at the cost of genuine self-government and autonomy. Secondly, he also argues that representation is incompatible with equality because, in the words of the 19th Century French writer Lous Veillot, "when I vote my equality falls into the box with my ballot, they disappear together." Representation, finally, he argues, is incompatible with social justice because "it encroaches on the personal autonomy and self sufficiency that every political order demands, because it impairs the community's ability to function as a regulating instrument of justice and because it precludes the evolution of a participating public in which the idea of justice might take root."<sup>59</sup> After all, democracy is the name of the regime which is open to change and improvement and in which society can willingly decide its future.

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<sup>57</sup> Uleri, Pier V., "The Referendum Phenomena in Italy: From the Beginning to the Crisis of a Democratic System", *Article presented at ECPR Joint Sessions, Madrid, 17-22 April 1994*

<sup>58</sup> Hirst, P., (1990), *Representative Democracy and Its Limits*, Cambridge: Polity, pp.26-28


<sup>59</sup> Barber, B., (c1984), *Strong Democracy: Participatory Politics for a New Age*, London: University of California Press, p.16

### 2.2.5. Economic and Social Democracy

Direct and representative democracies are concerned about the process of decision making and mostly equality regarding the right to vote etc. However, some theorists have developed a new form of democratic theory, which deals more with the outcome instead of the process. Classical democracies do not say anything about the distribution of wealth or economic equality, therefore, in response to this, “economic and social democracy” were developed.

Economic democracy means an economic system in which persons (including corporate persons) operate in a market but are governed by those who work for them. According to Robin Archer, economic democracy is a pragmatic goal, which the socialist movement can and should achieve.<sup>60</sup> Economic democracy can be regarded a dimension of social democracy. Since its main concern is democracy at work place, there is no need to examine it here any further. “The first step in the revolution by the working class is to raise the proletariat to the position of the ruling class, to win the battle of democracy”<sup>61</sup>

Socialists and radicals have traditionally criticised the liberal conception of democracy which is described in the next section of this Chapter, as narrow, limited, insufficient and unsatisfactory. This criticism is generally associated with Marxism. Socialists have insisted that genuine democracy should go beyond political and legal arrangements, and also tackle the economic and social roots of class inequalities.

Socialist democracy is defined by Marx and Marxists as the extension and perfection of the process of democratisation, which was initiated with the introduction of liberal democracy, in which its rights and freedoms are preserved and extended. However, mostly socialist democracy is pictured as an alternative to liberal democracy, which will supersede and replace it.<sup>62</sup> The Soviet Union and the other existing socialist societies were modelled on the idea of socialist democracy as an alternative to liberal democracy. These regimes rejected liberal democracy and claimed instead to be “people’s democracies” which were supposed to be an alternative and superior 

<sup>60</sup> Archer, R., (1995), *Economic Democracy*, Oxford: Clarendon Place, p7

<sup>61</sup> Marx K. [1971], *Birth of the Communist Manifesto*, (edited and annotated, with an introduction by Dirk J. Struik) New York: International Publishers, also see Freuer. L. S., (1969), *Marx and Engels: Basic Writings on Politics and Philosophy* London: Fontana

<sup>62</sup> Seyers, S., & McAllen, D., (1991), *Socialism and Democracy*, London: Macmillan, p.2

While the relation between liberalism and socialism is one of clear antithesis, the relation between socialism and democracy is rather complementary in theory if not in practice. It is argued that as democratisation proceeded, so it would inevitably lead to, or at any rate foster, the advent of a socialist society. It is also claimed that only by the way of the advent of socialism could participation in political life be strengthened and enlarged, and democracy fully realised. Among the promises held out by such a democracy, moreover, is that of an equal distribution not only of political but economic power, and this is something that liberal democracies never have offered.

In Marx's idea, the plan for national organisation is to be based on tiers of elected delegates, revocable and bound by written instructions. Marx states that "instead of deciding once in three years or six years which member of the ruling class was to misrepresent the people in parliament, universal suffrage serves every other employer in the search for workmen and managers in his business."<sup>63</sup> Here revocability and accountability, rather than representation are stressed. The standard formulation of the Marxist ideal is found in the Communist Manifesto where "democracy" is defined "an association in which the free development of each is the condition of the development of all".<sup>64</sup> Marx looked for a stateless, self-governing coercion-free democracy without vertical structures, without power problem, without cleavage or conflict of any sort.

Lenin examined democracy in relation to three stages: the capitalist, the socialist and the communist. Simply the idea of democracy was associated by Lenin with the existence of the state. Democracy, according to Lenin, "is a form of state, one of its varieties" which sort or variety did not matter for Lenin. To him the state, any state, was "an organisation of violence for the suppression of some class"<sup>65</sup> Lenin stated insistently "Democracy is also a State, and....consequently democracy will also disappear when the State disappears"<sup>66</sup>

It should be noted that Lenin never indicated that democracy meant as a state, and therefore democracy was something to be rejected. He was rejecting bourgeois

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<sup>63</sup> Marx, K., (1871), *The Class Struggle in France* in McLellan D., (ed.1997), *Karl Marx: Selected Writings*, Vol.3 London: Penguin, pp.286-297

<sup>64</sup> Marx K. [1971] ., *Manifesto II in Birth of the Communist Manifesto*, ( edited and annotated, with an introduction by Dirk J.Struik) New York: International Publishers

<sup>65</sup> Lenin, V., (1919), *State and Revolution: Marxist teaching on the state and the task of the proletariat in the revolution*, London: The British Socialist Party, v. 4; II,1; and v.2

democracy (liberal democracy as exist in capitalist states). Lenin admitted in subordinate hypothesis that democracy is also something else. However, he did not say that his criticism of democracy as state system ended where the capitalist conception of democracy ended. He spoke of democracy as the "organised systematic use of violence" in the absolute.

However, when Lenin came to the second stage, the dictatorship of the proletariat, he changed his tune. He maintained that the dictatorship of the proletariat was more democratic than bourgeois democracy. He used democracy in a different and positive sense. In a capitalist society, Lenin argued democracy is democracy for a minute minority; whereas the dictatorship of the proletariat is a democracy for the vast majority, and is a dictatorship only as regards a minority of (former) oppressors. He continues thus:

"The dictatorship of the proletariat, i.e., the organisation of the vanguard of the oppressed as the ruling class for the purpose of suppressing the oppressor, cannot result merely in an expansion of democracy. Simultaneously with an immense expansion of democracy, which for the first time becomes democracy for the poor, democracy for the people, and not democracy for the money bags, the dictatorship of the proletariat imposes a series of restrictions on the freedom of the oppressors, the exploiters, the capitalists. We must suppress them. Their resistance must be crushed by force, and it is clear that where there is suppression, where there is violence, there is no freedom and no democracy" <sup>67</sup>

In the communist doctrine, socialism stands for the preliminary stage of the as yet to be attained communist society. To non-communist, however, socialism stands for a very different ideal and reality. Originally socialists' doctrine was a Marxist one, albeit, more often than not, of the revisionist.

Some socialists like Hodgson do not reject parliamentary democracy. He does not accept Lenin's sharp division between "proletarian" and "bourgeois" democracy and finds it misleading and unsatisfactory. He argues that in spite of the fact that it would be difficult to construct the features of what Lenin called "proletarian democracy" through the normal process of parliamentary legislation, it does not mean that parliament has to be destroyed in order to achieve a workers' democracy which involves mass popular involvement and the administration, elected representative under recall. He claims, it is,

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<sup>66</sup> *Ibid.*, v.2

<sup>67</sup> *Ibid.*, v.2

in principle, possible to modify the Constitution so that Members of Parliament are subject to the recall of their constituencies.

“ there is no reason to suppose that it is impossible, especially after the creation of additional mass organs of democratic control, and the breaking of the military and economic power of the capitalist class. It seems that “proletarian democracy” does not, in principle, exclude parliamentary democracy, despite Lenin’s rebuttal of the latter”.<sup>68</sup>

Bobbio puts forward three arguments that are advanced in support of the view of socialist democracy is preferable to liberal democracy. The first is that liberal democracy came into existence as representative democracy, with elected representatives unfettered by and mandate: Socialist or, in class terms, proletarian democracy is to be a direct democracy, in the double sense either of a democracy of all the people without representatives, or else of a democracy based, not on representatives, but on mandated delegates subject to recall. Second, liberal democracy allowed people to participate in political power, both central and local, through the extension of the suffrage to the point where all men and women enjoy the vote, but only socialist democracy will allow them to participate also in decisions on economic matters, which in capitalist society are determined autocratically. Finally, and above all, liberal democracy offers the right to participate directly or indirectly in political decisions, but this is not paralleled by any increased equality in distribution of economic power, with the result that the right to vote often amounts to nothing more than a mirage. Socialist democracy, by contrast, holds a more equal distribution of economic power to be one of the prime aims of the changes which aims to institute in the economic regime, and thus transforms the formal power, at the same time bringing democracy itself to its ideal fulfilment, a greater equality among men.<sup>69</sup>

### 2.2.6. Liberal Democracy

After some Western countries such as Britain and United States became liberal states, a new concept of democracy was born. It was called liberal democracy. It was

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<sup>68</sup> Hodgson, G. (1977), *Socialism and Parliamentary Democracy*, Nottingham: Spokesman, pp.28-31

<sup>69</sup> Bobbio, N., (1986), *Which Socialism?: Marxism, Socialism and Democracy*, (tr. Griffin, R.) Cambridge: Parity, pp.73-78



developed from representative democracy however, its main concern is not political representation but individuals' rights.

Many liberals believe that there is a necessary connection between liberalism and democracy. However, some opponents believe that democracy is incompatible with liberalism. Thomas Hobbes saw democracy as a hindrance to the safeguarding of the one fundamental right of the individual to life. John Locke who is commonly taken to be the father of liberalism was not a democrat and merely believed what one might nowadays consider to be elements of democracy could serve as only one instrument for preserving his expanded version of human rights.<sup>70</sup> Locke claims that governments are established to secure fundamental human rights, and the government is limited by this special duty. In his theory government has two main duties: (a) to secure rights (b) to realise public order.<sup>71</sup> Rousseau attempts to create a union of both authority and liberty.<sup>72</sup> Consent was a balance between the individual and government for Locke, for Rousseau and Hobbes, the contract was constitutive of society itself.<sup>73</sup> The transition from the older liberalism to reformation liberalism in John Stuart Mill<sup>74</sup> who changed not the instrumental role of democracy but the scope of human rights. Throughout the development of early liberalism, democracy was merely a means to achieve the realisation of a number of basic human rights. The nature of the liberal ends determined the character of the democratic means, but democracy was not an end itself.<sup>75</sup> However, today, when one mentions democracy, it is mostly "liberal democracy" which comes to mind. Most countries which are accepted democracies are liberal states and call themselves liberal democracies

To define "liberal democracy" is no easier than defining the word "democracy" itself. Some says that the term "liberal democracy" is a qualification of "democracy", and it refers to democracy of a limited kind. However, this may not be clear. It could be said that the adjective "liberal" as applied to a system of government classically

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<sup>70</sup> See Locke, J., (c1994), *Two treatises of Government*, New York: Legal Classics Library

<sup>71</sup> Salvadori, M., (1959), *Locke and Liberty, Selection from the Works of J. Locke*, Liverpool: Charles Birchall & Sons Ltd., pp.174-177

<sup>72</sup> For more information see Leyden, W., (1982), *Hobbes and Locke*, Hong Kong: Macmillan Press

<sup>73</sup> William, G., (1991), *Political Theory in Retrospect* Hants: Edward Elgar Publishing Ltd. p.85

<sup>74</sup> See Mill, J.S., (1951), *Considerations on Representative Government* New York: E .P. Dutton [Everyman's Library]

<sup>75</sup> See, Wintrop, N., (c1983), *Liberal Democratic Theory and Its Critics*, London: Croom Helm

indicates a concern with individual freedoms that centres on the need to restrain the power and authority of government. In the classical view 'democracy' refers to the location of a state's power, i.e. in the hands of people, whereas "liberal" refers to the limitation of a state's power.

For the purpose of this thesis, it is argued that liberal democracy as one of the different kinds of democracies refers to a set of institutions, which includes free elections, competing parties, and freedom of speech, responsible government and the rule of law. Liberal democracy aims to aggregate individual preferences into a collective choice in as fair and efficient a way as possible. It could be said that fundamental rights serve as limits on democracy. Liberal democracy is a system in which fundamental political rights and liberties are preserved and protected from infringement even by means of the democratic process itself.<sup>76</sup>

It could be said that liberal democracy is a specific form of democracy. Liberalism is its absolute premise and foundation. Liberal democracy means liberalised democracy which is democracy described and formed within the limits set by liberalism. Liberal democracy evolved from the idea that "majoritarian decision-making is to be preferred" to "the idea of a pluralist system which gives various groups in society different amounts of influence over decision in proportion to their interest in those decisions".<sup>77</sup> In this way, liberal democracy is defined

"as the extent to which political system allows political liberties and democratic rule. Political liberties exist to the extent that the people of a country have the freedom of express a variety of political opinions in any media and the freedom to form or to participate in any political group. Democratic rule exists to the extent that the national government is accountable to the general population and each individual is entitled to participate in the government directly or through representatives."<sup>78</sup>

Democracy preceded liberalism in western history, but liberalism preceded democracy in the modern age. Historically democrats and liberals have always battled with each other. Liberal democracy is a contemporary concept, which tries to reconcile

<sup>76</sup> Dahl, R. A., (1989), *Democracy and Its Critics*, London and New Haven: Yale University Press, p.169

<sup>77</sup> Miller, D., (1992), "Deliberative Democracy and Social Choice", *Political Studies* XL Special Issue, p.55

<sup>78</sup> Bollen, K., (1993), "Liberal Democracy: Validity and Method Factors in Cross-National Measures" *American Journal of Political Science*, Vol.37, p.1209

those quarrelling brothers. "In the modern world, democracy has often been perceived by liberals as a threat or potential threat to individual freedom, and there have been warnings about the tyranny of the majority and the tyranny of public opinion."<sup>79</sup>

Liberalism needs democracy for two reasons. Firstly, despite the fact that in liberalism all individuals are free and equal by nature and masters of themselves, a liberal polity needs some mechanism by which the people can give their consent to and then bestow on the government the right to govern. Secondly, liberalism expects the government to set up and maintain a system of rights based on the principle of maximum liberty. The government, however, may not by its own inclination set up such a system or may violate it. A liberal polity, therefore, needs a mechanism by which the people can control and force the government to realise its trust. Since liberalism needs these kinds of mechanisms, it turns to democracy to provide them and defines democracy in terms of them.

Modern democracies, according to Sartori, hinge on (a) limited majority rule (b) election procedures and (c) the representational transmission of power.<sup>80</sup> Sartori puts forward that there are lots of characteristics or properties eligible for selection of a democratic system; not only majority rule and participation but also equality, freedom, consensus, coercion, competition, pluralism, constitutional rule and more.<sup>81</sup> He also states that, in order to isolate liberalism from democracy, it could be said that liberalism calls for liberty, and democracy for equality. It is the task of liberal democratic systems to combine liberty with equality. The distinction becomes that liberalism is above all a technique of limiting the state's power, whereas democracy is the insertion of popular power into state.<sup>82</sup>

Liberal democracy is normally depicted as an indirect democracy. However, there is some overlapping in terms of using devices of direct democracy such as referendums. Liberal democracy has been developed in liberal states where mostly representative democracy was in practice.

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<sup>79</sup> Arblaster, A., (1987), *Democracy*, Milton Keynes: Open University Press, p.21

<sup>80</sup> Sartori, G., (1987), *The Theory of Democracy Revisited*, Chatham: Chatham House Publishers, p.332

<sup>81</sup> *Ibid.*, p.84

<sup>82</sup> *Ibid.*, p.385

The basic relationship between liberalism and democracy from de Tocqueville<sup>83</sup> to de Ruggiero<sup>84</sup>, Kelsen<sup>85</sup> and Raymond Aron is as a relation between liberty and equality. Holden argues that there are three key concepts, which have a key role in the idea of liberal democracy. According to Holden, to answer the questions, which may arise when one thinks about or uses the notion of liberal democracy, one should examine the relationships among the three key concepts of democracy. These are democracy, equality and liberty.<sup>86</sup>

The word “liberty” means freedom in a social context. The term “individual liberty” then refers to the freedom of individuals with respect to their social and particularly their political environment. Liberal democrats assume that there is very close connection between individual liberty and limited government and that threats to individual liberty come only and mainly from the state or government. The central point is that a liberal democrat can make sense of the notion of the people making a decision only where there is freedom to present different viewpoints to the people and where the people are free to make whatever decision they wish. In this way, freedom of speech, organisation and assembly and so on are seen as essential if democracy is to exist at all. In other words, essential individual liberties must be present in a democracy. It can be said that liberal democracy is a democracy of a limited sort, a system in which there are restrictions on the extent of people’s decision making. Liberal thinkers emphasise the concept of negative liberty since they think that the logic of the free market requires that. Negative liberty means an absence of coercion rather than a positive power to enabling capacity. It is “freedom from”, rather than “freedom to”. It makes a sharp distinction between freedom and ability.

The definition of freedom in the sense of “positive freedom” is criticised by Hayek. According to his definition of negative freedom, freedom is something that is akin to power, or ability.<sup>87</sup> On the other hand, he believes that positive freedom can be

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<sup>83</sup> For an analysis of how Tocqueville relates democracy to liberty, see De Tocqueville, A., (1945), *Democracy in America*, New York: A. A. Knopf

<sup>84</sup> See, De Ruggiero, G., (1927), *The History of European Liberalism*, (Tr. Collingwood, R.G). Oxford: Oxford University Press

<sup>85</sup> See, Kelsen, H., (1946), *Society and Nature: A Sociological Inquiry*, London: K. Paul, Trench

<sup>86</sup> Holden, B., (1988), *Understanding Liberal Democracy*, Oxford & New Jersey: Philip Allen p.34

<sup>87</sup> Green, D., (1987), *The New Right: The Counter-Revolution in Political, Economic and Social Thought*, Brighton: Wheatsheaf Books, p.112

used to demand a redistribution of wealth and he associates this idea of freedom with socialism. Hayek is very concerned about the survival of individual freedom. In his view, freedom is an ideal and should be accepted as an overriding principle which governs all particular acts of legislation. It is also a system in which government action is guided by principles<sup>88</sup>.

The principle of equality has played an important role in the democratic formula. There is very strong connection between democracy and equality. Democracy is sometimes defined in terms of political equality. Opinions on equality may differ from one to another, but the most common accepted opinion is that people must have an equal opportunity and rights to participate in politics. Rawls states that “ each person is to have an equal right to the most extensive total system of equal basis liberties compatible with a similar system of liberty for all.”<sup>89</sup> The idea is attractive that since liberty is so important to a person, since it is so important to all persons simply by virtue of their being persons, it should be fostered for all equally. He asserts that the public culture of a democratic society is committed to seeking forms of social co-operation, which can be pursued on a basis of mutual respect between free and equal persons.<sup>90</sup> Dworkin also argues that individuals have a right to equal concern and respect in the design and administration of the political institutions governing them.<sup>91</sup> He continues arguing that once a principle of equal concern and respect has been acknowledged, further argument must follow about what particular political arrangements satisfy that principle- a system of equal opportunity for achieving differential status based on merit, as system of absolute equality in income and status, or whatever. Whereas the principle of equal concern and respect is fundamental, the right to an equal outcome in the distribution of some goods obtains only where this is for some special reason derivable from the more fundamental right to equal consideration and respect.<sup>92</sup> The concept of equality has been interpreted by Marxist theorists in economic sense. They claim that people must be equal not only in terms of having the same political rights but also having the same

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<sup>88</sup> Hayek, F. A., (1991), "Freedom and Coercion" in Miller, D., (ed), *Liberty*, New York: Oxford University Press, p.89

<sup>89</sup> Rawls, J., (1971), *A Theory of Justice*, London: Oxford University Press, p.302

<sup>90</sup> Rawls, J., (1985), "Justice as Fairness: Political not Metaphysical", *Philosophy and Public Affairs*, XIV, pp.223-251

<sup>91</sup> Dworkin, R., (1978), *Taking Rights Seriously*, London: Duckworth, p.180

economic conditions. Liberal democrats see the concept of equality in terms of having equal rights to participate in politics and having equal weight regarding votes.

As mentioned above, though historically democrats and liberals have always struggled with each other, today, democracy is seen as the natural development of liberalism. It is believed that the rights of man are protected only in a democratic state, and that every authoritarian state in the world is anti-liberal and anti-democratic. Democracy and its procedures are criticised severely by the neo-liberal thinkers, but this is only with the aim of improving it rather than removing them.

Fukayama claims that liberal democracy has quite simply surpassed all contemporary ideologies and is the only viable ideology remaining<sup>93</sup>

Liberal democracy as mentioned above is a form of representative democracy and emphasises individual rights, plurality and participation. Rights to freedoms of expression and associations are the main concerns in liberal democracy. Therefore, political parties are regarded as indispensable elements of liberal democracies. Since parties articulate and aggregate public interests and functions as communication channels between public and the government, one could say that political parties are most important organisations in liberal democracies than any other kind of democracy. Interest optimisation and civic orientation can be achieved far more than in any other democracies. With principles of the rule of law and limited government, liberal democracy makes it possible for public to exercise control over government. However one can not deny that exercise of control could be achieved better in direct democracies. But the question arises here at what cost to liberalism this exercise of control is achieved?

Political parties could be state machines designed to mobilise and educate the public in some kinds of systems. However, one cannot mention free competition or pluralistic structure in those regimes since they are based on merely one party system such as communism. Thus, these party roles are not possible in a liberal democracy.

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<sup>92</sup> *Ibid.*, p.273

<sup>93</sup> Fawcett, E., (1992), " Book Review of the End of History and the Last Man", *Millennium*, Spring, Vol.21:1 p.106

After looking at some definitions of the word “democracy”, and “liberal democracy” and representative democratic theories, the conditions of democracy must now be examined.

### 2.2.7. The Conditions of Liberal Democracy

For democracy to thrive, specific procedural norms must be followed and civic rights must be respected. These procedures alone do not define democracy, but their presence is indispensable to its persistence. In essence, they are necessary but not sufficient conditions for its existence.

Robert Dahl has offered the most generally accepted listing of what he terms the “procedural minimal” conditions that must be present for modern democracy (or as he puts it, “polyarchy”) to exist.

- 1) Control over government decisions about policy is constitutionally vested in elected officials.
- 2) Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
- 3) Practically, all adults have the right to run for elective offices in the government...
- 4) Citizens have a right to express themselves without the danger of severe punishment on political matters broadly defined...
- 6) Citizens have a right to seek out alternative sources of information. Moreover, alternative sources of information exist and are protected by law.
- 7) Citizens also have the right to form relatively independent associations or organisations, including independent political parties and interest groups”.<sup>94</sup>

Schmitter and Carl add two others to these seven conditions. These are firstly that popularly elected officials must be able to exercise their constitutional powers without being subjected to overriding (albeit informal) opposition from non-elected officials. Democracy is in jeopardy if military officers, civil servants or state managers retain the capacity to act independently of elected civilians or even veto decisions made by people’s representatives. Secondly, the polity must be self-governing: it must be able to act independently of constraint imposed by some other overarching political system.<sup>95</sup> These two conditions are highly important when Turkish case is examined. In 1997, the

<sup>94</sup> Dahl, R., (1982), *Dilemmas of Pluralist Democracy*, New Haven: Yale University Press, p.11

<sup>95</sup> Schmitter, P. C. & Karl, Terry L., (1991), “What Democracy is . and is not”, *Journal of Democracy*, Vol.2:3, p.81

Welfare Party-True Path Party coalition government had to resign because of incredible pressure from the Turkish military.

Beetham argues that democracy entails the twin principles of popular control over collective decision making and equality of rights in the exercise of that control.<sup>96</sup> According to those ideas, public policy is to be governed by the freely expressed will of the people whereby all individuals are to be treated as equals. He classifies necessary conditions of democracy under two titles: "Basic Freedoms" and "Citizenship and Participation." Under basic freedoms, he lists freedom of speech and expression, the right to freedom of movement, the right to freedom of association, the right to equal treatment under the law, the right to freedom of worship. Under citizenship and participation; he argues that the political community which has a common and standardised form of legal membership should be compatible with the basic freedoms. Citizens should have equal rights to run for elective office. Citizens should have the right to be equally eligible to serve, and, where appropriate, granted an equal probability of being selected for service, in non-elective representative and decisional bodies. Citizens should have the equal right to vote in all elections and referendums. Citizens' votes must be decisive under all decisional mechanisms. Mechanisms must be available for citizens to vote directly on substantive outcomes. There must be a voting system, which allows the expression of a majority preference in multi-sided contests. Where votes for representatives are conducted, these votes must be renewed at regular and specified intervals.<sup>97</sup>

After having examined the concept of democracy and particularly liberal democracy and conditions of democracy, one could say that liberal democracy could not be achieved without political parties. Parties are a most important element of democracy.

In direct democracies political parties may not be able to function as they do in representative democracies (including liberal democracies), however they are still important in order to mobilise the public and to form and shape public opinions on issues in question. In socialist democracies, (or one party systems) political parties acted as state machines to educate people and carry out formal ideologies from top to bottom.

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<sup>96</sup> Beetham, D., (1995), *Introducing Democracy: 80 Questions and Answers*, Cambridge: Polity Press, p.3



Political parties in newly established democracies play an essential role as well. In liberal democracies, based on basic rights and civil liberties such as right to equal vote, freedom of expression and freedom of associations, rights and freedoms can be exercised effectively only with the existence of political parties. Political parties' functions and roles in this theoretical framework are studied next in greater detail.

### 2.3. Political Parties

Democracy, as E. E. Schattschneider argued, is “unthinkable save in terms of the parties”<sup>97</sup> Modern democratic theorists of all colours accept parties as institutions that organise electoral competition, represent various social interests, moderate social conflict, increase voter rationality, enlarge the electorate through mobilisation, connect people to their government, function as a recruitment pool for government from below and constrain those in positions of power. In emerging democracies, it is political parties that play an instrumental role in consolidating the new regimes.<sup>98</sup> Despite the fact that strong parties may not be necessary for inducting democratic regimes (even though that may be helpful), to achieve the long-term consolidation of broad-based representative government, there needs to be strong parties.<sup>100</sup> The emergence of a strong, institutionalised party system is not the only requirement for democratic consolidation, and there are other potentially relevant variables such as economic performance, political culture, patterns of historical development, social and economic inequalities and dependence.<sup>101</sup>

In the mature democratic political system, political parties are of central importance. Political parties represent coalitions of different groups in society. They provide a means whereby the conflicting elements of similar interests are reconciled, harmonised and then fed into the political system. Parties involve and educate their

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<sup>97</sup> Beetham, D., (1994), *Defining Democracy*, London: SAGE, pp.36-37

<sup>98</sup> Schattschneider, E. E., (1942), *Party Government*, New York: Farrar and Rinehart, p.1

<sup>99</sup> Mainwaring, S., (1995), "Political Parties and Democratisation in Brazil and the Southern Cone", *Journal of Inter American Studies and World Affairs*, Vol.37:11, pp.113-179

<sup>100</sup> *Ibid.*

<sup>101</sup> Dix, R. H., (1992), “Democratisation and the Institutionalisation of Latin American Political Parties”, *Comparative Political Studies*, Vol.26:4, pp.488-511

members, who also provide the key personnel for democratic control of central and local government.<sup>102</sup>

The study of political parties is required as a condition to an understanding of the real problems of democracy, both in theory and in action.<sup>103</sup> Liberal democracy has been one of the principal units around which studies of parties have been based. There is good reason for this, given that the need to mobilise mass electorate is a major influence on how parties in these states can operate and this is a feature common to all liberal democracies. Even in liberal democracies, however, the concept of a party is a broad one. The term was used, and still is used, to refer to those elite groupings which emerged in legislatures before the enfranchisement of a mass electorate, a process which did not begin in most regimes that were to develop into liberal democracies until the late nineteenth century. Well-defined elite groupings emerged and disappeared in the British parliament at various times from the late seventeenth century until the mid-nineteenth century, when the parliamentary parties were transformed into parties with mass electoral bases.<sup>104</sup>

### 2.3.1. The Concept of Political Parties

A concept of parties is more difficult to formulate than a theory of interest groups or bureaucratic organisation. Some of the reasons for this could be stated as follows.

Political parties do not clear boundaries in the political system as interest groups or bureaucracies. Therefore it is difficult to have clear and easy definition. For Epstein, having a label rather than an organisation is the crucial defining element of parties.<sup>105</sup> On the other hand, a political party is defined as “a team seeking to control the governing apparatus by gaining office in a duly constituted election.”<sup>106</sup> Janda defines parties as those organisations that pursue the goal of placing their avowed representatives in

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<sup>102</sup> Tanilli, S. (1981), *Devlet ve Demokrasi*, Istanbul: Say Yayinlari, pp.9-10

<sup>103</sup> Macridis, R. C., (ed. 1967), *Political Parties Contemporary Trends and Ideas*, New York and London: Harper Touchbooks, p.33

<sup>104</sup> La Palombara, J and Weiner, M., (ed. 1966), *Political Parties and Political Development*, New Jersey: Princeton University Press, p.31

<sup>105</sup> Epstein, L.D., ( 1993), *Political Parties in Western Democracies*, London: Transaction Publishers, p.9

<sup>106</sup> Downs, A. , (1957), *An Economic Theory of Democracy*, New York: Harper and Brothers, p.25

government positions.<sup>107</sup> In other word, a party is an association organised in support of some principle or policy that by constitutional means it attempts to make the determinant of government,<sup>108</sup> while a rational choice theorist accepts any association as a party as long as they aim to become part of the government by competing in elections, Ware argues that parties are bodies that intend to exercise some control over a state, and its members are not simply the representatives of a single interest in society.<sup>109</sup> These two types of definitions have different implications. The first type of definitions does not refer to the functions that parties perform for the political system while Ware's definition implies that. The rational choice theory neither denies that parties may perform broad political functions nor that they respond to psychological needs. The definition excludes those who are essentially choosers among competing parties, i.e. voters. Between candidates and voters lies a host of interest groups, media experts, and activists of all sorts whose relationship to the party is problematical. Since rational choice theorists have concentrated on candidates and strategies, they have simply overlooked the problem of organisation.<sup>110</sup>

As stated above, Janda requires that for something to be a party, it must intend to put its representatives in government, while Ware merely requires that the party seek to exercise control over government. To distinguish parties from pressure groups, Ware adds to his definition a restriction that for a body to be a party, it must be the representative of more than a single issue. There are some boundary problems in this definition. First of all, multiple-interest bodies seeking to exercise control over a state are not necessarily parties. The Referendum Party in the UK is one of the examples, since that party has one single issue and does not aim to exercise control over the state. The Green Party also does not fit into Ware's description of a political party; it is much more an interest group whose main aim is to express concern for environment. However, these two organisations have candidates who stand for elections under a party label. That, according to Epstein's definition mentioned above, makes them a political

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<sup>107</sup> Janda, K.,(1970), *A Conceptual Framework for the Comparative Analysis of Political Parties*, Beverly Hills: Sage, p.83

<sup>108</sup> McIver, R. M., (1964), *The Modern State*, London: Oxford University Press, p.196

<sup>109</sup> Ware, A., (1987), *Citizens, Parties and State: A Reappraisal*, Oxford: Polity Press, p.16

<sup>110</sup> See Shlesinger, J. A., (1984), " On the Theory of Party Organisation" *Journal of Politics*, Vol. 46: 2, pp. 367-400

party. Some political scientists have disposed of the problem of the boundary between parties and other organisations by altering the definition of party to include only those bodies which pursue control of state by constitutional means.<sup>111</sup> However there are many examples of organisations which are recognisably parties that have chosen to, or been forced to, pursue power outside the recognised liberal democratic means of influence.<sup>112</sup> The Kurdish Workers' Party (PKK) in Turkey aims to achieve the independence of Kurdish people but is not recognised by the state or by the European Court of Human Rights as a political party. Although they call themselves a party, it is certainly not an acceptable political party according to the values of liberal democracy.

Political parties may be analysed from several points of view. Externally and historically, parties constitute a central institutional link between social and governmental structure in mass-participation political system. A natural series of points arises from speculation concerning the mutual effects of formal governmental structure upon party and interest group behaviour and organisation, as well as of social structure upon the legal framework. The social and governmental structures have mutual effects on each other. Furthermore, party structures may be affected by social and governmental structures. The structure of a society helps to shape the character of political parties at crucial developmental stages. The social structure continues to exert influence. The ways that societies are divided (or united) by religion, race, ethnic background, language, educational levels, or the manners or styles of life can be included in the term social structure along with economically based classes.<sup>113</sup> In post-modern times, political parties are based more on social cultural identities than economic classes. For example, in Turkey, political parties are shaped as left, right and centre but these words left, right and centre do not explain fully where parties stand. There are parties which could be identified with the religious side of society such as the Virtue Party, while some parties are identified with ethnic background such as HADEP (People's Democracy and Labour Party) whilst the Nationalist Movement Party is based on nationalist ideas. All of these parties are supported by various economic classes.

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<sup>111</sup> McIver, R. M., (1964), *op. cit.*, p.396

<sup>112</sup> *Ibid.*, p.17,

<sup>113</sup> Epstein, L. D., (1993), *Political Parties in Western Democracies*, New Brunswick and London: Transaction Publishers, p.35

Secondly, on the psychological level, party doctrine and perceptions of party membership help the individual to resolve the inner tension between his several group affiliations and his responsibility for the selection of political-governmental leaders. Thirdly, as organisations, the internal processes of party management and policy making may be visualised not as closed, self-contained elite groups, but as complex patterns of leader-follower relationships with other political entities, which intersect and overlap in the vital functions of political education, organising political participation, providing access to and consultation with public officials and co-ordinating the elective and administrative branches of government.

Parties are by far the most important part of the representative structure in complex democratic societies. Although there exist doubts about their effectiveness, parties define the alternatives which voters consider and provide a device with which citizens can control their government.<sup>114</sup> The concept of political parties may be examined from different views. One may look at the parties from the citizens' point of view, or from the state's view.

From the citizens' view point, it might be said that citizens are consumers of political participation and representation. Political parties are by no means the most important means of representation available to citizens who want to influence the policy process.<sup>115</sup> The common model of liberal democracy emphasises the importance of elections, the sovereignty of the legislature and the role of political parties as both channels of participation and linkage or representational structures in society.<sup>116</sup> Voting is one of the important tools of liberal democracy, but voting must be organised to be effective, hence the reason for the importance of political parties in a liberal democracy.

For newly established states political parties are the means of structuring the society and mobilising the people. As La Palombora states:

“Whether in a free society or under a totalitarian regime, the organisation called the party is expected to organise public opinion and to communicate demands to the centre of governmental power and decision. Somehow too the party must articulate to its followers the concept and meaning of the broader community even if the aim of the party leadership is to modify profoundly or even to destroy

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<sup>114</sup> Wolinetz, S B., (1988), *Parties and Party Systems in Liberal Democracies*, London: Routledge, p.1

<sup>115</sup> Richardson, J., “Interest Groups and Representation”, *Australian Journal of Political Science*, Vol.30, p.611

<sup>116</sup> *Ibid.*, p.5

the broader community and replace it with something else. Furthermore, whether the country is relatively democratic India or relatively undemocratic Ghana, a long established democracy like the UK or a thriving totalitarian like the Soviet Union, the party is likely to be intimately involved in a political recruitment."<sup>117</sup>

### 2.3.2. Party Organisation

As well as looking at their external role in democracies, parties can also be considered internally in terms of their organisations, and as such, they differ enormously in structure and strength.<sup>118</sup> In some systems, parties are strong: the party maintains control over resources and nominations; there are local, regional, and national organisations; there is formal party membership; local party organisations play an important role in the social life of citizens.<sup>119</sup> In other systems political parties are relatively weak such as political parties in the United States.<sup>120</sup>

Political parties incorporate three aspects of organisation in a unique manner; (1) the party maintains itself through market-exchange, making it similar to business firms and therefore unlike interest groups and public office; (2) the party's output consists of collective goods, making it similar to interest group and public office; (3) the party compensates its participants indirectly, making it similar to interest groups yet unlike the office or business.<sup>121</sup> Elections are like a type of market in which parties offer their candidates and policies in exchange for votes needed to gain the office. In that sense parties are like business firms. Therefore, they have to adapt themselves to changes to maintain themselves. However, interest groups and public office are not market based organisations so they do not need votes or support as much as a party does. After the election, if a party or party candidate, such as mayoral candidate, wins the election, they will be everybody's government or mayor, and everybody regardless of whether they vote for the party is supposed to benefit from the party's policies. Therefore, it could be

<sup>117</sup> La Palombara, J., and Weiner, M., (ed. 1966), *op .cit.*, p.3

<sup>118</sup> For general account of this area see, Katz, Richard S., (1980), *A Theory of Parties and Electoral Systems*, Baltimore: John Hopkins University Press and McDonald, R. H. & Mark, R., (1989), *Party Politics and Elections in Latin America*, West View: Boulder, CO.

<sup>119</sup> Michels, R., *Political Parties: A Sociological Study of the Oligarchic Tendencies of Modern Democracy*, [( 1911) 1962], Free Press: New York, pp.364-371

<sup>120</sup> Mayhew, D., (1986), *Placing Parties in American Politics: Organisation, Electoral Settings, and Government Activity in the 20th. Century*, Princeton: Princeton University Press, pp.17-21

rightly said that parties produce collective goods like interest groups and public offices but unlike business firms. Parties do not compensate their participants directly as business firms do, they do it indirectly as being in office will benefit party participants indirectly. In that sense they are not like public office or business firms but interest groups. Parties might be described as forms of organised trial and error. Thousands of individuals and interests try to control the party's decisions. They promote candidates, frame issues, recruit workers, make alliances, and devise campaigns. Among these competing forces, choices are made, choices whose correctness is ultimately determined not by the party but by the electorate.<sup>122</sup> The model explains why parties put forth policies in order to gain office rather than gain office to pursue policies. It also explains why parties are oligarchies and how parties maintain their organisations despite an inevitable sense of dissatisfaction among many of their supporters.

A concept of parties is more difficult to formulate than a theory of interest groups or bureaucratic organisations. Some of the reasons for this are stated above. However, it may be beneficial to compare political parties to interest groups to have a clearer concept of political parties.

### **2.3.3. Parties and Interest Groups**

Parties as sub-units of the political system have less clear-cut boundaries than interest groups or bureaucracies. They tend to be more open towards the mass electors, new social movements and the network of organisations in society on the one hand and the power centres of political organisation on the other.

It may be claimed that parties have too few incentives and sanctions with which to encourage ordinary people to become involved in politics, and they can only appeal in this sense to the few who are hoping for a political career.<sup>123</sup> However, one should keep in mind that a political career is not the only reason for people to join parties. The client-patronage relationship between parties and their supporters is one of the important incentives. People may join or support political parties hoping to get government

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<sup>121</sup> Shlesinger, J. A., (1984), "On the Theory of Party Organisation" *Journal of Politics*, Vol.46:2, pp.367-400

<sup>122</sup> *Ibid.*

<sup>123</sup> Beyme, K. von, (c1985), *Political Parties in Western Democracies* (Tr. by Martin, E. ), Gower: Aldershot, p.6

contracts when the party they support is in power. Some may see political parties as a means to get a job. Some may join a political party simply because they think the policies that party pursues are best for the Country and the future. Political party membership in ideologically polarised societies might be higher than harmonious societies. In Turkey, especially pro-Islamic or nationalist parties have a considerably higher number of members compared to British political parties. For example it was mentioned in the press that the pro-Islamic Welfare Party had more than four millions members before it was closed down by the Constitutional Court.

The modern theory of political systems associates with interest groups the function of “interest articulation” and to parties that of “interest aggregation”. The introduction of such concepts as interest articulation and interest aggregation may be understood in the context of the process of the emergence of the democratic infrastructure. Early efforts at legitimising the activities of parties and interest groups took the form of somehow trying to squeeze these institutions into the constitutional framework of separation of powers. The division of the policy-making into interest articulation and interest aggregation was an effort at codifying the conclusion of research on political parties and pressure groups of the inter-war and the early post second world war periods. The model of politics which came out of this research was that of organised groups whose tasks were the formulation and expression of political demands of economic and other groups and the transmitting of these demands to political parties, legislatures and administrative agencies. Political party leaders on the other hand were viewed as brokers attempting to convert these particular demands into policy alternatives, which would attract votes in electoral campaign and structure debates in the legislative process.<sup>124</sup>

A further distinction between parties and interest groups is that parties are more oriented than interest groups towards a competitive political market, and to concentrate on individual parties is often to take too narrow a view since it ignores their competitor

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<sup>124</sup> See, Alman, G. A. and Powell, G. B., (1978), *Comparative Politics: Systems, Process, Policy*, Boston: Little Brown, Ehrmann, H., (ed.1958), *Interest Groups on Four Continents*, Pittsburgh: University of Pittsburgh Press, Neumann, S., (1956), *Modern Political Parties*, Chicago: University of Chicago Press



parties.<sup>125</sup> Interest groups often have target groups or figures but no countervailing group.<sup>126</sup>

As a conclusion, it could be said that the boundary between political parties and interest groups is fluid. However, some points can be drawn in order to separate political parties from interest groups. Parties and interest groups may be examined according to membership, participation in elections, participation in parliament and participation in government. As mentioned above, political parties usually have a comprehensive agenda which contains many issues. Since the main role of political parties is interest aggregation, it means that parties have to compromise between their members' interest and demands. Therefore, various interests are required to be represented and put into policy. On the other hand, interest groups usually aim to promote one single issue such as the environmental issue, or women's rights, or workers' rights.

Political parties have mass membership and directly involve themselves in elections, and participate in parliament and government directly; interest groups do not stand directly for elections. They do not run candidates under their group label, although they often support candidates or a set of candidates, by endorsement, money, and votes. Interest groups may support parties in these ways, but that does not make them a party. They do not participate in parliament as parliamentary groups. The wish to participate in election under their own label may be regarded as the most important indicator to distinguish political parties from other organisations. However, one must identify as an exception to this some absentionist parties such as Sinn Fein until 1982.<sup>127</sup>

"A party is a group of formulating comprehensive issues and submitting candidates in elections."<sup>128</sup> According to Laswell and Kaplan, this definition makes a party distinguishable from a group that seeks to affect decisions by the use of violence as well as pressure groups. It is the parties only that "secure and exercise power through the formal co-ordination of votes."<sup>129</sup>

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<sup>125</sup> Beyme, K. von, (c1985), *Political Parties in Western Democracies*, (Tr. by Martin, E. ), Gower: Aldershot, p.6

<sup>126</sup> Wright, W.E., (1971), *Comparative Study of Party Organisation*, Columbus- Ohio: Charles Mill, p.27

<sup>127</sup> Walker, C., (1988), "Political Violence and Democracy", *Modern Law Review*, Vol.51, p.605-622

<sup>128</sup> Laswell, H. D. and Kaplan, A., (1950), *Power and Society*, New Haven: Yale University Press. p.169

<sup>129</sup> *Ibid.*, pp.169-171

According to Riggs, “any organisation which nominates candidates for election to an elected assembly” defines a political party. Riggs states that his definition may not, nor does it pretend to, bring out the most important characteristic of parties. It only specifies a way of deciding what to include and what to exclude from the category under consideration.<sup>130</sup> At the end, it could be said that none of these features is absolutely necessary but, they are indicators that help to identify political parties from interest groups. Drawing a table as below may show these differences between parties and other groups.

**Table: 2.1: Distinctions between Political Parties and Interest Groups**

	<b>Political Parties</b>	<b>Interest Groups</b>
<b>Participation in Election</b>	Run candidates under the party label	Support some candidates or parties by money, endorsement or vote
<b>Participation in parliament</b>	Parliamentary groups and involvement directly in legislating	Try to exert influence on legislatures by campaigns etc.
<b>Participation in government</b>	By forming a government or forming opposition	None
<b>Representation</b>	Interest aggregation and articulation	Interest articulation
<b>Agenda</b>	Comprehensive issues	Single issues
<b>Membership</b>	Mass membership	Usually narrow membership policy

Before examining the detailed functions of political parties and their role in advancing democracies, it would be beneficial to look at the emergence of political parties and party systems briefly.

#### **2.3.4. The Emergence of Political Parties and Party Systems**

The circumstances relevant to the development of political parties are broad and various. The emergence of political parties in the modern world is closely linked to the enlargement of the suffrage, the social structure, the constitutionally governed executive-legislative relationship, developments in mass media, and election arrangements. Parties

<sup>130</sup> Riggs, F. W., (1970), *Administrative Reform and Political Responsiveness: A Theory of Dynamic Balancing*, SAGE, p.580

today are found in almost all forms of government, and in socialist and in the third world states as well as advanced liberal democracies, but their origins are essentially Western.<sup>131</sup> The concept of the functions of parties was largely based on a theory of their emergence. Three main theoretical approaches in the relevant literature can be identified. These are institutional theories, historical crisis situation theories, and modernisation theories.<sup>132</sup>

#### **2.3.4.1. Institutional Theories**

According to these theories, parties are seen as deriving from the development of parliamentary systems and their election procedures. These have seen the emergence of parties as largely due to the way the representative institutions function. Britain and USA have been the main focus of attention here, since only they appear to have sufficient continuity of representative government, with parliament playing independent and powerful role. The parliamentary system and the general franchise have both affected the development of party structures. However, their influence has varied, since the development of a party system did not coincide with the general enfranchisement in most countries. Looking at the history of political parties, one can identify certain stages of development that are common to Western Europe.

First, the growth of the party is associated with, and generally follows rather than proceeds, representative government. It is only at the beginning of the nineteenth century that the party emerges as a group consisting of members of representative assemblies in terms that are no longer synonymous with a cabal or as a special relationship to the monarch. Almost all commentators have observed that a critical juncture in western political development was reached when national cohesion in particular societies began to be sufficient for the toleration of political division and their institutionalisation into organised competition for power.<sup>133</sup>

The second stage in the development of political parties comes after the middle of the nineteenth century. First this was the extension of the franchise - by the middle of

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<sup>131</sup> Duverger, M., (1954), *Political Parties*, London: Methuen, p.21

<sup>132</sup> See La Palombara, J. and Weiner, M. (ed. 1966), *Political Parties and Political Development*, New Jersey: Princeton University Press

<sup>133</sup> See Giddens, A., (1991), *The Consequences of Modernity*, Cambridge: Polity Press

the 1830s in the United States - from 1832 and progressively throughout the nineteenth century in England.. However, members of the House of Commons were elected by a very small portion of the population until 1867, when the ballot was first extended to most urban males.<sup>134</sup> Property qualifications remained major barriers for most Englishmen, so that as late as 1866 only about one adult in eight had the right to vote.<sup>135</sup> Party competition remained largely unknown in the UK. In fact, competition for parliamentary seats was not general, as many candidates for the House of Commons were elected unopposed till 1867.<sup>136</sup> As Sartori has observed, if parties found little favour in the intellectual climate immediately emerging from either French or American revolutions, they found a firm basis in the ideology of social and intellectual pluralism on which the practice of nineteenth century liberalism was built.<sup>137</sup> Moreover, the institutional expression of this liberalism - representative government and the subsequent extension of the franchise - created powerful incentives to the formation of alliances in the legislature, and thence to potential party groupings. At the end of the nineteenth century, the franchise dramatically altered the composition of the electorate. As the restricted franchise of liberalism gradually yielded to mass democracy, those groups who were excluded from the legislature, but already assuming an organised identity outside it, were also given an incentive to establish a clear-cut party connotation. Politics was no longer the domain of a small upper class, Societies entered the era of mass politics. Along with extension of the franchise came to development of mass political parties.<sup>138</sup> The leadership and indeed the basis of the party remain the representatives in the assemblies. However, support now must come from a wider number of participants. This entails gradual changes in party organisation. One of them is the development of permanent central organisations to solicit votes, collect funds, present programs, and to impose, directly or indirectly, the party leaders' wishes.

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<sup>134</sup> Bulmer-Thomas, I., (2<sup>nd</sup>. Ed.1967), *The growth of the British Party System*, Vol.1, London: John Baker, pp.5-101, and Jennings, I., (1962), *Party Politics: The Growth of Parties*, Vol. 2, Cambridge: Cambridge University Press, p.116

<sup>135</sup> Jennings, I., (1962), *Party Politics: The Growth of Parties*, Vol. 2, Cambridge: Cambridge University Press,

<sup>136</sup> See Epstein, L.D. (1993) *Political Parties in Western Democracies*, New Barwick, and London: Transaction Publishers, p.24 and La Palombara, J and Weiner, M. (ed. 1966) *op. cit.*, p.9

<sup>137</sup> Sartori, G., "Representational Systems" in *International Encyclopaedia of the Social Sciences*, Vol. 13, New York: Macmillan, p.269

A third stage in the development of parties occurs in the decades preceding and following the end of the nineteenth century. It is the period that Maurice Duverger aptly associates with the growth of what might be called extra-parliamentary parties. The impetus for organisation now comes from sources other than the representatives in Parliament.<sup>139</sup> As mentioned above, one of the common features of the literature on the origins of political parties, is therefore, the emphasis on a distinction between those parties generated initially inside parliaments and those born as social movements or interest groups outside it. Notable examples of the former type are Conservative and Liberal parties in nineteenth century in Europe. Among the latter, socialist parties and other parties representing working class, religious interests, and the defence of territorial or cultural identity against the national metropolitan centre, stand out as their clearest types. Examples are, the German Socialist Democrats or British Labour Party, Italian (Catholic) People's Party, and the Irish nationalists.<sup>140</sup>

This historical sketch tells us, therefore, both a great deal and very little about political parties. First they are the consequences rather than the "causes" of democracy, but once they emerge they reinforce the prior conditions to which they owe their origin. In other words, while an overall acceptance of freedom of association and freedom of participation allows the formation of parties and the growth of a party system, the parties themselves and the party system as a whole reinforce and sustain commitment to these basic freedoms.<sup>141</sup>

#### **2.3.4.2. Historical Crisis Situation Theories**

These theories operate with the rise of new states or the collapse of constitutional systems. These theories on the emergence of parties have placed much stronger emphasis on the ideological driving force in the genesis of new movements than the institutional theories. According to these theories different factors which have favoured

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<sup>138</sup> Dalton, R. J., (1985), "Political Parties and Political representation", *Comparative Political Studies*, Vol.18:3

<sup>139</sup> See Duverger, M., (3<sup>rd</sup> Ed. 1964), *Political Parties: their organisation and activity in the modern state*, (Tr. by North, B. and North, R.), London: Methuen

<sup>140</sup> See Epstein, L. D., (1993) *Political Parties in Western Democracies*, New Barwick, and London: Transaction Publishers

<sup>141</sup> Macridis, R.C., (ed.1967) *Political Parties Contemporary Trends and Ideas*, New York and London: Harper Touchbooks, p.13

the rise of parties in Western Democracies and for states outside of Western Europe can be distinguished.

These are briefly; the emergence of new states, breaks in legitimacy, the collapse of parliamentary democracy. The conditions in which parties come into being and have evolved in the West are vastly different from the emergence of parties in the new nations in the 20<sup>th</sup> Century. Political parties emerged in most of the ex-colonial countries in order to cope with a series of problems with which their Western counterparts were not directly involved. National liberation and identity, the creation of a set of values by which political participation would be implemented, the creation of legitimised governmental institutions, the establishment of new norms beneficial to industrialisation, the creation of governmental institution to distribute benefits while incalculating support, and finally, the management of conflict -i.e., the establishment of procedures to allow for differences, to make compromises between different points of view, and to accommodate conflicting ideologies.<sup>142</sup> The way in which a political elite copes with such crises may determine the kind of political system which develops<sup>143</sup>. The point is that such historical crisis not only often provides the context in which political parties first emerge, but also tend to be a critical factor in determining what pattern of evolution parties later take.

Among the many internal political crises which nations have experienced during the period in which parties were being formed, three seem as most important in their impact on party formation. These are legitimacy, integration and participation crises. The legitimacy crisis has, however, been more central to the early formation of parties when existing the structure of authority failed to cope with the crisis itself and a political upheaval ensued. In Turkey, after the collapse of the Ottoman Empire, the Sultanate could not cope with the situation which was to defend the Empire's independence, therefore, an elite took over the authority, and after the founding of the new Republic, the Republican People's Party (RPP) was establish by the state elite whose primary purpose was to modernise Turkey.<sup>144</sup> The republican state elite opted for rational

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<sup>142</sup> *Ibid.*, p.16

<sup>143</sup> Weber, M., (1949), *The Methodology of the Social Sciences*, Glencoe: The Free Press, III, pp.182-185

<sup>144</sup> Rustow, D. A., "Development of Parties" in La Palombara, J and Weiner, M., (ed. 1966) *op. cit.*, p.119

democracy; for them, democracy meant enlightened debate to find out what was best for the country.<sup>145</sup> A crisis in participation may occur and with it the creation of parties concerned with establishing local organisation or some measure for local support. For example, parties in the UK were first created in the minds of men, their expansion into modern political parties took place when the political system experienced a crisis of participation<sup>146</sup>through the struggle to enlarge the franchise to the working class. A crisis of integration has also provided the milieu in which parties have first emerged. In Europe the emergence of parties in Germany, Italy and Belgium took place as part of an integration crisis.<sup>147</sup>

### 2.3.4.3. Modernisation Theories;

These theories put less weight on political factors and more on social and economic factors. The education system and the growth in urbanisation, with their secularising and integrative effects, have been the most important variables in the process of modernisation which have great effect on the emergence of political parties.<sup>148</sup>

“Increases in the flow of information, the expansion of transportation networks, a growth in technology, the expansion of internal markets, increases in social mobility appear to have profound effects upon the individual’s perception of himself in relation to authority.”<sup>149</sup>

It may be said that the secularising effect of an educational system and the homogenising effects often associated with urbanisation are stimulants to the creation of political organisation. It may also be said that the origin of political parties, while deeply associated historically with “crises” is also closely tied up with the general process of modernisation. Therefore, if the presence of one of the historical crises is a political agitator for the emergence of parties, it may be true to say that parties would not in fact be materialised unless a measure of modernisation already existed.<sup>150</sup> Macridis offers two broad hypothesis: the greater the legitimacy of government and the earlier the impact of

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<sup>145</sup> Heper, M., (1985), *The State Tradition in Turkey*, Walkington: The Eothen Press, pp.51-55

<sup>146</sup> See, Butterfield, H.,(1957) *George II and The Historians*, London: Collins, Book:3

<sup>147</sup> La Palombara, J and Weiner, M., (ed.1966) *op. Cit.*, pp.16-17

<sup>148</sup> *Ibid.*, p.7

<sup>149</sup> *Ibid.*, p.20

<sup>150</sup> *Ibid.*, p.21

the industrial revolution, the more peaceful the development of parties and the greater the attachment to a party system.<sup>151</sup>

Parties are more likely to exist where many members of the society become aware of the existence of social conflict and see these conflicts to be large and long-standing. For parties to develop there must be broad social conflict. Conflicts must run deeply into the fabric of society and sharply divide its members. These conflicts urge people to be organised and have a powerful voice. Parties are unlikely to emerge if there is little or no perceived conflict. Nevertheless, even if conflict is relatively high, parties will only arise if politicians need popular support, and if traditional social hierarchies are weak.<sup>152</sup>

### **2.3.5. The Functions of Political Parties**

A political party, an association that activates and mobilises the people, represents interests, provides for compromise among competing points of view, and becomes the probing ground for political leadership. It is an instrument to gain power and to govern.<sup>153</sup>

There are four functions which political parties fulfil and on which most scholars can agree. According to King's list,<sup>154</sup> other two can be added to this list. These are listed as below:

#### **2.3.5.1. The Identification of Goals (Ideology and Programme)**

Political parties with their programme and ideology are the institutions which provide the identification of a collective goal. Individuals may not be able to achieve their private goals alone. They may find it easier to identify their own goals with a political party's aims and support the party in order to see that the party achieves its goals. In that way an individual would be able to achieve some of his goals too.

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<sup>151</sup> *Ibid.*, p.14

<sup>152</sup> Blondel, J., (1978), *Political Parties*, London: Wildwood House, p.15

<sup>153</sup> Macridis, R. C., (ed. 1967), *Political Parties Contemporary Trends and Ideas*, New York and London: Harper Touchbooks, p.9

<sup>154</sup> King, A., (1969), "Political Parties in Western Democracies", *Polity*, Vol.2, p.118



### 2.3.5.2. Articulation and Aggregation of Social Interests

This function may be labelled as representation (and brokerage). This means expression and articulation of interests within the party and through the party. Conversion and aggregation are only variants of representation and brokerage. By “conversion” is understood the transformation of what may be called the raw materials of politics namely, interests and demands, into policy and decisions. Citizens transform their interest and demands into governmental policies and decisions through the political parties. However, party competition is a very imperfect mechanism for producing the optimal aggregation of interests. The way parties compete against each other in many political systems makes it unlikely that interest aggregation based on political equality will take place.<sup>155</sup> It could be said that if interest optimisation were the only element of democracy, it would be concluded that the ability of parties in advancing democracy is a rather limited one.

### 2.3.5.3. Mobilisation and Socialisation of the General Public within the System

Participation, socialisation and mobilisation are variant of essentially one overall function - integration. Socialisation is the process through which a set of norms about the political system is transmitted to younger people. Mobilisation is the extreme variant of socialisation, whereby the party attempts to bring large numbers of people who formerly stood outside the system rapidly into the system, to inculcate interest and to secure mass support. Participation stands somewhere between socialisation and mobilisation-it means that through the party in all systems a medium of expression of interest and participation in deliberation and the choice of policies and leaders is open to all. A degree of prior socialisation and mobilisation is a precondition for participation.

One of the roles of parties could be said to be a linkage mechanism which links public to political elite. The importance of parties' political linkages has long been recognised among commentators who study parliamentary democracies. Sartori, for instance, states that “citizens in modern democracies are represented through and by parties. This is inevitable.”<sup>156</sup>

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<sup>155</sup> Ware, A., (1987), *op. cit.*, p.215

<sup>156</sup> Sartori, G., (1968), “Representational Systems” in *International Encyclopaedia of the Social Sciences*, Vol.13, New York: Macmillan, p.471

Parties are basic institutions for the translation of mass preferences into public policy.<sup>157</sup> Parties do not only express but also channel. They aggregate, select, and eventually vary and distort. Parties shape and manipulate opinion. It means parties are a two-way communication channel. However, parties are not a transmission channel downward to the same extent that they are a transmission channel upward.<sup>158</sup> “Parties as agents of electoral mobilisation occupy an important role in social flow of political communication.”<sup>159</sup>

#### 2.3.5.4 Elite Recruitment

The term is used in the widest possible sense to denote training and preparation for leadership, exposure to the public, the performance of governmental legislative or other functions by members of the party, and of course, successful competition in elections.<sup>160</sup>

#### 2.3.5.5. Structuring the Vote

Structuring the vote is the minimum function of a political party in a modern democracy. Structuring is the imposition of an order or pattern enabling voters to choose candidates according to their labels. A very different view is that parties do have a role in helping to structure the vote, but they are seen as only one form of political organisation. The main forum for articulating preferences in the political system should be interest groups.<sup>161</sup> It is suggested that the role of political parties as agents of citizen representation and participation may be eroding due to the emergence of interest groups and new social movements. Almond and Verba reported that:

“When it comes to the support that individuals believe they could enlist in a challenging political situation, they think much more often of enlisting the support from the informal face to face groups of which they are members than from the formal organisation to which they belong. In all countries except Germany, less than one per cent of the respondents indicate that they would work

<sup>157</sup> Key, V.O., (1961), *Public Opinion and American Democracy*, Washington: Knopf, p.433

<sup>158</sup> Neumann, S., (1956), *Modern Political Parties*, Cambridge: University of Cambridge Press, p.397

<sup>159</sup> Sprague, J. and Huckfelder, R., (1992) “Political Parties and Electoral Mobilisation: Political Structure and the Party Canvass”, *American Political Science Review*. Vol. 86:1, pp.70-86

<sup>160</sup> Von Beyme, K., (1996), “Party Leadership and Change in Party Systems: Towards a Post-modern Party State?” *Government and Opposition*, Vol.31:2, pp.135-59

<sup>161</sup> See Dahl, A.R., (1963), *Modern Political Analysis*, Englewood: Prentice-Hall, Cliffs, N. J, and Truman, D. B., (1951), *The Governmental Process*, New York: Alfred E. Knopf

through their political party if they were attempting to counteract some unjust regulation being considered by the local government. Clearly, no matter how important the role of political parties may be in democratic societies, relatively few citizens think of them as the first place where support may be enlisted for attempts to influence government."<sup>162</sup>

In one way or another, parties provide a basis, although they are not the only one, for electoral choice. Voters may still make their choice on some other basis, like individual candidate appeal, but party labels, persisting over many elections and many candidates simplify the voter's decision. A party can be said to exist as long as it structures the vote even though it does nothing else.<sup>163</sup>

#### **2.3.5.6. The Organisation of Government; the Formation of Public Policy:**

Two things are meant by organisation of the government. One is the actual function of legislating and governing. This is the case when the party has a majority or controls the legislature and through it, the parliamentary systems, or by virtue of direct election as is the case with presidential systems, gets its leader elected either as Prime Minister or as President.<sup>164</sup> It also means the constant effort of the party to control the government and its activities, either through the day-to-day control that it exercises in parliamentary systems or through its ultimate power to deny nomination and support to a party leader. Among those who accept that political parties should be instruments of popular control, there are very different traditions. On the one hand, there is the idea that parties should offer people choices and that these choices should be implemented as public policy-irrespective of whether the decisional procedures actually produce cycles or paradoxes. Behind this lies the idea that by offering policy alternatives, parties enable citizens to develop ideas about the sort of political future that they want and to express their opinions about this in the decision-making process<sup>165</sup>. On the other hand, there are those who argue that popular control should be limited to acting as a kind of safety valve-giving the electorate the chance to remove political leaders when the latter

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<sup>162</sup> Almond, G.A. and Verba, S., (1963), *The Civic Culture Political Attitudes and Democracy*. Boston: Little Brown, p.192

<sup>163</sup> Epstein, L.D., (1993), op. cit., p.77

<sup>164</sup> It should be noted that the case in Israel is different. People vote separately for the Prime Minister and for the Members of parliament. However, the candidates for Prime Ministry are usually the party leaders.

<sup>165</sup> See, Schattschneider, E. E., (1942), *Party Government*, New York: Farrar and Rinehart

implement a series of wholly unwanted policies.<sup>166</sup> These traditions have given rise to two very different views of the role of parties in a democracy.

Those such as Schattschneider<sup>167</sup>, who emphasises *choice* by the people as being a principal feature of democracy, have focused on three requirements of parties for choice to be effected. One is that there must be some connection between the alternative sets of goals and objectives presented to voters by parties and what a government can try to implement. Because none of the electoral systems actually used in liberal democracies guarantee that one party will always have a majority in the legislature and thereby ensure that one of the packages of policies presented to the voters will be implemented, these commentators favour a two-party system, and political institutions that encourage two-partyism. That way the electorate could be sure that the political party with its policy package will form the government and implement its policies. In coalition governments, none of the parties can implement their political agenda, since bargaining and compromising among parties take place during the process of forming a coalition government.

Another requirement is that there should be a high degree of control of party policy programmes by a party's supporters. There are two reasons why democrats who advocate the notion of popular choice might favour internally democratic parties. Such parties would extend the arenas within the state in which citizens could be involved in making choices relating to the state's objectives and involving such people in the process of constructing policy programmes will make it less likely that unspecified and ambiguous statements will take the place of actual policies in the programmes presented to the voters. Thus, democratic control of a party makes for both more democracy and acts as a mechanism to prevent distortions in the process of electoral choice.

The final requirement is that parties should be able to implement their policies once in power: they must have sufficient control of the state that the choices made are not rendered meaningless.<sup>168</sup> In Turkey, after the 1996 General Elections, the pro-Islamic Welfare Party and the True Path Party formed a coalition government. While

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<sup>166</sup> See Ricci, D. M., (1970), "Democracy Attenuated: Schumpeter, The Process Theory and American Democratic Thought", *The Journal of Politics*, Vol.32:2, pp.239-267

<sup>167</sup> Schattschneider, E. E., (1942), *Party Government*, New York: Farrar and Rinehart

<sup>168</sup> For more information see, Schattschneider, E. E.,(1942), *Party Government*, New York: Farrar and Rinehart

they were in government, they were unable to implement their policy because of pressure from the armed forces.<sup>169</sup> The government resigned in order to avoid the pressure of the army.<sup>170</sup> The result is clearly undemocratic.

The role accorded to parties by those who conceive popular control is not in terms of voter choice, but is the ability to remove a set of leaders. For most of these democratic theorists the fear is that parties in government will try to do too much, and that in their endeavours they will be pushed by their activists, members or associated interest groups.<sup>171</sup> This is an elitist approach to the parties. If the party came into power by gaining majority support, that means they represent the majority's view and should be able to implement their policies in the constitutional framework.

In addition, one last function of the political party or parties should be mentioned: it is what it may be called the supportive function. The party not only mobilises and governs, but also must create conditions for its own survival and for the survival of the system within which it operates.<sup>172</sup> It must create support for the system. Socialisation, mobilisation, participation, grouped here under the heading of integration, have this purpose. The decisions which are made, the policies which are implemented or formulated, the degree to which the party listens or fails to listen to its clientele, may strengthen or weaken the support given to the party.<sup>173</sup>

## 2.4. Conclusion

In this chapter, democracy and political parties were studied. By looking at different democratic theories, the place and role of political parties in those democracies has been established. The main focus in this part of the thesis was liberal democracy and the roles of political parties in liberal democracies. Three elements of democracy namely interest optimisation, the exercise of control and civic orientation were identified. The nature of liberal democracy and condition for democracy were set out. It is thought that liberal democracies cannot be effective without political parties, therefore

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<sup>169</sup> *Turkish Daily News*, June 17, 1997, p.1

<sup>170</sup> *Middle East International*, No: 553, 27 June 1997, *The Washington Post*, June 14, 1997, Editorial.

<sup>171</sup> Ware, A. (1987), *Citizens, Parties and State; A Reappraisal*, Cambridge: Polity Press, p.27

<sup>172</sup> However some parties like Sinn Fein in Northern Ireland oppose the existing system and aims to change it.

after examining the concept of democracy, inevitably the concept of political party followed. Parties have made one important contribution with regard to civic orientation. They helped direct mass political activity towards constitutional political channels. As agents of the exercise of control, parties contributed to the extension of popular control over governments in liberal democracies. Nevertheless, the extent of democracy is still rather limited. Political parties were defined as organisations whose aim is to be part of government via legitimate means i.e. elections. Election means competition. Competition between parties does help to inform and educate citizens about the nature of political division in their society, and it offers some of the means of resolving the conflicts. Although many parties have failed to provide much mass involvement in the nomination of candidates, in the choice of party objectives, and policies, parties have acted as a forum for political participation. Parties will continue to be effective as intermediaries in the liberal democracies, and will be able to operate as agents of democracy in the future. Having said that, one must keep in mind the fact that parties are open to influence from social structure and division. Major changes in class structure, in religious affiliations, in the ethnic composition of a state, can all cause important transformations in parties and party system to take place. The changing pattern in social structure has meant that the new social groups (such as environmental groups) lack firm attachments to the older parties. Furthermore, parties now loom less large in social and political life than they did, these groups will not develop strong loyalties to new parties either. Therefore, maintaining mass membership will be ever more difficult for parties.

While in liberal states parties and interest groups are both aggregators and articulators of interests, this latter function is performed by interest groups more than parties. However, this does not lead to the replacement of parties by other actors in the political system but to a new set of arrangements in which parties can remain a powerful influence in the policy process.

In order to perform their roles in society, political parties must remain private organisations and must operate in a free environment. If political parties are supposed to introduce alternative policies to the electorate to choose between, liberal democracy is a

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<sup>173</sup> Macridis, R.C. (ed. 1967) *Political Parties Contemporary Trends and Ideas*, New York and London:

necessary condition for this to happen. Freedom of expression and freedom of associations are essential requirements for parties to compete in elections and fulfil their functions. Political parties in restricted society may act as tools for social mobilisations or political education, but this is certainly not enough to advance democracies. On the contrary, parties might be used by the ruling elite to legitimise or strengthen their authoritative rule. It is essential to define the freedom of expression, freedom of association and free elections to establish suitable environment for parties to perform fully. Therefore, these freedoms are examined in the next chapter relating to the European Convention of Human Rights.

## CHAPTER 3

# POLITICAL RIGHTS AND POLITICAL PARTIES UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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### 3.1. Introduction

In previous chapter, the concept of liberal democracy and political parties are examined from a theoretical approach. Since democracy is a matter that voters have the right, at periodical intervals, to remove governments which they have come to dislike from office, without free elections, democracy cannot be mentioned.<sup>1</sup> Thus, liberal democracy naturally entails rights and free elections. Implications of liberal democracy as translated into standard of the European Convention as free elections, and freedom of speech and associations will be the main concern of this chapter. Therefore, free elections will be examined according to Article 3 of the First Protocol of European Convention on Human Rights. The existence of political rights, which is part of liberal democracy as being liberal, is essential for political parties in order to organise, function and represent the opinion of the people. Rights to freedom of expression, association and free elections are the most important rights for political parties. Free elections and freedom of expression, particularly freedom of political debate, and freedom of association, together form the bedrock of any democratic system. Those rights are inter-related and they operate to reinforce each other. For example, freedom of expression is one of the conditions necessary to ensure the free expression of the opinion of the people in the choice of the legislature. Therefore, one can say that one of the greatest issues in terms of free elections has been the freedom of political speech.

In this chapter, these rights will be examined in the frame of the European Convention on Human Rights. While studying those rights, the judgments of the European Court of Human Rights will be the main focus related to the rights.

Democracy is without doubt a fundamental feature of the European public order. That is obvious, firstly, from the Preamble to the Convention, which

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<sup>1</sup> See Sartori, G., (1987), *Theory of Democracy Revisited*, Chatham, NJ: Chatham House Publishers



establishes a very clear connection between the Convention and liberal democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective liberal democracy and on the other hand, by a common understanding and observance of human rights.<sup>2</sup> The Preamble goes on to affirm that European countries have a common heritage of political tradition, ideals, freedom and the rule of law. It has been observed that common heritage of political traditions, ideals, freedom and the rule of law which are principles of liberal democracy are among the underlying values of the Convention.<sup>3</sup> It could be said that the Convention was designed to maintain and promote the ideals and values of a democratic society.<sup>4</sup>

Moreover, Articles 8, 9, 10 and 11 of the Convention require that interference with the use of the rights which are set out by these articles must be evaluated by the yardstick of what is "necessary in a democratic society". The only type of necessity to justify an interference with those rights can only be originated from "democratic society". Democracy therefore appears to be the only political model which the Convention aims and the only one compatible with it.

The Court has identified certain provisions of the Convention as being characteristic of democratic society. Consequently, in its early judgments the Court categorised free expression as equally fundamental to democracy as other rights. The Court emphasised on political speech in its judgments by making it clear that political speech is a core element of liberal democracy. Furthermore, the European Union has gradually developed an identity of its own in terms of the promotion of human rights and democratic freedoms outside its frontiers. A decisive step forward was taken here with the Treaty on European Union, which for the first time includes provisions relating to human rights and the strengthening of democracy.<sup>5</sup> The principles underlying the Union's action are the very ones, which form the keystone of the international system of protection for human rights. Those includes the principle that human rights are universal, which means that the existence of values common to all mankind, the principle that they are indivisible, which prevents the establishment of any ranking order as between civil and political rights on the one

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<sup>2</sup> *Klass and Others v. Germany*, App. No: 5029/71, Series A-28, para 59

<sup>3</sup> *Soering v. the United Kingdom*, App. No: 14038/88, Series A-161, para 88

<sup>4</sup> See *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, App. Nos.: 5095/71, 5920/72 and 5926/72 Series A-23,

<sup>5</sup> The Treaty of European Union, Article 8 (2)

hand and economic, social and cultural rights on the other, the principle that human rights, democracy and development are interdependent. The analogy of these principles is that the concepts of human rights and democracy combine well to form a balanced whole. While respect for human rights is essential if each individual is to achieve his or her full potential, democratic society is a requirement for the exercise of those rights. Democracy forms the general framework in which they are set, and human rights are themselves mandatory for a democratic society, since such a society is based on the contribution each person makes, individually and voluntarily, to the life of the community.

