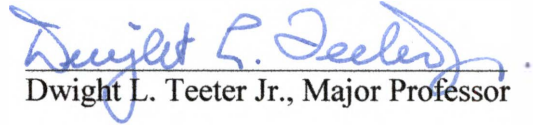


To the Graduate Council:

I am submitting herewith a dissertation written by Banu Baybars Hawks entitled "Crises, Terrorism, and Restraints on the Media: Comparing Freedoms and Key Controls in the United States and Turkey." I have examined the final paper copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Communications.


Dwight L. Teeter Jr., Major Professor

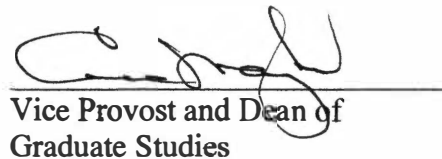
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**Crises, Terrorism and Restraints on the Media: Comparing Freedoms
and Key Controls in the United States and Turkey**

A Dissertation

Presented for the

Doctor of Philosophy Degree

The University of Tennessee, Knoxville

Banu Baybars Hawks

May, 2002

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DEDICATION

For the members of my family Sevim, Necdet and Ebru Baybars, and for my husband Michael D. Hawks who encouraged me to achieve my goals and were always there for me...

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ABSTRACT

This study compared key aspects of freedom and control of the press in two nations: the United States and my native country of Turkey. Three major media control areas were examined: prior restraint, seditious libel, and broadcast licensing. These control areas were compared in the United States and in Turkey in both historical context and as matters stand in 2002. One useful book underlying this study was Fredrick S. Siebert's *Freedom of the Press in England, 1476-1776*, which brilliantly discusses the ancient enemies of freedom-- framework for repression -- that were struggled against in England and in England's North American colonies from the late fifteenth century through the late eighteenth century. In his book, Siebert offered two propositions that characterized governmental control of the press:¹

Proposition I. "The extent of government control of the press depends on the nature of the relationship of the government to those subject to the government."

Proposition II. "The area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase."

Using the framework suggested by Siebert, this study attempted to determine the nature of relationship between governments and the media throughout histories of both Turkey and the United States. In this context, illustration of international terrorism proved a significant point. Both in Turkey and the United States, governments have

¹ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 10.

limited freedoms as a result of incidents of terrorism, in line with Siebert's Proposition II, which asserted that the more insecure the government, the more restraints are put on freedoms. Although these two countries are geographically apart and the development of the media is quite different from each other, there are still some similarities between them. The most important similarity is that both countries, under pressure of terrorism, justified their actions in limiting freedoms by asserting the imperative need to make their nations secure by eradicating terrorism.

For this study, it was concluded that those media controls including prior restraint, seditious libel, and broadcast licensing have been effective tools of governments throughout histories of both the United States and Turkey. Although the origin and nature of the documents protecting freedoms, particularly freedom of speech and press, are quite different in those two countries, the limitations on those freedoms have been fairly the same. Governments limited freedoms in both these countries by issuing laws, decrees, and with judicial decisions. This research revealed that, consistent with Siebert's first insight, as governments proceeded from monarchical regimes to more democratic ones, freedom of expression and press expanded. It also showed that, consistent with Siebert's second insight, as the stresses on the stability of the government and society increased, enforcement of restraints on freedoms increased as well. The events of late 2001 alone were sufficient to prove this proposition.

TABLE OF CONTENTS

CHAPTER I

Introduction, Statement of Purpose, and

Outline of the Study 1

CHAPTER II

Literature Review.....24

CHAPTER III

Methodology.....47

CHAPTER IV

Prior Restraint in the United States.....51

CHAPTER V

Prior Restraint in Turkey.....71

CHAPTER VI

Seditious Libel in the United States.....108

CHAPTER VII

Seditious Libel in Turkey.....131

CHAPTER VIII

Broadcast Licensing 186

CHAPTER IX

Broadcast Licensing in Turkey.....204

CHAPTER X

Results.....	226
---------------------	------------

CHAPTER XI

Conclusions and Suggestions for Future Research	235
--	------------

BIBLIOGRAPHY	240
---------------------------	------------

APPENDIX	251
-----------------------	------------

VITA.....	281
------------------	------------

CHAPTER I

INTRODUCTION, STATEMENT OF PURPOSE AND OUTLINE OF STUDY

1. Introduction

This study compares key aspects of freedom and control of the press in two nations: the United States and my native country of Turkey. Three major media control areas are examined: prior restraint, seditious libel, and broadcast licensing. These control areas are compared in the United States and in Turkey in both historical context and as matters stand in 2002. Because of my bi-lingual background, I am able to translate from Turkish into English. This study appears to be the first of its kind where someone has translated key documents on media law from Turkish into English to make information readily available for English-language scholars interested in comparative studies of media liberty and media constraint.

As a student who came to the United States for graduate study, my fascination with mass media roles has grown. Freedom of the press is at the heart of modern democracy. As world press scholar Pnina Lahav has written, "The roles of press are seen as a vehicle for self-expression, as an informer of the public, as a participant in the formation of public opinion, and as a watchdog of the government."¹ And governments, when realizing what has been called in recent times the checking function of media, have attempted throughout history to place some controls on the media.²

¹ Pnina Lahav, ed., *Press Law in Modern Democracies* (New York: Longman Inc., 1985), 339.

² See Vincent Blasi, "The Checking Value in First Amendment Theory," *American Bar Foundation Research Journal* 3, (1977): 523-649; and Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel* (Chapel Hill: Univ. of North Carolina Press, 1986).

The evolution of the press and the emergence of the theories of freedom of the press in the United States had roots in England three hundred years before the creation of the United States of America. Printing in England grew slowly in social and political power. After printing was introduced into England in 1476, those in power gradually came to see that the press, unless controlled, could threaten the existing order. As more and more printing presses were put to use over the next half-century, government regulations on the press began to appear, first as a few printing trade regulations. Controls were expanded with promulgation of the first list of prohibited books in 1529. A system of licensing the press in and around London began in 1530, and additional controls were developed such as the granting of printing monopolies, and the establishment of the Stationers Company under Queen Mary in 1557. The Stationers Company was a guild organization. Printing was not a right, but a privilege; to have the privilege, one had to belong to the Stationers Company. The members of the Company were in effect licensed by that privilege, and often informed to authorities about illegal unlicensed printers, showing an unfortunate mindset of choosing membership in a monopoly over free expression.³

During the Tudor period (1476-1603) the Court of the Star Chamber –so named because it met in a room with a star decoration on its door – was established. In 1586, the Court of the Star Chamber issued a decree which limited the number of printers, apprentices, and presses and authorized the Stationers Company powers to make search and seizure.⁴

³ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 2.

⁴ Siebert, 62.

The law of seditious libel was put into operation during the early Stuart period (1603-1640). Professor Teeter and his colleagues define sedition as criminalizing “expression attacking government’s form, laws, institutions, or officers.”⁵ The law of seditious libel was developed and applied by the common-law courts in Seventeenth Century England. Printers and publishers were being constantly searched by the officials whose job was to find all seditious printing and turn it over to the crown prosecutor. The penalties for seditious libel were severe, ranging from indefinite imprisonment and heavy fines to large bonds for good behavior.⁶

The period of the Civil War, the Commonwealth, and the Protectorate (1640-1660), brought significant changes for the control of the press by government. During those periods, the Printing Acts of 1649 and 1653, and Cromwell’s orders of 1655 were put into effect. Cromwell’s especially threatening orders, which included the suppression and prosecution of all unlicensed printers and suppression of all news-books except those licensed by the Protector or his Council, were successful in controlling the press.⁷

During the later Stuart Period (1660-1714), controls on the press were enforced by the office of the Surveyor of the Press. On June 10, 1662, the “Act for preventing the frequent abuses in printing seditious, treasonable, and unlicensed books and pamphlets, and for regulating of printing and printing presses”⁸ was put into operation, and it became the basis for the regulation of the press from 1662 to 1694 with the exception of the years

⁵ Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 28; Leonard W. Levy, *Legacy of Suppression* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1960), chapter 1 (1-17); and Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel*, 3.

⁶ Levy, 11, 16; and Siebert, 269, 270.

⁷ Siebert, 230-231.

⁸ *Ibid.*, 238.

between 1679 and 1685.⁹ Under the Act of 1662, only the master printers of the Stationers Company of London and the printers of Cambridge and Oxford universities were allowed to print.¹⁰ The Regulation of Printing Act was allowed to expire in 1694, primarily due to failure to operate an enforceable system of regulation under a two-party parliamentary government. The advisability of freedom of the press was not one of the reasons that led to expiration of that Act.¹¹ From 1694 until the first Stamp Act of 1712, the only controls were the law of seditious libel and the regulation by Parliament of the reporting of its activities, allowing only printers approved by Parliament to print carefully and self-protectively edited.¹²

In the eighteenth century, taxes on publications replaced the licensing system as a form of control. Without paying taxes, and without affixing tax stamps on publications, publishing would not be allowed. Various forms of taxes on publications, including a stamp tax, a paper tax, and an advertising tax, emerged. Subsidization of press and writers replaced the controls previously applied through the Stationers Company. Parliament also continued its insistence on punishing seditious libels, but the press received help in 1792 when Parliament passed Fox's Libel Bill, which gave juries the right to decide whether or not a publication was of a criminal nature. Fox's Libel Bill also provided for truth as a defense, doing away with the pernicious old doctrine of "the greater the truth, the greater the libel."¹³

⁹ Ibid., 238.

¹⁰ Ibid., 239.

¹¹ Ibid., 260-61.

¹² Levy, 13-17, and Siebert, 4.

¹³ Levy, 203.

In the early years of the nineteenth century, seditious libel prosecutions still were effective despite Fox's Libel Act, and taxes on publications increased dramatically. The freeing of the press of England from objectionable controls by the government did not take place until the 1860s.¹⁴

During these years, the extent of control mechanisms varied according to different social and political changes that had taken place. For example, the decline of government regulations on the press in the eighteenth century was attributed to the growth of private capitalism, the growth in the number of printing presses ("licensing fell of its own weight" with the rapid increase in printing facilities), and the increase in democratic process in government.¹⁵ On the other hand, during those three hundred years from 1476 to 1776, government increased its efforts to control the press whenever it perceived threats from societal tensions or from external sources.

Fredrick Siebert, in his *Freedom of Press in England, 1476-1776*, offered two propositions to characterize government control of the press:¹⁶

Proposition I. "The extent of government control of the press depends on the nature of the relationship of the government to those subject to the government."

This relationship, which in its specific nature poses greater or lesser degree of accountability of government to those who are governed, was variably categorized as Monarchy (absolute or enlightened), Democracy (more or less direct), and Totalitarianism, including communist or fascist totalitarianism.¹⁷

¹⁴ Siebert., 5.

¹⁵ Ibid., vi.

¹⁶ Ibid., 10.

¹⁷ Ibid.

One idea underlying this proposition is that governments present themselves as being responsible for welfare and safety of their peoples. The more direct the accountability of governments to their masses, the greater the freedom of the press. So, as governments proceeded from monarchical regimes to more democratic ones, freedom of expression and of press expanded. In democratic societies, press took on an extra-legal function by providing information to the public and serving as a watchdog of government and public affairs.¹⁸ But even in democratic societies, press freedom is not absolute, and can be restricted by governments. This situation led Siebert to his second proposition:

Proposition II. "The area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase."

This proposition seems valid for all types of government regimes. For example, especially in war times with other nations, or if any internal attack on the structure of government is perceived, the restraints on the freedom of press are increased. The more secure the existing government, the fewer restraints are imposed on the press.¹⁹ The events of late 2001 seem to bear this out once again.

September 11th, 2001, terrorist attacks on the United States brought home a level of threat that the country (unlike Turkey and Middle Eastern countries and Ireland) had not dealt with since the attack on Pearl Harbor in Honolulu on December 7, 1941. During those years of World War II, as at the other times of national distress, constraints on freedoms increased somewhat to protect "national security." Following the attacks of

¹⁸ Ibid.

¹⁹ Ibid.

September 11, the United States began its biggest military mobilization since the Gulf War in 1991, naming the campaign against terrorism “Operation Enduring Freedom.”²⁰ Within this context, the George W. Bush administration ordered the use of military tribunals to try non-U.S. citizens suspected of involvement in terrorist activities, and proposed some changes to federal immigration laws. According to proposed changes, the attorney general would be given “the authority to certify based on attorney general’s belief that a non-citizen is a danger to the United States, or might be someone who might engage in terrorist activities...Under the law, a person certified by the attorney general must be taken into custody, and can be incarcerated.”²¹ This gives government a power to detain based only on mere suspicion.

These actions of the government brought criticisms from some quarters. Arguments based on differing principles were made whether it is better to sacrifice individual freedoms at the expense of defeating terrorism or whether individual freedoms, which most Americans today accept as naturally as breathing,²² cannot be sacrificed, no matter what. The critics of government’s actions have claimed that the Bush administration exercised tremendous power in the name of security and violated civil liberties. The American Civil Liberties Union (ACLU) has objected to the use of military tribunals and has claimed that “the scope of the executive order allowing these tribunals is so broad as to undercut basic international and constitutional ideals of fairness and

²⁰ Jonathan Weisman, “Pentagon renames campaign Enduring Freedom,” *USA Today*, 25 September 2001, available at <http://www.usatoday.com/news/nation/2001/09/25/name.htm>.

²¹ “ACLU’s Lucas Guttentag: Immigrants and civil liberties.”

<http://www.cnn.com/2001/COMMUNITY/10/17/guttentag/index.html> (October 17, 2001).

²² Teeter and Loving, 5.

justice.”²³ Arguing that the government’s report on individuals arrested and detained after September 11 was “incomplete and inaccurate,” the National ACLU and a coalition of 16 other civil rights and human rights groups filed a Freedom of Information Act (FOIA) request on December 5, 2001.²⁴ Those rights groups observed that “there are credible indications that the government itself has determined that most of the detainees are not connected to terrorism and that the Attorney General no longer has any national security rationale for withholding information about these individuals.”²⁵ Attorney General John Ashcroft strongly rejected those criticisms against the actions of the government and in the Senate Judiciary Committee hearing in December 2001 said,

To those who pit Americans against immigrants, citizens against non-citizens, to those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists for they erode our national unity and diminish our resolve...²⁶

Defense Secretary Donald H. Rumsfeld noted the information-sensitive nature of this war, and appeared as “a disciplined holder of secrets”²⁷ regarding the U.S. military actions in Afghanistan. He stated at a September 12 briefing, “We are...seeing the definition of a new battlefield in the world, and it is a different kind of conflict.”²⁸

²³ “ACLU Submits Recommendation for Military Tribunals; Urges Adherence to Bush Demand for ‘Full and Fair’ Trials.” <http://www.aclu.org/news/2002/n011602b.html> (January 16, 2002).

²⁴ “Rights Groups Seek to Question Government Officials on ‘Incomplete and Inaccurate’ Records of Detainees.” <http://www.aclu.org/news/2002/n012302a.html> (January 23, 2002).

²⁵ Ibid.

²⁶ “Ashcroft: Critics of new terror measures undermine effort.” <http://www.cnn.com/2001/US/12/06/inv.ashcroft.hearing/> (December 7, 2001).

²⁷ Nina J. Easton, “Blacked Out,” *American Journalism Review* (March 2002): 39.

²⁸ Ibid., 38.

Governments under normal circumstances are not likely to interfere with press freedom. But if they are attacked or believe that they are seriously threatened, governments with their supporting public opinion (if any) are likely to exert control of various kinds.²⁹ Within this context, national security concerns were, and still are a reason given by governments to justify limiting freedoms. Alexander Hamilton understood this more than two hundred years ago, as he wrote in *The Federalist* Number 8 in 1787:

Safety from external danger is the most powerful director of national conduct.

Even the ardent love of liberty will after a time, give way to its dictates.

The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.³⁰

Siebert's propositions seem sound and are applicable to a large extent of situations in nations' histories. However, before taking them for granted, it is useful to test their applicability by evaluating the relationship between the government and the press in different periods of history in the United States, and in my native land, Turkey. Testing Siebert's generalizations in changing periods helps to frame my comparative study of media controls in Turkey and the United States.

²⁹ Donald L. Shaw and Stephen W. Brauer, "Press Freedom and War Constraints: Case Testing Siebert's Proposition II," *Journalism Quarterly* 46 (2) (Summer 1969): 243-44.

³⁰ Edward Mead Earle, ed., *The Federalist: A Commentary on the Constitution of the United States Being A Collection of Essays Written in Support of the Constitution Agreed upon September 17, 1787, by the Federal Convention* (New York: The Modern Library, n.d.)

Turkey, my native land, is a country between southeastern Europe and southwestern Asia with a population of more than 67,000,000 in early 2002. Ankara is the capital city with a population over four million. The biggest city of the country, Istanbul, has a population more than twelve million, and with this population, it exceeds more than 128 countries' populations in the world.

Turkey has a history showing both similarities to and differences from the historical foundation of the United States. Built on the lands once ruled by the Ottoman Empire, Turkey was founded in 1923 as a new republic by Mustafa Kemal Ataturk. During the periods of Ottoman Empire from 1288 to 1918, the lands of Empire covered most of today's European and Middle Eastern countries. Within the borders of this Empire was a highly cosmopolitan population, including people from different nationalities, ethnicities, and races.³¹

The emergence of the press in the Ottoman Empire was the product of Jews at the end of the fifteenth century. This was followed by the foundation of the Armenian press in 1567 and the Greek press in 1627. On 5 July 1727, the Turkish press was established and the printing of Turkish books 'in the high, God-guarded city of Constantinople' was permitted.³² The control of the press came mostly under the form of prior restraint and the emperor was the only authority to make decisions about regulations on the press.

³¹ For more information about the Ottoman Empire, see Douglas A. Howard, *The History of Turkey* (Westport, Conn.: Greenwood Press, 2001); A.L. Macfie, *The End of the Ottoman Empire 1908-1923* (London, NY: Longman Inc., 1998); W.S. Cooke, *The Ottoman Empire and its Tributary States* (Amsterdam: B.R. Gruner Publisher, 1968); and Bernard Lewis, *The Emergence of Modern Turkey* (London, Oxford: Oxford University Press, 1968).

³² Lewis, 50-51.

The first Turkish newspaper, *Takvim-i Vekayi* [Calendar of Events] was published in 1831. *Takvim-i Vekayi* was a type of official newspaper, and its contents were limited to announcements of official appointments, verdicts of judicial trials, and descriptions of the Sultan's progress on state occasions.³³ Around the same time of the publication of this first Turkish newspaper, several brilliant thinkers began to emerge such as Ibrahim Sinasi (1826-71), Ziya Pasa (1825-80), and Namik Kemal (1840-88), brave men who first discussed the idea of free speech and press in Turkey. Emperors (sultans) who feared free expression as destabilizing to their regimes tended to send such threatening persons to jail, to exile them, and sometimes even executed them,³⁴ and the punishments they suffered will be described at some length in the dissertation.

The Republic of Turkey and the principles of press freedom in it had a different evolution from the ones in the Ottoman Empire. Mustafa Kemal Atatürk, by overthrowing the last emperor (sultan) of the Ottomans, founded the Turkish Republic on principles new to Turkey. He did not become the only ruler of the new country. Instead, he guided the establishment of the National Assembly as "the only real representative of the people, and as the holder of both legislative and executive power" in Ankara in July 1920.³⁵ On 29 October 1923, declaration of the Turkish Republic was symbolized with these words: "The form of government of the state of Turkey is a Republic...the President of Turkey is elected by the Grand National Assembly in plenary session from

³³ Charles White, *Three Years in Constantinople*, 3 vols. (London, 1846), 218, quoted in Bernard Lewis: *The Emergence of Modern Turkey*, 95.

³⁴ See Lewis, *The Emergence of Modern Turkey*; Ahmet Emin Yalman, *The Development of Modern Turkey as measured by its press* (New York: Columbia University Press, 1914); and Alpay Kabacalı, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present] (Istanbul: Gazeteciler Cemiyeti Yayinlari:29, 1990).

³⁵ Quoted in Lewis, *The Emergence of Modern Turkey*, 256.

among its own members...The President of Turkey is the head of the state...and appoints the Prime Minister...³⁶

As the president of the new republic, Atatürk led to the emergence of modern Turkey by abolishing religious laws in which the Islamic faith was used mostly as a political instrument and by adopting a new legal system and laws whose roots were based on the ones in Western democracies. With a reform program launched, “Turkey abandoned much of its Ottoman and Islamic heritage”³⁷ and inside the country, a secular and nationalistic environment was created under a new doctrine called “Kemalism” to honor Atatürk. With the way that Atatürk followed, republican principles came in effect, and as in the history of England, political changes gave leeway needed for the evolution of press freedom in Turkey. Unfortunately, after Atatürk’s death in 1938, struggles between the left and right wings of the country resulted in military intervention several times in Turkey’s history and during those times, basic rights and freedoms were seriously hurt. The restrictions brought on the media by government in those periods which although strict were not as severe as the ones under Ottomans.

Transferred from earlier generations, ancient enemies of freedom have surfaced in the laws of the United States under the form of prior restraint and what Norman L. Rosenberg termed political libel (in various guises as seditious libel, criminal libel or civil libel).³⁸ Other old enemies imported from England included licensing, taxation, the contempt power of courts and legislatures, and forcing communication to occur. In the

³⁶ Quoted in Lewis, 261.

³⁷ “Freedom House Country Report on Turkey for 2000-2001.”

<http://www.freedomhouse.org/research/freeworld/2001/countryratings/turkey.htm> (2001).

³⁸ See Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel*, 7.

twentieth century, “forcing communication to occur” emerged in the form of the equal opportunity provision for political candidates (still effect in 2002) and the Fairness Doctrine, which required every broadcaster to devote a reasonable amount of time to the coverage of important public issues, and to provide this coverage in a fair and balanced manner. The Federal Communications Commission (FCC) repealed the Fairness Doctrine in 1987. When the FCC repealed the Fairness Doctrine, claiming that it was “inconsistent with public interest and First Amendment because of the growth of new and alternate media outlets, it left standing the Personal Attack and Political Editorial rules.”³⁹ These rules provided that “when a broadcast attacked the integrity or character of a person or group, or an editorial supports or opposes a political candidate, stations were required to promptly notify the person with the content of the attack, and offering air time to respond.”⁴⁰ In October 2000, a panel of the D.C. Circuit of Appeals ordered the FCC to repeal both the Personal Attack and Political Editorial rules.⁴¹

In Turkey, transferred from the Ottoman Empire, those same enemies of freedom --similar processes-- existed as prior restraint, licensing, seditious libel, the contempt power of courts, forcing communication to occur, and restrictions brought through a series of changes in constitutions and the penal codes. Contrary to the United States, taxation of the media has not been used in Turkey as a media control.

A two-nation study on governmental controls of the media can provide a better understanding of the similar and different actions of governments in this arena. In the

³⁹ Teeter and Loving, 703.

⁴⁰ Ibid.

⁴¹ Radio-Television News Directors Association v. FCC, 229 F.3d 269 (D.C.Cir.2000), 28 Med.L.Rptr. 2465.

context of comparison of those key media control areas between the two countries; excerpts from their constitutions, their laws, statutes, acts, and decrees regarding the prior restraint, seditious libel, and broadcast licensing have been analyzed along with important judicial decisions involving these areas, and similarities and differences have been discussed en route to the drawing of conclusions.

2. Statement of Purpose

As a citizen of the Republic of Turkey who has developed an interest in media law and regulation in the United States during my doctoral studies in Knoxville, Tennessee, from 1999 to 2002, I have wished to compare some major systems of media control in my native land to those in the United States. I was interested in governmental interaction with the freedom and control of mass media of communication. One useful book underlying my study was Fredrick S. Siebert's *Freedom of the Press in England, 1476-1776*, which brilliantly discusses the ancient enemies of freedom--framework for repression--that were struggled against in England and in England's North American colonies from the late fifteenth century through the late eighteenth century. After the creation of the United States of America late in the eighteenth century, those same old enemies of freedom often could be found in what is often called "the land of free." I have done a portion of my graduate work at the University of Tennessee with Professor Dwight L. Teeter, Jr., who has used the framework of controls discussed in Siebert's path-breaking book to organize his own thinking about media law and regulation in the United States.⁴²

⁴² See Teeter and Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001).

Using the framework suggested by Siebert, I have compared media law in the United States and Turkey under these topic areas:

1. Prior restraint
2. Seditious libel
3. Licensing in its modern form of broadcast licensing.

Although comparative studies may be valuable, this study has been undertaken with the knowledge that comparative studies across many years, many miles, and differing cultures run the risk of misleading as well as informing. For instance, when freedom of expression is generally recognized as fundamental and universal human right in Western democracies, the same freedom is still in the evolution stage in most Eastern European countries because of long time Communist rule.⁴³ Although the Communist regimes fell in the 1990s in most of those countries, the long time living under Communism was deeply engraved in the cultures and traditions of these countries and made it hard the adoption of Western rooted values. Therefore, if one wishes to compare the Western democracies with Eastern European governmental structures in terms of laws and theories of freedom of expression and press, it must be done with an awareness of the differences in those countries' understanding of those freedoms.

So while this study adopts a framework of controls over the press borrowed from a leading historian of the press and First Amendment lawyer, Fredrick S. Siebert, it is recognized that the Anglo-American frame provided by Professor Siebert can not be an exact fit for Turkey.

⁴³ James Miller, "Democratizing East-Central Europe: Is Western Journalism Universal? Ahistorical? A Human Right," paper presented at the 2002 ASJMC/AEJMC/AJE International Conference in London, England, 5-8 January 2002.

For example, seditious libel was long a major threat in English history and in the early national history of the United States, but there was no wording equivalent to “seditious libel” in Turkey, and there is no such wording there today. However, the function of seditious libel may be found in the history of Turkey as well as in England and America. In the Ottoman Empire, sultans (emperors) were believed to have sublime power (passed from God), and they were able to imprison people or put them to death for criticizing government.⁴⁴

In modern Turkey, Article No.28 of the Constitution says:

Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by a decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law...⁴⁵

Turkey also has Penal Code item no.158, making it a crime to insult the president, and no.159, making it a crime to insult the authorities, which includes Parliament, the government, and military.⁴⁶ The penalty for violating item no.158 can result in imprisonment for a term ranging from one to three years, while the violation of item no.159 can be punished from one to six years in prison. For example, in October 2001,

⁴⁴ See Howard, *The History of Turkey*; and Lewis, *The Emergence of Modern Turkey*.

⁴⁵ 1982 Turkish Constitution, Article 28.

⁴⁶ Turk Penal Code, Articles No.158 and 159.

Burak Bekdil, a journalist for English-language *Turkish Daily News* was charged with ridiculing the judiciary of Turkey, which was a violation of item no.159 of the Turkish Penal Code. He is now facing a maximum prison term of six years.⁴⁷

3. Limitations

My study is limited to the comparison of three key media control areas--prior restraint, seditious libel, and broadcast licensing--in the United States and Turkey. Other media controls such as contempt power of courts, taxation, and forcing communication to occur are not included in this study.

4. Comparing Nations

Dogan and Pelassy state the importance of comparative studies in finding similarities and isolating differences in discussions involving various subjects. The comparativist wants to acquire knowledge through reference extending the limits of one environment. When comparing nations, scholars look for reference frames which will provide common or comparable explanation of actions, situations, and outcomes. These commonalities, in turn, allow exploring meaning and understanding of the now enlarged environment. As a result, knowledge is extended.⁴⁸

Blumler, McLeod, and Rosengren make the same point, and list three significant contributions of comparative research to knowledge. The first occurs at the level of observation, "comparative inquiry cosmopolitanizes, opening our eyes to communication patterns and problems unnoticeable in our own spatial and temporal milieux." The second is that "only comparative research can overcome space-and time-bound limitations on the

⁴⁷ "Turkish journalist pokes fun at judiciary, may go to jail." www.freedomforum.org. (October 3, 2001).

⁴⁸ Mattei Dogan and Dominique Pelassy, *How to Compare Nations: Strategies in Comparative Politics* (Chatham, NJ: Chatham House, 1990), 3-4.

generalizability of our theories, assumptions, and propositions.” The third contribution is comparative studies’ ability to “...explore and reveal the consequences of differences in how communication is organized at the macro societal level.”⁴⁹ In a way of proving the second contribution that Blumler et al. indicated, my comparative study has tried to overcome some space and time boundaries on the generalizability of Fredrick Siebert’s propositions that characterize government control over the press.

Gurevitch and Blumler observed that comparative research also plays a more creative and innovative role – “opening up new venues, shifting the intellectual focus, forcing a redefinition of existing concepts and fashioning of new ones transportable across space and time, and a framing of new problems and questions.”⁵⁰ From this perspective, according to Gurevitch and Blumler, comparative research extends knowledge in two respects – “in level (from the microindividual toward the macrosocietal) and in scope (extending the number of sites to which theoretical propositions might apply and in which they might be tested).”⁵¹

Gurevitch and Blumler also argued that comparative studies help us to counteract “naïve universalism” and “unwitting parochialism.”⁵² This is important in my study of key media controls in the United States and Turkey. Freedom of expression and press, Western-derived concepts, are considered as universal human rights by those Western democracies. This approach sometimes creates a danger of distortion that “lies in

⁴⁹ Jay G. Blumler, Jack M. McLeod, and Karl E. Rosengren, eds., “An Introduction to Comparative Communication Research,” in *Comparatively Speaking: Communication and Culture Across Time and Space* (Newbury Park, CA: Sage, 1992), 3-4.

⁵⁰ M. Gurevitch and Jay G. Blumler, “Comparative Research: The Extending Frontier,” in *New Directions in Political Communication: A Resource Book*, eds. D. L. Swanson and D. Nimmo (Newbury Park, CA: Sage, 1990), 305-325.

⁵¹ *Ibid.*, 319.

applying Western ideas indiscriminately in speaking of other political systems.”⁵³ But in non-Western societies, the emergence, evolution and understanding of those freedoms are different than the Western societies. The contribution of comparative studies arises at that point. They offer a real picture of the world and allow us to explore significant aspects of different cultures and cultural diversity. In relation to that, Gordon Smith asserted that the use and attraction of comparative studies lies “...in the sensitivity the process gives in properly comprehending the history, culture and politics of individual countries.”⁵⁴

The objective of this study is to find commonalities and differences between the two nations (Turkey and the United States) through the discussion of some key media control areas. Although these two countries are geographically apart and the development of the media is quite different from each other, there are still some similarities between them. The most important similarity for the purposes of this paper is the role of terrorism as a justification factor in limitation of freedoms by governments in both countries.

Terrorism has been all too commonplace in Turkey since 1984 when the Kurdish Workers Party (the PKK) began its armed struggle against Turkey. In Turkey, a country with roughly one-fifth of the population of the United States, nearly 40,000 lives have been lost in terrorism incidents in less than 20 years. Consequently, the government of Turkey has found--as is happening to some degree in the United States--that defending against terrorism is a sufficient reason for curtailing liberties. In the United States, on the other hand, terrorism from an overseas enemy had not been a major concern until the

⁵² Ibid.,308-390.

⁵³ Roland Young, “Political and Legal Systems of Order,” in *Approaches to Comparative and International Politics*, ed. R. Barry Farrell (Evanston: Northwestern University Press, 1966), 295.

⁵⁴ Gordon Smith, “Seeking to Understand European Politics,” in *Comparative European Politics: The Story of a Profession*, ed. Hans Daalder (London, Washington: Pinter, 1997), 160.

terrorist attacks on the World Trade Center in New York City on September 11, 2001. As a result of the terrorist attacks of September 11, the United States government has followed the same path as the Turkish government and attempted to bring some restrictions on freedoms that Americans long took for granted.

These recent acts of terrorism in the United States provided a new backdrop for investigation of some key media controls in both Turkey and the United States. Now, we are capable of comparing one nation with a history of terrorism to a nation that has suffered recently from the acts of terrorism.⁵⁵

5. Outline of the Study

Chapter one of this study includes the introduction, statement of purpose, limitations, and the logic underlying the comparison of the two nations. In this context, a brief summary of the nature and evolution of theory of freedom of press and restrictions over this freedom in the United States and Turkey are given. Then, Fredrick Siebert's propositions regarding the nature and extent of government control over the press are explained and their applicability to this study is discussed along with the statement of purpose and limitations of this study. Chapter one also includes an explanation of the contribution of comparative studies.

Chapter two reviews the literature that discussed those key media control areas: prior restraint, seditious libel and broadcast licensing. Then, the literature examining the condition of press freedom and restrictions on this freedom in several countries of the

⁵⁵ Dr. Kenneth Killebrew used this logic in the comparison of Great Britain and the United States in his unpublished doctoral dissertation "Critical Events and Agenda Building in the U.S. and Great Britain: A Comparative Analysis of the Communication Effects of Terrorist Acts on Elite Newspaper Coverage and Policy Statements," University of Tennessee, Knoxville, 1998, p.16.

Western democracies, Continental Europe, non-Western democracies, South America, and Eastern Europe, Middle East, are reviewed. The documents securing freedoms in those countries also are briefly surveyed.

Chapter three outlines the methodology of this dissertation in addition to research questions.

Chapter four discusses prior restraint of the media in the United States. The chapter starts with origins of prior restraint in early England. The laws and organizations responsible from prior restraint of the media are examined with the discussion of important court cases about prior restraint of the media before the foundation of the United States. Then, prior restraint in the United States is investigated. The discussion of guarantees against prior restraint of the media, along with the discussion of some important court cases of the history about this area are made, in addition to the recognition of some exceptions to no prior restraint rule by the U.S. Supreme Court.

Chapter five begins with the discussion of the emergence of prior restraint in the Ottoman Empire, laws and constitutions of Ottomans that made prior restraint possible over the media, and some important figures in the Ottomans that first talked about and defended the idea of freedom of expression and press. Then prior restraint of the media in modern Turkey is studied. Various laws and penal code of Turkey that made prior restraint of the media possible are examined. At the end, similarities and differences between the United States and Turkey in the area of prior restraint are analyzed.

Chapter six discusses seditious libel in the United States. Definition of seditious libel is made followed by the discussion of its emergence and laws that made seditious libel a crime in early England. Some important seditious libel court cases in the history of

early England before the foundation of the United States also are examined. Then, the transition of seditious libel to the lands of the United States is investigated with the examination of laws that made seditious libel a crime in the United States, and important seditious libel court cases of the United States. The chapter also discusses criminal and civil libel with the important court cases in the United States occurred in those areas.

Chapter seven begins with the origins of seditious libel in the Ottomans, laws and constitutions of the Ottomans that made seditious libel a crime, and some important seditious libel court cases of the country. Then, seditious libel in Turkey is examined with the discussion of various laws and penal code of Turkey that made seditious libel a crime, and important seditious libel court cases. At the end, similarities and differences between the United States and Turkey in the area of seditious libel are revealed and analyzed.

Chapter eight includes the discussion of broadcast licensing in the United States. It is argued that prior restraint appears in broadcasting in the form of licensing. The development of broadcasting in the United States and the requirement for broadcasting stations to get a license from Federal Communications Commission to operate in the United States are the highlights of this chapter.

Chapter nine discusses the emergence of broadcast licensing in Turkey after the establishment of the first private television station in 1990, the establishment of the Radio Television Supreme Board and its sanctions on private broadcasting stations through the “Law No. 3984.” At the end, similarities and differences between the United States and Turkey in the area of broadcast licensing are discussed.

Chapter ten presents the answers of the research questions based on the discussions of previous chapters.

Chapter eleven offers conclusions of this study and sets forth suggestions for future research.

CHAPTER II

LITERATURE REVIEW

Press freedom and protections and restrictions on this freedom have been the subject of many scholarly books, professional and popular journal articles. Press freedom is considered vital to democracies, and any restriction on this freedom can be described as damaging. Over the years, governments have used various mechanisms in their attempts to control the media. **Prior restraint** has been one of those key media controls.

Through much of history in recent centuries, all countries witnessed some degree of government control over expression. In early England, prior restraint existed as licensing by the government. In early America, printing presses were licensed. But in late colonial times, prior restraint declined. England's own licensing system had expired in 1694. In addition to that, the publication of *Commentaries in on the Laws of England* by William Blackstone in 1765 helped the development of late colonial and early national law on the North American shores.¹ According to Blackstone, the liberty of the press consisted in the absence of pre-publication censorship but he encouraged post-publication punishments.²

Siebert has categorized Blackstone's ideas as one of the three theories of the liberty of the press, and called it "the Blackstone-Mansfield theory."³ The other two theories, according to Siebert, are "Tudor-Stuart theory" and the theory that emerged

¹ Dwight L. Teeter Jr., "The First Amendment at Its Bicentennial: Necessary But Not Sufficient?" *Journalism Quarterly* 69 (Spring 1992): 20.

² Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel* (Chapel Hill: Univ. of North Carolina Press, 1986), 13-14; and Leonard W. Levy, *Legacy of Suppression* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1960), 14.

³ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 7.

under the views of Thomas Erskine, Chancellor Camden, and in the United States, Thomas Jefferson and James Madison.⁴ The Tudor-Stuart theory of the function of the press proposed that “as long as the responsibility for protecting and advancing the public interest rested on the crown, it was a necessary corollary that the press should be regulated so as to ensure the success of the royal policies.”⁵ The third theory of the function of the press that emerged under the views of Erskine, Camden, Jefferson and Madison claimed that freedom of the press was “one of the natural rights of man as derived from the law of God and incapable of infringement by any man-made power.”⁶ According to this view, the king of Parliament has a limited power.

Those three theories of liberty of the press have one assumption in common. That is, freedom of press is not an absolute right. Therefore, all agreed that some forms of restraint are necessary and that the government has a legitimate function to apply these restrictions.

In the early years of the United States, the government attempted to use pre-publication censorship especially during troubled times – the Abolitionist period, the Civil War, the period of political and labor unrest during the late 1890s and early 1900s.⁷ During the Abolitionist period, prior restraint existed in the form of southern states’ postmasters’ refusal to deliver mails from Northern anti-slavery societies.⁸ During the

⁴ Ibid.

⁵ Ibid., 6.

⁶ Ibid., 7.

⁷ Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 39.

⁸ See Russel B. Nye, *Fettered Freedom – Civil Liberties and the Slavery Controversy 1830-1860* (Michigan: Michigan State University Press, 1963); and Harold Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court* (Indianapolis, New York: The Bobbs-Merrill Company, Inc., 1967), chapter 4 (168-218).

Civil War, pro-South (“Copperhead”) publishers occasionally were shut down by northern generals since they wrote that the war was a failure and accused the leaders as being corrupt and demagogic.⁹ During the period from the late 1890s through the first third of the twentieth century, postal and customs officials used prior restraint to control the publication and distribution of materials discussing “sex” in peacetime, and to stop “sedition” in wartime.¹⁰

One of the most important decisions of the Supreme Court of the United States in the twentieth century was *Near v. Minnesota ex rel. Olson*¹¹ in 1931, which portrayed the repression of press freedom in prior restraint form.¹² In its decision, even though the five-member majority in *Near* held that prior restraint was unconstitutional, it made some exceptions: for example when the nation was at war so that troop movements might be endangered, or if there was dangerous incitement to violence or governmental overthrow, or impending publication of obscenity.¹³

Almost 40 years after the *Near* case, government again attempted to use prior restraint. In *New York Times Co. v. U.S.*,¹⁴ known as the “Pentagon Papers” case, the *Times* and, subsequently, other newspapers including the *Washington Post*, were temporarily restrained by a federal judge after they printed stories based on a leaked “Top Secret” government report about United States involvement in the Vietnam War. The

⁹ Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court*, chapter 5 (221-247).

¹⁰ Vincent Blasi, “Toward a Theory of Prior Restraint,” 66 *Minnesota Law Review* 11 (November 1981): 14-15; and Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court*, chapter 6 and 7 (269-320).

¹¹ 283 U.S. 697, 51 S.Ct. 625, 630 (1931).

¹² Fred Friendly, *Minnesota Rag* (New York: Random House, 1981).

¹³ 283 U.S. at 716, 51 S.Ct. at 631.

¹⁴ 403 U.S. 713, 714, 91 S.Ct. 2140, 2141 (1971).

Pentagon Papers case made history as one of the most serious pre-publication censorship cases, and it became the subject of several books.¹⁵

Prior restraint also was the most common form of censorship over the media during the Ottoman Empire period before the foundation of the Republic of Turkey.¹⁶ That mechanism was used mostly to silence the critics of emperors and their policies in the Ottoman Empire, and after the foundation of Turkey, prior restraint was legitimized with a series of laws enacted by the Parliament including a State of Emergency Laws and Laws for Maintenance of Order.

In the new republic, pre-publication censorship was the most extensive in the years before 1985. Thousands of books were banned by the Council of Ministers, provisional governors, and by the police. For example, between the years of 1980 and 1983, 195 books, 106 periodicals, 46 pamphlets, 22 newspapers, seven newsletters, 32 communiques, three postcards, one poster, five calendars, two maps, six albums, eight poems, two music cassettes, two tourist guides, one article and thirteen other publications were banned.¹⁷

A second mechanism that governments use to control the press has been **seditious libel**. Seditious libel existed as one of the major threats against freedom of speech and press in English history and in some periods of the United States history. Although there is no wording equivalent to “seditious libel” in Turkey, its function can be found in the

¹⁵ See David Rudenstine, *The day the presses stopped: A history of Pentagon Papers case* (Berkeley: University of California Press, 1996); and Lloyd Chiasson Jr., *The press in times of crisis* (Westport, Conn.:Greenwood Press, 1995).

¹⁶ Hamza Cakir, “Osmanli Imparatorlugu Donemi’nde Basin [The Press in the Period of Ottomans],” *The Magazine of Istanbul University School of Communication* VII (September 1998): 15; and Murat Ozgen, “Basin Ozgurlugu Kurami [The Concept of Press Freedom],” *The Magazine of Istanbul University School of Communication* VII (1998): 53.

history of Turkey. For example, freedom of the press is governed by many laws enacted by the Parliament, in addition to the Constitution, in Turkey. One of these laws, the Press Law, including a number of amendments added in 1983, provided that a public prosecutor may, without securing a court order, stop distribution of a newspaper or magazine containing material that constitutes an “offense against the state”-- a vaguely defined offense that includes political expression and is the functional equivalent of seditious libel. After distribution has been stopped, a public prosecutor must apply to a state security court in 24 hours for an order approving his action. The public prosecutor can also seize publications already distributed. Additionally, where a state of emergency exists, the government has a right to ban published material.¹⁸

Prior restraint is at work in broadcasting in many countries through the use of **licensing**.¹⁹ Licensing of broadcast stations in the “public interest, convenience or necessity” in the language of the United States’ Communications Act of 1934 is a widely accepted form of control, but nevertheless is a form of prior restraint.²⁰ Broadcasters have to have a license to operate a radio or television station in the United States. Within this perspective, broadcasters claim that they do not have the full protection of the First Amendment that the print media has because the federal government, through the Federal Communication Commission, puts restraints on them. It is true that licensed broadcast

¹⁷ “Yasaklılar [The Forbidden],” *Cumhuriyet* [Republic], December 4, 1987, p. 5.

¹⁸ 1980 Basın Yasası [The 1980 Turkish Press Law], and *Paying The Price: Freedom of Expression in Turkey*, The Report of U.S. Helsinki Watch Committee, 1989, p. 14.

¹⁹ See Teeter and Loving, 650-659; Wolfgang Hoffmann-Riem, *Regulating the media: The licensing and supervision of broadcasting in six countries* (New York: Guilford Press, 1996); and David J. Clark with Earl R. Hutchison, eds., *Mass media and the law: Freedom and Restraint* (New York: Wiley-Interscience, 1970).

²⁰ Teeter, “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” 21.

stations have the freedom to criticize government, but they are also aware that broadcast re-licensing by the FCC has been a routine matter.²¹

Licensing in broadcasting was not in existence in Turkey before the emergence of private television and radio stations. Until the 1990s, radio and television were owned and run by the state. The Turkish Public Radio and Television (TRT) was the single station of the time, and televised as a voice of government. In 1990, the first private television station was established: “STAR 1.” The years following the establishment of that first private television, many new private televisions and radio stations took place in Turkish broadcasting. When government realized the power of this new sector, it began to apply restrictions on broadcasting.²² With this aim, Radyo Televizyon Ust Kurulu (the RTUK) [Radio and Television Supreme Council] was established in 1994. The restrictions and punishments of the RTUK on broadcasting have been operated through the Law on the Establishment and Broadcasting of Radio Stations and Television Channels No. 3984. This law put the operation of licensing into effect, by stating that “all public and private radio and television enterprises shall get a broadcasting permit (license) to operate. The power to issue broadcasting licenses as well as the power to revoke them lies exclusively with the Radio and Television Supreme Council.”²³

²¹ Teeter and Loving, 64.

²² See Gursel Ongoren, *Legal Remedies in Libel Cases for Plaintiffs Who Are Attacked by Private Radio and Television Stations* (Istanbul: Der Publishing Co., 1996); and Mehmet Semih Gemalmaz and Osman Dogru, *Freedom of Press in Turkish Broadcasting* (Istanbul: Press Council Publications, 1990).

²³ The Law on the Establishment and Broadcasting of Radio Stations and Television Channels in Turkey No.3984, Article 16, <http://www.rtuk.org.tr/eng14.htm> (2001).

Today many countries recognize freedom of the press as a viable value, but the commitments to this freedom vary greatly among them. Countries' commitments to press freedom can be underlined in various documents they designed.

In her introduction to *Press Law in Modern Democracies*, Pnina Lahav discussed the commitments to press freedom in several countries by dividing them into the Anglo-American, the Continental, and the non-Western groups. This same discussion could also be made, as Killebrew suggested in February 2002, by placing the nations in cultural, constitutional, or geographical context.²⁴ But for the purposes of this study, Lahav's categorization will be taken as a prime generalization.

In the Anglo-American group, meaning the United States and the United Kingdom, there is a common-law tradition in which the judiciary plays a key role in developing the law through interpretation, and the consideration of the Blackstone's doctrine against prior restraint as the foundation on which their press laws are built.²⁵ Although they are in the same group, there are some differences in press laws between England and the United States. As Supperstone stated, the United Kingdom has neither a constitution nor a special regime of law regulating the press. Under English law, press offenses are tried and convictions are made by ordinary courts.²⁶ On the other hand, a written constitution--including the First Amendment to the United States Constitution--is the foundation of press freedom in the United States. The United States Constitution offers guarantees for the protection of fundamental freedoms including the freedom of

²⁴ Kenneth C. Killebrew, Jr., e-mail correspondence, February 8, 2002.

²⁵ Pnina Lahav, ed., *Press Law in Modern Democracies* (New York: Longman Inc., 1985), 2.

