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Ross Friedman

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The Banning of Political Parties by Constitutional Courts: A Turkish Perspective

by

Ross J. Friedman

Adviser

Dr. Jeffrey Staton

Department of Political Science

Dr. Jeffrey Staton
Adviser

Dr. Kyle Beardsley
Committee Member

Dr. Jennifer Gandhi
Committee Member

Dr. Kristin Wendland
Committee Member

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Abstract

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The author examines the conditions under which constitutional courts choose to close political parties. In order to understand the factors that encourage or discourage a court to close a political party, the author focuses on the case of Turkey. The rulings of the Constitutional Court provide ample variation between closed parties and not closed parties for study. The author tests four hypotheses, focusing on threats to a regime, fragmentation, public support, and international influences. Quantitative analysis is used to determine the statistical significance of these variables individually. The author also considers independent variables in both a multivariable model and an interactive hypothesis model. From the analysis, the author concludes that a significant relationship exists between threat and the likelihood to close political parties. The author also discovers that fragmentation is a significant factor in the banning of political parties. Additionally, the author asserts that international influences are an important consideration for courts when considering whether or not to close a political party. From these findings, the author discusses broader implications for the banning of political parties in a democratic setting.

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Table of Contents

Chapter 1: Introduction	1
Chapter 2: Theory	7
Chapter 3: The Turkish Case	19
Chapter 4: Data	32
Chapter 5: Estimation and Results	42
Table 5.1: Result and Threat Crosstabulation	43
Table 5.2: Result and Absolute Majority Crosstabulation.....	45
Table 5.3: Result and Veto Players Crosstabulation	46
Table 5.4: Difference of Means test of Age of Political Parties	48
Table 5.5: Public Support for Entry to the European Union to Turkey.....	51
Table 5.6: Imports from the European Union to Turkey	51
Table 5.7: Exports to the European Union.....	52
Figure 5.1: Likelihood of Closure with Respect to Time	53
Table 5.8: Complete Multivariate Logistic Regression Models	55
Table 5.9: Predicted Values of Threat	55
Table 5.10: Predicted Likelihood of Closure Based Upon Veto Players	56
Figure 5.2: Predicted Values with Respect to Party Age.....	57
Figure 5.3: Predicted Values with Respect to EU Exports	58
Figure 5.4: Predicted Values with Respect to EU Imports	59
Figure 5.5: Predicted Values with Respect to Time	60
Table 5.11: Interaction of Threat Conditioned by Age.....	61
Table 5.12: Predicted Probabilities of Closure	62
Table 5.13: Interaction between Threat and Exports to the EU	62
Table 5.14: Predicted Probabilities of Closure	63
Table 5.15: Interaction of Threat Conditioned by Veto Players	63
Table 5.16: Predicted Probabilities of Closure	64
Table 5.17: Result and Far Left Parties Crosstabulation	65
Table 5.18: Result and Religious Parties Crosstabulation.....	66
Table 5.19: Result and Kurdish Parties Crosstabulation	68
Chapter 6: Conclusion.....	71

Chapter 1: Introduction

The traditional conception of democracy is based on the principle that a citizen should have the ability to choose his or her representatives. In other words, the electorate votes on who will advocate their best interests either directly or indirectly. The right to choose one's representatives also suggests that the choices of the people should not be restricted. Any political party or person that desires to represent citizens should have the opportunity to be chosen. The ultimate decision as to whether or not that particular entity is the best representative of the electorate should therefore remain with the electorate. Despite these established norms, the choices of citizens have been restricted historically in the form of banning political parties.

While the banning of political parties is counterintuitive to a citizen's right to choose, a democracy should have the right to protect itself as a system of government. Historically, parties have used the democratic framework to ascend to power and once in power, have dissolved the democratic system that allowed them to rule. The most famous example of this occurred in Germany in the early 1930's. In 1933, Hitler was appointed as the Chancellor of the Weimer Republic after a period of political deadlock. Shortly thereafter, a new parliament was elected with Hitler's National Socialist Party winning over 40% of the vote. Hitler used the political momentum to consolidate his power, win approval by the parliament for emergency powers, and systematically transform the democratic Weimer Republic into the totalitarian Third Reich. Hitler and the National Socialist Party were able to manipulate the rules of democracy in the Weimer Republic to bring himself to power and then eliminate democracy. Thus, banning a political party may sometimes be necessary for the preservation of democracy.