Thus, the purpose of this chapter is to go through these rights which are linked with liberal democracy, show in detail what they require, how they advance democracy, and what the role of political parties is in them, what protection is given to political parties in the European Convention. This is especially important for the later chapters in order to see whether the regulations regarding political parties comply with the Convention. In this chapter, particularly, cases related to Turkey and the UK will be main concerns. The Court particularly focuses on political speech when dealing with most of the cases mentioned above such as *Castells* and *Zana*. Obviously political parties are not the only element which is indispensable in liberal democracies. Freedom of political speech is also the core of the principles enshrined in liberal democracy. When it comes to the cases related to political parties, since there is no case related to political parties apart from Turkish political parties, when Article 11 is examined, main cases will be the Court's judgments related to Turkish political parties.

### **3.2. Freedom of Expression**

#### **Article 10:**

- (i) "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (ii) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the

disclosure of information received to confidence or for maintaining the authority and impartiality of the judiciary”

### 3.2.1. Theoretical Basis of Freedom of Expression

There are three sets of reasons for regarding freedom of expression as foundational.<sup>6</sup> They form on the values of personal autonomy, truth, and democracy. Free speech is seen as an integral aspect of each individual’s right to self development and fulfilment. Restrictions on what a man is allowed to say or write, or to hear or read, obstruct the growth of his personality. People will not be able to develop intellectually and spiritually, unless they are free to formulate their beliefs and political attitudes through public discussion, and in reply to the criticism of others.<sup>7</sup> The provision of a right to free speech in a constitution suggests strongly that the freedom is specially valued, and in one way set apart from other liberties which might equally be thought crucial to personal development.

Secondly, freedom of expression enables an open debate about social and moral values. The strongest argument for a free speech principle has been based on the importance of open discussion to the discovery of truth. If restrictions on speech are tolerated, society may prevent the discovery and publication of facts and accurate judgements.<sup>8</sup>

It also allows political discourse, which encourages democratic society. Freedom of speech is primarily a liberty against the state, or a ‘negative freedom’ and largely for this reason is more capable of judicial interpretation and enforcement than positive rights to, say an adequate education. Dworkin argues that the case for free speech protection is based on fundamental background rights to human dignity and to equality of concern and respect.<sup>9</sup>

A question may arise from the democratic theory of free speech. If the maintenance of democracy is the foundation for free speech, how is one to argue against the regulation or suppression of that speech by the democracy acting through its elected representatives? As Schauer puts it, “the very notion of popular sovereignty supporting the argument from democracy argues against any limitation

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<sup>6</sup> Feldman, D., (1993), *Civil Liberties & Human Rights in England and Wales*, Oxford: Clarendon Press, pp. 454-75

<sup>7</sup> Schauer, F., (1982), *Free Speech*, Cambridge: Cambridge University Press, pp.41-49

<sup>8</sup> See Mill, J.S., (ed. 1989), *On Liberty with The Subjection of Women and Chapters on Socialism*, Cambridge: Cambridge University Press, pp.53-55

<sup>9</sup> Dworkin, R., (1977), *Taking Rights Seriously*, London: Duckworth, pp.78, 364-8

on that sovereignty, and thereby, argues against recognition of an independent principle of freedom of speech”.<sup>10</sup>

Society should recognise a free speech principle and accept limits on the rights of the majority, because only through open discussion of forms of government and political ideas will lead to better institutions, legislation, and ‘administration result’. This is a variety of the argument from truth applied to political discourse. One theory of free speech assumes the core function of such speech to be the protection of the democratic political process from abusive censorship of political debate by the ephemeral elected majority in political power. By analogy, Ely’s outspoken response to the democratic objection to judicial review is that judicial review on free speech grounds does not run afoul of the democratic objection to judicial review, for judicial review here protects the integrity of democracy itself from the illegitimate attempt of a transient majority to fortify its own power by manipulating the agenda of political debate in its own favour.<sup>11</sup> The free speech ideal is intended to safeguard minorities and to keep alive the possibilities of political change. Constitutionally legitimate power must respect the essential spheres of moral independence, and the right to freedom of expression through which persons exercise their effective powers of moral independence, must correlatively extend to all such matters. The limitation of freedom of expression to politics is illegitimate because it allows forms of censorship that deprive persons of the liberties essential to the moral self-government of a free people.<sup>12</sup> Freedom of expression is essential for a democratic society, and it is closely related to the freedom of political parties and political debates.

### 3.2.2. The Scope of Article 10

In the *Lingens* case, the European Human Rights Court stressed “on eminence of freedom of expression in a democratic society of which it is one of the essential foundations and one of the basic conditions for its progress and of each individual’s self-fulfilment.”<sup>13</sup> This sentence embraces the two strongest theoretical bases for

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<sup>10</sup> Schauer, F., (1982), *Free Speech*, Cambridge: Cambridge University Press, p.41

<sup>11</sup> See, Ely, J.H., (1980), *Democracy and Distrust: A Theory of Judicial Review*, Cambridge Mass, London: Harvard Press, pp 105-116

<sup>12</sup> See Baker, C. E., (1989), *Human Liberty and Freedom of Speech*, New York and Oxford, Oxford University Press, p.31, and Greenawalt, K., (1989), *Speech, Crime, and the Uses of Language*, New York Oxford: Oxford University Press, pp. 177-179.

<sup>13</sup> *Lingens v. Austria*, App. No: 9815/82, Series A-103, para 41

protecting expression; its essential part in the operation of democratic political process, and its necessity for self-realisation of the individual.<sup>14</sup>

The term, freedom of expression concerns mainly the expression of opinion, and the receiving and imparting information and ideas. The Court and Commission emphasise that freedom of expression is itself a fundamental safeguard for the protection of other human rights. The public condemnation of human rights' abuses so that they be eradicated lies in freedom of expression. Democracy is an open system of government in which the freedom of expression plays a fundamental role. In the democratic system, the actions of the Government must be subject to the review not only of the legislative and judicial authorities but also of the press and public opinion.<sup>15</sup> The sensitivity of expression matters arises in large measure from their connection with the maintenance and exercise of political power. The toleration of different views is a vital aspect for a democratic political system. This right to free expression will now be described in detail.

### 3.2.2.1. Political Expression

The respect accorded to the right is not (subject to Articles 10 (2) and 17 which will be discussed later) dependent upon the acceptability of the view expressed. The Court in the *Handyside* case stated that:

“Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that often shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means amongst other things that every ‘formality’ condition’, ‘restriction’, or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued”<sup>16</sup>

Article 10 protects the right to express views which may offend, shock or disturb the state or any sector of the population.

Next, Article 10 (1) refers to the “right to receive and impart information and ideas”. Whereas Article 19 of the Covenant on Civil and Political Rights refers also to the right to seek information, it is clear that Article 10 of the European Convention does not encompass freedom of information in the sense that public authorities are

<sup>14</sup> O’Boyle, M, Harris, D.J and Warbrick, C., (1995), *Law of European Convention on Human Rights*, London: Butterworths, pp.372-416

<sup>15</sup> *Castell.v. Spain*, App. No: 11798/85, Series A-236, para 46

<sup>16</sup> *Handyside v UK*, App. No: 5493/72, Series A 24, para 49

obliged to give information at the request of the citizen. However, Article 10 protects the right to freedom of disclosed information. The Court decided that by ordering a journalist, Mr. Goodwin, to disclose his source by the British Court violated Article 10 of the Convention.<sup>17</sup>

Despite the fact that Article 10 protects freedom of expression, it does not, in certain cases, protect against the consequences of that expression. The *Kosiek* case concerned a lecturer who was dismissed because his membership of the National Democratic Party, whose aims were considered harmful to the free democratic constitutional system which is laid down in the German Basic Law, was regarded as inconsistent with civil servant status.<sup>18</sup> The Court found that Article 10 afforded no protection since it did not apply to recruitment to the civil service. The Court did not find any interference with the exercise of the right of freedom of expression.<sup>19</sup> It may be said that in the Court's view the right remained but the person expressing the particular views must live with the consequences of those views, where they were not regulated by the Convention.<sup>20</sup> Political restrictions upon the employment of civil servants were investigated also in *Glaserapp v. Germany*.<sup>21</sup> Julia Glaserapp was dismissed from her probationary teaching post because she refused to disassociate herself from the policies of a German political party. In this case, the Court did not distinguish between the two materially different situations, and rejected the complaints on the narrow and arguably unsatisfactory issue that as "access to the civil service lies at the heart of the complaint there was no violation as this right was not protected by the Convention."<sup>22</sup> One of the main arguments in this case was that being a member of a political party which stands against the principles of liberal democracy is not protected by the Convention. The Court would argue in this case that it is accepting the state's assertion here that there is a need to act in order to maintain liberal democracy by preventing people who subscribe to political parties which are fundamentally opposed to liberal democracy being at the heart of the government.

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<sup>17</sup> *Goodwin v. the UK*, App. No:17488/90, Reports 1996-II

<sup>18</sup> *Kosiek v. Germany* App. No: 9704/83, Series A-105, 9 EHRR 1986 p328

<sup>19</sup> *Glaserapp v. Germany* ,App. No: 9228/90 Series A-104, (1986), 9 EHRR 25

<sup>20</sup> Jacobs, F and White, R. C.(1996), *The European Convention on Human Rights*, Oxford: Clarendon Press, , pp.222-236

<sup>21</sup> See *Glaserapp v. Germany* , App. No: 9228/90 Series A-104 (1986)

<sup>22</sup> See *ibid*.

The UK has some political restrictions on local government employees. These restrictions were challenged before the European Court in *Ahmed*<sup>23</sup> case. The applicant and three others challenged regulations made under s.1 (5) of the Housing and Local Government Act 1989. The regulations which are called the Local Government Officers (Political Restrictions) Regulations 1990, place considerable restrictions on the political activities of local government officers. According to these regulations, if an officer holds a politically restricted post, he or she is not entitled to announce their intention to stand for an election, nor to hold administrative type positions in political parties. They are prohibited from speaking to the public at large with visible intention of affecting public support for a political party. The Court agreed that the application of the Regulations to the applicants created an interference with their right to freedom of expression as guaranteed in Article 10(1). Nevertheless, the Court did not agree with the Commission on the issue of proportionality. Whereas the Commission stated that restrictions were disproportionate, the Court decided otherwise. The Court put forward the view that the interference pursued a legitimate aim within the terms of Article 10(2), being protect the rights of others –council members and electorate alike- to effective political democracy at the local level.<sup>24</sup> The Court rejected the argument for the applicants that restrictions on public servants’ freedom of political expression could be justified only in circumstances which presented a threat to the stability of the constitutional or democratic order; this would overlook the interests served by democratic institutions and the need to make provision to secure their proper functioning where this was considered necessary.<sup>25</sup> In considering whether the restrictions were “necessary in a democratic society” the Court stated that “necessary implies the existence of a “pressing social need”, the interference must be “proportionate to the legitimate aim pursued” and reasons adduced by the national authorities must be relevant and sufficient. The Court found that there was a “pressing social need” and pointed out that there was no restriction on the right to join a political party or to engage in activities within it other than the “limited restrictions” which were directed at those types of activity which, because of their

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<sup>23</sup> *Ahmed and others v. UK*, App. No: 22954/95, Reports 1998-VI, [1999] I.R.L.R. 188

<sup>24</sup> *Ibid.*, para 54

<sup>25</sup> *Ibid.*, para 52

visibility, would be likely to link a post-holder with a particular party line. The Court concluded:

“Having regard to the need which the ...State enjoys in this are the restrictions cannot be said to be a disproportionate interference with their rights under Article 10”<sup>26</sup>

The Court also stated that while examining the challenge under Article 3 of First Protocol, the Article implies a right to stand for election this is not an absolute right. The restrictions of the rights of the applicants to stand was legitimate in order to secure their political impartiality and did not limit the very essence of their rights given that they operated only while the applicants occupied “Politically restricted Posts” from which they were free to resign.<sup>27</sup>

Restricting civil servants from joining to a political party can potentially curtail political activities quite substantially especially in countries where the term civil servant is defined very widely to contain almost every person who works for the state and probably apply not only to anti-democrat parties but to all political parties as in Turkey. However, the restrictions here in these cases are rather limited compared to Turkey.

Political speech is in large part immune from restriction, because it is a dialogue between members of the electorate and governors and governed. It is, therefore, beneficial, rather than noxious, to the operation of a constitutional democracy. The same is not so obviously true of other categories of “speech”, for which the protection of the free speech clause may be claimed - pornography or commercial advertising.

The European Court’s approach to balancing enables the judges to show a degree of preference for political speech, although it is clear that both commercial advertising and publications with some sexually explicit content may be covered by Article 10. In *Handyside v. UK*<sup>28</sup>, it was said that the Article was primarily concerned to protect against discrimination between political ideas. On the other hand, in the *Sunday Times*<sup>29</sup> decision, the Court stressed that the extent of each member state’s discretion to determine the measures necessary to restrict free speech varies according to the character of the state interest involved i.e. national security,

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<sup>26</sup> *Ibid.*, para. 65

<sup>27</sup> *Ibid.*, para. 75.

<sup>28</sup> See *Handyside v UK*, *loc. cit.*

<sup>29</sup> *Sunday Times v. UK.*, App. No: 6538/74, Series A 30



protecting moral. In particular, the state has a greater “margin of appreciation” in framing measures to protect morals than it does in the case of rules required to maintain confidence in the administration of justice.<sup>30</sup>

The Strasbourg authorities attach the highest importance to the protection of political expression and, generally, require the strongest reasons to justify limitation on the exercise of political speech. It is widely accepted that the toleration of different opinions is an essential aspect for a liberal democratic political system. At one level, the competition between the major political parties for political power is expressed in terms of ideas and programmes; at another, the unorthodox proposition has the chance to overturn the erring orthodoxy, however established it has become. Because political discussion can touch practically any aspect of life, the contents of the expression might not be a major consideration in determining whether it should be protected.<sup>31</sup> The privileged position of political speech derives from the Court’s conception of it as a central feature of a democratic society, both in so far as it relates to the electoral process and to day to day matters of public concern. According to the Court, freedom of expression is an essential foundation of a democratic society. It is applicable to all information and ideas, whether inoffensive or offensive, shocking or disturbing. This is particularly true when an elected representative voice the ideas.

The Court stated:

“while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interference with the freedom of expression of an opposition member of parliament, ...call for the closest scrutiny on the part of the Court.”<sup>32</sup>

The protection of the expression rights of politicians demands particular strictness, the more so for members of the opposition.<sup>33</sup>

### 3.2.2.2. Limits on Political Expression

The freedom of political debate is undoubtedly not absolute in nature. A State may make it subject to certain restrictions or penalties, but it is for the Court to

<sup>30</sup> *Sunday Times v. UK*, *loc. cit.*, para.9

<sup>31</sup> *Thorgerson v. Iceland*, App. No: 13778/88, Series A-239, para .61, 14 EHRR 1992

<sup>32</sup> *Castells v. Spain*, App. No: 11798/85 Series:A-236, para 42, 14 EHRR 445 1992

<sup>33</sup> *Ibid.*, para 46 and also see *Piermont v. France*, App. Nos.: 15773/89 and 15774/89, Series A 314

give a final ruling on the compatibility of such measures with the freedom of expression set out by Article 10.

There are limits regarding freedom of expression. States may interfere with freedom of expression as long as interference is prescribed by law, pursued legitimate aims and necessary in a democratic society. Legitimate aim means that a State must interfere in the interests of national security, territorial integrity, or public safety and others stated in paragraph 2 of Article 2

Article 10 (2) states that:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received to confidence or for maintaining the authority and impartiality of the judiciary.”

Furthermore, the Convention clearly states that nothing in the Convention can be interpreted that the rights mentioned in the Convention can be used for the destruction of any of the rights and freedoms set forth in the Convention. Article 17 of the Convention states that:

“nothing in this convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”

According to the Court, freedom of press is also essential within certain prescribed limits, to broadcast information and ideas and to stimulate debate on matters of political and public interest. Certain restrictions are expressly allowed in Article 10. Article 10(1) itself provides that States may require the licensing of broadcasting, television or cinema enterprises. Subject to these provisions, freedom of expression under Article 10 should be considered as prohibiting censorship whether in the form of authorisation or subsequent prosecution, of books, the press, television and radio, the cinema and theatre, or any other vehicle for the expression of ideas. The Court acknowledges that the role of the press which is that “of public watchdog” and states that:

“It is... incumbent on it to impart information and ideas on political issues just as on these other areas of public interest. Not only does the press have the

task of imparting such information and ideas the public also has a right to receive them.”<sup>34</sup>

Strong criticism colourfully presented has the advantage of drawing attention to political issues and serves the commercial aims of newspaper proprietors. However, the approach carries the risk of serious disadvantage and even damage to those who are unjustifiably pilloried by the press. In deciding where the line is to be drawn, the Court has leant in favour of the press.

Where the reason for the condemnation of a press report is that it is untrue, the defendant must be given the opportunity to prove the truth of his allegations. This was the position in *Castells*<sup>35</sup> that where the applicant had complained about the manner of and lack of accountability for policing of the Basque nationalist party. His allegations were particularly serious in that he said the police were responsible for the murder of Basque activists and that they were protected by the authorities from prosecution. He had been convicted of criminal offences involving serious insults to the government and public servants. The Court was concerned about the resort to the criminal law in case like this.

“The dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.”<sup>36</sup>

The Court has, in its case law, put a limit on what tolerance requires. Where the expression is directed at the undermining of democracy and human rights themselves, the state is not obliged to confer the same protection on it as would be the case if it were orthodox political speech. In order to meet requirement that limitation is prescribed by law, there must be sufficient legal basis for the limiting measure. If reliance is placed on any of the specific grounds listed in paragraph (2), the State must also show that the limitation on that ground is necessary in a democratic society.

Political speech and its limit will be examining in this part by analysing the Court cases related to the subject. Cases from Turkey and the UK will be main subject since they are more relevant to the purpose of this thesis.

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<sup>34</sup> *Observer and Guardian v. UK*, Series A, No: 216, 1991, at para 59

<sup>35</sup> *Castells v. Spain* App. No: 11798/85 Series-A No:236, 1992

<sup>36</sup> *Ibid.*, para.46

In *Zana v. Turkey*,<sup>37</sup> the Court emphasised the differences between expressing a political view and giving support to a terrorist organisation which is likely to cause disturbance. The Court was concerned in this case, whether a fair balance had been compromised between the individual's fundamental right to freedom of expression and a democratic society's legitimate right to protect itself against the activities of terrorist organisations. It is well accepted that States have a margin of appreciation, especially while fighting against terrorism or dealing with issues which occurs in special circumstances such as sustaining disturbance in a territory.<sup>38</sup> Some articles of the Convention allow a measure of derogation in most of the circumstances which fall within public emergency; therefore "it may be necessary in a democratic society for a state to interfere with freedom of expression to preserve public order to a greater extent in time of emergency than it would be in settled conditions".<sup>39</sup> In *Klass v Germany*<sup>40</sup>, the Court expressed that:

"Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able to, in order to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction"

The Commission in *Purcell*<sup>41</sup> and *Brind* likewise made it clear that States have a margin of appreciation in order to protect themselves from terrorist activities. It would be useful to look at these two cases before examining the *Zana* case in detail.

The Commission accepted the measures constituted an interference with the applicants' freedom of expression although only of a limited kind. The limited nature of the interference was an important factor in the Commission's decision that the ban did not exceed the margin of appreciation which was given to a State by the Convention for fighting terrorism.<sup>42</sup>

In *Purcell*, a group of journalist and producers and two trade unions in the Irish Republic challenged the ministerial order passed under the section 31 of the Broadcasting Authority Act 1960 by claiming that the order violated Article 10 of the

<sup>37</sup> *Zana v. Turkey*, App. No: 18954/91, Reports 1997-VII

<sup>38</sup> See, *Brannigan and McBride v. UK* App. No: 5/92, Series A-258-B (1993), *Brogan and Others v. UK*, App. No:10/87, Series A No: 145-B (1988) *Ireland v. UK* Series A No:25 (1978)

<sup>39</sup> *Brind v. UK* App. No: 18714/91, 77 DR para 42 pp. 53-55 (1994)

<sup>40</sup> *Klass v. Germany*, loc. cit., para 48

<sup>41</sup> *Purcell v. Ireland*, App. No: 15404/89, 70-DR, (1989),

<sup>42</sup> *Brind v. United Kingdom*, App. No: 18714/91, 77-DR (1994), and *Purcell v. Ireland* App. No: 15404/89, 70-DR (1991), see also Banwell, C., "The Courts' Treatment of the Broadcasting Bans in Britain and the Republic of Ireland", *Journal of Media Law and Practice*, Volume 16:1, 1995, pp.21-31

Convention. Since they could not broadcast interviews, or reports of interviews with representatives of listed organisations in the Order, it put a serious restraint on the applicants' work as journalists and producers. As these prohibitions apply to any statement of a representative of listed organisations, the most significant of which was Sinn Fein, regardless of the subject matter so, obedience to the Order involved restrictions and conditions not only on the choice of the material the applicants may broadcast but also on their editorial decisions. The Commission stated that the Order constituted an interference with the right to freedom of expression (right to receive and impart information and ideas) which is ensured under Article 10(1) of the Convention. It was however stressed that the Order did not ban the reporting of the activities of any of the listed organisations, but only live interviews with spokesmen. The Order therefore prohibited the use of the broadcast media for the aim of attracting support for organisations which use violence and other illegal methods to undermine the democratic order and the fundamental rights and freedoms. The Commission noted that while Sinn Fein was not forbidden organisation, but it condoned the terrorist activities of a proscribed organisation and was closely associated with them. Under these circumstances, Sinn Fein might have been declared an unlawful organisation under Irish law. Being not banned was a matter of policy which was entirely up to Irish Government to determine. According to the Commission, the decision not to outlaw Sinn Fein did not imply an obligation on the Government to grant Sinn Fein free access to the broadcast media. The Commission emphasised that the exercise of freedom of expression "carries with its duties and responsibilities" and that fighting against terrorism was a public interest of the first importance in a democratic society.

The objective of the restriction was to make sure that spokesmen of the listed organisations did not use the opportunity of live interview and other broadcasts for advocating illegal activities. According to the Commission, since the limitation was outlined to deny representatives of known terrorist organisations and their political supporters the opportunity of using the media as a platform for promoting their cause and imparting an impression of their legitimacy, they can reasonably be considered "necessary in a democratic society" within the meaning of Article 10 (2) and so the case was.<sup>43</sup>

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<sup>43</sup> *Ibid.* para 280

In *Brind* the first six applicants were a television producer and five other broadcast journalists, working as employed or independent television and radio producers, editors and presenters. The seventh applicant was a clerk, who was bringing the application as the holder of a television licence. Two notices were issued by the Secretary of State for the Home Department for BBC, and for the Independent Broadcasting Authority (IBA) requiring the BBC and the IBA to abstain from sending any broadcast matter which consists of, or contains, any words represent or imply an organisation specified in the issue, the words support or solicit or invite support for such an organisation other than specified in the issues. The order defined the relevant organisation as those for the time being proscribed organisation for the purposes of the Prevention of Terrorism (Temporary Provisions) Act 1984 or the Northern Ireland (Emergency Provisions) Act 1978 and other organisations namely Sinn Fein, Republican Sinn Fein and the Ulster Defence Association. The applicants complained that because of the Home Secretary's directions there was unjustified interference with their right to receive and impart information and ideas.

After deciding the interference was prescribed by the law and pursued a legitimate aim, the Commission considered the question of the necessity for the interference with applicants' rights set out in Article 10. The Commission concluded that the extent of the interference in the present case was limited. Whilst the applicants were affected by the directions in the way they performed their functions, the directions given by the Home Secretary did not have any impact on the words that could be spoken or the images that could be shown on television or radio. The Commission accepted the inconvenience for journalists to have to use the voice of an actor for the broadcasting of certain interviews, and appreciated that the logic of the continuation of the directions was not obvious when they appeared to have very little real impact on the information available to the public. Nevertheless, the Commission referred to the special problems involved in striking a fair balance between the requirements of protecting freedom of information –especially the free flow of information from the media- and the need to protect the State and the public against armed conspiracies seeking to overthrow the democratic order which guarantees this

freedom and other human rights. The interference with the applicants' rights was held to be proportionate.<sup>44</sup>

In both cases, the Commission accepted that the measures constituted an interference with the applicants' freedom of expression although only to a limited extent. The limited nature of the interference was an important factor in the Commission's decision that the ban did not exceed the margin of appreciation that was given to a State by the Convention to fight terrorism.

Comparing *Castells*<sup>45</sup> where the applicant had complained about the manner of and lack of accountability for policing of the Basque region party, his allegations were particularly serious. He alleged that the police were responsible for the murder of Basque activists and that the authorities protected them from prosecution. For making these allegations, he had been convicted of criminal offences involving serious insults to the government and public servants. Despite the fact that *Castells v Spain*<sup>46</sup> dealt with an arguably far more serious infringement of freedom of speech by virtue of the fact that the MP concerned was convicted of a criminal offence and dismissed from public office, the Court could easily have been referring to Sinn Fein politicians who were also elected representatives of a lawful political party and had themselves renounced any support for violence in order to stand as local election candidates pursuant to the Elected Authorities (Northern Ireland) Act 1989.<sup>47</sup> The Court in *Castells* decided that the action of the Government exceeded the "margin of appreciation" available to signatories of the Convention in determining what is necessary in a democratic society; it was this margin of appreciation that was interpreted so leniently in *Purcell*.<sup>48</sup>

Having examined *Brind* and *Purcell* cases, one may comment, before going into cases from Turkey, that these applications were rejected for two reasons. One reason is that the Commission found the limitations imposed to be proportionate. It was not a complete political ban on these political parties or their operations. The Sinn Fein was not banned, it could still take part in elections, it could still produce its

<sup>44</sup> *Brind v. U.K.*, App. No: 18714/91, 77-DR (1994)

<sup>45</sup> *Castells v. Spain*, App. No: 11798/85, Series .A No:236, (1992)

<sup>46</sup> *Ibid.*

<sup>47</sup> For more information about Sinn Fein and Northern Ireland, see Walker, C., (1988), "Political Violence and Democracy in Northern Ireland", *Modern Law Review*, Vol. 51, pp. 605-622

<sup>48</sup> *Purcell v. Ireland* No: 15404/89, 70 DR (1991) and see Banwell, C., "The Courts' Treatment of the Broadcasting Bans in Britain and the Republic of Ireland", *Journal of Media Law and Practice*, Volume 16:1, 1995, pp.21-31 for more information about margin of appreciation and articles 10 and

own newspapers which it did. It could still have its views put across on television. Therefore, it was limited intrusion into Article 10. The other reason is the link with terrorism. The Strasbourg authorities see terrorism as a difficult issue and let the State to decide, since the local authorities are in a better position to judge about the situation in the Country. After this short comment, the Turkish cases now can be examined.

In *Zana*,<sup>49</sup> the applicant was a Turkish born citizen and a former mayor of Diyarbakir. The applicant, while serving several sentences in a military prison, stated in an interview with a journalist that "I support the PKK national liberation movement, however, I am not in favour of massacres. Anyone can make mistakes and the PKK kill women and children by mistake."

That statement was published in the national daily newspaper. The applicant was charged and sentenced with supporting the activities of an armed organisation, the PKK, whose aim was to break up Turkey's national territory. The Court regarding the legitimacy of the aims pursued, stated that:

"The applicant indicated that he supported the PKK national liberation movement and, .. the applicant's statement coincided with the murders of civilians by PKK militants. It considers that a time when serious disturbance were raging in south-east Turkey such a statement-coming from a political figure well known in the region- could have an impact such as to justify the national authorities' taking a measure designed maintain national security and public safety."<sup>50</sup>

Therefore, the interference complained of pursued legitimate aims under Article 10(2). However, the questions before the Court was whether the interference in issue was proportionate to the legitimate aims pursued and whether the reasons cited by the Turkish authorities to justify it were relevant and sufficient.<sup>51</sup>

The Court's concern in this case, was to establish the balance between the principles set out in the Convention and the measures taken by national authorities to maintain national security and public safety as part of the fight against terrorism.<sup>52</sup> The Court looked at the statement as published in the national daily newspaper. The statement consisted of two sentences. In the first of these, Mr. Zana expressed his

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11 of the Convention see, Prebensen, S.C. "The Margin of Appreciation and Articles 9, 10 and 11 of the Convention" *HRLJ 1998*, pp.13-17

<sup>49</sup> *Zana v. Turkey*, App. No: 18954/91, Reports 1997-VII

<sup>50</sup> *Ibid.*, para 50

<sup>51</sup> *Zana v. Turkey*, *loc. cit.*, para 51

<sup>52</sup> *Ibid*, para 55



support for the “PKK national liberation movement” while at the same time, saying that he was not “in favour of massacres”. In the second, he said, “anyone can make mistakes, and the PKK kill women and children by mistake.”<sup>53</sup>

The Court stated that interpretations of those words could be varied but they were both contradicting and uncertain in meaning at all events. It was contradictory to support the PKK a terrorist organisation which use violence to achieve its goals and to declare at the same time oneself opposed to massacres. The words were not clear in meaning because while Mr. Zana was opposing the massacres of women and children, he described them as common mistakes that anybody could make.

“In those circumstances the support given to the PKK-described as a ‘national liberation movement’-by the former mayor of Diyarbakir had to be regarded as likely to exacerbate an already explosive situation in that region.”<sup>54</sup>

According to the Court, the penalty imposed on Mr. Zana was answering to a “pressing social need” and that the reasons cited by the national authorities are “relevant and sufficient” at all event. Therefore, no breach of Article 10 of the Convention occurred.<sup>55</sup>

However, there are many other cases related to Turkey which have been dealt by the Court or which are pending before the Court. In *Arslan v. Turkey*,<sup>56</sup> the applicant was convicted by the State Security Court for having had published his book entitled “*Yas Tutan tarih/ 33 kursun*” (*History in Mourning/33 Bullets*).. The book was accompanied by a preface attributed to Musa Anter, a well-known pro-Kurdish politician and leader writer whose main theme was the Kurdish question in Turkey and who was murdered in 1992.

Mr. Arslan and his publisher was charged for disseminating propaganda against “the indivisible unity of the State” in accordance with Article 8 (1) of the Anti-terror Law.<sup>57</sup> The applicant complained under Articles 6, 9 and 10 of the Convention that his conviction because of the publication of his book constituted an unjustified interference with his freedom of thought and freedom of expression.

The Court stated that the book was in the form of a literary historical narrative. In the book, the Turks were described as aggressors and persecutors who formed Turkey by conquering the lands of other peoples. The Court affirmed that it

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<sup>53</sup> *Ibid*, para 57

<sup>54</sup> *Ibid*, paras 58, 58 60

<sup>55</sup> *Zana v. Turkey*, App. *loc. cit.*, para 61

<sup>56</sup> *Arslan v. Turkey*, App. No: 23462/94, (1999), <http://www.echr.coe.int>

was not a “neutral” description of historical facts. The author intended to criticise the action of the Turkish authorities in the south-east of the country and to encourage the population to oppose it.<sup>58</sup>

However, according to the Court, the interpretation of Article 10 (2) of the Convention should be very narrow when restrictions on political speech, or on discussion on questions of public interest are the issue. Furthermore, the limits of permissible criticism are wider related to the government than in relation to a private citizen or even an individual politician.

“In a democratic system, the actions or omissions of the government must be subject to the scrutiny not only of Parliament and judiciary but also of public opinion. Furthermore, the controlling position which the government occupies made it necessary for it to display control in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries.”<sup>59</sup>

In the Court’s view, the State enjoys a wider margin of appreciation where such remarks incite to violence against an individual or a public official or a sector of the population, to interfere with freedom of expression.

In this case, the applicant made his views public by means of a literary work rather than through the mass media. This limited his opinions’ potential impact on “national security”, “public order” and “territorial integrity” to a substantial degree. The Court noted that despite the fact that certain particularly harsh passages in the book painted an extremely negative picture of the population of Turkish origin and gave the narrative a hostile tone, they did not incite any violence, armed resistance or an uprising.<sup>60</sup>

The Court noted that the kind and severity of the penalties imposed should be considered in order to evaluate whether the interference was proportionate.<sup>61</sup>

In conclusion, the Court decided that Mr Arslan’s conviction was disproportionate to the aims pursued and accordingly not “necessary in a democratic society”. There has therefore been a violation of Article 10 of the Convention.<sup>62</sup> The Case differed from *Zana* where the penalty imposed on Mr. Zana answered a

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<sup>57</sup> The Anti-terror Law, Law no. 3713

<sup>58</sup> *Ibid.*, para 45

<sup>59</sup> *Ibid.*, para. 46

<sup>60</sup> *Ibid.*, para 48

<sup>61</sup> *Ibid.*, para 49

<sup>62</sup> *Ibid.*, para 50

pressing social need and the reasons alleged by the national authorities were relevant and sufficient and based on the writings being an incitement to violence.

Next, the *Surek*<sup>63</sup> case concerned the applicant's conviction by the State Security Court, because of the publication of a news commentary in a weekly review. The applicant was the major shareholder in the publishing company concerned. The applicant complained under Article 10 of the Convention that his conviction constituted an unjustified interference with his freedom of expression<sup>64</sup> The article analysed possible events, which could occur during the upcoming celebrations of Newroz.<sup>65</sup> A translation of the relevant parts of the news commentary as follows:

“It's Newroz week in Kurdistan. The biggest confrontation between the demands of the Kurdish people and non-tolerance in the face of expression of these demands occurs during these days. The tradition of rebellion is awakened.”

In the same issue and within the context of the above news commentary an interview by the Kurdish news Agency (Kurd-Ha) with a representative of the E.R.N.K<sup>66</sup> was also published.

The applicant was charged because of the publication of the above news commentary, as the owner of the review, with making propaganda via the press against the indivisibility of the State. The applicant was also charged under Article 8 and 6 of Anti-Terror Law<sup>67</sup> with publishing the declaration of the ERNK, an illegal terrorist organisation being the political wing of the PKK

The Court stated that the press should not harm vital interests of the state such as national security. However, the press has an binding duty to disclose information and ideas on political issues, including divisive ones. Public opinion has also right to receive these information and ideas. “Freedom of the press provides the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders”<sup>68</sup>

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<sup>63</sup> *Surek v. Turkey*, App. No: 24762/94, <http://www.dhcour.coe.fr/> Judgment date: 08/07/1999

<sup>64</sup> He also complained under Article 6 para 1 of the Convention that his case was not dealt with by an independent and impartial tribunal.

<sup>65</sup> The day when the Kurdish people celebrate to welcome the spring every year in March

<sup>66</sup> A political organisation associated with PKK and operate in Europe

<sup>67</sup> The Anti-terror Law, Law no. 3713

<sup>68</sup> *Ibid.*, para 55

The Court repeated its opinion that criticising the government should have wider boundaries than criticism regarding a private citizen or even an individual politician.<sup>69</sup>

The Court recognised that the interview contained hard-hitting criticism of the Turkish authorities such as the statement that “the real terrorist is the Republic of Turkey”. For the Court, however, this was more a reflection of the hardened attitude of one side to the conflict, rather than a call to violence. The Court decided that overall the content of the articles was not in the nature of inciting to further violence.

The Court stressed that in situations of conflict and tension, the “duties and responsibilities” of media professionals have special significance. Caution should be taken to prevent the media from becoming a tool for the dissemination of hate speech and the promotion of violence. However, “where such views cannot be categorised as such, the State cannot restrict the right of the public to be informed of them by applying the criminal law to the media with reference to the protection of territorial integrity or national security or the prevention of crime or disorder.”<sup>70</sup>

The Court concluded that the conviction and sentencing of the applicant were disproportionate to the aims pursued and therefore not “necessary in a democratic society”. Therefore, there was a violation of Article 10 of the Convention.<sup>71</sup> The Court has asserted same opinion in some other cases<sup>72</sup> related to Turkey under Article 10 as in *Surek*.

The Court underlined its approach that there is little scope under Article 10 (2) of the Convention for restrictions on political speech or an debate on matters of public interest. The limits of permissible criticism via press or speeches are wider concerning the government than in relation to a private citizen, or even an individual politician. Considering the government’s dominant position, displaying restraint should be necessary in resorting to criminal proceedings. The margin of appreciation when examining the need for an interference with freedom of expression is wider, where expressions constitute an incitement to violence against an individual or a public official or a sector of the population. However, the Court did not see any remarks, which were subject to prosecution by Turkish authorities in the related

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<sup>69</sup> *Surek v. Turkey*, App. No: 24762/94, <http://www.dhcour.coe.fr/> para 57, see also *Zana v. Turkey*, *loc. cit.*, para. 46

<sup>70</sup> *Ibid.*, para 59

<sup>71</sup> *Ibid.*, para 61

cases, (apart from *Zana*), that constitute an incitement to violence. The Court in all these cases and others emphasised the fact that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. As mentioned above, the Court gives great importance to freedom of political speech and asserts that there is a little scope of article 10(2) regarding limitation on political speech, especially if it concerns criticism of the State. However, the Court accepts that the state authorities should enjoy a wider margin of appreciation regarding fighting against terrorism and speech which constitutes an incitement to violence.

### 3.2.2.3. Election Expenditure and the Right to Freedom of Expression

It is common in modern Western democracies to limit the amount of money which may be spent by election candidates or on their behalf by outsiders, first, to prevent corruption and secondly, to ensure that the richer candidates and groups do not have disproportionately more resources with which to influence the outcome of an election. British law imposes limits on the amount that may be spent by individual candidates at both Parliamentary and local elections, though there is somewhat inconsistently no national limit on the expenditures of political parties.<sup>72</sup> The Representation of the People Act 1983 also prohibits expenditure third parties which is incurred "with a view to assist or secure the election of a candidate at an election" for the organisation of meetings and displays, the issue of advertisements and circulars, and for otherwise advocating a candidate or disparaging another candidate.

The European Court of Human Rights dealt with this issue in *Bowman v. UK*<sup>74</sup>. The Court reached the conclusion in this case that the restriction imposed upon a campaigner barring her from publishing information with a view to influencing voters in parliamentary elections in favour of an anti-abortion candidate was, in the circumstances<sup>75</sup>, disproportionate to the aim of securing equality between candidates. In its judgment, the Court observed that the limitation on expenditure prescribed by section 75 of the 1983 Act is only one of many detailed checks and

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<sup>72</sup> See, *Ceylan v. Turkey*, App. No: 23556/94, *Gerger v. Turkey*, App. No: 24919/94, *Baskaya and Okcuoglu v. Turkey*, App. Nos: 23536/94 and 24408/94, 8 July 1999,

<sup>73</sup> However, there is later legislation which is pending, see Chapter 7

<sup>74</sup> *Bowman v. UK*, App. No: 24839/94, Reports 1998-I

balances which made up United Kingdom electoral law. Therefore, the Court saw it necessary to consider the right to freedom of expression under Article 10 in the light of the right to free elections protected by Article 3 of the First Protocol to the Convention. According to the Court, the two rights are inter-related and operate to reinforce each other.<sup>76</sup> It is especially significant in the period preceding an election that opinions and information of all kinds are allowed to be distributed freely. However, in certain circumstances the two rights might come into conflict and it may be necessary, during the election, to impose certain limitations on the freedom of expression in order to obtain “free expression of the opinion of the people in the choice of the legislature”. The Court recognised that Contracting States have a margin of appreciation, as they do generally concerning the organisation of their electoral system.<sup>77</sup> However, the Court found that section 75 of the 1983 Act operated for all practical purposes, as a total barrier to Mrs. Bowman’s publishing information with a view to influencing the voters. It was not satisfied that

“it was necessary therefore to limit her expenditure to £5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon political parties to advertise at national or regional level or upon the freedom of press to support or oppose the election of any particular candidate in any particular constituency.”<sup>78</sup>

In the light of the Court’s recent judgment on British Electoral Law, it may be said that the limitations on election campaigns’ expenditure breach the freedom of expression and there may be need to change the law accordingly. The British Government has brought a Bill before Parliament, which contains relevant change.<sup>79</sup>

### 3.3. Freedom of Assembly and Association

“Article 11:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise rights other than such as are prescribed by law and are necessary in a democratic society in the interest of national security or public safety, for preventing of disorder or crime, for the protection of health and morals of for the protection of the rights and

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<sup>75</sup> Mrs. Bowman was charged for exceeding third party election expenditure limit which is £5 while distributing leaflets which called people to consider the candidates stand for abortion issue.

<sup>76</sup> *Ibid.*, para 41

<sup>77</sup> *Ibid.*, at para 42

<sup>78</sup> *Ibid.*, at para 47

<sup>79</sup> See Chapter 7

freedoms of others. This article shall not prevent of these rights by members of the armed forces, of the police or of the administration of the state”

Article 11 protects two different freedoms, which are sometimes connected, freedoms of peaceful assembly and association. They are adequately different to be treated separately but they share the objective of allowing individuals to come together for the expression and protection of their common interests. Rights set out in Article 11 are central to the effective working of the democratic system, if those interests are political in the widest sense. It provides, in particular, for the creation and operation of political parties, interest groups, and for the distribution of ideas and programmes, from among which others may choose and by which influence may be exerted on the holders of public power for the time being.<sup>80</sup>

### 3.3.1. Freedom of Peaceful Assembly

People’s right to organise and political demonstrations are protected by the Convention as a “fundamental right”.<sup>81</sup> Private meetings and meetings in public are included in this protection.<sup>82</sup> The protection includes marches as well as meetings.<sup>83</sup> The content of the message that the organisers wish to project is not a reason for regarding the occasion as being outside the scope of Article 11. The only limitation is that the assembly must be “peaceful”, since a meeting planned with the aim of causing disturbances will not be protected by Article 11.<sup>84</sup> However, Schauer has argued very convincingly that free speech problems may only arise in the area of demonstration or assembly if the purpose of the governmental restriction is to restrict expression, rather than to achieve some other end, such as public order, safety on the streets, or quiet in residential areas. He gives as an example the prohibition of a Communist march. If the reason for the ban is the undesirability of extremist demonstration, free speech issues may be risen. However, if the ban is imposed because the street is to be repaired on the day in question, that does not so clearly

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<sup>80</sup> See, O’Boyle, M, Harris, D.J and Warbick, C., (1995), *Law of European Convention on Human Rights*, Butterworths: London, pp.417-32, and Fawcett, J., (1987), *The Application of the European Convention on Human Rights*, Oxford: Clarendon Press

<sup>81</sup> *Rassemblement Jurassion Unite-Jurassienne v. Switzerland* App. No: 8191/78, 17-DR, 93 para 119 (1979)

<sup>82</sup> *Ibid.*

<sup>83</sup> *Christians against Racism and Fascism v. UK*, App. No 8440/78, 21-DR 138 para 148 (1980)

<sup>84</sup> *Ibid.*, para 150

involve them.<sup>85</sup> The line between the two may not be clear. Taking into account to the importance of freedom of assembly, the Commission has said it ought not to be understood restrictively. It held that a non-violent sit-in, blocking the entrance to American barracks in Germany, did count as “peaceful assembly”, so interference with it required justification under Article 11(2).<sup>86</sup>

For the authorities, freedom of assembly raises a number of problems especially where public meetings and marches are involved. Those pose threats to public order through the disruption of communications, the prospect of confrontation with the police and the danger of violence with rival, they claiming, of course, their own freedom to demonstrate. It is the last situation which raises particular difficulties as recognised by Article 11(2).

The Commission and Court have confirmed that there are positive duties on a State to protect those exercising their right of freedom of peaceful assembly from violent disturbance by counter-demonstration.<sup>87</sup> Because both sides may claim to be exercising Article 11 rights, initially there may be a duty to hold the ring between meetings or processions, but if one of them is aimed at disruption of the activities of the other, the obligation of the authorities is to protect those exercising their right of peaceful assembly. The threat of disorder from opponents does not itself justify interference with the demonstration.<sup>88</sup>

The Strasbourg authorities have spoken inconsistently about the fundamental quality of the Article 11 and, therefore, the need to interpret it widely, while granting a “fairly broad” margin of appreciation to states to consider necessity of any limitation of peaceable assembly. In fact, only in *Ezelin v. France*<sup>89</sup> has a violation of Article 11 been established regarding the right to freedom of assembly. Mr Ezelin had taken part in a demonstration directed against the court and individual judges in Guadeloupe. He attended as a lawyer and trade union official, carrying an inoffensive placard. The march turned into violence. Ezelin did not leave the demonstration when it happened and he refused to answer police questions in an inquiry into the events. He was rebuked by the Court of Appeal exercising its disciplinary function over lawyers for “breach of discretion” in not disassociating himself from the march

<sup>85</sup> Schauer, F, (1982), *Free speech, A philosophical Enquiry*, Cambridge, pp.203-5

<sup>86</sup> *G. v. FRG* App.No: 13079/87, 60 DR para 263, (1989)

<sup>87</sup> *Platform 'Arzie fur das Leben' v. Austria* App. No 10126/82, 44 DR 65 at 72 (1985)

<sup>88</sup> *Christians against Racism and Fascism v. UK* App. No 8440/78, 21 DR 138 at 148 (1980)

<sup>89</sup> *Ezelin v. France*, App. No: 11800/85, Series A 202, paras 52-53 (1991)



and for not co-operating with the police. No allegations of unlawful conduct during the march were made against Ezelin. The European Court stated in the case that the proportionality principle demands that a balance should be struck between the requirements of the purposes listed in Article 11 (2) and those of the free expression of opinions by word, gesture or even silence by person assembled on the streets or in other public places. The pursuit of a just balance must not result in lawyers being discouraged, for fear of disciplinary sanctions, from expressing their political views and defending their own rights on such occasions. Although the penalty imposed on Mr. Ezelin was at the lower end of the scale of disciplinary penalties given according to the law, the Court considered that the freedom to take part in a peaceful assembly is very important that it cannot be restricted in any way, even for a lawyer, as long as the person concerned does not himself commit any chargeable act on such an occasion.

Therefore, the Court found a breach of Article 11, since the sanction complained of did not appear to have been necessary in a democratic society. The judgement is a strong one in favour of freedom of assembly, given the relatively insignificant punishment imposed on the applicant.

One may ask what are the implications for political parties. It is part of the political parties' remit to occasionally hold public meetings in various types. Therefore, it is encouraging for that point of view. A political party is a collective idea and that unity is strengthened by being able to express collectively and has more force than is able to be expressed individually.

### **3.3.2. Freedom of Association**

Freedom of association is obviously related in some loose respects to freedom of expression. For example, a major objective of a political party or pressure group is to communicate ideas to the electorate, and therefore, the justification for protecting association rights in this context is identical to that which justifies a free speech principle.

An ability to form groups and societies enables their members more effectively to exercise their own free speech rights. Individuals may lack the self-confidence or the opportunities to communicate their views to those outside their family and friends. "The press and broadcasting media cannot, or may not be prepared to, afford facilities to more than a relatively few individuals. In practice, it

is therefore very difficult for individuals other than professional politicians and pundits to speak to the national community.”<sup>90</sup> The existence of associations does enable ordinary people to communicate indirectly through their leaders and organisers in the same way that they are able to exercise vicarious political power through the ballot box. This argument may constitute part of a philosophical justification for an independent right of association.

De Tocqueville viewed “freedom of association” as so fundamental as to have a source in natural law:

“The most natural right of man, after that of acting on his own, is that of combining his efforts with those of his fellows and acting together. Therefore the right of association seems to me by nature almost as inalienable as individual liberty”<sup>91</sup>

The right of freedom of association contains a complex of ideas, not all of which are fully worked out in the practice under the Convention. The right involves the freedom of individuals to gather for protection of their interests by forming a collective entity, which represents them. This “association” is capable of enjoying fundamental rights against the state,<sup>92</sup> and will generally have rights against and owe duties to its members. An individual has no right to become a member of a particular association so that an association has no obligation to admit or continue the membership of an individual.<sup>93</sup> Similarly, an individual cannot be forced to become a member of an association and must not be disadvantaged if he chooses not to do so.<sup>94</sup>

Associations may have a variety of different purposes. They include political parties,<sup>95</sup> although Article 17 allows the Contracting States to impose a control upon the programmes that they may pursue.<sup>96</sup> On the other hand, an association is not excluded from protection provided by the Convention simply because its activities are regarded by national authorities as illegal. There should be a right to associate to campaign for a change in the constitution or the law too, however difficult it may be to draw the line between the two.<sup>97</sup>

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<sup>90</sup> Linder, D.O., (1983), “Freedom of Association After *Roberts v. United States Jaycees*”, *Michigan Law Review*, Vol. 82, pp 1878-1902

<sup>91</sup> De Tocqueville, (1994), *Democracy in America*, London: David Campbell p178

<sup>92</sup> *Platform 'Arzte fur das Leben' v. Austria* App. No 10126/82, 44DR 65 at 72 (1985)

<sup>93</sup> *Cheal v. UK*. App. No:10550/83, 42 DR 178 at 185 (1985)

<sup>94</sup> *Young, James, and Webster v. UK* Series A No:44 para 55 (1981)

<sup>95</sup> *KPD v. FRG*, App. No: 250/57, 1 YB 222 (1957), *United Communist Party of Turkey and Others v. Turkey*, App. No: 19392/92, Reports 1998-I

<sup>96</sup> *United Communist Party of Turkey and others v. Turkey*, App. No: 19392/92, Reports 1998-I

<sup>97</sup> *Lavis v. France* App. No 14223/88, 70 DR 218 at 234-239 (1991)

As a result, the exceptions set out in Article 11 should, where political parties are concerned, be interpreted strictly; only “convincing and compelling” reasons can justify restrictions on such parties’ freedom of association and these reasons must be necessary in a democratic society. In determining whether a necessity within the meaning of Article 11(2) exists, the Contracting States possess only a limited margin of appreciation. The Court stated in the *Castells* case, that such scrutiny was necessary in a case concerning a Member of Parliament who had been convicted of offering insults<sup>98</sup> such scrutiny is all the more necessary where an entire political party is dissolved and its leaders banned from carrying on any similar activity in the future.

Three of the important recent cases regarding political parties are *United Communist Party of Turkey and others v. Turkey*<sup>99</sup>, *Socialist Party and Others v. Turkey*<sup>100</sup> and *Freedom and Democracy Party (ÖZDEP) v. Turkey*.<sup>101</sup> These important cases which are specific to political parties are now going to be looked at. These cases all relate to Turkey. The reason simply is that in the UK there has never been a case brought to the Court on the basis of such direct actions against political parties as has happened in Turkey. They have in fact been bans on political parties in history in the UK. The most recent example was from Northern Ireland when Sinn Fein was excluded. Sinn Fein ceased to be banned in 1974<sup>102</sup>. No applications were brought to the Court in regard to the banning.

### 3.3.2.1. The United Communist Party Case

The United Communist Party of Turkey (the TBKP) was a political party that was dissolved by the Constitutional Court soon after it was established. The TBKP was formed on 4 June 1990. On 14 June 1990, when the TBKP was preparing to participate in a general election, the Counsel of the Court of Cassation (hereafter, the Counsel) applied to the Constitutional Court for an order dissolving the TBKP. The party was accused of having sought to establish the domination of one social class over the others (contrary to Articles 6, 10 and 14 and former Article 68 of the Constitution and section 78 of Law no. 2820). The charges were brought against the

<sup>98</sup> See *Castells v. Spain* App. No: 11798/85, Series A No:236

<sup>99</sup> *United Communist Party of Turkey and Others v. Turkey*, App. No: 19392/92, Reports 1998-I

<sup>100</sup> *The Socialist Party and Others v. Turkey*, App. No:21237/93, , Reports 1998-III

<sup>101</sup> *Freedom and Democracy Party (ÖZDEP) v. Turkey*, App. No. 23885/94, 8 December 1999, ECHR Web Site

party for using the word "communist" in its name (contrary to section 96 (3) of Law no. 2820), and also for having carried on activities likely to undermine the territorial integrity of the State and the unity of the nation (contrary to Articles 2, 3 and 66 and former Article 68 of the Constitution, and sections 78 and 81 of Law no. 2820).

When the case came before the European Court of Human Rights, the Government's claim was that political parties were not mentioned in Article 11, therefore they were not within the scope of the Article 11.<sup>103</sup> However, the Court expressed the opinion that there was nothing in the wording of Article 11 to limit its scope to a particular form of association or group or suggest that it did not apply to political parties. On the contrary, "if Article 11 was considered a legal safeguard that ensured the proper functioning of democracy, political parties were one of the most important forms of association it protected."<sup>104</sup> The Court, like to the Commission's opinion, considered that the wording of Article 11 provides a primary sign as to whether political parties may rely on that provision.<sup>105</sup> Furthermore, political party is a form of association essential to the proper functioning of democracy. Having considered the importance of democracy in the Convention system, political parties without doubt come within the scope of Article 11.<sup>106</sup>

The Court also asserted that "an association, including a political party, could not be excluded from the protection of the Convention, simply because its activities were regarded by the national authorities as undermining the constitutional structures of the State and calling for the imposition of restrictions."<sup>107</sup>

The Court stated that in view of the role played by political parties, harsh measures like an order of abolition of a political party, affected both freedoms of expression and association and, therefore, democracy in the State concerned.<sup>108</sup> On the other hand, to have the right to protect its institutions if an association jeopardises that State's institutions via its activities. In this connection, the Court pointed out

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<sup>102</sup> Walker, C., (1988), "Political Violence and Democracy in N.I.", *Modern Law Review*, p.609

<sup>103</sup> *Ibid.*, para 19

<sup>104</sup> *Ibid.*, para 23

<sup>105</sup> *United Communist Party of Turkey and Others v. Turkey*, App. No: 19392/92, Reports 1998, I, para 24

<sup>106</sup> *Ibid.*, para 25

<sup>107</sup> *Ibid.*, para 27, see also, *Open Door and Dublin Well Woman v. Ireland*, App. Nos: 14234/88 and 14235/88 Series A-246-A-29, para 69

<sup>108</sup> *United Communist Party of Turkey and Others v. Turkey*, App. No:19392/92, Reports 1998-I, para

that some compromise between the requirements of defending democratic society and individual rights was inherent in the system of the Convention<sup>109</sup>

It was stated that “freedom of association not only concerned the right to form a political party but also guaranteed the right of such a party, once formed, to carry on its political activities freely”.<sup>110</sup> It was also stated that the Convention intended to guarantee rights that are not theoretical or illusory, but practical and effective.<sup>111</sup> It would be possible for the State to disband the association immediately if it did not cover the right of a party to carry on its activities freely. That would make the right of association which is guaranteed in Article 11 largely theoretical and illusory. According to the Court, the protection afforded by Article 11 lasts for an association’s entire life and dissolution of an association by a country’s authorities must accordingly satisfy the requirements of paragraph 2 of that provision<sup>112</sup>.

The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. Because of political parties’ essential role in ensuring pluralism and the proper functioning of democracy, that especially, applies even more to political parties.<sup>113</sup>

The Court stressed that there could be no democracy without pluralism. And “freedom of expression” is applicable to information and ideas that offend, shock or disturb.” as well.<sup>114</sup> Since political parties’ activities form part of a collective exercise of freedom of expression in itself them to be under the protection of Articles 10 and 11 of the Convention.<sup>115</sup>

According to the Court, the State is the ultimate guarantor of the principle of pluralism.<sup>116</sup> That responsibility make it obligatory for the State to “hold free elections at reasonable intervals by secret ballot under the conditions which will ensure the free expression of the opinion of the people in the choice of the

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<sup>109</sup> *Ibid.*, para 32

<sup>110</sup> *Ibid.*, para 33

<sup>111</sup> *Ibid.*, para 33

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*, para 42, also see *Young, James and Webster v. the United Kingdom*, App. Nos: 7601/76 and 7806/77, Series A-44, para 57, and *Vogt v. Germany*, App. No: 17851/91, Series A-323, para 64

<sup>114</sup> See *Handyside v. UK*, App. No: 5493/72, Series A-24

<sup>115</sup> *United Communist Party of Turkey and Others v. Turkey*, App. No: 19392/92, Reports 1998-I, para 43

<sup>116</sup> see *Informationsverein Lentia and Others v. Austria*, App. Nos: 13914/88 ; 15041/89 Series A-276, para 38

legislature”.<sup>117</sup> Such expression is impossible without the participation of a plurality of political parties representing the different opinions which exists within society. By focusing this range of opinion, “not only within political institutions but also at all levels of social life, political parties make an irreplaceable contribution to political debate which is at the very core of the concept of a democratic society”.<sup>118</sup>

The TBKP was abolished even before it had been able to start its activities. The abolition was therefore ordered entirely on the basis of the TBKP’s constitution and programme, which however, according to the Court, contained nothing to suggest that they did not reflect the party’s true objectives and its leaders’ true intentions.<sup>119</sup>

One of the reasons for abolishing the TBKP was that the party had included the word "communist" in its name.<sup>120</sup> The Court considered that in the absence of other relevant and sufficient circumstances, a political party’s name cannot, in principle, justify a measure as extreme as abolition. The Court stated that the TBKP was clearly different from the German Communist Party, which was dissolved on 17 August 1956 by the German Constitutional Court, since the party was not seeking to establish the domination of one social class over others and also it satisfied the conditions of democracy. The Court did not accept that the submission based on the party’s name might, by itself, entail ban on the party.<sup>121</sup>

Secondly, it was alleged by the Turkish government that the TBKP sought to promote separatism and the division of the Turkish nation. By drawing a distinction in its constitution and programme between the Kurdish and Turkish nations, the TBKP had exposed its intention of working to achieve the creation of minorities which asserted a threat to the State’s territorial integrity. It was for that reason that self-determination and regional autonomy were both proscribed by the Constitution<sup>122</sup>

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<sup>117</sup> Article 3 of the First Protocol

<sup>118</sup> see *Lingens v. Austria*, App. No: 9815/82 Series A-103, 1986 para 42, and *Castells v. Spain*, App. No: 11798/85, Series A-236 (1992), para 43.

<sup>119</sup> *Ibid.*, para 51

<sup>120</sup> Contrary to section 96(3) of Law no. 2820

<sup>121</sup> *Ibid.*, para 54

<sup>122</sup> *Ibid.*, para 55

The Court stated that despite the fact the party referred to the Kurdish as "people" and "nation" and Kurdish "citizens", it did not described them as a "minority" and did not claim that they should enjoy special treatment rights.<sup>123</sup>

In the Court's view, one of the principal characteristics of democracy is the possibility it offers to resolve a country's problems through dialogue, without using violence. Democracy advances on freedom of expression. In that regard, the Court stated that

“there could be no justification for banning a political group only because it sought to debate in public the situation of part of population and to take part in the nation's political life to find solutions in democratic rules which is capable of satisfying everyone concerned.”<sup>124</sup>

The Court accepted the difficulties associated with the fight against terrorism, however, the Court found no evidence in this case to conclude, in the absence of any activity by the TBKP, that the party had any responsibility for the problems which terrorism asserted in Turkey. Therefore, Article 17 could not be applied as nothing in the constitution and programme of the TBKP justified the decision that it relied on the Convention to destroy any of the rights and freedoms set forth in it.<sup>125</sup>

The Court decided that the ban was disproportionate to the aim pursued and consequently unnecessary in a democratic society, therefore there was a violation of Article 11.<sup>126</sup>

In this case, it is made clear that Article 11 protects political parties as well as trade unions. Not only, it protects the right to found a political party but also the right to carry on its political activities. The Court established that political parties are essential elements of liberal democracy and States are the ultimate guarantor of pluralism. Therefore, States have the responsibility to hold free elections in accordance with Article 3 of First Protocol to ensure the right to free expression in the choice of legislature. Elections cannot be imagined without political parties. Political parties are expected to voice different opinions which exist in society. Therefore, they must enjoy the rights to freedom of expression and freedom of association. Banning political parties on the ground that they expressed disseminated ideas severely harm pluralistic feature of the society and therefore liberal democracy. The Court found abolition of a political party to be a very severe punishment. Unless

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<sup>123</sup> *Ibid.*, para 56

<sup>124</sup> *Ibid.*, para 57

<sup>125</sup> *Lawless v. Ireland*, App. No: 332/57, Series A -3, para 7

a political party is proven to be connected to violence, dissolving the party is disproportionate to the legal aim pursued and not necessary in a democratic society. Keeping in mind that over 20 political parties have been dissolved by the Turkish Constitutional Court, one clearly could say that the law regarding political parties should be changed. In fact, the chairman of the Constitutional Court stated in a press conference that if Turkey wants to comply with European Convention, provisions of the Political Parties Law related to closure of political parties should be changed.<sup>127</sup>

### 3.3.2.2. The Socialist Party (SP) Case

The SP was formed on 1 February 1988. When the SP was preparing to take part in a general election, the party was accused of seeking to establish the domination of working class with a view to establish a dictatorship of the proletariat. The Constitutional Court dismissed the application as unfounded, as it considered that the political objectives stated in the SP's programme did not infringe the Constitution.<sup>128</sup> The party ran an election campaign. However, on 14 November 1991 the Counsel applied to the Constitutional Court for a second time for an order dissolving the SP. The party was accused of carrying on activities likely to undermine the territorial integrity of the State and the unity of the nation (contrary to Articles 3, 4, 14 and 66 and former Article 68 of the Constitution, and sections 78, 81 and 101(b) of Law no. 2820).

The Constitutional Court dissolved the SP and transferred its assets to the Treasury.<sup>129</sup> Therefore, the founders and managers of the party were banned from holding similar office in any other political body.

In *Socialist Party v. Turkey*<sup>130</sup> the Court stated that the interference with the Socialist Party was prescribed by law and had pursued at least one of the "legitimate aims" set out in Article 11: the protection of "national security".<sup>131</sup> While determining whether the ban was "necessary in a democratic society", the Court stated that:

"Democracy thrives on freedom of expression, from that point of view, there can be no justification for hindering a political group solely because it seeks

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<sup>126</sup> *United Communist Party of Turkey and others v. Turkey*, App. No:19392/92., Reports 1998-III

<sup>127</sup> ATV Ana Haber, (ATV Main News) 21 June 2000. Press Conference of the Chairman of the Constitutional Court

<sup>128</sup> In a judgment of 8 December 1988, R.G. 16 May 1989,

<sup>129</sup> The order was published in the Official Gazette on 25 October 1992

<sup>130</sup> *Socialist Party and others v. Turkey*, App. No:21237/93, Reports 1998-III

<sup>131</sup> *Ibid.*, paras 32-33



to debate in public the situation of part of the state's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned."<sup>132</sup>

The Turkish government claimed that the president of the SP justified "the use of violent and terrorist methods" by saying in particular that

"The Kurd proved himself through the fight of impoverished peasants by linking its destiny [to theirs]"

However, the Court did not accept this claim and stated that these phrases were directed at citizens of Kurdish origin and invite them to rally together and advance certain political claims. However, there was no trace of any incitement to use violence or infringe the rules of democracy. Therefore, the relevant statements were barely (according to the Court) any different from those made by other political groups that were active in other countries of the Council of Europe. The Court accepted that the reference was made to the right to self-determination of the "Kurdish nation and its right to secede". However, the statements using the words did not encourage secession from Turkey but emphasised that the proposed federal system could not occur without the Kurds' freely given consent, which should be expressed through a referendum. According to the Court, the fact that such a political programme was regarded as incompatible with the current principles and structures of the Turkish State did not make it incompatible with the rules of democracy. "It is of the essence of democracy to allow to diverse political programmes to be proposed and debated, even those that call into question the way a state is currently organised, provide that they do not harm democracy itself."<sup>133</sup> With this judgment, the Court clearly stated that being contrary to the Turkish law did not mean that it was incompatible with the values of liberal democracy that is enshrined in the Convention.

The Court concluded that the dissolution of the SP was disproportionate to the aim pursued and consequently unnecessary in a democratic society so there was a violation of Article 11 of the Convention.<sup>134</sup>

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<sup>132</sup> *Ibid.*, para 45

<sup>133</sup> *Ibid.*, para 47

### 3.3.2.3. The Freedom and Democracy Party (ÖZDEP) <sup>135</sup>Case

The Freedom and Democracy Party (ÖZDEP) was founded on 19 October 1992. On 29 January 1993, an application was made to the Turkish Constitutional Court by the Counsel to have ÖZDEP dissolved on the ground that it had infringed the principles of the Constitution and the Law no: 2820. It was claimed that the content and aims set out in the party's programme sought to undermine the territorial integrity and secular nature of the State and the unity of the nation. On 30 April 1993, while the Constitutional Court proceedings were still pending, the founding members of the ÖZDEP decided to dissolve the party. On 14 July 1993 the Constitutional Court decided to dissolve the ÖZDEP, particularly on the ground that its programme was likely to undermine the territorial integrity of the State and the unity of the nation and violated both the Constitution and the Law no; 2820. The Party applied to the European Court of Human Rights claiming that their right to freedom of association which is protected by Article 11 of the convention was infringed.

While examining the case, The Court decided that the interference was prescribed by law the criticised measures could be regarded as having pursued at least one of the "legitimate aims" set out in Article 11: the protection of territorial integrity and thus the preservation of "national security".<sup>136</sup>

The Court, after analysing ÖZDEP's programme, decided that nothing in the programme could be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. On the contrary, the necessity of observing democratic principles when implementing the proposed political project was stressed in the programme. The programme proposed the creation of a democratic assembly consisted of representatives of the people elected by universal suffrage". The party defended a peaceful and democratic solution to the Kurdish problem subject to the strict application of international instruments such as the final Helsinki Agreement, the European Convention on Human Rights and the Universal Declaration of Human Rights.<sup>137</sup> However, the Government claimed that the ÖZDEP supported the armed struggle by declaring in a statement it supports the

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<sup>134</sup> *Ibid.*, para 54

<sup>135</sup> *Freedom and Democracy Party (ÖZDEP) v. Turkey*, App. No. 23885/94, 8 December 1999, ECHR Web Site

<sup>136</sup> *Ibid.*, paras 29, 30-31

<sup>137</sup> *Ibid.*, para 8

people's just and legitimate struggle for their independence and freedom and stands by that struggle.

While certain political demands were made by the statement of purpose, according to the Court nothing in that statement would incite people to use violence or break the rules of democracy.<sup>138</sup>

The Court concluded that in its programme the *ÖZDEP* also referred to the right to self-determination of the "national or religious minorities". However, taken in context, those words did not encourage people to seek separation from Turkey but were aimed to emphasise that the proposed political project must be underpinned by the freely given, democratically expressed, consent of the Kurds. The Court repeated its view in *Socialist Party* case by saying that even such a political project was to be considered incompatible with the current principles and structures of the Turkish State that did not mean that it broke any democratic rules.<sup>139</sup>

In conclusion, the Court decided that *ÖZDEP*'s dissolution was disproportionate to the aim pursued and consequently unnecessary in a democratic society and there has been a violation of Article 11 of the Convention.<sup>140</sup>

#### 3.3.2.4. Summary of the Cases of Turkish Political Parties

Having examined then three important cases that are related to political parties, the Court's approach and assessment may be summarised thus:

Democracy is without doubt a fundamental feature of the European public order.<sup>141</sup> That is obvious, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that "the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights."<sup>142</sup>

The Court had identified certain provisions of the Convention as being characteristic of democratic society. In a field closer to the one concerned in the above cases<sup>143</sup>, the Court has on many occasions stated, for example, that freedom of expression constitutes one of the essential foundations of a democratic society and

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<sup>138</sup> *Ibid.*, para 40

<sup>139</sup> *Ibid.*, para 43

<sup>140</sup> *Ibid.*, para 48

<sup>141</sup> See *Loizidou v. Turkey*, App. No: 15318/89, Reports 1996-VI, para 75

<sup>142</sup> *Klass and Others v. Germany*, App. No: 529/71, Series A-28, para 59 (1978)

<sup>143</sup> See the cases of *United Communist Party*, *Socialist Party* and *Freedom and Democracy Party*

one of the basic conditions for its progress and each individual's self-fulfilment. Whereas in *the Mathieu-Mohin and Clerfayt*, it was noted the prime importance of Article 3 of Protocol No. 1, which enshrines a characteristic principle of an effective political democracy.<sup>144</sup>

Consequently, the exceptions set out in Article 11 are, where political parties are concerned, to be understood strictly; only convincing and compelling reasons can justify restrictions on such parties' freedom of association. The Court held that European supervision was necessary in a case concerning a Member of Parliament who had been convicted of proffering insults<sup>145</sup> such scrutiny was all the more necessary where an entire political party was dissolved and its leaders banned from carrying on any similar activity in the future.<sup>146</sup>

As seen the cases above, the Court is very sensitive regarding political parties' rights to freedoms of expressions and association and interprets narrowly "the margin of appreciation" given to states by the Convention. The Court in many cases mentioned above made it clear that there is a close connection between Article 10 and Article 11 and these two freedoms are the basic elements of a democratic society.

In all these cases, the importance of political parties to democracy was emphasised. The difficulty of bringing the case within Article 11 (2) to an extent to a ban on activities was made clear by the Court in these cases. One must establish a clear connection between a political party and violence with strong evidence. It is made very clear that political speech and political parties are essential to political debates and therefore liberal democracy. The restrictions should be interpreted very narrowly when they are applied to political speeches or political parties.

### **3.3.3. The Implications of the European Court's Judgements upon the Abolition of Political Parties in Turkey**

Turkey has been a signatory to all international agreements such as; United Nations Agreement, Universal Declaration of Human Rights, European Council Statute, European Convention of Human Rights, Helsinki Final Act, Paris Charter and that therefore has committed to pursue the provisions set forth in these

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<sup>144</sup> *Mathieu-Mohin v Belgium* Series A-113, para 47 (1987),

<sup>145</sup> *Castells v. Spain* App. No: 11798/85 Series: A-236, para 42

<sup>146</sup> See *United Communist Party, Socialist Party and Freedom and Democracy Party cases*

agreements. Turkey has also recognised the application of Turkish citizens and institutions to European Commission of Human Rights in 1987 and the authority of European Court of Human Rights in 1990. Consequently, Turkey has accepted European Court of Human Rights as the authorised court, has recognised the application of its citizens and institutions in accordance with the concerned provisions of the agreements it signed and has committed to comply with the decisions of these courts.

After the brief explanation of Turkey's position regarding International Conventions, it would be beneficial to examine the abolition of political parties in the light of the Court's judgments for the three cases mentioned above.

Turkey has a tradition of closing down political parties, however one cannot deny the fact that according to values of liberal democracy, political parties must be encouraged rather than being banned in order to provide plurality. It is clear enough that European Convention is in favour of liberal democracy. It emphasises the importance of more political speech not less political speech although it might be annoying or shocking. It is only where there is a close link with violence that it will be convinced that a political party can be closed down, otherwise it will tend to opt for pluralism and for more speech not less speech. Therefore, it could be said that there is a clear division between what Turkey has done as its tradition and what the European Court has stated in its findings. As a signatory of the Convention, Turkey must take into account the Court's interpretation of the Convention, if it wants to avoid a further series of cases which will undoubtedly be found to be in breach of the Convention.

The most recent political party closure case is the Welfare Party (Refah Partisi) which was the leading party in the previous coalition government in Turkey. It was dissolved by the Constitutional Court on 20 January 1998 on the grounds of being against the principle of secularism, which is set out in the Constitution. Five MPs including the ex-prime minister were banned from involvement in any political party activities. The Constitutional Court of Turkey decided that the Party is a threat to the State's secular structure and dissolved the party permanently.