²⁶ Michael Supperstone, "Press Law in the United Kingdom," in *Press Law in Modern Democracies*, ed. P. Lahav, 9.

speech and press. From that aspect, as Professor Soifer has written, the United States whose constitution possess both the power to invalidate statutes and the will to give the value of free speech a preferred status seems to be more permissive toward the press than the United Kingdom.²⁷ Some similarities and dissimilarities distinguishing the commitments to press freedom in the United States and the United Kingdom have been illustrated in the essays by Ian Loveland in *Importing the First Amendment*,²⁸ and by Robert Trager and Donna Dickerson in their prologue of *Freedom of Expression in the 21st Century*.²⁹

The Continental group, which includes France, Germany, and Sweden, differs from the Anglo-American group in regard to their legal systems, which are part of the civil law tradition. Contrary to common law tradition, the judiciary is not central in developing the law in civil law approach. Instead, legal codes created by the legislature serve that purpose in civil law systems. In the Continental group, there are also a special statutes devoted to the press, which is different than the Anglo-American group.³⁰ One of the countries of the Continental group, Germany rewrote its constitution in 1949 and included a guarantee for freedom of expression in the document. A related item in Germany's Constitution states that "there will be no censorship," but then it lists

²⁷ Aviam Soifer, "Freedom of the Press in the United States," in *Press Law in Modern Democracies*, ed. P. Lahav, 79.

²⁸ Ian Loveland, ed., *Importing the First Amendment – Freedom of Expression in American, English, and European Law* (Oxford: Hart Publishing, 1998), 1-23.

²⁹ Robert Trager and Donna L. Dickerson, *Freedom of Expression in the 21st Century* (Thousand Oaks, London: Pine Forge Press, Inc., 1999), 2.

³⁰ Lahav, 2.

exceptions to that statement: “Expression that is offensive, injurious, or indecent can be censored.”³¹

Pnina Lahav discussed press laws of Israel and Japan, categorizing them under the non-Western group. Israel, Lahav stated, carries the mix of the British common law tradition and an authoritarian colonialist approach to the press which is in contradiction with the formal commitment to freedom of the press. Japan, after the World War II, adopted a democratic form of government and followed the traditions of the American model in its laws, including press law.³² However, the existence of an unwritten code in Japanese culture concerning what can and what cannot be said in public places puts limitations on the operation of Japanese press despite that nation’s laws.³³

In some other non-Western countries, for example in India, a constitution includes the guarantees of freedom of expression but also gives list of exceptions to that freedom: Expression that interferes with the “sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”³⁴ In Iran, besides a general limitation clause to freedom of expression in the constitution, there is also a list of special limitations to that freedom.³⁵ In another non-Western nation, Singapore, the government has been able to extend its restrictions even to some of the world’s largest media organizations including the *International Herald Tribune*, *Time* magazine, and

³¹ German Basic Law, Article 5, quoted in Trager and Dickerson, *Freedom of Expression in the 21st Century*, 8.

³² Loveland, 96.

³³ Lahav, 4.

³⁴ Trager and Dickerson, 94.

³⁵ Ibid.

many others through court cases, libel suits, restrictions on circulation, and through limitation on reporters.³⁶ Although new media ventures have seemed to contribute the development of press freedom in Singapore, longstanding restrictions remain because the government still takes the position, as Prime Minister Goh Chok Tong said in 2000, “the media should not set the national agenda.”³⁷

In South America, press freedom continued to be threatened as in those non-Western nations. In Mexico, although the government does not own the press or censor it, and although freedom of expression is protected under the Mexican constitution, the Mexican press does not seem entirely independent yet. According to Eduardo Ruiz Healy, who is the one of the country’s radio commentators, “the relationship between the government and the press is a sick one. In many cities, the owners of the radio and the newspaper is a person who had a big position in the ruling party of the country.”³⁸ The government, through an agency called PIPSA, supplies the newsprint for almost all except a few Mexican newspapers. Those newspapers also get most of their revenues from government advertising. The government, in the form of news stories, buy space, and not all newspapers advise their readers that what they read is paid propaganda. If newspaper publishes something that the government finds objectionable, the delivery of newspapers can be stopped.³⁹ Recently, there are some positive signals towards the

³⁶ Charles P. Wallace, “Singapore’s grip,” *Columbia Journalism Review* 34(4) (November 1995): 19.

³⁷ Assif Shameen, “Singapore: And then there were two: The government allows a bit of media rivalry,” *Asiaweek*, June 9, 2000, p. 1.

³⁸ Diana Solis, “Mexican Press still on the take,” *Nieman Reports* 51(3) (Fall 1997): 76-77.

³⁹ See Raymundo Riva Palacio, “The kept Mexican press,” *Nieman Reports* 53-54 (4/1) (Winter 1999-2000): 208-210; and Trager and Dickerson, 85.

development of free press with the efforts of President Vicente Fox. Fox is calling for open (“transparent”) government for the public and the press in Mexico.⁴⁰

In Brazil, although press freedom has increased significantly since the military regime ended in 1985, there are still attempts of government to restrict the press. Those attempts include proposed press laws that would curtail press freedom by making media organizations convicted of libel, slander or defamation liable for a fine of 10%-20% of their annual gross revenues, depending on the severity of the offense.⁴¹

Looking at the other parts of the world at the start of the twenty-first century, ancient enemies of freedom are at work there as well. For example, recovering from the long period of Communist rule, many Eastern European country presses are in search for their freedoms. Most of those Eastern European countries, after the fall of Communist regime, rewrote their constitutions with the intention to secure basic rights and freedoms. Although the document like First Amendment did not exist in those countries to protect freedoms, some international norms concerning free expression such as Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) became a guide for them. Since the membership or potential membership in the North America Treaty Organization (NATO) and the European Union (EU) is very important for those Eastern European countries, they have realized that their legal and media systems should adhere to those international human rights norms including free expression.⁴²

⁴⁰ Dwight L. Teeter, Jr., interview by author, Knoxville, Tennessee, 30 October 2001.

⁴¹ Michael Kepp, “Brazil: From Violence to Press Laws,” *UPI Report* (August-September 1996): 18.

⁴² See Clifford Jones and Lynda Lee Kaid, “Political Television, European Human Rights, and the First Amendment: A Comparative Study of Political Broadcasting Regulation in the EU and the USA,” and Kenneth C. Killebrew, Jr., “When Actions Speak Louder than Words: Motivating Eastern Europe to

Section 1 of Article 19 of the ICCPR states, “everyone shall have the right to hold opinions without interference.” Section 2 of the same act covers the scope of the right to free expression:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, through any other media of his choice.

Section 3 of Article 19 of the ICCPR specifies the limitations on the right to free expression and press under the certain circumstances including “for the respect for the rights and reputations of others,” and “for the protection of national security or of public order (ordre publique) or for the public health or morals.”

Article 10 of the European Convention on Human Rights also includes guarantees for the right to free expression and press. Section 1 of Article 10 of the ECHR states:

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 to frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

While section 1 of Article 10 defines protections for basic freedoms with a broad language, section 2 of the same article notes the limitations on the right of free expression with more specific statement:

Embrace Constitutional Guarantees of Free Expression,” papers presented at the 2002 ASJMC/AEJMC/AJE Conference, London, England, 5-8 January 2002.

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 crime and disorder, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

Most of the Eastern European countries, whose constitutions were rewritten after the fall of communism, took into consideration international norms including Article 19 of the ICCPR and Article 10 of the ECHR for the protection of freedom of expression and press in their constitutions. But in theory, although those countries adopted those international norms for the protection of free expression and press, the application of these protections in practice generally failed and the ideals of democracy grew slowly in those eastern and central European countries.⁴³ For example, according to the 2001 Annual Report of the Reporters Sans Frontiers, although the significant progress can be observed in some of those countries, “the promise of democracy that blossomed ten years ago at the end of the Cold War has not borne fruit everywhere.”⁴⁴ Similarly, Freedom House’s “End of the 20th Century Freedom in the World Survey” announced Kosovo

⁴³ Killebrew, “When Actions Speak Louder than Words: Motivating Eastern Europe to Embrace Constitutional Guarantees of Free Expression,” 3.

⁴⁴ “The 2001 Annual Report of the Reporters Sans Frontiers.” <http://www.rsf.fr/rsf/uk/rap2000/introduction> (2001).

(Yugoslavia) as the worst-rated territory in the world in regard to freedoms.⁴⁵ In other words, winds of democracy that swept over Central and Eastern Europe following the fall of communism did not completely blow away the controlled press because “the two major forces keeping the press in check are still in operation: news sources commandeered by governments and repression condoned by laws that deprive media of their freedom.”⁴⁶ Trager and Dickerson have written that the main reasons for the continuance of suppression on expression in the Eastern European countries are the fear of loss power or money for governments, and the absence of tolerance and understanding of ethnic, religious, and political differences in their history and culture.⁴⁷

The most reported reason for governments to restrict the freedoms has been to protect the safety of their citizens and the welfare of the state. In relation to that, during the times of ethnic violence and political repression, individual freedoms were set back to a great degree. Under that atmosphere, freedom of press has suffered significantly. Although only totalitarian states defended censorship, nowhere in Eastern Europe, the former Soviet Union, or most of Africa was the press free of threats to enforce responsibility as defined by government. When the Freedom House’s “End of the 20th Century Freedom in the World Survey” found that “85 of the world’s 192 countries are free, 60 countries are partly free, and 47 countries are not free” in terms of freedoms, it also reported that press-freedom violations continued even in the freest nations.⁴⁸

⁴⁵ “Freedom in the World 2000-2001 Survey.”
<http://www.freedomhouse.org/research/freeworld/2001/essay1f.htm> (2001).

⁴⁶ Ibid.

⁴⁷ Trager and Dickerson, 72-73.

⁴⁸ “Freedom in the World 2000-2001 Survey.”
<http://www.freedomhouse.org/research/freeworld/2001/essay1f.htm> (2001).

The Freedom House Committee, until 1999, listed Turkey as one of the most dangerous countries in the world for journalists critical of government policies and rated it as “not free.” After 1999, Turkey was promoted to a category of “partly free,” but was mentioned that “Kurds and political Islam are still sensitive subjects that frequently earn journalists criminal penalties.”⁴⁹

It is true that dozens of books and publications were banned, many journalists were arrested, sentenced or fined by government officials in previous years in Turkey—mainly because they supported the appeal of the autonomy of Kurds in the eastern region of Turkey. Control was based on government’s opposition to Kurdish autonomy, and what is officially regarded as the “pro-Kurdish terrorist movement” in the lead of the Kurdish Workers Party, the PKK. In the last 18 years, as a result of this campaign of terror against Turkey, nearly 40,000 people lost their lives, “more than in the conflicts on the West Bank and in Northern Ireland combined.”⁵⁰ Among the ones who died were women, elderly, children and in many instances even infants. One of the main targets of the PKK was school teachers “since it was judged that PKK’s subversive views could be most easily imposed on the uneducated and the ignorant.”⁵¹

With a population of 25 million, the Kurds are the largest ethnic group in the world today without their own state. After the First World War, they hoped to establish their own state from the leftovers of the Ottoman Empire, but those hopes vanished when

⁴⁹ “Freedom House: Press Freedom Survey 2000: Country Report on Turkey.” <http://www.freedomhouse.org/pfs2000/reports.html> (2000).

⁵⁰ Kevin McKiernan, “Turkey’s War on the Kurds,” *Bulletin of the Atomic Scientists* 55 (March-April 1999): 2.

⁵¹ “What is the PKK?” *Republic of Turkey, Ministry of Foreign Affairs*, <http://www.mfa.gov.tr/grupe/eh/eh01/pkk3.htm> (2001).

Mustafa Kemal Atatürk founded the Republic of Turkey in 1923. With Atatürk's principle of nationalism, all the minorities in Turkey, including the Kurds, were given a single identity, everybody became a "Turk," while the rights of those minorities were preserved and respected. In the first 25 years of the Republic, dozens of Kurdish uprisings broke out, but all were crushed. Finally in 1978, a Marxist-led group called the PKK, the Kurdish acronym for the Kurdish Workers Party, was founded by Abdullah Ocalan (known as Apo), and in 1984, it began an armed struggle against Turkey characterized by terroristic threats and incidents.⁵²

The PKK was recognized as one of the 30 main terrorist organizations in the world by the U.S. Secretary of State in October 1997. In its attempts to fight against this terrorist organization, Turkey made a series of operations against PKK facilities in northern Iraq and restored law and order throughout the southeastern provinces.⁵³ Following the arrest of Abdullah Ocalan, the leader of the PKK, by Turkish security forces in Nairobi, Kenya in February 1999, PKK's actions against Turkey declined although occasional uprisings still occur from time to time in southeastern provinces.

Terrorism continued into 2002 as one of the most serious violations of human rights, particularly the right to live, since terrorist acts in Turkey had claimed 40,000 victims in less than 20 years. Most recently, the United States of America experienced the worst kind of terrorism when the September 11th, 2001, terrorist attacks claimed the lives of thousands. After the attacks, the world saw the United States go from a nation paying only half-hearted attention to security, not understanding that the first World Trade

⁵² Ibid.

⁵³ Ibid.

Center bombing in 1993 was part of a larger pattern. Now, in line with Siebert's insight, stress on government and society--and a wartime footing if not actually a declared war--is beginning to limit freedoms Americans took for granted. Under pressure of terrorism, President Bush ordered the use of military tribunals "to try non-U.S. citizens suspected of terrorism, the detention of hundreds of immigrants in connection with the terrorism probe, the 'voluntary' questioning of thousands of men mostly from Middle Eastern countries, and eavesdropping between attorneys and their clients in terrorism cases."⁵⁴

Turkey lived with terrorism for many years, and witnessed the loss of thousands of lives. As a true determination, Turkey stated that the PKK has violated the right to live. As seen, when threatened with terrorism, every nation, including the one recognized as the freest nation in the world, United States, has claimed the right to take appropriate measures to protect themselves from violence and eradicate terrorism. Turkey's fight against PKK terrorism was of this nature and aimed to maintain security and protect its citizens.⁵⁵

During those efforts against terrorism, freedoms were limited, and this situation raised questions from human rights advocates. Governments both in the United States and Turkey tried to justify their actions by claiming that their primary duty is to protect and respect the rights of innocent civilians. The Turkish government could also be able to justify its actions under some international standards. As one of the oldest members of

⁵⁴ "Ashcroft: Critics of new terror measures undermine effort."
<http://www.cnn.com/2001/US/12/06/inv.ashcroft.hearing/> (December 7, 2001).

⁵⁵ "What is the PKK?" *Republic of Turkey, Ministry of Foreign Affairs*,
<http://www.mfa.gov.tr/grupe/eh/eh01/pkk3.htm> (2001).

NATO in 1952, one of the 51 founding members of the United Nations, and now as a primary candidate for full membership to European Union, Turkey complies with the international norms concerning the fundamental rights and freedoms. For example, what the Turkish government did was not in violation of section 2 of Article 10, the European Convention on Human Rights, which states the certain limitations on the right to free expression and press. From this aspect, the Turkish government has been able to curtail freedom of expression and press “in the interests of national security, territorial integrity or public safety, and for the prevention of crime and disorder” as was stated in section 2 of Article 10 of the European Convention on Human Rights.

When human rights advocates such as the Freedom House Committee criticized the Turkish government regarding its actions to limit freedoms, they sometimes overlooked some positive developments about the Turkish press and legal system over years, including the removal of the government monopoly on newsprint supply, creating the foundation for private broadcasting stations in years following 1990, legalization of Kurdish printing after the Gulf War, and permit to HADEP, a political party claiming to represent Turkish citizens of Kurdish origin, to compete in the 1995 parliamentary elections with other ten political parties.

Since being formally declared a candidate for European Union (EU) membership in 1999, Turkey increased its momentum to expand the area of freedoms. When announcing Turkey as a candidate for membership, the European Union identified the steps necessary for Turkey to become a full member, including the rule of law, freedom of expression, human rights, constitutional reform and respect for the rights and

protection of minorities.⁵⁶ In accordance with the EU membership requirements, Turkey adopted a set of political and economic goals and tasks. Accordingly, 28 items in the 1982 Constitution of Turkey, which include restraints on freedom of thought and expression, the freedom and security of the individual, the privacy of the individual life, the freedom of communication, the freedom of residence and movement, and freedom of association, have undergone profound changes in late 2001. The broadcasting in Kurdish language, which was illegal previously, also was allowed by the new Turkish Constitution of 2001 (see Appendix A for the complete set of constitutional amendments made in late 2001).

As it can be seen, freedom of expression and of the press are guaranteed with the First Amendment in the United States, while international norms including the Article 19 of the ICCPR and Article 10 of the ECHR played a significant role in the protection of those freedoms in European countries. But there is one significant difference between the First Amendment and the international norms that shed a light to European countries in their constitution-making process. The First Amendment does not state any limitations or restrictions on the right to free expression and press, while the Article 19 of the ICCPR and the Article 10 of the ECHR state certain limitations and restrictions on those freedoms with a specific language. In the United States, the same concerns that were stated in the section 2 of the Article 19 of the ICCPR and Article 10 of the ECHR can be the reasons for a limitation on freedom of expression and press, but only with judicial decisions in the courts. From this perspective, then the question arises as to whether

⁵⁶ “Introduction,” *The 1999 Regular Report from the European Commission on Turkey’s Progress towards Accession*, http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/turkey_en.pdf (13 October 1999), 10.

Europe is more ready to accept governmental justifications for restricting these fundamental rights and freedoms than is the United States.

In the introduction of this study, it was noted that Fredrick Siebert's propositions that characterize government control over the press would be used as framework. There were other authors who examined governmental interaction with the press by using Siebert's proposition. Donald Shaw and Stephen Brauer tested one of Siebert's propositions, which stated that "the area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase" in their article "Press Freedom and War Constraints: Case Testing Siebert's Proposition II." In the study, the authors analyzed the threats against an outspoken North Carolina editor, William W. Holden of the *North Carolina Standard*, during the Civil War period. At the end, they concluded that the analysis of the threats against a North Carolina editor proved "the proposition that official and unofficial pressures on press freedom increase in times of governmental stress."⁵⁷ In other words, their study supported Siebert's proposition II.

John D. Stevens examined press freedom by focusing on another time period, World War I. He investigated the threats against Wisconsin papers during World War I period and found that the legal and extra-legal controls against the press were the strongest in that period.⁵⁸

⁵⁷ Donald L. Shaw and Stephen W. Brauer, "Press Freedom and War Constraints: Case Testing Siebert's Proposition II," *Journalism Quarterly* 46 (2) (Summer 1969): 243.

⁵⁸ John D. Stevens, "Press and Community Toleration: Wisconsin in World War I," *Journalism Quarterly* 46 (2) (Summer 1969): 255-59.

The literature discussed above has made significant contributions to this study. As it can be seen, the authors of those studies examined different aspects of my topic, but none of them made a study comparing the governmental regulations on media in Turkey with those in the United States. The reason for the selection of the United States in this comparative study is that the United States constitution is considered one of the strongest documents promoting democracy and free speech. Because of the U.S. Constitution's strong ties to democracy, republicanism, and free speech, its merits are used as a comparative tool when examining the free speech practices in other nations.⁵⁹ The reason for the selection of Turkey, beyond its being my native country, is to show the evolution of democracy and freedoms in accordance with the requirements that the European Union demanded from Turkey before it would be granted full membership status. Once it declares a country as a candidate for membership, the European Union prepares an Accession Partnership document, in which it identifies economic and institutional requirements for that country to comply. Then this particular country produces a national program for accession that mirrors the Accession Partnership, and progress is monitored by means of the annual "Regular Report from the European Commission on Progress towards Accession." Turkey now is making a significant progress in the areas identified by the Union to gain a membership. Turkey wants to comply with the requirements of the European Union both for the reasons of Commerce and a concern for freedom.

Unlike the United States (once the Bill of Rights was adopted in 1791), the Turkish constitution was not protective of free speech rights when it was first adopted.

⁵⁹ Kenneth C. Killebrew, Jr., e-mail correspondence, February 8, 2002.

But some positive steps were taken in Turkey over the years, and recently, constitutional amendments were adopted toward the way of expansion freedoms and relaxation of restrictions. This study discusses those positive steps which were taken in regard to freedoms in Turkey.

Additionally, the illustration of international terrorism proves a significant point. Both in Turkey and the United States, governments have limited freedoms as a result of incidents of terrorism, in line with Siebert's proposition which claimed that the more insecure the government, the more restraints are put on freedoms. From this perspective, the comparison of some key media controls by governments in the United States and Turkey relates the terrorism movements to governments' actions in limiting freedoms. Both the United States and Turkey, as countries that have suffered from terrorism, prove good examples in their illustration of how governments could justify themselves in limiting freedoms by showing the reason for protecting their nations and eradicating terrorism.

This dissertation reports on some regulations of Turkish and American governments over the media, and examines the past and current situations of press freedoms in those countries. As a responsible academic, my aim is to provide a study to guide communicators, journalists, broadcasters, and media law scholars all around the world who want to study or practice in or/and about Turkey.

One of the challenges for United States scholars in comparative media law is finding English translations of statutes and court decisions from other lands. As a citizen of Turkey who did doctoral studies in the United States, I did substantial reading about media law in the United States. When I wished to compare features of U.S. law with

those in Turkey, I found that substantial amount of materials are not available in English. So, while pursuing my comparative study, it fell to me to have to translate Turkish laws, decrees, and court decisions from Turkish into English. It is my hope that my translations of excerpts from those laws, decrees, and court decisions from Turkey over the last 150 years will provide useful information for other students of international controls over-- and efforts to gain freedom by--the press. Throughout this dissertation, material translated by me will be identified in footnotes as "Translated by the author."

CHAPTER III

METHODOLOGY

This study examines some key media controls based on Siebert's propositions regarding the explanation of governmental control of the press. In the past, some other authors examined Siebert's propositions by focusing on specific time periods, for example the Civil War,¹ and World War I.² These studies, as they noted, were limited in the scope of data because they examined the problem by selecting specific time range and specific aspect of the issue, while there are other periods and other conditions of pressure that will be tested.³ Since some of the key media controls, particularly--prior restraint and seditious libel--are centuries old, the discussion of their origins and evolution can only be made with a historical study. On the other hand, since governments construct their limitations on the media with a variety of legal documents including constitutions, laws, decrees, or with judicial decisions, it was also necessary to engage in legal research for the purposes of this paper. Then, my study about government regulations over media in Turkey and in the United States has been both a historical and a legal study.

For the purposes of historical research, primary historical sources such as published official documents and published personal documents can be considered useful materials, so they have been used in this study. Primary sources are raw materials of history that carry close proximity to the events of interest, and therefore, they are more valuable in historical research. Secondary sources are not contemporaneous with the

¹ Donald L. Shaw and Stephen W. Brauer, "Press Freedom and War Constraints: Case Testing Siebert's Proposition II," *Journalism Quarterly* 46 (2) (Summer 1969): 243-54.

² John D. Stevens, "Press and Community Toleration: Wisconsin in World War I," *Journalism Quarterly* 46 (2) (Summer 1969): 255-59.

³ Shaw and Brauer, 254.

events of interest. In this study, secondary historical documents such as pamphlets and periodical literature, monographs, and biographies have been used to strengthen the understanding about the content and time of the events.

As James D. Startt and Wm. David Sloan have written, in historical research, one needs to understand personalities and circumstances related to a study. One also needs to understand historical movements, changes, and their causes pertaining to a study. The researchers must avoid present-mindedness, and try to understand the events as they were in the past. When evaluating sources, internal and external criticism must be used. Scholars can encounter exaggerated contemporaneous records, forged papers, or invented interviews at the various stages of the research. External criticism determines the authenticity of the record. In order to determine that, collation (comparison of various documents with an original source), identification, and textual verification must be done. Determination of the credibility of the author of the source and understanding the content fall under internal criticism. Questions like “how near was this person to the event in terms of time and space? how available was the evidence to this person?, and, how competent was this person to interpret the event?” can be helpful.⁴ Suggestions of Startt and Sloan have been taken into consideration in this study, and have been complied to them whenever it has been necessary.

Legal research also has been conducted for the purposes of this study. For this aim, primary legal materials such as constitutions, statutes, court cases, and judicial opinions involving government regulations over the media in both countries have been

⁴ James D. Startt and Wm. David Sloan, *Historical Methods in Mass Communication* (Hillsdale, NJ: Lawrence Erlbaum Associates, Publishers, 1989), 42-45, 117.

examined. By using traditional legal research methods and descriptive techniques, the nature and extent of these primary legal materials have been evaluated. Secondary sources have also been used to provide better understanding about the issue discussed and for interpretive purposes. Legal dictionaries, legal encyclopedias, academic law reviews and other scholarly journals have been cited, whenever it has been necessary. At the end, differences and similarities between Turkey and the United States have been revealed under those areas including prior restraint, seditious libel, and broadcast licensing, and suggestions have been offered for future studies involving similar issues.

In this comparative study, court cases, constitutions, and statutes involving the topics outlined above have been investigated for the United States by using “*digests* (to locate cases discussing similar points of law), *annotations* in annotated statutes and codes, *Shepard’s Citators*, and legal periodical indexes.”⁵ Computer-assisted legal research systems such as WESTLAW and LEXIS have been the other important finding tools.

In Turkey, unfortunately, there are no sources such as *Shepard’s Citators* or *digests* of the United States. Some major legal documents such as the Constitution of Turkey and Anti-Terror Law are available online at the government’s official website in English. Other legal documents such as the Press Law, a State of Emergency Laws, or Laws for Maintenance of Order are available in Turkish in secondary sources. Therefore, it was necessary to translate them into English. Other legal documents before the creation of the Republic of Turkey are available in Arabic. Since I cannot read Arabic, their

⁵ J. Myron Jacobstein, Roy M. Mersky, and Donald J. Dunn, *Fundamentals of Legal Research*, 7th ed. (New York: Foundation Press, 1998).

Turkish translations have been taken from secondary sources and translated into English for this study.

Research Questions:

1. What are the similarities and dissimilarities between the United States and Turkey in the media control area of prior restraint?
 - a. How did prior restraint of the media emerge in the United States and Turkey?
 - b. Does prior restraint exist in both printing and broadcast media in both countries?
2. What are the similarities and dissimilarities between the United States and Turkey in the media control area of seditious libel?
 - a. What were the circumstances under which seditious libel crimes appeared in the history of both countries?
 - b. Which legal sanctions did the governments of those two countries use to punish seditious libel?
3. What are the similarities and dissimilarities between the United States and Turkey in the media control area of broadcast licensing?
 - a. How do governments in the United States and in Turkey license the broadcasting media?
 - b. What was the reasoning behind broadcast regulation in the two countries?

CHAPTER IV

PRIOR RESTRAINT IN THE UNITED STATES

Prior restraint, as a form of media control, can be defined generally as any form of restraint or censorship prior to publication. Scholars and free-press advocates¹ agree that prior restraint is the worst of all media controls. As the U.S. Supreme Court has recognized in its decision of *Nebraska Press Ass'n v. Stuart*,² “if it can be said that a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it...”³

Sir William Blackstone defined freedom of the press as “to be free from previous restraints upon publications” in his 1765 *Commentaries*.⁴ Blackstone’s ideas had become a guide for future generations, and the primary meaning of freedom of the press has been understood as “freedom from previous restraints upon publications” throughout American legal history.⁵ The U.S. Supreme Court, in its historic decision of *Near v. Minnesota*,⁶ legalized Blackstone’s ideas about prior restraint, by stating that previous restraint upon publication is “what the First Amendment most certainly was intended to protect against.”⁷ Leading First Amendment historian Leonard W. Levy, however, reached another conclusion, arguing that the First Amendment was not intended to stop

¹ See, e.g., Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 44; and John D. Zelesny, *Communications Law*, 2nd ed. (California: Wadsworth Publishing Company, 1997), 41.

² 427 U.S. 539, 559, 96 S.Ct. 2791, 2803 (1976), 1 Med.L.Rptr. 1064.

³ *Ibid.*

⁴ Teeter and Loving, 16.

⁵ See Pnina Lahav, ed., *Press Law in Modern Democracies* (New York: Longman Inc., 1985), 2; and Leonard W. Levy, *Legacy of Suppression* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1960), 309.

⁶ 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931).

⁷ Zelesny, 41.

prior restraint. He claimed, "...the First Amendment was hardly as libertarian as we have traditionally assumed...There is every reason to believe that the Bill of Rights was more the chance product of political expediency on all sides than of principled commitment to personal liberties."⁸

The Court in *Near* also modified the Blackstone's ideas about prior restraint in two ways. First, while Blackstone stated "no prior restraint" in any circumstances, the Court in *Near* found that statement as too broad, and allowed prior restraint under certain limited circumstances such as war, incitement to violence or overthrow of government and obscenity.⁹

Second, while Blackstone had approved the punishment of criticism of government, the Court in *Near* recognized the right of the press to discuss the character and conduct of public officers by stating, in Justice Hughes's words, that

[T]he administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and danger of its protection by unfaithful officials and the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities.

The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for

⁸ Levy, vii-viii.

⁹ *Near v. Minnesota*, 283 U.S. at 716, 51 S.Ct. at 631.

such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.¹⁰

Prior restraint of the media emerged three hundred years before the founding of the United States. In early England, prior restraint existed as licensing by the government. When printing gained its social and political power fifty years after its introduction into England in 1476, printing was seen as a threat by the government, and a system of licensing the press began in 1530 in and around London. With the establishment of the Stationers Company under Queen Mary in 1557, more effective controls started, and all printing was prohibited with the exception of the members of the Company. During those years, printing was not a right, but it was a privilege which was gained by becoming a member of the Stationers Company. The main duty of the members of this Company was to inform authorities about illegal unlicensed printers.¹¹

During the years of Queen Elizabeth (1558-1603), the Court of the Star Chamber was established. The 23 June 1586 decree of the Star Chamber was the most extensive regulation of the entire Tudor period, staying in effect until 1637. The Star Chamber Decree of 1586 limited the number of presses, printers, and apprentices, and confirmed the Stationers Company's power for search and seizure. The decree also wrote that all books (with the exception of law books and the ones printed by the queen's printer) must be licensed by the Archbishop of Canterbury and the Bishop of London.¹²

¹⁰ Ibid. at 719-720, 51 S.Ct. at 632-633.

¹¹ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 68.

¹² Levy, 8; and Siebert, 61, 62.

When the Army under Oliver Cromwell took control of the country between the years 1647 and 1649, a series of Printing Acts were put into effect. The Printing Act of 1649 expired in 1651. Following that, the Printing Act of 1653 and then the Cromwell's orders of 1655 passed. Both Printing Acts of 1649 and 1653 limited printing to the city of London, prohibited all 'scandalous' and 'seditious' publications, and all books and pamphlets were required to be licensed.¹³ The Printing Act of 1653 offered additional restrictions by giving authority to determine the number of printing houses, apprentices, and presses to the Council of State, and by requiring all the printers to get the permission of the Council of the State.¹⁴ Cromwell's orders of 1655 were especially threatening since they gave the following duties to the three commissioners for the regulation of printing:¹⁵

1. to secure names and location of master printers, their servants, workmen and apprentices, to see how many presses each operated, and to inquire "of what fame, quality, conversation, or condition of every such master printer is and how he, and his servants and workmen stand affected to the present Government,"
2. to suppress and prosecute all unlicensed printers,
3. to prosecute all those printers who having entered into bonds may have broken the condition of the bond,
4. to suppress all news-books except those licensed by the Protector or his Council,
5. to execute the acts suppressing street hawkers and mercury women,
6. to send all offenders to Bridewell to undergo "corporal and pecuniary punishment," and to appoint deputies to assist in the enforcement.

¹³ Siebert, 222, 223.

¹⁴ Ibid., 228, 229.

¹⁵ British Museum E. 1064.58 (28 August 1655), quoted in Siebert, 230, 31.

The most important regulation of the later Stuart period (1660-1714) was the Regulation of Printing Act. The Act was put into effect on 10 June 1662 in order to prevent “the frequent abuses in printing seditious, treasonable, and unlicensed books and pamphlets,” and to regulate “printing and printing presses.”¹⁶ The Regulation of Printing Act became the major regulation of the press from 1662 to 1694 except the years 1679-1685.¹⁷

Like the previous printing acts, the Regulation of Printing Act of 1662 offered special privileges to the stationers and printers if they cooperated in enforcing the state regulations. This Act also put the licensing system under authority of the Parliament. It prohibited the printing of all unlicensed and unauthorized books and pamphlets.¹⁸ The Regulation of Printing Act expired in 1694 due to inability of a two-party parliamentary government to arrange “an enforceable system of regulation capable of achieving the results desired.”¹⁹

In early England, as discussed above, the licensing power allowed government to put a prior restraint on publications by making it crime to publish without license. After the expiration of England’s licensing system in 1694, freedom of the press from licensing began to be recognized. The publication of *Commentaries on the Laws of England* by William Blackstone in 1765 helped the development of late colonial and early national law on the North American shores.²⁰ Blackstone wrote:

¹⁶ Siebert, 238.

¹⁷ Ibid.

¹⁸ Levy, 8.

¹⁹ Siebert, 260.

²⁰ Dwight L. Teeter Jr., “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” *Journalism Quarterly* 69 (Spring 1992): 20.

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraint upon publication, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity.²¹

With these words, Blackstone advocated the removal of prior restraint from publications, while he left the door open for post-publication punishments. Blackstone's ideas shed light to future generations in interpretation of press freedom as being free from prior restraints.

Colonial Americans broke their ties connecting them to Britain in 1776 with the Declaration of Independence. Those Americans were aware of a long history of struggle against arbitrary power, and this sense of history compelled them to set frameworks of government in writing after the War for Independence. Those frameworks were first set in emerging states after the Declaration of Independence, then in the Articles of Confederation, and finally in the Constitution of the United States.²²

Freedom of expression was still not an absolute right in the late eighteenth century, but nation's founders wanted to set up a principle expanding freedom of expression beyond that in England. As a result, a broad principle was stated in firmly

²¹ William Blackstone, *Commentaries on the Law of England*, IV, p. 151, 152, adapted by Robert Malcolm Kerr, Boston, 1952.

²² Teeter and Loving, 14.

protective terms, and it was left to future generations for interpretation.²³ On December 15, 1791, state ratification of the Bill of Rights gave force to these words protecting free expression in the First Amendment:²⁴

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

As David Anderson stated, before the adoption of the First Amendment, freedom of the press--not freedom of speech--was seen as a separate right, in most of the state constitutions except Pennsylvania's constitution. Freedom of the press gradually had begun to be treated as a part of a larger net of related rights, and in the ratifying conventions, its relationship to freedom of speech was recognized.²⁵ Despite this recognition, nearly all state constitutions agreed that those freedoms could be abused, but the definition of 'abuse' was not made and it was left to later generations to be defined.²⁶

Post-revolutionary leaders framed the First Amendment as "a cluster of distinct but related rights, complementary means by which thought, belief and expression are protected from governmental interference."²⁷ The men who created the First Amendment believed, "however dimly, naively, or incompletely, that freedom of the press was

²³ Ibid., 15.

²⁴ U.S. Constitution, Amendment I.

²⁵ David Anderson, "The Origins of the Press Clause," 30 *UCLA Law Review* No.3 (February 1983): 484.

²⁶ Teeter and Loving, 15.

²⁷ Anderson, "The Origins of the Press Clause," 484.

inextricably related to the new republican form of government and would have to be protected if their vision of government by the people was to succeed.”²⁸

If specific attention is paid to the language of the First Amendment, it can be seen that it does not say freedom of press and speech shall not be abridged. All it says is that Congress (not the States) “shall make no law.”²⁹ Since the boundaries of the freedoms named in the First Amendment are open to interpretation, there were attempts throughout history to limit the freedoms defined in the First Amendment. And especially until the First World War, those attempts had resulted with success, since “the overwhelming weight of judicial opinion in all jurisdictions offered little recognition and even less protection of free speech interests.”³⁰ As David M. Rabban pointed out, during that period, “the Court repeatedly denied that cases implicated freedom of expression, and often made no reference to the First Amendment.”³¹

In its early years, the United States used prior restraints on publications especially in times of national stress. During the Abolitionist period, the postmasters of the South refused to deliver mails from Northern anti-slavery societies.³² During the Civil War, northern generals would occasionally shut down pro-South publishers. During the period of political and labor unrest in the late 1890s and early 1900s, prior restraint was frequently used by imposing restrictions on publication and distribution of obscene materials. In the first third of the twentieth century, postal and customs officials used

²⁸ Ibid., 537.

²⁹ Teeter and Loving, 25-26.

³⁰ David M. Rabban, “The First Amendment in Its Forgotten Years,” 90 *Yale Law Review* (1981): 557.

³¹ Ibid., 542.

³² Russel B. Nye, *Fettered Freedom – Civil Liberties and the Slavery Controversy 1830-1860* (Michigan: Michigan State University Press, 1963); and Harold Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court* (Indianapolis, New York: The Bobbs-Merrill Company, Inc., 1967), chapter 4 (168-218).

prior restraint in peacetime to control materials discussing sex, whereas in wartime to prevent sedition.³³

*Near v. Minnesota*³⁴ is considered as the most important decision of the U.S. Supreme Court in the media control area of prior restraint. After publishing nine issues of the *Saturday Press*, in which the Minnesota public officials charged with neglecting their duties to control bootlegging, gambling, and other crimes, defendants J.M. Near and Howard Guilford were charged under Minnesota law that permitted prior restraint of “nuisance” or “undesirable” publications. This law permitted a single judge, without a jury, to enjoin a newspaper from publication forever if he considered it to be “obscene, lewd and lascivious...or malicious, scandalous, and defamatory.”³⁵ When the local county attorney asked the court to issue an injunction to prohibit publication of future issues of the *Saturday Press*, Judge Baldwin did not hesitate to do it. Temporary injunction against the *Saturday Press* prohibited Near and Guilford “from producing, publishing, editing, circulating, having in their possession, selling and giving away” a publication known as the *Saturday Press*.³⁶ After the hearing, the temporary injunction against the *Saturday Press* that had lasted for 26 months was made permanent by a state judge.

Near and Guilford appealed to the Minnesota Supreme Court, but the court upheld the injunction on the ground that the Public Nuisance Law was constitutional, and that the protections of free expression did not exist to protect publications that were

³³ Vincent Blasi, “Toward a Theory of Prior Restraint,” 66 *Minnesota Law Review* 11 (November 1981): 14-15; and Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court*, chapter 6 and 7 (269-320).

³⁴ 283 U.S. 697 (1931).

³⁵ Fred Friendly, *Minnesota Rag* (New York: Random House, 1981), 22.

³⁶ *Ibid.*, 51.

scandalous and defamatory.³⁷ As a final remedy, *Near* and Guilford went to the U.S. Supreme Court. In its ruling in defendants' favor by the margins of five to four, the Court found the Minnesota law as prior restraint—"the essence of censorship,"³⁸ and declared that law unconstitutional. Chief Justice Charles Evans Hughes wrote for the majority:³⁹

[L]iberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship.

Looking at one hundred and fifty years of American history, Chief Justice Hughes had found "almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers."⁴⁰

In its *Near* decision, the Court also recognized some exceptions to "no prior restraint" rule, saying that "prior restraint was allowable in dealing with matters of wartime security such as troopship movements, with obscenity, or with incitements to acts of violence and the overthrow by force of orderly government."⁴¹

Despite its limitations, *Near* provided a protected status for criticism of government, and the press received the First Amendment protection against actions by states. *Near v. Minnesota* also became the precedent for protecting the press against government's demands for suppression.⁴²

³⁷ Teeter and Loving, 46-47.

³⁸ *Near v. Minnesota*, 283 U.S. at 707, 713, and 51 S.Ct. at 627, 630.

³⁹ *Ibid.*, at 697.

⁴⁰ *Ibid.*, at 718.

⁴¹ *Ibid.*, at 716, 51 S. Ct. at 631.

⁴² Teeter and Loving, 48.

During the stressful years of World War I and II and the Cold War period in the late 1950s through the 1970s, national security was used as a legitimate reason for governments to restrict the actions of the media. For example, just before World War I started, postmaster Albert S. Burleson was given “the authority to determine what could and what could not be sent through the second-class mail...”⁴³ These activities of the post office to control the press were affirmed by the Espionage Act of 1917.⁴⁴

The restrictions of the government during the World War I years were not limited to the postal regulations on the press. In April 1917, President Wilson led to the establishment of the Committee on Public Information – which became known as the “Creel Committee.” The main duties of the committee were “to change antiwar attitudes to enthusiasm for an organized military operation and to intensify a general feeling of national solidarity.”⁴⁵ Among its activities, the committee mailed thousands of news releases to American newspapers, supported propaganda films, sponsored thousands of speakers who sought to raise the ire of Americans toward the Germans, monitored the foreign language press, and engaged in propaganda activities overseas.⁴⁶

Soon after George Creel was appointed to head the committee, he issued regulations to the press requesting voluntary self-censorship. He divided news into three categories: “dangerous,” or not to be published, news that contained material about military actions and threats against the president; “questionable” news that included

⁴³ Jean Folkerts and Dwight L. Teeter, Jr., *Voices of a Nation – A History of Mass Media in the United States*, third ed. (Boston, London: Allyn and Bacon, 1998), 324.

⁴⁴ Ibid.

⁴⁵ Ibid., 326.

⁴⁶ Ibid., 326, 327.

technical discoveries and rumors, to be published with caution and with the affirm of the Committee; and “routine” news that required no authorization.⁴⁷

Despite the criticisms made, the committee was successful to orchestrate “press coverage of the war and the effort to positively influence public opinion”⁴⁸ in 1917 and 1918.

During World War I, there were a number of experimental wireless stations, although commercial radio broadcasting had not really begun before the end of the war. With the intent of controlling this new medium, the United States Navy took over the operations of all private wireless stations which were found useful and ordered other transmitters to shut down.⁴⁹ In 1917, the number of coastal stations that the Navy took over from American Marconi Company was 53, and 28 of them were closed immediately by the Navy.⁵⁰ In 1919, President Wilson gave the approval for the return of radio stations to their former owners effective March 1, 1920.⁵¹

Government restrictions on the media continued in World War II through the Office of Censorship, which was established by the First War Powers Act in 1941,⁵² and the Office of War Information.⁵³ “On January 15, 1942, the Office of Censorship published the Code of Wartime Practices for American Press. Although compliance with the Code was voluntary, it worked quite well, with few breaches of security.”⁵⁴

⁴⁷ Ibid., 328.

⁴⁸ Ibid.

⁴⁹ Sydney W. Head, *Broadcasting in America*, 2nd ed. (Boston: Houghton Mifflin, 1972), 130.

⁵⁰ Lawrence W. Lichty and Malachi C. Topping, *American Broadcasting* (New York: Hastings House, 1975), 14.

⁵¹ Ibid., 15.

⁵² Steven Livingston, “Mass Media and the Military,” in Margaret A. Blanchard, ed., *History of the Mass Media in the United States* (Chicago: Fitzroy Dearborn, 1998), 378.

⁵³ Folkerts and Teeter, 411.

⁵⁴ Livingston, 378.

Throughout World War II, the Office of War Information sent advisories to print media and radio stations on sensitive matters and requested restraint in presentation of that information.⁵⁵

The restrictions of government exercised on radio broadcasting also were substantial in the World War II years. The Federal Communications Act of 1934 gave the President (President Franklin Roosevelt, in this case) the power to take control of radio in a national emergency. Benefiting from that rule, the government took over all short-wave stations in the United States and used them to send American propaganda to people overseas. The stations then became the basis for the “Voice of America.” The government also forbade all “live-microphone” broadcasts to which the public might have access (such as popular man-on-the street interviews) because of concerns that a someone (enemy or friend) might get on the air and divulge information that would be useful to the enemy – also possible was that an enemy agent might get on the air and speak code words that would be intercepted by enemy agents.⁵⁶ Furthermore, most powerful radio stations near the coasts (Atlantic, Gulf, and Pacific) were protected by military guards during World War II because of fear that an enemy might take over the transmitters and send detrimental messages that could be received by enemy submarines in the coastal waters.⁵⁷

During the Korean conflict in the early 1950s, “General Douglas MacArthur initially resisted the use of censorship, relying instead on the sort of voluntary restraint

⁵⁵ Folkerts and Teeter, 411.

⁵⁶ Herbert H. Howard, interview by author, Knoxville, Tennessee, 2 April 2002.

⁵⁷ Ibid.

seen during World War II.”⁵⁸ But in a short time, it appeared that voluntary restraints were not working and the reporting from the battlefield was hurting the war effort. This situation led to Secretary of Defense George C. Marshall and media representatives’ eventual decision that “the military would take responsibility for reviewing media reports from the battlefield. On December 23, [1950], the Eighth Army headquarters in Korea required journalists to submit all dispatches, photographs, and radio broadcasts for clearance.”⁵⁹

During the Cold War period, when Cuban Missile Crisis occurred in 1962, President Kennedy requested about 10-12 powerful 50,000 watt radio stations in the South to turn over their facilities to the government for nighttime broadcasts beamed to Cuba. The idea was to beam in the American position on the crisis with Cuba. This relates to the Communications Act which gives the President the power to take over radio in a national emergency. This move was suggested to the President, by J. Leonard Reinsch, President of Cox Broadcasting, Atlanta, a leading broadcaster and advisor to Presidents.⁶⁰

As seen, in the face of developing lethal weapon technologies, the rationale for limiting freedoms holds that when national security is at stake, some exceptions must be allowed for governments in their attempt to apply censorship over the media. The boundaries of those exceptions, however, at times have seemed indefinite under that perspective.

⁵⁸ Livingston, 378.

⁵⁹ Ibid.

⁶⁰ Howard, interview by author.

*New York Times Co. v. United States*⁶¹ was one of the best examples symbolizing the government's attempt to restrict publications due to national security reasons. The case arose when Daniel Ellsberg, a consultant who had worked for the Pentagon, leaked a 47-volume "Top Secret" history of Vietnam War to *New York Times* reporter Neil Sheenan. On June 13, 1971, *the New York Times* began to publish a story titled: "Vietnam Archive: Pentagon Study Traces 3 Decades of Growing U.S. Involvement." Within 48 hours after publication, Attorney General John Mitchell asked the *Times* to stop the publication of those documents, but the newspaper chose to ignore his plea.⁶²

The Nixon Administration then, through the Department of Justice, asked a federal judge to suspend the publication of the stories involving U.S. decision making in the Vietnam War. Judge Gurfein issued a temporary injunction halting the *Times'* publication of the stories. When the *Washington Post* began to publish the same story, a temporary restraining order became effective against this newspaper as well. This was the first time in United States history that "general circulation newspapers had been restrained by court order from publishing material that the government claimed would endanger national security."⁶³

The U.S. Supreme Court, moving with unprecedented speed, heard the case within 14 days and lifted the temporary injunctions, ruling against the government. In an unsigned *per curiam* decision, the Court's six to three decision said that the government

⁶¹ 403 U.S. 713, 91 S.Ct. 2140 (1971).

⁶² Teeter and Loving, 48-49.

⁶³ James Lofton, *The Press as Guardian of the First Amendment* (Columbia, SC: University of South Carolina Press, 1980), 258.

“carries a heavy burden of showing justification for the imposition”⁶⁴ of prior restraints and concluded that the burden had not met by the government in this case.