The closing of political parties is a phenomenon that has occurred in various democracies throughout the world, including Israel, Germany, Switzerland, and Spain. Although the banning of political parties can occur quite frequently in authoritarian regimes, as previously mentioned,

it is both surprising and uncharacteristic of democracies. Such a restriction conflicts with a fundamental idea of democracy -- the idea of unrestricted choice. For example, in Spain, several Basque parties have been banned, including the Batasuna Party most recently, which was banned by the Spanish Supreme Court in 2006 (Dobson). The Spanish Supreme Court cited ties to the Basque Fatherland and Liberty (ETA) organization, widely considered a terrorist organization committed to the independence of the Basque region of Spain, as a reason for its closure.

Banning a political party is a controversial subject in a democratic state. In addition to restricting citizen's choice, closing a political party also represents a restriction on the freedom of speech. However, sometimes the restriction of free speech is necessary if it is used incorrectly. According to Joshua Cohen, "the United States is...unique internationally in its legal toleration of hate speech" (Cohen 208). However, other democracies are much less accepting of undemocratic behavior and take appropriate measures to restrict it. For example, in 1984 the Kach party won election to the Knesset in Israel. Following the elections, the party declared that they refused to cooperate with any government that did not support the removal of Arabs from Israel. In the following year in response to the High Court of Justice, the Knesset passed an amendment to the Basic Law, which added incitement to racism as proper justification for banning a political party from participating in elections. As a result of this amendment, the Central Elections Committee prevented the Kach party from participating in the 1988 elections. The High Court of Justice rejected the Kach party's appeal stating that the goals and actions of the Kach party are racist (Israel Ministry of Foreign Affairs).

Political parties have also been banned for other reasons. A second reason parties have been banned is because they are historically connected to a party that was detrimental to democracy or human rights while in power. After World War II, the German Constitutional

Court banned a party that claimed to be a successor to the Nazi party. The party was banned because it is antidemocratic in nature and because it represents an incitement of hatred against Jewish people. More recently, the *Washington Post* reports that Iraqi officials have banned 15 parties from the upcoming parliamentary elections either because they are associated with Saddam Hussein's Baath Party or because they have expressed support for Baathist ideals.¹ Both the restriction of the Nazi Party and of the Baath parties was justified by the belief that these parties could be harmful to democracy in both countries.

Closing a political party is especially problematic when the motivations for doing so are political rather than motivated by a desire to protect democracy. The closures of the Kach Party and the Nazi Party might be considered acceptable because they were closed in order to prevent anti-democratic parties from competing in elections and assuming power. In other words, the closure of these parties occurred in order to protect the system. What happens when political party banning is political? Do regimes try to manipulate the norms of party closure for their own benefit?

Before these questions can be answered, one must also consider the mechanism that is used to close political parties. Who decides whether or not a political party should be closed? In some instances an independent, bi-partisan electoral commission can ban political parties. This is essentially what occurred with the Kach Party in Israel when the Court indicated that it would uphold such a decision if it were challenged in court. But how can one be certain that the rights of citizens will be protected by an electoral commission? Who is responsible for the protection of rights?

¹ Fadel, Leila and Qais Mizher. "Iraq bars 15 political parties with Baathist ties from upcoming elections." 8 Jan 2010. *Washington Post*, Web. 01 March 2010. <<http://www.washingtonpost.com/wp-dyn/content/article/2010/01/07/AR2010010703773.html>>.

Because the right to political association and the right to choose one's representative are generally rights prescribed under a state's constitution, it is the Constitutional Court that is entrusted with the responsibility to ensure that the rights of citizens are respected. The court must balance the threat to democracy with the people's right to choose. In order to do so, the court must examine factors including the constitution, the party manifesto, the political climate, and any other factors that might be relevant in determining how threatening a party may be to democracy. However, in order to isolate the court from what some refer to as the tyranny of the majority, the constitutional courts that examine these cases are comprised of justices that have been appointed by either legislative members or executives. Thus, it is actually unelected institutions that are determining whether or not political parties should be banned. An understanding of the factors leading to the closure of political parties will help political scientists understand whether or not these institutions actually protect democracy and people's rights. Hirschl argues that the world is currently experiencing a "judicialization of politics." Because the judiciary is becoming more active in the political arena (and in some cases even overstepping their bounds), an understanding of political factors that motivate their decisions are increasingly important. What motivates a court to make a risky decision when the possibility of severe backlash both domestically and abroad exists?