As is stated by the former member of the Constitutional Court, Mr. Aliefendioglu:

"The Constitutional Law is obliged to take into consideration the modern understanding and respect to human rights that the human rights and freedoms have reached and assure the balance between the state authorities

set forth by the Constitution and the fundamental rights and freedoms in the interpretation of the principles of the Convention".<sup>147</sup>

Thus, the following three issues need to be assessed with regard to the closing down of a political party in Turkey.

A-On what grounds is the closing down of a political party based from the grounds listed in Article 11 (2) of the Convention?

B-Are the programmes or actions of the party threatening the public security? Is it violating the rights and freedoms of others?

First, the questions should be answered with a narrow interpretation. If clear and definite answers cannot be given to these questions, a lawsuit for closing down of a party should not be brought.

The Reporter of the Turkish Constitutional Court, Assoc. Prof. Dr. Turhan, explains further processes of closing down a party as follows:

"If the closing down of a political party is the matter of concern, the restriction causes such as "national security", "public security" and "protection of the rights and freedoms of others", which are listed in the second paragraph of Article 11 of the Convention need to be materialised. In order to use the basis of protection of national security, it should be proved that the organisation is aiming at dividing of the country land and that these activities tend to damage the peace in the region; in order to claim the protection of the public security, it should be proved that the party organisation supports or manages terror and the hostility and conflict among the public is incited. In order to have the basis of protection of the rights and freedoms of others the connection of the organisation with terror should be proven".<sup>148</sup>

C-If the closing of a party is claimed on the grounds of one or more of the reasons given above, it should be questioned whether or not this is 'necessary in a democratic society'.

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<sup>147</sup> "Dissenting Vote" E. 1993/3, K.1994/2, AMKD, number 30, volume 2, p. 1217/1218 The former chairman of the Constitutional Law Mr. Ozden stated the same fact: "Human rights are universal goals. They should be lived and defended under every circumstance and condition and they should never be restricted and their essence should not be interfered.. The responsibility of the jurists, especially the judges of the Constitution on the issue is great. Our court is issuing decrees that refer to the human rights. The judges should show more caution to international treaties" see, Constitutional Jurisdiction No: 9, p10. As stated by the Reporter of the Constitutional Court, Assoc. Prof. Dr. Turhan: "In a lawsuit regarding closing down of a political party our Constitutional Court is obliged to evaluate the Political Parties Law with the European Human Rights Convention as they are in the force of law; and in determination of the violation of the Constitution it is obliged to interpret the provisions of the Constitution with rights and freedoms set forth in the European Human Rights Convention" see, *Yeni Türkiye Dergisi*, No:10, 1996, p.20

<sup>148</sup> Turhan, M., (1996), *Yeni Türkiye* ( New Turkey) Issue 10, p. 422

As was specified in the Socialist Party lawsuit before the European Court of Human Rights, in order to prevent random and arbitrary restrictions "the necessity in a democratic society" should be subjected to a strict evaluation.<sup>149</sup> The matter that needs to be taken into account at this point is whether closing down of a political party is a "pressing social need". In other words, rights cannot be restricted as long as there is not a compulsory, unavoidable and urgent social need. Furthermore, the European Court seeks the proportionality between the interference and the requirements for the action.

The right of organisation cannot be restricted with the assumptions that the actions and opinions of the concerned party constitute "potential danger" or that "it shall cause great damages in the future" as stated in the *United Communist Party* case.

Under cold war conditions following the Second world War, in a period in which the negative effects of the fascist regimes were still fresh in the memory, decrees of the Federal Germany Constitutional Courts with regard to closure of the Fascist Party and the Communist Party 50 years ago are as exceptional case which needs to be evaluated under the condition of that time. By contrast, evaluation of the decisions regarding closing down of the Turkish United Communist Party as in breach of the right freedom of association which has been assured by Article 11 proves this argument. Applying the judgment of the Court in the *Communist Party*<sup>150</sup> case to the *Welfare Party* case, if one shall asks what point has been reached in modern and national law, this question shall have only one answer. It is that the provisions of Article 11 of the Convention guarantees that an association is not excluded from the protection afforded by Convention simply because its activities are regarded by national authorities as undermining the constitutional structure of State.

One could make here one further point that the UK has tended to avoid these difficulties because its tradition of closing down the political parties largely ceased by the early part of the nineteen-century.

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<sup>149</sup> See *Socialist Party and Others v. Turkey*, App.No:21237/93, , Reports 1998-III

<sup>150</sup> *United Communist Party of Turkey and Others v. Turkey*, App. No: 133/96 Reports 1998-I

### 3.3.4. Restriction on Activities Subversive of Convention Rights by Article 17

By Article 17 of the European Convention

“Nothing in this convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”

According to Fawcett, the fundamental question to be asked in connection with individuals and groups under Article 17 is whether their activities aim at destroying the rights of the others.<sup>151</sup> Fawcett proceeds with his explanation as follows:

“Here (Article 17), we are face to face with irregular warriors, terrorists or fighters of freedom, whatever you call them. They use armed force for their political purposes and they resort to force in a wide array ranging from random firing and guerrilla war. Alternatively, they carry out campaigns to establish totalitarian and separatist regimes. It may be said that the first of these activities aims at destroying the rights and liberties of others and therefore they alone violate Article 17. Campaigns and propaganda can be defended in view of the rights under the convention, in particular in view of the scope of the rights covered by Article 9 - 11 and their execution will depend on the assessment of the purpose of the campaign and political consequences.”<sup>152</sup>

Although the Strasbourg authorities generally adopt the view mentioned above while interpreting Article 17, they have also taken decisions which have been subject to criticism. The most criticised decision concerning political parties related to the decision by which it rejected the application by the German Communist Party against the Federal Republic of Germany in 1957 in accordance with Article 17. In that regard, the Commission believed that the Communist Party’s purpose to establish a tyrant regime as evidenced by its statements aimed at destroying the rights and liberties safeguarded by the European Convention on Human Rights.<sup>153</sup> This decision was later interpreted as influenced by the bitter marks left by the totalitarian regimes of Eastern Europe and the Commission was criticised for its action to have taken the decision only in the light of the provisions of Article 17. It is also useful to cite the conclusions by Associate Professor Mehmet Turan, one of the Turkish Constitutional Court reporters,

<sup>151</sup> Fawcett, J., (1987), *The Application of the European Convention on Human Rights*, Oxford, , p. 315

<sup>152</sup> *Ibid.*, p.315

<sup>153</sup> KPD v. FRG, App. No: 250/57, 1 YB 222 (1957)



“This famous decision by the European Human Rights Commission was criticised because it was implemented on its own. According to the critics, application of Article 17 on its own may lead to its misinterpretation to the effect that those concerned may be stripped of the rights and liberties covered by the European Convention on Human Rights”<sup>154</sup>

After the *Communist Party* case, the Strasbourg organs have subjected Article 17 to a much narrower interpretation. They have openly stated that the purpose of this article is “ to prevent totalitarian groups from exploiting the convention principles for their interests.”<sup>155</sup> Besides, while interpreting Article 17, the Convention organs draw attention to the time when an action has taken place as far as totalitarian activities are concerned. For instance, examining an article of the Belgian Penal Code which prevented a Belgian journalist (De Becker) from writing and publishing articles after the War because of his co-operation with the Nazis in the Second World War, the Court decided that the interference violated Article 10 of the Convention.<sup>156</sup> The Commission had reached the following conclusion in connection with Article 17 in *De Becker*, which was later been shared by Court

“Article 17 cannot be used to strip somebody of his / her rights and liberties forever just because he once uttered totalitarian thoughts and acted accordingly. Certainly, although Mr De Becker’s behaviour took place in the past before the convention entered into force, they may be assessed in the scope of Article 17. However, this does not mean that this claimant is prevented by the provisions of this article (Article 17) unless he misuses freedom of expression.”<sup>157</sup>

Furthermore, although cited in the indictment in the *Welfare Party* case, the closures of the Fascist and Communist parties in the Federal Germany in the 1950s cannot prove today that a political party can be closed down. These were the incidents, which took place under the extraordinary conditions after the Second World War. What is more, the closed parties were later revived under different titles, and they have never been closed down again.<sup>158</sup>

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<sup>154</sup> Turhan, M., (1996), “Anayasa Mahkemesi Kararlarında Avrupa İnsan Hakları Sözleşmesinin Yeri” ( The Place of the European Convention in the judgments of the Constitutional Court), *Yeni Türkiye*, Issue 10, p.40

<sup>155</sup> See *Glimmerveen and Hagenbeek v. the Netherlands*. App. Nos: 8348/78 and 8406/78, 18 DR 187, and *Lawless v. Ireland*, 961, (1979-1980) 1 EHRR13

<sup>156</sup> *De Becker v. Belgium*, App. No: 214/56, 2 Yearbook 1958-59, p.214. See (1978-80) 1 EHRR 43

<sup>157</sup> *Loc. cit.*

<sup>158</sup> Kapani, M., (1981), *Kamu Hürriyetleri*, (Public Liberties), Ankara: Siyasal Bilgiler Fakültesi Yayınları, p.223

The Court in the *United Communist Party*, the *Socialist Party* and the *OZDEP* cases, decided that Article 17 could not be applied to these cases since all three parties did not in their words or actions incite any violence.<sup>159</sup>

It could be said at this point that, Article 17 could only be used if there is a fundamentally undemocratic political party. Where the Turkish cases are concerned it is not sufficient if one wants to cite Article 17. The Welfare party was accused of being dominated by religion. It is clear from the judgement of the Court's decisions this is not a ground for using article 17, nor is it a ground that a party might want to change the Constitution. The position of religion in a society is something which in a pluralistic society could be argued about and this has to be accepted. If a party wants to abolish free elections or wants to massacre some part of population, then article 17 could be applied. Moreover, as time has gone on, the role of Article 17 has been lessened. After World War II, constitutional democracies like Italy and Germany were fragile but now they are stable democracies better able to defend themselves against communist or fascist movements. This point of course applies to western democracies where stable democracies are established. When one thinks about Turkey, it could be said that Turkey is in a different situation since it has not been able to establish a strong and stable democracy. However, that does not give the Turkish State a right to interfere with the rights to freedom of expression and association without satisfying the conditions outlined in second paragraphs of Article 10 and 11. One also has to keep in mind that the main reason of failure to establish a strong democracy is not to have strong protection for the rights to freedom of expression and association which will ensure pluralism and evidently liberal democracy.

As explained above, freedom of association is inter-related to freedom of expression. If there is no right such as freedom of expression, right to freedom of association does not mean anything and vice versa. People should have the right to express themselves freely and also associate in order to promote their opinions and ideas. However, even if these both rights exist, that does not guarantee a democratic society or democratic state. As examined in chapter 2, one of the main characteristics of democracy is that people should be able to choose their legislatures and government freely by secret ballot elections. The right to free elections should

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<sup>159</sup> See above, Section 3.3.2

be guaranteed in order to protect democracy. Here Article 3 of the First Protocol of the ECHR comes into play.

### 3.4 Free Elections

Political parties and free elections are necessary elements of democracy. In democratic regimes, political parties compete with each other in order to carry out their ideas and thoughts. Political parties take the authority to put their programmes into practice, from the public via elections. In democratic systems, the basis of the authority of government or its legitimacy is elections. In multi-party regimes, the aim of general elections is to determine, for a prescribed term, which party will establish the government and which party will take the duty of inspection as an opposition. However, being in government or the opposition party is not a continuous role. The government and the opposition might change place in the next election. Change is carried out in peace via the mechanism of election. In a previous section, it was established that free flow of ideas and political debate are essential for liberal democracy. It is also demonstrated that political parties are one of the most important means for political debate in pluralistic societies. Elections are ultimately the process by which people choose between important political debates. They are the mechanism. If there is no election, there is no choice therefore there is no point in having free flow of ideas and political speech and even freedom of associations for political parties. Therefore the election is a necessary element for the existence of a democratic society but it is not sufficient in itself. To make a democratic election, people should have freedom to explain their ideas and should have the right to organise a political party. Political contest should be completely free in the sense of freedom of association and of speech.<sup>160</sup> It may be seen clearly that these political rights and free elections have a complementary existence. Thus, the measures and conditions which are defined for suffrage, should be arranged to make it encouraging for public participation, not for limiting this right.<sup>161</sup>

According to Butler, Penniman and Ranney, a general election can properly be described as democratic if it “largely or wholly” satisfies six listed conditions:

- “1. Substantially the entire adult population has the right to vote for candidates for office.

<sup>160</sup> Rokkan, S., (1970), *Citizens, Elections, Parties, Approaches to the Comparative Study of the Process of Development*, New York: McKoy, pp28-30

<sup>161</sup> Karamustafaoglu, T., (1970), *Secme Hakkinin Demokratik Ilkeleri* (The Democratic principles of the Right to Vote), Ankara: Ankara Unv. Hukuk Fakultesi Yayinlari, p.230

2. Elections take place regularly within prescribed time limits.
3. No substantial group in the adult population is denied the opportunity of forming a party or putting up candidates.
4. All the seats in the major legislative chamber can be contested and usually are.
5. Campaigns are conducted with reasonable fairness in that neither law nor violence nor intimidation bars the candidates from presenting their views and qualifications or prevents the voters from learning and discussing them.
6. Votes are cast freely and secretly; they are counted and reported honestly and the candidates who receive the proportions required by law are duly installed in office until their term expires and a new election is held.”<sup>162</sup>

Legislators, while determining the conditions of the right to vote, have to consider that suffrage is a human right, which is recognised by universal declarations.

Article 2 (1,2 and 3) of Universal Declaration on Human Rights states that;

“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.  
Everyone has the right to equal access to public service in his country  
The will of the people shall be basis of the authority of government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret or by equivalent free voting procedures”

Free elections are also guaranteed by Article 3 of the First Protocol of the European Convention on Human Rights.

### **3.4.1. Article 3 of the First Protocol**

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

#### **3.4.1.1. Background of Article 3 of the First Protocol**

When the draft Convention of August 1950 was submitted to the Assembly and considered by the Committee on Legal and Administrative Questions, whose report was approved by the Assembly on 25 August 1950<sup>163</sup> the parliamentary organ of the Council of Europe while substantially accepting the Ministers’ draft, made several suggestions to improve it. The Assembly called for the addition of three further articles to protect the three other rights which had been discussed a year

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<sup>162</sup> Butler, D., Penniman, H. R and Ranney, A., (ed.1981) *Democracy at the Polls : A Comparative Study of Competitive National Elections* Washington London: American Enterprise Institute for Public Policy Research, p.3

<sup>163</sup> Robertson, A. H., (1963), *Human Rights in Europe*, Manchester: Manchester University Press, p.12

before but were not included; the right of property, the right of parents to choose the kind of education to be given to their children and the right to free elections<sup>164</sup>. The Committee of Ministers at its sixth session in Rome in November 1950 were unable to reach agreement on accepting the majority of the amendments proposed, with the result that the Convention was finally signed on 4 November 1950 without these three rights in it.<sup>165</sup> The Committee of Ministers had not rejected the proposal for including the three additional rights into Convention, but they required more time to study it. A series of meetings of legal experts took place during 1951, and the Assembly's legal committee was consulted on two occasions in August and November about the drafts, which had been prepared.<sup>166</sup> The First Protocol to the Convention covering the three further rights of property, education and free elections was duly concluded and signed on 22 March 1952.<sup>167</sup>

#### 3.4.1.2. The Scope of Article 3 of the First Protocol

The difference between Article 3 of the First Protocol of the European Convention on Human Rights and Article 21 of the Universal Declaration of Human Rights is obvious. While article 21 (1) of the Declaration mentions taking part in government directly or through freely chosen representatives, Article 3 of the First Protocol only mentions the holding of a free election in the choice of legislature. Apart from this, article 21 (3) contains a provision more in line with Article 3 of the Protocol, to the effect that the will of the people shall be the basis of the authority of government and that free elections by universal suffrage shall be held. The aim of Article 3 of the First Protocol is to protect democracy as a system of government.<sup>168</sup>

The Court has described the State as the ultimate guarantor of the principle of pluralism.<sup>169</sup> In the political sphere that responsibility means that the State is under the obligation, among others, to hold, in accordance with Article 3 of Protocol No. 1, free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the

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<sup>164</sup> C.A., Second Session, Doc. 93 and Seventeenth Sitting

<sup>165</sup> Robertson, A.H., (1963), *Op. Cit.*, p.13

<sup>166</sup> Robertson, A. H., (1951), "The European Convention on Human Rights - Recent Developments", *British Yearbook of International Law*, pp. 359-365

<sup>167</sup>, Robertson, A.H (1963), *Op. cit.* p. 15

<sup>168</sup> Castberg, F., (1974), *The European Convention on Human Rights*, New York: Oceana Publications Inc. p.181

<sup>169</sup> *Informationsverein Lentia and Others v. Austria* , App. Nos: 13914/88 ; 15041/89 Series A-276, para 38

legislature. Such expression is inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country's population. By relaying this range of opinion, not only within political institutions but also – with the help of the media – at all levels of social life, political parties make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society. In the *Greek case*<sup>170</sup> the Commission said that Article 3 of the First Protocol 'presupposes the existence of a representative legislature, elected at reasonable intervals, as the basis of a 'democratic society.' This opinion fixes the place of political democracy in its relationship with human rights. It is one of the conditions for the protection and enjoyment of human rights, but it is not the only one. As the Court said in *Mathieu-Mohin*,<sup>171</sup> it is "a characteristic principle of democracy". It almost goes without saying that an accommodation has to be made between the demands of human rights standards and the acts of even a properly elected legislature: human rights are a limit on majoritarianism, however legitimately constituted. The ultimate objective as the Commission indicated in *the Greek case*, is not "democracy" but "a democratic society". In a "democratic society" the majority has regard to the interests of all groups and people in the state, not merely those of its supporters. This is the same idea as liberal democracy, as was described in Chapter 2.

Article 3 of the First Protocol leaves a generous margin of appreciation to the contracting parties in the selection of their electoral systems. In *the Liberal Party v. U.K.*,<sup>172</sup> the Commission stated that Article 3 of the First Protocol gives an individual right to vote in the election provided for by this Article. Article 14 of the Convention read in conjunction with Article 3 of the First Protocol protects every voter against discrimination directed at him as person for the grounds mentioned in Article 14. This is not the same as a protection of equal voting influence for all voters. The question is whether equality exists in this respect due to the electoral system being applied. Article 3 of the First Protocol is careful not to bind the States as to the electoral system and does not add any requirements of "equality" to the "secret ballot".<sup>173</sup> Therefore, the Commission clearly stated that Article 3 of the First

<sup>170</sup>*Denmark v. Greece* App. No: 3322/67, *Norway v. Greece* App. No: 332267, *Sweedden v. Greece* App. No: 3323/67, *Netherlands v. Greece*, App. No: 3344/67, 12 YB 1 para 179

<sup>171</sup>*Mattieu-Mohin and Clerfayt v. Belgium* App. No: 916781/81, Series A-114, para 57

<sup>172</sup>*Liberal Party v. U.K.*, App. No 8765/79 21 DR (1980) 4 EHRR, 122

<sup>173</sup>*Ibid.*, para 8

Protocol may not be interpreted as an Article which imposes a particular kind of electoral system which would guarantee that the total number of votes cast for each candidates or group of candidates must be reflected in the composition of the legislative assembly. Both the simple majority system and the proportional representation system are therefore compatible with this Article.<sup>174</sup> The Article applies to “the choice of legislature”. It is for each State to make its own constitutional arrangements allocating legislative power. It is for the State to decide on how many chambers the legislature should have, how they are related and whether to adopt a federal or unitary system.<sup>175</sup> However, the Strasbourg authorities must determine whether any particular body is a “legislature” and thus within Article 3, First Protocol. The test is whether the national body has independent power to issue decrees having the force of law. Therefore it goes further than requiring free elections; It requires that the exercise of political power be subject to a freely elected legislature. Since the Convention emphasises the importance of all those rights and freedoms being guaranteed by law, and of all restrictions on them being subject to the law, Article 3 of the First Protocol underlines the whole structure of the Convention in requiring that laws should be made by a legislature responsible to the people. Free elections are thus a condition of the “effective political democracy” referred to in the Preamble, and of the concept of a democratic society which runs through the Convention.

Article 3, in contrast to Article 21(3) of the Universal Declaration of Human Rights, does not refer expressly to universal suffrage, the Commission has expressed the view that it implies recognition of universal suffrage.<sup>176</sup> On the other hand, its form is different from that in which the other rights in the Convention and Protocol are expressed. It does not provide that everyone has the right to vote. If a person complains that he is disqualified from voting, the Commission’s duty is to consider whether such disqualification affects the ‘free expression of the opinion of the people’ under Article 3. An individual cannot, on the basis of article 3 of the First Protocol, protest against being excluded from voting by a State’s election legislation. For example because he has had his right to vote suspended as a result of conviction<sup>177</sup> or on grounds of residence.<sup>178</sup> The Commission stated that

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<sup>174</sup> *X v. United Kingdom*, 7 D. & R. 1976

<sup>175</sup> *Moreaux v Belgium* No 9276/81, 33 DR at 128-129 (1983)

<sup>176</sup> *The Greek case*, 12 YB 1 at 179

<sup>177</sup> *X v. FRG*, App. No: 530/59, Yearbook 111, p. 184, para 190

“The Contracting States may ...exclude categories of citizens such, for example, as overseas residents, from the vote, provided such exclusion does not prevent the free expression of the opinion of the people in the choice of legislature”<sup>179</sup>

According to Commission, referendums are not within the term of Article 3 of the First Protocol. The Commission stated that the obligations of the contracting States under Article 3 of the First Protocol are limited to the field of elections concerning the choice of legislature.<sup>180</sup> The Commission also stated on the same application that the British referendum on EEC membership was not an election on concerning the choice of the legislature; it was a purely consultative character and there was no legal obligation to organise such a referendum. A right to participate in the referendum could not be derived from that provision.<sup>181</sup> However, one may question the Commission’s approach to referendum. Apart from consultative referendums, there are other kind of referendums which the outcome of those are become an enactment of law. For example, on 6 November 1982, a referendum was held in Turkey that allowed people to ratify the new Constitution and to accept or reject the leader of the military coup as president for the next term. A campaign for rejection was strictly prohibited. It is obvious that this is a danger to a democratic society and an infringement with freedom of expression.

Article 3 of the First Protocol does not require popular participation in the election of the government nor the head of the state, no matter what its or his powers.<sup>182</sup> It requires no particular form of separation of powers or of control of the government by the elected legislature.

There is no suggestion that States have duties to compensate parties or candidates for economic disadvantage in the election process, either by subsidising parties or by imposing limits on contributions. However, if a state chooses to provide public financing, it is not prevented from doing so by the Convention.<sup>183</sup>

Apart from the several rights that each individual enjoys to a fair electoral system, individuals have discrete rights with respect to the system, identified originally by the Commission and now confirmed by the Court as the rights to vote

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<sup>178</sup> *X and Others v. Belgium*, App. No: 1065/61, Yearbook IV, p.260

<sup>179</sup> *Ibid.*, p.268

<sup>180</sup> *X v. FRG*, App. No 6742/74, 3 D.R., p. 98 (1975) and *X v UK*, App. No 7096/75, 3 DR 163 (1975)

<sup>181</sup> *X v UK* App. No 7096/75 3 DR p.163 (1975)

<sup>182</sup> *Habsburg-Lothringen v Austria* App. No 15344/89, 64 DR 210 para 219 (1989).

<sup>183</sup> *Association X, Y and Z v FRG*, App. No 6850/74, 5 DR 90 at 94 (1976)



and to stand for election.<sup>184</sup> In *Purcell v Ireland*,<sup>185</sup> the Commission said that the rights of individual voters protected by Article 3 of the First Protocol did not include the right that all political parties be granted equal coverage by the broadcasting media or, indeed, any coverage at all.

### 3.4.2. The Details of Free Elections

Elections should be held under the direction and supervision of the judiciary and in accordance with the principles of free, equal, secret, direct and universal suffrage. These principles which are enshrined in the Convention are fundamental. Therefore, it would be beneficial to discuss these principles in the lights of Article 3 of the First Protocol. Article 3 of the First Protocol clearly states that contracting States are under obligation to hold 'free elections' at 'reasonable intervals' by 'secret ballots' under conditions which will ensure "the free expression of the opinion" of the people in choosing legislatures. One may derive some conclusions from the Article as follows.

#### 3.4.2.1. Free Elections

This principle states that there shall be no pressure or threat on either voters or candidates. Free election does not only mean that the voters can cast their vote without illegal interference, it means that those who have the right to vote can choose whoever they want among the candidates."<sup>186</sup> The Convention emphasises on "free elections". If people are to be free to choose, there should be more than one options to choose between. "Free elections" requires according to the Convention to be held at "reasonable intervals". That means that the government cannot be in power for more than a reasonable period, which is usually 4 or 5 years in many countries. This way today's minority opinion will have a chance to become majority in the future which is one of the basic principle of democracy. The principle of free elections also requires a secret ballot and public count in order to avoid the falsification of the election results

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<sup>184</sup> *Mathieu-Mohin v Belgium* Series A No: 113 para 51 (1987), relying on *W, X, Y and Z v Belgium* App. Nos 6745/74, 6746/74, 2 DR 110 (1975)

<sup>185</sup> *Purcell v. Ireland*, App. No 15404/89. 70 DR 262 (1991)

<sup>186</sup> AMK., E:1968/15, K:1968:18, T:4..6.1968. AMKD, (the official periodicals of the Turkish Constitutional Court), Vol.6, p.102

### 3.4.2.2. Secret Ballot

Secret ballot and public count are fundamental principles of an election to be regarded as fair and free. It is a requirement by article 3 of the First Protocol. Secret ballot ensures that voters are free to choose whomever they want without fear of persecution by the authorities. It also ensures the free expression of opinion since it is not open to others influence.

In Turkey, from 1924 to 1961, there had been open ballots and secret counting of the votes. During the first multi-party election in 1946, there were claims that the government allowed a corrupt count of votes. According to eyewitnesses and press, the opposition party (the Democrat Party) should have won at least 20 seats in Istanbul, but they won only eight seats, as the votes were deliberately miscounted in secret.<sup>187</sup> With the 1961 Constitution the ballot became secret and the count public.

This principle was declared in the Ballot Act 1872 in the UK which is not to be found in the Representation of the People Act 1983.<sup>188</sup> However, according to Robert Blackburn, although the Act stresses on the principle of secret balloting, the modern British history has some strange practices of ballot voting.

“Casting one’s vote in the polling booth in circumstances of privacy is to be sharply distinguished from the equally important matter of maintaining the secrecy of how each citizen actually voted. In this second respect, there has never been a secret ballot in Britain, because every individual citizens vote can be traced from each ballot paper used.”<sup>189</sup>

The ballot paper used by the voters has a serial number, which is also printed on the counterfoil retained by electoral officials. The polling clerk writes the voter’s electoral registration number on the counterfoil to the ballot paper issued. It means that officials could find out who voted for which particular party in the constituency.<sup>190</sup>

### 3.4.2.3. Equal Vote

This principle sets out that every elector has equality and one vote regardless of their social status or wealth or education. However, in *Mathieu-Mohin v*

<sup>187</sup> Aksin, Sina, (1988), "Demokrat Partinin Kurulmasi"( Establishing the Democrat party) , *Tarih ve Toplum*, May,Vol: 12:2, pp.13-15

<sup>188</sup> Blackburn, R., (1995), *The Electoral System in Britain*, New York: St Martins Press, pp. 103-104

<sup>189</sup> *Ibid.*, p.105

<sup>190</sup> For more information see *ibid.*

*Belgium*,<sup>191</sup> the Court said that the Convention did not require that States adopt systems that gave equal weight to votes cast in the same election, which essentially would have required constituencies of approximately equal electoral populations. The Commission leaves open the question whether or not specific features in the voting behaviour could raise an issue under Article 3 of the First Protocol, also in conjunction with Article 14, if religious or ethnic groups could never be represented because there was a clear voting pattern along these lines in the majority.<sup>192</sup> On the other hand, the question might arise as to whether those who voted for the parties and failed to win seats in Parliament because of high national and regional thresholds, have equality regarding their votes.

#### **3.4.2.4. General Vote and Eligibility to Vote and Stand in Elections**

This principle requires the entire nation to cast their votes without discriminating against anybody regarding their sex, education and race.<sup>193</sup> The conditions which are stated in the Constitution and laws do not harm this principle. The conditions for being qualified as a voter are not to limit suffrage but for the benefit of society.<sup>194</sup> The rights are not absolute, for the state has an implied power to exclude some individuals from the right to vote<sup>195</sup> or to stand as candidates or to impose conditions on their doing so.<sup>196</sup> While prohibitions on voting or standing are not ruled out on grounds of age, for instance, they must not thwart, “the free expression of the opinion of the people”. Article 16 allows discrimination against aliens in the exercise of political activities, so that qualifications for voting based on nationality are not forbidden. Where voting or candidature is subject to conditions, these conditions must not impair the essence of the right by making its exercise burdensome or practically impossible.

The achievement of universal suffrage reflected ideas and influences common to all Western nations. Citizenship is the basic requirement for voting and standing for a post in a country's election. Even this requirement may be waived. In the 1979

<sup>191</sup> *Mathieu-Mohin v Belgium* Series A No: 113 (1987),

<sup>192</sup> *Kennedy Lindsay and Others v. United Kingdom*, App. No: 8364/78 15 DR, 140 (1979)

<sup>193</sup> Tezic, E., (1995), *Anayasa Hukuku*, (Constitutional Law), Ankara: Turhan Kitabevi, p.71

<sup>194</sup> Karamustafaoglu, T., (1970), *Secme Hakkinin Demokratik İlkeleri*, (The Democratic Principles of the Right to Vote), Ankara: A. U. H. F. Yayinlari, p.166, and Tezic, E., (1995), *op. cit.*, p.243

<sup>195</sup> *H v Netherlands*, App. No: 9914/82, 33 DR 242 (1979) (convicted prisoners may be disenfranchised)

<sup>196</sup> *Fryske Nasjonale Partij v Netherlands* App. No 11100/84, 45 DR 240 (1985) (language requirement for registration)

election to European Parliament, Ireland and Netherlands allowed citizens of other European Community countries resident there to vote. The basic requirement of citizenship is qualified on more or less common and uncontroversial grounds in every country. Age is the chief ground for limiting the right of citizens to vote. In most democratic countries today, an individual must be eighteen years old to vote. The age qualification is usually consistent with statutes determining when an individual legally comes of age. No Western nations allow the vote to persons younger than eighteen years old and until the 1960s or 1970s twenty one was the normal age for qualifying to vote. Conviction on a criminal charge, bankruptcy, or being declared mentally incompetent by a court is the second limitation upon franchise.

Most countries take positive measures to facilitate voting. The most common measure is to assume responsibility for compiling the electoral register. Meeting the formal legal criteria for voting is not sufficient for a person to cast a vote; an individual must also have his or her name upon the register of electors of a given constituency. An electoral register must be compiled in advance of polling day, showing who is eligible to cast a vote in a given constituency.

In Turkey, the conditions for being a voter are regulated by the Constitution and the Election Law. According to them, one should be a Turkish citizen, and be registered on the electors' list. The age to be an elector was regulated by the 1924 Constitution as 22. The 1961 Constitution did not regulate the age and left it to the legislator to decide. The 1982 Constitution regulated the age to be an elector as 21. By Constitutional amendment, it was reduced to 20 on 17.5.1987. The current situation now is that the age limit is 18 to be qualified to vote in elections. This was regulated by the last constitutional amendment in 1995. According to this, all Turkish citizens who are over 18 years old in the year of an election or referendum have the right to vote in elections and take part in a referendum.<sup>197</sup>

In the UK and in Turkey the right to vote is given not to all citizens but only those who are qualified for it. People who are in the army doing their national services, military students, prisoners, people in psychiatric hospitals, and people who reside abroad unless they come to Turkey for voting, and people are not Turkish citizens cannot vote in elections. In Britain, Commonwealth citizens and citizens of

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<sup>197</sup> See Article 67(3) of the Turkish Constitution

the Republic of Ireland as well as British citizens are entitle to vote.<sup>198</sup> According to British law, in addition to the age, residency and nationality necessities, the voter must be free from any particular disqualification imposed by law. Peers, convicted people (during the period of their imprisonment) and mentally ill and handicapped people are residing in psychiatric hospitals are excluded from voting rights. People are convicted for committing a corrupt or illegal practice in elections are also disqualified.<sup>199</sup>

Eligibility to stand for Parliamentary elections is regulated by the Act of Parliamentary Election 1983 in Turkey. According to this, anyone who is over thirty years old can be candidate unless he falls under one of the listed people in the Act. Those who are not a primary school graduate, prisoners, those who has not done his military service, those who are prohibited from civil services, those who are convicted for a crime which requires an imprisonment for a year or more. Those who are convicted for bribery, corruption, burglary, or for provoking people for hatred and enmity by discriminating public on the base of class, race, religion and denominations. These people can not stand for elections even if they have been pardoned.<sup>200</sup>

In the UK, there is no single Act which defines who can be candidate for Parliament. The questions of who cannot be a candidate has to be answered by looking at different legal sources. Aliens, peers and peeresses, ministers of religion (includes only Church of England, Church of Ireland and Roman Catholic Churches), people who have severe mental illness, people who declared bankrupt by a court, those who are reported by the Election Court to have committed a corrupt electoral practice are disqualified from election in Parliament.<sup>201</sup>

### 3.4.3. Electoral Systems

Although Article 3 of the First Protocol does not require anything regarding electoral system to impose on states,<sup>202</sup> it may be beneficial to examine the effects of electoral system on the political system. Traditionally analysis of the consequences of electoral systems has concentrated upon two central topics, the influence of the

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<sup>198</sup> Blackburn, R., (1995), *op. cit.* p.80

<sup>199</sup> *Ibid.*, pp.82-83

<sup>200</sup> Act of Parliamentary Election, Article 11

<sup>201</sup> These disqualifications are examined in detail in Blackburn, R., (1995) *op. cit.* pp. 157-195

<sup>202</sup> *Liberal Party v. U.K.*, App. No 8765/79 21 DR (1980) 4 EHRR, 122

electoral systems upon the number of the parties, and its effects upon the political stability of a country. Electoral systems may also play an important role in encouraging or militating against alliances or other forms of co-operation between political parties.<sup>203</sup>

Electoral laws have profound political effects. For example, proportional representation produces more parties and less dis-proportionality in the conversion of votes to seats than plurality and majority systems.<sup>204</sup> Whereas people choose what party they support, the electoral system determines what effect votes have in allocating seats in a national Parliament. There is nothing automatic about the translation of votes into seats: how this is done depends upon the choice between different electoral systems.<sup>205</sup> In the UK the age limit for candidacy is 21 while in Turkey the limit is 30 as stated above.

It could be said that there are two principles which must be considered in an electoral system. These are the principles of justice and the principle of stability. A difficulty in setting a suitable electoral system is the establishment of a balance between the principle of justice in representation and the principle of stability in politics. These principles work in opposite ways. These principles can be different from one system to another, such as while the principle of justice is primary concern for the proportional electoral system, plurality system concerns governmental stability first.

Majority, plurality, and proportional representation constitute the three broad types of electoral formula, though there is great variation in the specific voting rules used to compute winners and losers within each system.<sup>206</sup>

Every electoral system has some consequences, which affects the political structure. No electoral system is perfect. Each electoral system has some advantages and disadvantages. To make a choice among these systems is simply a matter of political preference.<sup>207</sup>

<sup>203</sup> Tezic, E., (1995), *op. cit.*, p.275

<sup>204</sup> Duverger M., (1954), *Political Parties, Their Organisation and Activity in the Modern State*, New York, pp.250-255

<sup>205</sup> Rae, D., (1971), *The Political Consequences of Electoral Laws*, New Haven, Yale University Press, p.14

<sup>206</sup> Rae D., *ibid.*, p.23

#### 3.4.4. Analysis

By contrast, to the notion of liberal rights, there have been relatively few cases to deal with electoral process. The reason is that the Convention does not have much to say about electoral systems that the States may adapt. The emphasis here is in terms of requiring clear laws and uniformity of applications regarding elections. The Convention is hesitant to say too much about electoral system and rather prefers to leave the matter to the States to decide. However, one may argue that electoral systems are very important in terms of ensuring the free expression of the opinion of the people in choosing legislatures. In some electoral systems, voters have to cast their votes for a political party which they do not support in order not to waste their votes. High thresholds and first past the post electoral system may restrict voters preference and may limit the political representation in parliament.

#### 3.5. Conclusion

In this chapter, the rights to freedom of expression, freedom of association and free elections have been examined. While studying these three important rights which are essential for a democratic society, the European Convention on Human Rights is used as a criterion and obviously the decisions of the Commission and the judgments of the Court of Human Rights are the main sources here. As has been shown in this chapter, the Strasbourg authorities repeatedly referred to political democracy and how to achieve a pluralistic and democratic society, how essential the protection of the rights to freedoms of expression and association is. As established in Chapter 2 of this thesis, liberal democracy is founded on free will and human rights and political parties are indispensable elements of democracy, it could be said that these three rights which are protected by the Convention are the most important requirements for political parties to perform their functions and roles in liberal democracies. Without freedom of expression, political parties can not express their ideas, and can not present their programmes to public. Without freedom of association, which enshrines freedom of expression in itself, it is difficult for people to organise as a political party to pursue their aims and function as interest

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<sup>207</sup> Turk, H.S. and Tuncer, E. (1995, *Turkiye Icin Nasil Bir Secim Sistemi?* (What Kind of Electoral System for Turkey?), Ankara: Tesav Y., p.8

aggregations. If there is no free elections, there is no point in having political parties. Since the main feature of political parties as was stated in Chapter 2, is to put their candidates for legislative election and to take part in government in order to implement their policies.

In conclusion it could be said that liberal democracy requires political parties and political parties requires existences of freedoms of expression and association as well as free elections in order to fulfil their functions and duties.

In terms of political parties as this chapter has shown, Turkey has had quite an eventful history in recent times and it appears to show some degree of clash of traditions between the Convention tradition and Turkey's statist tradition. The statist tradition in Turkey and its relevance to political parties will be explored further in the next chapters.



## CHAPTER 4

### THE ROLE OF POLITICAL PARTIES IN TURKEY

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#### 4.1 Introduction

This chapter aims to understand political parties and their roles in Turkish society and also aims to offer a critique from the point of view of liberal democracy and the expected roles of political parties within it. To establish the place of political parties in Turkish democracy, and the reasons behind it, Turkish political history and Turkish political parties must be studied in detail. This chapter also aims to answer the question of whether democratic political institutions in Turkey will be institutionalised to carry Turkey further, within political stability, towards her aspirations for economic and political change. Therefore, in this chapter, the historical background of the Turkish political system is examined as well as that of main political parties which have been influential in Turkish politics. Since Turkey has a multi-party system and has had over 120 political parties throughout its multi-party history, it is impossible to examine every single political party. The criteria for selecting which political parties to study has been to look at whether they won any Parliamentary seats and represented any particular section of the society.

Turkish political history and cultural structure must be understood in order to understand the role of political parties in Turkish politics and social structure. There are some special features of Turkish history and culture which should be examined such as statism and Turkish political culture. In this chapter, the historical background of Turkish political system and its statist structure will be studied along with liberal tendencies or movements in Turkish politics and Turkish political parties and their role in Turkish democracy.

Turkish political culture has the following attributes: Turkish people ascribe privacy to the collectivity, not to the individual. For both the Right and Left, collectivist tendencies have dominated. The human being is not valued as an individual, and

citizens get their values from their classes, and societal allegiances.<sup>1</sup> They have an inclination to obey authority. On the other hand, Tanyol claims that neither the Turkish State tradition, nor the Turkish people is accustomed to the idea of the Army out of Turkish politics.<sup>2</sup> The Turkish political system has depended on illicit gains. In this respect, Turkey does not have a well established democracy. Politicians act in their narrowly defined self-interest. By manipulating the public institutions, everyone tries to get benefits which they really do not deserve.<sup>3</sup>

Ideological handicaps are present in all the political communities. Ideology is characterised by paternalism, lack of trust and collectivism. In Turkey, it is even possible to encounter “civil totalitarianism”.<sup>4</sup> The prominent columnist, Cengiz Candar points out that the Turks are inclined to be sloganistic and they are quite casual about what they do<sup>5</sup>. These characteristics of Turkish society deeply affect the political system and political parties. Paternalism, lack of trust and collectivism are main constraints on a liberal structure in Turkey.

Since its first transition from an authoritarian one-party system to democratic politics in the late 1940s, Turkey has made significant progress toward institutionalising representative institutions and process. Multi-partyism, competitive elections, and the peaceful transfer of power following national electoral contest have been part of the Turkish political scene for more than four decades. However the process of democratisation in Turkey has experienced serious problems and still has not led to the establishment of a consolidated democracy. The three regime breakdowns in 1960, 1971 and 1980 are the obvious indicators of the problems that Turkey has met in its efforts to achieve a democratic consolidation. However, for much of this century, Turkish politics has been party-centred. During the formative years of the Republic (1923-1950) the Republican Party (RPP) served as the principal political organisation of the one-party

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<sup>1</sup> Yayla, A., (1994), “Turkiye'nin Liberalisme ihtiyaci Var mi?” (Does Turkey Need Liberalism?) *Polemik*, Vol.12: 5, p.8

<sup>2</sup> Tanyol, C., (1990), *Cankaya Drami*, (Drama of Cankaya), Istanbul: Altin Kitaplar, p.192

<sup>3</sup> Yayla, A., (1996), “Ozal Reformcu Lider” in Sezal, I., (ed.), *Devlet ve Siyaset Adami Turgut Ozal*, (The Stateman and Politician: Ozal) Istanbul: 2 Mayıs Vakfi

<sup>4</sup> See Helvacı, A., (1998), *The Influence of Liberalism on Turkish Economy, Politics and Civic Culture with Particular Reference to the Ozal Era*, Unpublished PhD Thesis, Sheffield University, November 1998

regime that was established by Atatürk. Following the transition from a one-party system to a multi-party system, a competitive party system, dominated by two large, catch-all parties, became the principal institutional mechanism for electoral mobilisation and policy-making in Turkish political life.<sup>6</sup> The change was a breakthrough in the institutionalisation of free and competitive elections, the legitimisation of opposition, and more generally the extension of political participation. Major Turkish parties have displayed a relatively high degree of organisational strength, complexity, and continuity.<sup>7</sup> At the beginning of the era of competitive politics, both major parties namely; the Republican People Party and the Democrat Party, were middle-of-the road pluralistic groupings, directing their populist appeal toward mobilising the entire population and frowning on those smaller parties that appealed to class or other narrower, special-interest groups. All parties have frequently been dominated by prominent personalities.<sup>8</sup>

In the Turkish context, the concept of the State has stood above society, politics and economics and has acted independently of them. The Ottoman political scene was an appropriate realm for the development of authoritarian politics. One of the main sources of statism in Turkish politics lies in the Turkish political culture. Turkish culture “assigns an important and perhaps mystic role to the State as the saviour, and the embodiment, of Turkish society.”<sup>9</sup>

The idea of the State has played an essential role in Turkish politics. The State renders the important and traditional functions of distributing welfare and justice. While performing this function, the focusing of power at the centre and the control of the periphery through the distribution of patronage to local persons of influence have been

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<sup>5</sup> *Sabah Gazetesi*, (The Turkish Daily Newspaper) 13 May 1993, p.3

<sup>6</sup> See Heper, M & Landau, J.M (eds. 1991), *Political Parties and Democracy in Turkey*, London: I.B. Tauris

<sup>7</sup> Sayari, S., “Aspects of Organisation in Turkey: Problems and Prospects” in O’Donnell & Schmitter (eds.) *Transitions from Authoritarian Rule*, pp.165-186

<sup>8</sup> See Ahmad, F. and Bedia, T., (1976), *Türkiye’de Çok partili Politikaların Açıklamalı Tarihi (1950-1971)*, (A Chronology of Multiparty Politics in Turkey, 1945-1971), Ankara: Bilgi Yayınevi

<sup>9</sup> Ergüder, U. (1987), “Decentralisation of Local Government and Political Culture in Turkey” in Heper, M (ed.) *Democracy and Local Government: Istanbul in 1980s*. Bridlington :The Eothen Press, p11

important appearances of this State tradition.<sup>10</sup> Because of this tradition, power and rewards are centralised.

“The power of central government is partly a function of history and culture.”<sup>11</sup> Turkey has an authoritarian political culture which is intolerant towards opposition, sees the power as absolute and recognises the State’s absolute right to legislate on public matters.<sup>12</sup> Many features characterise Turkish political culture. The most important one is that the dominance of status-based values rather than market-originated ones. This reflected the statist nature of Turkish history.

## 4.2 Historical Background of Turkish Political System

History of Turkish politics could be separated as ottoman era and republic era. Republic era could be listed as ruling of Ataturk, single party regime, multi-party time, 1960 military coup, 1971 military coup and 1980 military coup.

### 4.2.1. The Ottoman Era

Though Turkey has a long tradition of non-governmental organisations, the Ottoman Empire did not have a strong liberal tradition in the Western sense. The idea of freedom was not closely related to individual freedom. Freedom mostly meant to be free from outside aggression, or not to be in jail.

It is usually agreed that the Ottoman State was a bureaucratic empire rather than a European style feudal system.<sup>13</sup> The Ottoman rulers from the very beginning set forth to establish a centralised polity<sup>14</sup> and the State was in the supreme position in the Ottoman polity.<sup>15</sup>

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<sup>10</sup> Erguder, U., (1987), “Decentralisation of Local Government and Political Culture in Turkey” in Heper, M (ed.) *Democracy and Local Government: Istanbul in 1980s*. Bridlington :The Eothen Press, p.10

<sup>11</sup> Whiteley, P., (1986), *Political Control of the Macro Economy*, London: SAGE Publications, p. 187

<sup>12</sup> Heper, M., (1985), *The State Tradition in Turkey*, Hull: The Eothen Press, p.17

<sup>13</sup> Ozbudun, E., and others (eds.1988), *Perspective on Democracy in Turkey*, Ankara: Turkish Political Science Association, p.2

<sup>14</sup> Heper, M., (1980), “Center and Periphery in the Ottoman Empire”, *International Political Science Review*, Vol.1: 1, p. 82

<sup>15</sup> Mardin, S., (1988), “Freedom in an Ottoman Perspective”, in Heper, M. &Evin, A., (ed.), *State, Democracy and the Military*, Hamburg: Deutches Orient Institute, p. 29

The military played a crucial role in the establishment of the Ottoman State.<sup>16</sup> The identity of the Ottoman State and its army was intertwined.<sup>17</sup>

The Turkish liberation movement started from the Tanzimat period.<sup>18</sup> As the Tanzimat was also motivated by a policy of consolidating the centre itself, the centre intended to penetrate the periphery more effectively. “The equality of all “citizens” proclaimed in 1839 and the “Islahat Fermanı” (Reform Edict) of 1856 was considered by the centre to be a practical means of mobilising the masses behind the State and against the “local notables”.<sup>19</sup> In the classical period the State was structured on the ruler, in the second period the State was structured on the bureaucracy.<sup>20</sup>

Right after the “Tanzimat”, the military strengthened its position, the revolutionary movement arose within the army, (all the officials, including Atatürk, who would determine the new Republic’s destiny, grew up during the Young Turk period).<sup>21</sup> This era had two important distinctions from the “Tanzimat” period: (a) the military became the main part of the state bureaucracy. (b) The motive of saving the state became the most dominant idea of the civil and military bureaucracy which has subsequently created problems for modern Turkey.

The first Ottoman Constitution (Kanun-i Esasi) was declared in 1876, by virtue of the opposition of the Young Ottomans.<sup>22</sup> Nevertheless, Sultan Abdulhamid II suspended the Constitution itself on 14th February 1878 and this continued until the Young Turk revolution of 1908.<sup>23</sup>

The second constitutional period (*İkinci Meşrutiyet*) (1908-1918) formed the most important part of the latest period of the Ottoman Empire. The “İttihad and

<sup>16</sup> Heper, M., (1985), *The State Tradition in Turkey*, Hull: The Eothen Press, p. 21

<sup>17</sup> Hale, W., (1994), *Turkish Politics and the Military*, London: Routledge, p. 2.

<sup>18</sup> See Cavdar, T., (1992), *Türkiye’de Liberalizm (Liberalism in Turkey)*, Ankara: İmge Yayınları, and Seyitdanlıoğlu, M., (1996), “Türkiye’de Liberal Düşüncenin Doğusu ve Gelişimi” *Liberal Düşünce*, Sayı: 2

<sup>19</sup> Heper, M., (1985), *The State Tradition in Turkey*, Hull: The Eothen Press, p.39

<sup>20</sup> *Ibid.*, pp.44-45

<sup>21</sup> The *Young Turks* were the constitutionalists who opposed the monarchic autocracy, which emerged during the first Ottoman Parliament between 1876 and 1978.

<sup>22</sup> Özbudun, E., and others (1988), *Perspective on Democracy in Turkey*, Ankara: Turkish Political Science Association. p.5

<sup>23</sup> Özbudun, E., and others, (1988), *Perspective on Democracy in Turkey*, Ankara: Turkish Political Science Association, p.7

Terakki” (Society for Union and Progress) transformed itself into a political party. The Ittihad and Terakki politics were ‘issue-oriented politics’, with the modernising, unifying, centralising, standardising, nationalist, authoritarian and statist character.<sup>24</sup>

At the very end of the Ottoman Empire the military bureaucracy, the army, and the civil bureaucracy were at the very core of Turkish politics, though the former has been more dominant due to the Young Turks period. The young Republic of Turkey could not, and did not, try to change this course, and the military and civil bureaucracy have been the main guarantors of statism in Turkey. Although Turkey has had many parliament-based governments, they could not have explicit power, unless they acted in accordance with the statism itself.

After victory over the invaders (mainly, Greeks, French and Italians) in the Independence War, the Sultanate was abolished in the autumn of 1922 and on 29th October 1923 the new Republic was acclaimed. Mustafa Kemal Ataturk formed a political party, the Republican People’s Party that was claimed to be the only real follower of the “Ittihad and Terakki”. In the 1923 elections, it won almost all of the assembly seats, but the new assembly was not the same assembly as that of 1921 in that it was far from being an obedient instrument of the leadership.

#### **4.2.2. The Republican Era**

The establishment of the Republic represents a turning point in terms of liberalism, because of the close relationship between modernisation and liberalism despite the fact the founder of modern Turkey, Mustafa Kemal Ataturk, headed an authoritarian strand which stemmed from the “Ittihad Terakki” tradition. The announcement of the Republic and the Grand National Assembly itself were fundamental and pre-eminent reforms which created a framework of political and legal legitimacy for every effort towards reaching “the level of contemporary civilisation” (*cagdas uygarlik duzeyi*).

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<sup>24</sup> *Ibid.*, p. 9

#### 4.2.2.1 The Rule of Ataturk (1923-1938)

Although Ataturk, the founder of Republican Turkey, did not consider the bureaucracy as the main formulator and the guardian of the interests of the Turkish community, he perceived the bureaucracy as an essential part of the leadership which was expected to carry Turkey towards “contemporary civilisation”.<sup>25</sup>

As Hale states, Ataturk’s legacy was ambiguous in terms of the military in Turkish politics. On the one hand, he forbade serving army officers to play any part in the legislature, on the other hand he encouraged them to think of themselves as the ultimate guardians of the republic.<sup>26</sup> However, while Ataturk established the principle that the military in the Turkish Republic was to stay out of politics, he relied upon the military while he was realising his republican reforms.<sup>27</sup> As Hale put it, “Ataturk’s revolution had left the Turkish army as the ultimate guardian of the republic, but effectively separated it from direct responsibility for government.”<sup>28</sup>

Since the political character of the Ataturkian era had a clear statist character, which has been explained above, only two politically liberal examples will be picked up and discussed here. The first liberal political movement emerged in November 1924. Twenty-nine deputies of the People’s Party resigned from their party and formed a new party called the Progressive Republican Party (*Terakkiyer Cumhuriyet Partisi*).

Its foundation created some concerns in the government, and the Progressive Republican Party did not last long and was eventually outlawed on 3 June 1925 by a decision of the Council of Ministers. They were accused of taking part in the Seyh Said (Kurdish-religious) rebellion<sup>29</sup> that erupted in February 1925 and this was the justification for shutting down the party. Consequently, its leaders were banned from Parliament.

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<sup>25</sup> Heper, M., (1985), : *The State Tradition in Turkey*, Hull: The Eothen Press, p.56

<sup>26</sup> Hale, W., (1988), “ Transition in Civilian Governments in Turkey” in Heper M & Evin, A., (ed), *op. cit.* p.174

<sup>27</sup> Altan, M., (1994), “Kemalizm Ordunun Resmi Ideolojisi” (Kemalism is the formal ideology of the Military) *Turkiye Gunlugu*, Sayi: 28, Mayıs-Haziran, p.63

<sup>28</sup> Hale, W., (1994), *Turkish Politics and the Military*, London: Routledge, p. 88

<sup>29</sup> For the Seyh Sait uprising see Yalcin-Heckmann, L., (1994). “Ethnic Islam and Nationalism Among the Kurds in Turkey” in Tapper, R., (ed.) *Islam in Modern Turkey*, London: I.B. Tauris & Co Ltd.

The radical reforms and the economic stagnation between 1922 and 1930 created antagonism and discontent in the country. The ruling elite was aware of growing discontent and decided to divert opposition within the populace, by setting up a loyal party to provide an opposition. The Liberal Republican Party (*Serbest Cumhuriyet Firkasi*) came about as the result of these circumstances.

“The purpose in establishing this party was to air the accumulated discontent and provide some control over the government both to correct its shortcomings, and to stimulate it to seek new ways of coping with the economic situation.”<sup>30</sup>

The party did not survive too long, existing only for ninety-nine days before it was banned on November 17, 1930.<sup>31</sup>

#### 4.2.2.2. After Ataturk: Single Party Ruling (1938-1946)

Immediately after Ataturk’s death in 1938, “the ‘revolutionary’ impact was weakened and the bureaucracy quickly reverted to its same old routine”.<sup>32</sup> Some of his basic ideas were distorted by the bureaucratic elite and the intelligentsia. “Gradually, the civil bureaucracy came to play a larger role in the polity”.<sup>33</sup>

The republican revolution was realised by civil and military bureaucrats and consolidated by bureaucratic power with ministries at the centre and governors in the provinces and districts.<sup>34</sup>

The bureaucratic elite did not welcome the representatives of the periphery at the national and local levels. According to Mardin, this was the main characteristic of the bureaucracy in Turkey. They have never trusted the representatives.<sup>35</sup> They were sensitive to the crisis of integration, and therefore not sympathetic towards the periphery.

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<sup>30</sup> Karpat, K., (1959) *Turkey's Politics: The Transition to a Multi Party System*, New Jersey: Princeton University Press, p.65

<sup>31</sup> Keyder, C., (1987), *State & Class in Turkey*, London: Verso, pp.124-125

<sup>32</sup> Heper, M., (1985), *The State Tradition in Turkey*, Hull: The Eothen Press, p.67

<sup>33</sup> *Ibid.*, p.68

<sup>34</sup> Ulagay, O., (1998) “Euro Oncesi AB’de Sol Damgasi” (The Stamp of Left in Turkey before the Euro) *Milliyet* (daily newspaper) 2nd November, p.1

<sup>35</sup> Mardin, S., (1990), *Turkiyede Toplum ve Siyaset. (Society and Politics in Turkey)* Istanbul: Iletisim Yayinlari, p. 46



After Atatürk's death, "Ataturkian thought was gradually transformed by the bureaucratic elite into an ideology".<sup>36</sup> Bureaucracy considered itself as the guardians of the Republic, and acted in accordance with this self-appointed role. It is widely believed that the one party rule oppressed whole phases of Turkish society in terms of laicism<sup>37</sup> and national integrity to consolidate its state centred authoritarianism.<sup>38</sup>

Although the introduction of a continuing authoritarian regime was not intended, the RPP left the statist polity behind as a legacy. Although the RPP was in opposition, their statist Jacobean perspective became an essence of the Turkish political regime. Through this manipulation, "the Kemalist regime evolved into a single-party model without having a single-party ideology."<sup>39</sup> In fact, Kemalism became not only the single party ideology, but also the State ideology itself after the 1960 military coup in Turkish politics, and persisted even up to the 1980s.

#### 4.2.2.3. Multi-Party System

The struggle for a multi-party system in Turkey began in 1946 and brought about a reinterpretation of the Republic's ideology. It had two main goals: firstly, it intended to neutralise the ideology and the political means which favoured the establishment and maintenance of one-party ruling. Secondly, it attempted to assure the free existence of opposition parties, and to devise an impartial election mechanism to allow the people to freely express their preference for a specific political party.<sup>40</sup>

The Democratic Party came to power with victory in the 14 May 1950 elections. The two goals of the Democratic Party were economic and religious freedom. It brought together urban liberals and religious conservatives and modern sections of the rural population into the political sphere. Though some intellectuals describe the Democrat

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<sup>36</sup> Heper, M., (1987), "State, Democracy and Bureaucracy in Turkey", in Heper, M., (ed.), *The State and Public Bureaucracies: A Comparative Perspective*, London: Greenwood Press, p. 135

<sup>37</sup> *Laicism* differs from *secularism*. Though the latter stands for an exact separation of religion and State, the former tends to keep religion in its grip. See Hocaoglu, D., (1994), "Sekularizm, Laisizm ve Turk Lasisizmi", (Secularism, Laicism and Turkish Laicism), *Turkiye Gunlugu*, Sayi 29

<sup>38</sup> Ozdemir, H., (1993), *Sivil Cumhuriyet*, (Civil Republic), Istsbul: Iz Yayincilik, p.32

<sup>39</sup> Ozbudun, E., and others (1988), *Perspective on Democracy in Turkey*, Ankara: Turkish Political Science Association, p. 15

<sup>40</sup> Karpat, K., (1959) *Turkey's Politics: The Transition to a Multi Party System*, New Jersey: Princeton University Press, p. 245

Party's character as economic and political (Keyder<sup>41</sup>, Yayla<sup>42</sup> and Erdogan<sup>43</sup>); others do not accept it as a force for economic modernisation (Ozbudun<sup>44</sup>). They stated that the main motivator of the DP and its supporters was their opposition to the State officials and the RPP. This movement emerged from the necessity of democracy.<sup>45</sup>

Turkey had its first real free general elections in 1950. The timing of the decision to democratise the Turkish party system probably had been affected by changes in the international environment as well. Obviously international factors also helped the DP. The free world was victorious in World War II. Turkey also started to receive American aid. Diversities, which were present in the society, started to come out and coalesced with the entrepreneurship to create the DP experience. It was the revolt of the periphery against the centre, and it did not have anything to do with Islamic revivalism.<sup>46</sup> This led to some kind of civil construction in the society.

Right after the first free elections in Turkey in 1950, the centre-periphery conflict came to the surface of the political and social agenda. Though the Republican People's Party was elitist, the Democrat Party placed rural interest above urban. It carried urban liberals, religious conservatives, the commercial middle classes (merchants) and the urban poor and modern sections of the rural population into politics.<sup>47</sup> Obviously, the civil and military bureaucracy was discontented with this development.

The Turkish bourgeoisie continued to gain some strength until the 1950s. Although it stayed with the RPP and its bureaucratic cadre during the Free Party experience, the upper middle class broke up its alliance with both the RPP and bureaucracy and chose to ride the mobilisation of the masses, since it had full confidence and expectation in the coming boom in the 1950 elections.<sup>48</sup>

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<sup>41</sup> Keyder, C., (1987), *State and Class in Turkey*, London-New York: Verso

<sup>42</sup> Yayla, A., (1996), "Ozal Reformcu Lider" in Sezal, I., (ed.) *Devlet ve Siyaset Adami Turgut Ozal*, (The Stateman and Politician: Ozal), Istanbul: 2 Mayıs Vakfı

<sup>43</sup> Erdogan, M., (1995), *Demokrasi, Laiklik, Resmi Ideoloji* (Democracy, Secularism and Official Ideology), Ankara: Siyasal Kitabevi

<sup>44</sup> Ozbudun, E., and others (1988), *Perspective on Democracy in Turkey*, Ankara: Turkish Political Science Association

<sup>45</sup> Ozbudun, E., and others (1988), *ibid.*, p.16

<sup>46</sup> Tapper, R., (1991), *Islam in Modern Turkey*, London: I. B. Tauris & Co Ltd. p.9

<sup>47</sup> Ozbudun, E., and others (1988), *ibid.*, p.17

<sup>48</sup> Keyder, C., (1987), *State & Class in Turkey*, London: Verso, pp.123-124

On the other hand, mostly due to the Islamic opposition, “the politics of Turkey gave the impression to the unsatisfied reformists on the left, who felt that ‘liberty’ had been restored far too early, that the great reformist task had been left incomplete.”<sup>49</sup> Later, that impression paved the way for the 1960 military coup.

By stating that westernisation-modernisation movements have influenced Turkish political history directly, Gole makes a sociological classification and claims that there had never been any State-society relations except, westernisation-modernisation movements, since the Tanzimat until the 1950s. Although the modernisation process was directed by the elite until the 1950s, the 1950s indicates the beginning of the period in which society put its weight behind the modernisation process, and the development of a civil society.<sup>50</sup>

The military’s prestige was declining owing to the Democrat Party’s policies, because “under the new regime, the individual citizen, rather than the State (primarily represented by the Army and civil bureaucracy) was encouraged to act on the main motive force of national development.”<sup>51</sup>

As a consequence of harsh feeling and the discontent of civil and military bureaucracy, the first military coup of the Republic of Turkey came about on 27 May 1960 “owing to the crisis into which Turkish democracy has fallen, and owing to the recent sad incidents and in order to prevent fratricide.”<sup>52</sup>

#### 4.2.2.4. First Military Intervention (1960-1962)

The 1960 military coup represented a victory for the bureaucracy over social diversity. The 1960 revolution is considered by some authors, as an attempt by the Kemalist centre to re-impose its hegemony.<sup>53</sup> Due to the fact that the Republicans relied on the urban bureaucratic elite, as many authors point out, “the 1960 military intervention may be looked upon as the reaction of a front composed of the bureaucratic-

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<sup>49</sup> Yalman, N., (1973), “Some Observation on Secularism in Islam: Cultural Revolution in Turkey” *Dadalus*, Vol. 102 Winter, p.155

<sup>50</sup> Gole, N., (1997), “Sivil Toplum”, (Civil Society), *Yeni Turkiye*, Vol. 18, p.17

<sup>51</sup> Hale, W., (1994), *Turkish Politics and the Military*, London: Routledge, p.98

<sup>52</sup> *Ibid.*, p.110

<sup>53</sup> Heper, M., (1985), *The State Tradition in Turkey*, Hull: The Eothen Press, p.13

intelligentsia against the Democrats supported by the periphery.”<sup>54</sup> The 1960 military coup had a historical meaning for the Turkish political system because it paved the way for military intervention in democracy in Turkey whenever the military considered Turkey’s security and integrity in danger.

On 27 May 1961, the final draft of the 1961 constitution was accepted and ratified by the Turkish Nation on 17 September 1961. The 1961 Constitution reflected the basic political values and interests of these groups, and it provided an effective system of checks and balances to limit the power of elected assemblies. Thus, the power of the elected assemblies would be balanced by judicial and other agencies that represented the values of the bureaucratic elite (which meant statism). Furthermore, as a legacy of the 1960s, because former officers Cemal Gursel and Cevdet Sunay became presidents in the 1960s in sequence, “the unfortunate idea was created among some officers that the Chief of the General Staff would automatically become president on the death or retirement of the incumbent.”<sup>55</sup>

The 1961 constitution changed the perception of ‘national sovereignty. In the 1960 constitution, ‘the concept of unconditional people’s sovereignty’ of the 1921 and 1923 constitutions was changed to “the people use their sovereignty in the specially arranged proper ways in accordance with constitution.”<sup>56</sup> The one reason behind this restriction is that the ruling class desired to control “national will”. This decision was shaped by, and fulfilled the philosophy of the 27 May 1960 military coup. An endeavour to restrict the elected government became a convention through the 1961 Constitution. The 1982 Constitution retained this formulation with slight editorial differences.<sup>57</sup>

Despite the fact that the 1961 Constitution brought liberal provisions on civil liberties, it also brought the senate, the constitutional court, the national security council, the supreme council of the judiciary and the State planning organisation which opened the way to definite changes in the political scene away from democracy. At the

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<sup>54</sup> Erguder, U., (1987), “Decentralisation of Local Government and Political Culture in Turkey” in Heper, M (ed.) *Democracy and Local Government: Istanbul in 1980s*. Bridlington :The Eothen Press, p.20

<sup>55</sup> Hale, W., (1994), *Turkish Politics and the Military*, London: Routledge, p.173

<sup>56</sup> Ates, T., (1996), “Turkiye’de Siyaset nereye Gidiyor?”,(Where is politics in Turkey going to?) *Yeni Turkiye*, Vol.2: 9, p.14

governmental level, it signified the dominance of statist Kemalism. The 1960s strengthened the bureaucracy and represented the re-emergence of the military as a major force. Therefore, the 1960s paved the way for the dominance of centrist and elitist politics.<sup>58</sup> After 1961, the statist groups had acquired considerable influence and wished to achieve the political and ideological supremacy of its own cadres.<sup>59</sup>

In many respects, the 1961 constitution represented a reaction to the severe problems observed in the functioning of the 1924 constitution. Whilst the 1961 constitution tried to restrict 'people's sovereignty', it also expanded civil liberties and granted extensive social rights.

The elitist bureaucratic and intellectual members of the Representative Assembly endeavoured to supply these liberties for themselves. They were not segregationists in essence, but they did not expect the opposition to use these rights effectively, because the opposition was neither very well educated nor well organised. However, these liberties were also beneficial for the opposition and the passive masses of the society, in that, these liberties improved their position and allowed them to form themselves into organisations. The religious front especially became much stronger than before. With the provision of the more liberal atmosphere of the 1961 constitution, all kinds of left-wing and right-wing groups appeared on the political scene. It may be said at this point regarding overall process of political development that there were two (to some extent conflicting) effects brought about by the 1961 Constitution. At a macro level, it could be said that the state elite (the bureaucracies) sought to bring back a degree of state control of political process. Establishing the Senate, the Constitutional Court and the National Security Council strengthened the bureaucracy and represented the re-emergence of the military as a major political force. On the other hand, there was also the expansion of civil liberties. At individualist level, in fact, there is progress towards civil liberties. This seems to hold seeds of future conflict. If civil liberties are granted to people at an individual level, they will use them. However, they will come up against

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<sup>57</sup> Ozdemir, H., (1995), *Tarih ve Politika*, (History and Politics), Istanbul: Iz Yayincilik, p.361

<sup>58</sup> Saribay, A. Y., (1995), *Postmodernite, Sivil Toplum ve Islam*, (Postmodernism, Civil Society and Islam), Istanbul: Iletisim Yayinlari, p. 64

<sup>59</sup> Karpat, K., (1988), "Military Interventions: Army-Civilian Relations in Turkey Before and after 1980" in Heper, M. &Evin, A., (ed. 1988.), *op. cit.*, p.144

the constraints which were imposed at macro level and that would create tension between the two. Allowing political freedoms at low level did seem to allow all kinds of groupings to appear on political scene. That was quite vibrant in political terms and they were no doubt ultimately frustrated by the controls imposed on them at high level.

“The dramatic socio-economic change that Turkey has experienced since 1950 had important consequences for Turkish politics during the 1970s.”<sup>60</sup> Turkish politics in the 1960s and 1970s were increasingly ideological. In addition to the fact that the RPP failed to win an overall majority in any of the six general elections since 1950, the political parties failed to make coalitions perform effectively, and terrorism increased as a means of obtaining political demands in the 1970s. Moreover, the student political activism that had started at the end of the Democrat Party governments intensified due to the influence of the international 1968 youth movement. Revolutionary Marxist organisations and their oppositions were created in the 1960s and grew in number and size as well.

Due to the increasing acts of political violence by extremist youth groups, in 1971, the 12 March military memorandum was given to the ruling party, the Justice party. Immediately after the military memorandum, the leader of the Justice party, Prime Minister Demirel resigned. They did not dissolve the parliament and preferred a technocratic government under Professor Nihat Erim. This government was expected to end political violence with the help of martial law, to accomplish certain constitutional amendments designed to strengthen the executive and to carry out the social reforms provided for by the 1961 constitution.<sup>61</sup>

At that time, “[military] action was far less decisive and complete”,<sup>62</sup> and they did not come to power directly, but permitted the establishment of a non-partisan cabinet to impose martial law.<sup>63</sup> On the other hand, the 1971 military coup did establish the State Security Courts in 1973 to deal with offences against the existence of the Turkish

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<sup>60</sup> Erguder, U., (1987), “Decentralisation of Local Government and Political Culture in Turkey” in Heper, M (ed.) *Democracy and Local Government: Istanbul in 1980s*, Bridlington :The Eothen Press, p.17

<sup>61</sup> Ozbudun, E., Erguder, U. and Turan, I., (1988), *Perspective on Democracy in Turkey*, Ankara: Turkish Political Science Association, p. 20

<sup>62</sup> Hale, W., (1994), *Turkish Politics and the Military*, London: Routledge, p.184

<sup>63</sup> Brown, J., (1989), “The Military and Society: The Turkish Case” *Middle Eastern Studies*, Vol.25, p.389

State. “These included crimes covered by 99 different Articles of the Penal Code, attacks on means of communication and infringements of laws dealing with demonstrations, strikes and lockouts, firearms and the organisation of societies.”<sup>64</sup> The government was not able to carry out social reforms, but it stopped the political violence and revised the constitution in 1971 and 1973. It curtailed individual and social rights and freedoms which were guaranteed under the 1961 constitution. It aimed not only to strengthen the executive authority, but also to prune certain individual liberties that were considered responsible for the emergence of political extremism and violence.

This second intention of the technocratic government indicates one of the failing characteristics of the Turkish democracy. According to the Turkish political mentality and tradition (especially until the Ozal period), the best way of dealing with an emerging problem is to make some kind of regulation (such as constitutional amendments, new laws, etc.) wherever, and whenever, it is necessary. The Turkish political system did not seem to be aware of the weaknesses of this approach. This was mainly due to its traditional statist political culture.

#### **4.2.2.5. Politicisation and Polarisation (1970s)**

Immediately after the partial coup of 1971, the RPP emerged as the largest party in the 1973 Elections. Nevertheless, the right was badly split and the composition of the 1973 National Assembly required coalition governments. The 1977 elections did not signify any change, and Turkey had three coalition governments, one minority government and one illusionist government that only became possible as it was filled with people who had resigned from the Justice Party in eight years.<sup>65</sup> Moreover, the political violence and terrorism continued to grow and spiralled out of control.

If the republican era is closely examined, it is obvious that there has been a very close connection between the religious or conservative demands and liberal movements. Three liberal examples of the political movement (the Progressive RP, the FRP and the DP) raised some religious demands and rights along with their (real or pseudo) liberal manifestos. This relationship shows that the freedom of religious belief lies at the centre

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<sup>64</sup> Hale, W., (1997), “Turkish Democracy in Travail: The Case of the State Security Courts” *World Today*, Vol:33, p.187

of the social consensus and seems to suggest, every liberal movement should give priority to the freedom of religion in countries which have a majority Muslim population. On the other hand, since the risk is that this might pave the way for religious fundamentalism and intolerance, there is a delicate balance between these values that has to be considered. Nevertheless liberal democracy offers much more of a guarantee from this danger, than any form of autocracy.