Justice William O. Douglas wrote a concurring opinion joined by Justice Hugo Black, and asserted Chief Justice Hughes’s opinion in *Near*: “The fact that liberty of the press may be abused...does not make any less necessary the immunity of the press.”⁶⁵ Justice Douglas continued: “The stays in these cases that have been in effect for more than a week constitute a flouting of the principles of the First Amendment as interpreted in *Near v. Minnesota** * *.”⁶⁶

Justice William J. Brennan Jr., although stating that “...the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture,” allowed the permissibility of prior restraints in an extremely narrow class of cases such as when the nation was at war or when troop movements might be endangered.⁶⁷

Justice Harlan, reflecting the general opinion of his fellow dissenters, said: “I cannot believe that the doctrine prohibiting prior restraints reaches to the point of preventing courts from maintaining the status quo long enough to act responsibly in matters of such national importance as those involved here.”⁶⁸

The decision of the U.S. Supreme Court in the so-called Pentagon Papers case can be deemed a victory for the press. But although the Court declared prior restraint unconstitutional, “it did not establish the absolutism of the First Amendment against all

⁶⁴ *New York Times Co. v. United States*, 403 U.S. 714, 91 S.Ct. 2141 (1971).

⁶⁵ *Ibid.*, at 724, 91 S.Ct. at 2146.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, at 725.

⁶⁸ *Ibid.*, at 674.

prior restraints.”⁶⁹ Even one of the most liberal members of the Court, Justice Brennan, recognized the permissibility of prior restraint by government when the nation was at war or when troop movements might be endangered. From that aspect, it seemed that the U.S. Supreme Court legitimized the government’s right to limit expression in wartime.

National security became a primary reason again when military used its censorship mechanisms on the publication of U.S. actions in Grenada (1983), Panama (1989), and in the Persian Gulf War (1991). News access was denied to the media during the U.S. Marines’ invasion of the Caribbean Island of Grenada in 1983. Media organizations hired private boats to go to the island, but when they approached, they were ordered to turn back by military.⁷⁰ Media complaints about the exclusion from Grenada incursion led to the designation of a “National Press Pool” which composed of sixteen pre-selected reporters who were ready to go a combat zone on a moment’s notice in a time of a military emergency. The Panama pool did not work very well, the sixteen reporters did not land in Panama on time, and even a year after Noriega surrendered, basic facts about the U.S. attack still were unknown.⁷¹

The debate over media access in wartime continued during the Persian Gulf War in 1991. Reporting of the Persian Gulf War was limited in accordance with the rules set by the Department of Defense. Only the members of selected media pools were allowed to report on combat. Pool members were required to share their products including videotapes. Before their dissemination, pool products were submitted for security review

⁶⁹ Friendly, *Minnesota Rag*, 177.

⁷⁰ Zelesny, 81.

⁷¹ Teeter, “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” 21.

checks in case of the risk of containing any sensitive information about the military.⁷²

“This was the first official wartime censorship since the Korean War.”⁷³ Malcolm Browne of the *New York Times* described the situation: “Few corpses were seen – in part because for the first time since World War II, correspondents must submit to near-total military supervision of their work.”⁷⁴ *Chicago Tribune* columnist Clarence Page said that Carol Rosenberg of the Miami *Herald* and Susan Sachs of *Newsday* were not allowed to cover the First Marine Division in the Persian Gulf because they were thought to have asked “rude questions” of Marine officers.⁷⁵

The Department of Defense tried to justify itself in imposing such restrictions by stating that “the rules were necessary to protect reporters’ physical safety, to prevent the release of information that might jeopardize soldiers, and to avoid having more than 1,000 free-roaming reporters physically hamper operations.”⁷⁶ The media, on the other hand, claimed that those restrictions were used to limit the quality and quantity of the information reported to the American public. The U.S. Supreme Court did not have a chance to address the questions involving military restrictions over the media. But looking at their previous rulings on the similar issues, it may be sensed that the members of the Court are more inclined to favor such military restraints if those restrictions claim to protect life and national security interests.

⁷² Zelesny, 82, and Livingston, 379.

⁷³ Livingston, 379.

⁷⁴ Malcolm Browne, “Conflicting Censorship Upsets Many Journalists,” *New York Times*, 21 Jan. 1991, p. A8, quoted in Dwight L. Teeter Jr.: “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” 21.

⁷⁵ Clarence Page, “Gulf between military, media is so wide that truth has been put into choke hold,” *Milwaukee Sentinel*, 22 Jan. 1991, p.8, quoted in Teeter: “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” 22.

⁷⁶ Zelesny, 82.

Following the September 11 terrorist attacks, the George W. Bush administration imposed strict controls on the media and restricted the media's access to report combat zones. Some media members claimed that "the media's access to American military operations [in Afghanistan] is far more limited than in any recent conflict."⁷⁷ On December 6, 2001, "Marines locked reporters and photographers in a warehouse to prevent them from covering American troops killed and injured by bomb north of Kandahar."⁷⁸ The Pentagon ordered American troops "to not allow photographers to transmit images of masked and chained prisoners in Afghanistan taken on January 10, 2002,"⁷⁹ and later the government discouraged news media outlets from airing videotapes of Osama bin Laden. The news media also were not permitted to travel with U.S. Special Forces during the fall campaign of military actions because Pentagon officials argued that "the covert, information-sensitive nature of this war made it impossible for reporters to accompany the Special Forces who did much of the early fighting."⁸⁰ As a result, the critical period involving "the buildup of American and alliance forces along the Afghanistan border following the September 11 attacks"⁸¹ and first wave of the United States attacks remained "a black hole, with little public knowledge or understanding of U.S. military actions in Afghanistan."⁸²

Today, the use of the Internet to make information public at a moment's notice has turned the application of prior restraint unlikely and ineffective in some situations.

⁷⁷ Michael Gordon of the *New York Times*, quoted in Nina J. Easton: "Blacked Out," *American Journalism Review* (March 2002): 38. Also see Leonard Downie Jr. of *The Washington Post*, quoted in Philip Taylor: "Pentagon unmuzzles media," *The News Media & The Law* (Winter 2002): 11.

⁷⁸ Philip Taylor, "Pentagon unmuzzles media," *The News Media & The Law* (Winter 2002): 13.

⁷⁹ Ibid.

⁸⁰ Nina J. Easton, "Blacked Out," *American Journalism Review* (March 2002): 39.

⁸¹ Taylor, 11.

However, military action in Afghanistan in late 2001 and early 2002 brought complaints from some quarters, as discussed above, about prior restraint by the military in over-controlling correspondents. Although courts of the United States today discourage prior restraint of the government, the issue is still alive, and it can appear under so many different masks that we cannot say that efforts to prevent prior restraint will ever result in whole success.⁸³

⁸² Easton, 37.

⁸³ Teeter and Loving, 71.

CHAPTER V

PRIOR RESTRAINT IN TURKEY

Printing came to the Ottoman Empire about the same time as in England. Ottoman people had no knowledge about printing until the end of the fifteenth century. Printing was first introduced to the Ottoman Empire by Jewish refugees from Spain. The first Jewish press was set up in Constantinople (Istanbul) around 1490, followed by the establishment of an Armenian press in 1567 and a Greek press in 1627.¹

Although a government allowed religious minorities to establish their printing presses, it put a ban on printing in Turkish or Arabic. This ban remained in effect until the beginning of the eighteenth century when Ibrahim Muteferrika, the founder and director of the first Turkish press, convinced the emperor (sultan) of the usefulness of printing. On July 5, 1727, the establishment of a Turkish press and the printing was permitted by a government with the exception of “the printing of the Koran, of books of on Koranic exegesis, traditions, theology and holy law.”² From that aspect, it can be said that government control was put in place even before the establishment of the first Turkish press.

The first non-religious book, the dictionary of Vankuli, was published in 1729 by Ibrahim Muteferrika. The press was temporarily closed in 1742, but reopened in 1784 when the development of printing in Turkey gained unstoppable momentum.³ At the end of the eighteenth century, the impact of the French Revolution was largely felt in the land of the Ottomans, including on the press. The ideas behind the French Revolution were

¹ Bernard Lewis, *The Emergence of Modern Turkey* (London, Oxford: Oxford University Press, 1968), 50.

² *Ibid.*, 51.

³ *Ibid.*

new to Ottoman people, who wanted to see a model showing the power of the public. During that time, a large number of French publications, including newspapers, pamphlets, and bulletins were circulated in the Ottoman Empire.⁴

The first Turkish newspaper, the *Takvim-i Vekayi* [Calendar of Events], was established in 1831. The central government limited the contents of this newspaper to “a reproduction of official appointments, extracts of judicial trials, and pompous descriptions of the Sultan’s progress on state occasions.”⁵ The publication house of the newspaper, Takvimhane-i Amire [The Director of Calendar], was required to get a license from a government to continue printing.⁶ Similar to early England, printers of the Ottomans had to take a license from government to operate. In other words, prior restraint was at work in the Ottoman Empire as in England in the form of licensing by government.

In 1845, the “Police Regulation Act” was issued. Article 13 of this Act gave a privilege to the Police Organization to put pre-publication censorship on the press: “any printing material, if had a character to destroy general order and morals, can be censored and confiscated prior to their publication.”⁷

The Regulation of Publication Houses Acts of 1854 and 1856 were issued because of the increase in the number of private publication houses. These regulations again stated the requirement to get a license to open a publication house and to print, but added

⁴ Ibid., 64.

⁵ Charles White, quoted in Lewis, *The Emergence of Modern Turkey*, 95.

⁶ Translated and paraphrased by the author from Alpay Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present] (Istanbul: Gazeteciler Cemiyeti Yayinlari 29, 1990), 15.

⁷ Translated and paraphrased from the Turkish by the author from 1845 Tarihli Polis Nizami [The 1845 Police Regulation Act], quoted in Kabacali, 15-16.

one more thing: “every private house should give a financial deposit to the government proportional to their annual investment.”⁸ This new requirement obviously stemmed from concerns of a government due to decreasing investment of state publication houses in the context of the increasing number of private presses.

The 1857 Regulation of Publication Houses Act stated the restrictions over press in a more orderly way and clearer language. Article 3 of the 1857 Regulation said: “the permission to open publication house and to print will be given after the security check reviews of the Council of Education and Police Organization, and if they are decided not having a character to harm the state.” Article 4-6 said: “minorities who live on Ottoman soil cannot be allowed to print books and newspapers if they do not have a license,” and article 7 said, “anybody who violates the stated requirements will be punished, and their publications will be confiscated.”⁹

In 1858, Matbuat Mudurlugu [the Directory of Printing] was established by government and its members were employed in issuing licenses to newspapers for printing.¹⁰

In the years following the establishment of the first Turkish newspaper the *Takvim-i Vekayi* [Calendar of Events], two other newspapers began publication, the semi-official the *Ceride-i Havadis* [Journal of News] in 1840, and non-official the *Tercuman-i Ahval* [Interpreter of Conditions] in 1860. The *Ceride-i Havadis* was established by an Englishman William Churchill, and it played an important role in making the Turkish

⁸ Translated and paraphrased from the Turkish by the author from 1854 and 1856 Tarihli Basimevleri Iradeleri [The 1854 and 1856 Publication Houses Regulation Acts], quoted in Kabacali, 17.

⁹ Translated and paraphrased by the author from Kabacali, 19.

¹⁰ Ibid., 22.

reader familiar with the news and features and in training a generation of journalists and printers.¹¹ Capanzade Agah Efendi, on the other hand, was the founder of the *Tercuman-i Ahval*, which was accepted by many as the starting point of real Turkish journalism in the Ottoman soil. Ibrahim Sinasi, who would be one of the first libertarians who discussed the concept of freedom of the press in later years, served as an editor and writer of the *Tercuman-i Ahval*.¹² From official records, it appears that these two newspapers began publication under licenses from the government.¹³

Ibrahim Sinasi was a poet and journalist. He was the son of an artillery officer, and in his student years, he stayed in France for four years as a part of a Turkish student mission to Paris. When he returned to Turkey, he entered government service as a member of the newly created Council of Education. During his career there, he was not viewed favorably because of his Westernized appearance (shaved skin without a beard, where a bearded face was the common style in Ottomans at that time) and thoughts. In the 1860s, he began to develop an interest in literature and journalism. In 1862, he edited the *Tasvir-i Efkar* [Illustration of Opinion], his own journal, which played an important role in the development of intellectuality in the country. In 1865, his fear of official anger caused him to leave for Paris again. He returned to Istanbul in 1869, and died there in 1871.¹⁴ Although Sinasi's political ideas were somewhat cautious and tentative, his

¹¹ Lewis, *The Emergence of Modern Turkey*, 147.

¹² Ibid.

¹³ Translated and paraphrased by the author from Kabacali, 25.

¹⁴ Lewis, 136-37.

writings advocated freedom from oppression and tyranny, and described “life, property, and honor” as “the candles of our hearts.”¹⁵

Ziya Pasa was the other libertarian who talked about the value of “freedom” in the columns of the *Tercuman-i Ahval* [Interpreter of Conditions]. He was the son of a clerk in the customs house. Ziya Pasa began the civil service when he was seventeen, and in 1854, he was appointed third secretary to the Sultan. During that period, he began to study French, and in a short time, he became an expert translator of French books into Turkish. Like Sinasi, he was not liked in his governmental career, and eventually was removed from his official position. Ziya Pasa then joined, along with others, in the formation of Young Ottoman Movement. From 1867 to 1872, he was first exiled to Paris, then London, and eventually to Geneva. During his years as an exile, he wrote some of his strongest criticisms about Sultan and his ministers.¹⁶ As a result of his article that criticized education in the Ottomans, the *Tercuman-i Ahval* was closed by government for two weeks- by becoming as the first precedent in Turkey for government suppression of a newspaper.¹⁷ One of Ziya Pasa’s most prominent ideas was constitutional government. He was allowed to return to Turkey in 1876, and he died in Adana in 1880.

The concerns of the Ottoman government continued to grow as a result of a rapid increase in the number of presses. Within this environment, the first press law was adopted and put into effect on January 1, 1865. With this law, a Press Commission was

¹⁵ Sinasi, *Türk Klasikleri* [Turkish Classics] (Istanbul: Varlık Yayinlari, 1952), 6, quoted in Bernard Lewis: *The Emergence of Modern Turkey*, 137.

¹⁶ Lewis, *The Emergence of Modern Turkey*, 138.

¹⁷ Ibid., 148.

established, which would sit at the Sublime Porte* and support the police courts in the enforcement of regulations.¹⁸ The first press law brought strict conditions for the conduct of the press, including “anybody who wishes to establish a newspaper should get a license, and in order to deserve a right to get a license, people with Ottoman nationality should be more than thirty-years old and should not have any committed crime in accordance with the Turkish Penal Code, people who have from different nationalities should not have press crimes, and the licenses given can be taken back any time.”¹⁹ This law remained in effect for 45 years, until 1909.

In the 1860s, the concept of freedom of expression and press began to be recognized through the efforts of four brave men: Ibrahim Sinasi, Ziya Pasa, Ali Suavi and Namik Kemal. They were the first ones to criticize the government in the newspapers of that time and to strive for the development of constitutional reform. Their first attempt was to establish a secret society in Poland, beginning with just six people, but the society gradually came to have 245 members.²⁰ This secret society named itself as “Yeni Osmanlilar [Young Ottomans],” and published its first newspaper called *Hurriyet* [Freedom] in 1868. In 1870, Namik Kemal, one of the founders of the *Young Ottomans Society* and the editor of *Hurriyet*, returned to Istanbul and took over the newspaper *İbret* [Admonition] in 1872. He created the play *Vatan yahut Silistre* [Fatherland or Silistria], with the theme of patriotism, a new concept to a Muslim. After a report of this play in

* The office of Grand Vezir. Grand Vezir refers to “Prime Minister.”

¹⁸ Lewis, 149.

¹⁹ Translated and paraphrased from the Turkish by the author from 1865 tarihli Basın Kanunu [The 1865 Press Law], quoted in Kabacalı, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 26-27.

²⁰ Lewis, 152-153.

İbret, Namik Kemal was exiled to Cyprus under close arrest, and his newspaper *İbret* was closed, “on the grounds of irresponsibility, sedition, and impudence.” Kemal’s imprisonment continued until 1876.²¹

Namik Kemal is deemed as the most gifted one among those literary innovators. He was born in Tekirdag in 1840, as a son of an aristocratic family. During his education, he learned French, Persian and Arabic. He assumed a position in the Translation Office of the Customs at the age of seventeen, then was appointed to the Sublime Porte. In the 1860s, he began to be influenced by Sinasi, and when Sinasi left for France in 1865, he took over Sinasi’s journal, the *Tasvir-i Efkar*. The second Polish revolution in 1863-4 and the Civil War in the United States helped to improve his skills as a political journalist and essayist. His essays on Ottoman affairs caused trouble with government authorities, and eventually resulted with his leaving for Europe in 1867, along with Ziya Pasa and other Young Ottomans. During his three years as an exile in London, Paris, and Vienna, he published opposition journals in which he advocated two characteristic ideas of the French Revolution: freedom and fatherland.²² He was the first to correlate human rights and parliamentary government in the Ottoman Empire, the first to achieve a clear vision of freedom and self-governance. He advocated political rights of the citizen, which government should respect and safeguard.²³ In 1871, he returned to Turkey and resumed his journalistic activities. In 1873, after a crisis as a result of his patriotic play *Vatan yahut Silistre*, he was exiled to Cyprus, where he stayed for three years. In 1876, he was

²¹ Ibid., 158, 159.

²² Ibid., 141.

²³ Ibid., 143.

allowed to turn back to Turkey after the Sultan Abdulaziz was deposed. He died in Chios in 1888.²⁴

On 10 May 1876, a famous “censor regulation” was put into effect. With this regulation, pre-publication censorship of newspapers by authorized government agents was authorized. Following passage of the 1876 censor regulation, protests of newspapers started. For example, the newspaper *Sabah* [Morning] was published by leaving its censored parts blank to protest this regulation. This type of protest became precedent for the newspapers that wanted to show readers the existence of government suppression.²⁵

On 31 August 1876, Abdulhamid II became a sultan of the Ottoman State, and the bitterest censorship period began. At first, he seemed supportive of human rights when he declared the first constitution of Ottomans, Kanun-i Esasi, on 23 December 1876. This first Ottoman constitution was similar to the Belgian constitution of 1831 in regard to its promulgation by the sovereign power. The Sultan delegated his executive power when he appointed Mithad Pasa as the Grand Vezirate.²⁶ On March 19, 1877, the first Ottoman parliament met. But it did not take long for Sultan Abdulhamid to reveal his real personality. He first dismissed Mithad from the Grand Vezirate and ordered him to leave the country. Sultan Abdulhamid tried to justify this action by taking power from an article 113 of the new constitution, “which authorized the Sultan to expel from the territory of the Empire those who, as a result of trustworthy information gathered by the police administration, are recognized as dangerous to the security of the state.”²⁷ Then by

²⁴ Ibid., 141.

²⁵ Translated and paraphrased by the author from Kabacali, 46.

²⁶ Lewis, 164.

²⁷ Ibid., 167.

using the Ottoman-Russian war of 1877 as an excuse, he closed the first Ottoman parliament in 1878, basing that action on a privilege that was provided him by the constitution. The Parliament did not meet again for thirty years, and the famous Sultan Abdulhamid's dictatorship started.²⁸

During that period, the censorship was extended by government to almost all printed material from newspapers and books to price tags, bus tickets, and advertisements. Using the word "nose" in written materials was also forbidden for the reason that can remind readers of the Sultan Abdulhamid's big nose, as the forbiddance of the word "star," which could be a reference to Sultan's property, "Star Palace."²⁹

The period of Sultan Abdulhamid II witnessed the most brutal challenges against any libertarian ideas. In such an environment, some of the Young Ottomans set aside their ideals, while the others faced deportation, imprisonment, and death.³⁰ Deportation was the lightest punishment for those brave enough to publish censorable material. Namik Kemal, who was one of the leader of libertarians, first was jailed in Istanbul for six months, then deported to Chios for two years, and finally given a minor government position in Aegean Islands. He stayed there until his death on December 2, 1888. A night before he died, he received a government order forbidding him "to print or continue the history of the Ottomans on which he was then working."³¹

²⁸ Translated and paraphrased by the author from Kabacali, 48.

²⁹ Translated and paraphrased by the author from Suat Gezgin, "Turk Basinindaki Polemiklere Tarihsel Acidan Genel bir Yaklasim [The Historical Research of the Polemics in the Turkish Press]," *The Magazine of The University of Istanbul School of Communication* VIII (1998): 5.

³⁰ Lewis, 173.

³¹ Ibid., 172.

Another leader of Young Ottomans, Ali Suavi, attempted to organize protest aiming at overthrowing Sultan Abdulhamid II in 1878, but was caught and killed. The other protesters were either sentenced to death or to life imprisonment.³² With this object lesson, other likely protests against the Sultan were silenced, and Sultan Abdulhamid continued to be the sole ruler, unrestricted by any legal or social checks.

Ali Suavi, one of the founders of Young Ottomans Movement, had been the first to try to overthrow Sultan Abdulhamid. He was exiled to Europe, along with other Young Ottomans, in the 1860s. When he was an exile in London, he began to publish the newspaper *Muhbir* [Informer] on 31 August 1867. He was described as a “turbanned revolutionary and “man of the people.”³³ He advocated making religious reform the starting point for a revived Islamic state and law, but Ziya Pasa and Namik Kemal did not support his viewpoints. After *Muhbir* had been closed in London, Suavi moved to Paris and began to publish a new journal *Ulum* [Science].

In 1871, Namik Kemal and other Young Ottomans were allowed to return to Turkey but because of the ideological differences between them and Ali Suavi, Ali Suavi chose to stay in France. During that period, “he began to express, for the first time, the idea of a *Turkish* [loyalty] as distinct from an Islamic or Ottoman loyalty.”³⁴ His publication involving this thought reached to Turkey and received some attention from the Ottoman readers.³⁵ He returned to Turkey eventually after Sultan Abdulaziz was deposed. He soon formed a political committee in Istanbul, the so-called Uskudar (a

³² Ibid., 176.

³³ Ibid., 175.

³⁴ Ibid., 155.

³⁵ Ibid., 154-55.

region in Istanbul) Committee, which held its meetings in his house. He was killed during the protest aiming at overthrowing Sultan Abdulhamid in 1878.³⁶

The new Printing Houses Regulation Act was put into effect in 1888. This Act required all printing material to be licensed prior to publication. In 1895, the Act of 1888 was revoked, and the new one was declared. The 1895 Printing Houses Regulation Act brought stricter regulations by making the requirement of taking a license for every publication that entered to the Ottoman Empire from other countries. The government agency called “Encumen-i Teftis ve Muayene [The Surveillance Council]” was charged to review the publications prior to their approval for license.³⁷ The publications that were seized by the members of the government agency were burned and destroyed in an iron fence enclosure in the back yard of that agency.³⁸

The severity of censorship increased throughout the years under Sultan Abdulhamid’s reign, and as a result, most Turkish newspapers and books were published by the Young Turk exiles in England, Egypt, Switzerland and other countries because the fear of Sultan’s censorship made it impossible to publish on Ottoman soil.

The Young Turk Revolution was mainly “a patriotic movement of Muslim Turks, mostly soldiers, whose prime objective was to remove a fumbling and incompetent ruler and replace him”³⁹ by an able government which would function better so that it could protect the Empire’s interests. From their origins, the Young Turks were divided into two

³⁶ Ibid., 175-76.

³⁷ Translated and paraphrased from the Turkish by the author from 1888 and 1895 Matbaalar Nizamnameleri [The 1888 and 1895 Printing Houses Regulation Acts], quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 54-56.

³⁸ Translated and paraphrased by the author from Cevdet Kudret, *Abdulhamid Devrinde Sansur* [Censorship During the Period of Sultan Abdulhamid] (Istanbul, 1972), 21-24.

groups. The first one was the liberals, who advocated decentralization and autonomous rights of religious and national minorities. The second group was the nationalists, who defended a central authority and supported Turkish domination in the Ottoman land. The Committee of Union and Progress was the instrument of the nationalists.

Despite the repression of the government, the Young Turk movement continued to expand, and in 1906, it led to “the establishment of revolutionary cells among service officers in field formations.”⁴⁰ One of these organizations was the “Fatherland and Freedom Society.” Mustafa Kemal, the future founder of the Republic of Turkey, was one of the founders of the Society. The primary aim of these Young Turk officers was to overthrow the Sultan and his government in order to achieve the ideals such as freedom, the nation, and the constitution. Threatened by these recent developments, the Sultan challenged the Young Turks, but this time, he was unable to succeed.⁴¹

Young Turks reached their goal when the Sultan Abdulhamid II, in evident desperation, declared that the constitution was once again in force on July 23, 1908. Following that announcement, celebrations were held in the streets for days and nights to welcome freedom. In the first six weeks following the declaration of the second constitution, the number of newspapers and magazines skyrocketed by reaching the total of 200. Within that environment, the Parliament met again on February 6, 1909. Article 12 of the new constitution provided a statement that forbade prior restraint: “no written materials can be censored prior to their publication.” In addition to that, the actions of

³⁹ Lewis, 212.

⁴⁰ Ibid., 205.

⁴¹ Ibid., 205-207.

government for subsequent punishments of publications declined dramatically. It can be said that there was almost no censorship at all during that period.⁴²

On 12 April 1909, “the Committee of Union and Progress published a statement in the press reiterating that it was no longer a secret association, but had become an ordinary political party. The same night, an armed reactionary mutiny broke out.⁴³ The mutineers wanted the *Seriat* (canonical law) back, they did not want to see college-trained officers in the government. At the end, they were silenced by the army forces, which came from Macedonia. As a result of this “reactionary mutiny,”⁴⁴ a court martial was set to punish the protesters. A number of people who attended or provoked the mutiny were sentenced to death, and they were executed with public hanging.⁴⁵ Sultan Abdulhamid was deposed, and Mehmet Resad became the new sultan.

Following the army rebellion in April 1909, a new press law was issued on 16 July 1909. The new law contained 37 articles, and described press crimes and specified punishments. The 1909 Press Law did not allow censorship, but if any newspaper published material that put the state’s security in danger and provoked the public, the government could close this newspaper until a court trial about could be held.⁴⁶ In other words, there was no censorship, but prior restraint, as in the famous American case of *Near v. Minnesota* (1931).

⁴² Translated and paraphrased by the author from Kabacali, 83.

⁴³ Lewis, 215.

⁴⁴ The mutiny is called “31 March Incident” in Turkish history books, since the old-style Greek calendar was in use in that period.

⁴⁵ Sir Edwin Pears, *Forty Years in Constantinople* (London: 1916), 302-3, quoted in Bernard Lewis: *The Emergence of Modern Turkey*, 219.

⁴⁶ Translated and paraphrased by the author from Kabacali, 84-85.

Nationalism, under the leadership of the Committee of Union and Progress, diffused rapidly throughout the country. Mehmet Resad was aware of the power of the Committee of Union. By taking advantage of the new sultan's vulnerability, the Committee "made a clean sweep of the palace and put their own nominees into key positions there,"⁴⁷ besides its manipulation of other government appointments. Between 1909 and 1911, the Committee became the primary political force in the Ottoman Empire, "first through alliances with senior officers and elder statesmen, then through its own men in and behind the government."⁴⁸ When they won the general elections held in April 1912, they took the control of the country with an "obedient parliament and a submissive Sultan"⁴⁹ on their side.

The opposition against the Committee of Union and Progress and measures to silence those who opposed the Committee's supremacy began to grow in the following years. Hasan Fehmi was one of those who strongly opposed to the tyranny of the Committee with his articles in the newspaper *Serbesti*. Fehmi was mysteriously murdered on 5 April 1909, and he became the first martyr among Turkish journalists. Fourteen months later, on 9 June 1910, Ahmet Samim, the main writer of the newspaper *Sada-yi Millet*, was found dead. Following those deaths, Zeki Bey of the newspaper *Sehrrar* also was mysteriously murdered. Since those journalists objected to and criticized actions of the Unionists in their newspapers, it was widely believed that the Committee of Union and Progress was responsible for the murders of them.⁵⁰

⁴⁷ Lewis, 217.

⁴⁸ Ibid., 219.

⁴⁹ Ibid., 222.

⁵⁰ Translated and paraphrased by the author from Kabacali, 86.

In the period between 1911 and 1912, many newspapers were closed by the Committee of Union and Progress. *Sehrrar*, which was known as the spokesperson of the Liberal Union, gained a grim kind of record in the Turkish press history: it was closed 13 times, and reopened 14 times with different names between 28 April 1911 and 26 March 1912.⁵¹

Then in 1912, the Balkan War started, and suppression over the press increased. The Censorship Council was established during that period, and the military censor controlled all kinds of publications and communications. Military censorship continued with the entrance of the Ottoman Empire to the First World War in 1914 as an ally of Germany. In that year, the Censorship Regulation Act was issued. This Act brought censorship of the press by the military branch called “Harbiye Nezareti.” Article 50 of the Act stated that all the press was responsible to comply with the rules brought by the government. The ones which violated the established rules can be closed permanently, and their editors tried by the courts of martial law. Article 51 of the Act prohibited the publication of the closed publications under different names.⁵²

The regime of the Committee of Union and Progress ended with the defeat of the Ottoman Empire in World War I in 1918. With that defeat, the Unionist disbanded themselves. The defeat from World War I prepared the end of the Ottoman Empire. Now the lands of Ottomans were open to external enemies, and the Sultan’s administration was

⁵¹ “Translated and paraphrased from the Turkish by the author from “Bir ‘Evrak-i Muzirra’: *Sehrrar Gazetesi* [The Newspaper ‘Sehrrar’],” *Tarih ve Toplum* [History and Society] (January 1987): 37, quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 88.

⁵² Translated and paraphrased from the Turkish by the author from *Sansur Talimatnamesi* [The Censorship Regulation Act], *Matbaa-i Askeriye* [Military Publication], Istanbul, 1914, quoted in Alpay Kabacali:

unable to take any measures to prevent it. On July 2, 1918, Sultan Mehmet Resad died, and Mehmet Vahdettin became the new sultan. Sultan Vahdettin first appointed Ahmet Izzet Pasa as Grand Vezir, after the resignation of Young Turk ministers. Over time, Sultan Vahdettin, like his older brother Abdulhamid, started to take personal control of the country. He dissolved the Chamber of Deputies in December 1918, and made his brother-in-law Damad Ferit Pasa Grand Vezir. Damad Ferit Pasa served as Grand Vezir until October 1920. Damat Ferid was replaced by Ahmet Tevfik Pasa, who would become the last Grand Vezir of the Ottomans.⁵³

During those developments in Istanbul, the nationalist movement was growing in power in the Anatolia. The leader of this movement was Mustafa Kemal. Angered by the Sultan's passive policies in throwing the enemy coups out of Ottoman lands, Kemal and his supporters decided to take action and established a new government called the "Ankara government." The first action of the Ankara government was to declare the administration of the Sultan Vahdettin and his policies invalid, and then to throw the enemy--other countries including Italy, Greece, France, and Britain--out from the land with "Independence War." During that period, the press which supported the nationalist movement became the major target of censorship by the Sultan's administration. Then, the Ankara government organized the meeting of the Grand National Assembly on 23 April 1920 in Ankara, which issued a Treason Act, making it a crime to challenge the

Baslangictan Gunumuze Turkiye'de Basin Sansuru [Censorship of the Press in Turkey from its Origins to Present], 95-96.

⁵³ Lewis, 240.

legality of the Grand National Assembly.⁵⁴ The Treason Act of 1920 remained in effect until 25 October 1923.

When the Sultan realized that the Ankara government was gaining more power every day, he chose to flee on a British warship to Malta on 17 November 1922. Next day the Grand National Assembly declared him deposed. Now the road to independence was clear. On 29 October 1923, the Republic of Turkey was proclaimed, and Mustafa Kemal was elected as first president of the new Republic. He appointed Ismet Inonu as the first Prime Minister of Turkey.⁵⁵

After the declaration of the Republic in Turkey, Mustafa Kemal led to a series of revolutionary changes. First, the first Constitution of the Republic of Turkey was adopted in 1924. The new constitution of Turkey provided that legislative powers were held directly by Parliament, while only the President or the Council of Ministers could exercise executive powers. The 1924 Constitution also authorized independent courts to exercise judicial powers. After the promulgation of the first constitution, Mustafa Kemal led to “the abolition of the Caliphate and the banishment of all members of the Ottoman house from Turkish territory”⁵⁶ in March 1924 and to the establishment of independent courts for judicial function in April 1924. Then the new law issued in 1925 that required all people of the nation to wear modern hats and clothes and that abolished the fez, Ottoman traditional hat. This was followed in 1928 by the establishment of the modern Turkish alphabet replacing the Arabic alphabet.

⁵⁴ Translated and paraphrased by the author from Kabacali, 107-108.

⁵⁵ Lewis, 261-262.

⁵⁶ Ibid., 264.

Pressure on the stability of the Turkish government escalated on 13 February 1925, when the Kurdish rebellion began in the eastern part of the country. After silencing the uprising, *Takrir-i Sukun* [the Law for the Maintenance of Order] was declared through the Assembly, giving extensive powers to the government. The statute had only one item, and this item gave direct power to the government in silencing any action which had the tendency to destroy the order and security of the nation.⁵⁷ This law also authorized the government to set up independence tribunals whenever it wished to try the criminals.

On 3 May 1925, the new Censorship Regulation Act was issued. Article 15 of the Act stated that all newspapers and magazines in the regions where the Law for the Maintenance of Order was effective were subject to censorship prior to publication. With this Act, prior restraint came to Turkey one more time, and newspaper closings had again begun. First, *Tevhid-i Efkar* [Promise of Opinion], *Son Telgraf* [The Last Telegraph], *Istiklal* [Independence] and *Toksoz* [Filled Word] were closed with the order of Ministers' Council in Istanbul, followed by *Millet* [Nation], *Presse de Soir* again in Istanbul, *Yoldas* [Colleague] in Bursa, *Dogru Oz* [True Essence] in Mersin, *Kahkaha* [Laugh] in Trabzon, *Sayha* [Sayha] in Adana, and at last, *Tanin* [Dawn] and *Vatan* [Fatherland] in Istanbul were closed.⁵⁸

The period of the Law for the Maintenance of Order (*Takrir-i Sukun*) lasted five years ending in 1930. However, the government's power to establish independence

⁵⁷ Translated and paraphrased from the Turkish by the author from 1925 Tarihli *Takrir-i Sukun* [The Law for the Maintenance of Order of 1925], madde 1 [Article No.1], quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 114.

⁵⁸ Translated and paraphrased by the author from Kabacali, 115.

tribunals remained in effect until 1949. During the period between 1925 and 1930, almost all publications opposed to government policies were silenced. But with the end of this period, the opposition press began to increase its publications. Mustafa Kemal was aware of and concerned about the disturbing effect of intolerance on the press. Therefore, in the beginning of 1930, his government showed some tolerance by allowing the publication of opposition newspapers including *Son Posta* [Last Post] and *Yarin* [Tomorrow].⁵⁹

The beginning of the fortunate period for the press, however, was disrupted when another unfortunate development threatened Turkey: the impact of totalitarian regimes in Europe increasingly was felt in Turkey. In response to this pressure, restrictions over the press started again. Those restrictions mostly were in the form of statutes forbidding criticizing the government and its policies. On July 25, 1931, a new Press Law was accepted. The law was composed of total 70 articles and its 50th article brought the most important and most applied restriction over years: “Publications which put nation’s security in danger can be closed temporarily by the Ministers’ Council. Publications closed this way cannot be reissued with different names during the closing period.”⁶⁰ Article 51 of the same law also gave the Ministers’ Council a power to stop the distribution of publications which entered Turkey from other countries.⁶¹

On 27 June 1938, with changes of 8 articles of the 1931 Press Law, the restrictions over the press increased. A change in the 9th article brought the requirement

⁵⁹ Translated and paraphrased by the author from Zekeriya Sertel, *Hatirladiklarim* [My Memoirs], 3rd ed. (Istanbul, 1977), 191-192.

⁶⁰ Translated and paraphrased from the Turkish by the author from 1931 Matbuat Kanunu [The 1931 Press Law], madde 50 [Article No.50], quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 128.

⁶¹ Ibid., madde 51 [Article No.51].

of a financial insurance letter provided from the national bank for those who intended to publish a newspaper. Changes in 12th and 21st articles brought the requirement of not having a bad reputation for newspaper owners. A change in article 38 in effect decentralized prior restraint. It required journalists who intended to write about rebellious events occurring in institutions such as schools or universities to get permission of the responsible manager of that institution before writing about that event.⁶²

On November 10, 1938, Mustafa Kemal, the founder of the Republic of Turkey died. Next day the Grand National Assembly voted to appoint Ismet Inonu as the new president of Turkey. There was no direct censorship over the press during the 1940s, but the Ministers' Council almost every day had given ultimatums to newspapers, and those which chose not to comply with those ultimatums had faced closings.⁶³ On April 24, 1940, one statement was added to article 30 of the 1931 Press Law: "the history of Turkey cannot be interpreted except by official opinion."⁶⁴ The government had even taken possession of the nation's history.

During World War II, although Turkey remained neutral, the restrictions over the press again increased, including prior censorship of telegrams sent by foreign journalists to their newspapers, in order to protect government secrets.⁶⁵

⁶² Translated and paraphrased by the author from Kabacali, 133.

⁶³ Ibid., 136.

⁶⁴ Translated and paraphrased from the Turkish by the author from 1931 Tarihli Matbuat Kanunu [The 1931 Press Law], madde 30 [Article No.30], quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 129.

⁶⁵ Translated and paraphrased by the author from *The Aksam* [The Evening], 1 May 1947, quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 149.

The end of the World War II was celebrated all around the world as the coming of freedom. In 1946, one-party rule ended in Turkey and the first step to multi-party parliamentary government was achieved. In the same year, the Republican People's Party, the party that had held power since 1923, won the first multi-party election. Following that, on June 13 1946, a change was made in article 50 of the 1931 Press Law by giving power to courts to close the newspapers for periods ranging from one month to two years.⁶⁶

On 10 June 1946, the Journalists Council was established by journalists, and Sedat Simavi was chosen as the first president of that Council. The Journalists Council celebrated 24 July 1948 as the 40th anniversary of the removal of the first censorship and declared that day as the "Journalists Day." In 1948, the government announced that anti-democratic articles of the 1931 Press Law would be changed. With this aim, a report was prepared with proposed changes, but before it was discussed in the Grand National Assembly, the election was held nationwide on 14 May 1950, and the Democrat Party won the election.⁶⁷

The victory of the Democrat Party was recognized by the press as the starting point for new hope, and seen as an opportunity to address grievances felt during the 27 years of People's Party ruling. The Democrat Party had promised to secure freedom of the press, and it did pass a new press law in 1950. The press law of 1950 is still in effect in Turkey in 2002, although with some changes and provisions made in later years. This

⁶⁶ Translated and paraphrased by the author from Hilmi Uran, *Hatırladıklarım* [My Memoirs] (Ankara, 1959), 459, quoted in Alpay Kabacalı: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 158.

⁶⁷ Translated and paraphrased by the author from Kabacalı, 162-163.

law lifted the powers of the governments over the press that was provided by the 1931 Press Law. The most important item of the 1950 Press Law was removing the requirement on the press to get permission from the government prior to the publication. The only requirement left was to notify the governor of a province of the beginning of a new publication.⁶⁸

The peaceful situation between the government and the press, however, lasted only two years. When the opposition press critical of the majority party increased its publications, the government began to restrain press freedom, which it once promised to secure, with a number of provisions that included heavy punishments for press crimes. Those provisions generally made it a crime to publish anything that would damage the order of the state and cause the panic among the public, or that talked about the disagreements among the members of the political parties.⁶⁹ Democrat Party also put some economic restrictions over the press during that period, by holding the paper monopoly in its hand. The Party was also the monopoly for official ads, so the newspapers which desperately needed the advertisements to survive, had to develop good relationships with the government.

The restrictions over the press in the period between 1954 and 1960 were almost as severe as the ones in the Sultan Abdulhamid period (1876-1909). Because of the censorship that came at the last moment before the publication, many newspapers' front

⁶⁸ Translated and paraphrased from the Turkish by the author from 15 Temmuz 1950 Tarihli Basın Kanunu [The Press Law of July 15, 1950], quoted in Mehmet Semih Gemalmaz and Osman Doğru: Türkiye'de Basın Özgürlüğü Mevzuatı [The Regulations Concerning Press Freedom in Turkey] (Istanbul: Hürriyet Ofset Matbaacılık, 1990), 106-113.

⁶⁹ Translated and paraphrased by the author from Hifzi Topuz, *100 Soruda Türk Basın Tarihi* [Turkish Press History in 100 Questions] (Istanbul, 1973), 188.

pages were blank. For example, the headline of one of the most prominent newspapers in the country, the *Cumhuriyet*, was blank in its issue of 19 December 1959.⁷⁰

The struggle between the Republican and Democrat Parties resulted in a military intervention on 27 May 1960. The Democrat Party was overthrown, and on behalf of the military coup, Milli Birlik Comitesi [the National Unity Committee] took over the administration. The Committee dissolved the Turkish Grand National Assembly and claimed the legislative power. During the period from 1960 to 1961 under military rule, the provisions that brought heavy charges for the press crimes were removed, and direct censorship was prohibited. However, advocating to overthrow the government still remained as a crime.

Although the National Unity Committee prohibited direct censorship, some actions to limit press freedom still were in force. The Act No. 7648 gave the Committee, which was composed of 15 members of the Grand Assembly, a power to censor the publications whenever it felt to be necessary. The Act stated that the publication of newspapers which do not comply with the rules of the government can be stopped, and their distribution can also be prevented. If they continue to publish, they can be closed.⁷¹

In July 1961, a new constitution of Turkey was adopted, and in October 1961, the military transferred the control back to civilians. The second chapter of the 1961 constitution included the provisions about the press. Article 22 of the Constitution stated: “The press is free, and shall not be censored.” But then the same article continued by listing some restrictions:

⁷⁰ Translated and paraphrased by the author from Kabacali, 179.

⁷¹ Ibid., 182.

Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by a decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law...

Article 23 stated that the publication of newspapers and magazines shall not be subject to prior permission or to the deposit of a financial guarantee. Article 24 provided the same thing for the publication of books and pamphlets.⁷²

The increase in terrorism and university riots over a number of years resulted in the declaration of martial law in 11 cities of Turkey on 12 March 1971. About two months later, on 13 May 1971, the Law for the Maintenance of Order No. 1402 was issued. This law gave privileges to the martial law generals to make a search on private property, to close down political parties and organizations, to censor communications, to control the press, and to close publication houses without showing any reason.⁷³ The government also issued the Act No. 1488 on 22 September 1971. With this Act, the 1961 Constitution's articles from 22 to 27, which secured the freedom of press, were changed.

⁷² Translated from the Turkish by the author from 1961 T.C. Anayasasi ilgili hukumleri [The 1961 Constitution of Turkey].

⁷³ Translated from the Turkish by the author from 1402 Sayili Sikiyonetim Kanunu [The Law for the Maintenance of Order No. 1402] (1971), quoted in Mehmet Semih Gemalmaz and Osman Dogru: *Turkiye'de Basın Ozgurlugu Mevzuati* [The Regulations Concerning Press Freedom in Turkey] (Istanbul: Hurriyet Ofset Matbaacilik, 1990), 161.

When the previous form of Article 22 gave a judge a power to suspend the distribution of publications, a new version of the article gave this power to prosecutors.⁷⁴

During the period of Law for Maintenance of Order in 1971, strict restrictions applied on the press in Turkey. Many journalists and writers were arrested in that period including the prominent journalists of the late twentieth century, such as Dogan Kologlu, Ugur Mumcu, Can Yucel, Ilhan Selcuk, Oktay Kurtboke, Yasar Kemal, Cetin Altan, Ilhami Soysal, and Altan Oymen.⁷⁵ They remained in prison for periods ranging from one week to eight months. During the same period, newspapers were also closed 39 times temporarily and permanently. As a result of these restrictions, the number of newspapers decreased significantly.⁷⁶

Ugur Mumcu, one of the prominent journalists arrested and imprisoned during the 1970s, was born in Kirsehir in 1942. He was graduated from the Ankara University Law School in 1966. He began writing in a daily *Cumhuriyet* [Republic] in 1974. He was known for his acerbic political writings. On 24 January 1993, he was killed in an assassination.⁷⁷ As of 2002, his murderers had not been apprehended.

Ilhan Selcuk, another prominent journalist of today, was born in Aydin in 1925. He was graduated from the Istanbul University Law School in 1950. His first writings

⁷⁴ Translated from the Turkish by the author from 1488 Sayili Yasa [The Act No.1488] (1971), quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 197.

⁷⁵ Translated and paraphrased by the author from Kabacali, 198.

⁷⁶ Translated and paraphrased by the author from *Uluslararası Hukukcular Birliği Türkiye Raporu 1971-1973* [The Turkey Report of International Lawyers Organization 1971-1973], Ceviren [Translated and edited by] Ince Pehlivan (Istanbul, 1973), quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 199.

⁷⁷ Translated and paraphrased from the Turkish by the author, "Ugur Mumcu," www.biyografi.net (2001).

appeared in a humor magazine *41 Bucuk* [Forty-one and a half] in 1952. From 1963 and into the twenty-first century, he has been writing in a daily *Cumhuriyet*.⁷⁸

Yasar Kemal was born in Adana in 1923. He started writing when he was in a secondary school. In the last year of a secondary school, he quit and began working in various places as a janitor and a laborer. During that period, five books of his poems appeared. He moved to Istanbul in 1951, and began writing for a daily *Cumhuriyet*. He published his first novel, *Ince Memed*, in 1955. He won an award from Varlik Publishers for *Ince Mehmed* [Thin Mehmed]. His novel, *Yer Demir Gök Bakır* (The Earth is Iron, the Sky is Copper) was selected as the best international novel in France in 1977. He was honored with Legion D'Honneur medal in France in 1984. His writings were published in 29 languages. His theme of the novels and poems was mostly concerned with the life of poor people in Cukurova (a region in Mediterranean part of Turkey) and their sufferings.⁷⁹

Cetin Altan was born in Istanbul in 1927. He was graduated from Ankara University Law School. He began his journalistic life as reporter for a daily *Ulus* [Nation] in 1946. He served as the governor of Istanbul between 1965 and 1969. He wrote for prominent newspapers including *Milliyet* [Patriotism], *Aksam* [Evening], and *Hurriyet* [Freedom]. He is in 2002 writing for another prominent newspaper *Sabah* [Morning]. He is the father of two other important journalists of Turkey today: Mehmet Altan and Ahmet Altan.⁸⁰

⁷⁸ Translated and paraphrased from the Turkish by the author, "Ilhan Selcuk," www.biyografi.net (2001).

⁷⁹ Translated and paraphrased from the Turkish by the author, "Yasar Kemal," www.biyografi.net (2001).

⁸⁰ Translated and paraphrased from the Turkish by the author, "Cetin Altan," www.biyografi.net (2001).