The banning of political parties has also been a salient issue in Turkish politics. The National Order Party, a pro-Islamist party lead by Necmettin Erbakan, was banned in 1971. Since then, several pro-Islamist parties with similar ideology, including the National Salvation Party, the Welfare Party, and the Virtue Party were also banned. However, after 2001 the situation changed. The Justice and Development Party (AKP) was formed and gained a resounding electoral victory in 2003. In 2008, a case against the AKP was brought to the Turkish

Constitutional Court. The AKP survived the party closure case by one vote despite the fact it espouses a pro-Islamic agenda (Shambayati 2004). What was different about the AKP from previous religious parties? What motivated the court to rule differently? Does this new ruling represent a shift in beliefs or is the AKP a special case? More broadly, under what conditions does the Turkish Constitutional Court decide to close political parties? How can the knowledge of those conditions be generalized to understand how other democracies or non-democracies decide under what conditions to ban political parties?

In this thesis I examine the closure of political parties in Turkey. Turkey is an exemplary case study because its political history features a high number of Constitutional Court closure cases since 1982. In some instances, the Constitutional Court chose to allow parties to remain open. The variation presented by the Turkish case allows one to compare situations that could encourage or discourage the closure of parties.

In order to understand the mechanisms that could influence the likelihood of closure of a political party by the Turkish Constitutional Court, I evaluate empirical implications of threats to the regime, party popularity, fragmentation of the government, and support for Turkish entry into the European Union (EU). These variables were examined both independently and in connection with one another to determine the likelihood that the Turkish Constitutional Court would close a political party in the presence and absence of these characteristics.

I organize the remainder of my thesis as follows. I first summarize four main theoretical arguments in the literature that could affect the conditions under which the Constitutional Court would choose to close a party. Utilizing these theoretical arguments, I will draw a list of testable hypotheses based upon these arguments. After I summarize the hypotheses, I will then discuss the Turkish case with an emphasis on the historical factors that are important for understanding

the Turkish Constitutional Court and reasons for choosing the data I chose to examine. Then, I will describe the measurements I used to collect data. Next, I will explain the data I collected and the quantitative results of the data. Lastly, I will draw conclusions about the nature of closing political parties in general and describe some potential implications of my research.

Chapter 2: Theory

What could account for the closure of political parties? An examination of the literature has provided four potential variables that could explain or influence the likelihood of a political party to be banned. These theories were derived both from relevant discourse in political science about the courts and about specifically the closure of political parties in Turkey.

Fundamental Regime Threats

Kogacioğlu posits a fundamental regime threats theory to explain the banning of political parties (Kogacioğlu 2004). This theory argues that if a party's platform is inherently threatening to the established regime, the court will close the political party in question. A court would do so because it fears that the continued existence of such a party could harm principles that a nation finds important. In "Dissolution of Political Parties by the Constitutional Court in Turkey," Kogacioğlu asserts that the Court portrayed the banned political parties as "threats" to the Turkish Republic when these parties attempted to challenge the distinction between "cultural life" and "political life." According to the author, threats to the established principles of unity and secularism were actually exaggerated in the court cases initiated against these parties. After these parties were framed as threatening to national unity and democracy, the Court was able to rely on the principal that democracy should not allow itself to be destroyed. Kurdish parties were considered problematic due to their separatist tendencies, while Islamist parties were considered problematic for their desire to introduce religious arguments into politics in the Turkish case. As Kogacioğlu argues, once these parties were portrayed as "full political embodiments of such a 'meta' Islamic and Kurdish presence," it was only natural for the court to protect Turkish democracy by closing these parties. Kogacioğlu asserts that "the boundaries of the Turkish political domain are judicially marked in a way that to a large extent prevents substantial social

concerns and aspirations from being translated into forms of legitimate political action” (Kogacioğlu 2003).