#### **4.2.2.6. The *Coup d'etat*, the 1980s as the New Era**

The 12 September 1980 military coup was different from its predecessors in terms of its success, length, and character which was more homogeneous, and its objectives were conservative.<sup>66</sup> However, the main characteristics of the three coups were as follows: Firstly, they imbued themselves with guardianship responsibilities for the political system and the State; secondly, they came to power reluctantly and never wanted to stay there for a long time; thirdly, they had the Kemalist ideology and accepted the principle of multi-party politics and democracy, though they tended to emphasise a disciplined form of democracy. The intention of the military leaders was both to resurrect the State as the anchor of Turkish society and to restore democracy.<sup>67</sup>

The Turkish civilian regime has been unable to control the military, and the Turkish military continues to enjoy a strong degree of military autonomy in three dimensions: institutional, ideological and behavioural.<sup>68</sup> Nevertheless, the Turkish military differs from Third World armies because the Turkish military accepts the ultimate legitimacy of democracy and civilian rule.

In spite of the military coup on the 12 September 1980, the 1980s represented the rise of neo-liberalism in Turkey. After the introduction of economic measures in January 1980, the 1980s experienced neo-liberal policies, mainly economic ones. However, these policies also had political and social dimensions and aspirations which were explained either by the generals or by the politicians, especially Turgut Ozal.

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<sup>65</sup> Hale, W., (1977) "Turkey's Inconclusive Election", *World Today*, Vol.33

<sup>66</sup> Hale, W., (1994), *Turkish Politics and the Military*, London: Routledge, p. 246

<sup>67</sup> Sakallioglu, U. C., (1997), "The Anatomy of the Turkish Military's Political Autonomy", *Comparative Politics*, Vol.29:2, pp. 151-152

<sup>68</sup> *Ibid.*



### 4.3. The Developments of Turkish Political Party System

For over a century, Turkish political parties have reflected both the profound changes and an underlying continuity in the country's political history. The promises of civic equality of the Tanzimat Reform period (1839-76) prompted the formulation of the New Ottoman Society in 1865, which became the lineal ancestor of the Society for Union and Progress of 1889, the Defence of Rights Society of 1919, the Republican People's Party of 1923 and the Social Democratic Populist Part of 1983 which later changed its name back to the Republican People's Party.

In Turkey, as in other countries, the more intense periods of political party activity came in anticipation of competitive elections. There were brief flurries of such partisanship in 1876 on the adoption of the Ottoman Empire's first written constitution on a European mode, in 1908-12, following the restoration of that constitution in the Young Turk revolution, and in 1918-19, after the final Ottoman defeat in the First World War. These episodes of electoral and party activity, however, were interrupted by periods of repression under Sultan Abdulhamit II's absolute rule. (1876-1908) and the military dictatorship of the Committee of Union and Progress(1913-18)<sup>69</sup> The continuous evolution of Turkish political party life thus goes back to the early Kemalist period, specifically to the Erzurum and Sivas Congress of 1919 and the Ankara National Assembly of 1920.

With the Ataturk regime and the attack on religion, insofar as it was integrated with the State, the values of political system came to be more narrowly defined. The restrictions articulated by the Ataturk regime went further than excluding Marxism and Islam. Liberalism itself was greatly curtailed, but the authoritarian single-party regime which was established was not totalitarian. No extravagant ideology of race, culture, or State was developed to embrace all civilisations and deny all religions. Party membership was not restricted to an elite; there were no purges, no uniformed party militia and there was no rigidly disciplined party cell organisation of the sort met with in totalitarian parties.

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<sup>69</sup> Rustow, A., (1966), "The Development of Political Parties in Turkey" in LaPalombara, J. and Weiner, M., (eds.) *Political Parties and Political Development*, Princeton: Princeton University Press, pp.107-133

Having examined briefly the history of Turkish political system regarding parties, and mentioned some of the Turkish political parties, it may be useful to look at the major and important parties in Turkey starting with the Republican People's Party,

#### **4.3.1. The Republican People's Party**

The Republican People's Party (RPP) was the dominant, ruling political organisation of Turkey from 1923 to 1945. It may be regarded in some ways as the epitome, as well as the reflection, of the currents of thought, the conflicts, the aspirations and the resentments accompanying the movement of political reform in Turkey in that period. This is largely because change was proposed and imposed by the party, which changed itself in the process.

On 16 March 1923, well after the invading Greek force was expelled from the country, Mustafa Kemal delivered a speech that was designed as a preparation for his next moves. He declared that there was now a new Turkish State different from the old one, that the government was populist, that 'the destiny of the people was eternally in its own hands', and that the government's two chief purposes were the 'preservation of national existence and the securing of national welfare'. In his view, good government was the one that accomplished these two goals. What was lacking was a political instrument to do the job.<sup>70</sup> Subsequently, he issued a proclamation, consisting of nine articles which was, in fact, a sort of election platform. The introduction to the proclamation declared that in order to "secure economic development and to complete and supplement every kind of organisation and thus achieve welfare for the country and the nation, a People's Party (Halk Firkasi) would be established."<sup>71</sup>

The RPP's initial goal was to create political and civic institutions that would perpetually generate change within society. The party also tried to impose via its control of the government a materialistic perspective on life, as well as a relativist non-religious view of society. Thus, on the one hand, the RPP maintained a certain loyalty to the old elite' historical concept of leadership while, on the other hand, it attempted to create a new political mechanism, that is, the modern party organisation, and to imbue it with

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<sup>70</sup> Ataturk, M.K., *Nutuk* (Speech) Istanbul, Turk Tarih Kurumu Yayinlari, pp.595-597

populist vision and democratic ideals while, at the same time keeping it confined within framework of the old elitist philosophy.<sup>72</sup>

The pattern of political thinking of the RPP followed naturally from this more basic goal: namely the establishment of a national territorial Turkish State. Seen in long perspective, the RPP appears as a political organisation created at a turning point in Turkish history in order to carry out a special mission. In other words, the party did not emerge from a collective consensus, from any political evolutionary process, or from a popular movement with deep roots in the social body and its culture. However, it made efforts to create the impression of continuity with the "Society for the Defence of Rights". In fact, the main link between the RPP and its predecessor the Society for the Defence of Rights was Mustafa Kemal himself.

Until the late 1920s, the RPP was ideologically eclectic, following a course that it hoped would somehow reconcile its philosophy with the views of the conservatives, most of whom were supporters of the republic and of progress provided that the society's basic identity and sense of historical continuity were preserved. The RPP finally abandoned this eclecticism in 1930, primarily because the earlier so-called ideological differences came to be embodied in a status difference between those whose superior economic and political position had been secured in good measure through party membership and jobs in bureaucracy and those who wished to destroy the privilege of this group.<sup>73</sup>

During the 1930s Ataturk tried a number of formulae to make the RPP more accountable. Primary responsibility was given to local and provincial officers (rather than national leaders and central inspectors) for carrying out directives sent from higher levels, and the former were required to report not only on their activities but also to communicate in writing to the next higher echelon their own thoughts about these directives and the party's aims. Another formula was in direct response to specific complaints made during the Free Party period. The RPP branches were ordered to cease interfering in the activities of private organisations, such as trade unions and

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<sup>71</sup> Tunaya, Z.T., ((1952) *Turkiye'de Siyasi Partiler* (Political Parties in Turkey) Istanbul: Dogan Kardes, pp.580-82

<sup>72</sup> Karpat, K.H., (1959) *Turkey's Politics*, Princeton, NJ: Princeton University Press, p.392

<sup>73</sup> *Ibid.*, p.394

professional associations, and, in fact, were forbidden to put up party slates for office of the latter organisations, unless the RPP's Central Office Council specifically ordered it.<sup>74</sup>

The history of the RPP from the 1945 to 1980 encompasses a period of unprecedented change for the party and the party system. The RPP became an opposition party after the 1950 General Election, when the Democrat Party came to the Office. The shift from one-party to multi-party politics opened the way for an accompanying shift from ideological cleavages to functional cleavages as the basis for party organisation.

Towards the end of the first phase of this period (1945-1960), the RPP began recovering from its dismal electoral performance and to show the potential for becoming a genuine challenge to the governing party. During the second phase of the period (1961-1973) following the restoration of a civilian regime, coalition politics emerged in the system. The RPP began this phase as the dominant partner in a series of unstable coalitions. The key factor in the social re-order of the political system and the ruling coalition of Turkey was the ideological transformation of the RPP, beginning with its deviation to the left, The party leader Inonu's loss of power and death, and the demise of the power of the Kemalists within the party. It then entered a new stage of electoral defeat and again assumed the role of opposition party. The second phase, like the first phase, ended as the RPP again showed signs of electoral recovery. In addition, like the first phase, the second one ended with what amounted to a military coup, although this time the forms of a civilian regime were retained. In the third phase of the period (1973-1980), the RPP maintained a more viable electoral base, rising from 33 per cent at the outset to better than 40 per cent. Despite the realignment of coalition politics, there was a clearer alternation between the two major parties in leading governments.

It is appropriate to note that in the transition from one base to another the RPP manifested aspects of a number of different, though related, party types. In its early years, the RPP exemplified the comprehensive nationalist type of party. This type has been defined as 'a single party' which is pluralistic in organisation, pragmatic rather than rigidly ideological in outlook, and absorbent rather than ruthlessly destructive in its

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<sup>74</sup> Tunaya, Z.T., (1952) *Turkiye'de Siyasi Partiler* (Political Parties in Turkey), Istanbul: Dogan Kardes, pp.580-82

relationships to the other groups.<sup>75</sup> The RPP's strength derived from its association with the early history of the Republic and Kemalism, and its main support came from the civil bureaucracy and the intelligentsia, groups that had power far in excess of what was warranted by their numbers because of their control of government, the communication media, and the educational system.<sup>76</sup> The RPP played an important role in modernisation of Turkish society and political education. However, the RPP was the State's party for a long time and therefore it had to bear the responsibility of the mistakes which had been caused through modernisation by the State. The modernisation was a top down operation and there were and there still are, strong discontented people because of the way modernisation applied to the society. This clearly explains why the RPP does not have popular support in Turkish society. The party is strongly secular and defending the status quo which strange enough for a party claiming to be social democrat while showing conservative characteristics. In brief, the role of RPP in Turkish politics could be explained as being a tool of modernisation (mainly Westernisation) and trying to structure the society in a Western sense, and assuming the role of educating people politically.

#### **4.3.2. The Democrat Party, 1946-1960**

In 1945, President Inonu decided to allow the formation of opposition parties. His aim was to transform the single party regime into a contested one. There were many reasons behind this decision. One was the favourable change in the international environment following the victory of the democratic regimes in the Second World War. Another was the long tradition of Westernisation, which also implied democratisation. A third reason was the social unrest due to wartime shortages and profiteering.<sup>77</sup>

In 1945 and 1946 fifteen new parties were founded, however it was the Democrat party (DP) which emerged as the major opposition party. The day the DP came to

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<sup>75</sup> LaPalombara, J., and Weiner, M., (1966), *Political Parties and Political Development*, Princeton: Princeton University Press pp.38-39

<sup>76</sup> Karpat, H. K. (1988) "Military Intervention: Army-Civilian Relations in Turkey before and After 1980" in Heper, M. & Evin, A., (ed.) *State, Democracy and Military*, Hamburg: Deutches orient Institute p.146

power was a turning point in Turkey, not only because political power changed hands for the first time since 1923 through free elections based on a 'secret ballot-open count' principle, but also because the political basis of the system began to shift from the "statist" to the "political" elite. Moreover, it was the first time in Turkish political development that the "man in the street" began to matter.<sup>78</sup> The DP became a major force to mobilise people and it was the first time the people were advised that they could control government.

In order to understand better some of the factors behind the DP phenomenon, it is necessary to take a brief look at the socio-economic and political conditions which emerged under RPP rule between 1945 and 1950. Due to the economic policy carried out during the Second World War, social unrest became widespread. The Government increased taxation at the expense of such wealthier social groups as the landowners and entrepreneurs. The government levied a heavy capital tax which aimed at placing the burden on profiteers, intermediaries and businessmen who had benefited most from the war economy. Since the tax was implemented in an arbitrary and harsh manner, it soon led to bitter complaints. Those most affected concluded that their security would only be assured by the replacement of the government.<sup>79</sup>

Discontent with the single-party regime also became apparent during a debate in the Assembly of the United Nations Charter in 1945. Adnan Menderes expressed the view that, by signing the Charter, Turkey was committing itself to full democracy, as the Charter asked its signatories to make such a pledge. On 7 June 1945 Menderes, together with three other RPP deputies submitted to the Chairman of the RPP's Parliamentary group "proposals for Changes in the party By-laws and in Some Laws". It was requested that all anti-democratic laws as well as some articles of the Party's by-laws should be amended or altogether abrogated in order to change the regime into a fully democratic one. Further, the government should be subjected to popular control and

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<sup>77</sup> Ozbudun, E., (1988), *Perspectives on Democracy in Turkey*, Ankara: Turkish Political Science Association, p.16

<sup>78</sup> Ilkay, S., (1974), *State and Society in the Politics of Turkey's Development*, Ankara: Faculty of Political Science, p.80

<sup>79</sup> *Ibid.*, p.31

election should be free.<sup>80</sup> When the proposal came to the floor of the Party's parliamentary group on 12 June 1945 and was rejected by its all members, with the exception of the four signatories of the proposal, Adnan Menderes and Fuat Koprulu started openly to oppose the Government and soon afterwards they were expelled from the RPP. Mr. Koraltan argued that this decision clearly violated the Party's by-laws. He was then ousted from the party. In the face of his associates' resignation, Celal Bayar, too decided to resign, first as deputy and then from membership of the RPP. Then these four deputies decided to establish a new party that would make the regime more democratic. Bayar and his associates, by reaching an agreement with Inonu who was the leader of the RPP and the President of the Republic, that they would respect Ataturk's principles, established the DP officially.<sup>81</sup>

The DP quickly gained popularity with the masses and successfully established its party branches throughout the country. The party contested the general election of 1946 and gained 61 seats (the RPP secured 296 and Independents 4), despite the irregularities, it faced. In the 1950 general election, the DP won overwhelmingly. It received 53.3 per cent of the total votes, gaining 408 seats (83,5 per cent of the total seats)

The DP emerged as a party that fought to put an end to the domination of the bureaucratic State over civil society. In Dodd's words "Once in power...the Democrat Party fell foul of the bureaucracy and began to mobilise people...in a populist fashion. They made a direct appeal through religion and other symbols, there being no classes or institutions through which to work as intermediaries".<sup>82</sup>

The Democrats came to power in the belief that free competition without any bureaucratic restraints in economy and polity would result in consolidating democracy in Turkey. Particularly after the 1957 elections, increasing economic difficulties and strengthening opposition prompted the Democrats to bear down on their opponents and introduce measures limiting democratic rights. It was as though history were repeating

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<sup>80</sup> Erogul, C. (1970) *Demokrat Parti:Tarihi ve Ideolojisi* (The Democrat Party: Its History and Ideology) Ankara: Ankara Universitesi Siyasal Bilgiler Yayini, pp.10-11

<sup>81</sup>Erogul, C., (1970), *Demokrat Parti:Tarihi ve Ideolojisi* (the Democrat Party: Its History and Ideology), Ankara: A.U. SBF Yayinlari, p.12

<sup>82</sup> Dodd, C. H., (1983), *The Crisis of Turkish Democracy*, Washington: Eothen Press, p.81

itself. However this time no new political party was able to emerge as the defender of democracy. Ironically, the Turkish army, then the strongest wing of the bureaucratic intelligentsia, intervened in May 1960 to “restore democracy” as well as to “protect the State”.<sup>83</sup> The Democrat party was closed down and its members were banned from politics by the military. The Prime Minister Adnan Menderes and two of his ministers were tried by an extra-ordinary tribunal and sentenced to death. They were hanged in 1961.

### 4.3.3. The Justice Party

The ban on party activities, imposed on 27 May 1960 on the day of military intervention, had been partially lifted on 13 January 1961. The formation of new parties was permitted, though most of them proved popular for a short time. The most important of the new parties was the Justice Party. The Justice Party was founded in February 1961, under the leadership of a retired General Ragip Gumuspala.<sup>84</sup>

There seems little doubt that initially the JP enjoyed the full confidence of the NUC (National Unity Council), General Sitki Ulay revealed a few days before the General Elections of 1965 that the army had laid the foundations of the Justice Party and entrusted the duty of leading it to an honourable soldier.<sup>85</sup> However there were three elements in the JP: the retired officers led by Sinasi Osma, Gumuspala’s former aide-de-camp and Secretary general of the party; the members of the Peasants’ Party founded in 1952 who had merged with the JP, and the former Democrat Party.<sup>86</sup> The latter were the most vital element. It was they who enabled the JP to acquire a countrywide organisation in the shortest possible time by reforming the old DP organisation at the provincial and local levels. Within a short time, members and adherents of the dissolved party had become the principal element in the JP, making it difficult for Gumuspala to steer the party in the direction of moderation that the military desired. Gumuspala died on 5 June 1964. He had been the unchallenged leader, and his death threw open the

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<sup>83</sup>Turan, I., (1984), “Continuity and Change in Turkish Bureaucracy” in Evin A., (ed.) *Modern Turkey, Continuity and Change*, Leske Verlag: Opladen, p.115

<sup>84</sup> Dodd. C.H., (1969), *Politics and Government in Turkey*, Los Angeles: University of California Press, p.140

<sup>85</sup> *Milliyet*, (Daily Turkish Newspaper) 5 Oct. 1965, p.1



whole question of the leadership. Demirel was elected as a new leader of the party on 27 November 1964. He epitomised the new Turkish politician. He did not come from the traditional 'military-bureaucratic intelligentsia' which had dominated politics in Turkey since the Tanzimat period in the nineteenth century. He was a technocrat and a leader with whom 'ordinary Turk' especially the rural migrant who lived in on of the new shantytowns, could identify himself, for he symbolised the self-made man. This proved a great asset in elections, and Demirel was able to reach this type of voter, in contrast to leaders like Inonu, and even the socialist Aybar.

Except for its constant proclamations against the Left, Demirel's party refused to commit itself ideologically. "We are against all "isms" including liberalism and capitalism announced Demirel to the Press. "We are not for any die-hard ideology, or system, we establish our economic view in accordance with the conditions of the day."<sup>87</sup>

Demirel the man who had succeeded in reconciling the armed forces to the JP role, failed to reach the accommodation with his political rivals and opponents that would have enabled social peace to be established. This was the special characteristic of his first five years in power. The Justice Party still had not found its identity, and its problems resulted from the character of its establishment. It had been founded under abnormal circumstance and as a reaction of the extraordinary situation created by the 27 May revolution. It came to include a wide assortment of political types: secularist intellectuals and reactionary Islamists, officers and the anti-military, former Democrats of all hues and those new to politics.

After 27 November 1966 when Demirel was re-elected with an overwhelming majority of the votes at the Third Congress, the Justice Party began to lose its ultra-conservative, religious character though it did not prevent it from exploiting religion for political ends.<sup>88</sup> In terms of party organisation, the Central Committee became more powerful and authoritarian and discipline was tightened. Demirel became more influential and acquired greater freedom to make appointments.<sup>89</sup>

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<sup>86</sup> *Cumhuriyet*, (Daily Turkish Newspaper) 16 July 1961, p.1

<sup>87</sup> *Vatan*, (Daily Turkish Newspaper) 15 September 1965, p.3

<sup>88</sup> Geyikdagi, M. Y., (1984), *Political Parties in Turkey: The Role of Islam*, New York: Praeger, p.102

<sup>89</sup> The JP pamphlet, (1966), *AP Adalet Partisi Ucuncu Buyuk Kongresi: Raporlar*, Ankara: Adalet Partisi

As noted earlier the passage to a multi-party regime in Turkey was decided from above. The State party, the RPP granted the Turks multi-party politics almost of its own wish. The transition was so short and easy that many problems could not even be foreseen. No consensus on many vital points concerning authority sharing between the bureaucratic and the political elite could be arrived at.

The JP inherited this problem, with the difference that the bureaucracy had already received quite a large share of power thanks to the 1961 Constitution. The JP was anathema to many bureaucratic circles, not because of anything it had done, but because of what it was - a party based on "political will" only. It is uncontroversial to state that, had the JP won the 1961 elections, the military would not have allowed the transfer of power. Even the fact that it came out as the second largest party created in crisis. It was obvious to everyone that it should not even attempt to form a coalition without the RPP, although in the terms of parliamentary arithmetic it could have done so easily. Therefore, the JP formed a government with the RPP despite the fact that these two parties were completely different in terms of policy, electoral basis.

The conflict between the JP, which wished for unlimited supremacy for the "political will", and the bureaucracy then became operative. The JP, using the governmental authority, tried to erode what the bureaucracy had won. The conflict was institutional and not personal.<sup>90</sup> The JP's desiderata were quite clear and simple. The government should be free to choose its chief executives; the State Planning Organisation should be reduced to a consultative body; and the autonomy of the universities assigned to the academic field only and the power of the Constitutional Court, Council of State and the High Election Council limited, and also the constitution should be changed.<sup>91</sup>

The economic growth that characterised the first years of the JP government slowed. Inflation became more accentuated. Personal grievances were added to the institutional conflict. This coupled with mounting terrorism and labour-related conflicts proved too much. On 12 March 1971, the military supported by the bureaucracy put an

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<sup>90</sup> Leslie L., and others, (1971), *The Managers of Modernisation: Organisations and Elites in Turkey (1950-1969)*, Cambridge: Harvard University Press, p.211

<sup>91</sup> Savci, B., (1966), "İktidarın ve Ana Muhalefetin Rejim ve Uygulamaları Üzerine Bazı Görüşler" *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi*, Vol:21, pp.131-5

end to the JP government. After the military intervention of 1971, the JP was never in power alone. It was dissolved by the military junta on 12 September 1980 when they took over.

According to Sherwood, the JP was the only real grassroots party in the Middle East.<sup>92</sup> The JP was the continuation of the DP; it resurrected itself one year after the 1960 intervention, thanks to its very effective organisation.<sup>93</sup> Indeed the organisation of the JP was the strongest of all Turkish Political parties in the 1960s and 1970s, pre-dating its leadership. Generally in Turkey, the leaders emerge first and they establish the organisation later, in case of the JP, the opposite happened. It is possible to say that in this case, it was the organisation that found Demirel and raised him to leadership. Generally, in Turkey the leader's position in the party is very strong and, save for some small ideological parties, leaders are almost unchangeable. The JP was exceptional. Its parliamentary group was less strong than those of other parties including its predecessor, the DP. The real power in the JP after the party chairman was the unofficial assembly of the 67 chairmen of local branches. They used to gather separately and choose a committee of fifteen among themselves in that congress and this committee prepared the list of candidates for the central bodies of the party. In every case, this list was unanimously accepted by the convention. There was a clear interdependence between the party leader and the local chairman. Demirel's support was vital for being chosen chairman of the local branches, and as long as the chairmen of the local branches were loyal to him - as was generally the case - Demirel was secure in his post. The strength of chairmen of local branches was great as is mentioned above, and this guaranteed that the JP parliamentarians were natives of the districts they represented more than in any other party. They were generally younger and less uniform in their social and educational backgrounds. On the personal level, the organisation of the JP was a very important vehicle of "social integration". It gave the citizen a kind of protection against the bureaucrats. It helped him in his personal economic and even family problems and helped the absorption of the peasant into city.<sup>94</sup>

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<sup>92</sup> Sherwood, W.B., (1967), "The Rise of the Justice Party in Turkey", *World Politics*, Vol.20, pp.54-65

<sup>93</sup> Ozbudun. E., (1966), *The Role of Military in Recent Turkish Politics*, Harvard: M. A: Centre for International Affairs, p.7

<sup>94</sup> Sherwood, W.B., "The Rise of the Justice Party in Turkey"

The JP was a civilian and grassroots' party, with a strong organisation and tens of thousands of active members. It could come to power when only it received an absolute majority of the votes. To achieve this, it had to present a platform, which would reflect the interests and ideas of different sections of the people.

#### **4.3.4. The Nationalist Action Party (NAP)**

The Nationalist Action Party was the name assumed by the Republican Peasants's Nation Party (RPNP)<sup>95</sup> in 1969. This change of name was the logical outcome of increasingly militant character imposed on the RPNP after it had been taken over, in August 1965, by Alparslan Turkes, an ex-colonel and his supporters. Turkes gave his party a more appealing name and enacted new regulations to tighten the chairman's hold over the party. The ideology of the NAP was militantly nationalist, as formulated in the party's official publications and in Turkes' writings, especially in his brochure, *Nine Lights*, first issued in 1965 and reprinted several times, which served as a constant inspiration to party followers. The "nine lights" were the following: nationalism, idealism, progress, development, and populism and industrialism and technology. The party was uncompromisingly anticommunist, both because of its nationalist ideology and because many people of Turkish origin lived under Communist rule. The NAP's ideology was also authoritarian, although without attacking Turkey's democratic regime which it claimed to cherish. Until the end of the 1960s, the NAP supported secular forces. After the 1969 elections, the NAP strove to present the electorate with the image of a party favouring religion.<sup>96</sup> This change in party programme was tactical and instrumental since Islam was interpreted as an ideology that strengthened and endorsed Turkish identity. The party also aimed to channel the support of Muslim masses towards itself. During the RPP government, the NAP became the party for marginalised middle class who faced difficulties in adapting to the rise of entrepreneurial capitalism and inflation.

Before the 1980 coup, the NAP idealists declared war against the Communists, and with their strong pro-State and anti-Communist stance believed that for the great

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<sup>95</sup> The RPNP was established in 1958

cause (the preservation and continuity of the Turkish Republic) even armed struggle was legitimate. By creating an enemy, the party on the one hand, aimed to unite elements of the extreme right in Turkey, and on the other hand sought a legitimate place in Turkish political sphere.

The NAP was a single-issue party, the product of a defensive obsession with the preservation of the Turkish State.<sup>97</sup> However, this explanation fails to explain the presence of the NAP in Turkish politics for more than four decades and the fact that it enjoys the support of ten percent of electorate. The NAP is anti-egalitarian, extreme nationalist, opposed to both liberalism and Communism, accepts the use of violence and defends discrimination.<sup>98</sup> The NAP was banned after the 1980's military intervention but in 1987 after the constitutional amendments, it was established under the same name again.

Between the years of 1989 and 1995 the party nearly doubled its electoral turnout and became a political force ready to pass the ten per cent national threshold for parliamentary representation. In 1999 Elections, the NAP surprisingly came second and won 120 seats in Parliament. The NAP is currently a coalition partner in Government led by Ecevit, the leader of Democratic Left Party. The NAP in Turkey, as Wolfreys puts it, similar to National Front in France, "motivated by the programmatic demands of satisfying a heterogeneous membership and the opportunist desire to benefit from events...proved itself capable of adapting its message to a given situation."<sup>99</sup>

Since the early 1990s, it has exploited the Kurdistan Worker's Party<sup>100</sup> (PKK) issue, claiming that there is a conspiracy of foreign enemies to use the PKK to destroy the unity of the Turkish State. During a period in which the funerals of soldiers who were killed in clashed with terrorist often turned into political rallies against the PKK and separatism, the message of the party was readily accepted by an increasing

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<sup>96</sup> Arslan, E.B. (1998), "The Programme of the Nationalist Action Party: An Iron Hand in a Velvet Glove?", *Middle Eastern Studies*, Vol. 34:4 October, p.121

<sup>97</sup> Laciner, O., (1985), "Foreword", in Bora, T. and Can, K., (ed.), *Devlet Ocak, Dergah*, Ankara: Bozkurt Yay. p.10

<sup>98</sup> Arikan, E.B. (1998), "The Programme of the Nationalist Action Party: An Iron Hand in a Velvet Glove?", *Middle Eastern Studies*, Vol.34: 4 October, p.125

<sup>99</sup> Wolfreys, J., (1993), "The Programme of the Nationalist Front: An Iron Hand in a Velvet Glove" *Parliamentary Affairs*, Vol:46:3 July, pp.415-429

proportion of the electorate. The party in fact, through mobilising anti-PKK sentiments among the population, was not deviating from its original path, to declare war against a fictitious or a real enemy. Therefore, switching from an anti-Communist stance to an anti-PKK one only shows that the party as an institution is capable of adapting to changing conditions.

The Party views democracy as a virtuous regime and believes it to be better than Communism, Fascism or any other regime. They claim to be democrats who have adopted democratic rules and principles. However, the latest developments in the Party<sup>101</sup> and fascistic elements in the party programme raise doubts as to the position of the NAP on democracy. Supporters of the Party are usually traditional men in an identity crisis, intensified as a result of the modernisation process in Turkey, the secularisation of lifestyles and decline in traditional values. They find themselves a new identity in the Party. Mr. Calik's words, who has been a member of the nationalist community in the past, shows what the NAP offers to the ordinary man challenged by modernisation.

“I am no longer given either the false security or the untrustworthy power of an organised society. For this reason, I do not carry with me the tribal responsibility derived from “belonging” that is restrictive, unreasonable and vain”<sup>102</sup>

The NAP aims to move toward the centre from the periphery by accepting the policies imposed by its partner in Coalition – the Democratic Left Party-. The Party is trying to establish good relationship with the State at the expense of giving up its promises during the last general election. This seems to be a dilemma for the NAP. On the one hand, the Party tries to appeal to the centre by complying with the State's wishes; on the other hand, it is facing a loss of its own supporters base by being accused of hesitancy and dominance by leftist policies imposed by its partner.

The NAP's main ideology is nationalism. Nationalism has always found its support in Turkish society. It offers kind of identity to people who are in difficulty to adapt themselves to modernisation.

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<sup>100</sup> An outlawed Kurdish terrorist organisation which fights for a free Kurdistan.

<sup>101</sup> A Cabinet Minister who is also member of the Party was beaten up by other NAP's MPs for applying for presidential candidacy on the contrary to the Party's informal decision.

#### 4.3.5. The National Order Party (NOP) and The National Salvation Party, (NSP)

As semi-urbanised and rural Muslims began using diverse cultural categories to construct new identities to deal with the challenge presented by industrialisation, migration from traditional villages to urban centres, the expansion of State power, and the popularisation of knowledge through mass communication, they first organised within the Justice Party (JP). When the JP started to pursue pro-industrialist and State-centric policies, Islamically sensitive small merchants, craftsmen, and small farmers searched for a new institution to voice their protest.<sup>103</sup> They formed the National Order Party (NOP) in 1970.<sup>104</sup> The NOP was the first legal party in the Republican Turkey officially committed to the promotion of Islam. It was created and headed by Necmettin Erbakan.<sup>105</sup> The party's strong advocacy of Islam caused the Counsel's office to prosecute it before the Constitutional Court, on the grounds of exploiting religion for political purposes. Two months after the military coup of 12 March 1971, the constitutional court banned the NOP, claiming that the party wanted to alter the secular principles of the State, and to institute an Islamic order. The leader of the party, Necmettin Erbakan, escaped to Switzerland and stayed there until 1972. His friends established the National Salvation Party (NSP) in the 1970s to encompass and express their Islamic political consciousness. The NSP obtained 11.8 percent of the vote for the Parliament, and 48 of its 450 seats. The NSP became the third largest group in the Parliament. The NSP used its own position, neither definitely left of the centre nor decidedly right of the centre, to enter a cabinet coalition, first with the RPP then with the JP and smaller parties. The NSP's ideology was anti-Kemalist, Its religiosity was mixed with a strongly nationalist ingredient, identifying Turkish patriotism with Islam. The NSP openly represented a protest against change in the traditional structures and values of Turkish society as well as a reaction against unbalanced, too rapid economic and

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<sup>102</sup> Calik, M., (1995), *MHP Hareketi Kaynaklari ve Gelisimi, 1965-1980*, (The Movement of the NAP: Its Sources and Development, 1965-1980), Ankara: Cedit Yayinlari, p. back cover page

<sup>103</sup> See Geyikdagi. N. Y., (1984) *op. cit.*, pp. 90-124

<sup>104</sup> Ozal, K., (1994), *Gercek Tanik Korkut Ozal Anlatiyor*, (The Real Witness Korkut Ozal is Telling) Istanbul, Milliyet Yayinlari

<sup>105</sup> Independent member of the Turkish Parliament at that time, and formerly a professor of automotive engineering at Istanbul Technical University.

social change. The party's programme aimed at bringing the nation happiness and security via moral and material progress.

The National Salvation Party represented those who were not fully integrated culturally and economically into the "modernist centre".<sup>106</sup> It stressed Islamic morals as a cure to social problems and its goal was to return to traditional social and cultural life. This party was banned by the 1980 military coup.<sup>107</sup> After the 1980, the same social groups formed the Welfare Party.

One could say at this point that the Islamic tradition which had always existed in Turkish society was transformed into politics by Erbakan and his followers through National Salvation Party and later the Welfare Party. Allowing Islamic ideas to be represented in politics is a crucial development in Turkish politics and it is indication of the growth of liberal democracy. The liberal notion of the 1961 Constitution provided this. The state might have aimed to integrate Islamic ideology into the system by permitting them to organise as a political party and to be represented in Parliament. However, this permission was to the certain extent, since the pro-Islamic ideas are never meant to be in government, when they formed a government, the state interfered (as explained below) and they had to give up on ruling power. Obviously, pro-Islamic politics has been treated cautiously by the State and they were allowed to act within certain boundaries. Even though, pro-Islamic parties had to operate in certain limits drawn by the State, this is an achievement in terms of allowing diversity in politics which shows an improvement regarding liberal democracy in Turkey.

#### **4.4. Main Political Parties Established after 1980**

After permission to form new political parties by 1983, fifteen different parties applied for permission in a two month period. Three political factors crucially affected the establishment of new parties in Turkey. The first was the realignment of voters from their pre-coup political party loyalties as new societal alliances evolved; the second was

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<sup>106</sup> Toprak, B., "Politicisation of Islam in a Secular State: The National Salvation Party in Turkey" in Arjomand, A.S., (eds.) *From Nationalism to Revolutionary Islam*, New York : State University of New York Press, 1984, pp 119-133

<sup>107</sup> The Welfare Party and (now Virtue party) which is the successor and continuation of the NSP with very small differences will be examined in next sections. The structure and cleavages which the party based on same therefore there is no need to study NSP extensively here.



the emergence of new ideas to mobilise the voters, and the third was the change in the electoral system.<sup>108</sup>

All of the Turkish political parties of the 1980s were new. However only one of the major parties, the Motherland Party, (MP) was based on new political cleavages and mobilisation of a relatively new ideological concept known as the new right. The remaining political parties represented an adaptation of old ideas to the new political order: the Social Democratic Populist Party (which later changed its name to the Republican Political Party)<sup>109</sup>, the True Path Party, the Welfare Party.<sup>110</sup>

Despite the significance of changing cleavages, realignments, the rise of new political parties, and electoral volatility, the major determinants of electoral volatility and of electoral behaviour in Turkish politics, seem to be class and religion.<sup>111</sup> These factors continue to retain their primacy as major sources and issues of conflict. Relatively less important, but still of considerable significance, are ethnicity and urban-rural differences.

Many parties have been founded since 1980, but few of them have survived and had a considerable share of the electorate. They can be divided into three main groups: The centre-left parties (the RPP and the DLP), the centre-right parties (the TP and the MP) and ideological parties (the NAP –nationalist, the WP and the VP –pro-Islamic and HADEP –pro-Kurdish)

#### 4.4.1. The Welfare Party (WP) and the Virtue Party (VP)

The Welfare (Prosperity) Party was the pro-Islamist rightist party and a continuation of the National Salvation Party. Both parties were led by Erbakan.

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<sup>108</sup> Turan, I., (1988), "Political Parties and the Party System in Post-1983 Turkey", in Heper, M. & Evin, A (ed.) *State Democracy and the Military: Turkey in the 1980s*. Hamburg: Deutches orient Institute

<sup>109</sup> The RPP is examined above therefore it will not be studied again under this section. See 4.3.1 The Republican party

<sup>110</sup> The WP was dissolved by the Constitutional Court in 1998 and the Virtue Party has been founded as a successor of that party.

<sup>111</sup> See Heper, M. and Evin, A., (1988), *State, Democracy and the Military: Turkey in the 1980s*. Hamburg: Deutches Orient Institutue

The WP was one of the main avenues for political Islam to articulate its demands within the public arena. It represented a platform for those who sought a change of the secular system as well as for those who demanded reforms in the system, within the bureaucratic State structure. This competing campaign to reorganise the political centre and transform the bureaucratic system mobilised large segments of the population, from Kurdish groups to the newly emerging Anatolian bourgeoisie, in the name of identity and justice.<sup>112</sup>

Through its institutions, the modern Nation-State forces individuals to play different and conflicting roles that split their personality and fragment their identity. As the State expands its power through new technologies, individuals are finding shelters to protect their personal wholeness in religious idioms. With its use of Islamic idioms and symbols, the WP provided a forum within which diverse ethnic and regional identities could flourish and coexist.

Despite the opposition of secularist military forces and big business, the WP won 21.1 percent of the vote and 158 seats of the 550 seats in Turkish parliament, and formed a coalition government with True Path Party in 1996. This coalition government between the pro-Islamic Welfare Party and the pro-Europe Tansu Ciller indicates the duality of Turkish identity and marks a turning point in the history of the Turkish Republic. On June 28, 1996, for the first time, the Turkish Republic had a Prime Minister whose political philosophy was in part based on Islam. "This event marked a psychological break in Turkish history that was the outcome of a search for new relations between State and society."<sup>113</sup> Some secular groups interpreted the success of the WP in elections as a revolt against Kemalism, whereas Islamist publicist viewed it as democratisation. In fact, the election was a turning point in terms of bringing peripheral and marginal voices to the centre of Turkish political discourse.<sup>114</sup>

Erbakan's government was forced resignation in 1997 in order to avoid further confrontation could neither promote democracy nor provide a solution to Turkey's

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<sup>112</sup> Ozden, M., (1996), "Refah Partisi Orneginde Turkiye'de Fikir ve Siyaset" (Ideas and Politics in Turkey in the Case of Welfare Party), *Turkiye Gunlugu*, Vol.41, pp.36-45

<sup>113</sup> Turkone, M., (1996), "Refah Iktidarda" (The Welfare in Government), *Turkiye Gunlugu*, Vol.41, pp.31-35

ongoing legitimacy crisis.<sup>115</sup> A few months after the resignation of Erbakan's government, the WP was abolished by the Constitutional Court on the grounds of being a threat to Turkey's secular structure. The Virtue Party has since been founded, and all the Members of Parliament who were members of the WP became members of the VP.

The debate over secularism versus religion represents major and deep-seated divisions in Turkish society: modern versus traditional, progressive versus conservative and rationalist versus religious. Since the founder of the republic Ataturk, wanted to homogenise Turkish society to create a secular nation State, Islamic and Kurdish identities were not allowed to become institutionalised in ways that would challenge the State centric national identity. Consequently the secularised national identity dominated the public space and Islamic groups were organised outside the State control and relied on traditional ties.<sup>116</sup>

The WP played an essential role in the political socialisation of Islamic groups by mobilising them to take part in the political system and thus eased political participation in Turkey.<sup>117</sup> The WP used the tactics of European Social Democratic Parties to mobilise voters who are ignored by other parties in Turkey. Developed to integrate vulnerable and excluded groups into political system, the WP has helped to resolve one of Turkey's foremost problems by including the Islamic-oriented periphery and the large Kurdish population. Their inclusion was not costly since the Islamic periphery did not request the immediate redistribution of political power. Rather, it was primarily an outcome of the changing parameters of the state after 1980 caused by a growing economy and liberalisation.

One of the major reasons for the political mastery of the WP was its organisational flexibility and strategic use of modern means to mobilise traditional networks. The WP differed from other Turkish parties by having organic connections with hundreds of associations and foundations that help keep voters together. The party

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114 Yavuz, H., (1997), "Turkey: The Establishment against Liberalisation", *Middle East International*, No:556, 8 August, p.18

115 *Chicago Tribune*, June 20, 1997, Editorial

116 Plaff, W, (1997), "A Delicate Balance of Past and Future in Modern Turkey" *Los Angeles Times*, May 20,

117 Yavuz, H., (1997), "Political Islam and the Welfare (Refah) Party in Turkey" *Comparative Politics*, Vol.30:1, p.66

established close connections with people in their neighbourhoods and during elections it asked people to vote for the party. The WP also maintained many types of clubs that brought together potential voters. Thus, the WP 'strategy relied on building interpersonal trust.<sup>118</sup>

In general, the WP was based on four segments of the population: the Islamist intellectuals who demand free expression of religion in the public sphere; the Sunni Kurds who seek either autonomy or reorganisation of the Turkish nation State to allow them to be recognised as a separate ethnic group; the squatter town dwellers who demand social justice; the members of the new bourgeoisie who want less State intervention, more liberalisation and the eradication of State subsidies for the big corporations.<sup>119</sup>

The main goals of the WP have been the externalisation of Islamic identity in the public domain and the construction of a moral and virtuous community. The National Salvation Party legitimised Muslims' cultural and political demands and carved out an influential role for religious interests in modern Turkish politics.<sup>120</sup> Its successor the WP, expanded its constituency horizontally and vertically into the ruling institutions by stressing identity and social justice.

Unlike other parties in Turkey, the Virtue Party (like its predecessor Welfare Party) is an institutional expression of a modern social movement that strives to redefine socio-cultural and economic relations through political means.<sup>121</sup>

The overall ideology of the VP is a form of Islamic "liberalism" in that it does not see Islam as an alternative to politics but searches for ways in which to integrate Islamic identity and its symbols into the political sphere. The most critical factors in the strength of the VP are found in its discourses on identity and justice. Muslim masses evoked Islamic symbols and institutions to express their discontent, and most important,

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<sup>118</sup> White, J.B., (1995), "Islam and Democracy: The Turkish Experience" *Current History*, January 1995, pp. 7-12

<sup>119</sup> Gole, N., (1997), "Secularism and Islamism in Turkey: The Making of Elites and Counter-Elites" *Middle East Journal*, 1997, Vol.51:1, pp.46-58

<sup>120</sup> see, Sarıbay, A.Y.,(1985), *Türkiye'de Modernleşme, Din ve Parti Politikası :MSP Örnek Olayı*, (Modernity, Religion, and Party Politics in Turkey: The Case of the NSP), Istanbul: Alan Yayıncılık

<sup>121</sup> Gunalp, H., (1995), "Islamist Party for National Power in Turkey", *Middle East Report*, May August, pp.54-55

construct their own modernity by reactivating Islamic tradition. The paradox of Turkey is that the expansion of a new conceptualisation and a new phase of modernity and Islamisation have coincided.

The National Salvation Party represented those who were not fully integrated culturally and economically into the “modernist centre”.<sup>122</sup> It stressed Islamic values as a cure to social problems and its first goal was to return to traditional social and cultural life. The WP, in contrast to its predecessor, modernised traditional norms and institutions by changing its approach to politics. The WP started using modern presentation technique and started stressing universal principles (the Convention) as a cure to social problems instead of Islamic values.

To the ruling elite, the most important problem today is the electoral power of Islamic fundamentalism. The Islamist party the Virtue Party, is paradoxically, the only modern political organisation in Turkey. It has deep roots in countryside and village offering a programme of moral-political reform to a population disoriented by the forces of modernisation.<sup>123</sup> The Party in the last general election secured 102 seats and is the main opposition party in Parliament.

#### **4.4.2. The Motherland Party (MP)**

The Motherland Party which was established under the leadership of Ozal<sup>124</sup> in 1983, is a centre right party. Its founders were from the private sector.<sup>125</sup> Its current leader is Mesut Yilmaz.

The emergence of the MP was undoubtedly the most important aspect of Turkish party politics in the 1980s. The prominence of the MP was not only due to its three

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<sup>122</sup> Toprak, B.,(1984), “Politicisation of Islam in a Secular State: The National Salvation Party in Turkey” in Arjomand, A.S. (ed.) *From Nationalism to Revolutionary Islam*, New York: State University of New York Press, pp 119-133

<sup>123</sup> Gunter, M.M., (1998), “The Silent Coup: The Secularist-Islamist Struggle in Turkey” *Journal of South Asian and Middle East Studies*, Vol: 21:3, Spring 1998, pp1-12

<sup>124</sup> A distinguished economist, who had served in 1969 as the director of the State planning Organisation, in 1979 and 1980 as economic adviser to Prime Minister Demirel, and as deputy Prime Minister in the Coup government after 1980.

<sup>125</sup> Dodd, C.H., (1990), *The Crisis of Turkish Democracy*, Washington: Eothen Press, p.95

consecutive victories but also to the new ideas it brought to Turkish politics. Views of commentators on the impact of the MP on Turkish politics fall into two opposite camps.

The first group<sup>126</sup> views the MP as an extension of the 1980 coup government. According to these scholars, the party is corporatist in nature, an instrument for integrating the Turkish economy into world markets, essentially conservative and supported by the religious and nationalist groups, an executive committee of the Turkish bourgeoisie, and a reflection of the rise of the new right in Turkey. According to an alternative view, however, the MP is seen as the 'initiator' of liberal revolutions, anti-bureaucratic, pluralist modern, and able to bring together a coalition including a wide range of ideological groups.

Ozal defined his party, in 1983, as "nationalist, conservative, social policy minded, promoting a controlled market economy". The party succeeded in providing a broadly acceptable, pro-establishment program for a large segment of the public that had had enough of the pre-1980 disruptive forces and the parties that had not coped successfully with them. The party assumed the image of a new centre-right party, representing traditional values and market rationality, favoured by many Turks eager for stability and prosperity.

The Motherland Party attempted to create a new sort of world. Its appeal at the top was to internationally minded, market-orientated industrialists and businessmen. At the lower levels, the party appealed to small businessmen, particularly to those in this class, and they are many, who are conservative in social and religious matters.

The party had to be pragmatic in its approach because it possessed a potentially dangerous division between its liberal and religious components, with a nationalist group tending to join the latter.

Republican nationalism and secularism did not pose any serious threat to the economic policies of the Ozal governments. However, in terms of political and constitutional changes, the Ozal governments faced important resistance from the statist cadres, rather than from the masses. Necessary changes could not be realised in Turkey. Thus, neo-Liberal ideas and their effectiveness were blunted. Though new right ideas

influenced the attitudes and beliefs of the Turkish people and the political culture, this influence could not be represented at the centre, due to the statist resistance. This resistance has since grown, during the 1990s.

Governmental control and dominance over economic, political and social policy formation and direction originated with Turgut Ozal during his governments. Ozal's high-profile style of government, involving the continuous leading of opinion from the front, embodied his philosophy of change and liberalism which opened the state to the periphery. In four years as a bureaucrat, seven years as Prime Minister and two years as President, he changed the structure of the economy and nature of contemporary Turkish politics and society. Ozal's existence was vital for Turkey, in terms of the 1980s liberal experience.

The main actors behind these ideas were the politicians or bureaucrats who saw the necessity of the liberal economy because of their experience or expertise individuals like Turgut Ozal, although there was few of them in the 1970s. Nevertheless, it should not be forgotten that, the liberal trend in Turkish politics provided fertile ground for every political and economic initiative. Ozal and his team with a vast majority of his supporters, flourished on the ideas and experiences of previous liberal political movement and the centre-right political parties.

Ozal's leadership and his handling of the Prime Ministry and the Presidency were very impressive and played the most important role in Turkey's experience in the 1980s. Whether one agrees or disagrees with his policies, it has to be accepted that Ozal changed attitudes toward the State and the society and demonstrated skills and tactics that were crucial and very influential, and are likely to be useful to future incumbents. He was an effective leader in putting his stamp on the domestic and foreign policies of Turkey, but in a real sense, his stamp appears to have been cancelled partially by the statist reflexes of Turkish politics in the 1990s.

After the death of Ozal in 1993, Mesut Yilmaz has become the leader of the Party. Yilmaz led the Party to the centre. Now the MP is completely different party to the MP which Ozal founded. The MP is now, seen as a statist and conservative party

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<sup>126</sup> See. Yesilada, B., (1993), *The Political and Socio-economic Transformation of Turkey*, Westport, Conn., London: Praeger

which does not emphasise liberal changes. The Party, during the legitimacy crisis in 1997, took the side of the Military and after the resignation of Erbakan led coalition government, Mesut Yilmaz formed a minority government relying on the support of two leftist political parties; the Democratic Left Party and the Republican People's Party. However, the government had to resign after a successful no confidence motion against the Government in Parliament. During the last elections in 1999, the Party only obtained 12% of the total votes and became the fourth party in Parliament. It is currently part of the Coalition government with the NAP and the DLP. After the elections, the Party leadership changed their position regarding their conservative stance. The leadership concluded that they had lost support because of their stand with the military against the civil government in 1997. Yilmaz, the leader of the Party, now emphasises the needs for liberal changes regarding the law and structure of the State.

#### **4.4.3. The True Path Party (TPP)**

The True Path Party was founded in 1983 and has taken part in the elections since 1984. It is also centre-right party. It represents the continuation of the Democrat and Justice parties (as representing the periphery against the State elites).<sup>127</sup> This party is headed by Tansu Ciller. It is professedly liberal in economics, and liberal in its hatred of military intervention in politics. The party stresses what it terms "free democracy". What is meant by this is that liberal checks and balances on government (and institutions which exercise them like the Constitutional Court and particularly the State Security Council) should transfer primacy to the potential will of victors at elections. The True Path Party has begun to lean in a more religious direction. Although the party's name, Dogru Yol (True Path) may have referred to the Koranic "sirrat al-mustakim" (straight path) to attract the vote of the traditionally minded, its avowed objectives were to guard individual rights in the framework of social justice, to foster a democratic secular State, and to promote advanced development and prosperity. The party's founders and leaders repeatedly have defined it as committed to the nation's liberal democracy, based on the

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<sup>127</sup> Acar, F., "The True Path Party" paper presented to international conference 'Continuity and Change' Bilkent University, Ankara November 1988,



free will of the people.<sup>128</sup> Ideologically, the True Path party has emphasised its identification with the Justice Party, just as its chairman and many officials had been leading members of the Justice Party. In this, it has had to compete with the main right-of-centre rival. The Motherland Party. Both the True Path party and the Motherland Party have resorted to a clientelistic approach. The True Path Party like the Motherland Party lost its support in the last General Election and became fifth party in parliament. This is seen as a general trend in Turkish politics that the centre is losing its base to the right wing or Islamic parties such as the National Action Party and the Virtue Party.

Both parties the MP and the TPP are similar to each other in terms of policies and their electoral base, they only differ in leadership.

#### **4.4.4. Democratic Left Party**

The Democratic Left Party was formed in 1985 and is the centre-left party with a special commitment to a moderate form of nationalism. Veteran politician Bulent Ecevit is the leader of the DLP. His wife Rahsan Ecevit is the deputy leader. The DLP does not have a modern party organisation. It is a personality-based party. Ecevit's charisma is the most important thing in the party. The Ecevits and their followers hold nationalist views as well as social democrat leanings. The DLP differs from the RPP by not identifying itself with State or Kemalism and the party's concept of secularism is different from the RPP. The DLP came first in last general elections in 1999 and formed a coalition government.

In the Democratic Left Party, there has never been an internal conflict or debate. The policies are not formed by discussion but by the leaders Mr and Mrs. Ecevit. The Party's success in last general elections was not due to its organisational success or election campaign but its leader's popularity based on his honesty and anti-corrupt approach.

#### **4.4.5. Pro-Kurdish Parties**

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<sup>128</sup> Bardach, A.L., (1997), "A Real Turkey: Tansu Ciller's Manipulative Rise to Power", *New Republic*., Vol.217 1 pp.16-19

Before mentioning pro-Kurdish political parties, one must look at the Kurdish issue in general with nationalistic character of the Turkish State to see a clearer picture of the situation.

When the Republic of Turkey was established on the 29<sup>th</sup> of October 1923, the secular nationalist ideology was also established as the supreme identity of the people and Turkish state. "Ataturk's secular state did not recognise national minorities. Ruling elite viewed any attempt to assert minority rights, as a threat to the integrity of the state".<sup>129</sup> Though they are not the only different ethnic group, the Kurds have been particularly subjected to this policy because they constitute the largest ethnic minority group.

Ataturk declared that "neither Islamic union or Turanism" may constitute a doctrine, or legal policy for Turks. Henceforth the government policy of the new Turkey is to consist of living independently relying on Turkey's own sovereignty within her national borders"<sup>130</sup> Although Turkey has a strict version of nationalism, it is not racist ideology it arose on the base of the nation-state, however, this interpretation denied any Muslim minority any rights in the republic except the Turks.

Despite Ataturk's nationalist policies minority nationalism could not be totally abolished in the republic of Turkey. In Turkey, minority nationalism largely emerged in reaction to fears of being culturally assimilated by the Turks, political repression and economic deterioration.

The Turkish Constitution identifies the Republic of Turkey as "an indivisible entity with its territory and nation".<sup>131</sup> It does not mention any other nationality except the Turkish nation. The Kurds particularly object to a clause in the constitution that says "its language is Turkish"(Article 3). It is believed that this formulation excludes the Kurds and other non-Turkic ethnic groups. In the preamble of the Turkish constitution it was declared that "the direction of the concept of nationalism as outlined by Ataturk". Article 2 also defines one of the characteristics of the republic as "loyal to the

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<sup>129</sup> Hann, C., (1997), "The Nation-State, religion and Uncivil Society: Two perspectives from the periphery", *Daedalus*, Spring Vol.126:2 p.32-40

<sup>130</sup> Landau, J. M., (1995), *Pan Turkism From Irredentism to Co-operation*, London: Hurst and Company, p.74

<sup>131</sup> Article 3 of the 1982 Constitution

nationalism of Ataturk” (Article 2). Moreover Article 4 clearly states that these three articles “shall not be amended, nor shall their amendment be proposed” (Article 4)

Though the Kurds are one of the oldest nations of the world, they have never succeeded in creating their own state or empire and have lived in this part of the world for generations. Despite the fact that there has been disagreement on the number of the Kurdish population, they comprise about 15% of the total population.<sup>132</sup> During the Ottoman Empire, the Kurds lived peacefully in a semi-autonomous position. They were acknowledged as a separate ethnicity in a separate region. Kurdish society was among the Muslim societies of the Empire and the Kurds showed a similar pattern of support for the state to every other Muslim minority.

The new Republic had the first confrontation with the Kurds in 1925. Under the leader of Shaykh Said, they rose against the Republic. Though there has been discussion since 1925 whether it was religious or nationalist in nature, it appears to have been a blend of these two forces.

On the other hand, there has been hardly any discrimination against the Kurds on ethnic grounds. If the Kurds were committed to the republican values, they could reach any position they wanted. Contrary to the general belief, the Kurds do not live only in south-eastern Turkey. Especially in the 1960s and 1970s, a large number of them emigrated to the big cities like Istanbul, Izmir and Ankara.

Until the very end of the 1970s, though the new republic was successful enough in getting the Kurds’ passive allegiance and the integration of Kurdish notables into the republican establishment (even some descendants of Shaykh Said entered the parliament). The new republic’s general policy has failed because it did not recognise the Kurds’ identity and discouraged the Kurdish language officially (not legal until in the 1980s). So the PKK Kurdistan Workers party was established on the platform of claiming full independence for the Kurds. The 1980’s experienced a new phase in terms of Kurdish identity and statism. It is the matter of the maintenance of state authority which is legitimate or the “statism” itself which is peculiar to Turkey now.

Kurdish nationalism was a reaction to a status of inferiority and to a denial of the political and cultural self-expression of its people. From 1980 onward, the Kurds have

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<sup>132</sup> Brown, J. F., (1992), *Nationalism, Democracy and Security in the Balkans*, Hents: RAND, p.35

embarked on campaigns of rewriting their national history and re-asserting national cultural policies.

There has never been a referendum on “the political and territorial autonomy” of Kurds in Turkey. Although there have been a lot of Kurds at high levels in the government, and in general they are not kept away from most important decision making processes in the Turkish government, they have been kept there only if they consented to the principles of the Turkish state.<sup>133</sup> There is enough evidence that Kurdish national traditions were discouraged in the past.<sup>134</sup>

Turkish officials claim in response to these criticism that any arrangement that brings differing implementation of public services and state activities regarding any particular ethnic group would require amendments basic to the constitutional principles of Turkey which in turn will require a broad consensus on a democratic platform. In that case, it should be normal to exclude movements using violence and groups not taking clear stand against violent movements from taking part in that consensus. In any case, once such arrangement is put into effect, new arrangements regarding other ethnic groups and subgroups would be needed. Then, it is quite likely that national integrity and unitary structure of the Turkish State will be diminished.<sup>135</sup>

Mango<sup>136</sup> writes about the necessity of freedom for the ethnically based political parties. Although it is forbidden for political parties to operate on ethnical grounds, through the exercise of the right to found political parties without any restriction as guaranteed under the Constitution, new parties are formed in lieu of the ones banned by

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<sup>133</sup> A particularly critical issue might be the composition of the Turkish army. It seems that few Kurds are allowed to join the army and they will be in senior position.

<sup>134</sup> Kırisci, K. and Winrow, G. M., (1997), *The Kurdish Question in Turkey*, London: and Portland : Frank Cass, p. 36

<sup>135</sup> Mango, A., (1995) *Türkiye'nin Yeni Rolü* (Turkey: The Challenge of a New Role), Ankara: Praeger Publishers, p. 50

<sup>136</sup> *Ibid.*, p.68.

Constitutional Court.<sup>137</sup> Alternatively, it is possible to become candidate for the general elections from political parties with differing views.<sup>138</sup>

According to the Turkish Law, the members of the Grand National Assembly of the Republic of Turkey are elected as the representatives of the Turkish nation as a whole irrespective of their ethnic origin for Turkish state is not based on ethnic discrimination and racist concept of nation..

Nevertheless, the pro-Kurdish movement formed the HEP, the People's Labour Party. The HEP caused controversy in Turkish politics since they raised the Kurdish issue. The Party was abolished by the Constitutional Court.<sup>139</sup> In its judgment, the Court stated that the Republic of Turkey was founded according to principles of a singular state, which is based on unity. The Court set out that the Constitution was arranged in accordance with the principle of the indivisible integrity of the state with its territory and nation therefore, the political parties in Turkey could not defend a federal system. The Court determined that being against "the nationalism of Ataturk" may also mean being against 'the indivisible integrity of the state with its territory and nation'.<sup>140</sup>

"The Nationalism of Ataturk which is unifying and removes all ethnic differences, and which is the main principle that the Republic of Turkey and can never be abandoned, is an anticipation of the peace at Home and in the world and a dedication of the country and nation. There is no doubt that an idea which contradicts this principle is also contrary to territorial and national unity."<sup>141</sup>

This comment of the Court may be criticised on the basis that there should not be a place for an official ideology in a democratic liberal regime with a multi-party system.<sup>142</sup>

The Court pointed out that

"Although their methods were different, the aims of the defendant party and

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<sup>137</sup> For instance, People's Democracy Party (HADEP) which replaced the pro-Kurdish Democracy Party (DEP) was legally founded and currently operates. The former secretary general of DEP who was brought to preside over HADEP expressed that he found most of the views of DEP correct. See *Özgür Ülke*, (Daily Newspaper) 12 May 1994.

<sup>138</sup> Former members of the Parliament from the banned DEP were elected from the centre-left party in 1991 general elections.

<sup>139</sup> AMK., T.14.7.1993, E.1992/1 (Siyasi Parti Kapatma), K.1993/1, RG.18.8.1993-21672, pp.11-234

<sup>140</sup> *Ibid.*, p.203

<sup>141</sup> *Ibid.*, p.213

<sup>142</sup> Duran, L., (1986), "Anayasa Mahkemesi' ne Gore Turkiye'nin Hukuk Duzeni" (the Legal Order of Turkey According to the Constitutional Court), *Amme Idaresi Dergisi*, Vol.13:2, pp.65-79

terrorists were quite similar...The HEP claimed the existence of oppressed Kurdish people who live in Turkey and have different language and culture and claimed that they especially have the right of 'self-determination'. The party showed Ataturk's speeches as a proof for its claims".<sup>143</sup>

The Court decided to close down the People's Labour Party with the justification that

"The HEP divided the Turkish Nation into two parts as Kurdish and Turkish Nations, provoked the citizens who have Kurdish origin, against the state by defining these citizens as 'an oppressed nation' and showing them fighting for their freedom. The Party also had divisive behaviours with the proposal to recognise Kurdish People's 'self- determination' right and other activities."

After the HEP, the Democracy Party was founded in 1993. However, the same fate was inevitable for the DEP. The party was banned on the ground of being against "territorial unity". Former parliamentarians of the banned DEP had been elected as the candidates of a centre-left party in the 1991 general elections. Their parliamentary membership continued until the Parliament rescinded their immunity by general consent in March 1994. Constitutional Court who acts independent from legislature and administrative bodies rejected the request, which is also a constitutional right, to invalidate Parliament's decision to revoke the immunity of DEP members.

The Turkish Court of Cassation, in its examination of the appeal against the conviction of DEP members, concluded that their speeches and expressions of views in the Parliament could not be considered for conviction because of freedom of speech.<sup>144</sup> In the same decision of the Court of Cassation it was told that there was concrete evidence which exposed the relations between the PKK and its leader and parliamentarians from DEP outside the Parliament and in non-legislative activities. In addition, former parliamentarians from DEP who escaped abroad declared that they were adherent to the PKK.<sup>145</sup> In particular, there is evidence that currently imprisoned former DEP members acted in common with the PKK and one of them, Leyla Zana was given

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<sup>143</sup> AMK, *loc. cit.*, p.213

<sup>144</sup> See *Yeni Sayfa*, (the Daily Turkish Newspaper), 25 November 1995, p.3

<sup>145</sup> "Naif Günes from DEP said: 'We are all adherent to the PKK'.", *Hürriyet*, 17 April 1995. "Former head of DEP, Yasar Kaya said: 'Kurdistan Parliament in Exile is not a body standing in the shadow of the PKK. Because functionally we have the typical characteristics of the PKK'", *Türkiye*, 10 September 1995.

political training in the PKK camp in the Bekaa Valley of Lebanon.<sup>146</sup> On the other hand, other former parliamentarians of DEP, who were found to violate Article 8 of the Anti-terrorism law that is seen restrictive of freedom of expression and which punishes disseminators of the propaganda against indivisible integrity of the State with its nation and territory, were released.

The HADEP, the People's Democracy Party, rose from the ashes of the HEP and the DEP. Founded on 11 May 1994, HADEP is a Turkish opposition party that speaks on behalf of the Kurds. Like its predecessors the HEP and the DEP, the HADEP has found itself targeted by the state security apparatus. On 12 February 1998, the police detained seven leading members of HADEP: Murat Bozlak, the President of HADEP; Mehmet Satan, the Vice President of HADEP; Hamit Geylani, the General Secretary; Zeynettin Unay, the Assistant General Secretary, Ishak Tepe, the Treasurer; Riza Yurtsever and Melik Aygul, both members of the Party's Executive Committee.<sup>147</sup> On 17 March 1998, an indictment was presented to Ankara's State Security Court by the State Prosecutor. The indictment stated that the seven members of HADEP had breached Article 168(1) of the Turkish Code, in that they were 'completely under the control and influence of the outlawed Kurdistan Workers Party (PKK) ... and that the PKK carried out many of its important organisational activities by means of HADEP.' Article 168(1) provides that 'whoever establishes armed societies or bands shall be punished by heavy imprisonment for not less than 10 years.' The indictment went on to state: "Despite the Constitution, the accused have regularly declared that they are a distinct race and people, with their own language, country and culture." The State Prosecutor charged that the education and teaching within HADEP was a separatist movement and linked to the PKK.<sup>148</sup>

In the general elections of 25 December 1995, the People's Democracy Party (HADEP) in alliance with extreme leftist parties for which the PKK had openly declared its support received only 4.17% of the total votes in Turkey and gained no seat in the

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<sup>146</sup> As quoted from the decision by the 9<sup>th</sup>. Penal Chamber of the Court of Cassation in *Yeni Sayfa*, (Turkish Daily newspaper) 25 November 1995, p.1

<sup>147</sup> Muller, M.,(1996), *Nationalism and the Rule of Law in Turkey [Democracy at Gunpoint]*, Parliamentary Human Rights Group, June 1996]

Parliament, persons of Kurdish descent from other political parties were elected. The HADEP in the following elections, was not able to gain any seats in Parliament. However, the Party candidates in local elections have become mayors of few big cities in South-East Anatolia.

The main accusation towards pro-Kurdish political parties is to have close link with the PKK ( Kurdistan Worker's Party) and being a threat to national unity. One must examine briefly the PKK in order to determine whether it is a political party or merely a terrorist organisation.

Political parties are organisations with popular support and clarity and are based on collective common sense. Organisations that do not accept peaceful democratic competition conditions are not political parties. If their principal political means are violence, they are terrorist organisations or revolutionary groups to the extent of their purpose and support.<sup>149</sup>

The characteristics of the PKK are best described by the words of its leader, Abdullah Öcalan:

"The tactics of the party are guerrilla. Now the party directs political developments. We can say that essence of the guerrilla is a more condensed form of our party's structure. The most reliable members of the political party build up the guerrilla. In this case, it is the organization of guerrilla nucleus, style of management and methods of working and fighting that we must put more emphasis on... As it is known, top management directs a war. In our organisation top managers of the war are parties."<sup>150</sup>

Öcalan clearly stated his methods and targets in the following excerpts from a program broadcast on Channel 4 of Swedish TV on November 4, 1990:

"We attack Turkish targets no matter if they are for either economic or social or touristic purposes. We will carry out all kinds of attacks by explosives and guns especially in Turkey. Those who go to Turkey are considered to be helping this country in its fight against us and for this reason we will take actions on them."<sup>151</sup>

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148 The HADEP Trial - The Proceedings against Members of the People's Democracy Party (Ankara State Security Court 25 September & 23 October 1996), KHRP, January 1997

149 *Ibid.*, p.3

150 *Ibid.*, p.17

151 *Ibid.*, p.20. A similar announcement was made in a press conference by a member of Central Committee of the PKK in Beirut/Lebanon on June 1, 1997. See "The PKK Warned in Severe Terms Israel and the USA Which Gave Support to the Invasion of Southern Kurdistan [by Turkey]: You Would Also Be Hit!", *Özgür Politika*, (Daily Turkish Newspaper) 4 June 1999



With its totalitarian Marxist-Leninist ideology and violence-centred policy, the PKK has distanced itself from the democratic process and before the 1994 local elections it threatened the parties to cease their political activities and not to participate in the elections in Southeastern Turkey.<sup>152</sup>

The European Court of Human Rights in its decision regarding Turkish cases stated that the PKK is a terrorist organisation.<sup>153</sup> On the one hand, the PKK seeks to establish an independent Kurdish state, though the majority of the Kurds do not, because “at least half of them are scattered around the metropolitan areas of western Turkey and integrated into the greater Turkish population”.<sup>154</sup> On the other hand, Turkish governments seek to preserve the frontiers and resources of their country. Though Turkish nationalism is the key concept here, the new Kurdish nationalism is also very important. It is mainly based on an extensive distrust. Nationalist Kurds have exaggerated these more or less real defeats and dangers and developed the ideology of the New Kurdish Nationalism which includes the politics of survival warfare and desperado heroism.

In conclusion, it could be said that tolerance, openness and democracy facilitate free expression of the demands for the improvement of democracy and human rights in Turkey. However, there is no doubt that the resurgence of nationalism poses a major challenge to the political and economic stability of Turkey. If there is no security, neither democracy nor markets in the country, will grow properly. The continuity of the democratic system depends on compromise between two minorities. Turkey as its history proved can function as a multiethnic and democratic state. The scientific and technological innovations and swift political changes of the twentieth century have increasingly eliminated distance and brought the cultures of the world into closer touch with one another.

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<sup>152</sup> Gunter, M., (1994), "The Changing Kurdish Problem in Turkey", *Conflict Studies, Research Institute For the Study of Conflict and Terrorism*, No. 270, (May 1994), p.21

<sup>153</sup> See Chapter 3.2.2. *Zana v. Turkey*, App. No: 18954/91, Reports 1997-VII

<sup>154</sup> Genckaya, O.F., (1996), "Ozal ve Guneydogu Sorunu: Demokrasi ve Entgerasyon" (Ozan and the Sout-east problem: Democracy and Integration) in Sezal, I (ed.), *Devler ce Siysaset Adami Turgut Ozal*, Istanbul: 20 Mayis Vakfi, p. 94

Different proposals for the solution of the Kurdish problem have had echoes in business, political and academic circles. The conditions for the realisation of the will of the people in a liberal atmosphere are almost totally set. Considerable steps were taken to improve the freedom of expression provided that propaganda for violence is not made. Turkey having its place in Western security and economic organisations for almost fifty years initiated the implementation of Customs Union Agreement, which is an important step towards full membership in European Union. Most of the obstacles on the way of expressing Kurdish identity through cultural, folkloric and traditional aspects were removed. The easing of cultural exchange in a pluralistic and tolerant society encourages unity on the basis of citizenship with no racist imposition and with no ethnic hatred but with openness and democratic involvement. This process in Turkey introduces itself as being considered as a Turkish citizen in line with the constitution of the Republic of Turkey on one side, and the realisation of all ethnic, religious and sectarian forms of affiliation freely in private life and on cultural basis on the other. The progress that will be made in Turkey's economic and political integration into the European Union and in the long term its adaptation to the economic and common foreign, defence, social and financial policies of European Union will clear the way for Turkey to adopt being European as her supra identity.

Before concluding this chapter, it may be beneficial to provide a table, which shows some of political parties, which exist in Turkey.

**Table: 4:1: Political Parties in Turkey**

Party Name	Political Stand	Foundation Date	Electoral Support (%)	Seats in parliament
Motherland Party	Centre-right	20.05.1983	13.22	88
True Path Party	Centre-right	23.06.1983	12.01	86
Nationalist Action Party	Right (Nationalist)	07.07.1983	17.98	129
Virtue Party	Pro-Islamic	17.12.1997	15.41	111
Democratic Left Party	Centre-Left	14.11.1985	22.19	136
Greens Party	Left, s	06.06.1988	n/a	n/a-
Republican Democratic Youth Party	Centre-liberal	04.10.1988	0.12	none
Rebirth Party	Pro-Islamic	26.03.1990	/	none
People's	Pro-Kurdish	07.06.1990	4.76	none

Democracy and Labour Party				
Socialist Unity Party	Extreme-Left (Marxist)	15.1.1991	/	none
Worker's Party	Extreme-Left (Maoist)	2.3.1992	0.18	none
Republican People's Party	Centre-Left (Statist)	9.9.1992	8.71	none
Democratic Turkey Party	Centre-Right	07.01.1996	0.58	none
Great Unity Party	Right (Turk-Islam Ideology)	29.01.1992	1.46	none

#### 4.5. Conclusion

In Turkey, the existing system and dominant values are determined and defined by the State and the existing bureaucratic system. The State, then, exists in two dimensions in Turkey: in one, it is visible, official, obedient to rules; in the other, it is obscure, hidden from public view, guided by a changing balance of forces that only initiators can properly discern.

The modernisation process and its liberal consequences have been from the top down and the periphery in Turkish society has not made a precise impact. This has created a dilemma for the civil forces. While they intended to restrict State dominance, they have had to operate at the State level to become successful. The centre has never allowed the periphery to dominate itself. However, if Turkey uses its situation this strong statist tradition give a chance for Turkish democracy, because this tradition can supply a "working state".<sup>155</sup>

Although there have been some political attempts in terms of liberal democracy these attempts have always faced the dominant reality of Turkish politics which has been statist in character. One should not forget that there was no well-constructed, independent and unique liberal movement up to the 1980s in Turkey.

The notion of rationalist democracy adopted in Turkey considers democracy as an intellectual debate with the intention of determining the best policy, and not as an

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<sup>155</sup> Dodd, C.H. (1990) *The Crisis of Turkish Democracy*, Cambridge: Eothen Press:, p.139

effort to reconcile and aggregate different views and interests. It does not allow the political elite to hold the real power and turn their ideology and programmes into governmental policies. Politics has to be in certain frame which is drawn by the State.

Efforts throughout the Republican period of institutionalising dimensions of democracy in Turkey do not seem to have been entirely successful. During this period, Turkey experienced three military interventions (in 1960, 1971 and 1980) and one “light intervention” (which forced the government to resign in June 1997). The first and the last one of these took as a target one party (the Democrat Party and the last one the Welfare party) and the second one’s target was all parties.