Over the years, struggles between fanatics of the left and right wings and university riots brought Turkey to the edge of civil war. Martial law was declared one more time on 12 September 1980. Five generals took all the authority and named themselves the “National Security Council.” Those years were one of the most tragic periods for the press. Besides the control of the martial law, those five generals took upon themselves a privilege of directly controlling the press. Press freedom was suspended with the application of political, legal, and economical restrictions at the same time. This military government allowed the press to print only those stories approved by this government. Prior restraint was a common restriction of the period, and all the newspapers were reviewed by the martial law agents--censors-- every day before their publication. If some of those newspapers were found harmful, they could be closed, their distribution could be suspended, and their editors could be arrested. Among the newspapers whose publications were suspended were *Cumhuriyet* [Republic], *Tercuman* [Interpreter], *Milliyet* [Patriotism], and *Hurriyet* [Freedom], the most prominent newspapers of those days and the early twenty-first century.⁸¹

In 1982, the National Security Council made an announcement of the referendum for the establishment of the Turkey’s new constitution, adding that that a white color vote would symbolize “accept,” and blue color vote symbolize “reject” the constitution. Following that announcement, the Council passed Provision No. 7 and propaganda for “yes” or “no” to the new constitution was prohibited. Newspapers were prohibited even from talking about the color blue.⁸²

⁸¹ Translated and paraphrased by the author from Kabacali, 210-13.

⁸² Ibid., 215.

Within that atmosphere, the new constitution of Turkey, in effect in 2002, was proclaimed on November 7, 1982. The 1982 Constitution was similar to the 1961 Constitution with some minor changes. In the 1982 Constitution, as in the 1961 Constitution, Chapter 2 included the basic guarantees for freedom of expression and freedom of the press. Article 25 stated: “Everyone has the right to freedom of communication.” Article 29 prohibited prior restraint: “Publications of periodicals or non-periodicals shall not be subject to prior authorization or to the deposit of a financial guarantee.”

In a section called “Freedom of the Press,” Article 28 secured the press freedom and again prohibits prior restraint by stating:

The press is free, and shall not be censored. The establishment of a printing House shall not be subject to prior permission and to the deposit of financial guarantee...The State shall take the necessary measures to ensure the freedom of the Press and freedom of information.

But then the same article continued, keeping the same restrictive statement taken from the 1961 Constitution: “Anyone who writes or prints any news or articles which threaten the integral or external security of the State...shall be held responsible...Distribution may be suspended...by a decision of a judge...

Article 28 set went on by setting additional restrictions:

Periodical and non-periodical publications may be seized by decision of a judge in cases of ongoing investigation or prosecution of offenses prescribed by law....

Periodicals published in Turkey may be temporarily suspended by court

sentence if found guilty of publishing material which contravenes the invisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals...

Article 30 of the 1982 Constitution provided further guarantees for freedom of the press but also noted some exceptions:

A printing press or its annexes duly established as a printing house under law shall not be seized, confiscated, or barred from operation.... except in cases where it is convicted of offences against the indivisible integrity of the State with its territory and nation, against the fundamental principles of the Republic or against national security.

Although the freedom of the press seemed to be protected with a series of principles set forth in the constitution, the exceptions to those guarantees were broad enough to cause some press restrictions in the following years. According to one account, between 12 September 1980 and 12 March 1984 there were 181 journalists and writers who were arrested and charged with violation of the stated principles of the constitution. Another news item noted that 404 charges were brought against the editors and writers of four newspapers and twenty magazines. Charges against 32 persons were upheld by the courts, and they were sentenced to 2500 years in jail.⁸³

⁸³ Translated and paraphrased by the author from "Basin 1980-84 [Press between 1980 and 1984]," *Cagdas Gazeteciler Dernegi Yayini* [The Publication of the Organization of Modern Journalists], Ankara (1984): 197-230, quoted in Kabacali: *Baslangictan Gunumuze Turkiye'de Basin Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 221.

The military returned the government to civilian control in 1983. In the same year, the Motherland Party won the elections as the majority party, and this party's leader Turgut Ozal became the Prime Minister of Turkey.

A State of Emergency Act which issued on 25 October 1983 brought further limitations over the press. Article 11 of the Act provided that when a state of emergency exists, the printing, publication and distribution of newspapers, magazines, pamphlets and books can be stopped, seized, or required to get a permission in order to secure the general order and to prevent violent actions.⁸⁴

In addition to the Constitution and the Act of a State of Emergency, press freedom was limited by the Press Law of 15 July 1950 No.5680, which was amended on November 10, 1983, and still in effect in 2002. With the new amendments, punishments for press crimes were increased. The new version of the 1950 Press Law (Press Law No. 2950) also stated that a public prosecutor, without securing a court order, can stop the distribution of any publication containing material that constitutes an offense against the state and that reveals government secrets. After distribution has been stopped, a public prosecutor should apply to a state security court in 24 hours for an order approving his action. The public prosecutor can also seize publications already distributed. In the case of a state of emergency, the government can also ban the published material.⁸⁵

⁸⁴ Translated and paraphrased from the Turkish by the author from 25 Ekim 1983 tarihli 18204 sayılı Olganustu Hal Kanunu [A State of Emergency Act No.18204 of October 25, 1983], quoted in Mehmet Semih Gemalmaz and Osman Dogru: *Turkiye'de Basın Ozgurlugu Mevzuati* [The Regulations Concerning Press Freedom in Turkey] (Istanbul: Hurriyet Ofset Matbaacilik, 1990), 179.

⁸⁵ Translated and paraphrased from the Turkish by the author from 2950 Sayılı Kanun [Press Law No.2950], ek madde 1 (added Article No.1), quoted in Kabacali, 224.

The government in Turkey, based on the power given it under the re-instituted Constitution of November 7, 1982, and a series of laws enacted by the Parliament, continued to put pressure on press. Two incidents can explain what it meant for press to live under such pressure. In the first incident, the daily newspaper *Milliyet* was confiscated for publishing the first of a series of interviews with the head of the Kurdish Workers Party (the PKK), Abdullah Ocalan. The PKK has been carrying on guerrilla warfare in southeastern Turkey since 1984. Before the June 16, 1988 issue of the newspaper reached newsstands, police raided the printing plant and seized that issue. *Milliyet* was also forbidden to print further versions of the interview. Mehmet Ali Birand, a well-known journalist who conducted that interview, and the responsible editor of the newspaper, Eren Guvener, were both charged with making propaganda detrimental to feelings of patriotism.⁸⁶ They faced 15 years of prison sentence, but at the end of the trial before a state security court, they were acquitted.

In the second incident again in June 1988, police raided the Ankara bureau of the daily newspaper *Cumhuriyet* for publishing a story about the interrogation of Kartal Demirag, the man who had attempted to assassinate Prime Minister Turgut Ozal. Erbil Tusalp, the journalist who wrote the story, was first detained for four days. Then he was charged with violations of the Press Law and 14 years of prison time was asked for him by authorities.⁸⁷ At the end of the trial, he was found innocent and released.

The year 1989 was difficult for the press. That year broke a record for press trials, with 394 trials involving 16 daily newspapers. Of 394 trials, 183 of them were criminal

⁸⁶ *Paying the Price-Freedom of Expression in Turkey*, The Report of U.S. Helsinki Watch Committee, 1989, p. 4.

⁸⁷ *Ibid.*

trials, while the others were brought for monetary damages.⁸⁸ During 1989, daily newspapers *Sabah* [Morning], *Hurriyet* [Freedom], *Bugun* [Today] and *Yeni Nesil* [New Generation] whose circulations were about 1.5 million, were also confiscated by authorities for 10 times.⁸⁹

On 10 May 1990, the “Decree Regarding the Additional Cautions in a State of Emergency” was issued by the government. Article 1 of the Decree provided that printing, publication, and distribution of any material, which could destroy the order of the region where a state of emergency exists, and which could cause excitement among the public of that region, can be prohibited temporarily or permanently by the government. If it is felt necessary, the printing houses of those publications can be closed as well.⁹⁰

The government in Turkey started to ease its restrictions over the media after 1990, when the efforts to become a full member of the European Union became a priority. Following that, the press was gradually allowed to openly criticize the government and its policies. By 2002, then there is no prior restraint of books and newspapers, and no day-to-day censorship, resulting in the expansion of the areas in which free expression is permitted. However, some restrictions still remain. Although there is no prior restraint, every writer and publisher is responsible for the consequences of his or her efforts to publish. And those consequences can be severe, including the court

⁸⁸ Translated and paraphrased by the author from Yahya Kocoglu, *iletisim Arastirma* [Communication Research] (ILAD Bulletin), 1990, 3.

⁸⁹ Translated and paraphrased by the author from Kabacali, 236.

⁹⁰ Translated and paraphrased by the author from 9 Mayıs 1990 Tarihli 424 Sayılı “Siddet Olaylarının Yaygınlaşması ve Kamu Düzeninin Ciddi Şekilde Bozulması Sebebine Dayalı Olaganüstü Halin Devamı Süresince Alınacak İlave Tedbirlere İlişkin Kanun Hukmünde Kararname” [The Decree Regarding the Additional Cautions in a State of Emergency No.424 of May 9, 1990], quoted in Kabacali, 238-245.

cases for civil defamation.⁹¹ In addition to that, threats to national security and violations to the indivisible integrity of the State with its nation and territory are still the major reasons for limiting press freedom.

The 1982 Constitution of Turkey was amended on October 17, 2001, and 28 articles of the Constitution underwent some changes. The articles concerning freedom of the press were kept in their entirety, but a statement has been added to Article 28 which said, “No ban shall be placed on the reporting of events, except by the decision of a judge issued to ensure proper functioning of the judiciary, within the limits specified by law.” Similar to Turkey, the judges in the United States could issue restrictive orders called “gag rules” in order to provide proper functioning of judiciary. Between 1966 and 1976, “hundreds of restrictive orders were issued by courts against the news media.”⁹² But in 1976, the Supreme Court’s decision in *Nebraska Press Ass’n v. Stuart*⁹³ stopped such prior restraints on the news media. But despite this discouraging ruling of the Supreme Court, restrictive orders of judges against the news media still occur, if less frequently, and “will remain in force when they are issued unless challenged by journalists.”⁹⁴

Conclusion:

Prior restraint, as a form of media control, existed in the histories of both the United States and Turkey. Prior restraint was applied as licensing by the government in early England and in the Ottoman Empire. In both early England and in the Ottomans,

⁹¹ *Paying the Price*, 77.

⁹² Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 540.

⁹³ 427 U.S. 539, 96 S.Ct. 2791(1976).

⁹⁴ Teeter and Loving, 544.

royal families were in authority, and after the increase in the printing facilities, those royal families were established some government organizations, like the Stationers Company and the Star Chamber in early England, and like the Directory of Printing and the Press Commission in the Ottoman Empire, to regulate the licensing procedures on the press. At the same time, the Printing Acts issued by the government in early England, and the Regulation of Printing Houses and Press Laws in the Ottoman Empire became the primary legal devices of governments to put prior restraints over the media.

The licensing system expired in 1694 in early England. After the declaration of independence, Americans wanted to set forth some principles securing the freedom of expression and press in writing. They did so with the United States Constitution and its First Amendment in 1791. The First Amendment, by saying “Congress shall make no law...abridging the freedom of speech, or of the press...” provided a guarantee against the abuses by the government. No exceptions to this freedom were noted in the First Amendment of the United States.

On the other hand, the first Constitution of Turkey was proclaimed in 1924, after the declaration of the Republic of Turkey in 1923. The first Constitution of Turkey set out this principle to secure the press freedom: “Press is free, and shall not be censored.” But then noted a list of exceptions to this freedom such as expressions “which threaten the internal and external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets.” The same guarantee for press freedom and same exceptions to it was kept from the first Constitution of 1924 to the last Constitution of 1982 in Turkey. As noted, a very broad and vague standard was established for the protection of freedom

of press in Turkish constitutions. Nowhere in those Constitutions was there any statement that forbids abridging of freedom of press by a specific authority, like that in the First Amendment: “Congress shall make no law...abridging the freedom of speech, or of the press...” Because of the exceptions to press freedom stated in the Turkish Constitution, government in Turkey successfully was and still is able to put restrictions over the press.

When the First Amendment set out a basic principle for protection of freedom of the press, boundaries of this freedom were not drawn, and it was left to future generations for interpretation. In the United States, where the common-law tradition exists, the judiciary plays a central role in the interpretation of the First Amendment. The U.S. Supreme Court, the highest court of the United States, interpreted the First Amendment when it faced with questions of prior restraint over the media. The U.S. Supreme Court, however, allowed prior restraint of publications in cases where dealing with matters of “wartime security such as troopship movements, with obscenity, or with incitements to acts of violence and the overthrow by force of orderly government.” This was the famous *Near* decision of the Supreme Court where the basic exceptions to the “no prior restraint” rule were set forth.⁹⁵ Later, in its decision of the Pentagon Papers case, the Court ruled prior restraint unconstitutional, but again recognized some exceptions such as “when the nation was at war or when troop movements might be endangered.”⁹⁶

In Turkey, where a civil-law tradition exists, the judiciary is not central in developing the law. Instead, a series of laws enacted by the Parliament, including the press laws, draw the boundaries for the commitment to freedom of the press. Turkey

⁹⁵ *Near v. Minnesota*, 283 U.S. at 716, 51 S.Ct. at 631 (1931).

⁹⁶ *New York Times Co. v. United States*, 403 U.S. at 727, 91 S.Ct. at 2149 (1971).

experienced the system of martial law several times in its history. During those times, the Laws for Maintenance of Order were adopted, and they provided the pre-publication censorship of publications by government. In addition to that, a series of publication acts and press laws made the application of prior restraint possible in Turkey. The current version of the Press Law still gives a privilege to public prosecutor, without providing a court order, in stopping distribution of a newspaper which contains a material that constitutes “offense against the state” – a vague standard that includes political expression. One of the other regulations over the press, the laws issued during a state of emergency, also gave authorized agencies of the government the power to put previous censorship upon publications mostly because of national security reasons.

In 2002, applications of prior restraint are rare in both the United States and Turkey, although American battlefield correspondents in Afghanistan in 2002 might disagree. However, the rareness of prior restraint does not mean that the exceptions where prior restraint can be allowed have been removed. Especially after the September 11th, 2001, terrorist attacks on the United States, it is possible that the U.S. Supreme Court, if it is faced with situation involving prior restraint of a publication which threatens to reveal government secrets by putting national security in danger, can recognize some exceptions, as it did in the past.

The Turkish government, if it feels any danger against the national security, can put previous censorship over the press into effect even more easily than the United States by taking a power from the exceptions to press freedom recognized in the Turkish Constitution and in a series of laws, including the Press Law.

Thus prior restraint can come back to life at any moment in both countries. Threats to national security, as it was addressed in all Turkish constitutions, and in the laws concerning the press in Turkey, and as it was recognized by the U.S. Supreme Court in its rulings, is the primary reason for both governments to apply previous restraints over the press. Only the devices to apply this media control are different; in the United States through the judiciary, and in Turkey, through the Constitution and a series of laws as enforced by the Parliament.

The picture appearing at the end of our analysis of prior restraint in the United States and Turkey nicely fits to Professor Siebert's Proposition II explaining governmental control of the press. Professor Siebert suggested that "the area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase."⁹⁷ Consistent with this proposition, both Turkey and the United States, when they perceive an external or internal threat against the security and stability of their nations, were and are swift to increase the restraints on the press.

⁹⁷ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 10.

CHAPTER VI

SEDITIONOUS LIBEL IN THE UNITED STATES

In the struggle to silence their critics, governments long have used the crime of seditious libel as one of their most effective weapons. Seditious libel has been defined as criminalizing “expression attacking government’s form, laws, institutions, or officers.”¹ In the ages before us, many printers, journalists, and scholars have experienced what it meant to commit the crime of sedition sometimes by being mutilated, executed, and at other times by being forced to pay heavy fines or getting life imprisonment. A review of the battles over seditious libel from its beginning in early England and the Ottoman Empire to its current standing in the United States and Turkey is important to an understanding of sedition’s changing meanings.

Like the other ancient enemies of freedom, seditious libel had its origins in early England before the founding of the United States. The prosecutions for seditious libel were handled by the Court of Star Chamber in the late sixteenth century and early seventeenth centuries. Although the offenders could not be punished with death under the powers given the Star Chamber, they could suffer “fine, imprisonment and corporal punishment (pillory, whipping, branding, mutilation)”² in that period. The day of inflicting of the sentences of seditious libel generally was declared a public holiday by the Star Chamber so that the public could see how punishments were meted out. The Star

¹ Leonard W. Levy, *Legacy of Suppression* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1960), chapter 1 (1-17); Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel* (Chapel Hill: The University of North Carolina Press, 1986), 3; and Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 28.

² Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 121; and Levy, 11.

Chamber used public punishment to discourage future crimes and in that way, people also could see the seriousness of the crime of seditious libel.³ But the prosecutions of Leighton (1630), Bastwick, Burton, and Prynne (1637) showed that the Star Chamber was mistaken. Instead of discouraging the public, the prosecutions created a public sympathy for those men and helped lead to the abolition of the Star Chamber in 1641, along with the reason of growing unpopularity of controls on free discussion and the increase in political and religious dissatisfactions.⁴

But the abolition of the Court of Star Chamber did not mean the abolition of the law of seditious libel. The rules under which offenders were prosecuted were adopted in almost every aspect by the common-law courts and sometimes they were even extended. As Professor Siebert pointed out, “no single method of restricting the press was as effective as the law of seditious libel as it was developed and applied by the common-law courts” late in the seventeenth century.⁵

During that period, the term “sedition” had taken its widest meaning by being applied to any criticism of government in written or printed form. Governments after 1660 were not so stable to take the chance of tolerating the criticisms about them. Public opinion was growing in power every passing day, and the other remedies, such as the law of treason, remained limited to silence the growing power of public opinion. Under those circumstances, and with the expiration of the Regulation of Printing Act in 1694,

³ Rosenberg, 4; and Siebert, 125.

⁴ Siebert, 3.

⁵ Ibid., 269. Also see Rosenberg, 5.

sedition libel was considered as the most effective weapon to curb the criticisms against the government until the passage of the first Stamp Act in 1712.⁶

There were some changes in the reasoning of finding someone guilty of seditious libel from the period of the Star Chamber to the period of common-law courts. During the Star Chamber period where the juries were not existent, the judges were only to decide whether the publisher intended to publish the seditious words regardless of proving false or malicious intent. On the other hand, during the period of common-law courts, juries were present. So common-law courts adopted a new principle for determining a seditious libel. According to this new principle, it was jury's duty to decide whether the offender published the alleged seditious matter while judge's duty to determine both whether the matter was offensive and whether the seditious intent was present. This legal reasoning was employed throughout the eighteenth century until its change with the act by the Parliament in 1796.⁷

In the eighteenth century, Parliament also had authority to punish libels committed against itself and against the government as breaches of parliamentary privilege.⁸ During the first quarter of the eighteenth century, legal principles developed in the previous century, were applied for finding someone guilty of seditious libel. Beginning in the 1730s, juries began to rebel in the seditious libel cases and prosecutions began to fail. At about the same period, in England's New York colony, one seditious libel case became an emotional if not legal precedent for future generations.

⁶ Siebert, 271; and Levy, 13.

⁷ Rosenberg, 5-6; and Siebert, 273-74.

⁸ Siebert, 4; and Levy, 15-16, 20.

The case arose with the publication of attacks by James Alexander against the New York Governor William Cosby in John Peter Zenger's *New York Weekly Journal*. James Alexander was a lawyer, a member of a colonial party opposed to the Royal Governor's policies, and one of the active supporters and contributors to the *New York Weekly Journal*.⁹ On 17 November 1734, Zenger was charged with "printing and publishing seditious libel having in them many things tending to raise factions and tumults, among the people of this province, inflaming their minds with contempt of his Majesty's Government, and greatly disturbing the peace thereof."¹⁰ Zenger was held in jail for eight months until his trial for seditious libel.

When Zenger was in prison, James Alexander and Anna Zenger, the printer's wife, kept his paper printing, and Alexander got ready to defend Zenger in the trial. But he was disbarred by Chief Justice De Lancey from participating in the trial. After this development, Andrew Hamilton of Philadelphia became Zenger's lawyer and defended him in his trial.¹¹ The law of seditious libel, under the English rule, had been that "the greater the truth, the greater the libel." Contrary to the law, Hamilton argued that the statements must be "false and malicious and tend to sedition" in order to be deemed as libelous. He stated that "if Zenger could prove the truth of the assertions in the alleged seditious libel, he should be acquitted."¹² After Hamilton's arguments, Chief Justice De Lancey instructed the jury with only finding whether Zenger printed and published those

⁹ Robert W. Jones, *The Law of Journalism* (Washington DC: Washington Law Book Co., 1940), 20; and Levy, 129.

¹⁰ Quoted in Jones, 21.

¹¹ Teeter and Loving, 30.

¹² Stanley Nider Katz, *A Brief Narrative of the Case and Trial of John Peter Zenger* (Cambridge: Harvard, 1963), 2-9; and Levy, 130.

papers. De Lancey emphasized that it was up to him to decide whether published statements were libel. A defiant “runaway” jury returned a verdict of “not guilty of publishing.” Although the Zenger case became famous, it established no legal precedent. If it was a precedent, it was an emotional symbol for people striving for increased freedom.

Truth as a defense was not recognized by statutory enactment in England until the Parliament passed the Fox Libel Act in 1792, giving a jury a right to decide a criminal nature of the publication. Fox’s Libel Act was adopted too late to be included in the laws of now independent American colonies, to the extent that the newly independent former colonies had been looking to England for precedents. The new nation was aware that the words the British saw as sedition played an important role in bringing the colonies to revolt against England and led to the independence.¹³

Only seven years after the adoption of the Bill of Rights and its First Amendment, The Alien and Sedition Acts of 1798-1800 were passed as devices to restrain and punish expression. At the time of the passage of the Acts, the United States was concerned with the problem of siding either with France or England in the possible war in Europe. Republicans supported France, while Federalists sided with England.¹⁴

In an attempt to curb the criticisms of its policies, the Federalist Party, then controlling Congress, passed the Alien and Sedition Acts. The first section of the Sedition Act “punished conspiracies and combinations to impede the operation of federal laws and

¹³ Teeter and Loving, 33.

¹⁴ James Morton Smith, *Freedom’s Fetters – The Alien and Sedition Laws and American Civil Liberties* (Ithaca, New York: Cornell University Press, 1956), 11.

set the penalty at no more than \$5,000.”¹⁵ The second section made it a crime to publish, utter, and print any false, scandalous and malicious statements against the government, either house of the Congress, or the President, with intent to defame them or to bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States. The maximum penalty for these actions was two years’ imprisonment and \$2,000 fine.¹⁶

This situation supported the Siebert’s second proposition that the more insecure the government, the more the restraints on free expression and the press. It was the early years of the new nation, the government was not yet stable, and when the Federalists perceived an internal attack to their policies, they wanted to punish their opponents. Under the Sedition Act, about twenty-five persons were arrested, fourteen indictments were brought all against Republican newspapermen and publicists, and all fourteen of them resulted in convictions.¹⁷ The Sedition Act had made truth a defense, but in operation this “Zengerian” principle did not protect defendants. Prosecutors were Federalists, judges were Federalists, and juries were packed with Federalists.¹⁸ Unpopularity of the Alien and Sedition Acts created a storm of opposition against the Federalist Party, and helped lead to the defeat of that Party in the next election. New president Thomas Jefferson allowed the Acts to expire in 1801.¹⁹ After 1816, the Supreme Court blocked the government from using another alternative, the common law

¹⁵ Ibid., 94.

¹⁶ Ibid., 95.

¹⁷ Ibid., 185.

¹⁸ Ibid., 424.

¹⁹ Ibid., 187.

of crimes, including that of sedition, to silence its critics. It was 140 years before the next peacetime sedition act was passed.²⁰

Early in the nineteenth century, the concept of seditious libel was weakened, as a result of the increase in civil libel suits. There also were some positive developments in favor of the freedom of speech and press in libel prosecutions. In 1805, the State of New York passed a statute that recognized truth as a defense in libel cases. According to the statute, “truth might be a help, of course, on the occasions when the offending words could be proved as ‘facts,’ though of little help where the words were opinions.”²¹ This New York statute then “became the model for most nineteenth-century libel provisions.”²² Until the 1830s, the press was subject mostly to threats from state court actions, civil libel suits, and occasional criminal libel actions.²³ The years between 1800 and 1830 represented a transitional period in the law of libel when civil libel suits brought by politicians and other public figures increasingly replaced criminal prosecutions. While the political leaders of the Revolutionary era were primarily interested in “what they called ‘fame’--their stature in the annals of the history--rather than current estimation of their characters in the minds of other citizens,”²⁴ “concern about one’s immediate political name became a more pressing concern than thoughts about one’s ultimate fame”²⁵ in the first part of nineteenth century. As a result of this, in

²⁰ Harold Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court* (Indianapolis, New York: The Bobbs-Merrill Company, Inc., 1967), xix.

²¹ *Ibid.*, xxi.

²² Norman L. Rosenberg, *Protecting the Best Men – An Interpretive History of the Law of Libel* (Chapel Hill: The University of North Carolina Press, 1986), 115.

²³ Nelson, xxii.

²⁴ Rosenberg, *Protecting the Best Men – An Interpretive History of the Law of Libel*, 120.

²⁵ *Ibid.*, 121.

addition to all the frenzy surrounding criminal libel prosecutions, civil libel suits appeared an attractive alternative during that period.²⁶

In the years following 1830, Abolitionists wanted “absolute freedom to protest against slavery, a ‘national evil,’ and considered any infringement upon their rights to petition or their right to use the mail as a complete contravention of those rights.”²⁷ Southern states disagreed by believing that “abolitionism represented a threat to their lives and property (both guaranteed protection by the Constitution),”²⁸ and they targeted Abolitionists with threats, violence, and their specific laws. According to the laws of Southern states, it was a crime to advocate the abolition of slavery and consequently, they denied abolitionist literature access to the mails.²⁹ Those laws also gave the postmaster or other local authorities the authority to inspect mails and to forbid delivery of “incendiary” publications.³⁰ These were the devices aimed to silence anti-slavery arguments of Abolitionists, and effective suppression came as a result in most of the South by 1850.³¹

During the Civil War, as in the other times of national stress, freedoms were to get threatened again. The federal government, without the legislation, successfully brought common law charges against and arrested about a thousand people since they were suspected to be dangerous, and put them in military prisons without trial. The number of executive arrests reached up to 38,000, and public opinion generally agreed

²⁶ Ibid.

²⁷ Russel B. Nye, *Fettered Freedom – Civil Liberties and the Slavery Controversy 1830-1860* (Michigan: Michigan State University Press, 1963), 42.

²⁸ Ibid.

²⁹ For more detailed information about the laws, see Nelson, *Freedom of the Press from Hamilton to the Warren Court*, p. 173-78, where Virginia laws 1832, 1836, and 1848 were discussed.

³⁰ Nye, 84.

³¹ Teeter and Loving, 35.

with those actions.³² This situation resembled what the United States government wanted to do in 2001-2002. The establishment of military tribunals with the executive order by the George W. Bush administration to try foreigners who are under suspicion of being linked with September 11th, 2001, terrorist attacks reflects how individual freedoms can be jeopardized in the time of national distress.

The number of criminal libel prosecutions began to increase during the last quarter of the nineteenth century. There were only 20 prosecutions between 1871 and 1880, then this number jumped to “almost 75 between 1881 and 1890, and to more than a hundred during the last decade of the century.”³³

During the twentieth century, in the years before World War I, the government took widespread precautions, this time, to silence the new group of people who posed as a new line of threat against the government. Those people accused were behind the ideas of socialism, radicalism, and anarchism. The assassination of President William McKinley by alleged anarchist Leon Czolgosz in 1901 provided a stronger impulse for government to silence its critics. The Immigration Act of 1903 was passed by the Congress “to bar from the country or to deport those who believed in or advocated the overthrow by force and violence of the United States government.”³⁴ Besides this federal act, states like New York, New Jersey and Wisconsin passed their own anti-anarchist acts. There was an awakening of sedition legislation during that period.³⁵

³² Jones, 28.

³³ Nelson, xxix. Also see John D. Stevens, Robert L. Bailey, Judith F. Krueger, and John M. Mollwitz, “Research in Brief – Criminal Libel as Seditious Libel, 1916-65,” *Journalism Quarterly* 43 (1966): 110-113.

³⁴ Nelson, xxxiii.

³⁵ Ibid.

With the entrance into World War I, new and important developments began to take place. To assure patriotism and wartime victory, and to support President Woodrow Wilson's crusade to "make the world safe for democracy," new government policies were adopted to suppress individualism and diversity of opinion. The aim, in fact, was to prevent and suppress alliances of immigrants, pacifists, socialists, and a wide range of other Americans whose loyalty was in any way suspect.³⁶ These new policies meant not only persuasive Americanism campaigns but also vigorous action through federal espionage, sedition, sabotage, and revised immigration laws against those who seemed to offer any resistance to these campaigns.³⁷ State statutes were adopted to make it a crime to advocate of violent overthrow of government. But it was the federal government's Espionage Act of 1917 and its amendment in 1918 to include sedition that put most critics of the government into prosecution for criminal words. This federal act made it crime to cause insubordination or disloyalty in the armed forces or to obstruct enlistment or recruiting by talking or printing. Some 1,900 persons were prosecuted for their speech, and about 100 newspapers and an unknown number of periodicals, pamphlets, as well as books were barred from mails.³⁸

The government also passed the Trading with the Enemy Act in October 1917, which authorized the censorship of overseas communication.³⁹ In addition to that, the

³⁶ Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York, London: W. W. Norton & Company, 1979), 26, 27.

³⁷ *Ibid.*, 27.

³⁸ Teeter and Loving, 36.

³⁹ Steven Livingston, "Mass Media and the Military," in Margaret A. Blanchard, ed., *History of the Mass Media in the United States* (Chicago: Fitzroy Dearborn, 1998), 377.

Censorship Board was established during the same period with a task of monitoring newspapers and magazines.⁴⁰

Consistent with Siebert's second proposition, as the growing fear of presumed alliances among socialists and immigrants increased during the World War I period, the restraints on freedom of expression and of the press increased as well. The feeling of insecurity was great in the war period, so the governments restricted the freedoms severely.

In the post-war period, the U.S. Supreme Court found a chance to address the validity of the 1917 Espionage Act. The case was *Schenck v. United States*.⁴¹ Although the Court unanimously upheld the convictions in *Schenck* case, it established a First Amendment exception for such dissident expressions. This was the famous "clear and present danger" test.

The case arose when the defendants, Charles T. Schenck and Elizabeth Baer, sent to "drafted men pamphlets that urged insubordination in the armed services and obstruction of the draft."⁴² This was a crime according to the 1917 Espionage Act and its amendment in 1918. They were convicted under the provisions of the Act, and the Supreme Court upheld the convictions. Writing for a unanimous Court, Justice Oliver Wendell Holmes stated:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances

⁴⁰ Ibid.

⁴¹ 249 U.S. 47, 39 S.Ct. 247 (1919).

⁴² John D. Zelesny, *Communications Law*, 2nd ed. (California: Wadsworth Publishing Company, 1997), 74.

in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to the effort that their utterance will not be endured...⁴³

Although the threats on individual freedoms slowed down with the War's end, it did not stop. States passed a series of sedition acts to target "domestic espousal of the Russian revolutionary theme."⁴⁴ Convictions were brought under the states' new laws, and they were generally approved by the U.S. Supreme Court during the 1920s.⁴⁵ One important case in which the Supreme Court upheld the validity of the state sedition act was *Gitlow v. New York*,⁴⁶ a decision supporting a state anti-sedition, anti-criminal anarchy act but also providing a rationale for nationalizing the First Amendment.

Benjamin Gitlow had been charged with violating the criminal anarchy law of the state of New York, since he published the Socialist party's newspaper, *Revolutionary Age*, "a tedious justification of a dictatorship of the proletariat and an appeal for a general strike."⁴⁷ In its ruling, the Supreme Court upheld the conviction of Gitlow under the New

⁴³ 249 U.S. 47, 52, 39 S.Ct. 247, 249 (1919).

⁴⁴ Nelson, xxxv.

⁴⁵ Ibid.

⁴⁶ 268 U.S. 652, 45 S.Ct. 625 (1925).

⁴⁷ Quoted in James Lofton, *The Press as Guardian of the First Amendment* (Columbia, SC: University of South Carolina Press, 1980), 207.

York law but also recognized that protections of the First Amendment were applicable to the states through the Fourteenth Amendment, which declares that “no state shall deprive any person of life, liberty or property, without due process of law.”⁴⁸ Justice Edward T. Sanford wrote the majority opinion of the Court:

...we may and do assume that freedom of speech and of the press-
which are protected by the First Amendment from abridgement by Congress-
are among the fundamental rights and “liberties” protected by the due
process clause of the Fourteenth Amendment from impairment by the states.⁴⁹

Justices Oliver W. Holmes and Louis D. Brandeis dissented in the *Gitlow* case, by articulating their famous “clear and present danger” test.⁵⁰ They stated, “...it is manifest that there was no present danger of an attempt to overthrow the government by force on the part of the admittedly small minority who shared the defendant’s views...”⁵¹

Neither the protection of the Fourteenth Amendment nor the clear and present danger test helped *Gitlow* to be freed; after *Schenck*, the Court moved on to a “bad tendency” test, much easier for prosecutors to prove. But the *Gitlow* case was important since it opened the door to put state governments “under the federal Constitution in regulating words.”⁵²

After World War I, another revolutionary source appeared that threatened the stability of the government: Communism. And on the eve of World War II, fears of communism and fascism accompanied by the activity of domestic communists led to

⁴⁸ Teeter and Loving, 17.

⁴⁹ 268 U.S. 652, 672, 45 S.Ct. 625, 630 (1925).

⁵⁰ 268 U.S. 652, 672, 45 S.Ct. 625, 632 (1925).

⁵¹ Ibid.

⁵² Nelson, xxxvi.

passage of the national peacetime sedition law since the Alien and Sedition Acts of 1798.⁵³ This was the Alien Registration Act of 1940 (known as the Smith Act). Section 2 of the Act stated:

It shall be unlawful for any person...to advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;... with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence...⁵⁴

The Smith Act prohibited three kinds of conduct: “advocacy of the violent overthrow of the government; organization of a group which advocates the violent overthrow of the government; and membership in a group which advocates the violent overthrow of the government.”⁵⁵

When World War II began, violations of civil liberties began as well. But prosecutions brought under the Smith Act were much rarer than the ones brought under the earlier sedition acts. The Smith Act, in fact, had aimed to punish members of the Communist party in the United States, not to punish the mass media of general circulation. Because the mass media of the time were the advocates of the status quo.⁵⁶

⁵³ Ibid., xxxviii.

⁵⁴ Ibid., 321-322.

⁵⁵ Don R. Pember, “The Smith Act as a Restraint on the Press,” *Journalism Monographs* 10 (May 1969): 8.

⁵⁶ Teeter and Loving, 37.

Although the Smith Act was invoked only two times during World War II, in the post-war period the Act was used as a primary device to prosecute the Communist party members in the United States.⁵⁷ More than 140 Communists had been indicted,⁵⁸ and about 100 of them were imprisoned under the Smith Act by the late 1950s.⁵⁹ After that date, convictions under this act began to be overturned.⁶⁰

In the context of the cold war between the United States and the Soviet Union in the years following the World War II, the Supreme Court had a chance to review the convictions brought under the Smith Act. One of those cases was *Dennis v. United States*.⁶¹ The *Dennis* case was important because it set the pattern for the interpretation of the Smith Act, as well as it set the pattern for the method of prosecution. “Throughout the nation, prosecutors came to court armed with stacks of books and newspapers.”⁶²

In *Dennis*, major figures of the Communist Party went to trial and 11 of them were convicted after a nine-month trial in 1949. Defendants were charged with conspiracy to teach and advocate violent overthrow of the government which was a crime under the Smith Act of 1940. The Court of Appeals of the Second Circuit upheld the conviction of defendants, and the case finally came to U.S. Supreme Court for review. Writing for the majority opinion, Chief Justice Fred Vinson upheld the constitutionality of the Smith Act by stating:

The Smith Act...is directed at advocacy, not discussion...the basis
of the First Amendment is the hypothesis that speech can rebut speech,

⁵⁷ Lofton, 220.

⁵⁸ Zelesny, 76.

⁵⁹ Nelson, xliii.

⁶⁰ Teeter and Loving, 39.

⁶¹ 341 U.S. 494, 71 S.Ct. 857 (1951).

propaganda will answer propaganda, free debate of ideas will result in the wisest government policies. It is for this reason that this Court has recognized the inherent value of free discourse...An analysis of the leading cases in this Court which have involved direct limitations on speech, however, will demonstrate that ...this is not an unlimited, unqualified right, but that the societal value of speech must, on occasion, be subordinated to other values and considerations...⁶³

Chief Justice Vinson wrote that the Court, in this case, were “presented with the application of the ‘clear and present danger’ test”⁶⁴ which was originated by Justice Holmes in the *Schenck* case in 1919. Vinson observed that

...Overthrow of the government by force and violence is certainly a substantial interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected...Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent.⁶⁵

Chief Justice Vinson, with those words, legitimized what Siebert suggested in his second proposition. An internal attack was perceived in the cold war period with the activity of communists. As Siebert suggested, since protection of societal structure from

⁶² Pember, 26.

⁶³ 341 U.S. 494, 71 S.Ct. 857 (1951).

⁶⁴ Ibid. at 508.

such an attack was seen as the governmental duty, the government was given every right to limit any speech that threatened the nation's security and societal structure.

It can be said that in troubled periods, especially in war times, civil rights and human freedoms were and are in a real jeopardy. In periods of national distress, people who advocated a policy of repression and the abolition of freedom successfully argued that the nation's right to protect itself overrides the citizens' right to express themselves. Those favoring suppression of freedoms tried to rationalize their conduct by arguing that those who opposed to the government and its policies were trying to injure the nation, and therefore they did not deserve the privilege of free speech. Civil rights violators also added that their victims were enemies of the state, while they were patriots.⁶⁶

After Earl Warren was selected as the chief justice of the United States Supreme Court in 1953, the Court became reluctant to uphold the convictions under the Smith Act. The Warren Court made its opposing approach to civil rights violations clear with its decision in *Yates v. United States*⁶⁷ in 1957. In this case, the Court extended the First Amendment protection to those who advocate a political doctrine.⁶⁸ Fourteen second-level leaders of the Communist party in California were convicted under the Smith Act for conspiracy to advocate violent overthrow of government. The Supreme Court reversed the convictions, and found the trial court faulty "for not having made clear to the jury the distinction between advocacy of action to overthrow the government by force

⁶⁵ Ibid. at 508, 509, 71 S.Ct. at 867.

⁶⁶ H. C. Peterson and Gilbert Fite, *Opponents of War, 1917–1918* (Madison: The University of Wisconsin Press, 1957), 300.

⁶⁷ 354 U.S. 298, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (1957).

⁶⁸ Robert Trager and Donna L. Dickerson, *Freedom of Expression in the 21st Century* (Thousand Oaks, London: Pine Forge Press, Inc., 1999), 65.

and violence and advocacy of abstract doctrine in this subject,”⁶⁹ which was protected speech according to the Court. The decision of the Supreme Court in *Yates* halted the government’s attempts to prosecute the members of the Communist party. In 1977, the Smith Act “disappeared from bills reforming the federal Criminal Code.”⁷⁰

In the recent decades, the spirit of seditious libel has revealed itself under various forms because, as Norman L. Rosenberg concluded in his book titled *Protecting the Best Men*, the key concept was political libel, not criminal libel or civil libel. In other words, if the people holding the authority attempt to use a suppressive device against speech and press, it does not matter whether that device dressed as a criminal law, as an injunction or a civil suit for defamation. Pre-publication censorship, post-publication punishment or post-publication assessment of civil damages: all have a potential to put freedom of speech and press under severe danger.⁷¹

During the 1960s, civil libel suits, one of the repressive devices of free speech and press, began to have a damaging effect on newspapers. The most famous and important defamation case of the twentieth century--*New York Times v. Sullivan* (1964)⁷²--came in the form of civil libel but carried the spirit of seditious libel. The real issue in *Sullivan* was racial politics. The officers of the organization titled “the Committee to Defend Martin Luther King and the Struggle for Freedom in the South” wanted to reserve a full page-advertisement in the *New York Times* “to protest the treatment of black

⁶⁹ Lofton, 243.

⁷⁰ Teeter and Loving, 40.

⁷¹ Dwight L. Teeter Jr. “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” *Journalism Quarterly* 69 (Spring 1992): 23.

⁷² *New York Times v. Sullivan*, 376 U.S. 254 (1964).

demonstrators by police in Montgomery, Alabama.”⁷³ The advertisement took place in the *New York Times* on March 29, 1960, with the headline “Heed Their Rising Voices”⁷⁴ and L.B. Sullivan, the commissioner of police operations in Montgomery, brought the history’s famous libel suit against the *New York Times* and four black ministers who had taken out the alleged advertisement, even though Sullivan was not specifically named in the advertisement.⁷⁵

Libel suits were not “a serious problem for the *New York Times*”⁷⁶ until that time. But the paper’s lawyer realized that the *Sullivan* case was a serious threat.⁷⁷ The great legal and political conflict that began with the libel suit “threatened the existence of *New York Times*, as well as the right of the press to report on tense social issues, and the right of the public to be informed about them.”⁷⁸

The Alabama trial court decided that under Alabama law, the challenged statements in the ad were “libelous per se,” which tend to injure a person’s reputation or bring him or her into public contempt.⁷⁹ As a result, the *New York Times* lost the case both in the Alabama trial and Alabama’s Supreme Court, and the jury awarded Sullivan \$500,000, the full amount he demanded. The *New York Times* appealed to the United States Supreme Court, and the Court agreed to review the case. The United States Supreme Court announced its decision on March 9, 1964. Justice Brennan, writing for a unanimous Court, decided in favor of the *New York Times* and overturned a \$500,000

⁷³ Robert D. Richards, *Uninhibited, Robust, and Wide Open: Mr. Justice Brennan's Legacy to the First Amendment* (Boone, NC: Parkway Publishers, 1994), 19.

⁷⁴ Anthony Lewis, *Make No Law* (New York: Random House, 1991), 6.

⁷⁵ Richards, 19.

⁷⁶ Anthony Lewis, 23.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, 7.

Alabama libel judgment against the newspaper. The first sentence of Brennan for the opinion of the Court made clear that “he was doing what the modern court rarely does: taking a fresh look at an entire area of the law.”⁸⁰ He began by stating,

We are required this case to determine for the first time the extent to which the constitutional protections for speech and press limit a State’s power to award damages in libel action brought by a public official against critics of his official conduct.⁸¹

After identifying plaintiff and defendants of the case, Brennan described the advertisement, “Heed Their Rising Voices” in detail, and stated the Alabama trial and Alabama Supreme Court’s previous rulings about the case. Then Brennan announced the opinion of the Court:

We reverse the judgment. We hold that the rule of law applied by the Alabama courts is constitutionally deficient for failure to provide safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action brought a public official against critics of his official conduct.”⁸²

Justice Brennan continued, “We further hold that under the proper safeguards the evidence presented in this case is constitutionally insufficient to support the judgment for the respondent.”⁸³ After declared the Alabama law “unconstitutional,” the Court responded the argument concerning whether the advertisement deserved the First

⁷⁹ Richards, 20.

⁸⁰ Anthony Lewis, 140.

⁸¹ 376 U.S. 256 (1964).

⁸² Ibid., at 264.

⁸³ Ibid.

Amendment protection. Brennan said, “the present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection.”⁸⁴ For the argument that some erroneous statements in the ad prevents that protection, Brennan said, “that erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the ‘breathing space’ that they need...to survive.”⁸⁵ Justice Brennan then stated the requirement for public officials to collect the damages in libel suits:

A public official cannot recover libel damages for criticisms of his official performance unless he proves that the statements was made with ‘actual malice’- that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”⁸⁶

By looking at the facts of the case, the Court then concluded, ...We consider that the proof presented to show actual malice lacks the convincing evidence clarity which the constitutional standard demands, and hence it would not constitutionally sustain the judgment for respondent under the proper rule of law...⁸⁷

Brennan’s most frequently quoted passage of the opinion from *New York Times v. Sullivan* was his characterization of American freedom⁸⁸ with these words:

...We consider this case against the background of a profound national commitment to the principle that debate on public issues

⁸⁴ Ibid., at 271.

⁸⁵ Ibid., at 272.

⁸⁶ Ibid., at 279.

⁸⁷ Ibid., at 286.

⁸⁸ Anthony Lewis, 143.

should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.⁸⁹

These words in the historic decision of the Court in *New York Times v. Sullivan* led to the beginning of the new era in which the press can criticize the public officials without the fear of libel suits. The “actual malice” standard was later extended beyond public officials to public figures in cases such as *Curtis Publishing Co. v Butts*⁹⁰ and *Walker v. A.P.*⁹¹

Criminal libel was also common form of media restraint before the years of World War II, but its application became rare after that. There is a distinction between the crime of criminal libel and civil libel. While criminal libel charges can be brought by government official or agencies, civil libel charges can be brought for publications which are false and damage a person’s reputation. People who are convicted for criminal libel charges are subject to get a jail time, fines, or both. On the other hand, people who are convicted for civil libel charges are not subject to criminal penalties, they are only subject to monetary fines.⁹² Over the years, courts increasingly approved that civil libel suits to recover damages were much to be preferred form to criminal libel prosecutions because the defamed person had a chance to gain more from a civil judgment for money damages than from a criminal conviction. In the same year with its *Sullivan* decision, the Court decided for *Garrison v. Louisiana*.⁹³ In *Garrison*, the Court reversed the criminal libel

⁸⁹ 376 U.S. at 270 (1964).

⁹⁰ *Curtis v. Butts*, 388 U.S. 130 (1967).

⁹¹ *Walker v. A.P.*, 388 U.S. 130 (1967).

⁹² *Teeter and Loving*, 80.

⁹³ 379 U.S. 64, 85 S.Ct. 209 (1964).

conviction of a Louisiana district attorney who had accused several of his county judges with laziness and inefficiency. The Court declared Louisiana criminal libel statute unconstitutional. With *Garrison* case, the United States Supreme Court “limited state power to impose criminal sanctions for criticism of official conduct just as it had, in *Sullivan*, restricted the right of an individual to collect civil damages.”⁹⁴

In recent years, it seemed as if criminal libel prosecutions had almost disappeared, but there are occasional times that showed itself again. For example, a 1991 Colorado Supreme Court decision declared the state’s criminal libel statute invalid “only insofar as it reaches constitutionally protected statements about public officials or public figures on matters of public concern.” But “where one private individual has disparaged the reputation of another private individual,” the Colorado criminal statute is valid.⁹⁵

As seen, especially during the war years, in other words, in the period of national distress, attempts to curb the critics of government policies reached its peak. As a very recent example, in a wartime footing if not actually a declared war following the terrorist attacks of September 11th, 2001, the United States government has set up military tribunals to try non-U.S. citizens suspected of terrorism. Looking from this perspective, then it can be concluded that fears of internal or external attack to the stability of government and safety of the nation have become once again legitimate reasons for the government in the United States to take actions in curbing free expression that would be inconceivable in time of peace.