In order to understand the context of Kogacioğlu’s argument, one must know the court’s preferences and the mechanism for how justices are selected to the court. In the case of Turkey, elected officials do not have a direct role in choosing Turkish Constitutional Court membership. Seven out of eleven members and three out of four substitute members are appointed by the President of the Republic from amongst a list of nominees chosen by the High Court of Appeals, the Council of the State, the Military Court of Appeals, the High Military Administrative Court, and the Court of Accounts. One member from academic personnel in universities is also appointed following nomination by the Higher Education Council. Three members and one substitute member are also chosen from lawyers and high civil servants in Turkey. Thus, professional judges and senior civil servants are the members that comprise the Constitutional Court. Shambayati argues that the influence of political parties on the Turkish Constitutional Court is limited by the fact that the presidency is seen as a non-partisan office and the constitution “does not foresee any role for the prime minister and the cabinet, or the Parliament, to influence appointments to the court” (Shambayati 2004). Additionally, the members of the Court are generally civil servants for years, which cause them to be considerably more Kemalist than the average Turkish person. By Kemalist, I mean someone who specifically believes in a modern, democratic, secular Turkey². Thus in Turkey, the default preference of the individual judges is likely to favor the state and its unelected institutions.

² The terms modern, democratic, and secular are to be understood differently than the civil libertarian conception of these terms. By modern, I simply mean an embracement of western ideals. Due to the structure of elected and unelected institutions (which is discussed in further detail in Chapter 3), the term democracy should be used loosely and simply means regular election of members to the Turkish Grand National Assembly. The secular aspect of Turkey is actually more reminiscent of the French laicism, which requires a very stark separation of religion and state, rather an American conception, which allows displays of religion in a government capacity as long as that religion is not forced upon others.

In another work, Kogacioğlu (2004) describes the underlying logic that accounts for why parties are closed in Turkey, which suggests that there is a specific way in which social, political, and judicial issues interact. According to Kogacioğlu, cultural symbols in Turkey, such as the headscarf or the Kurdish alphabet, become unnecessarily political. For example, women who wear a headscarf are seen as supporters of the Justice and Development Party rather than covering their hair for religious reasons. Additionally, the use of the letter “w,” a letter that is not in the Turkish alphabet, is considered to be a political demonstration and defiance against the state rather than simply being proud of one’s Kurdish heritage. The decisions of the Court are informed by an arbitrary line between culture and political domains. For example, cultural issues such as the use of the Kurdish language can become political “threatening the basis of a united, democratic, state.” In order to prevent the cross contamination of culture and politics, the Court is given authority and legitimacy to prevent this by the 1982 Constitution. Because the Court is an institution above politics, Kogacioğlu asserts that decisions to dissolve political parties are merely a way for the Court to ensure that democracy continues in Turkey. A cultural symbol that threatens democracy, progress, or unity is considered a threat to all three of these important aspects of the Turkish Republic. The protection of the boundary between political and cultural spheres is understood by the Court as a method to protect democracy (Kogacioğlu 2004).

Another instance of closure which parallels the situation described by Kogacioğlu is the banning of the Basque party in Spain. The Spanish government closed the Batasuna party because of its connections to the ETA. This closure was motivated by terrorism in the name of Basque separatism from Spain. The actions of the ETA and the political connection through Batasuna thus represented a fundamental threat to the Spanish regime. Dobson quotes Tim Golden, stating that “as a strategy to undermine separatist violence...the autonomy policies have

largely failed” (Dobson 2003). Because violence has still continued despite allowing an autonomous Basque region, Dobson argues that while Judge Garzon’s ruling to ban Batasuna is not a perfect solution, it is the best solution presently available (Dobson 2003). Thus Dobson would argue that terrorist activities of both the Kurdistan Workers Party (PKK) and the ETA are directly related to their respective political parties and that those activities warrant the closure of political parties affiliated with those groups.

If this theory is correct, one would expect to see parties closed if they are explicitly threatening to the regime. In the Turkish context, one would expect any party that is overly religious or advocates separatism to be closed by the Constitutional Court.

Fragmentation of the Political Space

Another important variable affecting the likelihood of closure is the fragmentation of political space. If important players in the state which usually constrain the court are in disagreement, an opening is created allowing courts that would normally be constrained by such actors to rule based on their preferences. Several scholars have written about the importance of fragmentation of the political space. For example, Rios-Figuera suggests that in the dominant one-party regime of Mexico, it was the competition and diversity of elites that finally allowed the Constitutional Court of Mexico to become more independent and expand civil liberties (Rios-Figuera 2007). In other words, the fragmentation of the political space was vital for the eventual opening of the Mexican system.