This was not surprising, given their predilection for viewing democracy as an end -i.e., promoting the general interest through debate based on reason-and not as a means to promote as well as reconcile “interests” vie-vice the problems of liberal democracy in Turkey - the military never found fault with the regime itself, or with social groups or with themselves but with politicians who as already implied, were accused of irresponsibly.<sup>156</sup>

Political openings in Turkey were neither the upshot of a falling-out among themselves of the authoritarian, as has been the usual pattern in many Latin American countries,<sup>157</sup> nor initiated by the pressure of emerging social forces, as was the case in the earlier, major revolutions. Rather, the openings were initiated by an alternative political party elite at the “centre” which attempted to replace the State-dominant political system by a party-dominant one.<sup>158</sup>

Compared to their counterparts in the Western industrialised countries, political parties have figured prominently in Turkish polity.<sup>159</sup> In the event, Turkish politics have been dominated by two categories of elite-the bureaucratic and military on the one hand, and the political on the other. Not only the political elite, but also the bureaucratic and the military elite, secretly or openly, have wished to play significant role in politics. As

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<sup>156</sup> This views is elaborated in Metin Heper, “Extremely ‘Strong State’ and Democracy: Turkey in Comparative and Historical Perspective” in Greniman, D., (ed.), *Democracy and Modernity*, Leiden: E.J. Brill

<sup>157</sup> See O’Donnell, G. and Schmitter, P, (1986) *Transition from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*, London: John Hopkins University Press.

<sup>158</sup> See Heper, M., (1985) *The State Tradition in Turkey*, Walkington: Eothen Press

<sup>159</sup> Jupp, J., (1968), *Political Parties*, London: Routledge & Kegan Paul, p.97

already mentioned, clinging on to their concept of rationalist democracy, the State elite expected the political party elite to place primary emphasis on the general interest, as the State elite themselves have defined it.<sup>160</sup> Political parties in Turkey achieved a linkage between the state and the public, although this linkage was cut off few times by the military. Some parties played an essential role for integrating the Islamist groups into legitimate political arena. Pro-Islamic parties in Turkey, despite the fact that they are disliked by the military and the state elite, have played their part in regarding mobilising a large portion of the society to actively participate in politics. The pro-Kurdish and pro-Islamic parties are the main forces fighting to widen civil liberties and political rights in Turkey. Centre parties in order not to lose their electorate support to parties at periphery adapts some of the approaches which have been put forward by counter-state parties.

The Kemalist establishment is fighting a desperate rearguard action to suppress civil society and preserve its own historic privileges and unchallenged right to command the nation from above to below. Its ideology, centred on the authoritarian State model, has become as anachronistic as the cult of personality surrounding its founder.

The political arena in Turkey is marred by the corruption of political leaders who manipulate religious and ethnic fears that the Turks face a catastrophic danger. This constant utilisation of the "enemy" has recently been brought to bear against the Kurds and Alawites, leaving the political scene the haunt of witch-hunters. The fragmentation of the Turkish party system exemplifies both the role of cultural cleavages in the make-up of Turkish politics and the collapse of the Europhile-dominated political and cultural elite that had articulated a more cohesive consensus on the western orientation of the country.

Turkey's very grave current problems originate in the continuing tension between modernisation and tradition, particularly traditional religion.<sup>161</sup>

Liberal democracy has two main constraints in Turkey. These are namely secularism and nationalism. Therefore, the State uses legal means to prevent any threat towards these two principles. These obviously affect political parties in terms of

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<sup>160</sup> Ozbudun, E., (1993), "Turk Siyasal Sisteminde Degisim ve Sureklilik Unsurlari", "The Elements of Change and Continuity in Turkish Political System), *Turkiye Gunlugu*, Vol.:25, pp.13-15

<sup>161</sup> Gole, N.,(1997), "Secularism and Islamism in Turkey: The Making of Elites and Counter-Elites" *Middle East Journal*, 1997, Vol.: 51:1, pp.46-58

functioning and representing the masses. As will be explained in the next Chapter, Turkish law has placed many restrictions upon political parties to ensure the secular and nationalist character of the Turkish State.

Political parties are not trusted by the ruling elite and some parties are seen as a threat to the fundamental principles of the Republic –i.e. secularism and territorial unity-, the legal structure regarding political parties is drawn in great details and in a very strict sense. The political struggle in Turkey as could be seen in this chapter has mainly been to dominate the State either by the centre or the periphery.<sup>162</sup> It could be said that there are two kind of political parties in Turkey. Political parties who are at the centre and close to the state such as the Republican Political Party and parties at the periphery and disliked by the ruling elite such as the pro-Islamic parties (the Virture Party) or pro-Kurdish political parties such as People’s Labour and Democracy Party (HADEP). The ruling elite has taken every legal precaution to keep the periphery parties away from power. If they come to power by coincidence, the ruling elite (mainly civil and military bureaucracy) steps into to make them ineffective or force them to leave government as happened during the Welfare Party government in 1997. The State elite realises that if political parties are to function as interest aggregations and articulations, and act as organisations to put popular demands into governmental policies, that may harm the current structure of the State. Therefore, the State elite is doing everything in their power to keep political parties in line with the official state ideology. What instruments the ruling elite uses and what the main concerns are will be explored in next chapter of this thesis.

It could be said that the main feature of Turkish democracy is the lack of a liberal democratic culture, not lack of parliamentary traditions as it is in the most Eastern European and middle Eastern countries. Democracy or a democratic pluralistic nation is (or should be ) the main aim of Turkey. The Kurds should be represented in parliament proportionally. Turkey’s *de facto* recognition of the Kurdish nation is an important step toward achieving liberal democracy. Nationalism and liberal democracy are qualitatively different and incommensurable and the world is still uncertain as to how to

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<sup>162</sup> for more information about centre-periphery relations see, Mardin, S., (1973), "Centre-Periphery Relations: A Key to Turkish Politics?", *Daedalus*, Vol. 102:1, pp. 169-191

protect the rights of national minorities. Nationalism is a social and a political reality of the Turkish nation and nothing is given as a single and permanent possible solution. Specific characteristics of every country will always be crucial to this issue and the intensity of nationalism can be decreased in some ways in compliance with these characteristics, and liberal democratic tenets.

“Other” identities which the Kemalist nation-state has denied, as it was defining a “Turkish identity” have emerged in two different forms, “minority (Kurdish) nationalism” and “Islamic identity”. Most of the regulations regarding political parties aims and activities in Turkey are designed to prevent these two from gaining strength in the public domain as is explained in the next chapter.

## CHAPTER 5

### LEGAL STATUS OF POLITICAL PARTIES IN TURKEY

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#### 5.1. Introduction

In this chapter, the main concern is to study the Turkish political parties' place in the Turkish legal framework. To do this, related articles of the Turkish Constitution and Turkish Political Parties Law will be examined. The relevant legal codes will also be studied. While examining the situations of political parties in Turkey, one must bear in mind relevant general principles. Apart from the Article 10 and Article 11 of the European Convention on Human Rights, the six criteria regarding political parties which are mentioned in Chapter 7 are also adopted in this chapter. These are the criteria of misconduct, fairness, over-spending, civic engagement, party effectiveness and freedom. Before starting to examine the treatment of political parties by the State, it is necessary to mention the background of the Constitution and the Political Parties Law. That would give us a clear idea about the approach of the Turkish State to political parties. These issues mentioned above were set out by the Neill Committee in British Parliament in order to make recommendations to the government regarding funding of political parties (which is studied in great detail in Chapter 7.) These principles are very general and transcendental therefore they could be applied to Turkish political parties.

On three different occasions (1960, 1971, 1980) perceived crises led to military intervention. Following both the 1960 and 1980 military interventions, the state wished to regulate democracy in Turkey. The 1961 Constitution did not allow sole emphasis to be placed on the "national will".<sup>1</sup> Article 4 stipulated that the "nation shall exercise its sovereignty through the authorised agencies as prescribed by the principles laid down in the Constitution". Furthermore, according to Article 153 of the Constitution, no provision of the Constitution was to be interpreted to nullify certain specific laws which were passed during the Ataturk era. The clear intention was to maintain Ataturkian thought as a political manifesto, and to put a legal end to the supremacy of parliament.

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<sup>1</sup> Before the 1960 Constitution, the 1924 Constitution stated that Parliament is the sole institution, which represents nation, and uses sovereignty on behalf of the nation. The term "national will" was used during the French Revolution to emphasis that the sovereignty (or political power) belongs to only to the nation.



The Constitution did not simply state that the Turkish State was a republic, it also elaborated the characteristics of the regime. Article 2 of the Constitution stated that the Turkish Republic was a national democratic, secular and social state under the rule of law, based on human rights, and the fundamental principles set forth in the "Preamble". This specifically mentioned "the reforms of Ataturk" as the core of the fundamental principles in question.

The post-1961 Constitution period in Turkey soon faced a deadlock. The political parties could not develop a co-operation based on the balance between Parliament and other institutions, which was implied by the Constitution. The state elite for their part was not ready to give a breathing space to the political elite.<sup>2</sup> As a result, three significant developments took place: (1) fragmentation of a bureaucratic intelligentsia, (2) politicisation of civil bureaucracy; and (3) relegation of the Republican People's Party to the periphery. In the process, the polity was gradually polarised, showing unmistakable signs of exhausting pluralism.<sup>3</sup>

The 1980 military intervention took place in the wake of these developments. Under the mixed Constitution of 1982, it is the military not the civil bureaucratic elite or any other civilian institution, which is the ultimate guardian of the state. The present state elite, in contrast to the post-Ataturk intellectual bureaucratic elite, does not presume that they are an inherently superior group in sole possession of the truth. Ataturkian thought is now the only justification for the state elite's taking upon themselves the responsibility of ensuring that the general interest is not given short shrift. However, Ataturkian thought is not regarded as a source for all public policies. It is taken as a technique and not as a manifesto concerning public policies. It serves as a justification for rejecting radical ideologies of both the left and the right. It sets parameters, not agendas.

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<sup>2</sup> In this thesis "state elite" means the civil and military bureaucracy who holds power and represents practically if not legally the state; "political elite" means the leadership of political parties who are not socially elite but because of the nature of political parties they hold the power of selecting parliamentary candidates and shaping the political parties.

<sup>3</sup> See Heper, M., and Evin, A., (1994) *State Democracy and the Military*, Hamburg:: Deutches Orient Institute

The military leadership, which assumed political power in September 1980, identified the political parties, their leaders, and the party system as major contributors to domestic strife, incessant terrorism, eroding public authority, and growing chaos, which prevailed in Turkey prior to their intervention<sup>4</sup>. Therefore, setting up a new basis for the establishment and functioning of political parties and the party system became one of their major concerns. The major policy tools available to the military leadership in the structuring of political parties and the party system were legal in nature. As had also been the case after the 1960-1961 intervention, a new law specifically dealing with political parties was enacted. A prominent characteristic of these laws is that they are highly detailed, containing similar provisions often repetitive in nature, reflecting the excessive concern of the leadership that the pre-1980 politics not be restored.

In the era of 1980 military rule, a substantial number of army officers as well as the extreme rightists and leftists, viewed the political parties as either hotbeds of strife and dissension or simply as convenient means of achieving power.<sup>5</sup> In 1980 the prestige of the parties was at an all time low due to their pitiful performance in the years from 1960 to 1980. In general, the military considered that political parties should be instruments of national unity, order and stability rather than vehicles for the expression of special interests of social or economic groups or particular regions of the country.<sup>6</sup> This wish is reflected in the Constitution and the Political Parties Law 1983 that were drafted and legislated during the military ruling.

In 1981 a timetable for the return to civilian rule was announced. In the same year, a Consultative Assembly was convened, charged with drafting a new constitution. The National Security Council (the NSC) carefully selected the Assembly members from among thousands of applicants. The Constitution drafted by the Assembly, which was, in turn, put into final form by the NSC, established a two-tiered regime. The President, who has the authority necessary to maintain the territorial integrity and security of the

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<sup>4</sup> General Evren's speech on TV and Radio on 12 September 1980. He was the leader of the military coup

<sup>5</sup> Soysal, M., (1986), *100 Soruda Anayasanin Anlami*, ( The Meaning of the Constitution in 100 Questions), Gercek Yayinlari, Istanbul, p.86

<sup>6</sup> See, Karpat, K.H., (1988), "Military Intervention: Army-Civilian Relations in Turkey Before and After 1980" in Heper, M., and Evin, (1994) *State, Democracy and the Military*, Hamburg: Deutsches Orient Institute, pp.137-155

state and the modernist features of the regime and to exercise a mild form of tutelage over the Parliament, represents the state. The second tier of the regime consists of the Parliament, the cabinet, the bureaucratic apparatus, and several other institutions, and it is designed to carry out the day-to day functions of the government within the framework set by the NSC

The Turkish Constitution of 1982 according to some provides a fair plan for the creation of a liberal and democratic state.<sup>7</sup> However, there are some limiting provisions in the constitution on the rights of individuals, and also some restrictions on publications, which threaten the external security and integrity of the state or which, are judged to incite crime, uprising, or rebellion. Nor may associations, which are not political parties, engage in politics, nor may civil servants. Whilst strikes are not banned, unless they have political ends, they are strictly regulated -as, too, are demonstrations. Like every other constitution, the 1982 Constitution is concerned to prevent a repetition of the immediate past. The overall aim is to discipline politics, as shown by the rule that political parties are neither to engage in co-operation with associations, unions and other bodies, nor to receive material aid from them. Yet this is more important for small sectional parties than for those which hope to broaden their appeal.

The Assembly was in charge of passing the new political parties law. The political parties' legislation proved to be much more controversial than had been expected. This was because the Assembly's committee charged with drafting it responded to the military's views that political parties should be much less oligarchic than before, even to the extent of having open primary elections and allowing party organisation to operate at sub-district level in towns and in villages. The previous legislation on political parties had allowed for primaries, but in practice they had come to be restricted to party delegates and did not place much of a curb on central power. The Committee was against state financial aid for political parties, was in favour of allowing political party organisation at the lowest level and supported freedom of action for

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<sup>7</sup> See Gakem W., (1994), *Turkish Politics and the Military*, London: Routledge

members within parliamentary groups not to be obliged to conform to the majority view of the parliamentary party.<sup>8</sup>

The Consultative Assembly proved very hostile to the recommendations of the Committee. Its members did not agree with opening up politics at very local level, they inserted a requirement for state financial aid for political parties, and they took the view that discipline within the parliamentary party was of primary importance and so threw out the idea of primaries. The Assembly showed itself less radical than its committee, but the crucial question was what would the National Security Council decide. The supreme body provided a mixed response. In its final form the Political Parties' Law 1983 reinforced the already restrictive rules for political parties contained in the Constitution, whose guiding principle in the regard was that political participation is vital for democracy, but that participation should be qualified, controlled, and should take place within limits set in detail by the Constitution and related laws.<sup>9</sup>

The principles, which will guide the functioning of parties, are indicated both in the Constitution and the Political Parties Law. A set of provisions directs political parties to subscribe to, and abide by, the central values of the Republic. Therefore, Article 14 of the Constitution sets the limits on the exercise of fundamental freedoms. They may not be used to challenge the national unity and the territorial integrity of the Republic, to abrogate the fundamental freedoms themselves, to establish the rule of a person or a group to have one social class establish domination over others, to promote divisions based on language, race, religion or sect, or to advocate a regime based on such division. The legislation on political parties and the party system which will be studied in detail in this chapter appear to be directed toward the achievement of three aims. These were: "preventing excessive politicisation of citizens, and groups, keeping political parties internally democratic, and rendering both political parties and the party system more stable."<sup>10</sup>

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<sup>8</sup> Insel, A., (1997), "MGK Hukümetleri ve Kesintisiz Darbe Rejimi", (The NSC's Governments and Continuous de'Coups Regime) , *Haftaya Bakis*, 8-16 Mayıs, No: 52

<sup>9</sup> Erguder, U., (1989), *Post-1983 Parties and Politics in Turkey*, Arbeitspaer Stifun Wissenschaft und Politik, Ebenhausen, p.15

<sup>10</sup> Turan, I., (1988), "Political Parties and the Party System in Post-1983 Turkey, in Heper, M. and Evin, A., (ed.) *State, Democracy and the Military*, Hamburg: Deutsches Orient Institute, p.69

In this chapter, membership, organisations and finance of Turkish political parties will be studied in the light of Turkish law (as set out in both the Constitution and legislation). Furthermore the aims and activities of Turkish political parties and how the law regulates them will be examined here. Restraints will be commented on in this chapter to large extent because they are setting the boundaries of political activities of political parties which is perhaps the most crucial issue. These constraints will be emphasised to show the contrast between them and the principles of liberal democracy.

## **5.2. Organisations, Membership and Finance of Turkish Political Parties**

In Turkish law, regulations relating to the organisation and activities of the political parties are to be found in Articles 68 and 69 of the Constitution and in the Political Parties Law 1983.<sup>11</sup>

The 1982 Turkish Constitution and the Turkish Political Parties Law 1983 defines how political parties should be established and how their relationships should be formed. The 1982 Turkish Constitution (hereafter the "Constitution") contains many provisions that are not usually found in a constitution but rather are usually placed at a legislation level.<sup>12</sup> It shows in those restrictive articles that political parties, which are accepted as the main foundations of democratic political life, are, in fact, not trusted by the Constitution (it may be more meaningful to say the makers of the Constitution).<sup>13</sup> It also shows the degree of mistrust. Political directions are particularly to do with secular nature of the state and to do with unitary nature of the state. The State elite shows their hesitance about these ideas by putting certain constraints in constitution so as to block future damage.

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<sup>11</sup>Political Parties Law 1983

<sup>12</sup> In principle, Constitutions do not regulate in detail. They are meant to be short and stating the general framework in which the legislator can make the law.

<sup>13</sup> Soysal, M.,(1986), *op .cit.*, p.29

### 5.2.1. Establishing a Political Party

Article 68 describes political parties as indispensable institutions of a democratic political life and sets out that they may be established without prior consent of the government.

Article 68 – “Citizens are free to form political parties in accordance with the law and become a member of and withdraw from a party. A person must be over eighteen years of age to become a member of a party.

Political parties are an inevitable element of political life.

Political parties are formed without prior permission and continue their activities in accordance with the Constitution and legal provisions.”

The Constitution clearly states that citizens are free to establish a political party without any prior permission. According to the Turkish Political Parties Law, political parties can be established by thirty Turkish citizens who are eligible to be elected, and their central office must be in the capital city of Turkey, Ankara. Political parties must get judicial recognition by giving notice in documents of establishment to the Ministry of Internal Affairs.<sup>14</sup> The Ministry of Internal Affairs gives a receipt when the Ministry receives that document. The Political Parties Law 1983 (hereafter, the 1983 Law)<sup>15</sup> lists those documents. If there is some deficiency in them, the establishment of the political parties will be provisionally accepted. However, if political parties do not eliminate these deficiencies within thirty days after the notice demanding the completion of the same has been given by the Office of Principal State Counsel at the Court of Cassation (the State Counsel), then the legal process will start for the abolition.

### 5.2.2. Party Membership

In Turkey, the Constitution and the Political Parties Law regulate party membership and withdrawal from membership of a party. According to Article 68 of the 1982 Constitution,

“Citizens are free to form political parties in accordance with the law and become a member of and withdraw from a party. A person must be over eighteen years of age to become a member of a party.

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<sup>14</sup> The Turkish Political Parties Law 1983, Article 8

<sup>15</sup> This law was made under the military rule and reflects to the authoritative military ruling and heir aims to discipline political parties.

Judges and prosecutors, members of higher judicial organs including the Court of Accounts employees in public institutions and organisations who have civil servant status, other public employees who are not considered to be labourers by virtue of the services they perform, members of the armed forces and students who are not yet in higher education institutions, cannot become members of political parties.

The membership of the members of the Higher Education Institutions in political parties is regulated by law. The law does not allow those members to assume responsibilities outside of the central organs of the political parties and sets the regulations by which those members of the Higher Education Institutions must abide as members of political parties.

The principles and limitations concerning the membership of students at higher education institutions are regulated by law”

Although, after the amendments, which were made in 1995, the Constitution leaves the party membership of university students and lecturers to the law to be regulated, the 1983 Political Parties Law is still in force without any changes and strictly prohibits students and lecturers from becoming a party member. Article 11 of Political Parties Law.

As seen above, even party membership, which is left to the parties themselves in British Law, has come under a constitutional rule by the 1982 Constitution. The reason for this is that the makers of the constitution aim to structure political life and not to take any risk in leaving it to political elite and also to avoid extreme polarisation. It is not difficult to understand restrictions for army members, judges and public prosecutors which are common in other jurisdiction. However, besides those, the restrictions for university lecturers, students and some civil servants<sup>16</sup> might be questioned. Forbidding those groups from party membership cannot be accepted according to western democratic standards. It is also against the principles of political participation and equality.<sup>17</sup> The issues of civic engagement and fairness are also relevant to this rule. It is obvious that restricting some part of society because of their employment status which does not really require political impartiality, will weaken civic engagement and will not be fair on political parties which seek to appeal to students or government employees (a considerable percentage of working force in Turkey). It might be beneficial to mention

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<sup>16</sup> The definition of civil servants differs from the one in UK. Here not only it means high bureaucrats but also simple post office clerk, teachers, or any one who works for the state as an employee.

<sup>17</sup> Tanor, B., (1991), *Türkiye'nin İnsan Hakları Sorunu*, ( Human Rights' Problems in Turkey), Istanbul: BDS Yayınları, p.159

here the *Kosiek* and the *Glesenap* cases. Political restriction upon the employment of civil servants were investigated in *Glesenap v. Germany*<sup>18</sup> and *Kosiek v. Germany*<sup>19</sup> which are mentioned in Chapter 3. The *Kosiek* case concerned a lecturer who was dismissed because of his membership of the National Democratic Party, whose aims were considered inimical to the free democratic constitutional system which is laid down in the German Basic Law, was regarded as inconsistent with civil servant status.<sup>20</sup> Julia Glasenapp was dismissed from her probationary teaching post because she refused to disassociate herself from policies of the German Communist Party. In both cases, the Court concluded that there was no violation. However, one should state that both of the cases were dealing membership of some political parties whose aims were considered inimical to liberal democratic systems. The Turkish law prohibits all government employees from membership of any political party regardless of their aims. Compared to German law, the restriction is much wider than in German law. However, one cannot assert with certainty that this regulation is contradictory to the European Convention of Human Rights, since in *Glesenapp*, the Court ruled that “access to the civil service” is not protected by the Convention. However, the Court’s decision in this case can be argued against on the basis that they did not take in to consideration that this restriction is not about “accessing to civil service” but being discriminated because of political commitment and this clearly falls into scope of the Convention.

It is particularly difficult to justify the restrictions for students, such that, while some young people who are over 18 years old can be a member of a political party, others cannot because of being a student. The reason behind prohibiting students from being a party members was the reaction to the fact that people who involved political violence in the pre-1980. The makers of the law and the Constitution’s intention here was to de-politicise students. To deprive students who are over 18 years old of the political rights, which other young people have, is a contradictory, unequal and meaningless way of behaving. It could also be said that young people are being punished because of being students. By prohibiting students from political party membership, the ruling elite

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<sup>18</sup> *Glasenapp v. Germany*, Series A-104, (1986)

<sup>19</sup> *Kosiek v. Germany* Series A-105, (1986)

<sup>20</sup> *Kosiek v. Germany* Series A-105, (1986), 9 EHRR 328



intended to achieve one of their aims mentioned above which is preventing excessive politicisation of citizens and securing stability in the society.

To keep students and civil servants from political participation might contravene with Article 14 of the Convention. In Turkey almost half of the population entitled to vote are students, teachers or civil servants. That means half of the *electorate* is prohibited from joining a party as a member. These people are also forbidden to form or join a trade union or any other kind of organisation. One may ask that if they are not entitled to be a party member or to form unions, how could their interests be represented and how could they exert influence upon the government in order to protect their rights and interests?<sup>21</sup>In the UK there is no age limit set out by the law to be member of any political party. The matter is entirely left to political parties. Students are free to join political parties and establish societies in the university to support political parties. This reflects the nature of pluralistic character of liberal democracy which exists in the UK and encouragement of a tradition of civic engagement in the country.

As well as restrictions on students and civil servants there are list of other restrictions in Article 11 of the 1983 Law as follows:

- “1. Those who are banned from public service.
2. Those who have been convicted of dishonourable offences such as embezzlement, bribery, corruption, theft, fraud, breach of trust, fraudulent bankruptcy, forgery, and persons convicted of smuggling.
3. Those who have been sentenced to a prison term totalling three years or more.
4. Those who have been convicted with the crimes of provoking hatred and hostility by discriminating against people on the grounds of their race, religion, or class.
5. Those who have been convicted of ideological and political offences.”<sup>22</sup>

These restrictions are quite extensive but probably more supportable as maintaining the probity of the political system. They can relate to preventing misconduct, however one may argue whether they are proportionate. Banning people forever from civic engagement does not seem compatible with democratic principles. On one hand, in

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<sup>21</sup> Erguder, U. and Hofferbert, R. I., (1987), "Restoration of Democracy in Turkey? Political Reform and the Elections of 1983." in Lane, L., (ed.), *Elections in the Middle East: Implications of Recent Trends*, Colorado: Boulder, Western Press, p.19

<sup>22</sup> Article 11 of the Political Parties Law 1983

principle there is a justification in terms of “misconduct” but it does go too far in terms of “fairness” and “civic engagement”.

The 1983 Law also states that political parties can regulate other conditions for party membership and they have the right to refuse membership applications.<sup>23</sup>

### 5.2.3. Party Associations and Central Organisations

Article 91 of the 1983 Law sets out that;

"Political parties, shall not form discriminatory auxiliary bodies such as women's or youth branches, nor shall they establish foundations." <sup>24</sup>

With this article, the area of political activity open to the political parties is limited. Young people and women have been kept away from politics by banning political parties from establishing auxiliary branches for youth and women and other groups. Similarly, the founding of extra party organisations such as clubs, associations, labour unions, co-operatives, foundations, occupational and professional associations by political parties, as well as developing political ties and various modes of political co-operation with such existing organisations are banned. Therefore, political parties have been compelled in practice to try to organise women and young people as committees, instead of associations.<sup>25</sup> However this kind of organisation was taken as a reason to apply to the Constitutional Court for the abolition of a party. The New Order Party (Yeni Duzen Partisi) was brought before the Constitutional Court for the contravening the Article 68 (6). The Court rejected this claim, because they did not think that to establish women's committee was against the prohibition of establishing an association.<sup>26</sup> The Court stated that establishing women's committee did not involve discrimination; it was an activity for the party to gain women's support.

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<sup>23</sup> Article 12 of the Political Parties Law 1983

<sup>24</sup> This restriction was omitted from Articles 68 (6) of the 1982 Turkish Constitution but still remains in the 1983 Law

<sup>25</sup> These committees do not have any legal ties with political parties and they are not mentioned in party constitutions and have no legal rights to participate in any formal party conventions and elections.

<sup>26</sup> AMK, T.9.11.1983, E:1983/5, R.G. 21.10.1984-18552, p.31-44

Political parties are forbidden from having any relationship with trade unions and other organisations such as co-operatives and societies. According to Article 92 of the 1983 Law

"Political parties shall not have political ties and engage in political co-operation with associations, unions, foundations, co-operatives, and public professional organisations and their higher bodies in order to implement any strengthen their party policies, nor shall they receive material assistance from these bodies."<sup>27</sup>

The State elite as a reaction to the general strikes brought these prohibitions for political purpose in 1970s. However, forbidding political parties from having any ties in political co-operation with associations and trade unions cannot be harmonised with a modern pluralist democracy. With these restrictions, political parties in Turkey cannot act in order to represent people. In contrast, one of the main British political parties was evolved from a trade union. (Labour Party)<sup>28</sup>

The organisation of a political party consists of its central organs, its provincial and county organisations and the party group in Parliament. The highest authority within the political party is its general convention. The central organisation of the political party consists of the general convention, the leader of the party, its central decision-making and executive board, its disciplinary board and its caucus.<sup>29</sup>

According to the 1983 Law, the main organisation of a political party is its General Convention.<sup>30</sup> Each General Convention consists of elected and natural delegates. Elected delegates are to be elected at a Province Convention in accordance with parties' own constitutions. The number of elected delegates cannot be more than double the number of the members of the Assembly. Ex officio delegates consist of the Party Leader, Members of Central Committees and MPs and ministers who are members of the party. The 1983 Law set out the functions of the General Convention. The General Party Convention elects the Party Leader and the Members of Central Committee by secret ballot. It also decides party policy and any changes in the party constitution. The National Conference is convened every a period of time as shown in

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<sup>27</sup> This article simple repeats the restriction which used to be in Article 69 of the Constitution and omitted by 1995 amendments.

<sup>28</sup> See Chapter 6

<sup>29</sup> The amendments of 1987 No:3370 in the Turkish Political Parties Law 1983, Article 13

<sup>30</sup> Article 14 of the Political Parties Law

the party constitution. The period between conferences cannot be less than two years or more than three years.<sup>31</sup> The reason for this may be the intentions of the achievement of the aim of keeping political parties internally democratic by limiting the term of party leadership but also having stability.

The 1983 Law does not give a choice to parties regarding conference time by limiting the period between two and three years. It also regulates how the conference should elect the Party Leader. According to the 1983 Law: the leader is to be elected by the majority of the conference delegates by secret ballot. The 1983 Law stated that the Party leader is elected for a maximum of three years. This was also to achieve the internal democracy of political parties. However these provisions have now annulled.<sup>32</sup> It is interesting to know that those political parties in parliament made this change in order to secure their leaders' position but were not minded to change other undemocratic provisions.

The Turkish Political Parties Law regulates the internal affairs of political parties as if it were the party's private constitution.<sup>33</sup> The 1983 Law goes into detail and regulates every aspect of political party organisations including membership and internal party-procedures. The reason for this is the existence of suspicion about political parties and the aim of achieving a politically stable society by not leaving any matters to political parties themselves to decide. By contrast, in the UK, there has been no law regarding political parties until 1998 and even now parties are barely regulated compared to Turkey. The political reasons for this difference will be further explained in Chapter 7. These restrictions on political parties may be regarded as breach of Article 11 of the European Convention. Obviously restricting political parties from having political ties with other organisation means a limit on their rights to freedom of associations. It is also clear that these prohibitions are contrary to the criteria set out in the introduction of this chapter as they cannot be justified with civic engagement, party effectiveness and freedom issues.

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<sup>31</sup> The Turkish Political Parties Law 1983, Article 14

<sup>32</sup> This provision was cancelled by Article 1 of the Law, No:3648 in 1986

<sup>33</sup> Perincek, D., (1985), *Anayasa ve Partiler Rejimi*, ( The regime of the constitution and parties), Istanbul: Kaynak Y., pp.44-45

#### 5.2.4. Democracy in Party Organisations

To achieve democracy in political parties was one of the purpose of the ruling elite which is reflected in the Constitution and the 1983 Law.

According to Article 69(3) of the Constitution, "The internal functioning and the decisions of political parties cannot be contrary to the principles of democracy." It can only be possible for political parties to articulate public needs and produce policies of public interest by having an internally democratic structure. The way the public has of exerting influence on the government is to exert influence on political parties. If the connection between people and political parties is close, the connection between public and governments will be strong and healthy as well. Therefore, establishing democratic structure in political parties can provide this.<sup>34</sup>

The existence of influence of various pressures groups over political parties is a necessity of modern democracy. On the other hand, if those groups have too much influence on the government and if the government use democracy only for those groups' interests, this can be the cause of a degenerating democracy.<sup>35</sup> Thus, the 1982 Constitution considers this matter important and seeks to ensure that activities and decisions of political parties cannot be contrary to the principles of democracy. Furthermore, the 1983 Law orders that a party leader cannot be elected more than five times without interruption and one cannot be elected as a party leader for more than three years at a time.

#### 5.2.5. Selection of Parliamentary Candidates

The arrangement for the selection of parliamentary candidates has a very important place in providing intra-party democracy. Article 29 of the 1965 Political Parties Law (No: 648) brought for the first time the concept of the "primary election". This regulation opened the arrangement of a Party Candidate List to the participation of registered party members instead of leaving it to oligarchic committees.<sup>36</sup>

<sup>34</sup> Abadan, N., (1959), "Siyasal Partilerde Oligarsik Temayuller", (Oligarchic Tendencies in Political Parties), *Ankara Universitesi Siyasal Bilgiler Fakultesi Dergisi*, Vol.24:2-3, 1959, pp.143-151

<sup>35</sup> Savci, B., (1978), *Turkiye'de Siyasal Partiler ve Baski Grublari*, (Political Parties and Pressure Groups in Turkey), Ankara: Ankara Universitesi Siyasal Bilgiler Fakultesi Y., p.71

<sup>36</sup> Caglar, B., (1989), *Anayasa Bilimi*, (The Science of Constitution), Istanbul: BFS Yayinlari, p.235

Article 37 of the 1983 Law, in its draft form, in order to achieve internal democracy at expense of stability, required the compulsory “primary election” of parliamentary candidates from registered party members, and in this way, its intention was to prevent parties from having oligarchic structures. However, this article was changed in 1986 and the compulsory “primary election” was cancelled and the way of selecting parliamentary candidates has been left to political parties’ own preference.<sup>37</sup> Most of the parties select the candidates by eliminating applications made to the central organisations. The leader has the absolute final say. This is another example to show that leadership of political parties wants to have the power over their members in Parliament by having control over the selection of parliamentary candidates. This situation serves the purpose of stability and so is acceptable to the state elite.

Therefore, the current situation in Turkey is that political parties have the right to regulate the selection of parliamentary candidates under their own constitutions. However, according to the 1983 Law, the method of selection of candidates cannot be contrary to the principle of democracy. Today, most parties prefer to select candidates by central committees. This situation gives the party leaders great power to control their parties. Most MPs are afraid of not being re-selected as a candidate by the party leadership for future elections if they act against the party leader’s wishes. Therefore, in Turkey, the argument that MPs are not free to act in their electorate’s interest but have to comply with the leader’s wishes is a quite valid argument. Furthermore, MPs are accused of defending the party leaders’ interests instead of the interest of their electorates. This situation has three further impacts if one considers the criteria mentioned at the beginning of this chapter. The first one is “civic engagement”. If an MP cannot act freely in the Parliament because of the pressure that he may not be re-selected by the leader, how will the electorate who chose that MP have a voice in the legislature. This may lead one to say that this is not a representative democracy but a system of leaders’ oligarchy. Having considering the current coalition government in Turkey, this argument is a strong case. On most of the important issues, leaders of three parties which form the government meet and decide, the cabinet, and Parliament has no

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<sup>37</sup> Article 9 of the Law, No: 3270, which entered into force on 28.3.1986

say in those issues because of party discipline within it. On recent voting in parliament about an amendment to the Constitution to change the rules apply to the procedure of electing the president, the Prime Minister forced his party's MPs and other MPs who are members of the other two coalition parties to vote openly, even though the rule of procedure of Parliament clearly sets out that party groups cannot issue a whip for voting regarding constitutional amendments and voting must be secret.<sup>38</sup>

### 5.2.6. The Finance of Political Parties

To control the finance of political parties is a political problem, which takes an important place in the process of democracy.<sup>39</sup> One of the natural necessities of democracy is to inspect how political parties raise and use financial sources.<sup>40</sup> The accumulation of political funds is necessary to meet election expenses in a democratic society; if funds do not exist, only the wealthy can afford to secure parliamentary representation. However, the main concern about these funds is the secrecy surrounding them. The payment of considerable sums of money in secret is usually made with the expectation of some return. That wealth will always have its influence is true. However, wealth when it acts publicly dare not do what it will often do when it acts in a secret manner. Every political party represents one or more social classes. An interested group, which has few members but big financial power may demand to be given priority by the government, whenever the political party which is supported by that group is in power. This may cause the government, which came to power with a majority vote to protect one group's interests.<sup>41</sup>

It can be seen from this difference that in Turkey, political parties are seen as an aspect of apparatus of State (constitutional functioning of the country where, mis-functioning is therefore a matter of national security. In the UK political parties are

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<sup>38</sup> The Parliament Rule of Procedure , Article 56

<sup>39</sup> Yucekok, A. N., (1972), "Siyasi Partilerin Masraf Denetimi", (The Inspection of Political Party Expenditure), *Ankara Universitesi S. B. F. Dergisi*, Vol.27:2, 1972, p.65

<sup>40</sup> Mehter, H., (1991), "Siyasi Partilerin Mali Denetimi", (The Audit of Political Parties in Turkey), *Anayasa Yargisi*, Vol:16:2, 1991, pp442-443

<sup>41</sup> Abadan, N.,(1959), *loc. cit.*, pp.143-151

private, but they do take part in public life and therefore they must comply with its standards.

Article 69 sets out that the auditing of political parties shall be carried out by the Constitutional Court, and parties cannot engage in any commercial activity.

“Political parties shall not engage in commercial activities.

The incomes and expenditures of political parties shall be in accordance with their objectives. The application of this rule is regulated by law. Laws regulate the supervision of the receipts and acquisitions of political parties, the establishment of the legality of their incomes and expenditures by the Constitutional Court, the supervision methods of compliance to these principles and the sanctions to be enforced in case of infractions. The Constitutional Court may work in co-operation with the Court of Accounts in carrying out this supervisory duty. The decisions taken by the Constitutional Court as a result of the said supervision shall be final.

Political parties which take financial aid from Foreign States, international institutions and persons and corporate bodies shall be dissolved permanently.”

The Constitution clearly states that receiving any financial aid from any foreign states or international institutions, persons or corporate bodies is a reason for its permanent abolition. The reason for this rule is that the State elite thinks or wants the public to think that Turkey has many enemies, and allowing foreign donation can lead political parties to be under foreign states influence and act as their tool to weaken the State. The concept of “enemy of the State” can be found in the very common saying that is repeated by the State: “Turks do not have any friends apart from themselves”. In the UK, the proposed law bans foreign donations to political parties as well. However the reason behind this is not to protect the state against foreign enemies but to prevent misconduct.<sup>42</sup> The punishment for receiving foreign donations in Turkish law is very severe. While parties in the UK, according to proposed Bill, face financial fines, Turkish political parties face the permanent abolition.

Article 69 of the Constitution, before the 1995 amendments, used to regulate the financial affairs of political parties. According to this, political parties could not receive material assistance from associations, unions, foundations, co-operatives, and public professional organisations. These provisions were omitted from the Constitution in 1995. However they still exist in the 1983 Law. Article 92 of the 1983 Law which is entitled



"the Prohibition of Political Relationship and Co-ordination with Associations, Unions, Co-operatives and Public Professional Organisations", contains same provisions which used to be in the Constitution before 1995. Article 92 also adds that they cannot help financially those organisations and cannot support them and cannot act for common purposes.

The breach of prohibitions and restrictions upon political party activities does not always lead parties to their abolition. However, some restrictive articles in the Constitution could cause the abolition of a party as a punishment. The 1983 Law stipulates the abolition of a party for breach of the restrictions which ban political parties from having political ties in political co-operation with associations, unions, co-operatives, foundations and public professional organisations, even though the Constitution does not mention abolition as a sanction for breach of these restrictions. This provision which is not found in the Constitution actually widens the conditions for their abolition of political parties by the 1983 Law and is therefore contrary to the Constitution.<sup>43</sup>

The reason for the existence of constitutional regulations is to protect the rights from being easily limited via new legal arrangements. The Constitution sets out the conditions to abolish a party, and the Constitution does not leave this matter to the legislators to regulate. Therefore, to introduce new rules to dissolve political parties should be only possible by amending the Constitution.<sup>44</sup> However, the existence of Article 92 of the 1983 Law that contains the post-Constitution rules for abolition of parties is unchallengeable, because of the provisional Article 15 of the Constitution.<sup>45</sup> Provisional Article 15 of the Constitution states that:

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<sup>42</sup> See Chapter 7

<sup>43</sup> Akmanlar, B. (1991), "Siyasi Partilerin Ozellikleri", (The Features of Political Parties), *I. U. Hukuk Fakultesi Dergisi*, Vol.32:2-4, pp.474-486

<sup>44</sup> Perincek, D.,(1985), *Anayasa ve Partiler Rejimi*, ( *The Regime of the Constitution and Parties*), Istanbul: Kaynak Y., p.214

<sup>45</sup> The National Security Council added this article to the Constitution under the heading of provisional rules in order to prevent future indictment and impeachment against them. This article gives the military coup immunity and also rules out any claim for unconstitutionality of the laws passed during the military rule

"No allegation of unconstitutionality shall be made in respect of decisions or measures taken under laws or decrees having force of law enacted by the Council of National Security"

Therefore, any person or body who is eligible to apply to the Court cannot bring the Law before the Constitutional Court for it to rule on the law's unconstitutionality.

The Law limits the sources of finance for political parties.<sup>46</sup> Political parties have to document their incomes and expenditure. The Law also states that financial control is within the power of the Constitutional Court. Ten kinds of income sources are allowed for political parties. These income streams are tax-free except for the incomes emanating from the party's properties. According to Article 61 of the 1983 Law permissible income are designated as follows: entrance fees and subscriptions; MP's fees; special fees subscribed by candidates of MPs, counsellors and members of provincial assemblies; income provided by selling party flags, badges and rosettes; the sale value of party publications; moneys for the provision of membership identity cards; the incomes from concerts, dances, and entertainment organised by the party; the income from party properties; donations; state aid. Political parties have to give receipts for donations, and the identity of the donor is to be written on the receipt.<sup>47</sup>

It is provided by Article 66 of the 1983 Law that banks, trade unions, professional organisations, societies, foundations, co-operatives cannot donate any property or cash to political parties, nor the right to use the property of trade unions without paying for it. The Turkish Political Parties Law also forbids the receipt of any fiscal help from foreign states, international organisations and foreign societies. It is forbidden to donate more than 50000000 TL (50 British sterling)) in kind or cash in a year by any single person or institution which is not named above. Political parties cannot take any kind of credit or borrow money from any source whatsoever.<sup>48</sup> Political parties cannot own real estate except that which is necessary for their residency,

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<sup>46</sup> Articles 61-69 of the Law of 1983

<sup>47</sup> Article 66 of the Law of 1983

<sup>48</sup> Article 67 of the Law of 1983

objectives and activities.<sup>49</sup> Political parties cannot lend any money to their members or others.<sup>50</sup>

Any breach of the above mentioned laws may attract a prison sentence of between 6 months and 1 year. In the case of involvement of foreign organisations the sentence may be between 1 year and 3 years.<sup>51</sup>

By contrast, there is no legal limit upon candidates or political parties regarding their expenditure in elections. Therefore personally wealthy people have an advantage in contesting elections or even becoming a candidate for any political party.

It could be said that these restrictions might respond to the “misconduct” and “over-spending” criteria as well as “fairness”. However, these restrictive regulations in the Turkish legal system make it difficult for the Turkish political parties, especially for the left wing parties to find enough financial support to perform their duties, and are therefore contrary to “civic engagement” and “party effectiveness”. In contrast to their British counterparts, they cannot receive any financial help from abroad<sup>52</sup> or trade unions, or societies or co-operatives. That makes Turkish Political Parties dependent upon the state aid or might even make them dependent on some financially powerful minority groups. One can say that when the limits were imposed on political parties regarding their finance, the aim was more to isolate them from trade unions and other association’s influence as well as foreign influence rather than finding a solution to prevent misconduct in party finances.

### **5.2.7. State Aid for Political Parties**

State aid for political parties appeared in Western Europe after World War II because of the collapse of democracy in the inter-war years. Increasing election expenses can result in parties becoming heavily dependent on particular interest groups. To protect parties from depending on corporate money and to provide balance between

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<sup>49</sup> Article 68 of the Law of 1983

<sup>50</sup> Article 72 of the Law of 1983

<sup>51</sup> Kuzu, B.,(ed. 1988) *Turk Anayasa Hukumleri ve Ilgili Mevzuat*, (The Rules of the Constitution and Related Regulations), Istanbul: Filiz Kitabevi, p.58

<sup>52</sup> The Government Bill which is pending before Parliament, which regulates finance of political parties bans the foreign donations in the UK. See Chapter 7

financially weak and strong parties is another reason for public funding of political parties. According to Ware, "state funding taps a central democratic value that competitors are being unduly advantaged by the support of small elite."<sup>53</sup> On the other hand, there is some concern that parties would become simply another arm of the state and would be controlled by the state.<sup>54</sup> There is no example of this in Western Europe though.

State aid for political parties is one of the most discussed matters in Turkey, and has been the subject of many constitutional and legal changes.<sup>55</sup> The Political Parties Law 1965 set out that political parties were to receive an amount of state aid which was based on their share of the total valid vote at the previous election. If parties received less than 5 % of the votes, they would not be eligible to receive state aid.<sup>56</sup>

The subject of state aid for political parties was referred to the Constitutional Court in December 1970 by one of the opposition parties on the basis that it was contrary to the Constitution. The Court decided that state aid for political parties was incompatible with the Constitution. The Court in its decision, pointed out that:

"Political parties are voluntary bodies, independent of the state and this independence would be compromised by public funding. State aid would breach the principle of voluntarism. The existence of political parties cannot be sustained by state aid."<sup>57</sup>

The Court for these reasons, decided that the public funding of political parties contravened the 1961 Constitution and cancelled Article 74 of the Law 1965. A provision on state aid was then inserted into the 1961 Constitution by adding a paragraph to Article 56 of the 1961 Constitution in 1971. Then the Political Parties Law was redrafted to allow state aid. The 1982 Constitution, which was adopted after Army intervention on 12<sup>th</sup> September 1980, did not mention any state aid for political parties. However, the additional article of the 1983 Law which was inserted into the 1983 Law in

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<sup>53</sup> Ware, A., *Citizens*, (1987), *Parties and the State: A Reappraisal*, Princeton, New Jersey: Princeton University Press, p.102

<sup>54</sup> Perincek, D., *op. cit.*, p.196

<sup>55</sup> Mehter, H.,(1991), *loc. cit.*, p.443

<sup>56</sup> The Political Parties Law 1965, Article 74

1984, states that political parties, which received at least 10 % of the total votes at the previous election, shall be paid state aid by the Treasury, on the basis of seats won in the Assembly. This regulation has also been referred to the Court after the Law was passed by government majority in the Assembly in 1984, like the 1965 Law. The Court, in contrast to its previous decision in 1971, decided that state aid was not prohibited by the Constitution. The Court stated that state aid was given to protect parties from the pressure of financially powerful groups.<sup>58</sup>

State aid was put in to the Constitution by adding a paragraph to Article 68 of the Constitution in 1995.

“The State gives financial support to political parties in sufficient amounts and in an equitable manner. The aid given to political parties, monthly dues collected from members and donations are regulated by law.”

Public funding of political parties in Turkey provides an advantage for big parties, which have received more than a 10 % share of the total vote at the previous elections. It might be argued that this situation damages the equality of political competition in elections but ensures stability. It would be better to provide state aid for parties without any minimum share of the vote to cover their election expenses. On the other hand one may argue that this would encourage multiplicity of parties and that this would be a disadvantage for Turkey. However, if the conditions which parties are required to meet<sup>59</sup> in order to be able to contest elections are considered, it may be seen that there are enough rules to prevent multiplicity of parties.

The form of subsidies is seen to be an important consideration; a form must be sought which guarantees equality of opportunity between the parties. There is no objection in principle in Turkey to subsidies. However, direct support is rejected by some on the grounds that it is difficult to find a system of allocation that is perfect and equitable from all points of view, and because the subsidies would serve to increase the psychological distance between the parties and the electorate. It might be suggested that

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<sup>57</sup> AMK., T.2.2.1971, E:1970/12, K:1971:13, *AMKD.*, Vol.:9, pp 284-90 (*AMKD: Anayasa Mahkemesi Kararlar Dergisi*), (The periodical which is published by the Constitutional Court and contains the Court's decision).

<sup>58</sup> AMK., T.12.5.1987, E: 1986/10, K: 1987:6, *AMKD.*, Vol. 24, p.217

<sup>59</sup> See later part of this chapter

State, sovereignty of the nation, the principles of a democratic and secular Republic; they shall not aim to protect or establish any class or group dictatorship or any kind of dictatorship; they shall not encourage committing a crime.”

Having examined the Article 68, the constraints are discussed below in terms of specific party objectives.

### 5.3.1. Indivisible Integrity of the State with its Territory and Nation

In Article 68 of the Constitution, it is provided that the programmes and constitutions of political parties cannot be contrary to the indivisible integrity of the state as a territory and nation. This concept is seen, for the first time, in the 1961 Turkish Constitution<sup>62</sup>. Article 3 of the 1961 Constitution stated that the Turkish State in terms of its territory and nation was an “indivisible entity”. The same sentence appeared in Article 3 of the 1982 Constitution. The 1982 Constitution often repeats the principle of state unity. The real reason for this is to express the state's reaction to divisive movements especially to Kurdish separatist movements.

The principle of state unity<sup>63</sup> in Constitutional law is a concept that should be examined together with the concept of sovereignty. The sovereign state is the highest power in its territory. The component of land of the national state is the territory, and the component of people of the national state is the nation.<sup>64</sup> The unity of territory and nation forms a national state. There are some important concrete outcomes of those abstract concepts in terms of constitutional law.<sup>65</sup>

The first outcome is territorial integrity. In other words, under the Turkish Constitution the transferability of any land of the country is out of the question. Separating some parts of the country and transferring it to others' control also involves

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<sup>62</sup> As mentioned earlier, the Republic of Turkey since its foundation has had three major Constitutions 1924, 1961 and 1982 Constitutions. The later one annulled its previous one.

<sup>63</sup> State unity means in the context, the indivisible unity of the State with its nation and territory.

<sup>64</sup> Tunaya, Z., (4th.ed. 1984), *Siyasal Kurumlar ve Anayasa Hukuku*, (Political Institutions and Constitutional Law), Istanbul, i.U. H. F. Yayinlari, pp.149-156, and see Kubali, N., (1971), *Anayasa Hukuku Dersleri, Genel Esaslar ve Siyasi Rejimler*, ( Lectures in Constitutional Law: Common Rules and Regimes), Istanbul: Ekin Y. pp.44-46.

<sup>65</sup> Tunaya, Z., (1984), *op. cit.*, p.157

transferring a part of the sovereignty, state and nation.<sup>66</sup> Article 68 of the Constitution forbids any kind of separatist movement to be organised as a political party. As mentioned above, it is accepted that the principle of the indivisible integrity of the state in its territory and nation constitutes the state unity.<sup>67</sup>

The Constitutional Court in the case of *the Turkish Workers Party* (Turkiye Isci Partisi) decided to close down the party on the ground of the infringement of the constitutional principle of the state unity with its nation.<sup>68</sup> The Socialist Party, the Turkish Labourer Party and the People's Labour Party are amongst the parties closed down by the Constitutional Court for the reason of taking part in separatist activities.<sup>69</sup>

The second outcome is the impossibility of federalism. Just as the principle of a national state makes impossible the comprehension of a multi-national state, likewise, "the principle of unity" (or of "the indivisible integrity of the state within its territory and nation") closes all the doors to federal structure. It is known that the structure of a federal state is based on federal and federate sovereignty. The principle of unity makes impossible the existence of more than one sovereign in one state's structure, and also prevents the state from becoming one of a number of federated states in the federal structure.<sup>70</sup>

Article 80 of the 1983 Law sets out that political parties cannot aim to change the principle that the Turkish State in its territory and nation is an indivisible entity. According to this article, no political party could defend the establishment of a federal system in Turkey. This principle at the same time contains the prevention of the 'creation' of minorities, the protection of the principle of equality and the prohibition of racism. Articles 81-88 of the 1983 Law states that political parties cannot claim the existence of some minorities, which are based on the differences of national or religious culture, denomination, race or language. They cannot pursue a goal of destroying the

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<sup>66</sup> Soysal, M., (1986), *100 Soruda Anayasanin Anlami*, ( The Meaning of the Constitution in 100 Questions), Istanbul: Gercek Yayinlari, p.181

<sup>67</sup> See Ozbudun, E., (2<sup>nd</sup>. ed.1992), *Turk Anayasa Hukuku*, (Turkish Constitutional Law), Ankara: Yetki Yayinlari, p.75

<sup>68</sup> AMK. T.20.7.1971, E:1971/3, K.1971/3, *AMKD*, Vol. 9, pp.80-131

<sup>69</sup> AMK., T.14.7.1993, E.1992/1 *AMKD*, RG.18.8.1993-21672, pp.11-234

<sup>70</sup> Soysal, M.,(1986), *op. cit.*, p.182

unity of the nation by creating minorities through protecting or improving any languages or cultures apart from the Turkish language and culture. They cannot use any language but Turkish in their constitution and programmes, and also cannot take racial separatism or discrimination as a goal.

Professor Bahri Savci, a well-known constitutional author in Turkey, has a different opinion on this subject. According to Savci, federation is a democratic institution. It is based on forming a unit with equal rights of its parts. Federation on its own is not an element of divisibility. Savci claims that the idea of federalism is not incompatible with “the indivisible integrity of the state with its territory and nation”. He argues that the idea of federalism might be disliked, refused or it could be claimed to be unsuitable for Turkey, but it cannot be claimed that it is inconsistent with national and territorial integrity.<sup>71</sup>

On the other hand, the principle of unity prevents the state from having more than one political restraint. This contradicts the structure of the federal state, which is based on at least two political power as federate and federal sovereignty. For these reasons, it is believed that federalism is in conflict with the unity of nation and nation's territorial integrity in accordance with the 1982 Constitution.

The third important outcome of this is the prohibition of the domination of any class. As is known, a nation consists of social classes, but the nation is a concept that means more than social classes. Sovereign power should be used by the nation. The activities and programmes that aim to provide only one social class to use sovereignty or prevent some classes from sharing sovereignty will be against this principle of unity.

### **5.3.2 Principle of Democratic and Secular Republic**

Republicanism is not only a form of government but also a state system in Turkey. As a state system, “the Republic” means the state in which sovereignty belongs to whole society and not to one or more groups. As a form of government, “the Republic” is a government system with a president, and other main state agencies that

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<sup>71</sup> AMK. T 10.7.1992, E: 1991/2, K: 1992/1, R.G.: 25.10.1992-21386 p.49



Article 78 of the 1983 Law imposes the obligation of complying with these constitutional principles as a restriction on political parties. It states that political parties cannot have any objectives or take part in any activities to change the form of the Turkish State and the fundamental principles outlined in the Constitution. They also cannot encourage or provoke others to do so.

According to Article 2 of the 1982 Constitution, one of the characteristics of the Turkish Republic is being a democratic state. In justification of this article, it is stated that the democratic regime is based on the principle of secularism and the social state being governed by the rule of law. Democracy is also a regime whereby sovereignty belongs to the nation.<sup>78</sup>

The “democratic state”, in one of the Court decisions, was defined as a form of government where sovereignty is not abused by one particular class and where free election is accepted as the only way to form or replace a government.<sup>79</sup> To equate the democratic social system with the state system designated by the existing Constitution, means to deny and freeze the main feature of liberal democracy which makes it dynamic and open to any improvements.

From this point of view, it is claimed that even the Constitutional Court's comments on the necessities of the democratic system could cause some dangerous results for the multi-party system. It is in abstract principle a requirement that the state must have no official ideology in democratic and liberal life.<sup>80</sup> The state must be impartial to all ideology. However, the Turkish State in all its regulations sees itself as a guardian of Kemalist ideology. In 1987, one of the mayors in Turkey was arrested and put into custody for 15 days for stating that he was not a Kemalist.<sup>81</sup> The 1983 Law requires every political party in Turkey, to declare that they are faithful to the principles of Ataturk in their programmes or constitutions. Since Kemalism is not equivalent to democracy, this situation, surely, cannot be reconciled with liberal democratic principles.

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<sup>78</sup> For the concept of democracy, see Chapter 2

<sup>79</sup> AMK., T. 26.9.1965, E: 1963/173 K: 1965/408, *AMKD.*, Vol.4, p.239

<sup>80</sup> See, Duran, L., (1986), "Anayasa Mahkemesine Gore Turkiyenin Hukuk Duzeni", (*The Legal Order of Turkey According to the Constitutional Court*) *Ankara Idare Dergisi*, Vol.13:2 March 1986, pp.5-15, and Turhan, M.,(1991) "Anayasamiz ve Demokratik Toplum Duzeninini Gereklere", (*Our Constitution and The Necessities of Democratic Society*), *Anayasa Yargisi*, Ankara 1991, pp.414-420.

This is clearly contrary to Article 10 and Article 11 of the European Convention. It can also be questioned according to the criteria set above in terms of freedom and party effectiveness.

The Constitution clearly states that political parties cannot aim or act to change the secular structure of the state. While formulating the characteristics of “the Republic”, it is determined that the Republic of Turkey is a secular state.<sup>82</sup> Therefore, it is clear that any political party, which is against secularism, cannot be established in Turkey

“Secularism” is defined as meaning that the state does not have religious power and the church does not have political power.<sup>83</sup> It can be said that secularism is a comparatively new constitutional institution in Turkey. In Western Countries, the first step was taken in the field of secularism with the 1789 French Revolution.<sup>84</sup> However, the principle of “secularism” did not find a place in the Turkish Constitutions until 1924. The provision stating "the religion of Turkish Republic is the religion of Islam" took a place in Article 2 of the 1924 Constitution. But the Caliphate was abolished on 3 March 1924 and the sentence stating “the state's religion is Islam” was also abolished by making an amendment in the 1924 Constitution on 10 April 1924. Then secularism was put in the text of the Constitution on 5 February 1937.<sup>85</sup>

More recently, Article 57 of the 1961 Constitution required that constitutions, programmes and activities of political parties complied with the principles of “secularism”.

It is determined in Article 68 of the 1982 Constitution that the constitutions and programmes of political parties cannot in conflict with the principles of “secular Republic”. It is stated in Article 69 that political parties cannot have any activity apart from their constitutions and programmes, and must act in accordance with the restriction

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<sup>81</sup> *Zaman Gazetesi*, (Daily Turkish Newspaper) 13 May 1987, p.1

<sup>82</sup> For more information see Yayla, Y., (1979), *loc. cit.*, p.1006 and onwards.

<sup>83</sup> Akal, C.B., (1991) *Yasa ve Kilic*, (Law and Sword), Istanbul: AFA Y. p.117

<sup>84</sup> see Akad, M., (1993), *Genel Kamu Hukuku*, (Common Public Law), Istanbul: Filiz Kitabevi, pp.173-174, 176, and Yayla, Y., (1979), "Anayasa Mahkemesi'ne Gore Cumhuriyetin Ozu"(The Essence of the Republic According to the Judgements of the Constitutional Court), *Hifzi Timur Anisina Armagan*, Istanbul, p.99

<sup>85</sup> For more information, see Batur, S. , and Yuzbasioglu, N., (1993), *Anayasa Hukuku'nun Temel Metinleri*, (Main Texts of Constitutional Law), Istanbul: Beta Y., p.38

outlined in Article 14. It is also stated that political parties, which do not comply with the restrictions, shall be abolished. Besides that, Article 24 of the Constitution, which regulates the freedom of religion and conscience rules that

“No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or even partially basing the fundamental, social economic, political, and legal order of the State on religious tenets.”

It also formulates the rule that political parties, which infringe these restrictions or encourage anyone in this way, shall be abolished by the Constitutional Court.

In pursuance of the Constitutional principle of secularism, the 1983 Law, contains many rules for political parties in order to prevent them from having any religious activities. Article 4 of the 1983 Law which is entitled 'the characteristics of the political parties' decrees that the establishment of political parties, selection of their agencies, and their decisions and activities cannot contravene the principles of democracy outlined in the Constitution. Article 12 of the 1983 Law, dealing with the conditions of party membership imposes the rule on political parties that they must not have any provisions in their constitutions that discriminate against any religion or sect. Article 78 of the 1983 Law forbids political parties from acting to establish a state, which is based on discrimination against any religion, or denomination. Article 83 entitled “the protection of the principle of equality”, and the Articles 84-89 entitled “the protection of Ataturk's principles and secularism” contain some sentences to protect secularism. According to Article 85 which is entitled 'Respect Ataturk', political parties cannot aim or act to insult or disparage the personality and activities or memory of Ataturk who is the saviour of Turkish Nation and the founder of the Turkish Republic. Article 86 states that parties cannot aim to re-establish the Caliphate and cannot act to pursue that aim.

Article 84 states that political parties cannot pursue any goal or cannot act against the legislation which aims to protect the secularist character of Turkish Republic. These pieces of legislation<sup>86</sup> are;

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<sup>86</sup> All these acts were passed during the Ataturk era and they are the backbone of Kemalist secular ideology in order to transfer Turkish society from a theocratic structure to a secular one.

1. Act No: 430 of 3 March 1340 (1924) on the Unification of the Educational System<sup>87</sup>.
2. Act No: 671 of 25 November 1341 (1925) on the Wearing of Hats<sup>88</sup>.
3. Act No: 677 of 30 November 1341 (1925) on the Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the abolition of Certain Titles.<sup>89</sup>
4. The principle of civil marriage according to which the marriage act shall be concluded in the presence of the competent official adopted with the Turkish Civil Code No: 743 of 17 February 1926 and Article 110 of the Code.<sup>90</sup>
5. Act No: 1353 of 1 November 1928 on the Application of Turkish Alphabet.<sup>91</sup>
6. Act No: 2590 of 26 November 1934 on the Abolition of Titles and Applications such as Efendi, Bey or Pasha.<sup>92</sup>
6. Act No: 2596 of 3 December 1934 on the Prohibition of the Wearing Certain Garments.

Article 88 forbids parties to arrange any religious ceremony and joining these kinds of ceremonies.

On this basis, there are three cases when the Constitutional Court decided to abolish a political party. One of them, which occurred under the 1961 Constitution, was related to the abolition of the National Orderliness Party<sup>93</sup> (Milli Nizam Partisi). The others, which concerns the abolition of the Comfort Party<sup>94</sup> (Huzur Partisi) and the Welfare Party took place under the 1982 Constitution.<sup>95</sup> The Constitutional Court decided to close down these three parties at different times on the basis that their Islamic programmes and activities were contrary to the principle of secular state, which is stated in the Constitution. The first two parties were closed down before Turkey had

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<sup>87</sup> This act provides that there is only one kind of education in Turkey, which is secular one. It also strictly forbid any religious education outside the state.

<sup>88</sup> Forbids wearing fez or other religious hats like the turban and requires all civil servants to wear a modern European hat.

<sup>89</sup> By this act, all the dervish convents and tombs were closed and it is forbidden using any religious titles.

<sup>90</sup> Before the act, a marriage act could be concluded with a religious person (Imam) now it should be concluded in a civil and secular way.

<sup>91</sup> With this act, the use of Arabic alphabet was abolished and Latin alphabet was adopted.

<sup>92</sup> With this act, the State aims to abolish social class and create an egalitarian society.

<sup>93</sup> AMK., T. 20.5.1971, E.1971/1, K.,1971/1, *AMKD.*, Vol.9, pp.3-71

<sup>94</sup> AMK, T.25.10.1983, E. 1983/2, K. 1983/2, , *AMKD.*, Vol.20, pp.35-374

recognised the European Court's jurisdiction for individual applications, therefore no application was made regarding these two parties. The Welfare Party case is pending before the European Court. Closing down these parties did obviously not make the support disappear for the parties. They were formed under different names. The Virtue Party represents the same groups maybe with more liberal approaches. However, the Virtue Party is facing the same threat since the party is taken to the Court on the basis of being contrary to secular principles.

### 5.3.3. Prohibition of the Domination of Social Classes

Article 68(4) of the 1982 Constitution sets out that

"Political parties whose aim is to support and set up the domination of a class or group, or any kind of dictatorship cannot be formed."

Article 6 of the Constitution rules that

"Sovereignty is vested in the nation without reservation or condition. The Turkish Nation shall exercise its sovereignty through the authorised Organs as prescribed by the principles laid down in the Constitution. The right to exercise sovereignty shall not be delegated to any individual, group or class...."

The Constitutional Court commented on this article that Article 6 clearly prohibited the action of securing domination of one social class over others.<sup>96</sup> With the rule stating "sovereignty belongs to the nation without limitations and conditions", it pushes the sovereignty of any social class out of the Constitution.

The problem relating to sovereignty is to know who or what has the political power.<sup>97</sup> It should be remembered that the concept of sovereignty and political power are two different things.<sup>98</sup> As is determined in Article 6 of the Constitution, the Turkish Nation exercises its sovereignty through authorised agencies according to constitutional rules. "The political power that uses sovereignty" is a description of the government. There are also other agencies apart from the government and the Assembly, which use

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<sup>95</sup> see Chapter 3

<sup>96</sup> AMK., T: 26.9.1965, E:1963/173, K.: 1965/40, AMKD., Vol.4, p.29

<sup>97</sup> Akal, C., (1990), *Sivil Toplumun Tanrısı*, (the Lord of Civil Society), Istanbul: AFA Y, p.70

<sup>98</sup> Tezic, E., (1976) *Siyasi Partilerin Hukuki Rejimi ve Türkiye'de Partiler*, (The Legal Status of Political Parties and Political Parties in Turkey), Istanbul: Gercek Yayınevi, pp.153-154

sovereignty, such as the President and the Constitutional Court. The Constitution does not deny the existence of social classes. It only seeks to prevent the domination of one class over others.<sup>99</sup> Communist parties are banned on this basis. There is no political party with the name “Communist” but there are some socialist parties in Turkey.

#### **5.4. The Abolition of Political Parties**

The threat of abolition is one of the important matters for political parties in Turkey. The Constitutional Court has the power to dissolve political parties. According to Article 69(6) of the Constitution, the dissolution of political parties is to be decided by the Constitutional Court after the filing of a suit by the Office of the State Counsel. In order to determine the rationales and bounds of the threat, it might be beneficial to examine the situations that can bring about the abolition of political parties. The reasons for abolishing a political party by the Constitutional Court in the 1983 Law are stated under three groups. These are:(1) being against the rules that are stated in section 4 of the 1983 Law,<sup>100</sup> (2) being the centre of illegal political activities,<sup>101</sup> (3) other reasons to file a suit for abolition of a party.<sup>102</sup>

##### **5.4.1. The Reasons for Abolition in the Section 4 of the Political Parties Law 1983**

Article 101 of the 1983 Law regulates in its first paragraph, the circumstances, in section 4, in which the Constitutional Court can decide to abolish a political party under four groupings.

i) The first paragraph of Article 101: In this paragraph, provision is made for the abolition of a party because of the way in which its constitution and programme is arranged. It is said that the Party's constitution, programme or other internal regulations cannot be against the articles which are stated in section 4

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<sup>99</sup> Tanor, B., (1991), *op. cit.*, p.154

<sup>100</sup> Political Parties Law 1983, Article 101

<sup>101</sup> Political Parties Law 1983, Article 103

<sup>102</sup> Political parties law, Article 104

The restrictions relate to the protection of the democratic state system,<sup>103</sup> the protection of independence,<sup>104</sup> the protection of state unity,<sup>105</sup> the prevention of creating minority,<sup>106</sup> the prohibition of racism and regionalism,<sup>107</sup> the protection of the principle of equity,<sup>108</sup> the protection of the principles and reforms of Ataturk,<sup>109</sup> the respect for Ataturk,<sup>110</sup> the protection of secularism,<sup>111</sup> the prohibition of exploitation of religion,<sup>112</sup> the prohibition of religious demonstration,<sup>113</sup> the protection of Department of Religious Affairs place in the administrative system,<sup>114</sup> the restriction that political parties cannot take a decision to support another political party,<sup>115</sup> the prohibition of forming auxiliary bodies such as women's branches (Art. 91), the restriction for engaging in political co-operation with associations, unions, foundations, co-operatives, and public professional organisations. (Article 92), the necessity that internal activities of parties must be appropriate to the foundations of democracy (Article 93), the prohibition of wearing special uniforms (Article 94), the membership of permanently abolished parties (Article 95), the use of forbidden political party names and symbols (Article 96), the prohibition of having a declaration or act against the military interval of 12 September in 1980. Breach of any of these restrictions will cause the closing down of a political party.

ii) The second paragraph of Article 101: In this paragraph, the conduct of that party's authorised agencies may cause the party to be abolished. Here, it is set out that;

"If the Party Conference, the Central Agencies, or Parliamentary groups take some decisions, or publish some announcement which are contrary to Section 4 of the 1983 Law, or if the Party Leader, the Deputy Leader, or the General Secretary of the Party declares anything in words or in writing which are in

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<sup>103</sup> *Ibid.*, Article 78

<sup>104</sup> *Ibid.*, Article 79

<sup>105</sup> *ibid.*, Article 80

<sup>106</sup> *ibid.*, Article 81

<sup>107</sup> *Ibid.*, Article 82

<sup>108</sup> *Ibid.*, Article 83

<sup>109</sup> Ataturk was the founder of the Republic of Turkey and first president of the State, *Ibid.*, Article 84

<sup>110</sup> *Ibid.*, Article 85. There is also an act entitled 'the Protection of Ataturk Act' According to this act, no-one can state anything about Ataturk which might imply insult or undermine him in the eyes of public.

<sup>111</sup> *Ibid.*, Article 86

<sup>112</sup> *Ibid.*, Article 87

<sup>113</sup> *Ibid.*, Article 88

<sup>114</sup> *Ibid.*, Article 89

<sup>115</sup> *Ibid.*, Article 90

contrast to those restrictions, the Party shall be abolished by the Constitutional Court"

According to the second paragraph of Article 101, although the constitution or programme of a party is not illegal, if any decision, declaration or notice, which is made later, on an actual problem or event is against the prohibitions in Section 4, then the party shall be dissolved. The Constitutional Court applied this paragraph to abolish the National Orderliness Party and the Turkish Labour Party.<sup>116</sup>

iii) The third paragraph of Article 101: The 1983 Law rules that if an election speech which is made on television or radio, by a representative of the Party, contravenes those restrictions which take place in Section 4, the party shall be closed down. [Article 101(1)(c)]

iv) The fourth paragraph of Article 101: Here, another situation is regulated where those actions which cause the abolition of a party are not of the party's authorised agencies but the acts of associated agencies or the party's branches.<sup>117</sup> Behaviour of a political party's members which is shown as a reason of abolishing a party are also regulated in this paragraph. For example; if the activities of a provincial or district party branches or of members of a party are in conflict with the restrictions in Section 4, the law suit cannot be brought directly to the Constitutional Court by the Office of the State Counsel by regarding this situation as a reason to dissolve a party. In this situation, the State Counsel demands, in writing from the party the expulsion of those members or branches that act against the restrictions. The party has the right to raise an objection within 30 days against the demand of the Office of the State Counsel to the Committee of Examination of Political Party Restrictions. The Committee has to examine the objection and reach a decision in 30 days. If the Committee refuses the objection, the Party has to expel those members or the branches. If the party does not do so, a suit will be brought to the Court to abolish that party.

According to the 1983 Law, members who were expelled from the party for that reason, or who cause the abolition of the party by not being expelled from the party, cannot be member of any other political party. They cannot be shown as a candidate in

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<sup>116</sup> see AMK., T.20.7.1971, E;1971/3. K: 1971/3, *AMKD*, Vol.9, pp.80-131.



party lists and cannot be a candidate for membership of Assembly. Parties which act against this rule are also liable to be abolished by the Constitutional Court.

The Committee of Examination of Political Parties Restrictions is not a court. However, its members are judges and its decisions are final.

#### **5.4.2. Being A Centre of Illegal Political Activities**

This situation is regulated in Article 103 of the 1983 Law. According to this Article.

"If it is conclusively established that a political party has become a centre for the activities which are against Articles 78-82, 84-88 and 97 of the 1983 Law, that party shall be closed down by the Constitutional Court."