⁹⁴ Lofton, 250.

⁹⁵ *People v. Ryan*, 806 P.2d 935 (1991), 19 Med.L. Rptr. 1074, 1078, quoted in Teeter and Loving: *Law of Mass Communications*, 10th ed., 83.

CHAPTER VII

SEDITIONIOUS LIBEL IN TURKEY

Seditious libel has been seen as one of the most serious crimes against the government in Turkey for many ages. Its origins started in the period of the Ottoman Empire, then the laws concerning the seditious libel were expanded after the foundation of the Republic in 1923. Until recent times, there were many laws in Turkey that made seditious libel a crime and that punished the offenders who committed that crime. Therefore, if the offenders could escape from one of those laws, it was not very hard to be caught in the net of another one of those laws, and the result of being guilty for the crime of seditious libel was inevitable for its offenders.

Controls available to government were not used in isolated fashion. The brave men discussed in Chapter V, Prior Restraint in Turkey, at times also collided with the Turkish version of the law of seditious libel. So, some of the names encountered while having prior restraint applied to their publications also will be found being prosecuted for seditious libel, imprisoned or banished into exile. Because these chapters focus on forms of control over the press and follow those controls as they were applied, the appearance of names made familiar from the reader's acquaintance with Chapter V may seem redundant in Chapter VII, but they are not. Instead, the instances mentioned here are but a second side of the operation of press control, whether it is Chapter V's prior restraint or Chapter VII's post-publication censorship for seditious libel, the word crime of daring to criticize government men, organizations, and measures.

Attempts to make seditious libel a crime in the Ottoman Empire were legalized in the middle of the nineteenth century. The first Penal Code of the Ottomans passed in

1858. Article 138 of the Penal Code included the crime of sedition: “Anybody who publishes books, newspapers, or other written materials against the Sultan, the members of the government, or against the nation can be punished by seizure of those offensive materials, their printing houses can be closed, and they can be forced to pay in the amount of 10 to 50 units of gold money.”¹

Article 139 of the Penal Code also made it crime to publish anything which endangers the internal security of the Empire or which libels the officials or agencies of the government.²

As mentioned in the chapter of “Prior Restraint in Turkey,” there were some brave men of that period in the Ottoman Empire who tried to institutionalize social and political reforms. The leaders of that movement were Ibrahim Sinasi, Namik Kemal, Ziya Pasa and Ali Suavi. Those Ottoman liberals worked “to create and instruct a Turkish public opinion which, they hoped, would play the same role in Turkey as its counterparts”³ in England and France. Their primary device was the press, as it was in the countries that they took as an example to follow. With this aim, Namik Kemal and his friends were spread over the important periodicals of the country, as either becoming editors or writers of these publications.

Ibrahim Sinasi and Ziya Pasa were writing in *Tercuman-i Ahval* [Interpreter of Conditions], which began its publication life in 1860 as one of the most important newspapers of the time. The authoritarian mood of the government was increasing during

¹ Translated and paraphrased by the author from Alpay Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present] (Istanbul: Gazeteciler Cemiyeti Yayinlari 29, 1990), 19.

² Ibid.

³ Bernard Lewis, *The Emergence of Modern Turkey* (London, Oxford: Oxford University Press, 1968), 146.

the same period, with officials arguing that those people, among them Ibrahim Sinasi and his friends, claimed more freedom than was their right. As a result of this, *Tercuman-i Ahval* was closed for two weeks by the government because of an article that criticized the education methods of the nation. The author of the article was Ziya Pasa. This incident entered the history books as the first precedent for government suppression in Turkey.⁴

In this environment, the government passed the first Press Law on January 1, 1865. This law was translated from the French Press Law, which was adopted in France when Napoleon III became an emperor. The first Press Law of the Ottomans, in addition to the provisions concerning the licenses prior to publication, laid down strict regulations for publications hostile to the general interests of the country. Newspapers with those dangerous characteristics that were published in foreign countries could be prevented from entering to the Ottoman country. Punishments for the offenders ranged from imprisonment, heavy fines, to temporary or permanent closings of their publications.⁵

With the passage of the first Penal Code and Press Law, the government increased its pressures on the press. Government officials, now faced with the increasing number of the publications in the Ottoman lands, increasingly became aware of the power of the press, and this awareness impelled them to take stricter measures. The Turkish press, on the other hand, had learned how to pass “from report to comment, from comment to criticism, from criticism to opposition, and from opposition to defiance”⁶ in a notably short time.

⁴ Ibid., 148.

⁵ Translated and paraphrased by the author from Kabacali, 26-27.

One of the most notable events symbolizing the organized opposition against the government's absolutism was the 1859 Kuleli* Incident. The case arose when a small group of protesters organized a plot to depose and assassinate Sultan Abdulmecid, the sultan of the Ottomans in that period. The attempt was unsuccessful because the conspiracy was discovered, and their organizers were exiled to Asia and imprisoned there. The Kuleli Incident was seen by some as the first effort to bring constitutional and parliamentary government, but recent research concluded that the aim of the leaders of that conspiracy was only to depose the Sultan and his ministers, rather than to change the structure of the governmental system.⁷ Whatever its aim and result, the Kuleli Incident was important because it revealed that the Turkish protesters were organizing, and gaining power against the authoritarian Ottoman government.

During the 1860s, the Ottoman Empire witnessed, for the first time, an unmistakable liberal criticism of government actions with the writings of Ziya Pasa, Sinasi, Namik Kemal and their friends. In 1865, Namik Kemal, with the support of his friends, established a organization called "Yeni Osmanlilar [Young Ottomans]," and started their freedom struggle in Europe with the publication of two main newspapers, *Muhbir* [Informer] and *Hurriyet* [Freedom].

Ali Suavi was the editor and main writer of the *Muhbir*. He frequently wrote articles that criticized the foreign policy of the government, while also calling for more freedom. As a result of Suavi's articles, *Muhbir* was closed by the government order dated March 8, 1867. The government order said: "*Muhbir* was closed temporarily for

* Kuleli is a region in Istanbul.

⁶ Lewis, 150.

⁷ Ibid., 151.

publishing false information concerning the governmental actions, and for causing a confusion among the public, with the accordance of the 1865 Press Law...”⁸

Only a few days after the government order regarding the closing of *Muhbir*, the government issued a decree called “Kararname-i Ali” that brought new regulations in the control of the press on 12 March 1867. The decree said:

It was determined by the government that some newspapers in Istanbul published news and articles that endangered general interests and security of the nation. Although the government agreed that the press is useful for the completion of the government, this thought was valid when the press published with good intentions. Since the government’s primary duty is to protect the stability and the security of the nation, it became inevitable to take some precautions against those dangerous publications. Therefore, it was decided that such publications are subject to direct punishment by the government aside from the provisions of the press law.⁹

Kararname-i Ali did not mention anything about deportation of journalists, but by benefiting from the vague language of the decree, the government first arrested Ali Suavi in his house, and then exiled him by ship to Kastamonu, a Turkish city on the Black Sea, because of his articles in *Muhbir*.¹⁰

Namik Kemal returned to Istanbul in 1871, and started writing for the newspaper *İbret* in 1872. In his articles in *İbret*, Kemal was expressing his ideas about freedom, and

⁸ Translated and paraphrased by the author from Kabacali, 28-29.

⁹ Translated and paraphrased from the Turkish by the author from Kararname-i Ali [The Decree of ‘Ali’], 12 March 1875, quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye’de Basin Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 30-31.

¹⁰ Translated and paraphrased by the author from Kabacali, 32.

sometimes criticizing the government's actions. But his journalistic activities in *Ibret* only lasted less than a year, until April 1873. At that time, an event occurred leading to his second exile to Cyprus. Kemal's theatrical play *Vatan yahut Silistre* [Fatherland or Silistria] was performed before a fervent audience. The theme of the play was patriotism, and the four acts of the play dealt with the defense of the Turkish fortress of Silistria against the Russians in 1854. The next and following days after the play, support and praise letters as well as the report on the scenes of *Vatan yahut Silistre* were published in *Ibret*. For the government, the play was an overt act of disloyalty because the theme of the play was about "the alien and subversive idea that the people owed loyalty not to the Sultan and his ministers, not to the Islamic community and its authorized exponents, but to an abstract and unfamiliar entity called the Fatherland."¹¹ On April 5, 1873, the government ordered the closing of *Ibret* "on the grounds of irresponsibility, sedition, and impudence."¹² Then Namik Kemal and his associates Ebuzziya Tevfik, Ahmet Mithad Efendi, Bereketzade Ismail Hakki and Nuri Beyler were arrested and deported to Cyprus.¹³

Namik Kemal's writings caused some other publications' closings as well. One of those publications was *Diyojen* [Diogen], the first humor magazine of the Ottomans, which began its publication on 24 January 1870. In 1872, a series of articles published in the magazine that made fun with the ministers of the Sultan, and criticized the hostile attitude of the government against the press. The author of the articles was Namik Kemal.

¹¹ Lewis, 158.

¹² Ibid., 159.

¹³ Translated and paraphrased by the author from Kabacali, 42.

As a result of Kemal's articles, *Diyojen* was closed on 13 January 1873. The government order said:

Diyojen, by taking advantage from its humorous character, continuously used a language that against the general ethics and that defamed the characters of some members of the government. Although they were warned to stop such publications, *Diyojen* insisted to publish them. As a result, the cancellation of its license to publish became inevitable. Therefore, *Diyojen* was closed permanently in accordance with the provisions of the 1867 decree of the government.¹⁴

On 11 August 1875, a new item was added to the 1865 Press Law, instructing that newspaper inserts could publish only official information, and they were not allowed to publish articles that confuse people's minds and that give false information. Publications that did not comply with this new rule would be closed from one to three months.¹⁵

During the period between 1831 and 1876, the suppression of the press gradually increased but the importance and the number of newspapers increased as well in the Ottoman Empire. There were 47 newspapers in Istanbul in 1876. Thirteen of those newspapers were Turkish, one was Arabic, nine were Greek, nine were Armenian, three were Bulgarian, two were Jewish, seven were French, two were English, and one was in German.¹⁶

In 1876, Abdulhamid II was the new sultan of the Ottomans. Abdulhamid had promised to declare the first constitution of the Ottomans before he took his title as a sultan. In the first months of his administration, he kept his promise and on 23 December

¹⁴ Ibid., 37-38.

¹⁵ Ibid., 43.

¹⁶ Ibid., 47.

1876, the first constitution of the Ottomans (Kanun-i Esasi) was promulgated. He also organized the meeting of the first Ottoman parliament on 19 March 1877.

Article 113 of the first constitution dealt with the declaration of martial law, stating that “If there are signs anywhere of the Ottoman country concerning the possible revolt, the government has a right to issue a martial law in that region temporarily.”

The same article also authorized expulsion of “security risks” from Turkey:

To exile and expel people from the territory of the Empire who, as a result of trustworthy information gathered by the police administration, are recognized as dangerous to the national security of the state, was under the authority of only the Sultan.¹⁷

Further, article 36 of the constitution allowed the Sultan to have lawmaking authority by himself:

During the periods when the parliament was not on duty, if any situation appears that endangers the security and stability of the State, the Sultan has an authority to issue decrees, and these decrees are as powerful as laws in function.¹⁸

In a short time after declaring the constitution, Sultan Abdulhamid began to show his real personality. First he ordered Grand Vezir Mithad Pasa to exile on the grounds of an article 113 of the constitution, allowing expulsion of people deemed “dangerous” to the state. Then by relying on article 36 of his own constitution, he passed the decree of martial law, and he took greater authority with article 71 of that decree, giving himself the power to close immediately publications that cause confusion among members of the

¹⁷ Lewis, 167.

¹⁸ Translated and paraphrased by the author from Kabacali, 50.

public.¹⁹ The 1877-78 Ottoman-Russian War made the Sultan's quest for power easier. He used the war as an excuse to dissolve the Parliament, to declare martial law in the country, and then to dissolve the first constitution of the Ottomans. In this way, the dictatorial regime of the Sultan Abdulhamid had started in every aspect because the Sultan had no tolerance for any idea that suggested opposition.

The period of the Sultan Abdulhamid II was devastating for the press. Many journalists endured imprisonment in that period, and their publications were closed temporarily or permanently. Most of those journalists served jail time because of violation of the articles of the constitution which forbade the criticism of the Sultan and its ministers. One of those journalists was Teodor Kasap. Kasap was publishing a newspaper *Istikbal* [Future], and humor magazines *Hayal* [Dream] and *Memos* [Memos]. In 1876, *Hayal* published a caricature that criticized some provisions of the Constitution and decrees, which had brought severe restrictions over the press. Charges brought against Kasap for degrading the Constitution, and its creator, the Sultan. He was found guilty by the court of martial law, and given three years imprisonment. All his publications were closed.²⁰

Following the closing of *Hayal*, other humor magazines experienced the same fortune. Most of them were closed either with the reason of increased pressures of the

¹⁹ Ibid., 51.

²⁰ Translated and paraphrased from the Turkish by the author from Mehmet Ata, "Memalik-i Osmaniye'de Sansurun Tarihi [The History of Censorship in the Ottomans]," *İkdam*, 29 Rebiulahir 1337 (1918), quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basin Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 52.

martial law, or for lack of interest by the public. Daily sales decreased to five thousand each from fifteen or twenty thousand.²¹

On 19 May 1878, when the Ottomans were still at war with the Russians, Ali Suavi, one of the leaders of the Young Ottomans, published an advertisement in the newspaper *Basiret* [Prudence]. He announced that he would explain the remedy that overcomes the country's difficulties in the next day's issue.²² The advertisement said: "The foreign policy of our sublime State faced with some difficulties on these days, but the remedy for these problems are not impossible. I must recommend all the public to read my article in Monday's issue of the newspaper."²³

This advertisement by Ali Suavi was a code for calling his supporters to gather and overthrow the government on that Monday. Some 500 men gathered in front of the Ciragan Palace in the lead of Ali Suavi, and 100 of them tried to break into the palace in order to depose the Sultan Abdulhamid. Police rapidly subdued the movement, and the protesters were silenced. Ali Suavi, with twenty others, was killed and about 30 people were wounded. A court martial declared one death penalty, but later transformed it to life imprisonment. The court also punished several of the protesters with deportation.²⁴ *Basiret* was closed for publishing Suavi's advertisement, and its owner Ali Efendi was sent to exile to Jerusalem after a trial lasting five and a half months.²⁵

The Act for the Regulations in Printing that was adopted in 1895 made it crime to publish not only against the Ottoman State, but also against the countries, their

²¹ Translated and paraphrased by the author from Kabacali, 53.

²² Lewis, 176.

²³ Translated and paraphrased by the author from Kabacali, 53.

²⁴ Lewis, 176.

²⁵ Translated and paraphrased by the author from Kabacali, 53.

presidents, and their religions who visited the Ottoman Empire. Those publications which criticized the visitor countries could be seized, and those who published and delivered them could be punished with heavy fines.²⁶

Although Sultan Abdulhamid applied all such means to silence those who opposed his regime, the attempts to depose him did not stop. Unable to publish freely in Istanbul, the leaders of the liberal movement increased their publications in exile. One of those was Murad Bey, who began to publish the newspaper *Mizan* [Order] in Egypt, openly criticizing the Sultan and his administration. The Sultan responded by arresting or exiling some of Murad's friends in Istanbul. In August 1896, the same group tried unsuccessfully to depose the Sultan. At the end of the attempt, all the conspirators were arrested. The court martial was set to try the conspirators with the charge of rebellion or treason. No sentence of death penalty was imposed by the court, instead, the conspirators were punished with deportation.²⁷

During the period of the Sultan Abdulhamid (1876-1909), censorship had reached such a level that dozens of words were censored before their publication in the Ottoman dictionary, which was published in the last years of the 1800s. Among the words forbidden were "anarchy, revolution, revolt, obstruction, opportunist, oligarchy, bomb, parliamentarism, parliament, republic, freedom, democrat, discipline, Darwinism, dictator, dynamite, radical, poison, censor, socialism, protest, memorandum, nihilist, veto, and liberty."²⁸

²⁶ Ibid., 55.

²⁷ Lewis, 198-99.

²⁸ Translated and paraphrased from the Turkish by the author from Mete Tuncay, *Olusum* [The Occurrence] Ekim-Kasim 1977 [October- November 1977]: 42-43.

Sultan Abdulhamid took some precautions against foreign publications as well. With this aim, he had established the Secretariat of Foreign Publications. The primary duty of this government agency was to respond to any foreign publication that criticized the policies of the Ottoman government, to prevent the entrance of the publication to the State, and to notify the country where such publications were originated. Between the years 1881 and 1883, the entrance and the delivery of 32 foreign publications including newspapers, magazines, brochures, books, maps, calendars to and in the Ottoman State were forbidden.²⁹

The severe censorship under the Sultan Abdulhamid continued until the promulgation of the second constitution on 23 July 1908. Despite all the measures that the Sultan had taken, the liberal movement of Young Ottomans could not be stopped, and it grew in power over time. The Committee of Union and Progress, the instrument of the Young Ottomans' nationalist wing, gradually became the dominant party in the Parliament and took control of the country until the defeat of the Ottoman Empire during World War I in 1918.

The second constitutional period began with new hopes for the defenders of freedom and their press. Following the promulgation of the second constitution, the number of publications increased dramatically with more than two hundred newspapers and magazines within the first one and half month. Newspapers were able to publish articles that criticized the previous administrations of the Ottomans openly without the fear of being censored. But all those freedoms did not continue long.

²⁹ Translated and paraphrased by the author from Turkler Acaroglu, "Sultan Abdulhamid II Doneminde Dis Yayin Yasaklamalari [The Restrictions on Foreign Publications during the period of Sultan Abdulhamid II]," *Ulusal Kultur* [National Culture] (Temmuz [July] 1979): 5, quoted in Kabacali, 74.

On 12 April 1909, some army forces which sided with Sultan Abdulhamid II revolted by demanding a canonical law. They were silenced quickly, but the event resulted in the declaration of martial law in the country. Sultan Abdulhamid II was deposed and Mehmet Resad became the new sultan of the country.

The period in which the nation enjoyed its freedoms had lasted only eight and half months from the adoption of second constitution in July 1908 until the reactionary army uprising in April 1909. On 16 July 1909, a new Press Law was passed which was prepared, taking the 1881 French Press Law as an example. This new law did not bring prior censorship, but if the publication had a character to put national security in danger or to cause a revolt among the public, it could be closed by government order until the trial about it is over. The responsibility for the alleged publication belonged to responsible editor of the publication and to the owner of the accused article.³⁰

Following the deposing of Sultan Abdulhamid, the nation had embraced a new and inspiring hope of forgetting the severe repression of the Sultan Abdulhamid's administration. But later, the Committee of Union and Progress, as the dominant party in the Parliament and manipulator of the new Sultan Mehmet Resad, showed itself to be an even more brutal oppressor of the freedoms. The Committee led to the passage of two laws by the Parliament: The "Law of Associations" on 23 August 1909, and the "Law for the Prevention of Brigandage and Sedition" on September 27, 1909.³¹ Bernard Lewis summarized the functions of these two laws as following:

The first of these prohibited the formation of political associations based on

³⁰ Translated and paraphrased by the author from Kabacali, 84-85.

³¹ Hikmet Bayur, *Türk İnkılabı Tarihi* [The History of Turkish Revolution], 2nd ed. (Istanbul, Ankara, 1953), 306, quoted in Bernard Lewis: *The Emergence of Modern Turkey*, 217.

or bearing the name of ethnic or national groups, and was followed immediately by the closure of the Greek, Bulgarian, and other minority clubs and societies in Rumelia. The second authorized the formation of special “pursuit battalions” from the army, and prescribed strong measures for the disarming and repression of armed bands and of the famous Balkan *komitadjis*. Severe penalties were imposed for failure to report *komitadji* activities to the authorities and for the unauthorized possession of weapons. To complete the pattern, steps were taken, for the first time, to conscript non-Muslims into the armed forces.³²

The restrictions imposed on the press began to mount quickly. Journalists including Istirakci Hilmi, Ismail Faik, and Asaf Konsilitci were arrested and exiled for publishing and writing articles that criticized the Unionists and their oligarchic domination.³³

In that environment, some changes were made in 1909 Press Law. According to that, the publication of the opinions of the military personnel regarding the national and foreign policy of the government was forbidden. Additionally, the publication of the criticisms against the military forces was not permitted. An editor responsible from the publication who did not reveal the names and identity of his military sources could be punished with imprisonment and heavy fines.

³² Lewis, 217-18.

³³ Translated and paraphrased by the author from Munir Suleyman Capanoglu, *Türkiye’de Sosyalist Hareketleri ve Sosyalist Hilmi* [The Socialism Movements in Turkey and Socialist Hilmi] (İstanbul: 1964), 79-80; and M.S. Capanoglu, *80 Yıllık Gazetecimiz Asaf Konsilitci* [Our Journalist of 80 years ‘Asaf Konsilitci’] (İstanbul: 1961), 29-30, 46-48.

The government made some changes again in 1909 Press Law in November 1913. An article that went through change was Article 23. The first version of the article said: “If the publication has a character to put national security in danger or to cause a revolt among the public, it could be closed by government order until the trial about it is over.” With the changes Article 23 then said: “Publications which would destroy the internal and external security of the government can be closed by the order of the Ministers’ Council with the security and peace purposes.”³⁴ With this change, the government now had gained a right to close the newspapers whenever it wished.

Article 33 of the Press Law also was changed:

At the times of peace and in the state of emergency, the publication of information about the defense methods and war strategies of the navy, air, and land forces is forbidden. The responsible editor of the publications who publish such information can be punished with a fine ranging from 100 Ottoman gold to 500 Ottoman gold. The responsible editor who does not reveal the source of his information can be punished with the highest range of fine and with imprisonment from one month to three months.³⁵

With the entrance of the Ottoman Empire into World War I on 29 October 1914, military censorship started. The famous Censorship Regulation Act contained of 61 articles and passed in 1914. The articles about the press started with Article 50:

All the press is obligated to comply with the orders of censorship. If they

³⁴ Translated and paraphrased by the author from Kabacali, 93-94.

³⁵ Ibid., 94.

chose not to do so, they can be punished with closing temporarily or permanently.

The responsible editor of such publication is tried in the court of martial law.³⁶

The articles of the Act made clear that the privilege to give information about the war belonged only to general headquarters. Anyone not from the headquarters who published the information about the war could be tried immediately under martial law and could be punished severely regardless of where they got that information. The execution of the death penalties as a result of the decision of the martial law court could be administered with the order of the generals. Thus, the privilege to order executions passed from the Sultan to generals. In addition to these rules, the government also forbade the publication of any news that would make an unfavorable impact internally or externally. For example, publications of train and ship accidents, or of fires were not allowed.³⁷

The censorship that was exercised over the press with the entrance into the World War I ended on 11 June 1918. After the defeat of the Ottoman Empire in World War I, the Committee of Union and Progress withdrew their authority. On July 2, 1918, Mehmet Vahdettin became the new sultan of the Ottomans after the death of the Sultan Mehmet Resad.³⁸

Around the same time of these developments, the nationalist movement with its leader Mustafa Kemal established “the Ankara government” and announced that Sultan’s

³⁶ Translated and paraphrased from the Turkish by the author from Sansur Talimatnamesi [The Censorship Regulation Act], *Matbaa-i Askeriye* [Military Publication], Istanbul, 1330 (1914): 16, quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye’de Basin Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 96.

³⁷ Translated and paraphrased by the author from Alpay Kabacali, *Bir Ihtilalcinin Seruvenleri-Dogmayan Hurriyet ve Yarida Kalan Ihtilal* [The Adventures of a Revolutionist – An Unborn Freedom and Unfinished Revolution] (Istanbul: 1989), 217.

administration was invalid. After that, there were two governments in the Empire; one was called the “Istanbul government,” in which the authority belonged to Sultan and his ministers, while the second one was the Ankara government in the leadership of Mustafa Kemal. The press which supported Mustafa Kemal’s actions became the primary targets of the Sultan and his repressive regime. Sultan Vahdettin and his Grand Vezir, Damat Ferit Pasa, pushed through the passage of the decree for the regulation of the press on 5 August 1920. According to the first article of that decree, those who published articles, news, and documents that put the nation’s internal and external security in danger could be punished with imprisonment from one year to three years. The second article of the same decree also made clear that newspapers and magazines which published such articles, news or documents could be closed from 15 days to six months, and the responsible editors of those publications could be forced to pay fines from 100 lira to 1000 lira, and can be imprisoned from one month to six months.³⁹ (In early 2002, 1 dollar is around 1,400,000 Turkish liras)

In response to those actions of the Sultan and his administration, the Ankara government established the Grand National Assembly and organized its first meeting in Ankara on 23 April 1920. The Grand National Assembly passed the Treason Act No.2 on April 29. The first Article of the Act made crime to challenge the legality of the Grand National Assembly and to endanger the security of the nation. According to the Act, any person challenging the Ankara government and its actions would be deemed as a traitor to the nation. The second article of the Act stated that the punishment for treason was

³⁸ Lewis, 240.

³⁹ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 103-104.

execution. Article four declared criminal courts as the place of trying those crimes.⁴⁰ The Treason Act of 1920 remained in effect until 25 October 1923.⁴¹

After the Sultan Vahdettin's flee to Malta in 1922, the Ankara government declared him deposed. And on 23 October 1923, the Grand National Assembly proclaimed the Republic of Turkey and elected Mustafa Kemal as the first president of the new Republic.⁴²

At the session of the Grand National Assembly which was held on December 8, 1923, the first independent tribunal of the Republic was established. The underlying reason for the establishment of the court was explained by Ihsan Topcu, the president of the court: "to punish, in accordance with the law, those who acted against the stability and the principles of the Republic..."⁴³

The court began operation immediately. The main writer Huseyin Cahid Yalcin and responsible editor Baha of the newspaper *Tanin* [Dawn], the main writer Ahmet Cevdet Oran and responsible editor Omer Izzettin of *Ikdam* [Effort], and the main writer Velid Ebuuzziya and the responsible editor Hayri Muhiddin Bey of *Tevhid-i Efkar* [Promise of Ideas] were arrested between December 9 and December 13 for acting against the interests of the nation.⁴⁴

⁴⁰ Translated from the Turkish by the author from *Hiyanet-i Vataniye Kanunu*, No.2 [The Treason Act No.2], 29 Nisan [April] 1920, quoted in Mehmet Semih Gemalmaz and Osman Dogru, *Türkiye'de Basın Özgürlüğü Mevzuatı* [The Regulations Concerning Press Freedom in Turkey] (Istanbul: Hurriyet Ofset Matbaacılık, 1990), 65.

⁴¹ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Türkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 108.

⁴² Lewis, 261-262.

⁴³ Translated and paraphrased by the author from Alpay Kabacali, *Baslangictan Gunumuze Türkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 111.

⁴⁴ Ibid.

Trials began on 15 December 1923 and continued until the decision of the Court on January 2, 1924. The prosecutor claimed that those journalists committed a crime by publishing a confidential letter that was sent to the Prime Minister Ismet Pasa. On the other hand, defense attorneys stated that journalists had published that letter because it was news. At the end, the Court decided that the publication of the letter was a crime, but the journalists did not publish it with bad intent. As a result, all the journalists were acquitted.⁴⁵

At the beginning of 1925, several newspapers were closed by the government for a variety of reasons. For example, *Toksoz* was closed for publishing material that could cause a dangerous reactionary movement, *Orient News* for publishing articles regarding the neglect of Istanbul by the government and thus, for intervening the internal politics of the government, and *Sada-yi Hak* for publishing articles that belittled the members of the Grand National Assembly.⁴⁶

With the promulgation of the new constitution in 1924, the special *Seriat* courts were abolished “in which theologian-judges had administered the Holy Law.”⁴⁷ On 11 September 1924, a commission was designed to create a new Turkish civil code, which would be adapted from the Swiss civil code. The commission completed its task in the beginning of 1926, and the new civil code became effective starting by 4 October 1926.⁴⁸

⁴⁵ Translated and paraphrased by the author from Ergun Aybars, *Istiklal Mahkemeleri 1923-1927* [Independent Tribunals 1923-1927] (Ankara: 1982), 36.

⁴⁶ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 113, 114.

⁴⁷ Lewis, 265.

⁴⁸ *Ibid.*, 272.

The new penal code, which was adapted from the Italian Penal code, also was passed in the same year. Article 140 of the Turkish Penal Code made it a crime to publish “in a foreign country untrue, malicious, or exaggerated rumors or news about the internal situation of the State so as to injure its reputation or credit in foreign countries.” Article 141 of the Code punished establishment of societies “with the purpose of establishing domination of a social class over other social classes or overthrowing any of the established basic economic or social orders of the country,” while article 142 made it a crime to make propaganda “in any manner for governing of the State by one person or by a group of persons, contrary to republicanism or to the principles of democracy, directed to abolish for racial reasons partially or entirely the civil rights secured by the constitution, or to exterminate or weaken nationalist feelings,” and to speak “favorably of the acts forbidden in these sections.”

Article 143 of the Penal Code punished anyone who “establishes...without the permission of the Government, societies of international character or societies the headquarters of which are in foreign countries.” Article 155 of the Turkish Penal Code penalized “publishing articles that make people unwilling to serve in the military.” While article 158 of the Penal Code punished those “who insult the President of the country,” article 159 made it a crime to insult the Parliament, the government, and the military. Article 311 and 312 of the Penal Code penalized to publicly incite a crime, to incite people to enmity and hatred by pointing to class, racial, or religious difference, and to praise an action considered criminal.

The adoption of the new laws and abolition of religious laws were the first steps taken towards modern Turkey in which, with Mustafa Kemal’s words, “the Islamic faith

would be rescued from the position of a political instrument.”⁴⁹ After the foundation of the Republic of Turkey, the country achieved a legal transformation which might have required decades in most other countries. “The concepts, the texts, and the contexts of the new laws were made harmonious with the progressive thrust of Ataturk’s Turkey.”⁵⁰ With Ataturk’s words, “the nation has placed its faith in the precept that all laws should be inspired by the actual needs here on earth as a basic fact of national life.”⁵¹

On 13 February 1925, a Kurdish revolt, which was known with its leader “Seyh Said,” broke out in the eastern part of Turkey. After the necessary precautions were taken through the silencing of the uprising, martial law was declared. Further, on 4 March 1925, the law named “Takrir-i Sukun – Law for the Maintenance of Order” was passed. A Law for the Maintenance of Order gave exceptional powers to the government. The law was composed of only one article, as Kabacali wrote: “The government has a right, with the approval of the President, to control and stop any attempt or movement that would destroy the general order, internal security or peace of the country. The Ministers Council was employed with the execution of this law.”⁵²

The Law for the Maintenance of Order also provided the establishment of independence tribunals “in the east and Ankara, the former with summary powers of execution.”⁵³ Seyh Said, the leader of this Kurdish rebellion, and forty-six of his

⁴⁹ Mustafa Kemal said that in his speech on March 1, 1924, in the opening session of the Grand Assembly, quoted in Lewis, *The Emergence of Modern Turkey*, 264.

⁵⁰ “Mustafa Kemal Ataturk,” www.ataturk.com.tr. (December 18, 2001).

⁵¹ Ibid.

⁵² Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 114.

⁵³ Lewis, 266.

followers were sentenced to death by the Diyarbakir Independence Tribunal on 29 June 1925. All forty-seven were executed in the next day.⁵⁴

The East Independent Tribunal also issued a verdict for the arrest of journalists Esref Edib, Velid Ebuzziya, Abdulkadir Kemali, Fevzi Lutfi Karaosmanoglu, and Sadri Ertem. When they were sent to prisons in Elazig, in the eastern part of Turkey, some other journalists including Ahmet Emin Yalman, Ahmet Sukru Esmer, Suphi Nuri Ileri, Ismail Mustak, and Gunduz Nadir Bey were arrested in Istanbul. The trials of these journalists took almost six months. Toward the end of their trials, the journalists sent a telegraph to the President Mustafa Kemal and asked for his forgiveness. After receiving this telegraph, Mustafa Kemal wrote a letter to the presidency of the tribunal, and said, "It would be appropriate to consider the innocence of the journalists who revealed their devotion to the Republic and its principles by spelling out their regrets for their actions."⁵⁵ At the end of the trials, it was decided that those journalists did not commit a crime of causing a revolt with the intention of destroying the authority of the government. The verdict was "not guilty" for them, but they were not allowed to resume publication of their closed newspapers.⁵⁶

The newspaper *Tanin* published an article titled "Invasion," which was about the police search of the Istanbul Headquarters of the Progressive Republican Party. After the appearance of the article, Nuri Bey, the author of the article, the newspaper's main writer

⁵⁴ Ibid.

⁵⁵ Translated and paraphrased from the Turkish by the author from *Turkiye Buyuk Millet Meclisi Arsivi* [The Turkish Grand National Assembly Archives] T-12, Dosya 96 [File No.96].

⁵⁶ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 116-117.

Huseyin Cahid Yalcin and its responsible editor Muammer Bey were arrested, and sent to Ankara on 19 April 1925 for their trial.⁵⁷

At the trial, the prosecutor claimed that the police searches were showed as invasion by the newspaper, and this indicated the intention of causing an excitement and provocation among the public. The prosecutor further stated that the intention behind the establishment of the newspaper was the same with the intention of the alleged article.

Huseyin Cahid, in his defense, claimed that he had no responsibility in the usage of the word “invasion” in that article. He said, “In the modern and free world where the people are real representatives of the republics and democracies, nobody can be punished for what they think. There cannot be no crimes in the jobs of opinion.” He continued, “the freedom of the press is at the heart of all freedoms, and therefore, I have a strong belief that this independent tribunal won’t issue a verdict of “guilty” for me. Only revenge and bad intentions must be punished.”⁵⁸

The court was not impressed by Cahid’s brave defense, and found him guilty, imposing a life imprisonment. Cahid was sent to prison in Corum, the northern city of Turkey, while Nuri Bey, the author of the article and responsible editor Muammer Bey were punished with a two-year imprisonment.⁵⁹ One and half years later, Huseyin Cahid was forgiven by the government, and he returned to Istanbul.

On 15 June 1926, a conspiracy attempt, whose purpose was to assassinate Mustafa Kemal in Izmir, was discovered by the police. Ziya Hursid, the leader of the

⁵⁷ Ibid., 118.

⁵⁸ Translated and paraphrased by the author from Huseyin Cahid Yalcin, *Siyasal Anilar* [The Political Memoirs] (Istanbul, 1976), 278.

⁵⁹ Translated and paraphrased by the author from Ergun Aybars, *Istiklal Mahkemeleri*, 241-251.

conspiracy and his followers were arrested and the independence tribunal was transferred from Ankara to Izmir to try the offenders. Their trials began on 20 June 1926 in the leadership of the presiding judge Ali Cetinkaya, known as 'Bald Ali.' On 13 July 1926, the court reached a verdict "guilty" and sentenced the conspirators to death.⁶⁰

With the passage of the Law for the Maintenance of Order, the government had gained a legal authority to deal with the opponents of its actions, and by 1927, "all opposition to the regime – military, religious, or political – had been silenced,"⁶¹ along with the opposition press.

The Law for the Maintenance of Order was renewed in 1927 for a further period of two more years. On 4 March 1929, the law expired. Towards to the end of 1929, a new newspaper *Yarin* (Tomorrow) began its publication. The government, at first, tolerated this newspaper's policy of publishing criticisms about the government. But later, Arif Oruc, the editor of the newspaper, was arrested with the charge of writing provocative articles and causing an excitement among the public. He was tried in Istanbul Criminal Court and sentenced to a month's imprisonment.⁶²

On 22 May 1930, the Military Penal Code was passed. Article 54 of the code made it crime for military personnel to commit any action that is against the security of the nation. Article 56 stated that if those crimes were committed at the time of the peace, offenders would be punished with imprisonment not less than 15 years. If the crimes were committed in the state of the emergency or during the time of war, offenders would

⁶⁰ Lewis, 275.

⁶¹ Ibid., 276.

⁶² Translated and paraphrased by the author from Mete Tuncay, *Türkiye Cumhuriyeti'nde Tek Parti Yönetiminin Kurulması, 1923-1931* [The Establishment of One Party System in the Republic of Turkey, 1923-1931] (Ankara, 1981), 278-279.

be sentenced to death. Article 58 of the Code made it crime actions that would cause incitement against the draft and those actions that would upset the status of national security. The punishments for these crimes are the same with what was stated in the article 56 of the same law. Article 85 of the Code also made it a crime to insult the supervisors of the military personnel, the punishment for this crime would be an imprisonment up to one year.⁶³

The government passed the Press Law on 25 July 1931 with the intent of silencing the opposition press and its leaders. The most restrictive and most applied article of the law was Article 50: “newspapers and magazines which published articles against the general policy of the government can be temporarily closed with the order of Ministers Council. The owners of those publications cannot publish other publications with different names during the time of their suspension.”⁶⁴

Article 30 of the Press Law stated that the authors of the newspaper or magazine articles, which libeled, defamed or insulted the members of the Grand National Assembly, the Ministers’ Council, or the other official government agencies, can be punished with imprisonment from three months to six months and fined with no less than 100 Turkish liras.⁶⁵

Article 40 stated that the publications of the newspapers or magazines, which provoked the communism and anarchy, and which favored the Sultan’s policies, could

⁶³ Translated and paraphrased from the Turkish by the author from Askeri Ceza Kanunu No.1632 [The Military Penal Code No.1632], 22 Mayıs [May] 1930, quoted in Mehmet Semih Gemalmaz and Osman Dogru, *Türkiye’de Basın Özgürlüğü Mevzuatı* [The Regulations Concerning Press Freedom in Turkey] (İstanbul: Hürriyet Ofset Matbaacılık, 1990), 95.

⁶⁴ Translated and paraphrased by the author from Kabacalı, *Baslangictan Günümüze Türkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 128.

⁶⁵ *Ibid.*, 129.

not be allowed. Those who violated this principle could be imprisoned from six months to three years.⁶⁶

In 1934, a new law was adopted and it required everyone to take a last name. Under this law, Mustafa Kemal received the last name “Ataturk” which means “Father of the Turks.”

In 1936, more changes were made in the Penal Code. The section titled “Actions against the Integrity of the State” was changed completely and rewritten by taking the 1930 Penal Code of Fascist Italy as an example.⁶⁷ Article 141 of this latest version of the Turkish Penal Code said:

Those attempting to establish or establishing, or arranging or conducting and administering the activities of, societies in any way and under any name, or furnishing guidance in these respects, with the purpose of establishing domination of a social class over other social classes or exterminating a certain social class or overthrowing any of the established basic economic or social orders of the country, or political and legal orders of the State shall be punished.⁶⁸

Article 142 of the Penal Code stated:

Whoever makes propaganda or establishes societies with the purpose of exterminating or weakening national feelings, or speaks favorably of the acts in the foregoing paragraphs shall be punished.⁶⁹

⁶⁶ Ibid.

⁶⁷ Translated and paraphrased by the author from Cetin Ozek, *141-142* (Istanbul, 1968), 123.

⁶⁸ Ibid., 122.

⁶⁹ Ibid.

Article 141 and 142 of the Turkish Penal Code were repealed in 1991 by the government. Until that time, they had been the most criticized articles of the Penal Code because according to their opponents, those articles had restricted the freedom of speech and of the press severely.⁷⁰

On 17 August 1938, Ahmet Emin Yalman wrote an article in the newspaper *Tan* about Mustafa Kemal Atatürk's illness. After the publication of the article, the Prime Minister Celal Bayar gave an order for the closing of *Tan* for three months.⁷¹

On 10 November 1938, Turkey lost its founder. From the foundation of the Republic of Turkey until Atatürk's death, the country sometimes witnessed the use of force and repression of basic liberties. But these measures were used mostly "to establish and maintain the Republic during the period of revolutionary changes."⁷² The intensity of repressive measures dramatically decreased after the executions of 1926, but the political opposition to the government's actions was still forbidden and opposition press was under strict control. Moreover, government repression was rare and took place only against to violent opposition.⁷³

One day after the death of Atatürk, İsmet İnönü was appointed by the Grand National Assembly as the new president of Turkey. In the 1940s, opinions and beliefs were spelled out not openly, but under different guises, and only to a certain extent, according to Nadir Nadi, one of the prominent journalists of the period.⁷⁴ Zekeriya Sertel,

⁷⁰ Translated and paraphrased by the author from Kabacalı, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 132.

⁷¹ Translated and paraphrased by the author from Ahmet Emin Yalman, *Yakın Tarihte Gorduklerim ve Gecirdiklerim* C.III [My Memoirs of the Recent Times] (Istanbul, 1970), 240.

⁷² Lewis, 290.

⁷³ Ibid.

another important journalistic figure, noted that the police organization was strengthened by the government during that period, and the press was under the occasional control of the police forces. There was no direct censorship, but not one day passed without the orders of the Ministers' Council to newspapers about what to write. The newspapers, which did not comply with those orders, were getting closed by the government.⁷⁵

On 24 April 1940, Article 30 of the Press Law was revised and it said, "those who publish the articles that would hurt or weaken the national feelings, and therefore, cause to the misunderstanding of the national history, shall be fined from 50 Turkish liras to 500 Turkish liras."

Article 35/G of the same law was also changed. While the previous version of the article said, "The discussions of the court decisions were not permitted," the new version stated, "The publication of the articles that talked about the investigations and cautions regarding the security of the State was not permitted."⁷⁶

On 22 November 1940, martial law was declared in some provinces of the country. Martial law was renewed every three months, and remained in effect for seven years, until November 1947. Turkey remained neutral during World War II, but this neutrality did not get rid of the reasons that put the press under control. Many journalists were prevented from writing during the years of the World War II, and their newspapers were closed by government orders.

⁷⁴ Translated and paraphrased by the author from Nadir Nadi, *Perde Araligindan* [From In-Between the Curtain] (Istanbul, 1964), 40, 41.

⁷⁵ Translated and paraphrased by the author from Zekeriya Sertel, *Hatirladiklarim* [My Memoirs], 3.baski [3rd ed.] (Istanbul, 1977), 235.

⁷⁶ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 138.

Sabiha Sertel was one of those journalists whose writings were found offensive by the government. She was prevented from writing for three times during the World War II period due to a series of articles that were against the imperialism.⁷⁷

On 30 July 1940, Nadir Nadi wrote an article for the newspaper *Cumhuriyet* regarding Turkey's possible position in World War II. His article created enormous interest among the public, and made the government very angry. Yunus Nadi, the owner of the newspaper, tried to explain the situation to his old friend, Prime Minister Ismet Inonu. On 7 August, they met at the Ankara train station. Inonu told Nadi that he would not allow the publication of political articles for the monetary purposes, and he left without shaking his old friend's hand. The same day, Nadir Nadi received a telephone call that said, "If he writes anything about the incident at the Ankara train station, *Cumhuriyet* will be closed." The next day, Nadir Nadi wrote an article, in language that was directed to Ismet Inonu, that stated, "He would not write articles for monetary purposes." This article made Inonu even angrier, and he declared, "Those people are trying to mess with me. Close that newspaper!" With Inonu's order, *Cumhuriyet* was closed on 10 August 1940, and remained closed for three months until November 9, 1940.⁷⁸

In the following years, many newspapers and magazines were closed by the government for a variety of reasons. For example, the magazine *Yuruyus* [Walk] was closed by the court of martial law on July 1943 for its covers that reflected the poverty caused by the war, and for some of its poems and articles about the same subject. Rifat

⁷⁷ Translated and paraphrased by the author" from Sabiha Sertel, *Roman Gibi* [Like A Novel] (Istanbul, 1969), 270-271.

⁷⁸ Translated and paraphrased by the author from Nadir Nadi, *Perde Araligindan*, 89-107.

Ilgaz, the famous author and the poet, was sentenced to six months in prison for violation of article 142 of the Penal Code. His crime was to write a poem book titled “Class.” Besides his punishment, his book of poems was also confiscated by the order of the Ministers’ Council.⁷⁹

War years brought great stress, suffering, and poverty to Turkey, even though the country was not an active participant in the war. There was a universal threat of foreign espionage and infiltration with the burden of mobilization, and these threats, in the eyes of the government, justified the restrictive measures taken. The government must be stronger than ever according the members of the government, and with this in their minds, they passed a martial law, put the press and publications under strict control, and extended police powers and actions.⁸⁰

After the war, the government began to test the transition from one-party rule to the multi-party parliamentary system. On 4 June 1945, the four members of the People’s Party, Celal Bayar, Adnan Menderes, Fuad Koprulu and Refik Koraltan, known as “four rebels,” proposed a number of legal reforms which would guarantee the removal of pressures on rights and liberties and the establishment of the second party to check the government. Their proposal was rejected on June 12, in a party group meeting. When their arguments failed inside of their party, four rebels turned to the public for the support.⁸¹ Ahmet Emin Yalman, editor of the newspaper *Vatan* [Fatherland], opened the columns of the newspaper to the arguments of the rebels, and in September 1945, signed

⁷⁹ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 147-148.

⁸⁰ Lewis, 304.

⁸¹ Ibid., 304-305.

articles were published that criticized the ‘totalitarian’ line of the government and party.⁸² After the publication of articles, the four rebels either resigned or were expelled from the Republican People’s Party.

Those developments increased the opposition of the press to the government’s actions. The newspaper *Tan* [Dawning] was one of the newspapers, which carried out a strong opposition to the government. The newspaper, under the editorship of Sabiha and Zekeriya Sertel, was expressing mildly pro-Communist opinions.⁸³ The main criticism that *Tan* was directed at the government was the one-party regime in Turkey. The government responded to those criticisms by launching a campaign against the writers of *Tan*.

Huseyin Cahid Yalcin, one of the leaders of the campaign against *Tan*, published an article titled “Wake Up My Country” in the newspaper *Tanin* on 3 December 1945. The article called the public and the press to respond to the cruel propaganda against the government. The next day, Sabiha Sertel, wrote an article titled “Don’t fear the newspaper, fear public opinion,” in response to the Yalcin’s article.⁸⁴ On 4 December 1945, on the same day that this article was published, mobs of students attacked and destroyed the offices of *Tan* and other pro-Soviet journalists *Yurt* and *Yeni Dunya* by screaming “Damn communism, damn Sertels, and God bless the Turkish Republic.”⁸⁵ There was little sympathy in Turkey for communism and its followers during that period,

⁸² Ahmet Emin Yalman, *Turkey In My Time* (Istanbul, 1956), 223.

⁸³ Lewis, 309.

⁸⁴ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 150-154.