Hirschl’s hegemonic preservation thesis is an example of how fragmentation can affect the way a court chooses to rule. According to Hirschl, regimes are always guided by self-interest rather than any altruistic desire to improve the political system. For this reason, regimes, which are defined as the people in power, will only increase the power of the court when they believe

they will lose influence in other policy-making areas. Hirschl asserts that judicial empowerment through constitutional mechanisms is part of a larger process where self-interested political and economic elites attempt to protect themselves from the previously excluded groups that now have the right to vote (Hirschl 2004). Therefore, all things being equal, the courts will protect the interests of the entrenched regime, a group of people who is able to maintain influence and power in non-elected positions after they have lost popular support, long after they have lost the power to influence in other areas. For this reason, shifts in the alliance might make a court more likely to expand rights and not ban political parties because perceived repression during a weakened coalition could be further detrimental to the entrenched regime.

The issue of fragmentation of the political space has also been discussed in the context of Turkey. Belge (2006) examines Turkish Constitutional Court cases between 1962 and 1980. She finds that the selective expansion of civil liberties is connected to an alliance between the military, Republican People's Party, intelligentsia, and students. She claims that when the military and the Republican People's Party (who represented the Kemalist interests in the pre-1980 era) disagree on issues that the court will be more likely to rule in favor of civil liberties. Belge claims that the tension between the military and Republican People's Party (RPP) allowed for an expansion of rights in the 1970s because the RPP shifted to the left and advocated for these rights. Furthermore, she argues that her theory justifies the brief openings in Kurdish party rights in the early 1990's when the RPP briefly established an alliance with the Kurds. As a result of this alliance, the Social Democratic People's Party (SDPP) was founded, which was able to bring several cases to the Constitutional Court that directly challenged anti-terror laws in Turkey. While these challenges were only moderately successful, they did result in striking down restrictions on due process and annulling protections extended to anti-terror law enforcement

officials. More importantly, they were significant because the Court was willing to consider the challenges to the terror laws originating from the Republican quarters, while similar challenges from solely Kurdish petitioners were rejected by the Turkish Constitutional Court (Belge 2006).

The theory of elite fragmentation is also advanced by Tezcur who argues that expansion of civil liberties, including not closing political parties, is only able to continue over longer periods when political power is distributed among elites with conflicting interests, and the civilian government offers support and protection to activist members of the judiciary (Tezcur 2009). He also states that “courts are more likely to illiberally restrain democratic rights if they are allied with or controlled by other powerful institutions such as the military.” (Tezcur 2007)

The implication of this theory is that one would expect a court to be more likely to rule based upon its preferences. Recall in the fundamental regimes threat section I argue that the default preference of the Turkish Constitutional Court is to close a political party when important political players disagree on whether or not to close the political party. Therefore, if fragmentation of the political space is the true causal mechanism guiding the rulings on particular cases, one would expect the court to rule based upon its preferences and close parties during periods of fragmentation.

Public Support Theory

The amount of public support could also be an important factor in explaining the closure of political parties. If a party enjoys high public support, it will be less likely to be closed by the courts. The idea behind this argument is that the courts are free to advance its own agenda once it has the support of the public. Other constraints upon the court, such as threats to the regime or pressures from political elites may be a non-factor if the political party is popular enough. Popular support protects the court from punitive action by the executive or legislative branch.

Carrubba argues that the public will back the court when the court supports its policy interests. The court maintains support by acting in a way that is not too aggressive. At the same time, the court should not strike down a law in the short term if it expects gains in the long term by not doing so (Carrubba 2009). Therefore, courts are sensitive to both the public and the government.

In a forthcoming paper by Staton and Helmke which proposes four observations about courts, they also conclude that as court popularity increases, courts are more likely to make risky decisions. One observation states that the higher the court's popularity, the higher the chance that they will make bold decisions. Another of their observations suggests that when the value of reviewing future cases increases and the value for relieving litigant demand increases, courts are more willing to make risky decisions even when there is a relatively low chance of public backlash to support the courts (Staton and Helmke). Taken together, these observations suggest that the higher the court's popularity, the more likely it is to make risky decisions. Furthermore, if the government attacks the court and fails, the court is even more likely to make risky decisions in the future because the court will be less likely to face retribution from the government. Thus, unsuccessful attacks by the government against a popular court perpetuate and intensify the likelihood that risky decisions will continue.