When the above articles are examined, it can be seen that the same arrangements are made in Section 4 and in other articles related to the restrictions for the objectives and activities of political parties. Here, it could be argued that there is a problem in terms of legal methodology. Article 103 counts the articles one by one; some of these articles are the restrictive articles which are also mentioned in Section 4, however, some restrictive articles in Section 4 are not mentioned in Article 103. One of those articles which is not mentioned in Article 103 is Article 83 mentioning "the principle of equality". Therefore a question arises in this situation: if a party acts contrary to the principle of equality, will it not be abolished?<sup>118</sup> In conclusion, it could be said that this selection from Section 4 is not based on a clearly defined rule, therefore, it is difficult to find a rationale for this kind of selection.<sup>119</sup>

#### **5.4.3. Other Reasons for Abolition**

According to Article 104 of the Political Parties Act, in case of being contrary to the articles which are in the 1983 Law except for the Articles of Section 4, and the provisions related to political parties outlined in other statutes, the Office of the State Counsel can apply to the Court for closing down a political party. If the Court finds any contradiction with these provisions, a warning is given by the Court to the political

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<sup>117</sup> Kuzu, B., (1988), *loc. cit.*, p.167

<sup>118</sup> Perincek, D., *op. cit.*, p.322

<sup>119</sup> Tezic, E., *op. cit.*, pp.163-164

parties to remove the contradiction. If the party does not do so within six months after receiving the Court's warning, the Court will decide to close down that party.

The Turkish Labour Party (Turkiye Isci Partisi) and the Turkey Progressive Ideal Party (Turkiye Ileri Ulku Partisi) were abolished, as they did not comply with the Court's request to remove the contradictions in six months.<sup>120</sup>

The parties that have not given requested documents and information in the defined time, in spite of the Office of The State Counsel's written request, are to be notified by a second warning. If the request is not complied with in spite of the second warning, a lawsuit is brought to the Constitutional Court to abolish the party. It might be claimed that this reason for abolishing a party is contrary to the Constitution, because this reason is not specified in the Constitution and is only mentioned in the 1983 Law.

According to Article 106 of the 1983 Law, if a political party does not stand for general parliamentary elections for two consecutive terms since the date of its establishment, the Party is notified by the Office of The State Counsel to take a decision to dissolve itself. If the party does not take this decision within three months of the notification, the Party can be abolished by the Constitutional Court in accordance with The State Counsel's application. The State disciplines political parties with these rules and takes the approach that political parties are for contesting elections. Therefore if a party does not aim to contest at elections, it may have some other intentions which may be harmful to the regime. Making it necessary to contest at elections also force political parties to adopt a national approach rather than regional one. To be eligible to contest in elections, a party must organise in whole country and fulfil other stated conditions by the 1983 Law.

The Constitutional Court is the only authorised office to close down a political party. However the Constitutional Court cannot act spontaneously. The authority to bring a suit for abolishing a political party is given to the Office of the State Counsel.<sup>121</sup> On this subject, the Office of the State Counsel can act spontaneously. The State

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<sup>120</sup> For more information, see AMK., T. 15.10.1968, E:1968/31 K:1968/44, *AMKD.*, Vol.:6, pp.276-278; *R.G.* 30.1.2.1968-13088.

<sup>121</sup> The Political Parties Law 1983, Articles 98 and 100

Counsel at can also act by the demand of the Justice Ministry in accordance with the Cabinet's decision or the demand of a political party.

The question arises whether every political party can demand that the State Counsel act in order to seek the abolition of party. The answer is *all political parties do not have this right*. According to the 1983 Law, a political party, firstly, has to have participated in previous general elections to have this right. The party also must have a parliamentary group, which should contain at least twenty MPs according to the Constitution, to be able to demand action from the Office. Furthermore, the party must have previously assembled its first National Conference, and the Party Leader on behalf of the party must give this demand in writing to the State Counsel.<sup>122</sup>

The State Counsel does not have to bring the suit to the Court because of the demand of the Ministry of Justice or a political party. The State Counsel can refuse that demand with the justification that there is not sufficient evidence. However, the Minister of Justice and political parties may object to the decision of the Chief of Public Prosecutor to "the Committee of the Examination of Political Party Restrictions". If this objection is found to be right, The State Counsel has to bring the suit to the Constitutional Court.<sup>123</sup>

It must be noted that neither the Minister of Justice nor political parties may use this right during the election terms.

The Constitutional Court examines the cases on files, and if it is necessary, the Court could call those that are concerned and those that have information.<sup>124</sup>

#### **5.4.4. The Situation of the Members of an Abolished Political Party**

Article 69 of the 1983 Law states that

"The founding members and administrators at every level of a political party which has been permanently dissolved shall not become founding members, administrators, or comptrollers of a new political party, nor shall any new political party be founded, the majority of whose members are former members of a political party previously dissolved."

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<sup>122</sup> *Ibid.*, Article 100 (3)

<sup>123</sup> *Ibid.*, Article 100 (5)

<sup>124</sup> *Ibid.*, Article 98

Article 84 of the Constitution which is entitled 'Loss of Membership' regulates loss of membership for MPs. According to this article;

"The membership of an MP, whose acts and statements are cited in a judgement of the Constitutional Court as having caused the abolition of a political party and that of other MPs who belonged to the party on the date when the action for dissolution was brought, shall end on the date when the Presidency of the Grand National Assembly of Turkey is notified of the dissolution order."

The constitution in this article separates the sanctions that are applied for the MPs who caused the abolition of their party by their actions and statements and those for others. If the MPs, who are innocent according to the Court's decision, resign from their party before the date when the Presidency of the Grand National Assembly of Turkey is notified of the dissolution order, they will not lose their membership of Parliament. If they do not, they will also lose their membership of Parliament.

It must be emphasised that this situation is not acceptable in accordance with the principles of modern democracy. Those sentences of the Constitution could force the MPs to leave their parties, by bringing a lawsuit against the parties to which they belong. In this way, a political party can be forced out of the Assembly before the judgement of the Court is yet reached.<sup>125</sup> If the MPs who did not cause the abolition of the party do not leave their party, they will be punished for others' acts and statements. In this situation, "the principle of individual responsibility for crimes" will be infringed.

At the same time, the sentence which regulates the loss of membership for the MPs who caused the abolition of his party by his acts, should be discussed. Article 83 regulates "Parliamentary Immunity". According to this article,

"An MP who is alleged to have committed an offence before or after election, shall not be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in the act of committing a crime punishable by a heavy penalty and in cases subject to Article 14 of the Constitution if an investigation has been initiated before the election. However, in such situations the competent authority shall notify the Assembly immediately and directly. The execution of a criminal sentence imposed on a member of the Assembly either before or after his election shall be

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<sup>125</sup> Tezic, E., (1976) *Siyasi Partilerin Hukuki Rejimi ve Turkiye'de Partiler*, (The Legal Status of Political Parties and Political Parties in Turkey), Istanbul: Gercek Yayınevi, p.99

suspended until he ceases to be a member; the statute of limitations does not apply during the term of membership.”<sup>126</sup>

If the Court decides to terminate membership of an MP, according to article 84, it could be regarded as some kind of sentence imposed on the MP. Even if the execution of this sentence is not delayed until after the end of a parliamentary term as is stated in Article 83 of the Constitution, the decision concerning loss of membership could, at least, be left to the Assembly to decide, as it is regulated in the first paragraph of the article 84. In this way, the normal “Parliamentary Immunity” would not be damaged.<sup>127</sup>

## 5.5. Conclusion

In this chapter, the constitutional and legal restrictions upon the organisations and activities of political parties and on their finances have been examined. It can be said that the 1982 Constitution has been drafted to have definite solutions that favour authority and act against the freedom of political activity. To favour the state instead of individuals is a major feature of the Turkish legal system.<sup>128</sup> As stated in the introduction of this chapter, the authors of the Constitution appear to have a lack of trust in the nation. It seems as if the Constitution is trying to protect the state against political parties and citizens. In effect, the spirit of the Constitution seeks to protect the state against individuals instead of protecting individuals' rights against the state as was intended.

Some of these restrictions make it almost impossible to establish various type of political parties, including a western type social democrat party in Turkey.<sup>129</sup> Those restrictions which have been brought by the Constitution and the Political Parties Law are difficult to harmonise with the principles of pluralist liberal democracy. To cut political party connections with organised groups of pluralist society leaves politics in

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<sup>126</sup> Article .83(2-3) of the Constitution

<sup>127</sup> Kubali, N., "Hak ve Hurriyetler Yolunda", (On the Path of Rights and Freedoms), *Cumhuriyet* (Turkish daily newspaper) 15.5.1986

<sup>128</sup> Tanor, B., (1991), *İki Anayasa*, (Two Constitutions), Istanbul: Beta Y., p.147

<sup>129</sup> Ozbudun, E., (1992), *Türk Anayasa Hukuku*, Ankara: Yetki Yayinlari, p.78

the hands of a narrow class of people. This could prevent democracy from being powerful and developed.<sup>130</sup>

On the one hand, it could be said that some of the restrictions on political parties in Turkish law such as limits on political donations and other financial restraints may satisfy some of the criteria set out in the introduction such as misconduct and over-spending. Moreover, state aid for political parties may be an answer to the fairness issue. On the other hand, constraints on party organisation and political aims and activities cannot be justified with party effectiveness, civic engagement and freedom. By prohibiting parties from having ties with trade unions and other organisations and forbidding students and civil servants from party membership, the principle of civic engagement is harmed. Imposing common ideology on political parties cannot be explained under the principle of freedom.

Prof. Tanor, a constitutional author in Turkey, argues that those restrictions are aimed at the left-wing political parties. According to Tanor, left-wing political parties need to have connection with mass organisations and to be supported by them more than right-wing political parties. Therefore, the function and aim of the Constitutional restrictions mean that political control is slanted to the right of political opinion.<sup>131</sup> No one can deny the existence of a pluralistic structure in Turkish society, so political parties should reflect this pluralism and they should be free to organise and to represent different groups.

However, one must add that it is not only left political parties who are affected by these restrictions. Pro-religious parties and pro-Kurdish parties have greater restriction upon their activities and aims. Turkish law gives great importance to “national unity”, the principle of “the Republic”, the principle of “secularism” and the principles of Atatürk. As is seen in this chapter, Turkish law forces political parties to defend official ideology, and respect the principle of territorial and national unity, of secularism. The problem is how will these abstract concepts be interpreted? While applying these principles, will the Court take universal declarations of freedom and human rights, which are accepted and guaranteed by the international treaties, into account, or will its concern

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<sup>130</sup> Perincek, D., (1985), *op. cit.*, p.312

be only the Constitution and the Political Parties Law which were prepared under the military rule? This problem still exists and waits to be solved in Turkey. Restricting political parties might be necessary in order to provide “the security of the state”, however, in Turkey, political parties have more restrictions than freedom that might make them similar to each other. If all the parties have to defend the same ideology, there is no point in having a multi-party system. To give parties a free area to express themselves and to pursue their different goals is essential for establishing liberal democracy. Otherwise, it might be claimed that Turkey is a democratic republican state on paper but in practice is an undemocratic and totalitarian regime. This is not a good impression for Turkey to give while she is trying to be a full member of the European Union.

Turkey may benefit from examining one of the established liberal democracies in Europe in order to make necessary alterations in its system. Comparing the Turkish situation to the one in the UK may be useful to find out what differences Turkey has in practice as well as in theory. In order to achieve this, the next two chapters will examine the role of political parties in the UK and their legal status.

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<sup>131</sup> Tanor, B.,(1991), *op. cit.*, p.143

## CHAPTER 6

### THE ROLE OF POLITICAL PARTIES IN THE UK

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#### 6.1. Introduction

The purpose of this chapter is to understand political parties and their roles in British society and also aims to offer a critique from the point of view of liberal democratic values. To determine the place of political parties in British society, and the reasons behind this, history of party system in the UK and political parties will be studied in detail in this chapter. While studying political parties, their functions, history and organisations will be main focuses. This study will help the reader to understand the difference between Turkish and British political parties and what the cause is behind this.

The party system dominates British Parliamentary democracy. Organised political parties seek government office, are able to form, and support a stable government. One of the important reasons for the existence of British political parties is that there is conflict within the political system. The idea of organising around the organising themes rather than for example, persons is also one of the reasons for existence of political parties in the UK. The party system has a long-established tradition in Britain. It could be said that the history of politics in the UK and the party system within the parliamentary democracy have reflected the different policy themes and ensued conflicts over the last three centuries.<sup>1</sup> The adversarial party system assumes that there will always be two main political parties within Parliament, and each of these parties would be united within itself to form organised policy themes which would then be the platform for their particular standpoint and objectives they would pursue if able to form a government.

To understand the importance of parties and their role in British political life, it should be considered what functions are fulfilled by parties.

One of the functions of political parties is to offer the electorate a choice, and this is done principally through the presentation of alternative political programmes. The extent to which these political programmes are real rather than rhetorical has come under scrutiny. It is difficult for different political parties to oppose every principle and policy espoused by their rivals. A survey of party manifesto shows that

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<sup>1</sup> Ball, A.R., (1987), *British Political Parties*, London: Macmillan, p.1



57% of the manifesto pledges are actually non-partisan.<sup>2</sup> Major ideas may be supported by all the main political parties. In the 1992 General Election all three main political parties pledged support for the Maastricht Treaty in relation to Britain's position with the European Community. No electoral choice on this particular issue was offered to the voter. Therefore, some other parties came into life dealing with only one or two major issues. An example is the establishment of Referendum Party which advocated against remaining in the European Union. It could be said that similarities between party policies reflect the stability of British politics. British society is not deeply polarised on as many issues as Turkish society, and throughout history, society has come to a consensus on most of the issues, especially public ownership in post-1940s and again in post-1980s.

Another function of political parties is to make the link between the citizen and the state so that opinions and interests within the country can be represented at the highest level. Although some interests can be found to be represented at the expense of other groups, it is wrong to assume that British political parties would promote and represent one group unequivocally and ignore the existence and wishes of others. The role which political parties fulfil means that they can persuade various groups within society to come to a like way of thinking, reconciling the conflicting interests in an effort to follow the particular ideas of political parties they support. Political participation is potentially facilitated by political parties. Party membership allows citizens to participate in activities organised by political parties. Although party membership is low, it is true to say that party members tend to participate more on the political stage than non-members.<sup>3</sup>

The parties were until very recently not registered or formally regulated in law, but in practice most candidates in elections, and almost all winning candidates, belong to one of main political parties. Political parties, outside parliament, are private organisations. As Keith Ewing states: they are "truly autonomous in the sense that there is no direct statutory regulation of their affairs."<sup>4</sup> Therefore, who joins and by what rules they conduct their affairs are the matters which were left to the parties themselves. Parties rely upon public subscription and voluntary

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<sup>2</sup> Ingles, S., (2<sup>nd</sup> ed. 1989), *The British Party System*, Worcester: Basil Blackwell, p.199

<sup>3</sup> See, Seyd, P. and Whitely, P., (1992), *Labour Grassroots*, Oxford: Clarendon Press, and Whitely, P., Seyd, P., and Richardson, J., (1994), *True Blues*, Oxford: Clarendon Press

<sup>4</sup> Ewing, K., (1987), *The Funding of Political Parties in Britain*, Cambridge University Press, Cambridge, p.7

involvement for most of their funds. The state provides only limited subsidies for electioneering and parliamentary activities. In 1998 the Registration of Political Parties Act was passed by Parliament which deals with party names and emblems. This Act and the proposed act on political parties will be examined in great detail in next chapter.

## 6.2. Historical Background

The two party system has dominated British political life for over one and half centuries. The Whigs and Tories then the Liberals and Conservatives and recently Labour and Conservative parties have been seen to be alternating in power.<sup>5</sup>

### 6.2.1. The Growth of the Parties in the 19<sup>th</sup> Century

Although recognisable groupings existed in the legislature in the seventeenth century before 1832, the date of the first parliamentary Reform Act there was no such clear-cut division along party lines in the House of Commons.<sup>6</sup> It was not until the first moves to electoral reform that organisations with links with extra-parliamentary groups began to emerge. “Whigs” and “Tories” represented political leanings but not only was there no party organisation outside Parliament, but in Parliament party discipline was weak too. One of the causes of this was that the electorate was exclusive, and it was only after enfranchisement that parties realised that they would need to win electorate support in order to gain seats in the House of Commons. Therefore, it could be said that parliamentary reform and the gradual extension of voting rights to the whole adult population brought about the growth of the modern party system.<sup>7</sup> In order to strengthen their position, political parties were forced to attempt to strengthen their political base outside of the legislature which resulted in the formalising of political parties and the need for local organisations. Local registration societies were set up after the 1832 Reform Act in an attempt to organise the newly enfranchised voters, and the Act encouraged the creation of central organisations to co-ordinate electoral activity. Following the 1867 Reform Act, political parties in the modern sense of the word began to emerge and following

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<sup>5</sup> For histories of the British parties, see Bulmer-Thomas, I., (2<sup>nd</sup> ed.1967), *The Growth of the British Party System*, Vol.1, London: John Baker, pp.5-101, and Jennings, I, (1962), *Party Politics: The Growth of Parties*, Vol:2, Cambridge: Cambridge University Press, pp.1-24

<sup>6</sup> Bulmer-Thomas, I., (1967), *op. cit.*,p.4

the 1883 and 1885 Reforms, the separate identity of the different political parties was prominent.<sup>8</sup> The evolution of the party system in the UK continued as election practices were made less corrupt, a more fair distribution of representation in parliament was allowed and the social composition of the electorate was changed thorough enfranchisement. As a result candidates found it increasingly difficult to promote their individuality and were gradually faced with the need to become a member or representative of a political party. Politicians as leaders of organised political parties put forward their political views as policies which their supporters were prepared to endorse in elections.<sup>9</sup>

By the end of the 19<sup>th</sup> century, the organisations of modern political parties were visible. For support to be maintained and the party to be successful, it became apparent that a form of political organisation outside Parliament was becoming increasingly necessary. The first of such parties were the Conservative and Liberal parties, broadly speaking descending from the Tories and Whigs of the 18<sup>th</sup> and early 19<sup>th</sup> Centuries. The role of the party organisations outside Parliament was to mobilise voters, generate funds for the elections and arrange for the nomination of local candidates.<sup>10</sup> However, these party organisations outside parliament had no sway over the policy making of the party within Parliament. This, though, did not mean that party leaders could deny their existence and furthermore ignore the views of these institutions of political parties. In fact, the only party which was actually formed outside Parliament was the Labour Party which was founded in 1900 as a direct result of further enfranchisement of the working class who saw it necessary to have a political organisation within the system reflecting their interest in Parliament.<sup>11</sup>

The continuance of the existing parliamentary parties was further espoused by the creation of the extra parliamentary organisations of the Conservatives, Liberals and Home Rulers. The Labour Party gave its extra-parliamentary wing much more policy-making power. It was not only the extension of franchise in 1867 and 1884 which had led to the rise of party organisations; the growth of a national press and

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<sup>7</sup> Thomas, J. A., (1950), "The System of Registration and the Development of Party Organisation, 1832-1879", *History*, Vol. 35, pp. 81-98

<sup>8</sup> Bulmer-Thomas, I., (1967), *op. cit.*, p.75

<sup>9</sup> See, Pombieni, P., (1994), "Starting in Reason, Ending in Passion: Bryce, Lowell, Ostrogorski and the problem of Democracy", *Historical Journal*, Vol. 37, pp.319-41

<sup>10</sup> McKenzie, R.T., (2<sup>nd</sup> ed. 1963), *British Political Parties*, London: Heinemann: pp.12-13

<sup>11</sup> Ball, R. A., (1987), *op. cit.*, p.44

the rise of organised Nonconformity also were two important factors in the 1860s and 1870s.<sup>12</sup> National issues came about as a result of developments in technology and urbanisation so that very localised issues were less and less at the forefront of the political agenda. Party manifestos reflected the growth of political parties, and the first was accredited to Peel who set out in detail what the next Conservative government would aspire to words in Parliament in the Tamworth manifesto of 1834<sup>13</sup> (albeit it was published after the successful election of the party to government). The 1880's witnessed the shift towards the establishment of issuing party manifestos.<sup>14</sup> National campaigns also influenced the development of British political parties.<sup>15</sup> Above all, it was the emergence of class issues especially in the 1880's which polarised British politics, strengthening the Conservatives, changing the Liberal Party and giving rise to the birth to the Labour Party.<sup>16</sup>

By 1867 the electorate had been increased to around a third of the adult male population.<sup>17</sup> Increasing competition within the elections also helped to account for the growth of political parties. Prior to the Reform Act of 1867, between 43 percent and 60 per cent of seats were uncontested. By the 1880 (after the 1884 Act), the figure was only 17 per cent<sup>18</sup>

Political corruption was dealt with by the Corrupt and Illegal Practices (Prevention) Act 1883, which outlawed bribery, and limited local campaign spending. The rapid growth of the franchise through the 1867 and 1884 Representation of the People Acts forced political parties to acknowledge the increasing numbers of voters and led them to employ professional agents to ensure that their supporters were registered and in a position to vote. Membership on a large scale outside parliament became the norm.

One of the important aspects of the development of the modern political party was the growth of parliamentary discipline. As late as the 1860s, it was commonplace for party whips to be ignored and representatives to fail to follow the

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<sup>12</sup> Cook, C., (1976), *A Short History of the Liberal Party 1900-1976*, London: Macmillan Press, p.4

<sup>13</sup> Topf, R., (1994), "Party Manifesto in Labour's Last Chance?" in Heath, A. Jowell, R and Curtrice, J. (ed.), *Labour's Last Chance?* Aldershot: Dartmouth, p.150

<sup>14</sup> Bulmer-Thomas, I., (1967), *op. cit.*, pp.81-83

<sup>15</sup> Pugh, M., (1982), *The Making of Modern British Politics 1867-1939*, Oxford: Basil: Blackwell, p.2

<sup>16</sup> Belcham, J., (1990), *Class, Party and the Political System in the Britain, 1867-1914*, Oxford: Blackwell, p.2

<sup>17</sup> Pinto-Duschinsky, M., (1981), *British Political Finance 1830-1980*, London: American Enterprise Institute, p.24

<sup>18</sup> *Ibid.*, pp. 9-24

party line. This would regularly result in defeats inflicted upon governments.<sup>19</sup> However, the evolution of the political party machine also meant the growth of parliamentary discipline which was largely as a result of the growth of the spectrum of government business and Gladstone's move towards ending debates with a majority vote.<sup>20</sup>

By 1900, the party system became clearly based around three integral issues: class, religion and imperialism. Class came to prominence as a cleavage in a number of ways, as the trade union movement supported the Liberals and the growth of the petty bourgeoisie came to the forefront of politics. Victorian Britain had seen the growth of artisans and small businessmen, however their position in the class structure was still one of the outsiders. The Liberals offered a home for these aspiring capitalists.<sup>21</sup> The Conservative Party sought support from those groups content with the social *status quo*, albeit it did seek party funds from wealthy businessmen in return for political honour. However, a significant minority of the working class did vote Conservative particularly in rural areas,<sup>22</sup> and this has continued up until the 1997 General Elections.

Religion was the second principal cleavage. Within the religious cleavage the Anglicans, and to some extent, Catholics, voted Conservative, whilst Nonconformists tended to support the Liberals. The Liberal party provided a means for Nonconformists to campaign against injustice following their experiences with discrimination.<sup>23</sup>

Imperialism and Irish policy was the third principal cleavage on which the party system was based.<sup>24</sup> Gladstone's idea for Irish Home Rule divided the Liberal Party, creating a group of Liberal Unionists, and marked the Liberals very differently from the Conservatives, who solidly favoured maintenance of the Union. In the 1880s, the 'Irish Question' became almost an "article of faith" for Liberals<sup>25</sup> and

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<sup>19</sup> *Ibid.*, pp.29-30

<sup>20</sup> Pugh, M., (1982), *The Making of Modern British Politics 1867-1939*, Oxford: Basil: Blackwell, p.18

<sup>21</sup> Gatrell, V.A.C., (1982), "Incorporation and the Pursuit of Liberal hegemony in Manchester, 1790-1839", in Fraser, D., (ed.), *Municipal Reform and the Industrial City*, Leicester: n/a pp. 16-20

<sup>22</sup> Pugh, M., (1982), *op. cit.*, p.82

<sup>23</sup> See Parry, J., (1986), *Democracy and Religion: Gladstone and the Liberal Party, 1867-1875*, Cambridge: Cambridge University Press

<sup>24</sup> For more information about the Irish Question see Boyce, D. G., (1988), *The Irish Question & British Politics 1868-1986*, London: MacMillan

<sup>25</sup> Pugh, M., (1982), *The Making of Modern British Politics 1867-1939*, Oxford: Basil: Blackwell, p.35

divided the working class. The working class revolted against the Liberals especially in the urban areas as a result of fear of widespread Irish immigration.

The most notable and significant change in enfranchisement in the twentieth century has been the granting of votes to women. One may ask why this change did not affect political structures? To answer to this one should keep in mind that it is only the last 20 years, public attitudes towards the question of women's rights and feminist issues has emerged as an important and controversial political issue within British society. It is shown in Hayes's studies that whereas individuals who adopt a pro-feminist orientation are distinctive in terms of their electoral choices, gender *per se* has had no notable impact on vote. In other words, at least as far as the question of British electoral patterns are concerned, it is feminism and not gender which emerges as the key variable distinguishing party choice in this society.<sup>26</sup> Therefore it could be said that at the time when the right to vote given to women, it was class cleavage and other factors rather than gender politics which influenced women voters.

### 6.2.2. Early 20<sup>th</sup> Century Party Politics

It is true to say that the real turning point for mass politics came with the Great War of 1914-18, since "political debate was not only nationalised as newer before, but it became saturated by often conflicting conceptions of national purpose and national identity."<sup>27</sup> After 1918, it was a different world. Religious orientations and imperialism tended to leave their place to class loyalties. However, imperialism did continue to some extent until 1930s with the argument of free trade. Localism also began diminishing in politics 1880s and onwards. After 1918, Labour came into its inheritance generation by generation, voting habits and traditions cemented class loyalties. The Liberals were frozen out.<sup>28</sup> After 1918, the Irish Question was taken out of British politics. Class politics were amplified because the "Irish question" was removed after 1922, not solved but British lost interest in the affair after the Irish Free State Agreement Act 1922. Northern Ireland was still the part of the UK but

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<sup>26</sup> Hayes, B. C., (1997), "Gender, Feminism and Electoral Behaviour in Britain", *Electoral Studies*, Vol. 16:2, pp.203-216

<sup>27</sup> Lawrence, J., (1997), "The Dynamics of Urban Politics, 1867-1914" in Lawrence, J. and Taylor, M., (ed.), *Party, State and Society: Electoral Behaviour in Britain since 1820*, Hants: Scholar Press, p.97

<sup>28</sup> Clarke, P. F., (1972), "Electoral Sociology of Modern Britain", *History*, Vol. 17, p.54

devolved government in Northern Ireland and strict rules made it difficult to raise NI issues in Westminster Parliament.

The First World War divided the Liberal party as Asquith came into conflict with Lloyd George over the conduct of the war. The Labour Party filled the vacuum left by fragmentation of the Liberal Party. The War also saw the Labour Party join with the Coalition Government therefore enhancing its claims to the status of potential party of government.<sup>29</sup> The Labour Party, according to Tanner, benefited from a “solid working-class vote, but with little positive ideological content”.<sup>30</sup> The 1918 Reform Act and Representation of the People (Equal Franchise) Act 1928 created new opportunities for parties which could adapt. The electorate became younger and included women for the first time.<sup>31</sup> In early 1920s, the Communist Party was emerged as a highly disciplined group on the left demanding insistently to be admitted to affiliation to the Labour Party. This demand was declined and then its members attempted to infiltrate and win control of the local Labour parties. In 1922 and 1925, the Labour Party conference barred Communists from individual membership of the party and from selection as its parliamentary candidates. However, they could still attend annual conferences as union delegates. The Labour Party captured a number of largely working-class industrial and mining held by Liberals in early 1920s. Nearly every mining seat returned a Labour candidate, and non-mining support in the coal fields and adjacent area also moved towards the Labour Party.<sup>32</sup> Social polarisation between 1910 and 1922 had an inevitable political result, namely decline of the Liberal Party. The Labour Party became the party of the workers, and especially the trade unions. The Conservative Party became the party of the wealthy, with an often unexplained ability to mobilise broader support. The Conservative Party had fought the December 1923 General Elections on the issue of protection, (against Free Trade and Tariff Reform). Although the Conservatives were returned as the largest parliamentary party it was clear that free trade parties, Labour and Liberals, had an overall majority in parliament. In January 1924, after 1923 General Election Labour Party leader

<sup>29</sup> See Laybourn, K., (1988), *The Labour Party 1881-1951*, Wolfboro-New Hampshire: Alan Sutton

<sup>30</sup> Tanner, D. M., (1990), *Political Change and the Labour Party 1900-1918*, Cambridge: Cambridge University Press, pp. 11-16

<sup>31</sup> This Act equalised women in regard to voting by reducing the age qualification for women to vote from 30 to 21. According to Representation of the People Act 1918 and Parliament (Qualification of Women) Act, 1918, women of 30 and over were entitled to vote.

MacDonald was called to form the Cabinet. However it did not last long since the Labour government had only 191 MPs in the Commons and needed Liberals support and lasted less than ten months. The Labour government was very moderate and determined to prove itself as a responsible party of government. However, MacDonald's attempt to open up trading and diplomatic relations with the Soviet Union paved the way for the defeat in Parliament. This was marked by the "Red Letter Scare", the printing of the Zinoviev letter indicating the intention of the Russians to use the Labour Party to extend Leninist ideas.<sup>33</sup> The General Elections were won by the Conservative Party, and the government was formed by the Party till 1929. In 1929, The Labour Party became the largest party for the first time. However following the 1929 Wall Street Crash, the world recession emerged, and unemployment had risen sharply in Britain. The second Labour Government was faced with the rapidly rising cost of providing unemployment benefits. The Leader of the Labour Party MacDonald resigned from the government accepting the King's commission to form a National Government during the financial crisis of August 1931. The Coalition government was formed and lasted until 1935. The Conservatives returned as governing party in 1935. During the War, the country was united against a common enemy and the Coalition government had fostered social and intellectual connection between Labour and Conservatives. The common effort for defeating Hitler made ideological differences between two parties less important. Acceptance of Keynesianism which aimed "full employment brought three main political parties together during the War years.

### **6.2.3. The Post-war Party System**

By 1945, social background of a new commonly supported consensus existed in the political culture. The "post-war consensus" caused the overlap between the economic, social and foreign policies of both Labour and Conservative governments throughout the post-war period until its breakdown in the 1970s. It could be said that the character of the British party system remained strongly bipartisan during the post-war period until the 1970s. The Liberal Party had suffered greatly in the immediate post war elections and Liberals continued as a small group in the House of Commons.

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<sup>32</sup> See Bogdanor, V. and Field, W.H., (1993), "Lessons of History: Core and Periphery in British Electoral Behaviour 1910-1992", *Electoral Studies*, Vol.12, pp. 203-24



Political life was dominated by the Conservatives and Labour Parties. This combined share of the General Election vote was never below 87.5 per cent.<sup>34</sup> Two-party government was a feature of the period, and the Conservative and Labour Parties alternated in power. Lengthy periods in office contributed to an element of stability in public policy. Immediately after the war, the Labour came to power. The Attlee government committed itself to achieve full employment. The 1945 Labour manifesto advocated nationalisation of public utilities and an extension of state ownership over further aspects of the private sector. Labour government nationalised the coal industry, electricity, railway and gas.<sup>35</sup> They set up the National Health Service. The setting up of the NHS and nationalisation of railways and coal mining was one of the bitter issues between the parties. This was the first time Labour had engaged a great majority in Parliament. After 1951 when Conservatives came to power a broad consensus had emerged on economic and welfare policy. Economic policy was Keynesian in approach, and there was general agreement on the relative size of the public and private sectors. Both parties had similar approach in terms of welfare and social policy too<sup>36</sup>. Labour won a narrow victory in 1964 but consolidated it with a majority of ninety-six in the general election of 1966. The party stayed in government until 1970.

Although this period clearly confirms the Conservative and Labour hold on the party system, an element of resistance did rear its head in the 1970s as Liberals emerged with some remarkable by election victories and the regional electoral activity in Scotland and Wales became increasingly successful.

During the 1970s a number of new issues combined and there was a suggestion that the party system might be changing. Rapidly changing economic conditions threatened Britain with potential economic uncertainty; huge economic problems were caused by the OPEC oil crisis. By 1976, Britain had no alternative but to apply the IMF for a loan resulting in a shift in economic policy away from Keynesianism. Problems with industrial relations and the emergence of post-modern or late-modernist era helped to break down the class division and led into late modern agenda of breaking down the Keynesianism, oil shock in 70's, de-

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<sup>33</sup> See Chester, H., Fay, S., and Young, H., (1967), *The Zinoviev Letter*, London: Heinemann

<sup>34</sup> Fisher, J., (1996), *British Political Parties*, London: Prentice Hall, p.11

<sup>35</sup> see Seldon, A., (1990), *UK Political Parties Since 1945*, London, New York, Toronto: Philip Allan

<sup>36</sup> For further information about the post-war era in Britain, see, Gorst, A., Johnsman, L. and Lucas, W.S., (1989), *Post-war Britain 1945-64*, London-New York: Pinter Publishers

industrialisation and globalisation. After the breaking down the class interests, new politics emerged such as gender politics, environment, regionalism and relationship with Europe. This has allowed for voter volatility. New smaller parties such as Referendum Party and the Green Party have emerged. Great switch from Conservative to Labour Party has been observed at last elections and also sustained growth of Liberals has been seen.

### **6.3. Major Political Parties in the UK**

In this section, major political parties in the UK will individually be studied. The reason for this is to show that these parties have deep roots and long history compared to their Turkish counterparts. In previous section, external growth through electorate has been shown. Here, internal organisations, their ideas and their social bases will be examined. In previous chapter, it has been shown that Turkish political parties do not have deep roots in society, and political representation of the existing groups in Turkish society has been relatively weak. Examining British political parties history, structure and ideas may provide clear understanding of the difference between British and Turkish political parties and may help us to see the reasons behind this. It also shows level of legal responses. British parties are historically well established and history shows us a great stability therefore British political parties did not need legislation to tell them what to do.

#### **6.3.1. Liberal Party**

During the 19<sup>th</sup> century, the Liberal Party was seen as the pioneer in British party politics. It was a coalition of the left and was the more radical of the two main parties. It took up the cause of social reform, and it was the party of constitutional innovation. It suffered a major split at the end of the 19<sup>th</sup> century and then ultimately was replaced by the Labour Party.<sup>37</sup> The Liberal Party introduced party organisation into British politics at both national and local levels.

Imitations of the Birmingham Liberal Association which was founded in 1865 culminated in the establishment of National Liberal Federation in 1877. The Federation had its roots in long-standing political relationships and practices in the

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<sup>37</sup> Mathew, H. and others, (1976), "The Franchise Factor in the Rise of the Labour Party" *English Hysterical Review*, Vol. 91, pp.723-52

city.<sup>38</sup> Both direct and indirect democracy were constituent parts of the Birmingham. Wards which provided the bottom rungs of the organisation, and each ward elected representatives to General Committee, which in turn decided the general policy of the Association and selected candidates Parliament. Those who agreed with Liberal Party objectives could be members of the Association and membership was free.

Other Liberal organisations emerged from other large towns. Various *ad hoc* organisations had existed before 1867. Although the Birmingham model was the one which was aspired towards, more particularly after the establishment of the National Liberal Federation in 1877, some organisational dissimilarity from place to place did exist.

The NLF was essentially a democratically structured organisation with power vested in the annual conference. Yet, the extra-parliamentary organisation never dominated the parliamentary wing of the organisation.

The Liberal Central Association, founded in 1874 replaced the Liberal Registration Society. This organisation was controlled by the parliamentary Whips and existed to encourage the establishment of constituency organisations in order to contest elections and able to raise money. Local control over candidate selection was to have a major impact on the future of the party.

Throughout its history as one of the two major political parties the Liberal Party remained a coalition.<sup>39</sup> The Liberal Party was more a coalition than was the late 19<sup>th</sup> century Conservative Party.

The Party's relationship with labour was the core of its ideological problems which tended to result in poor performances in the working class areas of London and Lancashire. The Liberal-Labour tradition was important within the party notwithstanding the tendency of the middle class associations to reject the working class candidates. Representatives, especially miners, had been elected to the Commons since the 1870s under the Liberal banner.<sup>40</sup> However, the political significance of the Liberal Party ended abruptly in 1922 following the emergence of the Labour Party as the second largest political party and as the alternative to the Conservative Party. After this turning point, there has been an almost continual

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<sup>38</sup> Griffiths, P.C., (1976), "The Caucus and the Liberal Party in 1886", *History*, Vol.61, pp.183-197

<sup>39</sup> Hamer, D.A., (1972), *Liberal Politics in the Age of Gladstone and Rosebery*, Oxford: Clarendon Press, p.1

<sup>40</sup> Clarke, P., (1972), "Electoral Sociology of Modern Britain", *History*, Vol. 57, pp. 33-51

decline of the power of the Liberal Party in the British parliamentary system.<sup>41</sup> Although the Liberal Party returned with 72 seats following the 1931 elections, it only gained 11% of the vote. The Liberal Party reached the lowest point in its popularity in the 1950s.<sup>42</sup>

General elections after 1964 represented rises and falls in Liberal support. The Liberal Party would do well during periods of Conservative government; the anti-Labour vote during Labour administration would mainly go to the Conservative Party. Between 1964 to 1970, there was only one Liberal success, which was Birmingham Ladywood. Between 1974 and 1979, the only victory was at Edge Hill Liverpool in 1979 to mention. However, between 1970-74, five English seats were won by the Liberals and this was during the period of Conservative government.<sup>43</sup> Up to 1979 the Liberals also gained some political standings after entering into a coalition with the Labour Party and in 1970s they were much healthier than 50s.

The SDP and the Liberal Party were allied in 1981 following a breakaway group of Labour MPs forming the SDP. An electoral alliance was entered into in the same year,<sup>44</sup> and the following two general elections were contested with a joint programme. Candidates offered themselves as Alliance candidates; once elected they would sit as representatives of their own parties. In the 1988 the two parties formally merged, and the Social and Liberal Democrats were formed. The Liberals has now regained support not only at the expense of the Labour Party but also as result of the new political agenda.<sup>45</sup> This party is known the Liberal Democrats and is currently well represented in the House of Commons with 46 MPs.

Three levels of organisation exist in the Liberal Democrat Party. The national level includes the leader, party headquarters, the federal executive, policy committee and national conference. The state level consists of separate organisations for England, Scotland, and Wales each organising a state conference. Scotland and Wales have an executive and policy committee, whereas England has a regional council. The basic unit of the party is the individual members.<sup>46</sup>

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<sup>41</sup> Cook, C., (1976), *A Short History of the Liberal Party 1900-1976*, London: Macmillan Press, p.104

<sup>42</sup> *Ibid.*, p.134

<sup>43</sup> See Ball, R. A. (1987), *British Political Parties*, London: Macmillan, p.222

<sup>44</sup> Garner, R & Kelly, R., (1993), *British Political Parties Today*, Manchester: Manchester University Press, p.195

<sup>45</sup> Bradley, I., (1985), *The Strange Rebirth of Liberal Britain*, London: Chatto & Windus

<sup>46</sup> Jones, B. and Kavanagh, D., (1994), "Political Parties" in Jones B, Gray, A. Kavanagh, and others, (2<sup>nd</sup> ed.), *Politics:UK*, Hemel Hemstead: Harvester Wheatsheaf, p.265

The local party is the basic unit of party organisation and usually covers a single parliamentary constituency. The minimum number of membership in local party is currently 30 members. If a local party has a membership below thirty for six months it is subject to automatic suspension.<sup>47</sup> The former Liberal party and Social Democratic party local organisations are now subsumed by the local parties which are responsible for internal organisation, working arrangements and finance and the sponsoring of Liberal Democrat candidates in local and national elections. The needs and interests of the district and local council are affected by the Government of the day and one of the duties of the local party is to keep watch on the administrative and legislative work of the government.<sup>48</sup>

The Liberal Democrat organisation can be summarised in a table as below

**Table 6.1: Liberal Democratic Organisation<sup>49</sup>**

**National**

National Executive	Federal Policy Committee	Federal Conference	Party Headquarters	Leader
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**State**

<b>England</b>	<b>Scotland</b>	<b>Wales</b>
Conference	Conference	Conference

Co-ordinating Committee for England	Executive	Executive
Council of Regions	Policy Committee	Policy Committee
English Regions		

**Local**

Local Parties
Members

The Executive Committee of the local party, or a short listing sub-committee appointed by it, produces a short list of candidates. These candidates must have appeared in the Party's national list of approved candidates. Other than when the sitting MP or a previous candidate is to be re-elected, a specified minimum number

<sup>47</sup> Ingle, S., (1996), "Party Organisation" in Maciver, D.N.,(ed.) *The Liberal Democrats*, London: Prentice Hall, p.115

<sup>48</sup> McKee, V., (1994), "The Political of the Liberal Democrats" in Dunleavy, P., and Stanyer, J., (ed.), *Contemporary Political Studies*, Exeter: Political Studies Association, p.1005

of candidates must be short-listed. Further rules ensure that short lists of 2 –4 candidates must include at least one member of each sex, and due regard must also be paid to the representation of ethnic minorities. The alternative vote method is used by all members of the local party who are entitled to participate in the selection of candidates. The sitting MP may be re-elected at a general meeting of the local party. The Liberal Democrats face difficulties in supplying sufficient candidates and on occasions simply supply candidates from their approved lists to constituencies where there is no locally selected candidate to ensure that there is a candidate in every British seat.<sup>50</sup>

The party's policy is determined through the Federal Conference. The Conference is attended by a variety of party members including representatives of local parties, associated organisations representing youth and students, the party's parliamentary teams and other party officers. The Conference meets normally twice a year in spring and autumn.

Membership is the main source of income for the Liberal Democrats. The party has struggled to find institutional sources of income. 23 % of central income comes from membership fees accounts.

It is not surprising to note the existence of different ideological traditions especially considering that the Liberal Democrats followed the merger of two parties. The two main groups also have numerous sub-groups that reflect the different opinions within party membership. Liberalism within the Party has three main strands, classical liberalism and social liberalism and community liberalism. Initially classical thought dominated the principle of the party and the main principle was that of classical competition in the economic arena. Classical liberalism, however, is not only a strand of economic thought. This element of liberal thought argues that a free market allows free expression by individuals and that any intervention in that market is therefore an impediment to an individual. Therefore, the freedom of market is linked to the freedom of the individual. This strand of liberalism is still apparent but has been overwhelmed by social liberalism among the contemporary Liberal Democrats.<sup>51</sup> Individual rights and their entrenchment in law have been emphasised and attempts have been made to reform British political system in order to enshrine

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<sup>49</sup> Jones, B. and Kavanagh, D., (1994), *op. cit.*, p.247

<sup>50</sup> Norris, P. and Lovenduski, J., (1995), *Political Recruitment*, Cambridge: Cambridge University Press, pp.80-81

<sup>51</sup> See Chapter 2 for more information on liberalism and liberal democracy

the rights. Henceforth, they have continued to advocate a Bill of Rights, electoral reform and the devolution of government as means by which citizen might be better able to preserve personal rights and participate in politics.

Social democracy forms the second main strand of Liberal Democrat ideology. A more centrist approach in economic matters rather than a radical liberal one is followed by the party. Some state intervention in the economy is promoted together with emphasis on the small business. A more leftist view is taken with regards social policy and especially in relation to education, housing and health. In international terms a strong pro-European stance is taken by the Party. The Liberals had long advocated international economic and political co-operation, while the founders of the SDP had all been committed supporters of the European Union.

Community liberalism is the third strand of liberalism, which exists within the Liberal Democrats. It is more concerned more with ethical values. It is more concerned with localism and the notion of direct democracy. It has strong feeling for community involvement “grassroots” action. Participation is seen as more important and representative democracy is criticised. The argument is that individuals should have a greater opportunity to participate in decision making and single-issue campaigning to be advocated.

The party faces some problems such as current electoral system which seems to be a barrier to sustained growth. The party also faces the risk of its ideological identity being threatened by the “modernising” policies emanating from the Labour party. The proximity of the two parties was shown by Liberal service within Labour Government’s Constitutional Affairs Sub-committees.

### **6.3.2. The Conservative Party**

The Conservative Party is the great enigma of British politics. The party is the most successful party in British history; and has been an important force in British politics for more than 150 years.<sup>52</sup>

The Conservative Party emerged in the 1830s as a successor to the Tory Party. It was not until the mid-late 19<sup>th</sup> century that the Party became a more modern national party with a distinctive electoral appeal and a centralised party organisation. The party remained extremely successful in all of the elections of the late nineteenth

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<sup>52</sup> Whiteley, P, Seyd, P. and Richardson, J., (1994), *True Blues: The Politics of Conservative Party Membership*, Oxford: Clarendon Press, p.1

and twentieth centuries except 1945 and 1997 elections. It was external factors proved to be the main force developing the Conservative Party outside parliament. The growth of the electorate made it necessary to have a more committed organisation in the constituencies.

The Carlton Club was the only central focus of Conservative Party organisation outside Parliament after 1832. After the Second Reform Act 1867, the party continued to remain strong in the rural counties and small towns, hence there was no need for strong local organisations. However, the electoral future of the Conservative Party was not to be decided primarily by the constituencies that were to suffer in the political reforms of 1883-5. It was in the larger towns that party organisation was to play such a significant part in deciding elections. Here the party's national bodies encouraged the growth of new local structures. After the 1867 Reform Bill, some working men's clubs and association appeared and became part of the local electoral organisation for the Conservative cause.<sup>53</sup> In order to get further support the Conservatives formed the National Union of Conservative and Constitutional Associations in 1867.<sup>54</sup> The formation of this organisation was to strengthen those already existing institutions. Its role became that of a national central organisation, and, following the 1868 defeat, Disraeli created the Conservative Central Office. This encouraged, and in a way was supposed to head, constituency Conservative Associations. Another role was to register candidates for elections.<sup>55</sup> By 1875, the National Union had approximately 472 local Conservative associations affiliated to it.<sup>56</sup> With this greater impact of local organisation, the role of the central organs also increased. The electoral defeat of 1868 and the consequences of the Second Reform Act encouraged a more efficient central organisation. The Conservatives had become a modern party by the 1880s. Party discipline in Parliament had grown, and the extra-parliamentary party was established. The 1884 Reform Act and the Redistribution of Seats Act of 1885 Act were important to this party development. The 1885 Act succeeded in splitting the centres of large cities from the more prosperous middle and lower middle- class suburbs, and the emergence of a new white-collar class created a firm nucleus of new

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<sup>53</sup> Gerrard, J., (1977), "Parties, Members and Voters after 1867: A Local Study ", *Historical Journal*, V. 20, pp.143-63

<sup>54</sup> Lindsay, T.F. and Harrington, M, (2<sup>nd</sup> ed. 1979), *The Conservative Party 1918-1979*, London and Basingstoke: Macmillan, p.26

<sup>55</sup> Norton, P., (1996), *The Conservative Party*, London: Prentice Hall Harvester Wheatsheaf, p.27



and old Conservative supporters in these new constituencies. However, in spite of these changes, the Conservative Party leadership remained overwhelmingly aristocratic and upper middle class until the second decade of the twentieth century.

At the beginning it could be said that the Conservative Party had few distinctive ideological differences with the Liberal Party, such as free trade, union with Ireland and in the early 20<sup>th</sup> Century welfare state policies. In the early 1900s, the Party had adapted itself pragmatically to the new social and political changes, and when political electoral realities demanded, was even willing to take the initiative.<sup>57</sup>

The Conservative Party is a hierarchical party. All efforts are directed towards the assistance of the parliamentary party and especially the leader. The Conservative Party emerged within Parliament, therefore the parliamentary party is paramount. The importance of the leader is clearly a reflection of the wider political creed of conservatism.<sup>58</sup> It also reflects one of the Conservative Party's key objectives which itself helps to shape party thinking the pursuit of government. "While all the mainstream political parties seek power, none do so as single-mindedly as the Conservative Party."<sup>59</sup>

Although the Conservative Party has been indisputably Britain's most effective political party, having been in office for almost three-quarters of the 20<sup>th</sup> century, there has been no detailed comprehensive study about the distribution of power inside the party since that of McKenzie<sup>60</sup> nearly forty years ago. A legal inquiry of 1982, involving Conservative Party Central office and the Inland Revenue, found that "the Conservative Party" did not even exist as "a compact, legally recognised organisation", consisting instead of "three separate components" operating mainly on the basis of convention".<sup>61</sup> The central party organisation in England and Wales is the National Union of Conservative and Unionist Associations, a federal organisation to which is subdivided into provincial areas, including Scotland, plus around 600 constituency affiliated associations. Scotland has its own organisation, the Scottish Conservative and Unionist Association,<sup>62</sup> but its 72 constituency associations are now also affiliated to the National Union. The main

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<sup>56</sup> McKenzie, R.T., (2<sup>nd</sup> ed.1963), *British Political Parties*, London: Heinemann, p.159

<sup>57</sup> Ball, R. A., (1987), *British Political Parties*, London: Macmillan, p.39

<sup>58</sup> Kelly, R., (1994), "Power and Leadership" in Robins, L., Blackmore, H. and Pyper, R., (ed.), *Britain's Changing Party System*, London: Leicester University Press, p.40

<sup>59</sup> Fisher, J. (1996) *British Political Parties*, London: Prentice Hall, p.35

<sup>60</sup> McKenzie, R.T. (2<sup>nd</sup> ed.1963), *op. cit.*:

<sup>61</sup> *Conservative Office v Burrell*, [1982] 1 WLR 523

functions of the National Union are to advance the Party's cause, to give an opportunity for issues to be debated, and to serve as an advisory body which keeps the leader informed of party opinion.<sup>63</sup>

The governing body of the National Union is its Executive Council.<sup>64</sup> The Executive Council of the National Union which meets regularly is composed of 264 members, including representatives of the provincial area councils and other provincial officers of the Party.<sup>65</sup>

An annual conference is held by the National Union every year and is the most important annual gathering of the Party. The Conference is attended by the members of the Central Council and two additional representation of each constituency including certificated agents or organisers.<sup>66</sup> At the conference the National Union receives the report of the Executive Committee, and debates and passes resolutions on party policy.<sup>67</sup> It is not authorised to decide on policy and has no executive power, its resolutions are therefore not binding on the party leadership, but they have considerable influence.

Conservative constituency associations are composed of individual members who live in, or are connected with the constituency, and pay a subscription each year to party funds. In many associations, there are separate sections catering for special interests of women; in most, there was section for "Young Conservatives" between the ages of 15 and 30. The Young Conservatives was the largest voluntary political youth movement in Britain. However, young conservatives in 1990s became a quite radical right wing organisation. It was abolished and "Conservative Future" is established instead. "Conservative Future" operates on a national and local structure especially based in universities and constituency branches. A number of studies have already contested that Conservative associations have more autonomy than constituency Labour parties, one obvious reason being that they are much more financially independent.<sup>68</sup> The associations have complete autonomy in the day to

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<sup>62</sup> Kelly, R., (1994), *op. cit.* p 41

<sup>63</sup> The Party Organisation, 1961, p.7, (Conservative Party's Publication)

<sup>64</sup> see Kelly, R., (1994), "Power and Leadership" in Robins, L., Blackmore, H. and Pyper, R., (ed.), *Britain's Changing Party System*, London: Leicester University Press

<sup>65</sup> *The Rule and Standing Orders of the National Union, 1990*, (Conservative Party's Publication)

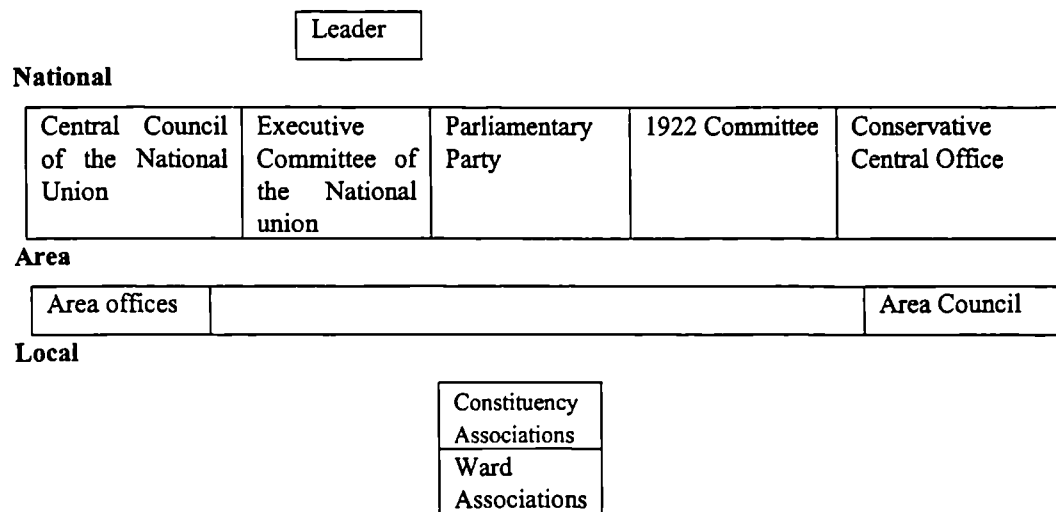
<sup>66</sup> McKenzie, R.T., (1963), *op. cit.*, p.189

<sup>67</sup> Clarke, D., (1958), "The Organisation of Political Parties", *American Journal of Political Science*, p.79-89

<sup>68</sup> See Pinto-Duschinsky, M., (1990), "The Funding of Political Parties since 1945" in Seldon, A. (ed.), *UK Political Parties Since 1945*, Hemel Hempstead: Philip Allan

day management of their affairs. They are free to elect their own officers, select and appoint their own agents, raise their own funds, and plan and carry out the own publicity programmes. They also conduct election campaigns in their constituencies in their own way, and adopt their own candidates for parliamentary and local government elections. The party organisation can be illustrated in the table as below.

**Table 6.2: Conservative Party Organisation<sup>69</sup>**



Candidates are chosen by the constituency associations of each party to its own established practice. Sitting MPs in all parties have to be reelected by their constituency associations at some point before contesting a general election. The procedure in the Conservative Party is as follows. When a new candidate is to be chosen, the executive council of the constituency association appoints a selection committee to which the standing advisory committee on candidates at party headquarters submits a list of potential candidates who have indicated their wish to stand for that constituency.<sup>70</sup> The names of local party members, some of whom may be put forward their own names for consideration, are also submitted. When the standing committee has approved any new local names, the selection committee chooses a number of candidates for interview, and produces a short-list to appear before whole executive council. A series of ballots is then taken, because of which one candidate may be recommended to a general meeting of the whole constituency association. Ordinary party members can have the final say on whether or not a candidate is adopted.<sup>71</sup> Except on the rarest occasions, this candidate is formally

<sup>69</sup> Jones, B. and Kavanagh, D., (1994), *op. cit.*, p.247

<sup>70</sup> Norris, P. and Lovenduski, J., (1995), *op. cit.*, p.35

<sup>71</sup> Fisher, J., (1996), *op. cit.*, p.45

adopted. However, the Standing Advisory Committee on Candidates has the power of veto over any local selection.<sup>72</sup>

The Conservative Party is a coalition. It is not the party of a single class, nor does it represent a single, galvanising political idea. The party is noted for pragmatism and opportunism, qualities which helped the party to survive and thrive. It could be said that the notion of a Conservative ideology in some ways is an anomaly. Since conservatism does not offer abstract notions such as justice or rights, it is arguable whether it should be considered as an ideology.<sup>73</sup> However the Conservative Party could be identified with distinct strands of thought which may reasonably be called ideological.<sup>74</sup> The main thing that could be said about the Conservative Party is that the party is traditionalist. It has a respect for established practices and institutions. This also takes its form in a strong nationalism. According to Conservatives, society develops as an organism. They emphasise a respect for history by arguing that societies cannot be created, but must evolve over time. The growing society relies upon each component playing its role, any radical diversion from this principle will threaten society's continued development. Conservatives are political sceptics. They reject abstract principles in politics, such as justice, rights and equality, and prefer the practical approach of society developing upon the knowledge of experience. A consequence of the Conservative Party's emphasis upon organicism and scepticism of ideology is the support for capitalism.

There are many strands of ideology in the Conservative Party; religious and secular, laissez-faire and paternalist. These various strands are always present and are apparent at the party's gross roots.<sup>75</sup>

By May 1997, it was clear that the Conservative Party organisation was suffering from a whole series of fundamental weakness. Therefore, wholesale reform was necessary. Under the leadership of William Hague, new reform programme is now being into place. There are four elements in this reform programme. First, there is the problem of declining and ageing party membership. It is essential to rebuild party's membership. In the past, being a conservative was as much a social as a political decision. It was a common part of social life in many parts of the country

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<sup>72</sup> Blackburn, R., (1995), *The Electoral System in Britain*, London: Macmillan, p.218

<sup>73</sup> Eccleshall, R., Goeghegan, V. and others, (1984), *Political Ideologies*, London: Unwin Hyman, p.80

<sup>74</sup> Goodwin, B., (1987), *Using Political Ideas*, Chichester: Wiley, p.139

<sup>75</sup> See Whitely, P., Seyd, P and Richardson, J., (1994), *True Blues*, Oxford: Clarendon

and suburbs. Nowadays, increasingly people join political parties because they are interested in politics. Second, the Conservative Party was not offering enough politics to its members. In particular the members felt excluded from the decision-making process. That is why Hague, the current Leader of the Party, has explicitly linked his target of doubling the membership with new opportunities for the membership to have a direct say in decision-making. In January 1998, it was decided that the parliamentary party would in effect conduct a primary for any future party leader. After that there will be a one member, one vote election in which every individual party member will have exactly the same rights and in which Members of Parliament have no special position at all.<sup>76</sup> Any system for involving the whole membership in political decision and in the selection of the leader requires also the Central Office to have a proper record of who the members are. Thirdly, traditionally, membership was entirely a local matter and local associations were very reluctant to pass such information on to Central Office for fear that it would undermine local membership subscriptions which constituted their financial base. The organisational renewal of the party therefore involves a national membership register.<sup>77</sup>

Hague set out the principles on which reform would be based in a speech at Conservative Central Office in July 1998. Reforms would have to be based on the principles of unity, decentralisation, democracy involvement, integrity and openness. This speech is remarkable for its formal commitment to bringing democracy and openness to the affairs of a party, which had previously placed it, an emphasis on trust, expertise and leadership. The Conservatives also realised that their approach to party funding could no longer be sustained. Therefore, Hague made a startling commitment to openness about political donations. "A modern party should be open about its source of finance. The Conservative Party has nothing to hide, unlike the Labour party we do not rely on the backing of trades unions or other vested interest groups and so, in future, we will be more open about the funding of the party. We will publish the names of all major donors and will refuse to accept any foreign donations."<sup>78</sup> In the discussion document or "green paper" entitled *Our Party: Blue Print for Change* which produced by the 1922 Committee, it is proposed that the

<sup>76</sup> Willets, D., (1998), "Conservative Renewal", *Political Quarterly*, Vol.69:2, pp.110-117

<sup>77</sup> Peele, G., (1998), "Towards 'New Conservatives'? Organisational Reform and the Conservative Party", *Political Quarterly*, Vol.69:2, pp141-147

<sup>78</sup> Speech by William Hague at Conservative Central Office, London, 23 July 1997

formerly separate elements of the Conservative Party: the parliamentary party, the voluntary wing (the Union) and the professional staff (central office) should be united in a single structure with a constitution and rules and a national membership.<sup>79</sup>

### 6.3.3. The Labour Party

As the number and range of voters increased, a third party came into existence at the beginning of 20<sup>th</sup> Century with the aim of representing working men in Parliament. As with the Liberal Party 50 to 60 years earlier, the Labour Party was the product both of a new body of voters created by legislation and the growth of a new ideology. The earlier parties began as parliamentary groups within parliament and established organisation outside it in order to gain support and so achieve re-election. In contrast, the Labour Party began as a movement outside Parliament, seeking representation within it in order to further the aims of party policy.

In the general election of 1900 the Labour Representation Committee (LRC) endorsed fifteen candidates, and two, Keir Hardie and Richard Bell, were elected.<sup>80</sup> This was the organisation that grew and formed the first Labour government in 1924. Before 1880 labour or working-class representation in Parliament was insufficient, and it was by courtesy of the Liberal Party. After the election of 1880 there were three working men in Parliament, and by 1886 this number had increased to eleven. They were all elected under the Liberal label. However, between 1880 and 1900 a genuinely independent working-class party did emerge with a national organisation and independent parliamentary representation.

It could be said that the emergence of the Labour Party was an inevitable process. With the achievement of a wider franchise, the decline of religion, and the growth of trade unions and class politics, the appearance of a working-class party to challenge the parties of capitalism was only a matter of time.

In the emergence of Labour Party, the role of the Liberal Party has a crucial importance. As Ramsay MacDonald, the future Labour leader and first Labour Prime Minister said in 1895, "We did not leave the Liberals. They kicked us out and slammed the door in our face."<sup>81</sup>

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<sup>79</sup> The Conservative and Unionist Party, *Our Party: Blue Print for Change*, London 1997

<sup>80</sup> Philips, G., (1992), *The Rise of the Labour Party 1893-1931*, London and New York: Routledge, p.11

<sup>81</sup> See Morgan, K. O., (1989), *Labour People*, Oxford: Oxford University Press, p.54

The Liberal Party succeeded in alienating this working class support in two ways. First, the emergence of middle-class dominated caucuses made it more difficult for working-class candidates to be nominated under the auspices of the Liberal Party. Second, the Liberal Party alienated essential sections of working class support before 1900 by ignoring legislative programmes of social and political reform that would benefit the working class. The Liberal Party did have its radical aspects to it in particular in terms of social and political reforms. After 1905 Liberals had a social welfare reform programmes however they were not enough to satisfy trade unions and working class. The party continued to provoke hostility among trade unions by its lack of sympathy to such demands such as the shortening of the working day. While the Liberal Party was alienating the working class, the rise and the political activities of various socialist groups after 1880 contributed significantly in different ways to the founding of the Labour Party. The Social Democratic Federation (SDF) was originally founded in 1881 and remained the one avowedly Marxist organisation in British politics in this period. Although it always remained a faction, it was politically significant in its nurturing of a Labour leadership and in raising working-class consciousness. The Fabian Society, founded 1884, claimed a genuine degree of political significance. It presented itself as the middle-class political and intellectual powerhouse of the early Labour movement. It was not designed to be a mass party and sought to achieve its ends mainly through a slow permeation of the Liberal Party, detaching itself, before 1900, from all attempts to secure independent working class representation. Fabians had had an important influence on both the organisation and policy directions of the Labour Party before 1918. However it was the ILP, founded in Bradford in 1893, that was to represent the mainstream of British socialism and to make the most significant contribution of all the socialist societies to the setting of the Labour Party.<sup>82</sup>

The Labour Representation Committee (LRC) was founded after the failed attempts of trade unions to penetrate effectively the established party system.<sup>83</sup> The LRC was set up by the Trade Union Congress, along with the Social Democratic Federation (SDF) the Independent Labour party (ILP) and the Fabian Society, the

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<sup>82</sup> Laybourn, K., (1988), *The Labour Party 1881-1951*, Wolfboro-New Hampshire: Alan Sutton, p.14

<sup>83</sup> See McKibbin, R., (1974), *The Evolution of the Labour Party*, Oxford: Oxford University Press

trade union having 94 per cent of the affiliated membership. After the 1906 Parliamentary Elections, the Committee became the Labour Party.<sup>84</sup>

After the decision of the miners' union to join with the Labour party in 1909, the Labour Party became the main political representative of working class. The replacement of the Liberals by Labour as the main political opposition to the Conservative was rapid and was result of a variety factors. The key factor was the Representation of the People Act 1918 which extended male suffrage. The split in 1916 of the Liberal party over Asquith's leadership which lasted until 1923 and the increasing importance of class as social cleavage and dislocating and radicalising effect of war were other important factors.<sup>85</sup>

Local committees were established at constituency level, but there was no individual membership, as the Committees consisted entirely of affiliated organisations. In 1918, the Party was completely reorganised, with constituency Labour parties admitting individual members as well as affiliated organisations.<sup>86</sup>

Constitutionally, the Labour Party is less hierarchical and more democratic than the Conservative Party. Individual members may vote in internal elections, including electing the leader and at conferences. Party conferences are designed to determine party policy. The party also consists of affiliated organisations, including trade unions and various societies. There can be identified three distinct levels of Labour Party organisation, which are a variety of bodies which interact both with each other and across levels of organisations. Three levels are local, regional and national.

Labour constituency associations are known as Constituency Labour Parties. Within these parties, branches may be formed usually covering electoral wards in towns, and parishes or groups of parishes in rural areas.<sup>87</sup> The party has two classes of membership: affiliated organisations and individual members. Affiliated organisations include trade unions (the most important category) co-operative societies and branches of the Co-operative party, and branches of socialist societies or professional organisations, which are affiliated to the Labour Party nationally. Individual members must be aged 15 or over and must be attached to the appropriate

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<sup>84</sup> Garner, R and Kelly, R., (1993), *British Political Parties Today*, Manchester and New York: Manchester University Press, p.161

<sup>85</sup> See Clarke, P. F., (1972), "Electoral Sociology of Modern Britain", *History*, Vol.17, p. 51 onwards

<sup>86</sup> *Ibid.*



branch operating in the ward where they live or, for those of voting age, where they are registered as parliamentary or local government electors. The constituency parties run their own affairs, elect their own officers, raise administer their own funds and undertake their own publicity programmes. They select their candidates and appoint their agents subject to the approval of the national organisation, and conduct election campaigns in the constituency on behalf of the Party. The affairs of the constituency parties are controlled by a general committee, which consist of delegates elected by the affiliated organisations, branches of individual members and women's and youth sections; all must be individual members of the Party.

At national level, there are five elements of organisation: the Parliamentary Labour Party (PLP), the party headquarters, the National Executive Committee (NEC), the annual conference and the leader of the party. Of these the NEC and the leadership are the most powerful parts.

The NEC is the administrative authority of the Party and seeks to apply its policies between annual party conferences. The NEC has joint responsibility with the leadership for drawing up to party's manifesto, although this role has declined in recent years. The NEC is responsible for the party organisation itself. Theoretically, the NEC could act as a check upon the power of the leadership.

The highest authority in the Labour Party is the party conference, which controls the work of the Party outside parliament, and is responsible for its constitution and standing orders, and decides, in broad outline, party policy. The Labour Party's annual Party Conference is composed of delegates from affiliated organisations and from constituency parties and federations. The annual Labour Party conference begins with the election (or re-election) of the leader and deputy leader. When the Labour Party is in opposition the procedure is brought into operation automatically, but if the Labour Party were in office the procedure will be initiated only on the request of the majority of the conference.<sup>88</sup> The Labour Party Conference has two principal functions: to determine the general policy of the Party and to elect the National Executive Committee, which is responsible to, and reports to, the Conference. It is the responsibility of the Party conference to choose the specific proposals to be included in the Party programme. Every item included must

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<sup>87</sup> Clarke, D., (1958), "The Organisation of Political Parties", *American Journal of Political Science*, (reprinted), p.81

have secured a two-thirds majority.<sup>89</sup> Votes at Conference are distributed according to membership of affiliated organisations. It is largely because the delegates at Conference represent the membership and determine the policy of the party that the party claims to be democratic. The delegate is expected to vote in accordance with the policy instructions of the people who elect him or her. Most constituency parties do instruct their delegates to the annual conferences on the major issues and provide an opportunity for the delegate to report back after the conference.<sup>90</sup> The conference is normally held once a year for four and a half days and is attended by some 1,300 delegates appointed by trade union, constituency parties and socialist and co-operative societies. Ex officio members, such as leading officials of its Party, MPs and prospective parliamentary candidates, and constituency party agents, take part. The organisation of Labour Party can be summarised as table below.

**Table 6.3: Labour Party Organisation<sup>91</sup>**

**National**

Parliamentary Labour Party	Labour Party headquarters	National Executive Committee	Annual Conference	Leader
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**Regional**

Regional Office		Regional Council
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**Local**

		Constituency Parties		
Trade Union Branches		Ward Organisation		Socialist Societies

Since 1993, the selection of parliamentary candidates has been based on one member-one vote (OMOV), a system which gives each CLP member an equal vote in the selection process. This contrasts with previous selection process whereby trade unions affiliated at local level possessed a block vote. In the Labour party,

<sup>88</sup> Budge, I. and Mckoy, D., (1993), *The Developing British Political System; the 1990s*, London: Longman, p.91

<sup>89</sup> Garner, R & Kelly, R., (1993), *British Political Parties Today*, Manchester: Manchester University Press, p.169

<sup>90</sup> Janosik, E., (1968), *Constituency Labour Parties in Britain*, New York: Praeger, p.179

<sup>91</sup> Jones, B. and Kavanagh, D., (1994), "Political Parties" in Jones, B and others *Politics in UK* Hemel Hemstead: Harvester Wheatsheaf, p.247

when a decision has been made (in consultation with the national organisation) to contest an election and a new candidate is to be chosen, party and affiliated organisations within the constituency are invited to nominate a candidate. A nomination may also be made by the executive committee of the constituency association but individuals may not submit their own names. The general committee of the Constituency Labour Party then examines all nomination and proposes a shortlist.<sup>92</sup> This list is submitted to individual party members on a one member one vote basis using the system of single transferable vote. The nominee receiving over 50 per cent at the final stage of the count becomes the candidate. The Labour Party requires parliamentary candidates, including MPs, to be re-elected by the local party between elections. In the case of a sitting MP, party branches and affiliated organisations are invited to make nominations. If two thirds of these bodies nominate the sitting MP, he or she is automatically reselected. If, on the other hand, this proportion falls below two-thirds, the normal candidate selection procedure follows based on individual one member one vote. His or her name is then placed before a meeting of the NEC for endorsement.<sup>93</sup>

The funding of the Labour Party provokes controversy. The trade unions provide a significant proportion of Labour's finances and fund the party in a number of ways, including affiliation payments, grants and ad hoc donations, sponsorship of candidates and MPs, advertisements in Labour Party publications, stands at party conferences and a wide range of payments in kind including the provision of both resources and personnel. However, Labour has been successful in recent years in diversifying its fund-raising, although traditionally it has been less successful in attracting large individual donations because of the socio-demographic make-up of its supporters. One of the most recent initiatives, the Labour Party Business Plan, is largely financed by individual donations from members and supporters or activities, such as high profile dinners, which attract money from individuals rather than institutions. In general, it is clear that the Labour party is diversifying its income base, and while trade unions continue to play very important role financially, Labour has more recently been successful in harnessing significant income from individuals, either through donations or through activities concerned with the Business Plan.

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<sup>92</sup> Geddes, A., Lovenduski, J. and Norris, P., (1991), "Candidate Selection", *Contemporary Record*, Vol.5:1, p.20

<sup>93</sup> Fisher, J., (1996), *op. cit.*, p.74

The Labour party is identified with the ideology of socialism. The word “socialist” was used for the first time in November 1827 when Robert Owen’s *Co-Operative Magazine* advanced the principle that co-operation was superior to competition and that consequently capital should be ‘socially’ owned.<sup>94</sup> The Labour Party, then, has had a rich vein of socialist thought from which to draw and the broad thrust of socialist thought given a clue as to why there has been much disagreement about what constitutes socialist goals. Rigid ideology plays little role in British political parties. Therefore, it could be said that the Labour party has been pragmatic and proficient at changing its emphasis in a manner similar to the Conservatives. There are different and distinct strands of thought in the Labour party, each laying different emphases and each laying claim to being ‘socialist’. Labour is a party that has always been the party aiming to change society and its institutions. Some writers describe the Labour Party not as ‘socialist’ but as ‘labourist’.<sup>95</sup> Labourism is described as “the dominant definitions of the political enshrined in the political philosophy and practice of the Labour Party since 1900. A “Labourist” reading of working class political ability within capitalism and their capacity for realisation through parliamentary channels.”<sup>96</sup> Therefore, Labourism is distinct from many forms of socialism because there is no attempt to remove the economic superstructure of capitalism.