⁸⁵ Translated and paraphrased by the author from Tekin Erer, *Basinda Kavgalar* [The Fights in the Press] (Istanbul, 1965), 172.

and therefore, severe restriction of Communist activities and Communism favored publications generally took a strong support by the public.⁸⁶

In 1946, one-party rule ended in Turkey, and the Republican People's Party won the first multi-party election. On 24 July 1946, the government, through an order of the Court of Martial Law, issued a warning that prohibited any action or publication, which would put the public in suspicion about the results of the election, and with this way, that would destroy the peace of the nation. The Court of Martial Law had been established when martial law was declared in 1940, and this warning of the government reminded that martial law, which was forgotten for a long time, was still effective.⁸⁷

In 1947, martial law expired, but certain restrictions still remained in effect. For example, criticism of Turkish foreign policy would not be allowed.⁸⁸ Furthermore, the opposition press was still under strict control. One of the opposition journalists, Recep Bilginer, who published the daily *Soz Milletini* [Words of Nation], was arrested in 1947. He was found innocent at the end of his trial.⁸⁹ The humor magazine, *Marko Pasa* [Marco Pasha] was closed several times for writing about anti-democratic laws of Turkey, inflation, and for publishing strong criticisms about the authority of the Republican People's Party. Authors of the magazine, Aziz Nesin, Sabahattin Ali, Rifat Ilgaz, and Mustafa Uykusuz also were arrested and imprisoned.⁹⁰

⁸⁶ Lewis, 309-310.

⁸⁷ Translated and paraphrased by the author from Hilmi Uran, *Hatiralarim* [My Memoirs] (Ankara, 1959), 459-464., quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 158.

⁸⁸ Lewis, 309.

⁸⁹ See Recep Bilginer, *Hapisligim* [My Imprisonment] (Istanbul, 1981).

⁹⁰ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 161.

Aziz Nesin, a famous poet and author, was born in Istanbul in 1915. He was graduated from Ankara Military School in 1937. He served for the military during the Second World War years. In 1945, he transferred from the military to the journalism. He began writing for a daily *Karagoz* [Black Eye] and a magazine *Yedigun* [Seven Days]. The same year he had his own column in a daily *Tan*. In 1946, he published a humor magazine titled *Marko Pasa* with Sabahattin Ali. He was arrested and exiled to Bursa because of his writings. In 1949, Elizabeth the Princess of England, Iran's Shah Reza Pehlevi, and Egypt's King Farook, by officially applying to the Foreign Ministry of Turkey, sued Aziz Nesin for his writing that allegedly belittled them. He was found guilty and imprisoned for six months. In 1955, he began writing for a daily *Yeni Gazete* [New Gazette]. In 1956, he won the international "Gold Palm" award in Italy for his novel "Kazan Toreni." In 1961, he began writing again for a daily *Tan* and published a humor magazine, the *Zubuk* [Zubuk]. In his later years, he won numerous national and international awards for his writings. He founded an organization devoted to education of orphans. In 1985, he was selected as the "best author of the year" by the Turkish public. He died in Cesme in 1995.⁹¹

Rifat Ilgaz, another famous author and poet, was born in 1911 in Cide. He began writing in his secondary school years. He served as a elementary teacher in late 1930s. In 1942, he published a magazine *Yuruyus* [Walk] with Omer Faruk Toprak. He published his first book titled *Yarenli* [Friendly Conversation] in 1943. He began working as a journalist in the 1950s. Between 1952 and 1960, he worked for a daily *Tan* as a reporter.

⁹¹ Translated and paraphrased from the Turkish by the author, "Aziz Nesin," <http://www.geocities.com/sanaldevrim/aziz.htm> (2001).

He wrote for a magazine *Dolmus* [Taxi] by using a nickname “Stepne.” He began to use his own name in his writings after the 1960s. He had retired in 1974. He was detained during the 1980s. After his imprisonment was over, he began to live with his son in Istanbul. He wrote his memoirs and his prison years in a book titled *Kirk Yil Once, Kirk Yil Sonra* [Before Forty Years, After Forty Years]. He died in Istanbul in 1993.⁹²

In 1948, the government promised to change the anti-democratic provisions of the Press Law. A new commission was established inside of the government to prepare a proposal for the new version of the Press Law. But before the proposal was sent to the Grand National Assembly, the elections were held on 14 May 1950, and the Democrat Party came to the authority. The Democrat Party, since it put providing the freedom of the press in its agenda before the elections, has taken strong support by the press during the election time. The new government passed a new Press Law on 15 July 1950 in the Grand National Assembly, and the law was carried on six days later, on 21 July 1950. 1950 Press Law was still in effect in Turkey with some changes.⁹³

The 1950 Press Law required the establishment of “Press Courts” to deal with the offenses that were committed by the members of the press. In those courts, the press prosecutor is responsible for bringing charges. According to the law, the owners of the newspapers were not under the burden of carrying responsibility for the articles or news published, only the responsible editors and authors of the alleged articles were under the threat of fines and/or imprisonment.⁹⁴

⁹² Translated and paraphrased by the author, “Rifat Ilgaz,” <http://www.haberbilgi.com/kitaplar/RifatIlgaz/rifatilgaz.html> (2001).

⁹³ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 164.

⁹⁴ Ibid.

Article 31 of the Press Law authorized the Ministers' Council to prevent importation and delivery of the publications which originated outside the borders of Turkey and which contained material opposing the integrity of the State and nation, the principles of the Republic, national security, the general order and peace of the nation, and the general moral.⁹⁵

About one year after the passage of the 1950 Press Law, the "Law Regarding the Crimes Committed Against Atatürk" was passed in the National Grand Assembly on 25 July 1951. The law was composed of only 5 articles. Article 1 of the law stated:

Those who insult the memory of Atatürk shall be punished from one to three years imprisonment. Those who break, destroy, or ruin the statues or similar materials which represent Atatürk shall be punished with imprisonment from one to five years. Those who incite to commit these crimes are punished as same as the people who actually committed the crimes.

Article 2 of the law noted that if the crimes stated above were committed in public places or through the means of the press, the punishment should be increased by half of the original amount. The law authorized the State prosecutors to bring the charges for these crimes.⁹⁶

Good relationships between the government and press continued only for two years. When the newspapers and magazines began to publish criticisms about the actions

⁹⁵ Translated and paraphrased from the Turkish by the author from 1950 Basın Kanunu No.5680 [The 1950 Press Law No.5680], madde 31 [Article No.31], 15 Temmuz [July] 1950, quoted in Mehmet Semih Gemalmaz and Osman Doğru: *Türkiye'de Basın Özgürlüğü Mevzuatı* [The Regulations Concerning Press Freedom in Turkey] (Istanbul: Hürriyet Ofset Matbaacılık, 1990), 106.

⁹⁶ Translated and paraphrased from the Turkish by the author from Atatürk Aleyhine İmlenen Suçlar Hakkında Kanun No.5816 [The Law Regarding the Crimes Committed Against Atatürk], 25 Temmuz [July] 1951, quoted in Gemalmaz and Doğru: *Türkiye'de Basın Özgürlüğü Mevzuatı*, 113.

of the Democrat Party, the tension between authority and the press began to mount as well. The opposition journalists started to be arrested again along with the closings of their newspapers. After 1954, the number of the trials involving press crimes increased dramatically. The publications of the Republican People's Party were the ones which caused the most charges to be made. A number of journalists including Metin Toker, Ulku Arman, Sinasi Nahit Berker, Fethi Giray, and Kurtul Altug were arrested and sentenced. Ali Ihsan Gogus, the responsible editor of the newspaper *Dunya* [The World], was also sentenced to 12 months in prison. Huseyin Cahid Yalcin was sentenced to 26 months 20 days imprisonment for writing an article which allegedly insulted the Prime Minister. He celebrated his 80th birthday in prison. Finally, when he became ill, he was released from prison.⁹⁷

Huseyin Cahid Yalcin was a journalist, translator, and commentator. He was born in Balikesir in 1874. He got the management of a magazine the *Servet-i Funun* after the departure of Tevfik Fikret in 1900. He joined to the Committee of Progress and Union in 1910. He was elected as a senator to become the president of the Parliament around the same period. After the invasion of Istanbul during the World War I, he was arrested by English and exiled to the Malta Island in 1919. After the Independence War, he could return to Turkey, but since he opposed to some reforms and laws of the new republic, he was tried in newly established "Independent Tribunal." He was exiled to Corum in 1925. Yalcin was allowed to return to Turkey in the 1930s. He published a magazine *Fikir Hareketleri* [Opinion Movements] in 1933. He entered to politics again in 1938 and at the

⁹⁷ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 167-168.

same time, he began writing. He was elected as a senator from Istanbul in 1939, and from Kars in 1950. He became the main writer of a daily *Ulus* [The Nation] in 1948. He was imprisoned during the Democrat Party period in 1954 for his writings criticizing that political party. He died in Istanbul in 1957.⁹⁸

Martial law was declared by Prime Minister Adnan Menderes and other ministers in Turkey one more time on 7 September 1955 due to violent events directed to the minority citizens in Istanbul and Izmir. Martial law brought strict restrictions for the press. Nurettin Aknoz, the general marshal of the martial law, explained prohibitions over the press, in a press meeting held on September 10, 1955: ⁹⁹

- Publication of the news that would cause an excitement among the public was forbidden. If the discussions in the Grand National Assembly have the same characteristics, their publication was not allowed as well.
- Criticism of the government was forbidden.
- Publication of the proceedings of the martial law was forbidden.
- News about the member countries of NATO was forbidden.
- News and the pictures about the violent events of September 6, 1955 were forbidden.
- News about the poverty and sufferings of citizens in Turkey was forbidden.
- Murder news that creates anxiety among the public was forbidden.
- Publication of the proceedings of martial law courts was forbidden.

⁹⁸ Translated and paraphrased from the Turkish by the author, "Huseyin Cahid Yalcin," <http://www.kimkimdir.gen.tr/huseyincahidyalcin/index.html> (2001).

⁹⁹ Translated and paraphrased by the author Hifzi Topuz, *100 Soruda Turk Basın Tarihi* [The History of Turkish Press in 100 Questions] (Istanbul, 1973), 195-197.

On 20 September 1955, Aknoz suspended the publication of the newspaper *Ulus* [The Nation] for indefinite time, and dailies *Hurriyet* [Freedom], *Tercuman* [Interpreter], and *Hergun* [Everyday] for 15 days for the violation of orders of martial law.¹⁰⁰ On 7 June 1956, martial law expired.

As a result of struggles between the Republican and Democrat Parties, the military intervened and martial law was declared again on 27 May 1960. The Democrat Party was removed from power, and on behalf of the military forces, Milli Birlik Komitesi [the National Unity Committee], consisting of mostly military officers, took over the administration. The National Unity Committee announced that the military coup was made in order to save democracy, and the government would be transferred to the civilians with the elections hold in the shortest period of time. After this announcement, the overthrown President, Prime Minister, ministers, deputies of the ruling party, were taken into custody. General Cemal Gursel, the leader of the military action, became the president of the National Unity Committee, and he claimed the functions of the President, Prime Minister and the Chief of General Staff. The Turkish Grand National Assembly was dissolved and the National Unity Committee took over its legislative actions.¹⁰¹ During the period of the National Unity Committee, direct censorship of the publications was not allowed, but the advocacy of overthrowing the government was still a crime.

In July 1961, the new constitution of Turkey was adopted with a public referendum and the National Unity Committee transferred power to the civilians following the elections held on 15 October 1961. "In accordance with the new

¹⁰⁰ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 171.

¹⁰¹ "From 1923 to the Present," <http://www.turkey.org/countryprofile/from1923.htm#top> (1999).

Constitution, the twenty-two members of the National Unity Committee entered into Parliament as 'Natural Senators' and Cemal Gursel was elected President."¹⁰²

With the new constitution, the legislature was transformed to a bicameral parliament. The constitution reserved the legislative power to the Turkish Grand National Assembly, while the executive power was left to the President and the Council of Ministers. Civil and military courts were and are still responsible with the administration of judicial power.

The second chapter of the 1961 constitution was composed of the provisions about the press. Article 22 of the Constitution stated: "The press is free, and shall not be censored. The government provides the necessary measures that would guarantee the freedom of the press and communication." The same article then continued by noting a series of restrictions over the press: "Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the State,... or which refer to classified state secrets... shall be held responsible under the law relevant to these offences..."

The National Unity Committee passed an anti-democratic law about the press on 5 March 1962. It was titled as the "Law Regarding the Actions that Threaten the Constitutional Order, National Security and Peace." Article 1 of the statute stated:

Those who criticize the 27 May 1960 military intervention, the decisions made by the official agencies of the government, publish false news about the proceedings of the government, and make propaganda in favor of the overthrown Democrat Party, shall be punished with imprisonment from one

¹⁰² Ibid.

to five years.

Article 2 of the statute said:

Those who criticize the multi-party parliamentary system of Turkey, and who make propaganda that this regime of the government is failed, shall be punished from one to five years in prison.

Article 7 empowered the State prosecutors to investigate alleged crimes and bring charges. But under the circumstances that military judiciary is in charge, the military judge is privileged to execute the duties of the State prosecutors.¹⁰³

After passage of the “Law Regarding the Actions that Threaten the Constitutional Order, National Security and Peace” went into effect, charges were brought against the many journalists with the violation of the provisions of the law. For example, Ferruh Dogan was tried because of his caricature titled “Open Regime.” He was found innocent at the end of his trial. Ahmet Emin Yalman, and Selami Akpınar, the responsible editor of *Hur Vatan* [Free Fatherland], underwent a lengthy trial for publishing an interview with the old members of the Democrat Party, who were at that time in prison. The law was repealed later, and all the charges and trials under it were dropped.¹⁰⁴

With the elections held on 1965, the Justice Party (AP) received 53 percent of the votes and by obtaining the majority in the Parliament, came to power. The chairman of the party, Suleyman Demirel, became the Prime Minister. The period between 1965-71, when AP, was in power, was one of the freest times of the press. “This was the period when the laws which limited free thought and which were considered to be anti-

¹⁰³ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 92-194.

¹⁰⁴ Translated and paraphrased by the author from Topuz, *100 Soruda Türk Basın Tarihi*, 221.

democratic were applied at a minimal level, ...varying points of views were openly written and discussed.”¹⁰⁵

The end of 1960s was a period of intense student demonstrations, which started in France but then spread all over the world. A major reason behind these demonstrations was to criticize the educational methods and examinations systems in universities. Turkey also felt the winds of these student reactions.

On 12 March 1971, the period of freedom which was enjoyed between 1965 and 1971, ended with a communique. The joint memorandum of the Chief of General Staff and four Force Commanders was read on the radio and it called “for the formation of a nonpartisan government of national consensus in which all the political parties would participate so that the necessary reforms with a Kemalist perception could be implemented and so that terrorism and anarchy could be prevented and the future of the regime could be secured.”¹⁰⁶ Otherwise, the army warned, “it would undertake the administration directly.”¹⁰⁷ As a result of this development, Prime Minister Demirel resigned the same day, and Nihat Erim became a new Prime Minister. The first move of Erim’s government, which was supposed to make reforms, was to declare martial law in eleven cities, and to adopt the Law for the Maintenance of Order No. 1402 on 13 May 1971.

Law No.1402 gave the generals martial law privileges to search in the properties of the people, to stop the actions of political parties and organizations, to limit communications, to control the press, and to close the printing houses without giving any

¹⁰⁵ “From 1923 to the Present,” <http://www.turkey.org/countryprofile/from1923.htm#top> (1999).

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

reason.¹⁰⁸ On 22 September 1971, the government also passed the Act No. 1488 on 22 September 1971. The Act No.1488 changed the articles 22 and 27 of the 1961 Constitution, which, to some extent, had provided for freedom for the press. The previous version of the Article 22 had authorized a judge to suspend, as a preventive measure, the distribution of publications which carried out the offenses that were stated in the article. But the new version of the Article 22 authorized prosecutors with the same duty.¹⁰⁹

In the later years, press trials followed one after other. Journalists Turhan Dilligil in Ankara, Dogan Kologlu, Alpay Kabacali and Sabri Yilmaz in Istanbul were arrested for the charges of insulting the President, which was a violation of the Penal Code article 158, and were sent to a jail in July 1972. Osman S. Arolat, the responsible editor of the magazine *Ant*, were arrested with the violation of articles 142, 159 and 311 of the Constitution, and 24 years imprisonment was sought by the prosecutor. Other journalists accused of insult were Abdulkadir Billurcu, Nihal Atsizm and Necdet Sevinc. The total imprisonment time asked for them was almost 100 years.¹¹⁰

Government repression also reached to education, and Mumtaz Soysal, a professor in constitutional law, arrested for making propaganda of communism in his book titled “Fundamentals of the Constitution.” He was tried in the court of martial law, took 6 years 8 months imprisonment, then the verdict about him was withdrawn.¹¹¹

¹⁰⁸ Translated and paraphrased from the Turkish by the author from 1402 Sayili Sikiyonetim Kanunu [The Law for the Maintenance of Order] (1971), quoted in Mehmet Semih Gemalmaz and Osman Dogru: *Turkiye’de Basın Ozgurlugu Mevzuati* [The Regulations Concerning Press Freedom in Turkey], 161.

¹⁰⁹ Translated and paraphrased from the Turkish by the author from 1488 Sayili Yasa [The Act No. 1488] (1971), quoted in Alpay Kabacali: *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 197.

¹¹⁰ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 199.

¹¹¹ *Ibid.*, 204.

The Commandership of the Istanbul Martial Law declared a list that included 139 books whose publication was prohibited. According to the report of the International Lawyers Council, even Einstein's *Natural Law* was among the ones prohibited.¹¹²

Martial law ended in October 1973, after the general elections were held in the country. Those who were arrested during the period of the martial law were released in 1974 after the declaration of general pardon.

In 1974, many prosecutions were brought against the publications of leftists and rightists whose number increased dramatically. According to the list that was sent by the government to the Department of Justice during the period between 7 July and 11 July 1975, there were the names of 18 publications in which the government found criminal matter, and therefore, wanted to bring prosecutions against a variety of publications. Charges included:¹¹³

- For the three articles in *Kitle* [Mass], the magazine of the Turkish Socialist Party, with the violation of Articles 159, 142, 141, and 312 of the Turkish Penal Code,
- For the two articles in *Yuruyus* [Walk], the magazine of the Turkish Workers Party, with the violation of Articles 159 and 141 of the Code,

¹¹² Translated and paraphrased by the author from *Uluslararası Hukukcular Birliği Türkiye Raporu 1971-1973* [The Turkey Report of International Lawyers Organization 1971-1973], Ceviren [Translated and edited by] Ince Pehlivan (Istanbul, 1973), 56, quoted in Alpay Kabacalı: *Baslangictan Gunumuze Turkiye'de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 199.

¹¹³ See Ugur Mumcu, "Sayın Muhbir Basbakan" [Dear Spy Prime Minister], *Cumhuriyet* [The Republic], 21 Subat [February] 1976.

- For six articles in the magazine, *Halkın Sesi* [Voice of the Nation], with the violation of Article 312, and for two articles in the same magazine with the violation of Article 142 of the Code,
- For the article titled “Sakarya Election,” which was written by Ahmet Kahraman, in the newspaper *Yeni Ortam* [New Environment], with the violation of Article 159 of the Penal Code,
- And for the article that published in the newspaper *Milli Gazete* [National Gazette], the publication of the National Peace Party, for the violation of Article 163, which made it a crime to establish, organize, regulate, or administer societies with the purpose of adapting the basic social, economic, political or judicial orders of the State to religious principles and beliefs.

Article 16 of the Press Law, which required the imprisonment of the responsible editor and the author of the accused article, was changed with the law on 8 May 1979. According to the new version of the article, the imprisonment of the responsible editors was transformed to the fines.¹¹⁴

Over years, the intensity and tension of the struggle between the leftists and rightists increased, resulting in military intervention one more time on 12 September 1980. Five military generals took all the authority in the country by naming themselves the “National Security Council.” During that period, those generals had the power to control the press directly by allowing the newspapers and magazines to print only stories approved by this government. Those who did not comply with the orders began to get

¹¹⁴ Translated and paraphrased by the author from Alpay Kabacali, *Baslangictan Gunumuze Turkiye’de Basin Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 209.

arrested as early as the night of the 12 September 1980. Demirtas Ceyhun, Rifat Ilgaz, Osman Sahin, and Lutfu Oflaz were among the ones who were arrested for their writings before September 12.¹¹⁵

Preparation for the new constitution of Turkey gained speed after declaration of martial law in 1980, and finally on 7 November 1982, the new constitution of Turkey, still in effect in 2002 with amendments made in later years, was promulgated. Chapter 2 of the 1982 Constitution, as in the 1961 Constitution, included the basic guarantees for freedom of expression and of the press (see Appendix A for the amendments made in the 1982 Constitution of Turkey).

Civilians took the control from the military in 1983, and the multi-party system was restored again. In the same year, the Motherland Party won the general elections, and came to the authority with its leader, Turgut Ozal, becoming the Prime Minister of Turkey.

On 4 February 1983, the Law of the Supreme Court of Appeal was declared. The law regulated the elections and duties of the members of the Supreme Court of Appeal.¹¹⁶ On 16 June 1983, the State Security Courts were established, and the law regarding the establishment and trying procedures of the Court was passed. The law authorized State Security Courts to deal with offenses against the integrity of the state. Article 23/V of this law stated that those who damage the order and integrity of the court with words, publications, and/or actions, or insult the court, the president of the court, the members of the court, or the public prosecutor and its assistant, can be held in contempt, and their

¹¹⁵ Ibid., 219.

¹¹⁶ Translated and paraphrased by the author from Gemalmaz and Dogru, *Turkiye’de Basın Ozgurlugu Mevzuati*, 168.

publications can be suspended. If they continue to publish by violating the order of suspension, they can be imprisoned from three months to six months, and can also be fined from five thousand liras to fifteen thousand liras.¹¹⁷

On 22 September 1983, The Turkish Flag Act was passed. Article 7 of the Act made it crime to use a flag in dirty, damaged, torn, wrinkled condition, which damages its symbolic value. The Article continued: “The contempt of and insult to the Turkish Flag with words, publications, and actions cannot be allowed. The flag cannot be torn apart, burned, or thrown out.”

Article 8 of the Act noted that those who did not comply with the provisions of the Flag Act are punished according to what was stated in the article 526 of the Turkish Penal Code.¹¹⁸

There were Flag Protection laws in the United States, similar to the one in Turkey, prior to 1989. Both the Federal Government and 48 states had such laws prohibiting desecration of the flag before 1989. But since the Supreme Court’s ruling in *Texas v. Johnson*¹¹⁹ that stated “burning an American flag as part of a political demonstration was expressive conduct protected by the freedom of speech clause of the First Amendment,” neither the Federal Government, nor the States, have been able to pass laws prohibiting the desecration of the American flag. As recently as in July 2001, the U.S. House of Representatives passed flag protection amendment that would grant Congress the power to enact laws to prohibit the physical desecration of the flag. Despite the amendment’s success in the House, it can be expected to fail again in the Senate, if we consider the

¹¹⁷ Ibid., 172.

¹¹⁸ Ibid., 175-176.

¹¹⁹ 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989).

similar amendments' fortune in the last 12 years which was resulted with rejection by the Senate.¹²⁰

A State of Emergency Act passed on 25 October 1983 and brought additional restrictions over the press. Article 11 of the Act stated that when a state of emergency exists; the printing, publication and distribution of newspapers, magazines, pamphlets and books can be stopped, seized, or required to get a permission in order to protect the general order and peace of the nation and to prevent violent actions.¹²¹

Press Law No. 5680, which was passed on 15 July 1950, and was still in effect in 2002, noted further limitations on press freedom. With the new amendments made on November 10, 1983, the punishments for press crimes were increased. The new version of the 1950 Press Law also authorized a public prosecutor, without securing a court order, to stop distribution of any publication containing material that constitutes an offense against the state and that reveals government secrets.¹²²

On 10 November 1983, the "Law Regarding the Establishment and Trying Procedures of the Constitutional Court of Turkey" was passed. The law authorized the Constitutional Court for judicial review of legislation. Article 42/1 of the law stated that pre-trial hearings of the Constitutional Court were secret. Article 43 of the law provided that agencies and officials of the government may refrain from giving the top-secret

¹²⁰ "Flag Protection Amendment Passes House," <http://usgovinfo.about.com/library/weekly/aa071801b.htm> (July 17, 2001).

¹²¹ Translated and paraphrased from the Turkish by the author from 25 Ekim 1983 tarihli 18204 sayılı Olaganustu Hal Kanunu [A State of Emergency Act No.18204, October 25, 1983], quoted in Mehmet Semih Gemalmaz and Osman Dogru: *Turkiye'de Basın Özgürlüğü Mevzuatı* [The Regulations Concerning Press Freedom in Turkey] (Istanbul: Hurriyet Ofset Matbaacilik, 1990), 179.

¹²² Translated and paraphrased from the Turkish by the author from 2950 Sayılı Kanun, ek madde 1 [The Act No. 2950, added Article No.1], quoted in Kabacali, 224.

information and/or sending the top-secret documents if they think that the national security of the nation and the nation can be damaged as a result of releasing that information and the documents. The constitutional court makes decisions about such incidents. If the two-third of the Court votes in favor of delivery of that top-secret information by the government, the government was obligated to release of that information and documents related to that.¹²³

According to the report of the Organization of the Modern Journalists of Turkey, 181 journalists, publishers, and writers were charged against and arrested for various offenses, and 82 were imprisoned between the period of 12 September 1980 and 12 March 1984. Among those who were convicted were Bektas Erdogan, Fuat Akyurek, Mustafa Colak, Semih Ozal, Muslim Colak, Ahmet Tastan, Taner Kayas, Erol Gozmen, Ugur Tekin, Ilhan Akalin, Atilla Aksu, Isik Yurtcu, Dogan Yurdakul, Yunus Er, and many others.¹²⁴ Most of the “guilty” judgments were issued for violation of the Article 142 of the Penal Code, which made it a crime to make propaganda “in any manner for governing of the State by one person or by a group of persons, contrary to republicanism or to the principles of democracy, directed to abolish for racial reasons partially or entirely the civil rights secured by the constitution, or to exterminate or weaken nationalist feelings,” and to speak “favorably of the acts forbidden in these sections.”

¹²³ Translated and paraphrased by the author from Gemalmaz and Dogru, *Turkiye’de Basın Ozgurlugu Mevzuati* [The Regulations Concerning Press Freedom in Turkey], 181.

¹²⁴ Translated and paraphrased by the author from “Basin 80-84 [The Press Between 1980 and 1984],” *Cagdas Gazeteciler Dernegi Yayini* [The Publication of the Organization of Modern Journalists] (Ankara, 1984): 197-230.

Some of those journalists were also found guilty for the violation of the articles 159, 311, and 312 of the Penal Code.¹²⁵

On 15 May 1984, a signed petition was sent to the Presidency and the Grand National Assembly of Turkey. Those who signed the petition demanded some regulatory changes in order to increase the effectiveness of a democracy. A free press was seen as one of the most important fundamental parts of the democracy, according to the signers of the petition. The petitioners stated that in order to enhance the effectiveness of democracy, the press should be without restrictions, should be independent, and multi-voiced. The same day that the signed petition was received by the government, its publication was prohibited. Those who signed the petition were questioned, and most of them were tried in the courts. In the trials, cameras and tape-recorders were not allowed in the courtroom. The government also disallowed the defense of Aziz Nesin, one of the signers of the petition in July 1985. The lawsuit known as the “Petition of the Intellectuals” was resulted with the “not guilty” verdict of the court for the defenders.¹²⁶

On 4 May 1988, Article 24 of the civil law was changed. The new provision of that article provided that those, whose reputations were attacked or in the danger of being attacked, can demand the necessary precautions to stop these invasions.¹²⁷ This change was made in fact to stop some news and publications. It was mostly carried out in this way by the members of the authority party in the following years. Some leading members of the party in authority brought lawsuits against many journalists with the charge of

¹²⁵ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 223.

¹²⁶ Ibid., 221.

¹²⁷ See Dr. Ahmet Kilicoglu, “Medeni Kanun Degisirken” [While Civil Law Was Changing], *Cumhuriyet* [The Republic], 7 Mart [March] 1988.

personal insult. In 1988, with the changes in the Articles 480 and 482 of the Penal Code, which regulate the punishment for the crimes of personal insult, fines were increased.¹²⁸

While the members of the press evaluated those latest actions of the government as attempts to suppress the freedom of criticism of the press, the government continued its similar actions. In 1988, publisher Muzaffer Erdost and attorney Halit Celenk were interrogated by the police for 18 hours, and then they were arrested for the charge of making the communist propaganda. They were tried in the court for provoking the labor segments of the population, but at the end, they were found innocent.¹²⁹

On 10 May 1990, the government passed a “Decree Regarding the Additional Cautions in a State of Emergency.” Article 1 of the Decree stated that printing, publication, and distribution of any material, which could damage order in the region where a state of emergency exists, and which could cause excitement among the public of that region, can be prohibited temporarily or permanently by the government order. If it is seen necessary, the printing houses of those publications can be closed as well.¹³⁰

On April 12, 1991, both positive and negative developments occurred in the area of freedom of expression. Articles of the Penal Code, which were seen as anti-democratic by many, were repealed. These included Article No.140 [forbidding publishing in a foreign country untrue, malicious, or exaggerated rumors or news about the internal situation of the States, or conducting activities harmful to national interests], Article

¹²⁸ Translated and paraphrased by the author from Kabacali, *Baslangictan Gunumuze Turkiye’de Basın Sansuru* [Censorship of the Press in Turkey from its Origins to Present], 232.

¹²⁹ Translated and paraphrased from the Turkish by the author from *Cumhuriyet* [The Republic], 26 Aralık [December] 1988.

¹³⁰ Translated and paraphrased from the Turkish by the author from 9 Mayıs 1990 tarihli 424 sayılı “Siddet Olaylarının Yaygınlaşması ve Kamu Düzeninin Ciddi Şekilde Bozulması Sebebine Dayalı Olaganüstü Halin Devami Suresince Alınacak İlave Tedbirlere İlişkin Kanun Hukmünde Kararname” [A Decree

No.141 [forbidding establishing societies or conducting activities with purposes of establishing domination of a social class over other classes, or overthrowing any of the established basic economic or social orders of the country, or exterminating the political and legal orders of the State, or governing the State by one person or by group of persons, contrary to the principles of republicanism or democracy, or abolishing partially or entirely societies because of race, the civil rights provided by the constitution, or exterminating or weakening national feelings], Article No.142 [forbidding creating propaganda contrary to republicanism or the principles of democracy, directed to abolish for racial reasons partially or entirely the civil rights secured by the constitution, or exterminating or weakening national feelings], Article 143 [forbidding establishing, organizing, regulating or conducting, without the permission of the Government, societies of international character or societies the headquarters of which are in foreign countries], and Article 163 [forbidding, contrary to laicization* establishing, organizing, regulating or administering societies with the purpose of adapting, even partially, the basic social, economic, political or judicial orders of the State to religious principles and beliefs], were all repealed.¹³¹ That same day, the Turkish Parliament passed the Anti-Terror Law, making the same offenses covered in the repealed articles of the Penal Code criminal once more.

Article 1 of the Anti-Terror Law described terror as “the actions of a person or group of persons which belonged to an organization whose purpose is to change the

Regarding the Additional Cautions in a State of Emergency No.424, May 9, 1990], quoted in Kabacali, 238-245

* Freedom of Government affairs from religious interference.

¹³¹ For detailed explanation of the Articles see page 150 of this chapter.

political, legal, social, economic order and principles of the Republic, to destroy the indivisible integrity of the State, to endanger the presence of the State and the republic, to attempt of weakening or destroying the stability of the Government, to destroy the basic rights and freedoms, to threaten the internal and external security of the State and general order of the nation.”

Article 2 of the Law made it a crime to commit the actions stated above. Also Article 8 prohibited the separatist propaganda which aims to destroy the indivisible integrity of the State. Those who commit the stated crimes can be punished with imprisonment from one to three years, and be fined from 100 million to 300 million Turkish Liras.

After the 1990s, the press in Turkey gradually began to gain its independence from government. The government allowed the members of the press to criticize the authority and its actions, and to express any political viewpoint. Lively debates on political issues increased in number. The abolition of the state monopoly over television and radio broadcasting in 1993 as a result of rapid increase in the number of private television and radio stations was also a positive development toward expanding the areas in which free expression and speech are not restricted. Today there are 16 national private television channels and seven state radio and television channels in Turkey, which outweigh any European nation in number.

Although the press in Turkey enjoyed more freedom in the years following 1990, certain restrictions of the government over the press still exist in some areas. For example, threats to the national security and order, publishing propaganda detrimental to national feelings, insulting the authorities, and violations to the indivisible integrity of the

State with its nation and territory are still the major reasons for suppressing of freedom of the press.¹³² Laws and constitution of the country authorize the government to restrict freedom of expression and press for the purposes or preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation rights and the personal and family privacy of individuals, protecting professional secrets as prescribed by law, and ensuring the proper functioning of the judiciary.

As recently as in October 2001, Burak Bekdil, a journalist for the newspaper *Turkish Daily News*, was accused of ridiculing the judiciary of Turkey by violating Article 159 of the Turkish Penal Code, which makes it a crime to insult the authorities including the Parliament, the government, and the military. The article that brought him trouble stated that “An ordinary Turk would probably have one in a million chance for a fair trial if he is foolish enough to trust Turkish courts and judges. And worse, if in search of justice he dares to complain about a verdict -or a judge- that would only add to his nightmares. Many people think Turkey’s most untouchable class is its generals. Oh, no, never underestimate its judges.”¹³³

The trial about Bekdil was still continuing early in 2002, and he is facing a maximum prison term of six years.¹³⁴

The 1982 Constitution of Turkey went to amendment on October 17, 2001, and 28 articles of the Constitution were changed. With the amendments, broadcasting in the Kurdish language and other languages was allowed. The new amendments also provided

¹³² *Paying the Price*, 77.

¹³³ “Turkish journalists pokes fun at judiciary, may go to jail,” www.freedomforum.org. (October 3, 2001).

¹³⁴ *Ibid*.

that the death penalty, which had not been administered in Turkey since 1984, is now limited to acts of terrorism and treason.

The election of Ahmet Necdet Sezer, the former chief justice of the constitutional court and outspoken advocate of democratic reforms, as President of Turkey in May 2000 accelerated Turkey's efforts toward expansion of freedoms. President Sezer urged "relaxation of anti-terror laws and other legislation that restricted free speech, political parties, and the rights of Kurds."¹³⁵ In August, he twice vetoed "a government decree that would facilitate the removal of public servants suspected of fundamentalist or separatist sympathies."¹³⁶ In October 2000, the law authorizing the Turkish government to issue decrees with the force of law was annulled by the constitutional court of Turkey.¹³⁷

Conclusion:

Seditious libel, another ancient enemy of freedoms, has been a very effective weapon of governments to silence their critics over years. In the United States, although it is not much of a threat in 2002, seditious libel has been declared a crime several times with laws in the nation's history, especially at the times of stress. In Turkey, although there is no wording equivalent to seditious libel, its function can be found in the nation's history as well as in the United States. Over the years, governments in Turkey designed many laws and decrees to silence their critics. Since the Turkish governments have been more open to external threats like the campaign of Kurdish Workers' Party (PKK) with terrorist actions, they have felt insecure and this insecurity have compelled them to

¹³⁵ "The 2000-2001 Freedom in the World Report on Turkey," Freedom House Committee," <http://www.freedomhouse.org/research/freeworld/2001/countryratings/turkey.htm> (2001).

¹³⁶ Ibid.

¹³⁷ Ibid.

design laws to punish their critics whose loyalty was in suspect. The events of September 11th, 2001, have opened a new window for governments and have given them “terrorism” as a factor to justify their actions to limit freedoms.

Looking at the picture in early 2002, we can conclude that Siebert’s second proposition is instructive for it stated that the more insecure the government, the more restraints are brought on the press. In the past, when governments in the United States and Turkey perceived an internal or external attack to their stability and structure of the society, seditious libel charges and prosecutions for people whose loyalties were in suspect increased as legitimate cautions to protect the nation’s security, and in the future, the signs indicate that they are likely to continue in the same direction.

CHAPTER VIII

BROADCAST LICENSING

1. Foreword

Licensing is another form of prior restraint. Although it does not exist in 2002 as a form of governmental control on the print media in the United States and Turkey, licensing is administered on the broadcasting media in both countries through governmental agencies.

Today broadcasting is more than 75 years old as one of the industries that experienced a most rapid development in line with technological and political changes. In every country in the world, governments have made attempts to regulate broadcasting either because they realize broadcasting's power to influence citizens or, as in the United States, for reasons of technology, to cope with a scarcity of frequencies. The fact that the electromagnetic spectrum is finite limits the number of broadcast stations that may transmit simultaneously. Licensing radio and television stations to operate on electromagnetic spectrum became a necessity because an unlimited number of unlicensed, or unassigned stations create "chaos" on the airwaves. Since the only answer to "chaos" is licensing, it fell to the governments of nations to license stations.¹

Regulation of broadcasting usually has been administered in the form of legislation, and even "in former totalitarian states, the law was used as a legitimizing vehicle."² However, in the recent times, regulation was replaced with deregulation in

¹ Herbert H. Howard, interview by author, Knoxville, Tennessee, 2 April 2002.

² Wolfgang Hoffmann-Riem, *Regulating Media – The Licensing and Supervision of Broadcasting in Six Countries* (New York, London: The Guilford Press, 1996), 2-3.

most Western and Eastern countries, following a trend of regulation by market forces that said, there always remains a fundamental level of government permission to broadcast.³

In the most Western European countries, including Turkey, broadcasting has been a monopoly of the state, in the form of so-called public broadcasting, until the 1990s. Therefore, opening up the broadcasting market to competition was a significant change in those countries. However, in the United States, broadcasting was the responsibility of the private commercial sector from its very beginning, and public broadcasting was created later. A duopoly of public and private broadcasting emerged in the United States in the 1930s, but it did not reach Turkey until the 1990s.

Especially in those European countries which began private broadcasting recently, some issues have been raised such as the threat to vulnerable traditional and cultural values since most of the programming in the form of “entertainment,” “news,” or “education” is imported from the United States. In fact, since its first decade of emergence in the 1950s, American television was involved in the lives of other nations – “an involvement of imperial scope.”⁴ Other concerns were loss of program quality and deterioration of the public service concept. These concerns are part of the context for statutory regulation and supervision of broadcasting in those countries. The legal range of regulatory instruments in the United States and its supervisory body of broadcasting, the Federal Communication Commission (FCC), were used as models in the regulation of private broadcasting in those European countries, including Turkey.⁵ As Hoffman-Riem

³ Ibid., 3.

⁴ Eric Barnouw, *The Image Empire – A History of Broadcasting in the United States*, Volume III – from 1953 (New York: Oxford University Press, 1970), 3.

⁵ Hoffmann-Riem, 4.

stated, “the creation of broadcasting regulation in this way was an important precondition for the introduction of private sector broadcasting. The supervisory body set up by the state served as a guarantee that broadcasting would develop in a responsible manner – or at least not proliferate uncontrollably.”⁶

At this writing in 2002, a comparison of broadcasting regulation in the United States and Turkey gives us some insight regarding the similarities and differences in this area of media control. These countries came from different backgrounds – the United States has a long tradition of private sector broadcasting under the FCC supervision; while in Turkey there was a 57-year government monopoly on broadcasting, and private broadcasting is only a decade old. Outlining the main distinctions in broadcasting between those two countries allows seeing the diversity of possible regulation options where these two nations are concerned.⁷

2. Licensing in Early England

Because the legal system of the United States evolved from English law, these early roots of licensing communication deserve mention here. In Early England, prior restraint was applied by the government in the form of licensing. A licensing system began in and around London in 1530. The Stationers Company was established under Queen Mary in 1557 and was responsible with informing authorities about illegal unlicensed printers.⁸

⁶ Ibid.

⁷ See Wolfgang Hoffmann-Riem, *Regulating Media – The Licensing and Supervision of Broadcasting in Six Countries*, 5, where he used the same logic in comparison of six countries.

⁸ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 68.

The Court of the Star Chamber was created by royal edict in 1588 as another controller of the printing media. The members of the Star Chamber included high-ranking government officials. Those members issued decrees and ordered punishments by sitting “behind closed doors in the ‘starred chamber’ at Westminster.”⁹ The 23 June 1586 decree of the Star Chamber, as the most extensive regulation of the press in that period, stayed in effect until 1637. The Decree confirmed the Stationers Company’s power for search and seizure. It also authorized the Archbishop of Canterbury and the Bishop of London to license all books (with the exception of law books and the ones printed by the queen’s printer).¹⁰

The Court of Star Chamber was abolished in 1641, but the government continued its restrictions of printers “by means of a licensing agency (the Company of Stationers), a Board of Licensers, or by various parliamentary committees.”¹¹ After 1647, a series of Printing Acts were put into effect by the government. Printing Acts of 1649 and 1653 limited printing to the city of London, prohibited all ‘scandalous’ and ‘seditious’ publications, and required that all books and pamphlets to be licensed.¹² The Printing Act of 1653 imposed additional restrictions by giving authority to the Council of State to determine the number of printing houses, apprentices, and presses, and required that all the printers must get the permission of the Council of the State.¹³ The Regulation of Printing Act, which was passed in 1662, intended to prevent “the frequent abuses in

⁹ William E. Francois, *Mass Media Law and Regulation*, 6th ed. (Prospect Heights, Illinois: Waveland Press, Inc., 1994), 2.

¹⁰ Siebert, 61, 62.

¹¹ Francois, 2.

¹² Siebert, 222, 223.

¹³ Ibid., 228, 229.

printing seditious, treasonable, and unlicensed books and pamphlets,” and to regulate “printing and printing presses.”¹⁴ This Act was the major regulation of the press from 1662 to 1694 except the years 1679-1685.¹⁵

The Regulation of Printing Act of 1662 also offered special privileges to the stationers and printers if they cooperated in enforcing the state regulations. The Act also put the licensing system under authority of the Parliament. It prohibited the printing of all unlicensed and unauthorized books and pamphlets.¹⁶ The Regulation of Printing Act expired in 1694 due to inability of a two-party Parliamentary government to enforce an effective regulation system.¹⁷

As seen above, in early England, “a licensing system was instituted on the theory that printing was a state matter and therefore subject the control by the crown.”¹⁸ During that period, the English government used its licensing power on the press successfully, and made it crime to publish without license. A licensing system expired in England in 1694.

3. Licensing in the United States

Licensing in the United States has not been a problem for print media, except in getting permission to cover battles during wartime conditions. Although licensing of the print media was not allowed, licensing of broadcast stations in the “public interest, convenience, or necessity” has been a widely accepted form of governmental control.¹⁹

¹⁴ Ibid., 238.

¹⁵ Ibid.

¹⁶ Ibid., 242.

¹⁷ Ibid., 260.

¹⁸ Francois, 2.

¹⁹ Dwight L. Teeter Jr., “The First Amendment at Its Bicentennial: Necessary But Not Sufficient?” *Journalism Quarterly* 69 (Spring 1992): 21.

From that aspect, broadcasters argue that the shield of First Amendment is weaker for them than the print media because the federal government, through the Federal Communication Commission, requires them to get a license to operate a radio or television station, and this is a form of prior restraint. In the United States, however, licensed broadcast stations are free to criticize government, and it is understood that “broadcast re-licensing by the Federal Communications Commission has become largely a routine matter.”²⁰

The primary reason for licensing in broadcasting and the need for a government agency, representing the public, is to provide for orderly use of the spectrum on which there is a limited number of channels for possible use. Secondary reasons for licensing stations include providing that qualified and responsible parties are entrusted with the facilities to which they are licensed and who will serve “the public interest, convenience, and necessity.” In some countries, licensees are approved because the parties have incurred favor with the government and other would-be licensees are turned down because they are out-of-favor with the government. In any case, a licensee is expected to follow the rules and regulations of broadcasting set forth by the government and its broadcasting agency (e.g., the FCC).²¹

The rapid development of large-scale broadcasting in the United States in the 1920s caught Congress unprepared to deal with the chaos (interference between stations) and to bring new requirements in this field. At that time, the only statute governing radio broadcasting was the Radio Act of 1912, which primarily dealt with ship-to-ship and

²⁰ Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 71.

maritime communications.²² Over time, this statute proved to be inadequate to control rapidly growing radio broadcasting. “By November 1925 more than 578 stations were on the air and applications had been filed for 175 and more.”²³ After experiencing considerable interference with each other on the airwaves, radio stations, politicians, and the public came to the point of demanding governmental control in this field since “the increase in stations continued unchecked.”²⁴

Succeeding the Radio Act of 1912, the new Radio Act was finally enacted in 1927 to make order out of the chaos in radio industry. With the Radio Act of 1927 both broadcast regulation began and the era ended in which “use of the airwaves was an inherent right of every citizen, limited only by the availability of spectrum space.”²⁵ Section 11 of the Act transformed this *right* to the status of *privilege*, to be granted by the Federal Radio Communication to broadcast stations which would serve the “public interest.”²⁶

The Radio Act of 1927 created the Federal Radio Commission (FRC) and divided the responsibilities between The Secretary of Commerce and the new Commission. The act authorized the FRC “with broad administrative and quasi-judicial powers”²⁷ over applications for station licenses, renewals, and revoke of those licenses, while the Secretary of Commerce was responsible with “fixing the qualifications of operators,

²¹ Howard, interview by author.

²² Erwin G. Krasnow and Lawrence D. Longley, *The Politics of Broadcast Regulation*, foreword by Newton Minow, second ed. (New York: St. Martin's Press, 1978), 8-9.

²³ *Ibid.*, 9.

²⁴ *Ibid.*

²⁵ Teeter and Loving, 650.

²⁶ *Ibid.*

²⁷ Krasnow and Longley, 11.

inspecting station equipment, and assigning call letters.”²⁸ But the FRC was an experimental body with a temporary status and its powers expired after one year. Additionally, the vagueness of the Radio Act of 1927 posed some difficulties in control of the radio industry.

After the election of Franklin D. Roosevelt as president, the Communications Act of 1934 was enacted and a new Federal Communications Commission was created as the supervisory body of broadcasting industry “with power to issue licenses, allocate frequencies, and specify operating conditions.”²⁹ The licensees were to operate in the public interest, convenience, or necessity.

The Federal Communications Commission was composed of seven members appointed by the president “by and with the advice and consent of the Senate.”³⁰ The new commission was authorized with “regulation of interstate and foreign communication by wire as well as by radio,”³¹ and its powers also included the regulation of telephone and telegraph.

The Mass Media Bureau of the FCC was formed in 1982 with the merger of the Broadcast Bureau and the Cable Bureau.³² This bureau is primarily responsible for developing, recommending, and administering policies and programs for the regulation of

²⁸ Ibid.

²⁹ Francois, 497.

³⁰ William B. Ray, *FCC-The Ups and Downs of Radio-TV Regulation*, foreword by Clark Mollenhoff (Ames: Iowa State University Press, 1990), xvii.

³¹ Ibid.