The likelihood of courts to make risky decisions is important here because the judicial expansion of rights implies that such rights have not already been expanded by the legislative or executive branches. Therefore, the expansion of such rights is against the wishes of the executive or legislative branches and therefore considered risky. Similarly, Stephenson argues that the public dislikes both government intervention in the court and judicial rubber stamping. He argues that if the court is more reliable than the government, then the voting public will force the government to cede policy control to the court (Stephenson 2004). However, if the government is

more reliable than the court, then the public will allow it to control policy. This logic suggests that the courts must somehow prove to the public that it serves the public's interest more than the government and only then will the public be more inclined to support. All of these authors indicate that rights can only be expanded in the face of some public support. Hirschl argues the importance of the public by stating that national high courts "do occasionally side with religious authorities and tribunals" in order to remain relevant and legitimate (Hirschl 2009).

In an analysis of the United States Supreme Court, Mishler and Sheehan discover that the Supreme Court was influenced by public opinion over time. The authors support the idea that the Court is responsive to public opinion because the average U.S. president appoints 2 justices per term, which would be often enough for the Court to be responsive. The author's argument reflects Staton and Helmke's in suggesting that the Supreme Court will not depart too far from public opinion because it is the only way to ensure that the public will comply with its decisions (Mishler and Sheehan 1993).

McGuire and Stimson also agreed with Mishler and Sheehan's assessment that justices are responsive to public opinion. McGuire and Stimson believe the Supreme Court must be so responsive because they care about how the decisions will affect the implementers of those decisions (McGuire and Stimson 2004). Because the Court does not have any official power to enforce its decisions, it requires the executive branch to be willing to uphold the decisions it makes. In order to ensure that such decisions will be implemented, the authors believe the Supreme Court must take public opinion into account. McGuire and Stimson demonstrate the mechanism through an analytic technique that had not been previously used, showing that the correlation between the Supreme Court and public opinion is stronger than ever.

The discussion of Recep Tayip Erdogan's story by Shambayati demonstrates this concept in the Turkish case (Shambayati 2004). During his tenure as mayor, Erdogan gave a controversial speech in Siirt in which he invoked a famous Turkish poem by Ziya Gokalp to garner political support on December 6, 1997. The poem was based on a fictional dialogue between Selcuk Sultan Alparslan and Byzantine Emperor Romanus IV Diogenes. Erdogan read the sultan's fabled response to a threat of elimination of the Turks by the Byzantines, which stated that "minarets are bayonets, domes helmets; mosques are our barracks, and the believers are soldiers." The rest of the speech was a typical political speech. Because his speech included the imagery of using Islam to fight, members of unelected institutions considered it a direct threat to the secular nature of the state. He was prosecuted by the Diyarbakir State Security Court and sentenced to jail for 10 months. Additionally, he was banned from politics for life. He only served 4 months, and he was visited by many supporters every day. A variety of people voiced concern over his sentence including the United States and the European Union. After he had served his sentence, he helped found the AKP despite the fact that he could not be a founding member. The AKP, under Erdogan's leadership, won a resounding victory in 2002 and became the largest party in the Parliament. The AKP was able to pass an amendment lifting Erdogan's ban on politics and permitting him to run for a disputed seat in Siirt and win. On March 13, 2003, the results of Erdogan's special election were certified, the Prime Minister Abdullah Gul resigned, and Erdogan was asked to form a new government in the Parliament (Shambayati 2004). Erdogan's political story demonstrates that the public did not respect the State Security Court's decision and promptly ignored it because they were able to elect his party and through the Turkish Parliament, lift his ban on politics. Shambayati claims that the multiple reformation of the same banned parties under different names, which is a common occurrence

with respect to both pro-Islamist parties and Kurdish parties, not only suggests that the public does not respect the Turkish court's decisions, but also suggests that the perception of the court as a "neutral" arbiter has been tarnished (Shambayati 2004).

If the public support model is accurate, then courts would be more likely not to ban a popular party because the court may be trying to avoid making decisions that run against the public will. In the case of Turkey, this would mean all things being equal, more popular parties, such as the pro-Islamist parties who won resounding victories in 1996, 2003, and 2007, would be less likely to be closed.