The Labour Party is committed to parliamentary democracy. The party has committed itself to seeking change through the established institutions of the state. Clearly, this represents a rejection of the Marxist view that the state cannot be considered as neutral. The party is committed to maintaining the state’s role in the provision of a wide range of areas, principally including health education and provision for those in need. By using the state, the party tries to eradicate inequalities in opportunity and develop greater social equality in general.

To many commentators the modernisation of Labour marks its long delayed conversion to European-style social democracy.<sup>97</sup> The real ideological significance of “New Labour” is the abandonment of Keynesian social democracy in favour of pre-

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<sup>94</sup> Wright, A., (1993), “Social Democracy and Democratic Socialism” in Eatwell, R. and Wright, A. (ed.), *Contemporary Political Ideologies*, London: Pinter, p.80

<sup>95</sup> See Webb, P., (1992), *Trade Unions and the British Electorate*, Aldershot: Dartmouth, Drucker, H. M., (1979), *Doctrine and Ethos in the Labour Party*, London: George Allen and Unwin, and Harrison, M., (1960), *Trade Unions and the Labour Party Since 1945*, London: Allen & Unwin

<sup>96</sup> Coates, D., (1989), *The Crisis in Labour*, Oxford: Philip Allen, p.36

Keynesian orthodoxy. Tony Blair's socialism is much more a reflection of the ethical tradition. He rejects the idea that welfare provision can always be funded through sustained economic growth. He emphasises the ethical and moral aspects of life rather than the elimination of social divisions such as class. "New Labour" thinking, reposes a greater faith in the self-correcting mechanism of the market and does not perceive any inherent tension between corporate profit-seeking and public welfare.<sup>98</sup>

Blair does not deny the existence or importance of ideology. He claims that Labour ideology "was out of date", having been in the past too narrowly construed around "one particular strand of socialist thinking, namely state ownership".<sup>99</sup> The task he set for his party is to reconstruct Labour's ideology around the strength of its values and the way they are expressed, then to create an organisation to match and reflect the ideology. One aspect of that 'ideological re-foundation of the party had already been achieved: the removal of Clause Four, with its dogmatically perceived linkage of socialism and nationalisation.<sup>100</sup>

## 6.4. Regional Parties

In this part, political parties apart from main three Westminster parties will be examined. These parties may be classified as nationalist parties namely Scottish Nationalists and Welsh Nationalist and parties of Northern Ireland which includes nationalists and unionists parties.

### 6.4.1. Scottish and Welsh Nationalists Parties

From 1945 until 1966, nationalism in Scotland and Wales excited little interest among either voters or academics. It was viewed as an historical rather than a current phenomenon. It was argued that the homogenising forces of urban-industrial society had substantially replaced culturally based non-economic social and political cleavages.<sup>101</sup> Therefore, occupational or class-based cleavages were the principal determinants of political behaviour. This left little room for nationalist

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<sup>97</sup> See, Shaw, E., (1996), *The Labour Party*, London: Blackwell, and Freedman, M., (1999), "The Ideology of New Labour", *Political Quarterly*, January 1999, Vol. 70:1, pp. 42-51

<sup>98</sup> Shaw, E., (1996), *The Labour Party*, London: Blackwell, p.202

<sup>99</sup> For Tony Blair's detailed ideas about the Labour Party and Britain see, Blair, T., (1996), *New Britain: My Vision of a Young Country*, London. Fourth Estate

<sup>100</sup> Blair, T., (1996), *New Britain: My Vision of a Young Country*, London. Fourth Estate, p.55

<sup>101</sup> Kellas, J.G., (2<sup>nd</sup> ed. 1975), *The Scottish Political System*, Cambridge: Cambridge University Press, p.91

parties to prosper.<sup>102</sup> However, these theories proved to be hard to sustained. There has been nationalist representation in Parliament since 1966. In that year, the Plaid Cymru candidate, Gwynor Ewans, was elected MP for Carmarthen in a by-election. This was followed by Winnie Ewing's celebrated victory for the Scottish National party (SNP) at the Hamilton by-election in 1967. With the exception of 1970-74, when no Plaid Cymru MP was present at Westminster, both parties have been continuously represented in the House of Commons.

The Scottish National Party (SNP) was formed in 1934 by supporters of self government for Scotland and returned its first MP in a by-election in 1945.<sup>103</sup> Like the SNP, Plaid Cymru, the Welsh Nationalist party made considerable advances in membership during the 1960s. Founded in 1925, it secured its first seat in the House of Commons at a by-election in 1966.<sup>104</sup>

The organisation of Plaid Cymru and the SNP is conditioned by two main factors. The first is their status as "party-movements", or "movement-parties", secondly they are parties operating within a "first-past-the-post" electoral environment. This affects both the type of party structures and the nature of membership, which can sustain their effort. The formal structures of PC and the SNP are typical of mass, branch type parties.

While they may have been parties in name only up until the 1960s, PC and the SNP have now become fully-fledged parties in reality too as their membership bases have expanded, detailed electoral programmes been devised and elections fought, and systems developed for maintaining both organisations locally and nationally.<sup>105</sup>

The official history of Plaid Cymru estimated membership of the party at 12,000 in the late 1980s,<sup>106</sup> while PC sources indicate a total membership around 8,500 organised in 200 or so branches.

SNP membership and organisation experienced some very significant changes during the course of the 1980s. According to semi-offical sources the total membership is at around 16,000 organised about 200 branches in 1993.<sup>107</sup>

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<sup>102</sup> See Butler, D. and Stokes, D., (1976), *Political Change in the UK*, New York: St. Martin's Press, and Pulzer, P., (2<sup>nd</sup> ed. 1972), *Political Representation and Elections in the UK*, London: Allen and Unwin

<sup>103</sup> Hanham, H. J., (1969), *Scottish Nationalism*, London: Faber and Faber, p.163

<sup>105</sup> see Harvie, C., (2<sup>nd</sup> ed. 1994), *Scotland & Nationalism: Scottish Society and Politics 1707-1994*, London: Routledge, especially pp. 169-195

The ultimate political aim of the SNP is independence for Scotland. Its 1974 manifesto demanded a Scottish parliament as a preliminary step to full self-government. It favours a single-chamber legislature with provision for the holding of referenda.<sup>108</sup> The SNP is a decentralised party which draws its strength from the effectiveness of its local branches. Its democratic ideals are reflected in the constitutional importance of its annual conference and in its practice of collective leadership by two major committees namely the National Executive and National Council.<sup>109</sup>

Since Wales does not have natural resources, which have given credibility to the Scottish quest for independence, and it is also smaller and more dependent upon the rest of UK, Plaid Cymru remains more of a cultural pressure and protest group than a separatist party and aims to preserve and increase the role of the Welsh language in Welsh society.<sup>110</sup>

**Table 6.4: Welsh Assembly Seats<sup>111</sup>**

Labour Party	28
Plaid Cymru	17
Conservative Party	9
Liberal Democrats	6

It may be beneficial to look at the result of the Scottish parliament election and European Parliament Elections to compare the success of the SNP to National (Westminster) Parties.

**Table 6.5: Election Results in Scotland**

Party	European Elections (%)	Westminster Election % in Scotland	Westminster Elections (%) in the UK
Labour	28.69	45.55	43.20
SNP	27.17	22.09	1.99
Conservative	19.76	17.50	1.99
Liberal Democrats	9.81	12.57	30.69

<sup>106</sup> Williams, D., (1990), *The Story of Plaid Cymru, the Party of Wales*, Aberystwyth, Plaid Cymru

<sup>107</sup> Levy, R., (1994), "Nationalist Parties in Scotland and Wales" in Robins, L., Blackmore, H. and Pyper, R. (ed.), *Britain's Changing Party System*, London and New York: Leicester University Press

<sup>108</sup> Butler, D. and Kavanagh, D., (1975), *The British General Election of October 1974*, London: Macmillan, pp.70-1

<sup>109</sup> Coxall, W.N., (2<sup>nd</sup> ed. 1985), *Parties and Pressure Groups*, London and New York: Longman, p.97

<sup>110</sup> For more information see Davies, C. A., (1989), *Welsh Nationalism in the Twentieth Century: The Ethnic Option and the Modern State*, New York London: Praeger,

<sup>111</sup> *The Times*, 8 May 1999

**Table 6.6: Scottish Parliament Seats**

SNP	27
Labour	56
Conservative	18
Liberal Democrats	17
Green	1
Scottish Socialist	1

As it could be seen above results nationalist parties namely the SNP have done much better compared to National Elections. In Scottish Parliament, SNP is a second large political party. That shows that in devolved assemblies, regional parties have become the main opposition parties (Plaid Cymru and SNP) and their effectiveness greatly increased comparing to House of Commons where SNP has 6 and Plaid Cymru has only 4 MPs.

These devolved assemblies are very important to the nationalist parties because they give them a degree of prominence and stability which they otherwise would not have. They are very insignificant in Westminster elections. However, in the devolved assemblies, they have become main opposition as stated earlier and that entrenches them within the political life.

#### **6.4.2. The Parties of Northern Ireland**

Parties and political issues in Northern Ireland bear no resemblance to those throughout the rest of the UK. However, the province remains part of the UK and from 1983 sent seventeen MPs to Westminster. Until 1989, none of the parties on the mainland fielded candidates there, and it now remains only the Conservatives who can do so. The party system in Northern Ireland is a reflection in one sense of the special circumstances of the area, and reveals division among the two main forces of political opinion in Northern Ireland. These two main forces are those that support the existence of Northern Ireland as part of the United Kingdom and those that wish to see it reunited with rest of Ireland. Around 90 per cent of votes cast are for parties that are committed to these positions and this division is bolstered by the strong partisan identities of Protestants and Catholics. Although there are some political parties such as the Alliance party and the Worker's Party who attempt to appeal to both communities in Northern Ireland, it could be said there is two broad



'sides' in Northern Ireland politics. While there are deep divisions within the two sides, Unionist support comes overwhelmingly from Protestants and Nationalist support from Catholics.<sup>112</sup>

The history of Northern Irish politics is a matter which is subject to long and extensive studies. However, this thesis is not the place for it. Therefore, the long history of Northern Ireland conflict will not be examined here.<sup>113</sup> For the purpose of this study, only political parties of Northern Ireland will be mentioned.

In 1921, 40 Unionists and 12 anti-partitionists were elected in the first general election. After four years following the first general elections, the Nationalists forces (the Nationalist Party and Sinn Fein) remained at 12 but Unionist lost eight seats to Labour, Independent Unionist and a farmer's candidate. By 1929, the third general election took place, and the Unionist Party appeared to be a monolith. Until the 1960s when first the Northern Ireland Labour Party (NILP) and then the Protestant Unionist began the fight elections against UUP candidates, the UUP candidates were unchallenged in most of the seats. Unionist won three-quarters of the seats with slightly more than half the electorate's support. Two groups were seriously disadvantaged-Labour and independent Unionist: the latter won 29.1% of the total vote in 1938 but won only three seats.<sup>114</sup> The UUP managed to co-ops or absorb all pretenders to its throne until the arrival of the Reverend Ian Paisley.<sup>115</sup>

Similar scene could be pictured on the Catholic side. There had been some kind of contest between Sinn Fein and the Nationalist Party in the early days. However, the Nationalist Party soon became the largest opposition and there was very little competition between Nationalist and Sinn Fein. The Nationalists were a party of local notables lacking in central organisation and even a manifesto. Until 1960s, they concentrated on contesting seats at Stormont.

After mentioning a brief history of political parties and elections, it is essential to examine the main parties in Northern Ireland

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<sup>112</sup> Connolly, M., (1990), *Politics and Policy-making in Northern Ireland*, Hemel Hempstead: Philip Allan, p.99

<sup>113</sup> see Aughey, A. and Morrow, D., (1996), *Northern Ireland Politics*, London: Longman

<sup>114</sup> *Ibid.*, p.68

<sup>115</sup> For more information about Ian Paisley who is a prominent figure in Northern Ireland politics, see Smyth, C., (1987), *Ian Paisley: Voice of Protestant Ulster*, Edinburgh: Scottish Academic Press Limited

#### 6.4.2.1. Unionist Parties

There are two main Unionist parties, the Ulster Unionist Party (UUP) and the Democratic Unionist Party (DUP). Both sit within the Ulster Loyalist tradition and are suspicious of both Ireland and the political role of the Catholic Church. In the late 1970s and early 1980s, the UUP and the DUP became keen rivals for the Unionist vote. After 1985, this rivalry transformed itself once more into co-operation when both parties opposed the Anglo-Irish Agreement. However, bitter personal and political division opened up again following the conflicting responses of the two parties to the Downing Street Declaration of December 1993. They are usually distrustful of the British government and wish to see devolved government restored to the province so as to ensure the loyalist majority is in control.

The UUP is the oldest party in Northern Ireland and has its origins in the Home Rule debate in the late nineteenth century. The Party has existed since 1905 but its firm roots go back to the 1890s and the period of major democratic reform. It is conservative and very much the party of the establishment. For most of its history the UUP maintained a direct organisational link with the British Conservative (and Unionist) Party. However, after 1972, the Ulster Unionists began to organise themselves as a distinct party in the Commons. The UUP supports Northern Ireland's position within the UK and is in that sense loyalist. In this way, while it attracts middle class voters with its conservative respectability, its strong links with Protestantism through the Orange Order serves to broaden its appeal across among the Protestants population.<sup>116</sup> The Ulster Unionist Council is the umbrella organisation of Ulster Unionism, which links together members and their parliamentary representatives in order to settle policy, to express ideas and to advance and defend the interests of Unionism. The Council elects the leader of the party and has a significant role in the election of the Executive Committee and of the party officers. The Executive Committee consists of the party leader, party officers and representatives of the party at Westminster, as well as members elected from the constituency delegates and representatives of affiliated bodies at Council.

The Democratic Unionist Party (DUP) is less conservative. It was born in 1971 and presents itself as a radical Protestant alternative to the UUP. It is more populist in approach, generally finding support among the working class and fundamentalist Protestants. The Free Presbyterian Church has strong impacts on

party organisation, finance and culture and, the dominant influence of Ian Paisley, the leader of that church and leader of the party is significant in the Party.

The organisation of the DUP lies on local branches based on district council and Westminster constituencies. These constituencies have their own organisations responsible for electing their officers and selecting candidates for council or Westminster elections.

After the “Good Friday Agreement” a new devolved Northern Ireland Assembly established. It may be useful to show the share of seats in the Assembly in order to see political parties’ strength.

**Table 6.7: Northern Ireland Assembly**

Parties	% vote	Seats
Ulster Unionist Party	21	28
Social Democratic and Labour Party	22	24
Democratic Unionist Party	18	20
Sinn Fein	18	18
The Alliance Party	6	6
Northern Ireland Unionist Party		3
United Unionist Assembly Party		2
Others		7

**Table 6.8: Westminster Parliament**

Parties	Vote % in Northern Ireland	Seats
UUP	33	10
SDLP	24	3
DUP	14	2
Sinn Fein	16	2

#### 6.4.2.2. Nationalist Parties

The Nationalist idea claims that Northern Ireland should not form part of the UK, but should be politically united with Ireland. It also claims the view that the Catholic population suffers discrimination and as the minority group in the province, this is unlikely to change. Like the Unionists, the Nationalists in Northern Irish politics are split in party terms.

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<sup>116</sup> Aughey, A. and Morrow, D., (1996), *op. cit.*, p.69

The Social and Democratic Labour Party (SDLP) formed in 1970 grew from the older Nationalist party and was developed as a more modern party organisation than its predecessor.<sup>117</sup>

The SDLP is Nationalist but while it seeks to reunify Ireland, it wishes to do so only with the consent and co-operation of the Protestant population. SDLP has been the most successful Nationalist party partly because of some very adept leadership, notably from John Hume. It has been seen as the legitimate face of Irish Nationalism. Nevertheless, the SDLP has not been without political opposition among Nationalist sympathisers, most notably from Sinn Fein.

Although Sinn Fein gained its electoral popularity in the early 1980s, it has existed since 1905. It has a long history and it was the main party in Ireland in 1918. By 1925, the Sinn Fein started losing its electorate support because its policy of abstention from Stormont on principle disheartened Catholic voters who were beginning to place more importance on social and economic issues than on Irish unity. By 1929, the Sinn Fein threat had disappeared altogether.<sup>118</sup>

The party represents a more hard-line form of Irish Nationalism and has close contacts with the IRA. Sinn Fein had been banned between 1956 and 1974 by the United Kingdom State as a reaction to its ties with armed group the IRA.<sup>119</sup> After the imposition of Direct Rule in Northern Ireland in 1972, Sinn Fein was de-proscribed in 1974.<sup>120</sup>

However, Sinn Fein denies that they are simply IRA's electoral arm. Sinn Fein's entrance into the electoral arena was prompted by the campaign of hunger strikes among Republican prisoners. That served to cement Nationalist feeling in the Catholic community and this was well illustrated when the most prominent hunger striker, Bobby Sands, was elected to the House of Commons in 1981 in a by-election. Sinn Fein's electoral success continued. In local elections in 1982, Sinn Fein managed to get 10.1% of the vote against 18.8 % of the SDLP. In the 1983 General Election the Sinn Fein president, Gerry Adams was elected to the House of Commons for the seat of Belfast West after defeating the former leader of the SDLP

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<sup>117</sup> see for more information, Rose, R., (1977), *The Northern Ireland Social Democratic and Labour Party*, London: Macmillan

<sup>118</sup> Arthur, P. (1984), *Government and Politics of Northern Ireland*, London: Longman, p. 55

<sup>119</sup> Walker, C., (1988), "Political Violence and Democracy in N.I.", *The Modern Law Review*, Vol.51, p.609

<sup>120</sup> *Ibid.*

by securing 13.4% of the vote.<sup>121</sup> Sinn Fein took more militaristic approaches prior to 1994 cease-fire but after 1994, Sinn Fein forged new alliances during the period of self-identified political pragmatism and start using a new language and imagery to form a vocabulary for peace and national reconciliation.<sup>122</sup>

Briefly, it could be said that the Northern Irish party system is plausibly represented as two systems, in which party competition occurs within nationalist and unionist blocs. Social and ideological divisions within these blocs constrain parties' electoral strategies and therefore facilitate or inhibit cross-communal compromise. Young people on both sides of the divide are more likely than those who are older to support the more recently introduced parties. Most significantly, however, there are noticeable asymmetries in the patterns of cleavage within the unionist and nationalist blocs. According to Evans and Duffy, among Protestants, left-right ideology has a far stronger impact than constitutional position on patterns of partisanship, and social class has considerably stronger effects than does denomination.<sup>123</sup> In clear contrast, on the nationalist side party support is polarised along constitutional lines. There is no cross-cutting ideological division over economic inequality, and a majority of Catholics adopt a moderate stance on nationalism. It is argued by Evans and Duffy that within the unionist bloc the pattern of intra-communal party competition militates against constitutional compromise as a solution to the Northern Irish trouble, whereas among nationalist the uni-dimensional structure of competition for electoral support and the distribution of attitudes towards the constitutional issue are likely to have influenced the adoption of compromise strategies by Sinn Fein.<sup>124</sup>

The New Northern Ireland Assembly was established as part of the Belfast Agreement reached at the multi-party negotiations on Friday 10 April, now commonly referred to as the "Good Friday Agreement". Under the Agreement, the Assembly has full legislative and executive authority in respect of those matters previously within the remit of 6 Northern Ireland government departments: departments of agriculture, education, environment, finance and Personnel, and health and social services.

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<sup>121</sup> Aughey, A. and Morrow, D., (1996), *op. cit.*, p.79

<sup>122</sup> Shirlow, P and McGovern, M., (1998), "Language, Discourse and Dialogue: Sinn Fein and the Irish peace", *Political Geography*, 1998, Vol.17:2, pp.171-186

<sup>123</sup> See Evans, G and Duffy, M., (1997), "Beyond the Sectarian Divide: The Social Bases and Political Consequences of Nationalist and Unionist Party Competition in Northern Ireland", *British Journal of Political Science*, Vol.27: 1, pp.47-81

<sup>124</sup> *Ibid.*

Following a referendum held on 22 May 1998 which resulted in a majority voting in favour of the agreement, the New Northern Ireland Assembly was constituted under the Northern Ireland (Elections) Act 1998. 108 members were elected to the Assembly on 25 June 1998 by Proportional Representation (Single Transferable Vote) from the existing 18 Westminster constituencies. The result of Northern Ireland Assembly may give an idea about the electoral strength of the political parties in Northern Ireland.

#### 6.4.3. Analysis of the Section

Devolution to Scotland, Wales and Northern Ireland had significant effect on the UK's political framework.<sup>125</sup> The new Scottish parliament and regional assemblies (Welsh and Northern Ireland Assemblies) created new political bases outside Westminster. This has helped the regional parties to boost their position and may encourage fragmentation among the Westminster parties.

Because of the great difference between Scotland and Wales compared to England in terms of population, the regional parties have never been able to gain more than a small share of the seats in Parliament. The establishment of regional assemblies (Parliament in Scotland case) offers new opportunities to these parties. The SNP and Plaid Cymru could put their agenda forward in the devolved legislatures since the regional legislatures will be focusing on regional needs and policy issues.<sup>126</sup>

In fact during the regional assembly elections, regional political parties did better than national elections.

Regional political parties such as Scottish National Party and Plaid Cymru and political parties in Northern Ireland with the exception of Sinn Fein have operated without legislation. They are well established parties and stable. They evolved with society. They seem to serve the needs of society in terms of representing people. There are some problems that this stable situation has become to break down in 1980s and 1990s. New small parties are emerging with the growth of nationalism.

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<sup>125</sup> For more information about Devolution in the UK, see Bogdanor, V., (1999), *Devolution in the United Kingdom*, Oxford: Oxford University Press

<sup>126</sup> Mitchell, J. and Seyd, B., (1999), "Fragmentation in the Party and Political Systems" in Hazell, R. (ed.), *Constitutional Futures: A History of the Next Ten Years*, Oxford: Oxford University Press, p. 90

## 6.5. Conclusion

British political parties are an established feature of British democracy, which perform important functions. Parties perform the function of representation of the main segments of opinion within Britain. Apart from some cases such as the anti-European stance of some voters and the resurrection of the death penalty, parties reflect the electorate's view in their party programmes. Parties serve as institutions to recruit people into politics. Party members fulfil five essential functions in British politics. They constitute an important part of their party's campaign machine; provide a testing ground for party policy; recruit and socialise the party's leader and representatives; they help to staff and fuel and fund the party organisation; and they are the party ambassadors in the wider community.<sup>127</sup> However party membership in Britain is a minority sport. The evidence suggests that a decline in party membership activism over time has occurred in both parties, but this decline is greater in the Labour party than in the Conservative Party. This is attributed to a number of political, cultural and sociological changes in society over time, but in short run the main factor is the outcome of the general election of 1992.<sup>128</sup> The Conservative Party has a relatively large group of active members who sustain the party over time. Conservative Party members' activism is motivated by three factors. Activism is motivated, firstly, by a variety of selective incentives, such as ambitions for elective office. It is motivated, secondly, by a desire for the party to achieve policy goals. These are collective goals which are subject to the problem of free-riding. However, since activist can influence policy outcomes, via their contacts with party leaders, they have high level of personal efficacy and a direct incentive to participate. Finally activism is motivated by expressive concern a motivation for involvement which lies outside a narrowly cast rational choice model of political participation.<sup>129</sup>

Although the role of political parties in structuring vote choice has become considerably weaker in the last 30 years, parties continue to be active organisations and contact one-fifth to one-quarter of the electorate, an activity that has important consequences. When individuals are contacted by the parties, they have a greater tendency to vote and engage in other political activities. Citizen contacting is a

<sup>127</sup> Martin, A & Cowley, P., (1999), "Ambassadors in the Community? Labour party Members in Society", *Politics*, Vol.19:2, pp.82-96

<sup>128</sup> Whiteley, P. F. and Seyd, P., (1998), "The Dynamics of Party Activism in Britain: A spiral of demobilisation?", *British Journal of Political Science*, Vol.28:1, pp.113-137

method by which party organisation effectively reduce the transaction costs associated with political participation and that is an important element in political behaviour.<sup>130</sup> Political parties provide a low cost signal of a candidate's policies and personal characteristics and, in this way, reduce voters' information costs. According to Jones and Hudson, political parties offer an 'implicit contract' between voters and politicians and thereby reduce the scope for opportunism by politicians. This impact on transaction costs is important in any evaluation of public policy towards political parties.<sup>131</sup> Furthermore, Sabucedo and Cramer's study which was done with a nationally representative sample of 1,073 British adults, shows that the main predictor of electoral participation is the degree of party allegiance and the result of this study emphasise the role of political parties in mobilising voters in Britain.<sup>132</sup>

In conclusion, it could be said that political parties in the UK are well established and stable and have operated without legislation. By large it is a happy history. However, there are some problems. The emergence of the new small parties and growth of nationalism and the rise of public concern about political corruption has opened a way to new legislation which regulates political parties. Political parties with the exception of Sinn Fein did not have any problem with the State. Parties have never been seen by the ruling elite something which should be under control as happened to be the case in Turkey. Where the separatist parties are clearly divorced of support of violent, as is the case with the SNP and Plaid Cymru, there is no question of those ever being banned. Their policies are viewed as legitimate and no government have ever tried to ban or curtail these parties. These obviously contrast with Turkey.

There is no clear differentiation between the ruling elite and political elite. Parliament is the supreme governing body in the United Kingdom and political parties are (via their elected MPs) the part of Parliament. Therefore, it could be said that there is no basis for mistrust between the state and political parties. However, as mentioned earlier, with the fragmentation in politics and increasing public concern

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<sup>129</sup> See Whiteley, P.F and Seyd, P. and others, (1994), "Explaining Party Activism: the Case of the British Conservative Party", *British Journal of Political Science*, Vol.24:1

<sup>130</sup> Wielhouwer, P.W. and Lockerbie, B., (1994), "The party Contacting and Political Participation, 1952-90" *American Journal of Political Science*, Vol.38:1, pp.211-229

<sup>131</sup> Jones, P. and Hudson, J. (1998), "The Role of Political Parties: An analysis based on transaction costs", *Public Choice*, Vol.94:1-2, pp.175-189



about political corruption the Government felt to bring new legislation relating to political parties which will be examined in detail in next chapter.

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<sup>132</sup> Sabucedo, J. M and Cramer, D., (1991), "Sociological and Psychological predictors Voting in Great Britain", *Journal of Social Psychology*, Vol.131:5, pp. 647-654

## CHAPTER 7

### LEGAL STATUS OF POLITICAL PARTIES IN THE UK

#### 7.1. Introduction

In this chapter, the main concern is to analyse British political parties' place in the British legal framework in order to assess the role and treatment of political parties in Britain and to compare the findings to the Turkish case. In contrast with Turkish law, British Law treats parties as private organisation and until recently there was little legislation which is directly related to political parties.<sup>1</sup> Due to rising concern about political corruption and expenditure of political parties, the British government asked the Neill Committee to investigate the funding issue of political parties and make recommendations to the government. The Labour government also sponsored the Registration of Political Parties Act 1998, which deals essentially with the registration of political party names and emblems for a number of specific purposes, primarily to control and eliminate potentially misleading candidate descriptions at elections. The Act does not directly deal with wider political party or electoral issues such as internal party organisation, party and electoral financing or electoral rules and procedures.

It is impossible to imagine the functioning of a democracy without political parties. Political parties are essential to the functioning of British democracy. Their role is to bring together people of like minds, to share ideas, put forward policies and ideas in a way, which can sustain the government of British nation. Political parties are the major vehicles for engaging people in the democratic process. It is therefore essential, that they are well managed, use the latest development in technology, employ high quality staff, train public representative to high standards and offer a first class service to their members, their public representatives and to the voting public. Party funding must therefore match these purposes.<sup>2</sup> There has been a move away from the old class and interest -system to a market-based model in which parties compete for support from less

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<sup>1</sup> Such as Trade Union Act and Company Act 1985 which are mentioned later in this chapter.

<sup>2</sup> Sawyer, T., General Secretary of Labour Party. Fifth Report of the Committee on Standards in Public Life, Volume II: Report Cm 4057-II, p.489, paras 5991-4

committed and partisan donors.<sup>3</sup> The political system in Britain has hitherto been operating based on trust and tradition. However, in the post-modern era, public trust for politicians and political institutions seems to be diminishing. Due to the fragmentation of political parties as well as of British society, small political parties have become important in British politics. The use of a proportional electoral system in European Parliamentary Elections and as part of the Scottish Parliament and Welsh Assembly made it possible for local or marginal political parties to play significant roles. Regional parties such as the Scottish National Party (SNP) and Welsh Nationalist Party (PC) after the Scottish and Welsh devolution have become very important political movements in British politics. These new politics and devolved governments changed the perception of the public about politics. The old certainties about politicians and political parties no longer exist. The breakdown of trust in politics is naturally causing the rise of legalism. Recent legal developments concerning political parties are the result of these changes. In the post-modern era, ideologies become less important and people have become more apolitical. Political parties are ruled by a few professionals. Technocracy has taken over party roots in the decision making process of political parties. Therefore, political parties have started relying on few wealthy donors instead of wide membership.

“The basic problem of party government in Britain today is that increasing numbers of electors find the established parties unresponsive, irrelevant and boring. To give financial security to the party professionals would merely shield them from the need to respond to new political conditions and popular demands.”<sup>4</sup>

In Britain, the main concern about political parties as stated above is the funding of political parties including the expenditures of parties. One does not see any problem in the British context, as seen in Turkish one, regarding the ideology of political parties.<sup>5</sup> There is no threat of abolition hanging over British political parties contrary to their Turkish counterparts. The differences between Turkish and British legal structure regarding political parties lie in the historical context. Britain’s democratisation process

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<sup>3</sup> Riddell, P., Political Columnist, *The Times*, Fifth Report of the Committee on Standards in Public Life, Volume II: Report Cm 4057-II, p.11

<sup>4</sup> Pinto-Duschinsky, M., (1981), *British Political Finance 1930-1980*, American Institute, p.71

<sup>5</sup> One must add at this point that Sinn Fein is an exceptional case in the UK’s political history. See Chapter 6

is very different from Turkey. Democratisation in Turkey came “from above”, when the state elite initiated a political reform. Therefore, the agenda for change was limited by the need of ruling elite to secure the conditional support of the groups they represent. However, in the UK, democratisation developed “from below” through radical movements mobilising mass support who were emboldened to change the agenda of ruling elite by introducing new demands. Therefore, while the UK has a pluralistic liberal democracy and puts individuals before the state, Turkey’s democracy is a limited one and puts the state security before individuals’ rights.

In this chapter, organisations and membership of political parties, the Registration of Political Parties Act 1998 and funding of political parties are main subjects. The Neill Committee report is examined in detail. The objective of this part of the study could be summarised as to study political parties in the United Kingdom to discover to what extent political parties can perform their role in accordance with the principles established by liberal democratic theory and to search to what extent the constitutional and legal framework allows citizens to participate in politics in terms of the control over political parties and the control exercised by political parties, and also to determine the current legal situation in relation to political parties in the UK and the reason behind it.

## **7.2. Organisation and Membership of Political Parties in the UK**

British political parties, unlike their Turkish counterparts, are free to organise themselves in any way they think is efficient and effective. There are no legal requirements about the organisation or membership of political parties. However, superficially, all major British parties are organised in much the same way regarding leadership and ruling group. The organisational structure typically contains four main levels. At the top is the party leadership, a group of no more than 20-30 MPs occupying, or hoping to occupy, senior government positions as Cabinet ministers. A little further down is the parliamentary party of elected MPs and active peers in the House of Lords, from who usually party leadership is drawn. After them comes the party in country - the

unpaid officers and active members of local associations - many of them elected councillors on the local authorities. On the bottom level of the party is the membership: stalwart supporters who, while not formally members, can be relied upon to vote for the party in election and to accept the party line on most political issues.

The structure of the different major political parties is dealt in Chapter 6 therefore, there is no need to go into detail here. However, if one looks at the party organisations in general, it could be described as follows. A branch of the party exists in each parliamentary constituency (apart from regional parties obviously), and, where support is strong enough, in each local ward making up the constituency. Its main function is to contest elections by raising campaign funds, engaging in electioneering and, most important of all, engaging in the process of selecting the parliamentary candidate.

Despite these superficial similarities, the Conservative and Labour parties differ significantly in their constitutions and ethos. The contrast lies in the two parties' very different historical origins, which were examined, in previous chapter. The Conservative Party has a unitary and hierarchical structure and a deferential culture. The Conservative Party did not exist as an incorporated associations. In the party organisation, the leader of the party was at the apex of the entire structure. He or she was elected by the Conservative members of Parliament in the House of Commons and was then presented for election to a special meeting representing the party as a whole. In the *Conservative Office v Burrell*<sup>6</sup> case, where the judge was determining whether the Party was an unincorporated association for tax purposes, the Conservative Party was described as follows.

“Membership of an unincorporated association is based on agreement between the members, a starting point for examining the legal nature of the party is to consider how anyone can join it. To this, there is a short answer: no one can join the party directly. Membership can be obtained either through a local constituency association or through the parliamentary party. Members of local constituency associations, and such associations themselves, have no constitutional links with the parliamentary party although there are many political links. These local associations choose their own parliamentary candidates from a list of candidates approved by the party's Standing Advisory Committee. If a

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<sup>6</sup> *Conservative Office v Burrell*, [1982] 1 WLR 523

candidate of their choice is elected a member of the House of Commons he becomes a member of the parliamentary party when he accepts the Conservative Whip, which he will do on election but which he may refuse later, in which event he will no longer be a member of the parliamentary party. Once elected members of the House of Commons they become representatives of the constituency for which they have been elected, not delegates of the local constituency associations which may have put them up as candidates. On the facts as found I can find nothing which links contractually and directly members of local constituency associations to Conservative members of the House of Commons representing their constituencies. The lack of a contractual link is even more clear in the case of peers who are members of the parliamentary party as long as they accept the Conservative Whip in the House of Lords.”<sup>7</sup>

The Labour Party is a federal and democratic structure with dissenting culture. The constitution and standing orders of the Labour Party provided by clause II (2) (e) that constituency Labour parties should be affiliated members of the party. Clause VIII (2) provided that the duties and powers of the National Executive Committee (the “N.E.C.”) should include:

“(a) To ensure the establishment of, and to keep in active operation, a Constituency Labour Party in every constituency; (b) To enforce the Constitution, Standing Orders and Rules of the Party and to take any action it deems necessary for such purpose, whether by way of disaffiliation of an organisation or expulsion of an individual, or otherwise.”

Separate rules for constituency Labour parties provide for their management being in the hands of a general committee of elected delegates (clause IX) with officers, an executive committee and auditors elected at the annual meeting of the general committee (clause XII); and the rules required that many acts of a constituency. In *Labour Party v. Kitson and Others*<sup>8</sup>, the judge eloquently described the relationship between the national Labour party and the local party:

“The national party and the local constituency party, is in law an unincorporated association. In that sense, each of them is a “separate entity”. .. When a person joins a local constituency party, he becomes automatically a member of the national party. In the eye of the law, he enters into two contracts - one with the other members of the local constituency party - the other with the other members of the national party. .. It then becomes apparent that the local constituency party is, in no sense, an independent organisation. It does not make its own rules or change them. Its rules are prescribed for it by the national party conference

<sup>7</sup> *Conservative Office v Burrell* [1982] 1 WLR 523

<sup>8</sup> *Labour Party v. Kitson and others* [1978] 1 W.L.R. 1061

(clause III (2) of the yellow book). They cannot be changed except by the national party conference or by the N.E.C. or with its approval (clause IX (3) of the white book). .. The N.E.C. has itself direct powers to discipline any members of the local constituency party (clause VIII (2) of the yellow book). Moreover, the N.E.C. has both the duty and the power to enforce the rules of the party (clause VIII (2) of the yellow book). . A constituency Labour Party cannot be regarded as independent of the national party. Nor can its members. Each individual is a member of his unit but he is also a member of the whole. . The N.E.C. have exercised disciplinary powers over the local Labour parties or their members. When there have been dissensions within a local party. In a body like this, rules are constantly being added to, or supplemented by, practice or usage: and, once accepted, become as effective as if actually written”<sup>9</sup>

The first structural difference to note is that the Conservative and Liberal Democrats are parties of individual members whereas Labour is a party of affiliated organisations mainly trade unions as well as of individual members. However, with the modernisation of the party, the Labour Party is moving towards to be party of individual members.

In principle, anyone can join a political party. The Labour Party’s Constitution states that members should not be less than 15 years old and either a British subject or resident in Britain more than a year. Membership is a social activity as well as involving volunteers devoting their spare time to political activities. However, party membership is in decline in everywhere<sup>1</sup>. As is mentioned in Chapters 2 and 6, people prefer to join single-issue groups or local associations rather than national parties.<sup>10</sup> Comparing the requirements for joining political parties as party members in Britain to Turkey, it could be said that the British law leaves this matter entirely to the political parties while Turkish law regulates every aspects of party membership.<sup>11</sup> However, British Law takes some measures to provide a healthy environment for political parties and candidates for a fair competition in elections.

In order to prevent misleading descriptions of candidates at elections, Parliament has recently passed the Registration of Political Parties Act 1998. This Act is the first parliamentary legislation directly dealing with political parties. Before examining this

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<sup>9</sup> *Ibid.*

<sup>10</sup> *The Times*, 6 October 1997, 1, *The Daily Telegraph*, 3 September 1999, 1

<sup>11</sup> See Chapter 5.2.2.

Act, it would be beneficial to have a look at other legal provisions which deal political parties.

There were some regulations related to political donations. The election agents of parliamentary candidates must provide details of campaign budgets.<sup>12</sup> There is also a limit for candidates under the Representation of the People Act 1983 regarding election expenses. According to this Act, if the seat is a borough constituency, a candidate may spend up to £4,965 together with an additional 4.2 p. for every name on the register of electors to be used in the elections. In the case of a county constituency, a candidate may spend 5.6p for every registered elector in addition to £4,642.<sup>13</sup> In order to ensure that the limits are complied with, the election agent of every candidate must transmit to the returning officer a prescribed form setting out all the payments made by the agent together with all the bills and receipts.<sup>14</sup> In Turkey, on the other hand, there is no legal limit upon candidates or political parties regarding their expenditure in elections. The reason for this is that the State is more concerned about the ideas and programmes put forward during the elections rather than misconduct. As explained in previous chapters, the Turkish State sees political parties, as an apparatus of the state and the primary concern for the state is national security rather than providing fair competition. There are however, no limits for national campaigns and no duty of disclosure imposed upon the political parties in Britain either.<sup>15</sup> Companies are required to disclose their political donations.<sup>16</sup> However, there is neither express statutory authority for corporate political contributions, nor any decision of the courts, which authorises payments for general political purposes. However, legal controls may be justified on two grounds for corporate political contributions. The first is that it is necessary in the public interest to ensure that political parties are not disabled from carrying out policies in government because of their financial dependence on big business. The second is that it is necessary to protect private interests in the sense that directors should be accountable in some way to

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<sup>12</sup> The Representation of the People Act 1983, s.81

<sup>13</sup> *Ibid.*, s.76(2) as amended by the Representation of the People (Variation of Limits of Candidates Election Expenses) Order 1997. SI 8791/1997 and there are different rules for by-elections.

<sup>14</sup> *Ibid.*, s.81 (1)

<sup>15</sup> *R v Tronoh Mines Ltd.* [1952] 1 All E.R. 697, *organ v Tate & lyle* [1955] A. C. 21

<sup>16</sup> Companies Act 1985, Schedule 7(3)-(5).



shareholders before the shareholders' money is used to promote political causes to which they may object.

In many jurisdictions, legislation has been introduced to regulate company political donations because of the concern that unregulated corporate activity presents a threat to the democratic process. It might be a danger that corporate interests are in a position to buy legislative favours by their financing of the political process. As already pointed out, there is already legislation, which is designed to protect the interests of shareholders in the making of political donations. This is, however, rather limited in extent, for all it does is to impose on directors a duty to disclose donations in excess of £200 in the annual report to shareholders.<sup>17</sup>

In contrast to the position in company law, from the early days trade union political expenditure has been closely controlled by Parliament.<sup>18</sup> One may posit two reasons for this. One is that the Conservative Party has been the main political party in government and Conservatives may have wanted trade unions under control more than companies since trade unions have been closer to the Labour party. Secondly, companies can be regarded as more private organisations than trade unions and they should not be regulated as much as trade unions. Trade unions are required to provide information, which includes income and expenditure for political purposes.<sup>19</sup> According to the Trade Union Act 1984, trade unions, which have political funds, are required to hold a ballot every ten years, if they wish to retain the fund.<sup>20</sup>

### 7.3. Registration of Political Parties

The Registration of Political Parties Act 1998<sup>21</sup> established a voluntary system of registration.<sup>22</sup> According to the Act, any organisation which considers itself to be a

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<sup>17</sup> Companies Act 1985, Schedule 7(3)-(5).

<sup>18</sup> Jefferson, M., " The Implementation of the Trade Union Act 1984", *Liverpool Law Review*, Vol:8: 21 1986 pp. 169-86

<sup>19</sup> Trade Union and Labour Relations Act 1983, s.81

<sup>20</sup> The Trade Union Act 1984, Part III, S.12

<sup>21</sup> Political Parties, Elections and Referendums Bill : which was brought before the House of Commons on 20 December 1999, brings significant modifications to the Registration of Political Parties Act 1998.

<sup>22</sup> The Bill would change this voluntary nature and in clause 19 makes it a requirement for the political parties wishing to put up candidates at a relevant election to be registered a political party with the

political party may apply for registration. The only stipulation is that they make a declaration that the party intends to have one or more candidates at an election. Registration under the 1998 Act confers only rights and not responsibilities. The Act seeks to provide a system for the registration of party political names and emblems, primarily to deal with the problems which have been experienced with potentially misleading (whether intentionally or otherwise) description of candidates at elections. The registration procedures set out in the Act are as simple as possible, consistent with the requirements of electoral law and practice, and the present diversity in political party organisation and structure. It is to be operated by staff responsible for company registration in England and Wales<sup>23</sup>. Registration is not compulsory, but the Act provides a number of incentives to register, including protection against electoral opponents using misleading descriptions, and rights to party political broadcasts. Parties must be registered to submit lists for the additional member aspect of elections to the Scottish Parliament, Welsh National Assembly and Assembly for London, for elections to the European Parliament.

The Act aims to solve the problem of misleading descriptions of candidates who attempt to stand under party labels easily confused with those of major parties, such as Conservative, Liberal Democrat<sup>24</sup>, or New Labour. In the case of *Sanders v Chichester* the Court stated that "The [pre-1998 Act] Rules required only that a candidate's nomination paper should identify him by his name and address and that any description should not exceed six words. Returning officers had no powers to reject a nomination paper on the grounds that the description was likely to confuse voters."<sup>25</sup> There were a number of such candidates at the 1997 general election. Because of the new proportional representation electoral systems used for Scottish Parliament, the National Assembly for Wales and the European Parliament, the Act becomes more important. Under the Act,

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Electoral Commission. If the party is not registered, they cannot put up a candidate under the party name at an election.

<sup>23</sup> The Election Commission will be responsible for this duty according to pending Bill.

<sup>24</sup> *R. v Acting Returning Officer For the Devon and East Plymouth Constituency Ex p. Sanders*, [1994] C.O.D. 497

<sup>25</sup> *Sanders v Chichester* [1995] 92(03) *L.S.G.* 37

only parties registered with Companies House<sup>26</sup> are able to put forward lists of candidates in the party list system. For the first time political parties have been able to register an emblem to be printed on the ballot paper. Taking advantages of new rules, 71 political parties have registered emblems by April 1999<sup>27</sup> which they will be entitled to display alongside candidates' names on voting papers. This is to assist identification and avoid confusion with parties of similar sounding names. This makes it easier for voters to distinguish between candidates and parties. Despite the fact that registration is voluntary, any serious political party may need to register in order to protect its name and emblem. Furthermore, unregistered parties are not able to make party political broadcasts.

In the words of Home Secretary, Jack Straw:

“The Bill will help to prevent the use of misleading candidates' descriptions on ballot papers at elections, thus helping to protect the identity of political parties and, therefore, the integrity of the political process. In addition, the Bill will allow, for the first time, a registered party's emblem to be printed on the ballot paper as a way of helping to distinguish as clearly as possible between candidates from different parties.”<sup>28</sup>

In contrast with the UK, in Turkey, to be recognised as a political party by the law, at least thirty people must put their names down as founders of the party and get registered with the Ministry of Internal Affairs. However, that is not enough to be party in Turkey. The Party has to give its constitution and programmes for scrutiny. The purpose of registration in Turkey and Britain differs as the purpose of registration in Britain is like a trade mark protection to avoid confusion and increasingly to deal with avoidance of the corruption. In Turkey, registration is also the first step in order to scrutinise the purposes of the party, to look into the substance of the party and may lead to the prohibition of the party.

The Registration of Political Parties Act deals with political party names and emblems, rather than political parties as organisations. Therefore, it does not cover any aspects of party organisation, structure, and finance. The legislation looks outwards not

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<sup>26</sup> However, companies House is replaced with the Electoral Commission by the new Bill before the Parliament

<sup>27</sup> *The Times*, April 3, 1999, 1

<sup>28</sup> HC. Debs: Vol.: 576, Col. 515, 4 June 1998

inwards, which is in line with British philosophy. While the term, political party, now exists in legislation, there appears to be no comprehensive definition of it in legislation. The term 'political party' appears in the Companies Act 1985 relating to disclosure of company donations over £200. However the provision is in terms of political purposes, and there is no definition of the term where it appears.<sup>29</sup> The Inheritance Tax Act 1984 adopts, in effect, the "Short money" qualifying criteria for a political party for the treatment of gifts.<sup>30</sup> In addition, this definition is carried over for the purposes of Capital Gain Tax etc. relief for local political constituency associations.<sup>31</sup> The provision in the Sex Discrimination Act 1975, excepting political parties from the anti-discrimination requirements<sup>32</sup> in relation to the provision of goods and services, simply describes a relevant party in relation to its function of promoting parliamentary candidates to the Parliament. This was considered by the industrial tribunal in the case on the Labour party's "women-only shortlists" policy.<sup>33</sup> In the main case in which rights in the name of a political party were considered by a court, *Kean v McGivan*, an attempt was made by one of the founders of a political party called the Social Democratic Party to prevent the use of the same title by the more famous party formed two years later in 1981.<sup>34</sup> But the Court dismissed the claim on the ground that the plaintiff was not involved in commercial activity in the sense required to found a passing off action.

According to the 1998 Act, a name is not acceptable for registration if, in the Registrar's opinion it (a) would be likely to result in the party's being confused by voters with a party which is already registered; (b) comprises more than six words, (c) is obscene or offensive; (d) includes words the publication of which would be likely to amount to the commission of an offence; (e) includes any script other than Roman script, or (f) includes any word or expression prohibited by order made by the Secretary of State.

The law brings a two-stage registration process. That means that parties which can register in the first stage (i.e. those with at least one MP) may well have an

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<sup>29</sup> Companies Act 1985, sch 7 para 3-6

<sup>30</sup> Inheritance Tax Act 1984, s24

<sup>31</sup> Taxation of Chargeable Gains Act 1992, s264(8)

<sup>32</sup> Sex Discrimination Act 1975, s33

<sup>33</sup> See *Jepson and Dyas-Elliot v Labour Party* [1996] IRLR 116

advantage to the extent that there are no parties already registered. On the other hand, parties applying thereafter will be in the position that some parties will already be registered, and against whose registered names their application will be considered. This means that not only will “first stage” applicants have what could amount to first refusal on any potential name for registration purposes, but they will also create their own area of surrounding “name space” where names comprising words which would, in the Registrar’s opinion, be likely to lead to voter confusion, would also have been in effect appropriated.

Parties can only register one name as its registered name for the purposes of the Act, however this does not affect how it wishes to describe itself in public, or even, subject to the provisions of schedule 2 of the Act, at elections. As mentioned above, political party is not itself defined in the Act, and therefore if an application is received which meets all the relevant criteria and conditions in the Act, the applicant can register a name and emblem, and benefit from the Act’s various protections. The only provision which deals indirectly with the possibility of sham applications is that contained in section 2(1)(b), whereby a party must send to the Registrar “a declaration that the party intends to have one or more candidates at a relevant election”. This is not an easy provision to control as there is no requirement in the Act for a registered party actually to field candidates at any relevant election within a prescribed time or at all, or any sanction of de-registration for failure to do so. In theory, groups could seek to pre-empt some registered names by making valid and successful applications, in much the same way as it is sometimes suggested that company names and internet addresses are “claimed” before the more obvious “claimant” has done so.

Registration inevitably amounts, in some respects, to a tacit official recognition of the legal existence of a particular political party, in terms of its registered name, emblem and other registered information. This may cause some difficulties in situations of serious party splits, especially where the majority of a party’s membership, leadership or elected representatives in Parliament and elsewhere becomes a separate ‘party’ from that grouping (especially if the latter included the registered leader and its registered

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<sup>34</sup> *Kean v McGivan* [1982] FSR 119

officers) which may well be entitled to retain the party's registration. *De facto* "control" of a party's registration could become, in some circumstances, a relevant factor in any such intra-party dispute. It is not clear from the provisions of the Act how the Registrar would deal with such a situation, like, when the faction which did not contain the previous registered leadership, but did appear to be, in terms of support, the "continuing party", sought to "take over" the existing registration, by sending the Registrar proposed amendments to its entry or otherwise. The UK Independence party is one of the examples here. It suffered substantial internal dissent and Leader, Michael Homes resigned in January 2000.

In conclusion, the legislation about the registration of political parties does not aim to interfere with political parties' internal affairs and does not restrict them from performing their roles and duties to public. On the contrary, the main purpose of this legislation is to protect political parties and therefore the public from misleading descriptions. Due to changes in the British political environment as mentioned above, regional campaigns and party names and emblems have become important with the attendant danger of unfamiliarity and confusion. Therefore, this legislation protects voters as well as political parties. Unlike in Turkey, the first direct legislation related to political parties in the UK serves to protect and improvise the healthy democracy. However, this is obviously not enough for a healthy democracy. As could be seen from the legislation, the finance of political parties left as a private matter. The question of how political parties are funded and by who is another and maybe more important issue regarding political parties' role and maintenance in democracies which is dealt in the next of this chapter. The reason for this "hands off" approach as explained earlier lies in the fact that the political developments in the UK have been materialised from bottom to top in contrast to Turkey. Therefore, the UK State does not interfere in politics.

## **7.4. Finance of Political Parties in the UK**

### **7.4.1. Background to Party Finance in the UK**

In contrast with Turkey, there has been no legal requirement in Britain for political parties regarding their finance or the necessity to make their accounts public.

They have been treated as private matters. However, after the Neill Committee's report<sup>35</sup> on the funding of political parties, the government prepared a draft bill to regulate the finance of political parties.

There was partisan concern in the two large parties about the other's finances, but little public concern in the beginning of the 20<sup>th</sup> century such as sale of honours in 1920s. British law mainly concentrated on election expenditures of the candidates at local levels starting from the 1880s. Therefore, British Law has been concerned with expenditure in constituency elections. This reflects the desire to stop electoral corruption but to allow widest possible political freedom. However in the modern world, is this adequate? Elections are now nationally organised, so the focus concerning finance should be wider.

By the mid-1970s, the parties' concerns began to emerge into the open. In 1975, the then Labour Prime Minister, Harold Wilson, attempted to right the balance in election spending by establishing the first official inquiry into state funding for political parties under Lord Houghton, a former Labour minister. Since then there have been three reports about funding of political parties. The Houghton Committee reported in August 1976.<sup>36</sup> It recommended by a majority a system of state financing. First there would be an annual grant to political parties of 5p per vote at the most recent general election, provided the party (a) had saved the deposits of the candidates in at least six constituencies, or (b) had had at least two candidates elected as Members of parliament, or (c) had one of its candidates returned as an MP and received a total of at least 150,000 votes. Secondly, the majority report also proposed that candidates in parliamentary and local elections should be reimbursed for up to half of their lawful campaign expenses so long as they obtained at least an eighth of the votes cast. A minority of four members argued fiercely against state interference in voluntary political activity. The recommendations of the Houghton Report were not implemented, although in 1975 the "Short Money" system was introduced with the aim of assisting opposition parties in the

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<sup>35</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057

<sup>36</sup> The Committee on Financial Aid to Political Parties (the Houghton Committee) Cmd. 6601

House of Commons.<sup>37</sup> The main concern here was to protect the private nature of political parties by opposing against state interference. This obviously reflects the main approach of British to political parties. In contrast, Turkish political parties are funded by the treasury and as shown in Chapter 5, the Turkish State interferes with political parties' affairs at every level. There are two issues here which must be considered. These are freedom and party effectiveness. By funding political parties, as argued before, there is a danger that the State will turn political parties into part of the state machine. This is obviously in contrast with the nature of liberal democracy. However, one may argue that funding parties may increase their effectiveness and this is good for democracy. To reply to this argument, it could be said that political parties should represent people's interest and therefore should rely on wide membership and electorate support. Therefore, "civic engagement" and "party effectiveness" should be provided in a healthy and democratic way.

During the 1980s, the familiar two-party model for fund-raising began to disappear. The Conservatives' donations from public companies fell sharply, especially in the 1990s<sup>38</sup>, while only two-fifths of Labour's income of £24m in 1997 came from the trade unions.<sup>39</sup> In 1992, concern over the Conservatives' perceived advantage as election costs escalated finally prompted an inquiry into political funding by the Home Affairs Select Committee in the House of Commons. The committee was bitterly divided along party lines. The Conservative majority, secured by the casting votes of the Conservative chairman, largely endorsed the current position in the committee report, insisting that donations should remain secret and ought not to be made subject to legal policing. The committee proposed a handful of limited reforms, such as a code of practice for the parties which ruled for example that anonymous and illegally obtained donations, and donations from foreign rulers, were unacceptable.

The Hansard Society has produced two reports concerning funding political parties in 1982 and 1993-94. The 1982 study recommended state aid, on the basis that

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<sup>37</sup> One may think here that the "Short Money" which was implemented in 1975 as state subsidy and was increased significantly in 1997. However, one should realise that "Short money" scheme was adopted to help political parties to perform their parliamentary duties in the Parliament, not for other political purposes such as election campaigns etc. See 7.3.2. *State Funding of Political Parties*

<sup>38</sup> *The Independent* 19 August 1995, p.2. *The Sunday Telegraph* 11 October 1998, p.2.



for each £2 donated to an eligible political party, the state would give another £2. A donation exceeding £2 would still attract only a £2 state contribution. The limit was recommended to encourage small donations and mass membership in order to increase “civic engagement”.

In 1994, the Home Office Affairs Select Committee of the House of Commons failed to endorse the case for a general extension of state funding along the lines proposed either by the Houghton or by the Hansard Commission.<sup>40</sup>

The Conservative Party adopted the code in 1994, but controversy over individual donations rose as it was revealed that several of its donors were disgraced businessmen; and that others were from Hong Kong and other foreign countries<sup>41</sup>. The party attracted public opprobrium for its refusal to return some donations and to identify its major donors. After the 1997 election, the Labour Party was fiercely criticised after it became known, immediately after the government's decision to exempt Formula 1 motor-racing from a ban on tobacco sponsorship, that Bernie Ecclestone, the F1 boss, had made a pre-election donation of £1m to the Labour Party.<sup>42</sup> The party sought the advice of Sir Patrick Neill, and he recommended that, while nothing improper had occurred, the donation should be returned because it could give the impression of improper influence over government policy. The concern about political parties' reliance upon few wealthy individuals was again raised when it became known that Conservative Party treasurer Michael Ashcroft was the prime sponsor of the party while he is not even on the Electoral registrar.<sup>43</sup> The Ecclestone affair has destroyed the idea that the size of a donation does not matter. The logic of Neill's advice is that is that all large donations, whether from private individuals or institutions, should be refused on the same grounds.

There are also fears that donations are made in the hope, or expectation, of honours. The Act of 1925 made it a criminal offence to deal in honours, either as a

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<sup>39</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057, p.38. paras 3.4

<sup>40</sup> House of Commons Home Affairs Select Committee, *Report on Funding of Political Parties*, HC 301, 1993-94

<sup>41</sup> *The Daily Mail*, 21 January 1998, 10

<sup>42</sup> *The Sunday Telegraph*, 9 November 1997, p.1 *The Guardian* 10 November 1997, 14 and 12 November, pp.1-11-21 *The Times*, 12 November 1997, pp.1-2

<sup>43</sup> *The Times* 5 June 1999, p.1, 8 June 1999, p.1, *The Observer* 13 June 1999, p.1

broker or purchaser, after the systematic sale of honours had become a public scandal. There is, however, no systematic scrutiny of the award of honours. A Political Honours Scrutiny Committee of three senior politicians inquires into the character and antecedents of the people who are to be honoured for political services and gives advice to the Prime Minister of the day. However, it does not scrutinise honours in other areas of public life. It is not surprising therefore, those allegations of abuse of the honours system arise. Consequently:

“The Public is very concerned about funding of political parties. The Public’s concerns focus on the inscrutability of the funding sources, and raise the questions of who is paying? How much and in return for what?”<sup>44</sup>

The most recent and may be the most extensive attempt to examine the funding of political parties and make necessary recommendations to the government in order to regulate party financing has been made by the Neill Committee.<sup>45</sup> With the Queen’s Speech on 14 May 1997 the Labour government made it clear that they intended to do something about the party funding issue.<sup>46</sup>

All these corruption cases such as Hamilton, Ashcroft seem to suggest a loss of trust in the political parties. People ceased to trust politicians and political parties to run their own affairs honourably. Therefore, the need of law to re-establish trust has emerged. The law obviously has to be consistent with liberal democracy. Law should interfere as little as possible in politics only for the legitimate purpose of preventing corruption or undo influence.

#### **7.4.2. The Neill Committee and the Recommendations<sup>47</sup>**

The Committee on Standards in Public Life is a standing committee which was originally appointed by the then Prime Minister, John Major, in October 1994. The Committee’s task was then to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and to make recommendations as to any changes in present arrangements

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<sup>44</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-1, p.31, para 2.6

<sup>45</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-1

<sup>46</sup> HL Vol. 580, col. 44, 14 May 1997

<sup>47</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-1 and II

which might be required to ensure the highest standards of propriety in public life. After its first report, it was suggested that the Committee should examine the funding of political parties which raised questions about standards of conduct.

At the Labour party conference on 30 September 1997, the Prime Minister, Tony Blair, said in the course of his speech to delegates:

“I can announce to you we are going to bring forward a Bill to ban foreign donations to political parties to compel all parties to make contributions above £5,000 public. In addition, we will ask the Nolan Committee to look at the wider question of party funding. At the next election all political parties will at last compete on a level playing field.”

In a submission from the Home Office dated 6 March 1998, the government sought the Committee’s advice on the following topics: the definition of foreign funding; the mechanics for disclosure of donations; the implications of the *Bowman*<sup>48</sup> judgement; the introduction of new rules on limits on election expenditure in order to accommodate the new electoral systems, the linkage between the future financial arrangements for the political parties and the government’s pending bill on the registration of political parties.<sup>49</sup>

The Government’s original intention was to legislate in the 1997-98 session of Parliament both to provide for the registration of political parties and to implement the manifesto undertakings about party funding. In response to representations from the Neil Committee that there would be overlap between issues which would arise in parliamentary debates and issues canvassed in submissions to the Committee, the Home Secretary announced on 28 January 1998 that the government had decided to defer introducing legislation on party funding on account of the simultaneous consideration of these matters by the Committee.<sup>50</sup>

The Neill Committee proclaimed seven Principles of Public Life in their first report, and they stated in their Fifth Report that three of those principles are specifically relevant to the funding of political parties.<sup>51</sup>

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<sup>48</sup> *Bowman v. UK*, App. No: 24839/94, Reports 1998-I

<sup>49</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-1, p16-17, para 1.8

<sup>50</sup> HC Vol. 585, Col. 275.29 January 1998.

<sup>51</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-1, p.25, para. 2.9

*Integrity:* Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in performance of their official duties.

*Accountability:* Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

*Openness:* Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.”

In the Committee’s view,

“Many allegations of misconduct were made during the 1980s and 1990s and that some of these allegations were widely believed to be true. An allegation of these kinds, and the unnecessary mystery that surrounds the funding of the political parties, is damaging. It damages the parties themselves. It also a factor tending to corrode public confidence in the political process as a whole.”<sup>52</sup>

The Committee outlined some public policy questions in its report. The first question is called the “misconduct” question. The question asks whether the ways in which parties are funded today cause Ministers, opposition leaders and others to behave in ways that they should not. For example, do party donations by individuals, companies and trade unions, in effect, buy privileged access to Ministers? Do they influence policy or the awarding contracts?

The second question is called the “fairness” question. Some parties have much more funding sources and therefore are able to spend much more during the elections than others. This gives those parties an electoral advantage and this advantage in some sense is not fair. Having raised large amounts of resources in ways that were perfectly ethically acceptable because of having wealthy supporters or greater popularity or superior fund-raising skills does not mean that there would be misconduct. However, the fairness question would still arise, though the Committee goes on to say that “fairness” does not mean “equality in level playing field”.

The third question that the Committee raised is called the “over-spending” question. This question deals with the amount of party spending on election campaigns. The outcome of too much being spent on election campaigns may result in offending voters and alienating them from the political process.

The fourth question is called the “civic engagement” (or the maximum participation) question.

“The argument here is that strong, healthy political parties are essential to the functioning of a strong, healthy democracy, in particular, strong and healthy parties are necessary as a means of recruiting ordinary citizens into decision-making positions at all levels of government, local as well as national, and also as a means of engaging very large numbers of people-as campaigners, activists, fund-raisers and participants in public debate- in the whole democratic process.”<sup>53</sup>

The fifth question, to which the Committee attended, is the “party effectiveness” question. This question connects to the parties’ ability to perform their other principal functions; namely, acting as a check on the government of the day and developing in opposition new ways of thinking about issues and new policies that are realistic and capable of being implemented in government. The Committee believes that the political parties represented in the UK and Scottish parliaments, and in the new Assemblies for Wales and Northern Ireland, do need to be effective along these lines.

The sixth and final question the Committee considered is the question of “freedom”. The Committee states that today there are strikingly few legal restraints imposed on political parties as to how they may raise, spend, or account for their money. Equally, those wishing to support a political party financially, whether they are based in the UK or overseas, are free to do so in any manner and up to any figure they can afford. All this can be done anonymously or at least without public disclosure of names and amounts. The question of freedom was raised in *Bowman* case, where the applicant was punished for exceeding the spending limit on private parties set by the Representation of People Act 1983, and the European Court of Human Rights decided that this was an infringement of freedom of expression.<sup>54</sup>

To what extent and at what point and with what justification is the state entitled to intervene to reduce freedom and rights of privacy in relation to the getting and spending of monies intended for the use of political parties? The Committee stated that freedom should prevail save where an overriding public interest is identified for calling

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<sup>52</sup> *Ibid.*, para 2.10

<sup>53</sup> *Ibid.*, p.27, para. 2.23

<sup>54</sup> *Bowman v. UK*, Case App. No: 24839/94, Reports 1998-I

for some limitation. The Committee took into account that it is impossible to maintain all existing freedoms and at the same time to ensure that public concern about the funding of the parties is dismissed. The restrictions on freedom which the Committee recommended are those which is to be essential in the eyes of the Committee to purify the funding of political parties.

The Committee made 100 recommendations to the government in their report, *The Funding of Political Parties in the United Kingdom*, published on 13 October 1998<sup>55</sup>. The government immediately declared that it welcomed the report and would publish a draft Bill before the 1999 Summer Recess which it did.<sup>56</sup> The main parties contesting the elections for the Scottish parliament on 6 May 1999 voluntarily agreed to abide by the Neill Committee's rules and to be guided by an unofficial Election Commission chaired by Professor Anthony King.

The recommendations of the Neill Committee may be broadly classified under eight titles. These are public disclosure of donations to political parties, sources of funding, state funding for political parties, limits on election expenses of political parties, referendums, political advertising and Honours, establishing an Election Commission.

#### **7.4.2.1. Public Disclosure of Donations to Political Parties**

Donations to political parties have become a major concern in British public life. Especially in the last months of the Conservative government in 1990 and 1997, some allegations concerning big donations to the Conservative Party from overseas sources appeared in the press. *The Guardian* listed Mr. Li Ka-Shing, Hong Kong Head of Hutchison Telecommunications, whom it said had given £900,000 to the Conservatives in the 1992 general election campaign and £100,000 for the forthcoming (1997) election; Mr. Stanley Ho, owner of casinos on Macao, who had given £100,000 to the Conservatives; Mr. Asil Nadir, described as a fugitive from British justice, who had given £440,000; and 'Mr X', a wealthy Serbian businessman based in Britain, who has

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<sup>55</sup> *The Times*, 14 October 1998, p.1

<sup>56</sup> Cm.4413

alleged to have given £100,000.<sup>57</sup> When it was revealed in November 1997 that Mr. Bernie Ecclestone, the leading figure in Formula One motor racing, had given £1 million to the Labour Party to help finance its May 1997 general election campaign, concerns about large donations to a political party were sharpened.<sup>58</sup> The disclosure was made shortly after Mr. Ecclestone had had a meeting with the Prime Minister to discuss the exemption of motor racing from the ban on tobacco advertising at sporting events. The Labour Party returned Mr Ecclestone's donation as already described.

The trend of institutional donations from companies and trade unions has been downwards.<sup>59</sup> However, it seems that the only alternative source parties rely on is large individual donations, with the result that parties seem to put themselves in the hands of wealthy people. "There is always a suspicion that wealthy people are giving money for some ulterior purpose Therefore that makes people feel very cynical about the political process."<sup>60</sup>

People who object to secrecy over the source and amount of donations put forward the view that a political party should not be dependent for its financial survival on funds provided by a few rich individuals, corporations, or organisations. The ordinary voter is likely to suspect that a very large donation to a political party must be made with some specific object in view. The most obvious objects, according to those who are critical about the large donations, are the purchase of access to Ministers and the purchase of influence over policy. A third possible object is the desire to be considered for an honour. Another possible object is the donor's wish to increase his prospects of subsequent selection for some public position or appointment. The Neill Committee stated that the suspicions which are considered concerning large givers are commonly lacking in any justification<sup>61</sup> and concluded that there is no evidence to doubt that nearly all give generously either because they support the general aims of the party which they finance, or in order to minimise the risk of the opposing party obtaining power.

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<sup>57</sup> *The Guardian*, 22 May 1996, pp.1-21

<sup>58</sup> *The Guardian* 10 November 1997, 14 and 12 November, pp. 1-11-21 *The Times*, 12 November 1997, pp.1-2

<sup>59</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-I, pp.30-31

<sup>60</sup> Bagdonor, V., Oral Evidence in Fifth Report of the Committee on Standards in Public Life, Volume 2: Report Cm 4057-II, pp. 9-18

<sup>61</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-1, p.45, para.4.5

However, the Committee commented that if both the names of the donors and the amounts given are unknown - as has been customary in the UK- there is room for unlimited speculation and rumour as to the identity of those who may be “bank-rolling” this or that political party.<sup>62</sup>

No political party in the UK, apart from the Labour party, has disclosed the names of its donors. The published accounts of the Conservative Party and the Liberal Democrat Party have revealed the total of all donations received centrally, but not the names of any givers or the size of any donation.

In summary, the advantages the Committee put forward for transparency included the following: (1) the public and the media know who is financing each political party; (2) rumour and suspicion wither; (3) the possibility of secret influence over Ministers or policy is greatly diminished; (4) public confidence in the probity of the political process is raised.

However, there are some arguments against the disclosure of donations. The main argument in favour of total secrecy and against the recommendations of the Committee is that what a person does with his/her money is that individual’s own business and nobody else’s. A person is entitled to be mean or generous. No public accounting of an individual’s expenditure is normally required by law – not, at least, until the point of bankruptcy is reached. There is also no requirement to disclose publicly gifts made to charity, whether large or small. In this argument reference is made to the right of privacy. It is claimed that by requiring a disclosure of political party donations by law may be a threat to the right of privacy. Since an individual’s political affiliation is an important aspect of his or her private life, it should not be the subject of compulsory disclosure merely because he or she has made a contribution to a political party. The decision to remain anonymous is also an aspect of the freedom of speech<sup>63</sup> Furthermore, it has been the law since the Parliamentary and Municipal Elections Act 1872 which sets out that a voter is entitled to vote in secret and cannot be required to disclose the name of the candidate or the party for which the vote was cast. Therefore,

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<sup>62</sup> *Ibid.*, para 4.6



people who argue against the disclosure of political donations claim that it is inconsistent with the existence of this fundamental statutory protection to require a voter or potential voter to disclose the identity of the party to which he or she has made a donation, the imposition of such a requirement necessarily involving publication of that voter's choice.

It is clear that the right to privacy in this area should not be invaded unless there is a compelling case for doing so. Nevertheless, an imposing case arises when the public interest is involved. The public interest is the need of the public to know when a donation is made to a political party which is significant enough to prompt questions or to raise suspicion about its purpose.

The Committee stated its opinion on this issue as follow;

“The need for transparency is so compelling that the risk will be taken that there will be fewer large donations, at least in the early years of the new system. After an adjustment period, it is perfectly possible that donors (or sufficient number of them) will come forward and make large donations to political parties without being deterred by publicity requirement.”<sup>64</sup>

The Committee recommended an open declaration of donations to political parties at the level of £5,000 or above.<sup>65</sup> The limit for donations to party constituency organisations or to regional organisations of political parties for public disclosure was set up at level £1,000 or more by the Committee's recommendations.<sup>66</sup> A disclosable donation means that a single donation of £5,000 or more from any one source made to the central party organisation; or a single donation of £1,000 or more from any one source made to an accounting unit of the party, or a series donations, which together total £5,000 or more, from a single source made either or the central party organisation or to a number of accounting units, or both, within the same year. “Disclosing publicly” meant that political parties are required to provide the full name and address of the donor, the value of the donations; if the donation is a benefit in kind the market value would need to be given, the date on which donation was received; and the organisation within the

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<sup>63</sup> *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1511 (1995) see Grabow, R. J., (1997), “McIntyre v Ohio Elections Commission: Protecting the Freedom of Speech or Damaging the Electoral Process?”, *Catholic University Law Review*, Vol. 46: 2, pp.565-616

<sup>64</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-I, p.53, para. 4.39

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

party to which the donations was made. The Committee defined “donation” not just of monetary donations but also of gifts in kind, goods, and services received at beneficial rates and sponsorship deals.<sup>67</sup> A minimum limit was suggested, below which it should not be necessary to keep records of every donation or aggregate them for identifying large donations made of small packets. In the Committee’s recommendations, the limit was set at £50.

Political parties according to the Committee’s recommendations, should normally be required to make reports to the Electoral Commission which is a body recommended by the Committee, in quarterly periods.<sup>68</sup> The Committee suggested that anonymous donations over £50 must be refused.<sup>69</sup>

In their report, the Committee recommended that blind trusts should be prohibited as a mechanism for funding political parties, party leaders or their offices, MPs or parliamentary candidates.<sup>70</sup> The dominant feature of blind trusts is that the beneficiaries purportedly do not know who contributed, therefore eliminating a possible means of buying influence. The Committee rejected the very concept of such blinds trusts as being inconsistent with the principles of openness and accountability. Moreover, there must be considerable doubt whether they ensure anonymity. “The cynical always be ready to conclude that a donor can be easily let it be known to the beneficiary that he or she has made a substantial contribution to the relevant blind trust.”