³² T.Barton Carter, Marc A.Franklin, and Jay B.Wright, *The First Amendment and the Fifth Estate – Regulation of Electronic Mass Media*, 5th ed. (New York: Foundation Press, 1999), 37.

radio and television broadcasting. The Mass Media Bureau's duties and responsibilities are as follows:³³

- (a) Process applications for authorizations in radio and television services, including conventional and auxiliary broadcast services (other than international broadcast services) and multi-point and multi-channel distribution services.
- (b) Process applications for renewal of licenses and for assignment or transfer of ownership interests in such licenses.
- (c) Participate in hearings before the Administrative Law Judges and the Commission.
- (d) Plan and develop proposed rulemakings and conduct comprehensive studies and analyses (legal, engineering, social and economic) of various petitions for policy or rule changes submitted by industry or the public.
- (e) Conduct studies and compile data relating to radio and television network operations necessary for the Commission to develop and maintain and adequate regulatory program.
- (f) Investigate complaints and answer general inquiries from the public and handle political broadcasting and fairness doctrine complaints.
- (g) To exercise authority to issue non-hearing related subpoenas for the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements,

³³ Code of Federal Regulations (CFR), Volume 47. Telecommunication, 1998, article 0.61.

and any other records deemed relevant to the investigation of matters within the jurisdiction of the Mass Media Bureau. Before issuing a subpoena, the Mass Media Bureau shall obtain the approval of the Office of General Counsel.

Any individual or organization desiring to operate a radio or television broadcast station is required to get a license from the Federal Communications Commission. Broadcasting without license is illegal in the United States. The FCC is also responsible for renewal or revocation of the licenses. Currently, license terms for television and radio are eight years. However, from about 1927 until the 1980s, the license period was only three years. In the 1980s, with deregulation of a lot of rules and regulations of broadcasting, the license period was extended – at first to 7 years for radio and 5 years for television – then in the Telecommunications Act of 1996, licenses were extended to 8 years for both radio and television.³⁴

Today in 2002, if broadcast stations do not commit a serious violation or persistently abuse of FCC rules, they may assume their license will be renewed. But until 1996, a station's license renewal could be jeopardized if another party filed to seek the channel the station occupied. Few stations lost their license this way, but the threat was considerable. After 1996, the law protects the licensee so as to provide a "presumption of renewal" unless the licensee has performed so badly or abused the license by doing something seriously offensive to the public interest. These are recent changes that provide greater freedom to the licensee.³⁵

³⁴ Howard, interview by author.

³⁵ Ibid.

The FCC was primarily set up to end “chaos in the ether” by enacting a series of “traffic regulations.”³⁶ Hoffman-Riem explained the reasoning behind the regulations of the FCC this way:

...since frequencies (at least those of terrestrial broadcasting) were scarce, the regulatory duty grew into an area in which considerations of common good were used to find or justify criteria for allocation. In making allocation decisions as well as in its subsequent supervisory activities, the FCC was bound by the Communications Act of 1934 to observe the common good (i.e., “public interest, convenience, and necessity”).³⁷

The scarcity argument, as the main reasoning of regulation of broadcasting, lost much of (if not all) its legitimacy over the years with the discovery of new means and technologies of transmissions, such as cable television and satellite-delivered television programming. As a result, the radio and television industry were substantially deregulated in the United States during the early 1980s because it seemed “inequitable to impose regulation upon certain forms of electronic media that cannot legally be imposed upon others.”³⁸

The Federal Communications Commission makes its licensing decisions by seeking certain criteria in the applicants, including “U.S. citizenship (or is a corporation with only a limited number of foreign stockholders), good character, access to technical

³⁶ Hoffmann-Riem, 15.

³⁷ Ibid.

³⁸ Teeter and Loving, 646.

knowledge and financial resources, an understanding of the community's programming needs, and conformance to certain limits on ownership of other stations or media."³⁹

The Supreme Court of the United States accepted the rationale of spectrum scarcity in its decisions made over the years regarding broadcasting. In *National Broadcasting et. al. v. United States*,⁴⁰ the networks challenged the FCC rules which "limited the amount of network broadcast time that any affiliate station could carry, and authorized the agency to revoke the license of any broadcast station that exceeded this limit."⁴¹ The network claimed that such practice of the FCC was a denial of free speech rights of the broadcasters. But the Supreme Court took a position favoring the federal government by stating that denial of station license on the grounds of "public interest, convenience, or necessity," if valid under the Communications Act of 1934, was not a denial of free speech.⁴² Speaking for the unanimous Court, Justice Frankfurter explained the reasoning behind the Court's decision:

...Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it must be denied...⁴³

The Supreme Court, turned back to its scarcity argument as a rationale for broadcast control again in 1969, but this time "even more clearly and forcefully than it

³⁹ Robert Trager and Donna L. Dickerson, *Freedom of Expression in the 21st Century* (Thousand Oaks, London: Pine Forge Press, Inc., 1999), 156.

⁴⁰ 319 U.S. 190, 63 S.Ct. 997 (1943).

⁴¹ CFR 47 §§ 3.101-3.108, quoted in Teeter and Loving: *Law of Mass Communications*, 644.

⁴² 319 U.S. 190, 226-27, 63 S.Ct. 997, 1014 (1943).

⁴³ *Ibid.*, at 213, 63 S.Ct. at 108.

had been described in the earlier Supreme Court decision.”⁴⁴ In *Red Lion Broadcasting Co. v. FCC*,⁴⁵ which involved the issue of the right of reply of an author attacked by the radio station, Justice White wrote for the unanimous Court:

...When there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unbridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish...the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.⁴⁶

The Communications Act of 1934 forbids censorship, but, for many years, the FCC tried to circumvent that item by attempting to influence programming by enunciating types and percentages of programming by stations that would be looked upon favorably when licenses were up for renewal. In earlier times, because of various concerns about programming balance, the FCC has chastised the radio industry for having too many sponsored programs, too much entertainment (at the expense of informative or educational programming), too much recorded programming (vs. live performance), and other broad criticisms.⁴⁷ In 1946 the FCC issued a document called “Public Service Responsibility for Broadcast Licensees,” which came to be known as the

⁴⁴ Teeter and Loving, 645.

⁴⁵ 395 U.S. 367, 89 S.Ct. 1794 (1969).

⁴⁶ Ibid., at 367, 386-390, 89 S.Ct. 1794, 1805-1806 (1969).

⁴⁷ Howard, interview by author.

Blue Book.⁴⁸ This was intended to be a guideline for U.S. broadcast stations to follow in developing their program schedules – in a manner that would satisfy the FCC. With this document, the FCC encouraged broadcast stations to engage in certain type of programming. More local programming, more non-sponsor programs, and more news were some of the FCC’s demands. The Blue Book was branded as “censorship” and was never adopted. It was an attempt by the FCC to tell broadcasters what they ought to program on their stations.⁴⁹

Later, in 1960, the FCC issued another programming guideline in the “1960 Programming Policy Statement.”⁵⁰ This document was milder in tone and more effectively enforced. As a result, it strongly influenced broadcast programming in the 1960s. With it, the FCC devised a license renewal plan in which an applicant for renewal of license would promise various types of programs and specify the percentage of air time in a typical week. Then, when it became for the next license renewal, the station had to go back and analyze its program logs to determine if it had kept its promises to the FCC. It was called “promise vs. performance.” The FCC called some stations “on the carpet” if they failed to do what they said they would do in broadcasting various types of programs [e.g., news, public affairs, information (such as agricultural, educational, religious, etc.)].⁵¹

As seen, in the United States, censorship at the level of statements and news stories has not been restrictive; but the government has attempted, at times, to demand

⁴⁸ See Frank J. Kahn, ed., *Documents of American Broadcasting*, 2nd ed. (New York: Appleton-Century Crofts, 1973), 151-233.

⁴⁹ Howard, interview by author.

⁵⁰ See Kahn, 234-250.

⁵¹ Howard, interview by author.

that stations program certain percentages of certain types of beneficial programs (such as 5% news).⁵²

The validity of scarcity argument was called into question after the emergence of cable television. Although the cable technology began as early as 1948, its expansion took a long time, but “during the 1970s the number of local U.S. cable systems grew to some four thousand, with more than fifteen million homes subscribing.”⁵³ So, the late 1970s and early 1980s witnessed an explosion of the use of cable television in the United States, and starting in that period, cable TV began to pose a serious competitive threat to broadcasting.⁵⁴

Unlike broadcasting, cable television does not use spectrum channels to deliver the programming. Its signals can be transmitted through a wire, “which prevents the radio frequencies from entering the spectrum.”⁵⁵ Then it can be assumed that since cable TV systems do not use the spectrum, the FCC has no legal basis to regulate cable TV in a way to regulate broadcasting. However, there are certain restrictions on the operation of cable TV systems, although the FCC had no legal authority to license cable TV operators. There have been two reasons behind the regulation of cable TV systems. First, local authorities may regulate cable television systems because their wires go down and across public streets and alleys. So to circulate transmission via their wires, a cable television company needs permission from the government agency that is responsible to control public property. In return of giving permission to use public property, the government

⁵² Ibid.

⁵³ Eric Barnouw, *Tube of Plenty – The Evolution of American Television*, second revised edition (New York: Oxford University Press, 1990), 493.

⁵⁴ Teeter and Loving, 646.

⁵⁵ Trager and Dickerson, 157.

expects from cable television companies to comply with some rules, including paying a fee to the government (no more than 5% of the system's gross annual revenues) and reserving some of its channels for educational, public, and governmental programming.⁵⁶

Especially after the 1980s, the federal courts began to take an unsympathetic approach against the attempts of the FCC to impose content control on cable television systems. The underlying basis for that approach was that "these regulations exceeding the authority granted the agency by Congress."⁵⁷ But in fact, even the FCC was aware that any cable programming regulation could hardly withstand First Amendment challenge in the courts. So, as a result, the FCC began to move toward deregulation by repealing every television and radio rule of its own, which do not seem justifiable any longer.⁵⁸

During the same period, the FCC also began to encourage the development of other new electronic media, including direct broadcast satellite (DBS), low power TV (LPTV) and multi-point, multi-channel distribution systems (MMDS), under less restrictive standards than those in broadcasting.⁵⁹

The rationale behind these recent actions of the FCC has been, as Dr. Teeter and his colleagues suggested, "to create such a vast electronic media marketplace of viewing and listening alternatives for American audiences that there will be no need for any further intervention on the part of the federal government to protect public interests in electronic mass communication."⁶⁰

⁵⁶ Ibid., 158.

⁵⁷ Teeter and Loving, 648.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

In the United States, as it can be seen, broadcasting has been the responsibility of the private commercial sector from its beginning. In contrast to long-term monopoly of public broadcasting in Turkey, broadcasting had never been a monopoly of the State in the United States. Public broadcasting in the United States emerged originally in the form of educational broadcasting.⁶¹ In order to encourage the development of public broadcasting services, “those college and university radio stations that had already received a broadcast license from the Commerce Department during the early 1920s were permitted to remain on the air,”⁶² although no spectrum space was set up for them either with the Radio Act of 1927 and the Communications Act of 1934. But over years the development of non-commercial broadcast stations was not very promising, because they lacked funding to meet the expensive production costs of programming. With the adoption of the Educational Television Facilities Act in 1962, the governmental funding for public broadcasting was established by setting up a grant program for noncommercial facilities.⁶³ Five years later, in 1967, the Public Broadcasting Act was enacted by the Congress and the Corporation for Public Broadcasting (CPB) was created. This Corporation was a non-profit, non-governmental organization and was authorized with funding all activities of noncommercial broadcasting. When the Corporation for Public Broadcasting was created, it inserted “new regulatory language in the Communications Act of 1934 specially designed to govern its functions.”⁶⁴ Section 398 of the Communications Act stated “the clear intent of Congress that there shall be no direct

⁶¹ Hoffman-Riem, 3.

⁶² Teeter and Loving, 708.

⁶³ Carter, Franklin, and Wright, 348.

⁶⁴ Teeter and Loving, 710.

jurisdiction of the FCC over the Corporation.”⁶⁵ In 1970, CPB and a coalition of noncommercial broadcast stations formed the Public Broadcast Service (PBS) and National Public Radio (NPR) in order to “distribute public radio and television programs to member stations.”⁶⁶ In 1974, the Station Program Cooperative (SPC) Plan was adopted by the CPB and the member licensees of PBS “to insure local control and origination of noncommercial broadcasting funded by the CPB.”⁶⁷ As noted, public broadcasting in the United States “has been sheltered from direct FCC control by a separate set of regulations.”⁶⁸

As a result of recent developments in the broadcasting area and in its regulation in the United States, questions have been raised in the twenty-first century whether broadcasting someday will enjoy the same First Amendment protection that was granted to the print media. Although certain restrictions imposed on broadcasting were repealed by the federal government, broadcasting stations still cannot operate in the United States without licenses. In other words, the practice of licensing was still alive in the United States early in 2002 where broadcasting was concerned.

⁶⁵ Carter, Frankling, and Wright, 349.

⁶⁶ Teeter and Loving, 709.

⁶⁷ Carter, Franklin, and Wright, 349.

⁶⁸ Teeter and Loving, 708.

CHAPTER IX

BROADCAST LICENSING IN TURKEY

The history of broadcasting in Turkey began around the first quarter of the 20th century. The British Broadcasting Corporation (BBC) aired the first official radio broadcast in 1922. The first regular television program was also carried out by the BBC in 1936. The first official Turkish radio broadcasting began on 6 May 1927 in Istanbul.¹

Wireless stations began to be established in Ankara and Istanbul with the enactment of the “Wireless Installation Law” in 1925, and these stations were used for the first “test” radio broadcasts aired in Ankara.²

After the airing of these test broadcasts, the “Turkish Wireless Inc.” (TTTAS) was established by Is Bank (Business Bank) as a responsible unit for radio broadcasts in Turkey. Turkish Wireless Inc. was privately owned. The first official Turkish broadcasting then began on 6 May 1927, when the Anatolian News Agency, which was composed of two deputies of the Interior Ministry and a businessman, was given sole broadcasting management rights for 10 years. The contract between the Turkish Wireless Inc. and the Interior Ministry required radio broadcasts to include news programs, lectures on a variety of subjects, concerts, and weather reports, which would serve the “public interest.”³

After Istanbul, Ankara Radio started its regular broadcasts in October 1927, airing everyday between 7.00 p.m. and 10.00 p.m. At that time, there were 1178 receivers

¹ “Historical Background of Radio and Television Broadcasting in Turkey.” www.bvegm.gov.tr/references/radyo-tv2001.htm (2001).

² Ibid.

³ Ibid.

throughout Turkey. In 1937, Law No. 3222 was enacted and responsibility for radio broadcasting was passed from the Turkish Wireless Inc. to the Post Office, which was owned by the State. This was a significant development since it marked the end of private company management in radio broadcasting and the beginning of state-controlled broadcasting and state radios. Then, with the enactment of Law No. 3837 in 1940, the Directorate of Press and Information was authorized with the control of radio stations.⁴

After the adoption of the 1961 Constitution, the number of State radio stations began to increase steadily. On 31 May 1961, with the resolution adopted by the Council of Ministers, provincial radio stations were set up in seven cities: Istanbul, Ankara, Izmir, Adana, Antalya, Kars, and Gaziantep. In 1963, the responsibility of the supervision of radio broadcasting was given to the Tourism and Information Ministry.⁵

In 1963, the Turkish Radio and Television Broadcasting (TRT) was established, and all radio and television broadcasting was assigned to this autonomous publicly-owned institution, according to the provision stipulated in article 121 of the Constitution which stated: "The management of radio stations and television networks are regulated under the law as autonomous public corporate bodies."⁶ The sovereignty of the broadcasting service, as stated in the Constitution, was translated into an Act of Parliament, "which decreed that all radio and television programs had to be made and distributed by an autonomous and independent organization."⁷ The Turkish Radio

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Bulent Capli, "The Media in Turkey," paper presented at the British Council, Ankara, Turkey, 3 March 1998.

Television Law No.359 was passed by the Parliament on December 24, 1963, and went into effect on May 1, 1964.⁸

The transfer of broadcasting control from the State to an autonomous and authorized unit, the TRT, made positive impact on the development of broadcasting sector in Turkey. The TRT established Turkey's first television station on 31 January 1968, and began the first television transmissions at the same day from a studio in Ankara, capital of Turkey. The TRT Istanbul TV began to broadcast on 30 August 1971.⁹

The autonomous structure of the TRT, which was stipulated in Article 121 of the 1961 Constitution, lasted only eight years. On 20 September 1971, Article 121 was amended and the TRT Law No.359 was changed with the enactment of the Law No. 1569. With the constitutional amendment and enactment of the new law, the TRT was transformed to an impartial public corporate body.¹⁰

With a referendum on 6 November 1982, a constitutional amendment was made in regulation of radio and television broadcasts in Turkey. Consistent with Article 133 of the Constitution, radio and television stations "could only be established by the state and their management would be as public corporate bodies. Furthermore, the principle of impartiality would be preserved in the management and supervision of the institution, establishment of the administrative bodies and in all radio and television broadcasts."¹¹

⁸ "Historical Background of Radio and Television Broadcasting in Turkey." www.byegm.gov.tr/references/radyo-tv2001.htm (2001).

⁹ Capli, 1.

¹⁰ "Historical Background of Radio and Television Broadcasting in Turkey." www.byegm.gov.tr/references/radyo-tv2001.htm (2001).

¹¹ Ibid.

In line with the constitutional amendment, the new Law No. 2954 was put into effect in 1983. With the passage of this law, a “Supreme Board of Radio and Television Broadcasts” was established with powers over the TRT. Article 5 of the Law No. 2954 stated that “broadcasting shall respect the privacy of life, reputations, and fundamental human rights within the boundaries of honesty;” “news broadcasting shall be made with the principles of objectivity and truthfulness, and within the framework of contemporary news reporting methods and techniques;” “news and its interpretations shall be separated during the broadcasting, and sources of interpretations shall be declared,” and “one-sided, subjective broadcasting shall not be allowed.”¹² No such rules are applied to broadcasters in the United States.

In 1984, the TRT began programming in color. Until 1986, TRT’s television channel TRT-1 was the only television channel. On 15 September 1986, TRT’s second channel TRT-2 was launched, followed by the establishment of TRT-3, TRT-4, TRT-INT, TRT-AVRASYA, and GAP-TV in the later years.¹³

September 1990 saw establishment of the first commercial channel, STAR 1, taking advantage of a loophole in the monopoly law. STAR 1 began its broadcasting in Turkish via satellite from Germany. This was an illegal action because the monopoly of the Turkish Radio and Television Corporation (TRT) on broadcasts had been stipulated in the Constitution. Following the example of STAR 1, many radio and television channels began broadcasting both at home and abroad. “By the beginning of 1993, there were

¹² Translated by the author from The Law No.2954, Article 5 (1983).

¹³ “Historical Background of Radio and Television Broadcasting in Turkey.” www.byegm.gov.tr/references/radyo-tv2001.htm (2001). Avrasya, in English, means “Eurasia,” while GAP represents “Southeastern Anatolia Project.”

almost 500 local commercial radio stations and 100 local television stations operating without licenses.”¹⁴ The emergence of new private radio and television channels created a “chaos in the ether” because private channels were using powerful transmitters, which resulted in interference to other frequencies. At that time, there was neither a law nor a supervisory body to regulate private broadcast channels and to allocate frequencies among them in Turkey. The rapid increase in the number of private broadcast channels compelled Turkish government to end the monopoly of the TRT in broadcasting field and to legalize the de facto pirates.¹⁵

With the passage of the Law No. 3913 on 8 July 1993, Article 133 of the Constitution was amended as follows:¹⁶

“Radio and television channels may be freely established and managed within the stipulations to be regulated by law. The independence and impartiality of the only radio and television institution established by the state as a public corporate body and news agencies aided as public corporate bodies are essential.”

With that constitutional amendment, the monopoly of the TRT on broadcasting was broken, and private radio and television stations established from 1990 onward were given legal status.¹⁷

With the entrance of private radio stations and television networks into the broadcasting field, a dual structure appeared in Turkey in the 1990s: “TRT, which was established in 1964, and the private television channels, which started to broadcast later.

¹⁴ Capli, 1.

¹⁵ Ibid.

¹⁶ Amendment in Article 133 of the 1982 Constitution, July 8, 1993 (available in Appendix B).

¹⁷ “Historical Background of Radio and Television Broadcasting in Turkey.” www.byegm.gov.tr/references/radyo-tv2001.htm (2001).

TRT remained in a separate position in this field, both from the aspect of its perception of broadcasting and from its legal structure.”¹⁸ The TRT Law No. 2954 was still in effect in early 2002, which clarified the TRT’s position as mainly broadcasting in “public service” and acting with constitutional autonomy. The TRT is also required to comply with the principles stated in the Law No.3984.¹⁹

Following the constitutional amendment in 1993, the “Law on the Establishment and Broadcasting of Radio Stations and Television Channels” No. 3984 was enacted by the Parliament on 13 April 1994 and a supervisory body was created in order to regulate private and public broadcasting in Turkey. The new supervisory body, Radio and Television Supreme Council (RTUK), was authorized with “allocating frequencies, channels, and transmission licenses to all broadcasting organizations.”²⁰ After this development, a “Supreme Board of Radio and Television Broadcasts,” which was established in 1983 with the enactment of the Law No.2954, was abolished, and its responsibility to supervise public broadcasting was given to the new supervisory body, the RTUK.²¹

Article 1 of the Law No. 3984 states the objective of the law is “to prescribe principles and procedures relating to the regulation of radio and television broadcasts and

¹⁸ “Radio and Television,” *Republic of Turkey Foreign Affairs*, <http://www.mfa.gov.tr/grupc/cj/cje/07.htm> (2001).

¹⁹ Translated and paraphrased by the author from Gursel Ongoren, *Televizyon ve Radyoda Kisilik Haklarina Saldirilara Karsi Hukuki Basvuru Yollari* [The Legal Remedies against the Attacks of Individual Rights through Television and Radio] (Istanbul: Der Yayinlari, 1996), 300.

²⁰ Capli, 2.

²¹ Ongoren, 300.

to the establishment, duties, competence and responsibilities of the Radio and Television Supreme Council.”²²

Article 4 states that radio and television broadcasts shall be conducted in a spirit of public service according to the following standards: ²³

Broadcasts shall not violate:

- (a) The existence and independence of the Turkish Republic; the territorial and national integrity of the State,
- (b) The national and moral values of society,
- (c) The principles, democratic rules and individual rights stipulated under the Title on General Principles of the Constitution,
- (d) General morals, social order and Turkish family structure,
- (e) The freedom of expression, and the principle of pluralism in communication and broadcasting,
- (f) The principle that people shall not be discriminated against because of their race, sex, social class or religious beliefs,
- (g) The principle that broadcasts shall not instigate the community to violence, terror or ethnic discrimination or give rise to feelings of hatred in the community.

Article 4 continues by stating the standards that broadcasts shall comply with:

- (h) The general objectives and basic principles of national education and the development of national culture,

²² The Law No.3984, Article 1, <http://www.rtuk.org.tr/eng11.htm> (2001).

²³ The Law No. 3984, Article 4, <http://www.rtuk.org.tr/eng12.htm> (2001).

- (i) The principle of fairness and impartiality, and respect for the law in broadcasts,
- (j) The bans on broadcasts that may humiliate, insult or slander persons or organizations beyond limits of criticism,
- (k) The principle that broadcast shall not serve private aims and interests or lead to unfair competition,
- (l) The principle that broadcasts shall present news and events truthfully and rapidly,
- (m) The principle that broadcasts shall not impair the physical, mental, emotional and moral development of children and adolescents,
- (n) The rule that no one may be declared guilty unless convicted by the judiciary,
- (o) The rule for the right of reply or rectification by individuals or organizations,
- (p) The objective of ensuring that broadcasters will reserve at least half of their transmitting time to domestic productions, excluding the time set aside for news, sport programs and advertising, and that they will achieve this proportion gradually, taking into consideration the demands of the audience, the informational, educational, cultural and entertainment responsibilities of the broadcaster and the types, duration, and quality of programs,
- (q) The principle that equality of opportunity will be achieved between democratic groups and political parties within the framework of democratic rules in such a way to respond to public expectations in the fields of politics, education, and culture,

- (r) The principle that Turkish shall be used as the language of radio and television broadcasts, with the exception that foreign languages which have contributed to universal works of culture and science may be used for teaching and news casting purposes; and that Turkish shall be used in its spoken form without going to extremes, and without destroying its characteristics and rules; that the Turkish language shall be developed and enriched in the form of a modern educational and scientific language, as a basic element of national unity and integrity,
- (s) The principle that the rights of musical composers and copyright holders shall be recognized and shall not be violated, in keeping with the principle of contributing to the development of the Turkish music sector.

Article 5 of the Law No. 3984 provided the establishment of the Radio and Television Supreme Council (RTUK) with legal autonomy. Article 6 stated the election and term of office of the members of the Supreme Council. According to that article,

RTUK is composed of nine members elected by the Turkish Grand National Assembly,...five of whom are elected from among candidates nominated by the governing political party of parties, and four from among candidates nominated by the opposition parties.

This composition of the Supreme Council has been highly criticized in the later years, claiming that overtly political structure of the Council might affect its objectivity of judgment.

Article 8 of the Law No.3984 states the functions and powers of the Radio and Television Supreme Council. Some of the important functions and powers of the Council are:²⁴

Planning: To determine the conditions and priorities necessary for national and regional frequency planning within the framework of the European Convention on Trans-frontier Television.

Assignment of Channels, Frequencies and Bands: To issue broadcast permits and licenses to national and regional radio stations and networks for a maximum period of five years.

Establishment and Control of Radio and TV Transmitting Stations and

Application of Sanctions: To control the transmitting facilities of national, regional, and local radio stations and TV networks in line with frequency and band plans.

Encouragement of Channels to Operate on a Time-Shift Basis: Especially to encourage regional radio stations and TV channels to broadcast on a rotating basis.

Regulations: To issue regulations on related matters including conditions channels, frequencies and band assignments, broadcast permits, license fees within the framework of the broadcasting standards stated in the law and compliance with the European Convention on Trans-frontier Television.

²⁴ The Law No.3984, Article 8, <http://www.rtuk.org.tr/eng13.htm> (2001).

Regulations on Coded and Cable Broadcasts: To draw up regulations on coded and cable broadcasts initiated by the PTT (Turkish Postal-Telephone-Telegraph Service) authorities within the framework of legal requirements.

Surveys: To carry out public opinion polls in cooperation with related institutions in order to evaluate the reaction and requests of the public.

Representation: To represent Turkey on international platforms apart from the international broadcasting organizations with which the Wireless Directorate-General, Foreign Ministry and the TRT have direct contact, or are members of.

The European Convention on Trans-frontier Television, as one of the important legal documents that the broadcasters in Turkey must comply with, states its purpose in article 1 as “to facilitate, among the Parties, the transfrontier transmission and retransmission of television program services.” Article 4 requires parties to provide freedom of reception and retransmission:

The Parties shall ensure freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of program services which comply with the terms of this Convention.²⁵

Section 1 of Article 7 of the Convention says, “all items of program services, as concerns their presentation and content, shall respect the dignity of human being and the fundamental rights of others,” while the section 3 of the same article states, “the

²⁵ European Convention on Trans-frontier Television, Article 4, <http://conventions.coe.int/Treaty/EN/Treaties/Html/132.htm> (2001).

broadcaster should ensure that news fairly presents facts and events and encourages the free formation of opinions.”²⁶

The Radio and Television Supreme Council applies a range of sanctions for those broadcast stations and networks which do not comply with the standards stated in the Law No. 3954. The lightest of the sanctions was a warning. The Supreme Council warns broadcast institutions “which do not fulfill their obligations, exceed the condition of the permission and which make broadcasts in violation of the broadcasting principles and fundamentals.”²⁷ If a broadcast station or television network chooses to ignore the Council’s warning, “then RTUK has the authority to close the broadcasting temporarily or cancel the permission, depending on the seriousness of the violation.”²⁸ RTUK’s decisions can be appealed to the provincial administrative court and then to the Council of State (Danistay).

During 1999, the Radio and Television Council (RTUK) imposed a total of 2,378 days of suspension on the broadcasting media in Turkey. Aktif Radyo [Active Radio], based on the city of Izmir, was suspended for 15 days for broadcasting “in contradiction general morals, social order and Turkish family structure” (article 4d of the Law No. 3984). BTV, a radio station which is known with its closeness to former prime minister Tansu Ciller, was suspended for a week for “humiliating, insulting or slandering persons or organizations beyond limits of criticism”(article 4j of the Law No. 3984) and for “accusing a person whose guilt had not been recognized by the courts” (article 4n of the

²⁶ Ibid., Article 7.

²⁷ “Radio and Television, Republic of Turkey Foreign Affairs, <http://www.mfa.gov.tr/grupc/cj/cje/07.htm> (2001).

²⁸ Ibid.

same law). Moral FM [Morale FM], based in Istanbul, was suspended for three days for failing to respect “the principles, democratic rules and individual rights stipulated under the Title of General Principles of the Constitution” (article 4c of the Law No.3984).²⁹

In February 1999, national private televisions ATV and Kanal D [Channel D] was suspended for a day for violating “the principle of fairness and impartiality, and respect for the law in broadcasts” (Article 4i of the Law No.3984). The decision was taken since those national private televisions aired “Bay Turnike” and “Carkifelek” (game show programs similar to “Wheel of Fortune” in the United States) without taking permission of the responsible national unit of lottery (Milli Piyango Idaresi).³⁰

In March 1999, Ozgur Radyo [Freedom Radio] was suspended for a year for broadcasting information likely to incite “to violence, terror or ethnic discrimination or give rise to feelings of hatred in the community” (article 4g of the Law No.3984). The decision was taken in a response to the radio station’s news bulletin on 19 February, which had mentioned “a directive instructing police to shoot real bullets at the legs of demonstrators who expressed their support for PKK (Kurdish Workers Party) leader Abdullah Ocalan too fiercely.”³¹ On 1 April 1999, Radyo Umut [Hope Radio], broadcasting from Istanbul, was suspended for a year for broadcasting information likely to incite “to violence, terror or ethnic discrimination or give rise to feelings of hatred in

²⁹ Translated and paraphrased from the Turkish by the author from 1999 Yili RTUK Basın Bildirileri [The RTUK Press Releases of 1999], <http://www.rtuk.org.tr/bas99.htm> (1999).

³⁰ Ibid.

³¹ “The 2000 Annual Report of Reporters Sans Frontiers (RFS) on Turkey,” p. 10, <http://www.rsf.fr/uk/rap2000/europe/turkey.html> (2000).

the community” (article 4g of the Law No.3984) after the publication on 21 February of a PKK (Kurdish Workers Party) communique.³²

In one of the high-profile incidents of the year 1999, the RTUK suspended broadcasting of the national channel Kanal 6 [Channel 6] for one week, under Article 4j of the Law No.3984 for “humiliating, insulting or slandering persons or organizations beyond limits of criticism” and under article 4g of the same law for encouraging “to violence, terror or ethnic discrimination or give rise to feelings of hatred in the community.” The RTUK took this decision in response to strong criticism of by the Kanal 6 regarding the organization of assistance by government rescue units after the 17 August devastating earthquake in the northwestern Turkey. Kanal 6 appealed the decision, and the Council of State overturned the decision of the RTUK in 2000.³³

According to the 1999 Report of the Committee to Protect Journalists (CPJ), on 30 October 1999, Radyo Foreks [Radio Forex], based on Istanbul, was suspended from broadcasting for 30 days for “persisting, despite warnings, in broadcasting statements from a terrorist organization, thus facilitating its activities, in violation with an article 4a of the Law No.3984. The RTUK took this action in response to Radyo Foreks’ May 26 broadcast of the BBC’s “Turkish Service,” a regular program, carrying an item about a recent meeting of the Kurdish National Congress in Europe.³⁴ The same report of the CPJ also mentioned that RTUK has forced stations to suspend broadcasting for a total of 5,642 days in the period from 1994 to 2000, “for such alleged offenses as violating

³² Ibid.

³³ Ibid., 13.

³⁴ “Middle East and North Africa: Country Report,” *The Committee to Protect Journalists*, <http://www.cpj.org/attacks99/mideast99/Turkey.html> (1999).

morals, depicting violence, invading privacy, 'separatist propaganda,' or 'reactionism' (i.e., pro-Islamist political discourse)."³⁵

The year of 2000 also witnessed a high number of suspensions of broadcast stations by the RTUK. According to the information given by the Turkish government, RTUK closed 62 television stations for 704 days, and 67 radio stations for 3,889 days in 2000.³⁶

In February 2000, the RTUK suspended the broadcasting of CNN TURK for a day, "in response to a January broadcast in which a commentator asked a program guest if PKK leader Ocalan could be compared with former South African president Mandela."³⁷ According to RTUK, this broadcasting of CNN TURK was a violation of article 4a of the Law No.3984. CNN TURK appealed the RTUK's decision and won the case.³⁸

On 5 July 2000, the RTUK suspended the broadcasting of Ozgur Radyo [Freedom Radio] for a year, starting on 31 July, for having cited a verse by a Turkish poet, Ataol Behramoglu, during its May 1 broadcast: "The dying men are multiplying / I exhaust myself by killing them / We prepare ourselves for the bloody combat / Our flag of socialism ahead / Raise the flag / Even higher." According to the RTUK, broadcasting of this verse was the violation of article 4g of the Law No.3984, which forbids encouraging

³⁵ Ibid.

³⁶ The 2000 U.S. Department of State Country Report on Human Rights Practices in Turkey, the U.S. Department of State, <http://www.humanright-usa.net/reports/turkey.html> (February 2001).

³⁷ Ibid.

³⁸ Ibid.

“to violence, terror or ethnic discrimination or give rise to feelings of hatred in the community.”³⁹

On 12 July 2000, the RTUK suspended Kral TV [King TV], Show TV, and InterStar [Interstar], which broadcast at national level, for a day for broadcasting and speaking at length about a saucy song. RTUK took this action by claiming that those three national television stations violated article 4d of the Law No.3984 which forbids broadcasting “in contradiction general morals, social order and Turkish family structure.”⁴⁰

During 2001, the RTUK imposed more suspensions on private television and radio stations. In January 2001, it suspended the broadcasting of a radio station, Cagdas Radyo [Modern Radyo], based in Ankara, for 180 days, for violation of Article 4g of the Law No.3984. The action was taken in response to television’s broadcasting of a poem devoted to the leader of PKK, Abdullah Ocalan. During the same month, Kral TV’s broadcasting was suspended for a week for a series of programs involving lesbian relations, oral sex, and showing male and female genital organs in close range. The decision was given for a violation of Article 4d of the Law No.3984 which forbids broadcasting “in contradiction general morals, social order and Turkish family structure.”⁴¹ In October 2001, the RTUK suspended the broadcasting of a radio station, Best FM, based in Istanbul, for a day in response to a dialogue between the program’s host and one listener in the program “The Girl with a Red Hat,” which involved remarks

³⁹ “Violations of press freedom in Turkey July 2000,” *The International Freedom of Expression Community Report*, <http://www.hr-action.org/archive3/1008ifex.html> (August 2000).

⁴⁰ Ibid.

⁴¹ Translated and paraphrased by the author from 2001 Yili RTUK Basın Bildirileri [The RTUK Press Releases of 2001], <http://www.rtuk.org.tr/bas21.htm> (2001).

like “being in the military is like being in the circus.” The action was taken against the radio station for a violation of Article 4j of the Law No.3984 which forbids “humiliating, insulting or slandering persons or organizations beyond limits of criticism.” In November 2001, Mihr TV and Mihr Radio were suspended for a year for broadcasting a program involving remarks that the Ministry of Religion and university’s theology departments in Turkey is misdirecting Muslim people toward the way of Allah (God). The RTUK took its action against that television and radio station for violating Article 4f of the Law No.3984, the principle that “people shall not be discriminated against because of their race, sex, religious or social beliefs.”⁴²

In Turkey in 2002 there were 16 private TV channels at the national level and 250 at the regional level, in addition to seven channels operated by the Turkish Radio and Television Corporation. As for radio stations, there were 36 of them at national, 108 at regional, and 1058 at local level in 2002. The total number of broadcast stations and networks in Turkey currently outweighs the number of stations and networks in any other European nation.⁴³ According to the 1998 report of the Organization for Economic Co-Operation and Development (OECD) on communications, “Turkey is the record-holder on development in radio and TV broadcasts.” OECD announced the average rate of increase in radio and TV sector for the 1995-1997 period as 3.4 percent, while “in Turkey the development of this sector in this two-year period was 24.3 percent.”⁴⁴

⁴² Ibid.

⁴³ “Chapter 2: Democratic Institutions and Turkey’s Place in European Institutions,” *Republic of Turkey Foreign Affairs*, <http://www.mfa.gov.tr/grupe/eg/eg27/04.htm> (2000).

⁴⁴ Ibid.

The entrance of private television and radio stations into the broadcasting arena can be considered a positive development in Turkey, since they offered richness and a diversity in a very short time to their audiences. Before the establishment of private broadcasting, Turkish broadcasting was a state monopoly and highly criticized for broadcasting one-sided and making the propaganda of the political party or parties in the authority.⁴⁵

The broadcasting field is one of the fastest growing and profitable industries in Turkey. The government is aware of the power of the broadcasting, and knows that the attractiveness of private television and radio stations on Turkish audiences once compelled them to break the monopoly of the state broadcasting. In order to regulate this industry, a governmental body was created in 1994 and authorized with allocation of frequencies, assignment of broadcasting licenses, and supervision of stations to comply with broadcasting standards, which are stated in the two legal documents: “The Law No. 3984” and “The European Convention on Trans-frontier Television.”

The most important legal document organizing broadcasting field in Turkey is the Constitution. Article 33 of the Constitution sets forth the basic rules concerning the establishment of broadcast stations. Audio-visual broadcasting, organized by this article of the Constitution, is regulated by the “Law on the Establishment and Broadcasting of Radio Stations and Television Channels” No. 3984. The Radio Television Supreme Council (RTUK) takes its authority from the Law No. 3984 as a supervisory body on broadcasting. “The European Convention on Trans-frontier Television” is another

⁴⁵ See *Paying the Price: The Freedom of Expression in Turkey*, The U.S. Helsinki Watch Committee Report, 1989, 61-62.

important legal document in broadcasting field in Turkey, which the broadcasters must comply with the principles stated in it.⁴⁶

Similar to the United States, the licensing power of government on broadcast stations can be seen as a form of prior restraint in Turkey, even though the government claims that the reason behind the regulation of broadcasting is to protect “the public interest.” At the time of renewal of broadcasting licenses, the Law No. 3984 requires each station to submit a “national security” document in which they have to mention all the punishments they have taken for violating national security principles. In line with this requirement, some stations can lose their licenses if they cannot meet this requirement. And the “national security” again becomes a legitimate reason for governments to restrain or deny media’s activities.

Conclusion:

The development of broadcasting and regulation of this industry has been significantly different in the United States from Turkey. In the United States, broadcasting began as a private commercial broadcasting and has been regulated by the laws and supervised by the governmental body, which was bound to observe the common good (public interest, convenience, or necessity). The Federal government in the United States has never held a monopoly in the field of broadcasting. Public broadcasting emerged in the second quarter of the twentieth century, but it was governed with different set of rules and regulations from the ones governing commercial broadcast stations in order to encourage public broadcasting’s development. Commercial radio and television

⁴⁶ “Radio and Television,” *Republic of Turkey Foreign Affairs*, <http://www.mfa.gov.tr/grupc/cj/cje/07.htm> (2001).

stations in the United States need to obtain a license from the governmental body, the Federal Communications Commission (FCC), to operate. The FCC was also authorized in allocating frequencies and forcing private and public broadcast stations to comply with the provisions of the Broadcasting Acts.

Broadcasting in Turkey began in the 1920s, around the same time as in the United States. In the first ten years, broadcasting was managed by a private organization, Turkish Wireless Inc. But in 1937, state took the control of broadcasting in Turkey by transferring its management to the state-owned Post Office, and later to the Directorate of Press and Information. This was the beginning of the period of the State's monopoly on broadcasting until 1963. That year, according to the provision stipulated in article 121 of the 1961 Constitution, all radio and television broadcasting was assigned to the autonomous publicly-owned institution, "the Turkish Radio and Television Broadcasting (TRT).

The TRT established Turkey's first television station on 31 January 1968. But the autonomous structure of the TRT, which was stipulated in the 1961 Constitution, lasted only eight years. In 1971, Constitution was amended and the TRT was transformed to an impartial public corporate body. And the monopoly of the State on broadcasting began again. The new constitution, which was adopted in 1982, preserved the monopoly of the State on broadcasting in its article 133 which stated, "radio and television stations could only be established by the state and their management would be as public corporate bodies."

Starting in 1990, private television and radio stations began their broadcasting illegally in Turkey. The rapid increase in the number of these stations and the

interference that they caused in the air did not leave much of a choice but to break a government's monopoly on broadcasting. First, article 133 of the 1982 Constitution was amended in 1993, to allow the establishment of private radio and television stations. Then in 1994, with the adoption of the "Law on the Establishment and Broadcasting of Radio Stations and Television Channels" No. 3984, a new supervisory body, the Radio and Television Council was created in order to regulate private and public broadcasting in Turkey. The duties of the RTUK were very similar to the duties of the FCC in the United States, such as allocation of frequencies and assignment of licenses to broadcasting organizations. Although their duties are similar, the time of the establishments of the RTUK and the FCC was very far apart: the FCC in 1934, while the RTUK was in 1994. There is a 60-year difference between their establishment times.

One other significant difference is that while the FCC was prevented from exercising direct control on public broadcasting in the United States, the RTUK in Turkey was authorized to regulate public broadcasting as well. Currently, there are no signs in Turkey indicating deregulation of broadcasting. The RTUK is still very active in imposing sanctions on broadcasting stations, often using the power vested by Turkish law to impose punishments similar to court punishments for seditious libel. On the other hand, in the United States, the trend towards deregulation began in the 1980s and still continues with the encouragement of other new electronic media, including direct broadcast satellite (DBS), low power TV (LPTV) and multi-point, multi-channel distribution systems (MMDS), under less restrictive standards than those in broadcasting.

Broadcasting in the United States is governed primarily with the 1934 Communications Act, as revised in the Telecommunications Act of 1996. There is no

provision in the Constitution of the United States regarding the regulation of broadcasting media since at the time of Constitution's adoption, there was no electronic media. But the free speech and press clause of the First Amendment can be considered to cover broadcasting as well. In Turkey, on the other hand, in addition to laws governing broadcasting, the Constitution also includes an article regarding the establishment of broadcasting stations. Additionally, broadcasters in Turkey are required to comply with the broadcasting standards stated in the European Convention on Transfrontier Television, dealing with technical matters of power and channel location and other matters including human rights, freedom of expression, freedom of reception, and fairness in the news.

CHAPTER X

RESULTS

Each of the three research questions of this study and their sub-sections seeks to explore the commonalities and differences between the United States and Turkey in the key media control areas. The research questions aimed to show the concerns about national security, in line with Siebert's propositions, as a justification factor by governments in application of those key media controls. Answers to research questions are reported through a historical examination of both countries' legal documents including constitutions, statutes, decrees, and court cases along with judicial opinions involving the key media control areas.

Research question one asked about similarities and dissimilarities between Turkey and the United States under the media control area of prior restraint. Research question one (a) asked how prior restraint emerged in the two nations, while research question one (b) sought to discover whether prior restraint exists in both print and broadcasting media in these two countries.

Prior restraint is defined as censorship prior to publication. For an answer to research question one (a), it can be stated that prior restraint existed in the form of licensing both in the Ottomans and early England before the founding of Turkey and the United States. Following the emergence of printing in both Ottomans and early England around the end of fifteenth century, governments realized the power of printing and with a series of laws, required the press to get prior permission to publish. Those laws made it a crime to publish without license. Governments of both countries also authorized government agencies to control the licensing procedures of the press. While licensing

systems expired in England in 1694 and later was not used in the United States, it continued in the Ottoman State and later in the Republic of Turkey. A licensing system was in operation in the Ottomans through a series of press laws and printing houses acts until the Empire's destruction in the second decade of the twentieth century. Licensing also was an effective weapon of government on the press during the first years of the Republic of Turkey. As a result of Kurdish uprisings, a Law for the Maintenance of Order was issued in 1925, and it made publications subject to prior censorship for security purposes. A Law for the Maintenance of Order was also used during the period of military intervention in 1960, 1971, and 1980 to suspend the publication of materials that threatened the internal and external security of the State. A State of Emergency Act which was designed as a result of terrorist actions of the Kurdish Workers Party (the PKK) in southeastern regions of Turkey also required press of that region to get a permission prior to their publication in order to report about those violent incidents. Press Law No. 2950, which was amended in 1983, also authorized the public prosecutor to stop distribution of material that constitutes offense against the state and that reveals government secrets. Although the last constitution of Turkey (the 1982 Constitution) prohibits prior restraint of the media in its Articles No.28 and 29, it notes a series of exceptions to this principle for example in matters dealing with threats to internal and external security of the state, fundamental principles of the Republic, and public morals.

In the United States, on the other hand, licensing was not used on the print media as a form of media control. But prior restraint appeared under different forms in the United States as well. In troubled years of the nation, for example, during the Abolitionist period, Abolitionists' access to mails is denied in southern states. Through the first third

of twentieth century, prior restraint was used to control material discussing sex in peacetime, and to stop sedition in wartime. The United States has not had laws as those in Turkey that include provisions about the prior restraint. But in several periods of history of the United States, the U.S. Supreme Court had a chance to interpret the First Amendment when it was faced with questions of prior restraint of the media. Two of the most important decisions of the Court, *Near v. Minnesota*¹ and *New York Times Co. v. United States*² (known as Pentagon Papers case), declared prior restraint “unconstitutional” but it recognized some exceptions, for example, when nation is at war or when troop movements might be endangered. Prior restraint also appeared in the form of news control by the government during World War I and II, and during U.S. actions in Grenada (1983), Panama (1989) and Persian Gulf War (1991), when news access was denied by the military. Recently, complaints have been made following the military action in Afghanistan in late 2001 and early 2002 concerning military’s controlling power over correspondents.

Research question one asked the similarities and differences between the United States and Turkey about prior restraint of the media. A basic dissimilarity between the United States and Turkey in the area of prior restraint is the application of this media control. In Turkey, it was used in the form of licensing and applied by a series of laws enacted by the Parliament, and taking advantage of provisions allowing prior restraint in the constitution. In the United States, it was used in the form denial of access to mail in the early years of the nation, and later, denial of news access by the military, during the

¹ 283 U.S.697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931).

² 403 U.S. 713, 91 S.Ct. 2140 (1971).

time of military actions. The United States Constitution also does not address any exceptions to “no prior restraint” rule, unlike the Constitution of Turkey. But the judiciary of the United States, particularly the U.S. Supreme Court, recognized some exceptions to allow prior restraint of the media under limited circumstances.

Although the sources of those exceptions are different in the two nations, their logic is similar: concerns of national security and protection of their nations from internal or external threats. Fredrick S. Siebert proposed that “the area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase.”³ Consistent with this proposition, governments in both Turkey and the United States, when perceiving an external or internal threat against the security and stability of their nations, used the exceptions to “no prior restraint” and put restraints on the media.

As an answer to research question one (b), prior restraint of the print media does not exist in 2002 in both countries but certain exceptions are recognized. Prior restraint exists in broadcasting media in both countries in the form of licensing. The details of broadcast licensing are addressed in research question three.

Research question two asked about similarities and differences between Turkey and the United States under the media control area of seditious libel. Research question two (a) asked the circumstances under which seditious libel crimes appeared, while research question two (b) asked the legal sanctions that the governments used to punish seditious libel.

³ Fredrick S. Siebert. *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 10.

Seditious libel has been defined as criminalizing “expression attacking government’s form, laws, institutions, or officers.”⁴ Laws of both early England and the Ottoman Empire made it a crime to publish criticism of royal policies. After the founding of the United States and Turkey, seditious libel was transferred to the lands of these countries. In the history of the United States, especially during the periods of national distress, such as during the period of involvement in the possible European war at the end of eighteenth and beginning of nineteenth century, during the Abolitionist period and Civil War, and during the period of World War I and II, federal and state seditious libel laws were adopted to make it a crime to advocate violent overthrow of government. During the World War I period, presumed alliances of immigrants, radicals, and socialists were seen as threats by government. The Espionage Act of 1917 and its amendment in 1918 were designed to silence those opposing voices against the government. On the eve of World War II, the Smith Act of 1940 was designed to silence pro-Communist views, because in that period, and later during the Cold War, communism was a threat against the government.

But after the decision of the U.S. Supreme Court in *Yates* in 1957 that halted the government’s attempts to prosecute the members of the Communist party, seditious libel prosecutions declined, and in 1977, the Smith Act “disappeared from bills reforming the federal Criminal Code.”⁵ Although seditious libel was not seen as a serious offense in the years following the *Yates* decision of the Court, the issue is still alive and can appear in any moment following the reaction to September 11th, 2001, terrorist attacks. The reason

⁴ Dwight L. Teeter, Jr. and Bill Loving. *Law of Mass Communications: Freedom and Control of Print and Broadcast Media*, 10th ed. (New York: Foundation Press, 2001), 28.

⁵ Teeter and Loving, 40.

for the United States to pass seditious libel laws in the past was to silence opposition from immigrants, socialists, radicals, and communists, and to protect the nation. Now, after September 11, the government can invoke the same rationale: to protect the nation against external and internal threats of terrorism. The first step already has been taken by the U.S. government by ordering the use of military tribunals to try non-U.S. citizens suspected of involvement in terrorism actions.⁶

There are many laws in Turkey that make seditious libel a crime. Although there is no wording equivalent to “seditious libel” in Turkey, its functioning is at work in a series of laws enacted by the Parliament. Most of those laws that made seditious libel a crime were enacted, as the ones in the United States, at the time of national distress. In the early years of the Republic of Turkey, Kurdish rebellions were serious threats to stability of the government. So, the Turkish Parliament enacted the Penal Code in 1926. A series of articles of the Penal Code made it a crime to advocate overthrow of the government, to publish against the indivisible integrity of the State, the fundamental principles of Republic, the national security and to insult the authorities including the President, the Parliament, the government, and the military (for the detailed discussion of these articles see Chapter VII, Seditious Libel in Turkey).

The three periods of military intervention in the nation’s history also can be seen as times of distress. During those periods, laws were designed to make “criticism of military actions and advocacy of government’s overthrow” crimes. As a result of terrorism incidents in the southeastern provinces of Turkey after the 1980s, new laws

⁶ “Ashcroft: Critics of new terror measures undermine effort.”
<http://www.cnn.com/2001/US/12/06/inv.ashcroft.hearing/> (December 7, 2001).

were designed to punish the offenders who violated the stated principles in these laws. The 1983 Flag Act made it a crime to insult the Turkish flag. The 1991 Anti-Terror Law made it a crime to make the separatist propaganda which aims to destroy integrity of the State. Turkey has lived under the pressure of terrorism for a long time and lost many lives, therefore, threats to national security, propaganda detrimental to national feelings, and insulting authorities have all been and still are legal reasons for governments in Turkey to silence the opposing voices.

As an answer to research question two, the basic similarity between the United States and Turkey in the media control area of seditious libel is found in the circumstances that cause the appearance of seditious libel crimes: national distress. This also answers research question two (a). And here again, Siebert's proposition becomes valid: the more insecure the government, the more restraints imposed on media. For an answer to research question (b), legal sanctions used to punish seditious libel in the United States were Alien and Sedition Acts of 1798-1800, the Immigration Act of 1903, a series of state sedition acts, the Espionage Act of 1917 and its amendment in 1918, and the Smith Act of 1940. In Turkey, the Penal Code, a series of laws enacted during the time of military intervention, A Law Regarding the Crimes Committed Against Atatürk, A State of Emergency Laws, Flag Act, and Anti-Terrorism Law.

Research question three involved the commonalities and differences between the United States and Turkey under the media control area of broadcast licensing. Research question three (a) asked how the two nations license the broadcasting media, while three (b) asked the reasoning of broadcasting regulation in these two countries.

As mentioned before, licensing of the print media is not allowed in either country in 2002 although some exceptions to this principle still remains standing. But the situation is different for broadcast media. For an answer to research question three, it can be said that broadcast stations of the two countries are required to get a license from governmental agencies to operate. In the United States, the Federal Communications Commission (FCC), with the enactment of the Communications Act of 1934, was created as a supervisory body of the broadcasting industry and authorized to license broadcast stations in the “public interest, convenience, or necessity.”

The primary duties of the FCC are to issue licenses, allocate frequencies, and specify operating conditions. In Turkey, a governmental agency responsible from the supervision of the broadcasting industry was established 60 years after the creation of the FCC in the United States. This supervisory body, the Radio and Television Council (the RTUK) was created in Turkey with the enactment of the “Law on the Establishment and Broadcasting of Radio Stations and Television Channels” No. 3984 in 1994. Like the FCC, the RTUK was authorized with allocating frequencies, channels, and transmission licenses to all broadcasting organizations.

The RTUK also is responsible from the compliance of broadcast stations to Articles of Law No. 3984, including principles of not broadcasting against the existence and independence of the Turkish Republic, or against the territorial and national integrity of the State, the national and moral values of society, against the principles, democratic rules and individual rights stipulated under the Title on General Principles of the Constitution, general morals, social order and Turkish family structure, against the freedom of expression, and the principle of pluralism in communication and

broadcasting. Broadcast stations also cannot instigate the community to violence, terror or ethnic discrimination or give rise to feelings of hatred in the community, according to the Law No. 3984. Broadcast stations which violate those articles of Law No. 3984 first are warned by the RTUK. If violations continue, the RTUK can suspend their broadcasting temporarily or permanently. Unlike the United States, in Turkey, a broadcast station also is required to submit a “national security” document in which it has to mention punishments taken for violation of national security issues at the time of renewal of its license. In the United States, if broadcast stations did not commit a serious violation or persistently abuse of FCC rules, they may assume their license will be renewed.

As an answer to research question three (a), the broadcasting media are licensed in both countries through governmental agencies, in Turkey by the Radio and Television Council (the RTUK) and in the United States by the Federal Communication Commission (the FCC). For an answer to research question three (b), the primary reasoning behind the regulation of broadcasting in the United States was the technology, to cope with a scarcity of frequencies. Spectrum scarcity is a universal phenomenon – as true in Turkey as in the United States. In Turkey, although broadcasting regulation under the supervisory of the RTUK initially emerged to deal with the “chaos in the ether,” its primary purpose then has been more to provide development of broadcasting in what government officials regarded as a responsible manner (this is also one of the responsibilities of the FCC) and to protect traditional values of the nation and the principles of the Republic, including laicization, patriotism, secularism, indivisibility of the existence of Turkey, and separation of powers.

CHAPTER XI

CONCLUSIONS AND SUGGESTIONS FOR FUTURE RESEARCH

This study examined governmental interaction with freedom and control of mass media of communication in the United States and Turkey. Specifically, three major media control areas--prior restraint, seditious libel and broadcast licensing--were investigated. In doing research of those key media control systems, Fredrick S. Siebert's propositions¹ that characterized government control over the media were used as a framework for this dissertation. Siebert's Proposition I stated, "the extent of government control of the press depends on the nature of the relationship of the government to those subject to the government." His Proposition II claimed, "the area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increase."

The historical examination of the evolution of press freedom and control in the two countries, in line with Siebert's Proposition I, showed that as governments proceeded from monarchies to more democratic ones, freedom of expression and of the press expanded. But as seen, even in early twenty-first century, press freedom is not absolute in those two nations. In 2002, two of the major media control systems, prior restraint of the media and seditious libel are still living issues in both Turkey and the United States, although their severity dramatically decreased. As for broadcasting, the licensing issue also is still alive in 2002 in the two countries.

¹ Fredrick S. Siebert, *Freedom of Press in England, 1476-1776* (Urbana, Illinois: University of Illinois Press, 1965), 10.

Freedom of expression and of the press in 2002 are ideal concepts of modern democracies that many countries in the world want to achieve. But as seen in the examination of the two nations, they are also vulnerable values and easy to lose. A variety of circumstances can cause their limitations. In this study, incidents of terrorism appeared as the primary justification used in the late twentieth and early twenty-first centuries by both countries' governments in their attempts to impose restrictions on those freedoms. In Turkey, with its long history of autocratic rule and relatively short history of democratic strivings, perceived threats to government stability in the press often met with swift and severe legal reprisal. It must be emphasized, however, that terrorism claimed the lives of 40,000 Turks in only 18 years, from 1984 to 2002. Provocation on government to take repressive measures for security reasons was extreme.

Terrorism, of course, is not something that countries can accept. It can come without any prior notice, and take many lives. Therefore, it is very important for governments to protect their nations, sometimes, as they have claimed, at the expense of sacrificing freedoms. Because, as they argued and as generally approved by the public, the right to live was paramount among all freedoms. In this study, a major focus was on governments' expressed justifications and consequently, the methods that they used to limit freedoms, particularly freedom of the press.

So, why is this study important? What does it contribute? It is important because it shows how two culturally, traditionally, and politically different nations used the same motive to limit the freedom of the press. This motive was the protection of the safety of their nations. Understanding the evolution of press freedom and the logic of governments in both Turkey and the United States helps to understand how the motives of other

countries where violations to freedoms occurred may be viewed. This study also can serve as a useful source for scholars interested in comparative studies of media liberty and media constraint, the more so because of the author's translations of materials from Turkish to English.

A comparison of countries is a risky task, and this is not only because of the language barriers. For the author of this study, although in the United States for three years, it is easier to understand her own national system, and this consequently runs the risk of seeing other countries, in this instance the United States, from this perspective. Therefore, those readers of this study who are more familiar with other systems may find that this study does not address their perspective adequately.

Could any other method be used in this study? This study was designed to use legal and historical approaches to cover the issues presented. The condition of press freedom and restraints over it in countries is a life-long study. Thus, longitudinal studies are needed in the examination of similar topics. In case of this paper, the investigation of the legal documents including constitutions, statutes, and decrees historically provided useful evidence in the interpretation of the condition of the freedoms and the restraints over it in the two countries. But historical documents without context lack spirit. They do not inform us about other background factors that caused specific behaviors of governments, the media, and public. These background factors, for example, press reaction to some specific action of the government, can be revealed to a greater extent with the content analysis of major newspapers of the time. Additionally, the examination of public opinion polls can provide information about public reaction to some specific position of the government towards the media.

Quantitative research could be another approach to study the topics of this paper. Using quantitative research techniques, the frequency of terrorism incidents occurring in the specific time range could be correlated with the frequency of violations to press freedoms occurring in the same time range in Turkey. Then, the United States could be examined by using the same approach in the same time period. And at the end, the results of Turkey research could be compared with results from the United States, and a general statement could be made regarding whether governments in these two countries used the terrorism incidents as a justification factor to limit press freedom in the time period investigated. This is an area which could be addressed in future research.

Translation and collection of the writings of the brave journalists who, in pursuit of their political ideals, also developed--with ideas from France stirred into the mix in terms of theories of freedom, including freedom of expression--is a worthy long-term project. Often, freedom may be guaranteed by legal authority, but usually the push for freedom comes from citizens, often journalists, willing to risk their lives for freedom. Future researchers can investigate these issues.

Media systems are still evolving and new ones are coming to the stage. In this study, traditional media systems--print and broadcast media--were examined. But in 2002, we have other media systems such as the Internet. Since the Internet was a relatively new and different than other traditional media systems in its nature, there are not many studies made about it. Future research can focus on governments' attempts to control this new medium, the Internet.

As media systems are evolving, the underlying reasons that cause restrictions over are changing as well. This study examined the issue of "terrorism" as the underlying

reason because “terrorism” was a lively topic in 2002, as a result of September 11th, 2001, terrorist attacks to the United States. The toll from terrorism in the United States from 1995 to 2001 totaled perhaps 3,500 persons, and sent shock waves through America. Turkey has had a much longer history with terrorism, with 40,000 killed between 1984 and 2002, and Turkey’s recent history of media restraints is more sweeping and severe than in the United States. It is not argued here that similar threats will bring commensurate responses in both nations. The United States Constitution has remained in force with its Bill of Rights since 1791, and the tradition of a right to criticize government is as strong as anywhere in the world. Turkey, given its geographic destiny as a crossroads between East and West, swept by both external and internal threats over the centuries, comes from different traditions of expression and control than the United States.

Future research can examine the factors other than terrorism incidents as underlying reasons for limitation of freedoms. It is the hope that this study encourages other studies focusing on other aspects of the problem outlined here.

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CONSTITUTIONAL AMENDMENTS

4 October 2001

The constitutional amendments undertaken by the TGNA constitute one of the most comprehensive packages of amendments that the TGNA has accepted to this date, with the exception of extraordinary situations.

These amendments testify to a broad-based political will for EU membership in Turkey. The package introduces new provisions, in line with the NPAA priorities, such as the freedom of thought and expression, the prevention of torture, strengthening of democracy and civilian authority, the freedom and security of the individual, the privacy of the individual life, the inviolability of the domicile, the freedom of communication, the freedom of residence and movement, the freedom of association and the equality between men and women.

These amendments, along with their relevance to the Political Criteria section of the NPAA, are as follows:

Article 1

The phrase **“no thoughts or opinions”** in the fifth paragraph of the preamble of the Constitution is replaced with **“no activity”**. This amendment further limits restrictions that may be imposed on the freedom of thought and expression. Restrictions can now be imposed only in the case of an “activity” that is in violation of the provisions of this paragraph.

This amendment is undertaken in the light of:

-Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) titled “Freedom of expression”;

-the principles of freedom and democracy referred to in the introductory paragraph to Political Criteria: Section 2.1. in the NPAA.

This amendment is also a step forward in the fulfillment of Turkey's commitment to review "the provisions of the Constitution on human rights and freedoms, in particular those concerning the expression and the dissemination of ideas..." in the short term (Political Criteria 2.1.1. "Freedom of Thought and Expression").

Article 2

This article amends Article 13 under the heading "Restriction of the Fundamental Rights and Freedoms" of the Constitution.

The amended version of Article 13 now reads **"Fundamental rights and freedoms may be restricted only on the basis of specific reasons listed in the relevant articles of the Constitution without prejudice to the values defined therein and only by law. The restrictions shall not conflict with the letter and the spirit of the Constitution and the requirements of the democratic social order and the secular republic and the principle of proportionality."**

With the amendments to Article 13, the following grounds for restrictions, **"the indivisible integrity of the state with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest and public morals or the protection of public health"**, are deleted from the text of the article. In the amended version, fundamental rights and freedoms may be restricted **"only on the basis of specific reasons listed in the relevant articles of the Constitution without prejudice to the values defined therein and only by law"**. The restrictions on

freedom of thought and expression are eased and the scope of fundamental rights and freedoms are expanded.

These amendments are undertaken in light of:

- Article 10 of ECHR titled “Freedom of expression”;
- the principles of freedom and democracy with additional safeguards referred to in the introductory paragraph to Political Criteria Section 2.1.

These amendments are also a step forward in the fulfillment of Turkey’s commitment to review “the provisions of the Constitution on human rights and freedoms”, in the short term (Political Criteria 2.1.1. “Freedom of Thought and Expression”).

Article 3

This article amends Article 14 under the heading “Prohibition of the Abuse of Fundamental Rights and Freedoms”.

The following is the amended version of Article 14: **“None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, or for activities undertaken with the aim of destroying the democratic and secular Republic based on human rights.”**

“No provision of the Constitution shall be interpreted in a manner that grants the State or individuals the right of destroying the fundamental rights and freedoms embodied in the Constitution, and of staging an activity with the aim of restricting rights and freedoms more extensively than is stated in the Constitution.”

“Sanctions for persons undertaking activities in conflict with these provisions shall be defined by law”.

These amendments strengthen existing safeguards on the exercise of fundamental rights and freedoms and are in accordance with the change in the preamble.

These amendments are undertaken in light of:

- Article 17 of the ECHR, titled “Prohibition of abuse of rights”;
- the principles of freedom, democracy with additional safeguards and the rule of law referred to in the introductory paragraph of Political Criteria Section 2.1.

These amendments are also a step forward in the fulfillment of Turkey’s commitment to review “the provisions of the Constitution on human rights and freedoms...” in the short term (Political Criteria 2.1.1. “Freedom of Thought and Expression”).

Article 4

This article amends Article 19 under the heading “Personal Liberty and Security”.

In the amended version of Article 19, the phrase **“in the case of offences committed collectively, within fifteen days”** in the fifth paragraph is replaced with the phrase **“in the case of offences committed collectively, within four days.”**

The sixth paragraph which reads **“Notification of the situation of the person arrested or detained shall be made to the next of kin without delay, except for cases of definite necessity pertaining to the risks of revealing the scope and subject of the investigation compelling otherwise”** is replaced with **“Notification of the situation of the person arrested or detained shall be made to the next of kin without delay.”** The special restriction on the provision on the notification of the next of kin of the person arrested or detained without delay is deleted from the text.

The phrase **“according to principles of the law on compensation”** is added to the last

paragraph on the right to seek compensation from the State provided for persons subjected to treatment contrary to these provisions.

All of these amendments are related to the improvement of human rights.

These amendments are undertaken in light of:

-Article 5 of the ECHR titled “Right to liberty and security”.

These amendments also fulfill Turkey’s commitment to “review Article 19/6 of the Constitution” in the medium term (Political Criteria 2.1.4. “Pre-trial detention”).

Article 5

This article amends Article 20 under the heading “The Privacy of Individual Life.”

This article remains the same with the exception of the following amendments:

The third sentence of the first paragraph, “**Exceptions necessitated by judicial investigation and prosecution are reserved**” is deleted, thereby strengthening the safeguards on the protection of the privacy of the individual and family life.

Specific reasons for the restrictions on the right of privacy, “**national security, public order, the prevention of crime, public health, public morals, or for the protection of the rights and freedoms of others**”, are added to the second paragraph of this article, in light of Article 8 of the ECHR titled “Right to respect for private and family life”. The requirement for a “**written**” order from an authorized body before restrictions can be imposed on the exercise of this right is an additional safeguard for the right to privacy of the individual.

These amendments are undertaken in light of:

-Article 8 of the ECHR titled “Right to respect for private and family life”;

-the principle of democracy with safeguards and the rule of law referred to in the introductory paragraph to Political Criteria Section 2.1.

These amendments are also a step forward in the fulfillment of Turkey's commitment to review "the provisions of the Constitution on human rights and freedoms", in the short term (Political Criteria 2.1.1. "Freedom of Thought and Expression").

Article 6

This article amends Article 21 under the heading "The Inviolability of the Domicile."

The article remains the same with the exception of the following changes:

Specific grounds for the restrictions on the inviolability of the domicile, "**national security, public order, the prevention of crime, the protection of public health, public morals, or for the protection of the rights and freedoms of others**" are added to this article, in light of Article 8 of the ECHR titled "Right to respect for private and family life".

The requirement for a "**written**" order from an authorized body before restrictions can be imposed on the exercise of this right is an additional safeguard for the inviolability of the domicile.

These amendments are undertaken in light of:

- Article 8 of the ECHR titled "Right to respect for private and family life";
- Article 1 titled "Protection of property" of Protocol No. 1 of the ECHR;
- the principle of democracy with safeguards and the rule of law referred to in the introductory paragraph to Political Criteria Section 2.1.

These amendments are also a step forward in the fulfillment of Turkey's commitment to

review “the provisions of the Constitution on human rights and freedoms...” in the short term (Political Criteria 2.1.1. “Freedom of Thought and Expression”).

Article 7

This article amends Article 22 under the heading “Freedom of Communication”.

The article remains the same with the exception of the following changes:

Specific grounds for the restrictions on the freedom of communication, “**national security, public order, the prevention of crime, public health, public morals, or for the protection of the rights and freedoms of others**”, are added to this article, in light of Article 8 of the ECHR titled “Right to respect for private and family life”. The requirement for a “**written**” order from an authorized body before restrictions can be imposed on the exercise of this right is an additional safeguard on the freedom of communication.

These amendments are undertaken in light of:

- Article 8 of the ECHR titled “Right to respect for private and family life” and Article 10 of the ECHR titled “Freedom of expression”;
- the principle of safeguards and the rule of law referred to in the introductory paragraph to Political Criteria Section 2.1. ;
- Political Criteria Section 2.1.1. “Freedom of Thought and Expression”.

Article 8

This article amends the fifth paragraph of Article 23 under the heading “Freedom of Residence and Movement ”.

A citizen's freedom to leave the country may no longer **"... be restricted on account of the national economic situation"**. This amendment is in the context of the expansion of the scope of the fundamental rights and freedoms.

These amendments are undertaken in light of:

- Article 2 titled "Freedom of movement" of Protocol No. 4 of the ECHR
- the principle of freedom referred to in the introductory paragraph to Political Criteria Section 2.1.

These amendments are also a step forward in the fulfillment of Turkey's commitment to review "the provisions of the Constitution on human rights and freedoms..." in the short term (Political Criteria 2.1.1. "Freedom of Thought and Expression").

Article 9

This article amends Article 26 under the heading "Freedom of Expression and Dissemination of Thought". The second paragraph is amended, the third paragraph is deleted entirely and a new paragraph is added to be the last paragraph.

The sentence which reads **"No language prohibited by law shall be used in the expression and dissemination of thought"** is deleted from the text and the third paragraph beginning with this sentence is entirely deleted from the text.

Restrictions on the exercise of this right, **"national security, public order, public security, the fundamental characteristics of the Republic and the protection of the indivisible integrity of the State with its territory and nation"**, are added to the second paragraph of Article 26.

The following sentence is added as the last paragraph of Article 26: **"The formalities,**

conditions and procedures to be applied in exercise of the right to freedom of expression and dissemination shall be prescribed by law.”

These amendments expand the scope of the right of the freedom of thought and expression and remove restrictions on the use of different languages, dialects and tongues by citizens in their daily lives.

These amendments are undertaken in light of:

-Article 9 titled “Freedom of thought, conscience and religion,” Article 10 titled “Freedom of Expression”, Article 14 titled “Prohibition of discrimination”, and Article 18 titled “Limitation on use of restrictions on rights” of the ECHR, and Article 1 titled “General prohibition of discrimination” of Protocol No. 12 of the ECHR;
-and is relevant to the introductory paragraph to Political Criteria Section 2.1., Political Criteria Section 2.1.1. “Freedom of Thought and Expression”, Section 2.1.9. “Cultural Life and Individual Freedoms”, and Section 2.1.11. “Full Enjoyment by All Individuals All Human Rights and Fundamental Freedoms”.

Article 10

This article amends Article 28 under the heading “Freedom of the Press.”

The second paragraph, which reads “**Publications shall not be made in any language prohibited by law**” is deleted from the text of the Constitution. This amendment extends the scope of the freedom of thought and expression, and removes restrictions on the use of different languages, dialects and tongues by citizens in their daily lives.

This amendment is undertaken in light of:

Article 9 titled “Freedom of thought, conscience and religion,” Article 10 titled “Freedom of Expression”, and Article 14 titled “Prohibition of discrimination” of the ECHR and Article 1 titled “General prohibition of discrimination” of Protocol No. 12 of the ECHR; -and is relevant to the introductory paragraph to Political Criteria Section 2.1., Section 2.1.1. “Freedom of Thought and Expression”, Section 2.1.9. “Cultural Life and Individual Freedoms”, and Section 2.1.11. “Full Enjoyment by All Individuals All Human Rights and Fundamental Freedoms.”

Article 11

This article amends the second paragraph of Article 31, under the heading “Right to use media owned by public corporations other than the press”.

Specific grounds for restrictions on the right of the public to use media owned by public corporations other than the press are added to the second paragraph. These grounds are listed as “**national security, public order, public morals or the protection of public health**”.

This amendment is undertaken in the light of:

- Article 10 of the ECHR titled “Freedom of Expression”;
- The principle of freedom in the introductory paragraph to Political Criteria Section 2.1.

This amendment is also a step forward in the fulfillment of Turkey’s commitment to review “the provisions of the Constitution on human rights and freedoms, in particular those concerning the expression and the dissemination of ideas...and the press” in the short term (Political Criteria 2.1.1. “Freedom of Thought and Expression”).

Article 12

This article amends Article 33 under the heading “Freedom of Association”.

The amended Article 33 now reads:

“Everyone has the right to form associations, to become, or to cease to be a member of an association without prior permission.

No one shall be compelled to become or remain a member of an association.

The right to form associations shall only be restricted on grounds of national security, public order, the prevention of crime, public health and morals, and protection of the rights of others.

The formalities, conditions, and procedures to be applied in the exercise of the right to form associations shall be prescribed by law.

Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for approval to the competent judge within twenty-four hours. Unless the judge declares a decision within forty-eight hours, this administrative decision shall be annulled automatically.

Provisions of the first paragraph shall not prevent the imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require.

The provisions of this article are also applicable to foundations.”

In the amended version of Article 33, the second paragraph on obtaining permits to establish associations is deleted, thereby easing restrictions on the establishment of associations.

Specific grounds for the restrictions to this right, **“national security, public order, for the prevention of crime, public morals, public health, or for the protection of the rights and freedoms of others”**, are added to this article.

This amendment is undertaken in light of:

- Article 11 of the ECHR titled “Freedom of assembly and association;”
- The commitment made by Turkey to “review the legislation on the freedom of association” in the medium term (Political Criteria Section 2.1.2. “Freedom of Association and Peaceful Assembly, and the Civil Society”).

Article 13

This article amends Article 34 under the heading “Right to hold meetings and demonstration marches.”

The amended Article 34 now reads:

“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.

The right to hold meetings and demonstration marches shall only be restricted on grounds of national security, public order, for the prevention of crime, public morals, public health, or for the protection of the rights and freedoms of others, and by law.

The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.”

Specific grounds for the restrictions to this right, **“national security, public order, for the prevention of crime, public morals, public health, or for the protection of the rights and freedoms of others and by law”**, are added to this article.

The second paragraph of Article 34 which reads **“The competent administrative authority may determine a site and route for the demonstration march in order to prevent disruption of order in urban life”** and the last paragraph which reads **“Associations, foundations, labour unions and public professional organizations shall not hold meetings or demonstration marches exceeding their own scope and aims”** are deleted from the text.

These amendments are undertaken in light of:

- Article 11 of the ECHR titled “Freedom of assembly and association”;
- The commitment made by Turkey to review “the legislation on the freedom of association and holding meetings and demonstration marches” (Political Criteria Section 2.1.2. “Freedom of Association and Peaceful Assembly, and the Civil Society”).

Article 14

This article amends Article 36/1 under the heading **“Freedom to Claim Rights.”**

The phrase **“the right to fair trial”** is added to the first paragraph, thereby introducing a additional safeguard for the protection of human rights.

This amendment is undertaken in light of:

- Article 6 of the ECHR titled “Right to a fair trial”;
- Political Criteria Section 2.1.7. “Improving the Functioning and the Effectiveness of the Judiciary”, particularly with respect to Turkey’s commitment to “strengthen legal defense by introducing a constitutional provision that will establish this as one of the fundamental

elements of the judicial process”.

Article 15

This article amends Article 38 under the heading “Principles Relating to Offences and Penalties.”

In the amended version of Article 38, the sentence **“the death penalty may only be imposed in time of war, imminent threat of war and for crimes of terrorism”** is added to be the seventh paragraph of the article , thereby restricting the cases in which the death penalty may be imposed.

This amendment is undertaken in light of:

- Article 2 of the ECHR titled “Right to life”;
- Article 1 titled “Abolition of the death penalty” and Article 2 titled “Death penalty in time of war” of Protocol No. 6 of the ECHR;
- and is relevant to the Political Criteria Section 2.1.8. “Abolition of the Death Penalty”.

An additional paragraph which reads **“Findings obtained in a manner not in accordance with the law may not be admitted as evidence”** is added to Article 38.

This amendment is a safeguard against the use of evidence obtained through such means as maltreatment and torture..

This amendment is undertaken in light of:

- Article 1 of the ECHR titled “Obligation to respect human rights” and Article 3 of the ECHR titled “Prohibition of torture”;
- Political Criteria Section 2.1. and Section 2.1.3. “Fight Against Torture”

Furthermore, a new paragraph which reads **“No one shall be deprived of his liberty merely on the grounds of inability to fulfill a contractual obligation”** is added to this article.

This amendment is undertaken in light of:

-Article 1 titled “Prohibition of imprisonment for debt” of Protocol No. 4 of the ECHR.

Article 16

This article amends Article 40 under the heading “Protection of Fundamental Rights and Freedoms.”

The sentence **“the State must determine the legal course of action and authorities that may be applied to by persons concerned”** is added as the second paragraph, thereby facilitating the citizens’ access to the judicial system.

This amendment is relevant to the Political Criteria Section 2.1.7. “Improving the Functioning and the Effectiveness of the Judiciary”.

Article 17

This article amends Article 41 under the heading “Protection of the Family.”

The phrase **“and is based on the equality of spouses”** is added to the first paragraph, following the sentence **“The Family is the foundation of Turkish society”**. This amendment is undertaken in the context of improving equality between men and women.

This amendment is undertaken in light of:

-Article 14 of the ECHR titled “Prohibition of discrimination”;

-Article 5 titled “Equality between spouses” of Protocol No. 7 of the ECHR;

-Article 1 titled “General prohibition of discrimination” of Protocol No. 12 of the ECHR;

-and is relevant to the Political Criteria Section 2.1.11. “Full Enjoyment by All Individuals All Human Rights and Fundamental Freedoms”.

Article 18

This article amends Article 46 of the Constitution under the heading “Expropriation”.

The amended Article 46 reads:

“The state and public corporations shall be entitled, where the public interest requires it, to expropriate privately owned real estate wholly or in part or impose administrative servitude on it in accordance with the principles and procedures prescribed by law, provided that compensation in real terms is paid in advance.

Compensation and the amount of additional compensation as finalized by court judgment shall be paid in cash and in advance. However, the procedure to be applied in paying compensation for land expropriated in order to carry out land reform, major energy and irrigation projects, and housing and resettlement schemes and afforestation, and to protect the coasts and to build tourist facilities shall be regulated by law. In previous cases where the law may allow payment in installments, the payment period shall not exceed five years; whence payment shall be made in equal installments.

Compensation for land expropriated from the small farmer who cultivates his own land shall in all cases be paid in advance.

For the remainder of the installments provided for in the second sub-paragraph, and in cases of any standing expropriation payments not honored for any reason, an interest rate equivalent to the highest interest paid on the public debt shall be paid.”

Article 19

This article amends the second paragraph and deletes the third paragraph of Article 49 under the heading “Right and Duty to Work.”

The phrase **“and the unemployed”** is added after **“workers”** to the following sentence:

“The State shall take the necessary measures to raise the standard of living of workers, to protect them in order to improve the general conditions of labor, to promote labor and to create suitable economic conditions for the prevention of unemployment.”

With this amendment, the State assumes the obligation to protect the unemployed as well as the workers; this is an improvement in the area of state social policy.

This amendment is relevant to the Political Criteria Section 2.1.10. “Alleviating Regional Disparities to Increase Economic, Social and Cultural Opportunities for All Citizens”.

Article 20

This article amends Article 51 under the heading “Right to Organize Labor Unions.”

“Employees and employers have the right to form labour unions and employers’ associations and higher organizations, without prior permission, in order to safeguard and develop their economic and social rights and the interests of their members in their labor relations and shall be free to become a member of, or withdraw from membership in, a union. No one shall be compelled to become a member, remain a member, or withdraw from membership of a union.

The right to form labor unions and employers’ associations and higher organizations shall only be restricted on grounds of national security, public order, prevention of crime, public health and morals and the protection of the freedoms of others.

The formalities, conditions, and procedures governing the exercise of the right to form labor unions and employers' associations and higher organizations shall be prescribed by law.

It is not allowed to hold concurrent memberships in more than one labor union or employers' association.

The scope and exceptions of and limitations in this field to the rights of public employees who do not have the worker status, shall be prescribed by law in accordance with the nature of the service that they provide.

The regulations, management and functioning of labor unions and their higher bodies shall not violate the fundamental characteristic of the Republic and the principles of democracy.”

The second paragraph which reads **“In order to form unions and their higher bodies, it shall suffice to submit the information and documents prescribed by law to the competent authority designated by law. If this information and documentation is not in conformity with law, the competent authority shall apply to the appropriate court for the suspension of activities or the dissolution of the union or the higher body”** is deleted from the text of Article 51. This amendment extends the scope of the right to organize labor unions.

Specific grounds for restriction of this right, **“national security, public order, the prevention of crime, protection of public health, public morals, or for the protection of the rights and freedoms of others”**, are added to this article.

Furthermore, the phrase “**Workers and employers**” in the first paragraph of Article 51 has been replaced by “**Employees and employers**”. This amendment extends the safeguards in Article 51 to a larger group.

These amendments are undertaken in light of:

- Article 11 of the ECHR titled “ Freedom of assembly and association;”
- Political Criteria Section 2.1.2. Freedom of Association and Peaceful Assembly, and the Civil Society, particularly Turkey’s commitment to “review any restrictions there may be on rights of labour unions and employers’ associations” in the medium term.

Article 21

This article amends the last paragraph of Article 55 under the heading “Guarantee of Fair Wage”.

The amendment adds the phrase “**the minimum living standards of employees**” to the third paragraph defining factors to be taken into consideration when setting the minimum wage, thereby reinforcing the social function of the State.

This amendment is relevant to the introductory paragraph of Political Criteria Section 2.1.

Article 22

This article amends Article 65 of the Constitution along with the heading. The new heading is “**The Limitations of the Social and Economic Duties of the State.**”

The amended article reads: “The State shall fulfill its duties as laid down in the Constitution in the social and economic fields within the limits of its financial resources, taking into consideration the priorities in line with the objectives of these duties.”

Article 23

This article amends Article 66 under the heading “Turkish Citizenship”.

The amendment deletes the sentence **“The citizenship of a child of a foreign father and a Turkish mother shall be defined by law”** on the grounds that this provision violates the principle of equality between men and women.

This amendment is undertaken in light of:

- Article 14 of the ECHR titled “Prohibition of discrimination”;
- Article 5 titled “Equality between spouses” of Protocol No. 7 of the ECHR;
- Article 1 titled “General prohibition of discrimination” of Protocol No. 12 of the ECHR;
- and is relevant to the Political Criteria Section 2.1.11. “Full Enjoyment by All Individuals All Human Rights and Fundamental Freedoms”.

Article 24

This article amends Article 67 under the heading **“Right to Vote, to be Elected and to Engage in Political Activity.”**

The amended Article 67 now reads:

“In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum.

Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, and direct, universal suffrage, and public counting of the votes. However, the conditions under which the Turkish citizens who are abroad shall be able to exercise their right to vote, are regulated by law.

All Turkish citizens over 18 years of age shall have the right to vote in elections and to take part in referenda.

The exercise of these rights shall be regulated by law.

Privates and corporals serving in the armed services, students in military schools, and convicts in penal institutions, **with the exception of those convicted for negligent conduct**, cannot vote. The Supreme Election Council shall determine the measures to be taken to ensure the safety of **voting and** the counting of votes; such voting is done under the on-site direction and supervision of authorized judge.

When there is less than one year for elections, amendments made to electoral laws shall come into force for the second consecutive elections.”

The phrase “**with the exception of those sentenced for negligence**” is added after the phrase “**convicts in penal institutions**” to the sentence “**Privates and corporals serving in the armed services, students in military schools and convicts in penal institutions cannot vote.**” According to the new version of Article 67, persons sentenced for negligence will be allowed to vote. This provision is an improvement on the exercise of democratic rights and freedoms.

This amendment is undertaken in light of:

- Article 3 titled “Right to free elections” of the Protocol No. 1 of the ECHR;
- and is relevant to the introductory paragraph of the Political Criteria Section 2.1.

Article 25

This article amends Article 69 under the heading “Provisions Relating to Political Parties.”

Amendments to this article introduce criteria for determining whether the political party has become a center for the execution of prohibited activities.

The following sentence is added to the sixth paragraph of Article 69: **“A political party will be considered to have become the center of execution when actions of this type are undertaken intensively by the members of that party and when these actions are discreetly or openly approved by the general assembly or the chairman or the central decision-making or administrative organs or by the General Council of the Party Group at the Turkish Grand National Assembly or by the administrative board of that Group, or when these actions are directly and intentionally committed by party organs.”**

This provision introduces a series of criteria for the dissolution of a party, such as the frequency and the intensity of actions undertaken by party members, and the approval of these activities by central party organs. This provision extends the scope of the exercise of the freedom of thought and expression.

After the sixth paragraph of Article 69, a new paragraph is added which reads **“The Constitutional Court may take the decision to deprive the party of State funds, either partially or in full, instead of permanently dissolving the party, according to the gravity of the actions brought before the Court”**, thereby enabling the

Constitutional Court to impose sanctions on political parties other than dissolution. This provision extends the scope of the exercise of the freedom of thought and expression.

The last paragraph of Article 69 now reads: **“The foundation and activities of political parties, their supervision and dissolution or the denial of state funds to them partially or in full, as well as the election expenditures and procedures of the political parties and candidates, are regulated by law in accordance with the above- mentioned principles.”**

These amendments are undertaken in light of:

-Article 17 of the ECHR titled “Prohibition of abuse of rights”;
-and is relevant to the Political Criteria Section 2.1.1. “Freedom of Thought and Expression”.

Article 26

This article amends Article 74 under the heading “Right of Petition”.

The amended version of the article now reads:

“Citizens, and foreigners resident in Turkey in accordance with the principle to reciprocity, have the right to apply in writing to the competent authorities and to the Turkish Grand National Assembly with regard to requests and complaints concerning themselves or the public.

The result of the application concerning himself shall be made known without delay to the petitioner in writing.

The way of exercising this right shall be determined by law.”

The right of petition is extended to foreign nationals, with the phrase **“foreigners resident in Turkey”**, provided that the principle of reciprocity is observed added to the first paragraph of Article 74.

This amendment is undertaken in light of:

-Article 10 of the ECHR titled “Freedom of Expression”;
-Article 14 of the ECHR titled “Prohibition of discrimination”;
-and is relevant to the Political Criteria Section 2.1.1. “Freedom of Thought and Expression” and Section 2.1.11. “Full Enjoyment by All Individuals All Human Rights and Fundamental Freedoms”.

Article 27

This article amends the heading of Article 86 of the Constitution and its first paragraph.

The new heading is **“Payments, Allowances, Pensions and Social Rights.”**

The amended first and second paragraphs read:

“The payments and allowances as well as social rights, pensions and indemnity payments of the members of the Turkish Grand National Assembly shall be regulated in its special law.

The monthly amount of the salary shall not exceed the salary of the most senior active civil servant; the travel allowance shall not exceed half of that salary; pensions cannot be less than half of the total of that salary and travel allowances. The present and retired members of the Turkish Grand National Assembly shall be associated with the Pension Fund of the Republic of Turkey and those who are no longer members of parliament may continue to be associated with the Fund upon their request.

The salaries and allowances paid to the members of the Turkish Grand National Assembly shall not necessitate the suspension of payments of pensions by the Pension Fund and similar benefits.”

Article 28

This article amends Article 87 of the Constitution.

The amended article now reads:

“The functions and powers of the Turkish Grand National Assembly comprise the enactment, amendment, and repeal of laws; the supervision of the Council of Ministers and the Ministers; authorization of the Council of Ministers to issue governmental decrees having the force of law on certain matters; debating and approval of the budget

draft and the draft law of the final accounts, making decisions regarding printing of currency and declaration of war; ratifying international agreements, deciding on the proclamation of amnesties and pardons **with the majority decision of 3/5 of the total number of members of the Turkish Grand National Assembly**; confirming death sentences passed down by the courts; and exercising the powers and executing the functions envisaged in the other articles of the Constitution.”

The phrase “**with the majority decision of 3/5 of the total number of members of the Turkish Grand National Assembly**” is added and the phrase “**excluding those individuals convicted for activities set out in Article 14 of the Constitution**” is deleted from the text of Article 87.

Article 29

Article 29 amends Article 89 under the heading “**Promulgation of Laws by the President of the Republic**”

The amended second paragraph reads:

“He shall, within the same period, refer to the Turkish Grand National Assembly for further consideration, laws which he deems **partially or fully** unsuitable for promulgation, together with a statement of his reasons. Budget laws shall not be subject to this provision.”

A new penultimate sentence is added, which reads: “**In case the President deems these partially unsuitable, the Turkish Grand National Assembly shall discuss only those articles.**”

Article 30

Article 30 amends the fourth paragraph of Article 94 and replaces the phrase “**in ten days**” with “**in five days.**” This amendment speeds up the election of the Speaker of the Turkish Grand National Assembly.

Article 31

Article 31 amends Article 100 under the heading “**Parliamentary Investigation**”. These amendments are undertaken to speed up the process and to discourage politicization.

The first paragraph is amended as follows: “Parliamentary investigation concerning the Prime Minister or other ministers may be requested through a motion tabled by at least one-tenth of the total number of members of the Turkish Grand National Assembly. The Assembly shall consider and decide on this request **with secret ballot** within one month at the latest.”

The second paragraph is amended as follows: “In the event of a decision to initiate an investigation, this investigation shall be conducted by a commission of fifteen members chosen by lot on behalf of each party from among three times the number of members the party is entitled to have on the commission, representation being proportional to the parliamentary membership of the party. The commission shall submit its report on the result of the investigation to the Assembly within two months. If the investigation is not completed within the time allotted, the commission shall be granted a further and final period of two months. **This report shall be submitted to the Speakership of the Turkish Grand National Assembly by the end of this duration.**”

The third paragraph now reads: “The report shall be distributed within ten days after the date of submission to the Speakership and it will be discussed in ten days after its

distribution, and if necessary, the decision may be taken to bring the person involved before the Supreme Court. The decision to bring a person before the Supreme Court shall be taken by secret ballot only by an absolute majority of the total number of members.”

Article 32

This article amends Article 118 under the heading “The National Security Council”.

The first paragraph of Article 118 now reads: The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, **Deputy Prime Ministers**, the Minister of **Justice**, the Minister of National Defense, the Minister of the Interior, the Minister of Foreign Affairs, the Commanders of the Army, Navy and the Air Force and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic.

The first amendment to this article replaces the phrase “**its views on taking decisions**” in the third paragraph with the phrase “**the advisory decisions it has taken and its views on**”, thereby emphasizing the advisory nature of the National Security Council decisions.

The second amendment to this article replaces the phrase “**give priority consideration to**” in the third paragraph with “**take into consideration**”, thereby reinforcing the advisory role of the NSC.

These amendments are relevant to the Political Criteria Section 2.1.15. “The National Security Council”.

Article 33

This article amends Article 149 related to procedures of the Constitutional Court, under the heading “Functioning and Trial Procedure”.

The amended version of Article 149 now reads:

“The Constitutional Court shall convene with its president and ten members, and shall take decisions by absolute majority. Decision of annulment of Constitutional amendments **and on the dissolution of parties** shall be taken by a **three fifths** majority. The Constitutional Court shall give priority to the consideration of, and to decisions on, applications for annulment on the grounds of defect in form.

The organization and trial procedures of the Constitutional Court shall be determined by law; its method of work and the division of labor among its members shall be regulated by the Rules of Procedure made by the Court.

The Constitutional Court shall examine cases on the basis of written evidence, except where it acts as the Supreme Court. However, when it deems necessary, it may call on those concerned and those having knowledge relevant to the case, to present oral explanations (Annexed sentence: 23.7.1995 - 4121/14 Article) and in lawsuits on whether to permanently dissolve a political party or not, the Constitutional Court shall hear the defense of the chairman of the party whose dissolution is in process or of a proxy appointed by the chairman, after the Chief Public Prosecutor of the Republic.”

The first amendment adds the phrase “**and the dissolution of political parties**” to the first paragraph of Article 149. The phrase “**two-thirds majority**” is replaced by the phrase “**three-fifths majority**”. This amendment makes it more difficult to dissolve a party and extends the scope for the exercise of the freedom of thought and expression. These amendments are undertaken in light of:

-Article 10 of the ECHR titled “Freedom of Expression”.

-and is relevant to the Political Criteria Section 2.1 and Section 2.1.1. “Freedom of Thought and Expression”.

Article 34

This article deletes the last paragraph of Provisional Article 15 from the text of the Constitution, which is: “No allegation of unconstitutionality shall be made in respect of decisions or measures taken under laws or decrees having the force of law enacted during this period or under Act No. 2324 of the Constitutional Order.”

This amendment enables laws and decree laws and other legislation enacted between 12 September 1980 and 6 December 1983 to be brought before the Constitutional Court on grounds of conflict with the Constitution, and is a step forward in the process of democratization.

This amendment is relevant to the Political Criteria Section 2.1.

Source: Republic of Turkey Prime Ministry, Secretariat General for European Affairs

VITA

Banu Baybars Hawks was born in Istanbul, Turkey on June 7, 1971. She attended elementary schools in Istanbul district and graduated from Besiktas Ataturk High School in 1988. In that same year she began her college education and received a bachelor's degree in Communications with a major in journalism and public relations in 1992 from the University of Istanbul.

After completion of college, she began working as a research assistant and taught graduate classes in the School of Communications for the University of Istanbul. In 1992 she started her master's studies in Communications at the University of Istanbul. In a short time, she was given the responsibility of the direction of the public relations department at the University of Istanbul. She organized a series of events to enhance the image of the university. With the direction of her, the university chose "The Best Communicators of the Month and of the Year," which was deemed as one of the most prestigious awards in the society.

Hawks completed her master's studies in 1995, and immediately began her doctoral studies in the School of Communications at the University of Istanbul. In 1999, when she was about to get her Ph.D. degree from her university, she was selected by the Higher Education Board of Turkey as the only person to be sent to the United States to continue her doctoral studies. As a result, she froze her Ph.D. degree in Turkey, and arrived at the University of Tennessee in 1999 to begin her Ph.D. education in the School of Communications. During her doctoral studies at the University of Tennessee from 1999 to 2002, she developed an interest in media law. She began working with Dwight L. Teeter, Jr., who is the dean of the School of Communications at the University of Tennessee and a well known media law scholar. With the advisory of Teeter, she completed her doctoral dissertation titled "Crises, Terrorism and Restraints on the Media: Comparing Freedoms and Key Controls in the United States and Turkey," and received her Ph.D. degree in Communications in the spring of 2002.

Hawks is currently completing her second Ph.D. at the University of Istanbul. She is also teaching in the School of Communication at the University of Istanbul and directing her university's public affairs and public relations department.

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