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The Committee by addressing the wider issue of donations to individual members of political parties or to unofficial groups within a party recommended that the principles of openness and accountability should apply to such donations as well.<sup>72</sup>

#### **7.4.2.2. Other Issues Related to Political Donations**

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<sup>67</sup> Fifth Report of the Committee on Standards in Public Life, Volume 1: Report Cm 4057-I, p.55, para. 4.45

<sup>68</sup> *Ibid.*, p.58, para 4.59

<sup>69</sup> *Ibid.*, p.56, para 4.49

<sup>70</sup> *Ibid.*, p.62, para 4.72

<sup>71</sup> *Ibid.*, p. 62, para.4.72

<sup>72</sup> *Ibid.*, p. 62-63, paras. 4.4.73 and 4.76

When the Neill Committee consulted on the overall limitation of political donations, only the Liberal Democratic Party out of three main political parties suggested an annual limit on the size of any donation by an individual or organisation. The point in suggesting this is that a limit may restore the public's confidence in the political process because it would make it harder for very wealthy individuals or organisations to buy into the political process. However, the Conservative Party put forward that it would be very serious invasion of people's rights.<sup>73</sup> The arguments in favour of limits on donations are as follows; large donations to political parties may deform electoral competition by giving wealthy individuals an opportunity to buy the outcome of an election; parties should not be largely dependent on a narrow income base which may bring real illegitimate pressures and may cause a party financial difficulty increase of the withdrawal of such large donations; a limit on donations would require parties to widen their support base and therefore increase popular political involvement. This would be specifically true of newer political parties, for instance the Social Democratic Party in 1981 or the Referendum Party in 1996.<sup>74</sup> Large donations from business organisations or trade unions which have been able to exercise influence over government policy because of their large donations, should be subject to limits to lessen any such influence.<sup>75</sup> Civic engagement and misconduct concerns can be used to argue for limiting political donations.

On the other hand, the freedom of people to contribute to political parties should be taken into account and the parties should be free to compete for donations. That is part of a healthy democracy. The other recommendations for the disclosure of any donation of £5,000 or more will remove illegitimate pressure and will decrease any risk of a political party having to return a large donation.<sup>76</sup> A limit on donations may prevent a party being too dependent on specific sources of income, however, that limit may violate a basic right and there will be a strong temptation to seek to evade the limit.

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<sup>73</sup> Evidence by Lord Parkinson, Chairman, the Conservative Party, Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-II p. 115, para 1369

<sup>74</sup> Dr. J. Fisher, Written submission to the Committee in Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-I, p.79

<sup>75</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-I p.79, para 6.6

<sup>76</sup> *Ibid.*, p.77, para 6.7

Therefore, a limit on the amount of a donation to political parties was not accepted by the Committee.<sup>77</sup>

In the current situation, as mentioned earlier, only trade unions have to seek consent from their members before making donations to political parties, while the directors of companies have a discretion whether to contribute to a political party and whether to seek shareholders' consent. Trade unions have been actively involved in politics from the mid-nineteenth century. Trade union political activity increased significantly with the establishment of the Trade Union Congress and later the Labour Party.<sup>78</sup> Trade Unions funded political parties (namely the Labour Party) with a compulsory levy on their members, until the House of Lords decided in the *Amalgamated Society of Railway Servants v. Osborne*<sup>79</sup> case where it was said that the union' had acted beyond its powers in imposing a compulsory political levy on its members. According to the House of Lords, there was nothing in the Trade Union Acts from which it can be reasonably inferred that trade unions as defined by Parliament were meant to have the power of collecting and administering funds for political purposes. Later the Trade Union Act 1913 defined political activity as that which benefited a political party. Trade Unions were allowed to make any political donations through a special political fund.<sup>80</sup> The fund could only be established if a ballot of members was in favour. Individual trade-union members were given the right to "contract out" of contributing to the political fund.<sup>81</sup> The Trade Union Act 1927 changed this provision by enacting that members had to "contract in" to the political levy. The Trade Union Act 1984 provided for general reforms to internal trade-union democracy. The 1984 Act reformed both the means by which trade unions could seek consent before funding political activity, and the definition of that political activity. The 1984 Act brought a requirement to hold a ballot every ten years to reaffirm the continuation of any political fund. The 1984 Act also broadened and re-defined the political objects of trade unions. Trade unions had previously used the political fund only in cases where they supported

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<sup>77</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-I p.80, para 6.11

<sup>78</sup> See Chapter 6.2 Historical Background of British Political Parties

<sup>79</sup> *The Amalgamated Society of Railway Servants v. Osborne*, [1910] A.C. 87

<sup>80</sup> Trade Union Act 1913, Section 3

<sup>81</sup> Trade Union Act 1913, Section 5

individual MPs or the national party. Statute law now requires the use of the political fund for any political activity which could influence the vote for or against a party.<sup>82</sup> In order to contravene the Act there must be an attempt to persuade someone to exercise a vote one way or the other rather than a mere persuasion which was not connected with the exercise of a political vote.<sup>83</sup> Unions are not prohibited from publicising their disapproval of a political party, provided this was not related to the exercise of a vote. In 1996, 42 trade unions maintained political funds, to which 4.9 million members contributed. Some 875,000 members, or 18 per cent, contracted out.<sup>84</sup> In the mid-1980s trade unions provided almost 80 per cent of the Labour Party's £5.8 million a year income. By 1990 that proportion had fallen to 35 per cent of the Party's £21 million incomes, although in absolute terms it had been risen from £4.84 million to £7.35 million.<sup>85</sup> It is not so much that trade unions are giving less but that companies are now contributing more to the Labour Party than they used to do. The Committee reached the conclusion that "no change should be made in the law relating to trade unions and their political funds".<sup>86</sup>

As mentioned earlier in contrast to trade unions, companies do not have to seek consent of their shareholders to donate to political parties under the current law. However, the Neill Commission suggested in their report that

"legislative provision should be made to require any company intending to make a donation (whether in cash or kind, and including any sponsorship, or loans or transactions at a favourable rate) to a political party or organisation to have the prior authority of its shareholders. This authority could be in the form of a broad enabling power, valid for no longer than four years, and typically conferred by a resolution passed at an annual general meeting giving the board of directors discretion about the making of such donations up to a prescribed limit."<sup>87</sup>

The Committee suggested new rules for the companies regarding political donations along the lines already in place for trade unions.

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<sup>82</sup> Trade Union Act 1913 s.3(3)(f) (as amended)

<sup>83</sup> *Paul and Fraser v National and Local Government Officers' Association*, [1987] I.R.L.R 413

<sup>84</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-I p.83, para 6.22

<sup>85</sup> *Ibid.*, para 6.31

<sup>86</sup> *Ibid.*, para 6.23

<sup>87</sup> *Ibid.*, p.86, para 6.35

One could say at this point that with the Neill Committee recommendations regarding political donations, the law trespasses into private affairs of political organisations. Taking into account three principles mentioned by the Neill Committee, it could be said that applying the principles of misconduct and fairness to the political parties requires such regulations. However, as mentioned earlier with the post-modern era, the public became less interested in politics and political parties do not receive active support from ordinary people, therefore one has to keep in mind that with these arrangements about disclosure of political donations may even discourage people further to keep themselves away from involving party politics and party funding. While concerns about political corruption and sleaze lead the state to make some changes in this regard, the question of political freedom should not be forgotten. The secret ballot is a universally accepted rule in order to protect individuals' political choice and provide fairness in elections. However, one may ask whether the requirement of disclosure of the names of donors to political parties contradicts this universally accepted principle of secret ballot? How a balance can be established between freedom and openness is a very serious question in this context. In conclusion, one could say that openness is not always desirable. Secrecy is sometimes justified (in voting for instance) because it encourages participation and free political choice. No one could deny that there is a conflict between, on the one hand, encouraging participation and free expression and on the other hand, avoiding corruption. When it comes to small donations the argument of encouraging participation and free expression is more important. In the case of large donations, avoiding corruption might be more important since those donations more likely to cause influence peddling and corruption.

In Turkey, trade unions, co-operatives, and charities are banned from donating to a political party. The Turkish law also limits the size of political donations. This clearly show the contrast between the approaches taken by Turkish and British states regarding political parties. As mentioned in Chapter 5, the principles set out by the Neill Committee can be applied to all political systems. The Turkish State's approach to political parties cannot be reconciled with the principles of freedom or civic engagement.

#### **7.4.2.3. Sources of Funding and Foreign Donations**

There are a number of political parties within the UK which rely on contributions from those living overseas, especially the nationalist parties like Plaid Cymru and the Scottish National Party and parties in Northern Ireland. Some argues that there is nothing in its nature wrong with an overseas donation, as long as it does not come from a foreign government. Mr. Daffyd Wigley (leader of PC) argued that “if it is decided sums more than £5,000 are an appropriate threshold for transparency, clearly that transparency should be equally effective for citizens living abroad. I would not like to deny the good people of Patagonia the right to contribute to Plaid Cymru if they so wished.”<sup>88</sup> Mr. Magnus Linklater, a leading Scottish journalist, also states his opinion against any ban on foreign donations by arguing that

“The government has announced it intends to ban foreign donations and there may be an argument for barring companies based abroad from donating to Scottish party funds, since their motives in doing so would certainly be open to question. But what about individuals? It is said that Scotland’s greatest export is its people and many of them have achieved great success abroad. Even second or third generation of Scots retain a passionate interest in their native country. Provided donations over £5,000 were declared why should they not help the party they believe best represents the interests of Scotland?”<sup>89</sup>

Mr. Alex Attwood, director of Development and Organisation in the Northern Irish Social Democratic and Labour Party, stated that

”There is a synergy between the Irish community wherever it is - in Australia or America. The Ireland Fund has linkages throughout the world that support charities throughout this island. We want to see those networks developed in a positive and proactive way, in terms of not only economic regeneration and inward investment but also political support for parties such as our own. All the main parties on this island-including Fianna Fall and Fianna Gael in the South-have developed networks in North America. We want to see equality between ourselves and other Irish parties in the South.”<sup>90</sup>

Outside of the Nationalist parties, the impact of foreign donations has been exaggerated. It is claimed that the amount involved - mainly to the Conservative Party and the nationalist parties - have not been large in scale and they have had no discernible effect on the formulation of policy by those in government or by those in opposition.

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<sup>88</sup> Fifth Report of the Committee on Standards in Public Life, Volume II: Report Cm 4057-II, p. 522, para. 6333

<sup>89</sup> *Ibid.*, p.300, para. 4942

According to Dr. Goodwin-Gill, the impact of foreign donations is greatly over-estimated, and there is a concern it could be most easily met by transparency and disclosure.<sup>91</sup> Some argued that banning would bring a number of problems in its wake that had not been anticipated.<sup>92</sup> According to this view any fear of improper influences being brought to bear on UK politics by individuals and corporations abroad could be removed by the adaptation of the disclosure recommendations rather than a prohibition.

On the other hand, it could be claimed in favour of a ban on foreign donations that the political parties have to submit their proposed policies to the electorate in the UK by manifestos, and the governing party is chosen by popular vote. Therefore, the political parties should be confined to seeking financial support from those entitled to vote for them subject to reasonable extensions to include UK registered companies and UK organisations and trusts. It could also be argued that disclosure for foreign donations is not enough. This would merely bring to light the extent to which political party receiving foreign donations.

The political parties' responses to the recommendation of banning foreign donations to political parties have been varied. In their submission to the Committee, the Labour Party supported the idea of not permitting political donations by individuals who are not ordinarily resident in the UK or who are not on an electoral register in the UK, and companies, unless incorporated under the British Law or carrying on substantial business in UK. The Conservative Party stated that it too does not see a role for foreign donations in the political process. The Liberal Democrat Party adopted a somewhat different approach. While it defended the proposition that donations from foreign governments should be outlawed, it did not seek a blanket ban on foreign donations, provided there is an overall limit on donations from individuals.<sup>93</sup> The nationalist parties in the face of a proposal that would cut them off from their funding links overseas displayed strong feelings. These parties regard the funding that reaches them from abroad, not only as a useful addition to their financial resources, but, more significantly,

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<sup>90</sup> *Ibid.*, p.542, para 6590

<sup>91</sup> Goodwin-Director of Research, Institute of European Studies at Oxford, Oral evidence in Fifth Report of the Committee on Standards in Public Life, Volume II: Report Cm 4057-II, p.270, para 3284

<sup>92</sup> Pinto-Duschinsky, M., Oral evidence in Fifth Report of the Committee on Standards in Public Life, Volume II: Report Cm 4057-II, p.73 para. 838



as sustaining valuable links with their diaspora, that is to say, with persons who feel continuing association with Scotland, Wales or Northern Ireland.

The Neill Committee recognised that an important difficulty for seeking to ban foreign donations is the problem of defining a foreign source for the purposes of such a ban. However, the Committee concluded that this difficulty could effectively be overcome by defining those sources from which political parties should be entitled to receive donations. They therefore recommended that “political donations should be receivable by political parties only if originating from a permissible source,”<sup>94</sup> defined in such a way as to exclude foreign funding.

The term “permissible source”, according to the Neill Committee reports, should include specified individuals those who are registered voters in the UK and those who are eligible to be put on an electoral register in the UK. This description for individuals covers Commonwealth citizens resident in the UK, citizens of the Republic of Ireland resident in the UK and citizens of the EU resident in the U.K. as well as British subjects who are resident here. The definition also includes persons known as “overseas voters”.<sup>95</sup>

As far as companies are concerned, the Committee thought that the principle should be that donations may be received from them, provided that they are incorporated under UK domestic law. The full regime of the Companies Acts applies to such companies and many aspects of their affairs have to be made public. Trade unions registered under UK legislation would clearly come within the definition of a “permissible source” and so would other organisations, voluntary associations and trusts, if genuinely UK based.

The Committee recommended that to attempt to evade or render nugatory the statutory provisions which confine political parties to donations received from a “permissible source”.<sup>96</sup> The Committee also suggests that it should be political parties’ responsibility to ensure that donations are received from a permissible source.<sup>97</sup>

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<sup>93</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-I, App. V

<sup>94</sup> *Ibid.* p.71, para. 5.19

<sup>95</sup> *Ibid.*, para. 5.22

<sup>96</sup> *Ibid.*, p.74, para. 5.30

<sup>97</sup> *Ibid.*, p.75, para5.31

The Committee recommended that political parties in Northern Ireland should be treated differently in respect of receiving donations from a permissible source. The term “permissible source” for the Northern Ireland political parties should include a citizen of the Republic of Ireland resident in the Republic subject to compliance with the Republic’s Electoral Act 1997.<sup>98</sup>

The Committee recommended that criminal sanctions should attach to a deliberate acceptance of a donation from a source falling outside the definition of a permissible source.<sup>99</sup>

The main problem in banning foreign donation lies in the definition of what is “foreign”. In addition to that, a ban on foreign donations would affect nationalist parties greatly since they receive important part of their funding from abroad. From the UK wide perspective, it might contradict with the Maastricht treaty, which conferred political rights for EU nationals resident in other member states. Some may argue on this point that those who have no risk in the future of the country should no right to take part in elections or to seek to influence their outcome. It could be said that political parties exist to represent the people of the country, the people who reside there, who work there, people who have a daily stake in the way which the country is governed. Therefore, it is justifiable to ban foreign donations. This is a very strong argument in favour of banning foreign donations. On the other hand, taking into account the difficulty of defining what is “foreign”, one may say that a common disclosure rule which would extend to foreign donations is sufficient. If there is transparency then people can vote against the party that accepted foreign donations if the people are against it. The point of receiving a donation is to encourage people to vote for the party. If a party is receiving foreign donation in such a way that it puts doubt in people’s mind and makes them not to vote for the party, there is no point having foreign donations. It is also said that outcome of European Parliamentary Elections may have an effect on other people apart from those who are on the UK’s electoral list. Therefore, they may legitimately claim a right to participate in politics in this regard. Supporting a political party which will, for instance, commit the UK to join the single currency might be essential for a German businessmen.

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<sup>98</sup> *Ibid.*, p.77, para5.41

If he were banned from donating to that party, would it not violate his freedom? After having stated these arguments against and in favour of banning foreign donations, as a conclusion it could be said that if the term “foreign” could be defined effectively and efficiently, in order to prevent political parties from relying on large donations from few foreign donors instead of relying on small donations of large members, banning of foreign donations may be justified.

Turkish law strictly prohibits political parties from receiving financial help from abroad of any kind. This is one of the reasons to close down a political party which is stated in the Constitution. The reason for this is the existence of mistrust towards political parties rather proof of misconduct. The State elite in Turkey thinks that if political parties have any kind of connection with foreign organisations, they may be used against the State’s interest. Therefore, it is a national security issue as said earlier rather than preventing political misconduct. However, this ban may contradict with Turkey’s interest in joining the EU.

#### **7.4.2.4 State Funding of Political Parties**

In Britain, state aid in kind contains the assumption by the state of a number of expenses which the parties otherwise would have to meet. State aid includes the cost of the register of electors, postal facilities for the candidates and the provision of broadcasting facilities.

State subsidies for the election expenses process are contained in the Representation of People Act 1983. There are different forms of subsidy. First, the registration of electors is a cost borne by the local authorities. S.8 of the 1983 Act requires local authorities to appoint an officer of the council to be a registration officer for any constituency situated in the district or borough. The Act then imposes a duty on the registration officer to prepare and publish in each year a register of parliamentary electors and a register of local government electors.<sup>100</sup> Secondly, some facilities have been introduced for the benefits of candidates in an election. A candidate is entitled to send free of charge to each elector one postal communication containing matter relating

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<sup>99</sup> *Ibid.*, p.77, para5.42

to the election only and not exceeding 60 grams in weight.<sup>101</sup> The candidates in parliamentary and local elections have the right to hold public meetings during the campaign period in a suitable room of any maintained school and any meeting room situated in the constituency in question.<sup>102</sup> Thirdly, the fees and expenses of the returning officers are costs that have been assumed by the state.<sup>103</sup>

Political parties are not permitted to buy advertising space on television or radio. However, access to broadcasting is not denied altogether. Political party broadcasting on TV is made available to the parties by both the BBC and IBA. The time is provided free of charge and the broadcaster is not to be compensated in any way by the government. Therefore, the media authorities themselves bear the cost.

Those subsidies, unlike in Turkey, do not involve the direct payment of money by the state to the political parties. In recent years, however, the principle of state subsidy has been extended into different areas. Cash subsidies are made available to the parties, albeit on a rather limited scale. First, an indirect cash subsidy introduced to the form of tax relief for certain donations made to the parties by the Capital Transfer Tax Act 1984 s.24. This provides relief from capital tax for the gift to political parties which do not exceed £ 100,000. To benefit from this tax relief because of their gift to the parties, the political parties should have two or more members elected for the House of Commons, or one member of the party who was elected to the House of Commons and not less than 150,000 votes were given to its candidates. Secondly, a direct cash subsidy – the “Short Money” - has been introduced, first for opposition parties to enable them to perform their parliamentary duties,<sup>104</sup> and then for all parties to help finance the cost of campaigning in election for the European Assembly. There is, however, no provision in British law for the payment of direct subsidies without any restrictions as to how they ought to be used.

It is mentioned above that there is direct public funding to facilitate opposition in Parliament in the UK. This public funding scheme is known as “Short-Money” which is specifically for assisting political parties in their parliamentary activities. The Rt. Hon.

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<sup>100</sup> Rawlings, H.F., *Law and Electoral Process*, (1988), Sweet & Maxwell, London, pp.90-93

<sup>101</sup> Representation of People Act. 1983. s. 91

<sup>102</sup> *Ibid.*, s.95 (4)(b)

<sup>103</sup> *Ibid.*, s.24

<sup>104</sup> HC Debs Vol. 888, Col. 1871 (20 March 1975)

Edward Short, the Leader of House of Commons in 1975, in speaking to the motion setting up the scheme, said that its purpose was “to enable Opposition parties more effectively to fulfil their parliamentary duties.”<sup>105</sup> Parties are free to decide how their share of the funds is to be used as long as they spent their allocation exclusively relation to their parties’ parliamentary business. The minimum criteria for qualification is either the possession of two seats or else one seat and at least 150,000 votes won at the preceding general election. The main principle of the scheme is to ensure that the finance goes to parties rather than to individual members of Parliament.

When first introduced, the formula for determining the amount of Short money payable was £500 for each seat won by the opposition party concerned, plus £1 for every 200 votes cast for it at the preceding general election, subject to an overall maximum in respect of any one party of £150,000. In 1987 the overall maximum was removed. The rate in the year ending 31 March 1998 was £3,840.65 per seat and £7.67 per 200 votes.<sup>106</sup> In 1993, a travel fund for opposition frontbenchers was set up, and this fund has to be used for parliamentary business. Although opposition parties in the House of Commons used to give some of the Short money to their teams in the House of Lords, in 1996 a scheme, known as “Cranborne money” (after Viscount Cranborne, the leader of the House of Lords at that time) was introduced which provided funding direct to the first and second opposition parties in the House of Lords. In conclusion, it can be said that the limited public subsidy of political parties is either directed to their role in the electoral process or, for those parties successful in the polls in a general election, to their role in the parliamentary process. There is no public funding of political parties for activities other than those related to campaigning or to opposition in Parliament.

Both the Labour Party and the Conservative Party take the view that there should be no radical departure from the small-scale state funding that is already provided to political parties; the Liberal Democrat Party advocates state provision of core funding.<sup>107</sup>

The Labour Party in its written submission to the Neill Committee acknowledged that “there is a case in principle for various forms of state aid”, but conceded that “at a

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<sup>105</sup> HC Vol. 888, Col. 1869 20 March 1975

<sup>106</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057, p.100, para. 9:4

time of fiscal prudence...the needs of political parties are not the greatest priority in terms of public expenditure.” The Labour Party was not in favour of an annual subvention to the political parties or reimbursement of election expenses, however it proposed only extending the present financial assistance to the opposition parties in Parliament and introducing state aid to assist parties in their role in citizenship education.<sup>108</sup>

The Conservative Party’s opposition was more fundamental:

“Forcing taxpayers to contribute to costs of party political activities of which they do not approve would be very significant step. It could be justified if it were believed that it would otherwise be impossible for political parties to operate effectively. We do not believe that this is currently the case or no do we believe that the public would be prepared to support such expenditure.”<sup>109</sup>

The Liberal Democrats claimed that the measures they advocated to control party finances, such as disclosure and contribution limits, would limit a party’s ability to raise funds privately. Therefore, the state should make an annual contribution of £2 million to each party that had gained at least 5 per cent of the vote in a general election, with a further £10 million a year distributed in proportion to the votes cast at the last general election.<sup>110</sup>

People who advocate increased state aid claim that state aid would “clean” the political process. If there were state aid on a large scale, the parties would no longer have to depend upon large donors and would be immune from any temptation to grant them privileged access to top politicians, or unwarranted influence over policy, contracts or honours.<sup>111</sup> State aid in other words, would make the political process much more clean than it is now. Furthermore, state funding would enable political parties to perform their essential functions more fully and effectively. It is also claimed that state aid could be used as a means of increasing the involvement of private individuals in the

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<sup>107</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-Written submission to the Neill Committee from the Labour Party, App. V, p.222, para 5.1

<sup>108</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057- p.89, para 7.9

<sup>109</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-Written submission to the Neill Committee from the Labour Party, App. V, p.241

<sup>110</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057-Written submission to the Neill Committee from the Liberal Party App. V p.247, para 23

<sup>111</sup> Ware. A., (1987), *Citizens, Parties and the State: A Reappraisal*, Princeton University Press, Princeton, New Jersey, p102

political parties and in the financing them. Use of the systems of “matching funding” as in Germany, and United States, under which citizens are encouraged to give money to the parties in the knowledge that their individual contributions will be wholly or partly matched by the state may increase civic involvement in political process. Alternatives that would avoid a general state subsidy are matching funds for parties against what they raise themselves or distributing vouchers worth a certain amount to voters. Such innovations could create the incentives needed for parties to recruit more support and live up to their fine democratic aspirations.

Argument against State subsidies can be summarised as follows: (1) it makes parties dependent on the state; (2) it freezes the political pattern; (3) it is contrary to the private character of political parties; (4) taxpayers should not be compelled to contribute to the support of political parties with whose outlook and policies they strongly disagree. Parties are meant to represent citizens in relation to the state. If parties rely on the state aid more than private funding, they may become part of the state and instead of representing the citizens they would be tempted to represent the state against citizens. In other words, they would, in effect, be captured by the state. Any system of state funding based largely on the level of parties’ support at previous elections is liable to have the effect that will freeze the current political pattern,<sup>112</sup> since it will be very difficult to break in for the new political parties. Political parties in Britain are regarded as private organisations, therefore they must rely on private contributions. Increased state aid is contrary to this character of the political parties. There is another question that why should the taxpayers pay for the party they do not like to be in power? The form of subsidies is seen to be an important consideration; a form must be sought which guarantees equality of opportunity between the parties.

Having considered all these arguments, the Neill Committee did not recommend a new system for public funding of political parties.<sup>113</sup> However the Committee recommended the introduction of tax relief by deduction at source

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<sup>112</sup> Perincek, D., (1985), *Anayasa ve Partiler Rejimi, (The Regime of the Constitution and Parties)*, Kaynak Y., Istanbul , p.196

<sup>113</sup> Fifth Report of the Committee on Standards in Public Life, Report Cm 4057-I, p.93, para 7.24

limited to the basic rate, on donations of up to £500 a year to “eligible” registered political parties.<sup>114</sup>

The essential difference between direct funding and funding by tax concession is that while the direct funding comes directly out of public funds, in the latter case the funding results from the decisions taken by taxpayers to support the political parties and involves a contribution by the taxpayers out of taxed income. It is a form of matching funding. It does not involve State direction but rather State response.

A system of tax relief, according to the Neill Committee, which increases the value to political parties of smaller donations, is likely to encourage the parties to make greater efforts to obtain them. However there are some arguments against a system of tax relief. The main argument is that it would discriminate between income taxpayers and non-taxpayers. A donation by a non-taxpayer would be of less value than a donation by a taxpayer. In addition, if higher taxpayers could claim to set their donations against higher rate tax, it would be discrimination in favour of donations by higher –rate taxpayers who could donate at less net cost to themselves than basic-rate taxpayers giving the same amount. Furthermore, tax relief would favour parties whose members have higher incomes and can therefore afford larger donations, even if a limit were placed on the size of gift eligible for tax concessions.<sup>115</sup>

The Committee next decided that the “Short money” provided for opposition in Parliament was not sufficient to facilitate their parliamentary duties effectively. Therefore, the Committee suggested that “the political parties in the House of Commons should review the amount of Short money now made available to the opposition parties, with a view to increasing it substantially, perhaps by as much as three times.<sup>116</sup> The Committee also suggested an increase for money made available to the opposition parties under the “Cranborne” money scheme.<sup>117</sup>

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<sup>114</sup> *Ibid.*, p.99, para 8.22

<sup>115</sup> Fifth Report of the Committee on Standards in Public Life, Report Cm 4057-I, pp.98-99, paras 8,10,11 and 12

<sup>116</sup> *Ibid.*, p.100, para 9.13

<sup>117</sup> *Ibid.*, p.105 para. 9.21



Since parties are an established focus of parliamentary democracy, there is a strong case to argue that they should be supported as an essential democratic element. For political parties to exist and function satisfactorily they must have income and resources. Therefore, unless the party can generate sufficient income from membership dues and trading investments, there must be alternative sources of that income. Although those who argue against state funding have strong points, there must be a way to find a balance between those two arguments. Funding by the state should not lead political parties to become isolated from their supporters. State funding should encourage parties to seek the support of large numbers of members. Giving money to political parties appears to encourage other types of political participation rather than providing a substitute for them.<sup>118</sup> Therefore if some matching fund is applied, that may also increase political participation. The Neill Committee recommended tax relief on small donations, but this was rejected by the Government as "general state aid by another route"<sup>119</sup> and because it would be expensive to administer.

Direct state funding of political parties may harm the private and independent nature of political parties. However, state subsidy as recommended by the Neill Committee encourages people to donate to political parties, which improves civic engagement. State subsidy may also prevent misconduct since political parties, if the subsidy were provided, would not have to be heavily dependent on wealthy donors. However, in contrast with the Neill Committee the government is not in favour of state aid for political parties. It is a sign of continued belief in private arrangement and that parties can and should work separate from the State.

In Turkey, political parties are directly funded by the State.<sup>120</sup> As was mentioned before, the Turkish State wants political parties to act as an apparatus of the state and pursue public goals which will also secure the State's status quo. Therefore, the State tend to fund political parties rather than leaving them to be funded by private individuals or organisations in order to protect political parties from these private groups' influence. This is a sign of mistrust to politics which were examined in detail in previous chapters.

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<sup>118</sup> Whiteley, P and Seyd, P, *The Guardian*, 23 December 1999, p. 11

<sup>119</sup> *The Times*, 11<sup>th</sup>.January 2000, p.21

<sup>120</sup> See Chapter 5.

#### 7.4.2.5. Limits on Campaign Expenditure

The funding of political parties has always been as important concern to public, but where political parties get their money is not the only concern. How they spend it is also another concern. Especially during the election campaigns, political parties spend quite lot money. Therefore, there are serious suggestions about limiting parties' campaign expenditure.

Since 1883,<sup>121</sup> limits on the spending of individual parliamentary candidates have been in place in Britain. Under the Representation of the People Act 1983 candidates are not permitted to spend in excess of a statutory limit in respect of their election expenses; election expenses are defined as expenses incurred "whether before, during or after the election, on account of or in respect of the conduct or management of the election".<sup>122</sup> Different limits are set according to whether the candidate is standing for election in a county or borough seat and whether it is a general or by-election.<sup>123</sup>

Any third party that is someone other than the candidate, the election agent or a person authorised by the election agent, is prohibited by the 1983 Act to spend more than £5 on a candidate during the election. This limit was the subject of challenge in the *Bowman* case.<sup>124</sup>

Limits on candidates' expenditure at the local level have been in existence and broadly accepted for a very long time. By contrast, the issue of national limits on the spending of political parties - whether there should be any and, if there were to be any, what form they should take - is altogether more complicated and contentious.

The important point here is that whereas in 1883 when the limits on candidates' expenditure were first introduced, most general elections campaign expenditure was local. By the late 1940s till now and for the future most such campaign expenditure has been and will be national. In 1997, the total expenditure of the Labour and Conservative Parties at local and national level was about £60 million<sup>125</sup> of which 90 per cent was national expenditure. However, in 1880 only the 2% of total expenditure was spent

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<sup>121</sup> Corrupt and Illegal Practices (Prevention) Act 1883

<sup>122</sup> Representation of People Act 1983, ss76(1) and 116

<sup>123</sup> See Section 7.2.

<sup>124</sup> See Chapter 3, *Bowman v. UK*. App. No: 24839/94, Reports 1998-I

<sup>125</sup> Butler, D and Kavanagh, D. (1997) *The Election of 1997*, London: Macmillan, pp.205-223

nationally by the two main political parties. When the original limit on expenditure were introduced in 1883, there was not any distinction between national and local spending, so the limits being imposed covered not just campaign expenditure at the local level but the great bulk of all campaign expenditure. However the outcome of the *Tronoh Mines* case in 1952<sup>126</sup> arguably diverted the intentions of the original Act by stating that there could be no limit on national level which is the main stage for election campaigns. *Tronoh Mines Ltd* had placed an advertisement in a national newspaper shortly before the 1951 General Election condemning the socialist policies being pursued by the Labour Government at that time and inviting readers of the advertisement to save the country by election “a new and strong government with ministers who may be relied upon to encourage business enterprise and initiative”.<sup>127</sup>

Until that time it had been thought that such advertising would be illegal under the 1883 Act which limits ‘third-party spending’ to an extremely low level. The judge, in the case, however, took different view. He ruled that the 1883 Act did not bring any limitation to the conduct of generalised political propaganda, even in the context of a general election campaign. It only limited spending by or on behalf of individual candidates in individual constituencies. The *Tronoh Mine* case turned the understanding of a blanket limitation on the great bulk of all campaign spending into a limitation focused specifically and narrowly on local spending.<sup>128</sup>

There are arguments for and against national spending limits. People, who argue in favour of national spending limits, put forward that it is the absence of such limits, rather than their possible presence, that constitutes the anomaly. Whereas the UK possesses legal structure to restrict local campaign spending, which in the circumstances of the beginning of the twenty-first century is relatively unimportant, the UK has no legal structure at all restricting national campaign spending, which is far more important. It is stated that it is absurd to restrict local campaign spending when so much of the expenditure which promotes local candidates and their campaigns takes places at the national level. The absence of national-spending limit makes a nonsense even of the

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<sup>126</sup> *R v Tronoh Mines Ltd* [1952] 1 All ER 697.

<sup>127</sup> Blackburn, R., (1995), *The Electoral System in Britain*, London: Macmillan, p.285

existing local limits. It is argued that unlimited national expenditure creates an unlimited demand for funds to pay for the expenditure and that causes the parties, in practice, to turn for money to wealthy individual donors and wealthy organisations. It is also put forward that too much spending by the political parties and their allies during the election campaigns has the effect of giving democracy in general and the political parties in particular a bad reputation. The last argument for national limits concerns the issue of “a level playing field”. The argument here is that money in the form of party election broadcasts, posters, extensive mail shots is able to buy votes and that is wrong that one political party, simply it is wealthier than another, should be advantaged in electoral terms. It is stated that “democracy must treat people as equals and if they are to be treated as equals, wealth must be clearly separated from power. It could even be argued that the separation of wealth from power is a basic condition of a democratic system.”<sup>129</sup> One could say at this point that limits on national expenditure of political parties may prevent “misconduct”, since they will not need so much money to spend in election campaigns. However, one must not ignore the “freedom” issue here, since this is a restriction upon political parties. Therefore, a balance must be provided between compelling public needs and political freedom.

On the other hand, there are other arguments that completely opposet national spending limits. Limits on campaign would restrict both freedom of speech and freedom of choice. Subject only to the law, political parties and interested persons should be free to spend their money as they see it. National limits would prevent them from exercising their rights in this connection. It is also argued that national limits are unnecessary. Campaign expenditure does not determine the outcome of elections. If it did, the Conservative Party which in post-war era outspent not only its principal rival the Labour Party, but any other party in British political history, would stay in power all the time. Although some, including the Labour Party, argue that election expenditure could be decisive in determining election outcomes, there is actually no hard empirical evidence bearing on the point. Mr. Riddell, assistant editor of *The Times*, states:

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<sup>128</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057,p115, para 10.19

“I am not convinced by the evidence that disparities in spending levels have made any real difference in the national elections. Labour did not lose the elections in the 1980s because it was outspent by the Tories. Similarly, the Tories spent a record amount in 1997 and they had the worst result since the franchise began to be extended in the 19<sup>th</sup> Century. I do not believe it made a difference. I actually believe that over a certain amount of money you get a declining return.”<sup>130</sup>

It is asserted that limits on national campaign spending are unnecessary, because in the future when other Neill Committee recommendations are implemented, political parties will not be able to raise very large sums of money. The decision of all three major parties to disclose the names of their major donors is likely to reduce the amount of giving by wealthy individuals. The banning of foreign donations is likely to have the same effect. Another argument against the limit is that it is not practical, and a centralised and well-organised national party might be tempted to create larger number of small front organisations through which campaign expenditure above the national limit could be channelled. It is unpractical and brings a vast and complex administrative duties to the State. There is also question of what is the precise level at which the limit would be set? Setting the wrong limit might well be worse than setting no limit at all. Too low a figure could easily amount to an unwarranted infringement of free speech. A figure that is slightly high may encourage the parties to spend more, not less, than they otherwise would spend.

The Neill Committee suggested that “a limit should be placed on the campaign spending of political parties in respect of elections to the House of Commons. The operation of the limit, both in principle and in practice, should be kept under review by the Election Commission.”<sup>131</sup> The Committee recommends that this limit should be separate from and additional to, those that now apply to candidates in individual constituencies.<sup>132</sup> The limit recommended by the Committee for the parties that contest more than 600 seats at that election is £20 million.<sup>133</sup> Individuals and organisations other

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<sup>129</sup> Quoted from Martin Bell, MP in the Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057, p1185, para.1025

<sup>130</sup> Fifth Report of the Committee on Standards in Public Life, Report Cm 4057-II ,p.3, para13

<sup>131</sup> Fifth Report of the Committee on Standards in Public Life, Report Cm 4057-I, p.122, para 10.31

<sup>132</sup> *Ibid.*, ,p.123, para. 10.40

<sup>133</sup> *Ibid.*, p.124, para 10.42

than political parties that wish to incur election expenses of £25,000 or more should register, like a political party, with the Election Commission. No individual or organisation not so registered may incur election expenses more than £25, 000.<sup>134</sup> The expenditure limits for third parties should be equivalent to 5 per cent of the maximum amount that could be spent by a political party at a relevant national election. Those controls will cover national spending by trade unions, companies and others that is intended by those organisations to influence the outcome of an election.<sup>135</sup>

The recommendation of a limit on election expenditure at national level is not easy to accept even based on three principles which were set out by the Committee. One may question what is the purpose of the limit. It cannot be “openness” or “accountability”. The principle of “openness” was to be achieved when the rule of disclosure for political donations was brought forward. The Committee already stated that “fairness” does not mean equality, therefore forcing political parties not to spend more than the limit set by the law would not exactly bring “fairness” into elections. One may argue that it prevents “misconduct”. However, the U.S. Supreme Court argues otherwise by saying that “governmental restriction of independent expenditures in campaigns, the limitation on expenditures by candidates from their own personal or family resources, and the limitation on total campaign expenditures did violate the First Amendment. Since these practices do not necessarily enhance the potential for corruption that individual contributions to candidates do, the Court found that restricting them did not serve a government interest great enough to warrant a curtailment on free speech and association.”<sup>136</sup> Therefore it could be strongly claimed that national limit on election spending cannot be justify by answering the “misconduct” question at the expense of “freedom”.

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<sup>134</sup> Report Cm 4057-I, p.132, para 10.77

<sup>135</sup> *Ibid.*, p.134, para 10.85

<sup>136</sup> *Buckley v. Valeo* 424 U.S. 1 (1976) see Levit, K.J. (1993), “ Campaign Finance reform and the Return of Buckley v Valeo”, *Yale Law Journal*, Vol. 103:2, pp. 469-503

#### 7.4.2.6. Referendums<sup>137</sup>

Referendums have received increasing attention after the recent round of votes on the Maastricht Treaty and the development process of the European Union.<sup>138</sup> Referendums were used also in devolution questions in the UK in recent years. There were some suggestions for referendums in the early 20<sup>th</sup>.Century. At a conference held in 1910 to try to solve the constitutional crisis the Conservatives proposed that organic bills - constitutional amendments - should, if twice rejected by the Lords, be put to referendum.<sup>139</sup> The Reference to the People Bill was introduced in the House of Lords by Lord Balfour of Burleigh which provided that any Bill rejected by the House of Lords could be put to referendum by either the Lords or the Commons. It also provided that a Bill passed by both Houses could be put to referendum by not less than 200 MPs. The Bill was not proceeded with.<sup>140</sup> The referendum was kept alive as an issue through the Irish Home Rule crisis of 1912-1914 as a possible way of determining how much of the province of Ulster should fall under Dublin's rule, but these proposals were not implemented.<sup>141</sup> There have been only a few referendums at national importance such as the one on the future of Northern Ireland, which took place in 1973.<sup>142</sup> Two years later an UK-wide referendum was held to decide whether or not the UK should remain a member of the European Community.<sup>143</sup> In 1979, separate referendums were held in Scotland and Wales on the Labour Government's proposals to devolve power to those two countries.<sup>144</sup> No referendums were held during the 1980's and the early 1990's. However, since the 1997 general election, referendums have been used more often. The issues of Scottish and Welsh devolution, a mayor and assembly for London, and the Northern Ireland Good Friday Agreement were brought to the people via referendums. It seems that in the near future, the electoral system, and single currency issues may be considered via

<sup>137</sup> Referendums in a theoretical approach are examined in Chapter 2

<sup>138</sup> Hug, S., Sciarini, P., (2000) "Referendums on European Integration - Do Institutions Matter in the Voter's Decision?" *Comparative Political Studies*, , Vol.33:1, pp.3-36

<sup>139</sup> Alderson, S., (1975), *Yea or Nay: Referenda in the United Kingdom*, London: Cassell, p.43

<sup>140</sup> *Ibid.*, p.44

<sup>141</sup> Butler, D. and Ranney, A., (1978), *Referendums* Washington: American Enterprise for Public Policy Research, p.211

<sup>142</sup> Butler, D. and Ranney, A., (1994), *Referendums around the World*, London : Macmillan, p.37

<sup>143</sup> For further information for the 1975 referendum, see King, A., (1977), *The UK Says Yes*, Washington D.C.: American Enterprise Institute

<sup>144</sup> Butler, D. and Ranney, A., (1994), *Op. cit.*, p.43

referendums. Increasing use of referendums brings the question of how they will affect the role of political parties.

There are a few issues which arise concerning referendum campaigns which do not usually arise in ordinary elections. First, the role of the political parties in referendums is not as predictable as in ordinary elections. While in ordinary elections, the parties normally contest against one another, in referendums the political parties may be contesting against one another or most of the parties may find themselves on the same side as largely happened in the 1975 Common Market Referendum.<sup>145</sup> Some of them may be seriously divided. It is clear that general rules governing the conduct of referendums cannot be based on predictions about the parties' behaviour or assumptions about their role. The parties should certainly not be assumed to be central to all referendum campaigns.<sup>146</sup>

The role of government in referendums should carefully be considered. A referendum normally takes place only because the government both believes that the people should be consulted and has a particular view about the outcome it wants.

Referendums also differ from ordinary elections in that the role of the broadcasters is less clear. In ordinary elections, the broadcasters are to be neutral in their news coverage of the various parties' campaigns and to give all the parties a chance to air their views in party election broadcasts. However, in referendums the broadcasters' role is not so well defined. They believe it is their duty to cover both sides impartially, but they feel under no such obligation to provide the two sides with referendum equivalents of party election broadcasts. They did not provide any in the 1997 and 1998 referendums.<sup>147</sup>

If the referendums are to be fair, it is essential on the principle of "fairness" that both sides of the arguments should be funded at least well enough to enable them to put their ideas before the voters. A large proportion of referendums are on matters of major constitutional significance, therefore neither side should be prevented from expressing their

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<sup>145</sup> Butler, D. and Ranney, A.,(1978), *Referendums*, American Enterprise for Public Policy Research: Washington, p. 214

<sup>146</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057,p.160, para 12.21

<sup>147</sup> *Ibid.*



views merely as a consequences of relative poverty. The Neill Committee recommended that.

“In any referendum campaign there must be fair opportunity for each side of the argument to be properly put to the voters. Depending on the circumstances, each side should be given equal access to an amount of core funding sufficient to enable it to mount at least a minimal campaign and to make its views widely known.”<sup>148</sup>

If there is to be a core funding, for each two sides, then the question of who would constitute “these two sides” will arise. The Committee stated that

“The new Election Commission should be the body both to receive applications for core funding from organisations intending to campaign in any referendum and to decide which of the organisations should be in receipt of the core funding. The Commission should be empowered to decide that none of them should. No more than one organisation on each side should be funded. . Obviously, it would be entirely inappropriate for core funding to be made available for the government. Furthermore, core funding should not be available for disbursement by the Election Commission until after the legislation.”<sup>149</sup>

The Committee continued saying that

“The government of the day in future referendums should, as a government, remain neutral and should not distribute at public expense literature, even purportedly ‘factual’ literature, setting out or otherwise promoting its case.”<sup>150</sup>

The Committee makes the same recommendations about the disclosure of donations and foreign donation, which was made for political parties such as disclosing donations over £5000 and restricting campaigning individuals and organisations to the receipt of donations only from a “permissible source”.

Referendums are useful means for solving or setting aside problems too difficult for representative bodies to handle since they cut across established political cleavages. They give legitimacy to new regimes or boundaries or constitutions as happened in Turkey in 1982 that they would otherwise lacked. Referendums are valuable adjuncts to representative democracy. With most referendums, *ad hoc* alliances of interest groups, parties and other organisations spring up on both sides of the issue. Individuals cannot be prevented from pursuing their own preferences. Political parties can only endorse a

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<sup>148</sup> *Ibid.*, para 12.35

<sup>149</sup> *Ibid.*, p.164, para, 12.34

<sup>150</sup> *Ibid.*, p.165, para, 12.44

position and hope that the declaration influences enough voters. When referendums occur, loyalties may be temporarily suspended and public policy becomes atomised. Some may say that using direct democracy tools may weaken political parties, however empirical analysis had proven on the contrary that direct democracy goes together with more professional and formalised party organisations.<sup>151</sup> Use of direct democracy is associated with more fragmented and volatile party systems, and with greater support for small parties, but causal interpretations of these relationships are difficult.<sup>152</sup>

There is another issue here which is the question of who will initiate referendums? In other words, who will decide if there should be a referendum? If it is the government, would the government put the issue to the people via referendum unless they are sure that it will be approved by the people? It is essential that both sides are able to put their case before the people without any restriction. In 1982 when the Turkish Constitution was put before people in Turkey via referendum, it was illegal to campaign for NO and there was not any clarification what would happen if the constitution was rejected. No wonder the Constitution was approved by 98% of the voters. The Turkish Constitution recognises referendums. If any constitutional amendment fails to get the support of 2/3 of the total members of Parliament but receives not less than 3/5 of the total votes (550 MPs in Parliament), then the amendment has to be put to people via referendum.

#### **7.4.2.7. Political Broadcasting and Advertising**

Political parties in the UK are not permitted to use television advertising, however they do spend large amounts of money on advertising and in trying to influence the news media. Such money is mainly spent on advertising in the press and on posters and billboards and on producing party political broadcast and party election broadcasts for television and radio. The three main political parties, the Conservatives, Labour and the Liberal Democrats, spent a total of approximately £30 million on various forms of

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<sup>151</sup> See Budge, I., (1993), "Direct Democracy: Setting Appropriate Terms of Debate" in Held, D., *Prospects of Democracy*, Polity Press: Cambridge, pp.136-155

<sup>152</sup> Ladner, A. and Brandle, M., (1999), "Does Direct Democracy Matter for Political Parties? An Empirical Test in the Swiss Cantons" *Party Politics*, Vol.5: 3, pp.283-302

national advertising, including the production of election broadcasts and videos in 1992.<sup>153</sup>

As mentioned above, political parties, candidates and interest groups are not permitted to advertise politically on television or radio; they cannot buy air time for political purposes.<sup>154</sup> On the other hand, they are allocated free airtime by the broadcasters so that they are in a position to present their own case to the public in their own way. The broadcasting authorities are required to observe “due impartiality” in matters relating to public policy.<sup>155</sup> This is difficult to achieve and has produced litigation. The Scottish National Party sought an interim interdict in respect of a proposed television debate between two or three leaders of political parties, but excluding leader of the SNP on this ground in 1997. However, the Court stated that “the 1990 Act required that a licensed service observed due impartiality in broadcasting output as a whole and a broadcaster has a discretion in deciding what is due and how such impartiality is achieved.”<sup>156</sup> Banning political parties from buying airtime on television and radio has the effect of restricting the total amount of money they can spend and thereby, of limiting the amounts of money they have to raise. Whilst political parties are prohibited from taking paid advertisements in the broadcast media, since 1924 they have been given free airtime for party election broadcast and subsequently for party political broadcasts. The rules in respect of party political and election broadcasts are determined by the broadcasting regulators (the Independent Television Commission, Radio Authority, BBC and S4C) in consultation with the main political parties. These rules determine in particular, which political parties are entitled to party political and election broadcasts and the length and frequency of such broadcasts. The broadcasters are under an obligation to ensure impartiality in programming, and in fulfilling this duty they are given a wide discretion in relation to the rules adopted. The duty of impartiality is not to be equated with achieving mathematical parity between parties, but means observance of procedural fairness in allocating broadcasting slots with regard to the

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<sup>153</sup> Blackburn, R., (1995), *Electoral System in Britain*, New York: St. Martin's Press, p. 288

<sup>154</sup> Broadcasting Act 1990. s.92(2)(a)(i)

<sup>155</sup> Broadcasting Act 1990. s.6(1)(c)

<sup>156</sup> *Scottish National Party v. Scottish Television plc.*, 1998 S.L.T. 1395

relative strengths, support and appeal of parties<sup>157</sup> The Neill Committee proposed that the Electoral Commission should have a role in this process.<sup>158</sup>

Paid advertising in the non-broadcast media raised a new issue for the Neill Committee that was not directly related to party funding, namely advertising standards. The Committee concluded that this was not an issue they could deal with in any detail in the context of their particular enquiry into the funding of political parties but they did recommend that the political parties should seek to agree, in association with the advertising industry, a code of best practice for political advertising in the non-broadcast media.<sup>159</sup>

#### 7.4.2.8 Honours

The Neill Committee considered that the determination of awards should be made on merit, irrespective of whether nominees have donated to a political party. However, they note that, on occasion, the timing of any donation or its size, or other special factors, might lead to advice to the Prime Minister against his recommending an award at a particular time. The Committee also noted that there is a considerable public perception that a particular donation might have led, or had led “rather rapidly”, to an honour. To allay such concern, the Committee proposed that the remit of the Political Honours Scrutiny Committee should be widened so that the Committee could scrutinise not only nominations for political services coming directly from the Prime Minister but also all those nominations in the higher levels of the Prime Minister’s Honours Lists which had been considered expert assessment groups.<sup>160</sup> In the light of Wakeham Report<sup>161</sup>, it could be said that honours would not be as important as they were before. The Wakeham Commission said that possession of a peerage should no longer be a necessary qualification for membership of the second chamber. New members should not be offered a peerage. All members would be chosen based on the contribution they

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<sup>157</sup> *R. v BBC Ex p. Referendum Party*, [1997] *E.M.L.R.* 605, also see , *R. v BBC, Ex p. McAliskey*, [1994], COD 498, and *R. v BBC Ex p. Owen* [1985] 2 *AER* 522

<sup>158</sup> Fifth Report of the Committee on Standards in Public Life, Report Cm 4057-I, p.183, para 13.35

<sup>159</sup> *Ibid.*, p. 180, para 13.24

<sup>160</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057,p.191.para 14.33

<sup>161</sup> Report of the Royal Commission on the Reform of the House of Lords, Cm 4534. para. 6.8

could make to the second chamber, not as a reward or mark of approval for past achievements.<sup>162</sup>

#### **7.4.2.9. The Election Commission**

Those who have advocated the establishment of an Election Commission have done so on three principal grounds. The first focuses on neutrality; there should exist a body responsible for overseeing the conduct of elections which is entirely independent of the government of the day and the political parties. The second focuses on administration; the various responsibilities for the conduct of elections should be brought together under one roof and should not, as at present, be widely dispersed among different government agencies. The third focuses on modernisation and reform; a new Election Commission is essential both because of the rapid changes in electoral law and in electoral systems that are now taking place and also because of the equally rapid transformation of the electronic media and modern electioneering practices.<sup>163</sup> The general function of the Electoral Commission includes; reporting on particular elections and referendums, the review electoral law; the provision of guidance in relation to party political broadcasts; and promotion understanding of electoral and political matters. In addition to that the Electoral Commission will have other functions relating to the registration of parties, the scrutiny of political parties' and third party income and expenditure and the administration of referendums.

This would be the first time, an administrative body is to be established in the UK to deal with political parties as well as elections, although the Election Commission does not interfere with political parties' internal affairs but rather their registration and their expenditures. Even so, this is a major step in British history marking the change of attitude towards political parties.

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<sup>162</sup> *Ibid*

### 7.4.3. Government's Response to the Neill Committee Report

After the Neill Committee published its report, the Labour Government produced a White Paper about regulating funding of political parties as response to the report.<sup>164</sup> On 20 December 1999 the government introduced the Political Parties, Elections and Referendums Bill to the House of Commons. The Bill consists of ten parts and brings provisions about the electoral commission, registration of political parties, control of donations, control of campaign expenditure, control of third party expenditure, referendums, election campaigns, political donations and expenditure by companies. Since all these issued are dealt above while examining the Neill Committee report, they will not be studied here in detail as well. However, it may be beneficial to look at where the Government did not agree with the Neill Committee, as summarised in table and text below;

**Table: 7.1: Government's Response to Neill Committee Recommendations**

Anonymous donations of £50 or more should be refused (p56)	Agreed but the amount is increased to £200. Clause 48, schedule 7
<p>The definition of a permissible source should cover:</p> <p>As to individuals registered UK votes and those entitled registers as UK voters.</p> <p>As to corporations incorporated in the UK</p> <p>As to partnership; partnership based in and having their principal sphere of operation in the UK</p> <p>As to trade unions: trade unions registered here pursuant to statue</p> <p>As to other organisations, voluntary associations, and trusts etc. genuinely based in and having their principal sphere of operations in the UK (p74)</p>	<p>Agreed. The government's proposals are set out in clause 48 of the Bill. The definition includes registered UK voters but not those entitled to register. With regard to companies the definition includes companies incorporated in the UK or elsewhere in the EU and which carrying on business in the UK.</p>

The arrangements for the fair conduct of referendums, in Part VII of the Bill include one departure from the Neill committee recommendations. That departure has to do with expenditure limits on campaign organisations. The Committee said that it was not opposed to expenditure limits as a matter of principle, but it questioned how such limits could be applied effectively in practice. It therefore proposed that there should be no limits on either side. However, the Government proposed a national limit on referendum

<sup>163</sup> Fifth Report of the Committee on Standards in Public Life, Volume I: Report Cm 4057,p.147.para 11.3

campaigns. The Government has proposed that, for a United Kingdom-wide referendum, there should be a limit for each political party with two or more Members of the House of Commons, with a similar restriction on umbrella groups. If in a particular referendum most political parties were on the same side of the argument, there would be a risk that such an arrangement could work unfairly. The proposed arrangement provides a disincentive to the formation of umbrella groups, and one could question whether it is right that political parties, irrespective of the number of Members should be subject to the same limit. If there are to be limits, they should surely apply to each side of the argument rather than to individual political parties, whose members may well be on both sides of the argument. The Neill Committee recommended no limit at all. If there is to be a limit, it should be done not by reference to political parties but according to the side of the debate. The Neill Committee asserted that "neither taxpayers' money nor the permanent Government machine should be used to promote the Government side of the argument. Under the Bill, the Government would be able to publish material on the case for a particular result until a period of 28 days leading up to the poll. That could potentially be very influential. Those two changes run the risk of creating an uneven playing field, something that the Committee was keen to avoid. The second area where the recommendations of the Committee were rejected was on tax relief at the basic rate for small donations of up to £500. If it were more widely recognised that making political donations was a virtuous participation in democracy and the public were given every possible encouragement to do so, parties would not be driven to seek the massive funding from rich individuals that has characterised the funding of the two major political parties in the past. That valuable proposal which would encourage people to participate in parties' finance has been dropped.

## **7.5. Activities of Political Parties**

In contrast with Turkey, there is no legal provision which directly regulates political parties' activities in the UK. There is no threat for any political party to be abolished by the state either. Political parties can be restrained in liberal democratic

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<sup>164</sup> Government's Response to the Neill Committee Report, Cm. 4413

theory if their link with violence is proven. Sinn Fein was banned as mentioned earlier on the basis that the party had link with armed organisation IRA. Political parties have to consider the electors or public's response to their activities and policies. Obviously, if any member of the party breaks the law, that is an offence but political parties are still treated as private organisations in regards their activities and policies.

## **7.6. Conclusion**

In this chapter, the legal status of political parties have been analysed. The new Act regarding the registration of political parties and the Neill Committee's report on funding of political parties have been studied in detail.

As shown above, political parties in the UK have been usually treated as private associations. However, due to recent concerns about the political sleaze and funding of political parties, the Government intends to regulate that area with the Political Parties, Elections and Referendums Bill, which is prepared according to the recommendations of the Neill Committee. The Registration of Political Parties Act also regulates some issues related to political parties which are mentioned above. There is a move away from old British traditionalist approach regarding political parties. The recent changes and proposed changes regarding political parties shows that British law is ceasing the practice of treating political parties as purely private organisations. It could be said that these changes are pragmatic rather than principled. An unrecognised effect of this development has been to put power into the hands of the grassroots members, who can withhold contributions if leaders are not attentive to their concerns. Moreover, the open accounting recommended by the Neill Committee means that grassroots' donations will increasingly be a barometer of the health of the mass party organisation.

To answer the question that how will these new regulations affect political parties' role in the UK, one could make a few points here. It could be said that with the Registration of Political Parties Act, political parties are protected from losing votes during the elections due to misleading party names and emblems used by other parties. They are now formally recognised by British law. Keeping in mind that political parties' names did not appear on the ballot paper until 1960s in the UK, these new regulations



are major step regarding the traditional approach. However, the new regulations do not go as far to intervene with internal party activities or organisations, as is the case in Turkish law. In British politics, issues of “misconduct” and “freedom” have been main criteria. It could be said that while new regulations try to ensure the prevention of misconduct, they also give great importance to “freedom”. As mentioned above, due to social changes in British society as well as others, the traditional trust in the political system and political actors namely politicians and political parties have been decreased. This breakdown in trust has led to the increase of legalism. Society is more diverse and the priorities of people are changing. With post-modernism, political ideologies do not mean as much to people as they used to. This affects political participation since people are no longer interested in politics. Apoliticisation and new tools of participation such as referendums and pressure groups make political parties’ role less important. These global changes in societies exist in British society as well. It could be seen that changes regarding political parties in the UK are part of constitutional reforms proposed by the Labour Government in order to keep in line with global changes mentioned above. However, it is not clear that where these reforms will lead and what kind of impacts they have on British democracy. One must emphasise at this point that political parties are still essential for British democracy as well as others’. They are still the means of interest articulations and aggravations for the people. The British law because of the liberal nature of its historical background puts freedom and individual interests before the State and other issues which, is opposite to what happens in Turkey.

Compared to Turkey, it could be said that due to Britain’s historical background, and the liberal nature of the state and society, political parties in Britain remain much more free to fulfil their duties to public and this situation obviously in line with the European Convention of Human Rights. There are some cases which went through European Commission or Court of Human Rights. *Bowman* case and *Liberal Party* case are already mentioned in this thesis.<sup>165</sup> *Ahmed* case is related to political participation

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<sup>165</sup> See Chapter 3

relating to local government officers. Although the Commission found that interference was not proportionate, the Court did not agree with the Commission.<sup>166</sup>

It could be said that only in *Bowman* case the UK was found to be in breach of European Convention in terms of political rights. On the other hand, there are many cases related to Turkey in which the Court found breach of Article 10 and Article 11 and decided that the interference was not proportionate with the legitimate aim pursued and was not necessary in a democratic society.

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<sup>166</sup> See Chapter 3

## CHAPTER EIGHT

### **CONCLUSION**

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The main objective of this study has been to determine the role and treatment of political parties in liberal democracies with specific reference to the UK and Turkey. This has been done by examining to what extent political parties are able to perform their role and how they contribute in advancing democracies under the current structure in both countries in the light of European Convention and Neill Committee's criteria. Three concluding remarks which have been reached by this thesis could be explained as below.

#### **The Importance of Political Parties for Liberal Democracy**

First concluding remark is that liberal democracy is a political system where pluralism in society can be best represented and where individual and organisational rights are best ensured. Political parties have been main elements of liberal democracy, and it is likely that they will stay that way in the near future. It is an undeniable fact that political parties are indispensable elements of liberal democracies. They perform various significant functions.

Political parties have been important factor for transforming Turkey from feudalistic cast system to modern society and helped the process of modernisation of Turkey. However, the conditions in Turkey have not been adapted according to the process of late modernity therefore, the political system is not reflecting the conditions of this development. The understanding of "state unity" and "secularism" as mentioned in Chapter 5 has blocked the way for Turkey to adapt itself to new era. This has caused the current problems which exist in Turkey. In the UK, as elaborated in Chapter 6, small political parties have gained importance with the process of devolution and application of proportional representation system in regional elections and European Parliament elections. However, with the fragmentation in politics and increasing public concern about political corruption, larger political parties face losing their link with public. Single issue groups are becoming more acceptable way for individuals to pursue their

own goals. It seems the UK has shown healthy adaptation from modernity to late modernity.

### **Differences between Turkey and the UK regarding the Treatments of Political Parties**

The second concluding remark is that the treatment of political parties in the UK and Turkey has been very different. Political parties in the UK greatly differ from their counterparts in Turkey in terms of their historical emergence, their representation and their power in turning groups' demands into governmental policies. It has been observed that political parties have been treated as private organisation in the UK and there has been no direct regulation related to them until 1998. The reason behind this is the liberal nature of the British State. The state did not want to interfere with political parties' affairs or organisation. This "hands off" approach towards political parties could be explained by two reasons. First, the democratisation process in the UK, in contrast with Turkey, has been developed from the bottom towards the top. The ruling elite did not decide the limits of the rights which were demanded by the public. Civil society forced the ruling elite to recognise these democratic rights. This path to democratisation has established the liberal nature of British democracy. Secondly, since first liberalism and then liberal democracy emerged in the UK, the political and state elites cannot be separated from each other. In other words, the political elite has had complete access to the state machine and therefore political power solely lies in Parliamentary elections. Parliament makes laws and political parties control parliament through party discipline over members in Parliament. Therefore, it is sufficient to say that political parties would not need or wish to make any law to impose restrictions upon their aims and activities. In the UK, therefore, due to liberal nature of the State, political parties have been regarded as private organisations and apart from local expenditure at elections, they have been left unregulated. However, this "hands off" approach has led some politicians towards political corruption and has caused public's concern for misconduct of political parties in terms of their funding. As part of the major constitutional reform scheme put forward by the Labour government, and to answer these misconduct concerns, political parties, for the first time, are regulated by the

Registration of Political Parties Act and also a Bill is before to Parliament to regulate political parties' financial affairs. However, these changes do not mean that the state is interfering with political parties' political stances. This new approach towards political parties is not a diversion from the UK 's liberal tradition. The regulations regarding to political parties in the UK bring an external frame in order to provide a fair playing field and prevent the political corruption. The main aims here are to restore public confidence in political system rather than restricting political parties in their aims and activities as is the case in Turkey. Political parties in the UK remain largely free in terms of their internal structure, aims and activities. This gives parties the flexibility to fulfil their functions which are examined in this thesis, as political parties. They can implement their programmes and policies once they are in government. There is no legal obstacle to prevent them from channelling their supporters' demands and offering alternative solutions for the problems the country faces.

In contrast with the UK, as established by the European Court of Human Rights in the cases of the *United Communist Party*, *Socialist Party* and *Ozdep*,<sup>1</sup> extreme restrictions upon political parties make it impossible to have pluralistic society in Turkey. Therefore, the current practice in relation to political parties in Turkey is not in the line with the European Convention on Human Rights. There are three reasons behind this. Firstly, democratisation in Turkey has been realised from the top to the down. Thus, the ruling elite has full control over drawing limits on political rights. Moreover, the state elite and political elite unlike in the UK are not same in Turkey. Therefore, although political parties have mass membership compared to the UK, parties are weak in the sense of translating their electorates preference into governmental policies. Secondly, political parties are seen as the apparatus of the state and are expected to put state interests before people's interests. The third reason behind the restrictive approach towards political parties is that Turkey has been fully controlled and partly governed by the military rule (especially after 28 February 1997). Such rule has been conducted through "regulatory" decrees, made without reference to any truly representative legislative assembly or to public opinion. The principles of liberal democracy have been ignored in many circumstances and issues in contemporary

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<sup>1</sup> See Chapter 3

Turkey. In fact, the principle of the rule of law in Turkey has become weak and there are some problems applying the law into practice. Therefore, abolition of political parties is a common practice in Turkey. As explained in chapters 4 and 5, the overwhelming majority of the armed forces did not believe in the wisdom of elections or politicians. They did not see themselves as ordinary people but as the elite who are superior to the masses. This has obviously hindered political parties from performing their roles in Turkey.

It is proven in the thesis that the existing system and dominant values are determined and defined by the State in Turkey. The Turkish political tradition does not entertain the notion of a “restricted state” which has performed as a legitimate power. It has been laid open that the modernisation process and its liberal consequences have been from the top to the bottom, and the periphery in Turkish society has not made a precise impact. Political parties have been treated with mistrust by the State elite and blamed for the disruptions to Turkish democracy.

Consequently, there are great restrictions upon political parties. In Chapter 5, it is shown that the legal framework has been drafted to achieve definite solutions which favour authority and act against the freedom of political activity. Some of the restrictions in Turkish law made it impossible to establish various types of political parties and this is contradictory to the principles of liberal democracy and the criteria of misconduct, fairness, over-spending, civic engagement, party effectiveness and freedom which are outlined by the Neill Committee and adopted in this thesis to determine effectiveness of current legal situations in Turkey and the UK. Parties in Turkey cannot implement their party policies (apart from economic ones) into government policies. There are certain limits which are put in place by the State (namely the military), and political parties have no freedom to act outside these limits. Political parties cannot offer alternative solutions to Turkey’s political problems. They can certainly not voice some opinions which exist in society. They have to observe certain rules and draw their aims and policies within the frame of the official interpretation of secularism and nationalism. Otherwise they face severe punishment. Threat of abolition makes it impossible for political parties to represent alternative ideas and policies. As a result it could be said that political parties have no power to operate in certain areas, even when

they are in government. The military is involved in politics particularly when the secularism and unity of the state is in question.

### **Turkish legal structure is not in line with the Principles of Liberal Democracy and the European Convention on Human Rights**

Finally, it could be seen that the UK is more in line with the values of liberal democracy and the European Convention. As shown in Chapter 3 and mentioned in Chapter 7, there has not been any successful application to the European Court on the ground of political rights relating to political parties (apart from the *Bowman* case). However, the European Court in all three cases (there are more cases related to political parties which are pending before the court and are likely to be concluded same way with previous ones), regarding restrictions on political speech and banning political parties has found Turkey in breach of Article 10 and 11.

Turkey faces a crisis which has exposed the problems of the Turkish polity. Turkey must face up to these problems and seek the citizens' true participation in public affairs. This can only happen when political parties are given free space to fulfil their functions. The Turkish political system does not have any alternative except drawing its legitimacy from liberal democratic practice, rooted in such institutions as free elections, the rule of law, the separation of powers and protection of civil freedoms (including freedom of expression and freedom of association). Liberal tendencies will be likely to continue and grow, as Turkey has not completed its modernisation process yet but has the social, economic and political conditions for that completion.

### **Recommendations**

Following recommendations could be made according to the results of this thesis.

In order to encourage political parties in the UK to seek the public's participation in political activities, some incentives should be made available such as state funding through tax rebates, as recommended by the Neill Committee. Political parties should de-centralise their structure and give more power to their local organisations. Comparing to Turkey, the UK political parties seem well established and stable and

there is not many problems to be addressed apart from funding which is due to be regulated by the pending Bill before Parliament.

If Turkey wants to join the European Union where liberal democracy is the only acceptable political system, it is essential for Turkey to make the necessary adjustment in her legal system to comply with the principles laid out in the European Convention of Human Rights. As shown in chapter two, there is a very close relationship between political rights and political parties. The European Court sees political parties as essential in ensuring pluralism and the proper functioning of democracy. Since there could be no democracy without pluralism and political parties have essential role in ensuring it, the activities of political parties form part of a collective exercise of freedom of expression in itself, therefore, parties are entitled to seek the protection of Article 10 and 11 of the Convention. Rights to freedom of expression, freedom of association and free elections are essential elements for political parties to operate and function properly in the political arena. These rights are guaranteed by the European Convention of Human Rights. Therefore, the judgments of the European Court of Human Rights are essential to determine the scope of these rights. Without these rights, political parties do not mean anything in terms of political participation and representation which are the main elements of democracy. As the European Court has stated many times, freedom of expression is one of the main necessities in order to have democratic society. If some political ideas or movements are denied the right to expression and association (as long as they do not aim to destroy democracy and incite violence) there can be no democracy in liberal sense and therefore political parties would become the arms of the state which seeks to impose statist ideology on people which is clearly contradictory with the pluralistic character of liberal democracy. The state elite in Turkey should stop trying to shape the society according to their own desire through social engineering. The new world order makes it necessary for Turkey to become more democratic and to respect universal principles of human rights. The balance of political forces will shape Turkey's specific adaptation to the global order. On the one hand, it seems that it is unlikely to abolish the statist character of Turkish democracy in the very near future, since it is rooted in Turkish politics, history and culture, but, on the other hand, to achieve her aspirations to join the European Union, Turkey should construct the balance of



liberalisation and statism exclusively according to the principles set out by the European Convention.

Turkey is struggling to control its own political destiny and to prevent the intensifying tension between the state and society. So far, the democratic character of the Turkish system has been successful in preventing civil strife from emerging. The drive for democracy cannot be halted and the people of Turkey are entitled to struggle for their rights. The pro-democracy movements articulate the will of the people on the basis of national consensus. Such consensus is based on pluralist and civil rights concepts commonly enshrined in the European Convention and the Constitution of Turkey.

While the credibility of political parties, especially centre-right and centre-left parties, is weakened by virtue of their own stifling organisational structure, corruption, personal rivalries, their effectiveness as vehicles for political change has been minimal in the 1990s. These centre-left-right parties seem incapable of undertaking the leadership role of the process of democratic transformation.

The Turkish people want a government that respect individual rights but also gives religion an important role in public life. Liberalisation cannot go far without a stable elected government and without political parties who are free in terms of Article 10 and 11 of the Convention.

In order to improve the situation regarding liberal democracy, particularly political parties, Turkey should re-regulate the national security organisation by liberal democratic values, and should ease the secularist perspective of the republic. A social and political solution to the Kurdish problem should be found. Political rights should be widened and necessary adjustment in the legal structure should be made to comply with the European Convention. The Turkish state should cease the tradition of abolition of political parties. This could be achieved by making new constitution. The current constitution in Turkey was drafted under the military rule and reflects the militaristic approaches to state and individuals. It aims to protect the state against individuals and certainly not in line with the principles of liberal democracy. Instead of trying to amend some Articles (according to some legal experts at least 100 articles should be changed) Parliament should reach a consensus and prepare a new constitution which will ensure

that individual rights are protected against the state's interference. The military should be kept out of politics. The Turkish Criminal Law, the Anti-terror Law and Political parties Law should be changed in order to achieve more democratic and pluralistic structure in Turkey. There is a minority group which holds ruling power in Turkey and this group is opposing the necessary changes in order to achieve liberal democracy. In order to strengthen pro-European and pro-liberal democratic groups, the European Union should also ease the way for Turkey to join Europe.

In conclusion, it could be said that political parties perform various functions. They are the link between electorates and governments. They structure the vote during the elections. They offer public a choice of policies. They act as brokers between the state and public. They encourage people to participate in politics through their membership. They perform very important roles in strengthening democracies in newly established democratic states. They mobilise people and educate them regarding politics. They recruit the political leadership and offer the public an opportunity to get involved in government policies. Political parties make important contributions with regard to political participation. They channel public political activity towards governmental structures. It is established that parties help the extension of popular control over governments in liberal democracies. To perform all these functions and roles political parties must be provided with a free area to operate. Liberal democracy is a system where freedom of expression and freedom of association is secured and free elections are the only way to change governments. Therefore, political parties and politicians must enjoy the rights of freedoms of association and expression. Due to recent changes in Turkey and in the UK, the importance of political parties has increased. In the UK, the devolution process and adaptation of list system in some elections give an opportunity to regional parties to play an important roles in politics. In Turkey, being accepted as an official candidate to the European Union made it necessary to make series of changes in the legal structure as well as economic structure. Therefore, political parties could take the initiative to reduce Turkey's statist nature and bring Turkey in line with the requirements of the European Union. It could also be concluded that on the one hand, political parties cannot be regarded as purely private organisations since this may lead to political corruption, on the other hand there should

be no restrictions upon their aims and activities apart from preventing them from having connection with violence. The balance could be struck by following the judgments of the European Court of Human Rights in the cases of *United Communist Party, Socialist Party* and *OZDEP*.

The future role of political parties in light of technological developments and increasing use of direct democracy tools (such as using Internet for direct participation) has not been elaborated in this study and left for the future researchers. Further research should also be undertaken to establish the political parties' place in more fully integrated European Union.

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