International Influence

Another potential variable affecting the likelihood of a court to close a political party is international influences. Kogacioglu notes that the Turkish Constitutional Court and litigants refer to international sources of legitimacy. In the case of People's Labor Party, the Turkish Constitutional Court makes significant reference to the Lausanne Treaty as the only legitimate way a recognized minority by the state can be established. Furthermore, the Welfare Party relied upon arguments by the European Convention of Human Rights and the Universal Declaration of Human rights in their case. Kogacioglu asserts that the multiple references of international sources suggest that "the political parties under fire, the prosecution, and the court looked up to the European Commission of Human Rights as a legal and social source of legitimacy" (Kogacioglu 2003). The necessity of all parties involved to refer to the European Commission and other international sources indicates that the influence of international actors is important and does have some sort of meaningful and legitimizing factor. In several cases, the European Court of Human Rights disagreed with Turkey's reasoning for closing political parties, finding them in violation of Articles 10 and 11. Because the European Court of Human Rights found

Turkey in violation of their principles, they even fined the Turkish government in the aftermath of the People's Labor Party (HEP) closure case. In the Welfare Party case, the European Court of Human Rights actually agreed with Turkey's decision to ban the party. Arslan argues that this disagreement is a function of the different interpretations implemented by the Turkish Constitutional Court and the European Court of Human Rights. The Turkish Constitutional Court, as has been argued by other authors, bases its decision to close a political party on political reasons whereas the European Court of Human Rights bases its decision to close a party on a rights based interpretation (Arslan 2002). With Turkey officially labeled as a candidate country to the European Union, it is possible that international influence has helped influence moderation in political party closings more recently.

Multivariate Analysis

In addition to considering each of these elements separately, a multivariate analysis will be performed in which all of the independent variables will be taken into consideration in one model. While an analysis of each of the individual variables is interesting, in reality the independent variables cannot be isolated from each other. How significant are threat, fragmentation, public support, and international influences when the other variables are held constant? A multivariate model may provide insight to this question.

Interactive Hypotheses

While each of these factors may, in of themselves, help predict the chances of a party being closed by a Court, one cannot necessarily view these variables in a vacuum from one another. In politics aspects of threat, public support, fragmentation, and international influence interact to increase or decrease the chances of political party closure. In light of this realization, it is expected that high public support for a party may make it less likely to be closed even if it is

identified as a threat. Similarly, fragmentation may also increase the likelihood that a party will be banned, especially if it is a threat to the regime. It is my belief that a hypothesis that takes multiple variables into account is likely the best explanation for why courts can sometimes ban political parties and sometimes not.

Chapter 3: The Turkish Case

Since the new Constitution of 1982 was written and ratified, the Court has examined thirty-six closure cases. In these cases, the Turkish Constitutional Court has decided to ban political parties twenty-one times. The Turkish case is an ideal case to study political party closures because there is such a high number of cases and high amount of variation. In most states where political parties have been closed, such as Spain, Israel, or Germany, there have only been a handful of these cases to evaluate. The Turkish case provides enough data to form a more comprehensive analysis using quantitative analytical techniques to understand the causal mechanism that influence courts to ban political parties. In order to understand how and why the banning of certain political parties has been significant, it is useful to review the origins of Turkey and Turkish politics.

The Establishment of the Turkish Republic

The Republic of Turkey was established by the Treaty of Lausanne in 1923 following the Turkish War of Independence. The Treaty of Lausanne was an important document because it provided the foundation for key aspects of the new Turkish Republic. In addition to establishing the new international borders of Turkey, the Treaty of Lausanne also determined which groups would be given minority status in Turkey. Although Lord Curzon expended significant effort in trying to include Kurdish people as a recognized minority, the Turkish delegation persuaded Curzon to drop this demand stating that they knew “from the bottom of their hearts that the Kurds wanted to share in the Turkish destiny” (Kogacioğlu 2004). Since its inception the Treaty of Lausanne has been integral in defining the territorial integrity of Turkey and is the document that designates which groups may possess legal minority status in Turkey.

Kemalism as the State Ideology

Upon the founding of Turkey, the leader of the Turkish War of Independence, Mustafa Kemal Ataturk, and his followers professed an ideology known as Kemalism, which became the dominant state philosophy. Kemalism held that Turkey should above all things be modern, democratic, and secular. According to Hakan Yilmaz, the Kemalist revolution, which set the new Republic of Turkey apart from the old Ottoman Empire, occurred in two major stages. The first stage culminated in the abolition of the Caliphate in 1924 which represented a complete disappearance of the political and religious authority of the Ottoman imperial center. Yilmaz argues that second stage of the Kemalist revolution was geared towards “eliminating rivals of Kemalism within the military, civil bureaucracy, and National Assembly, and suppressing the religious and Kurdish nationalist revolts against the secular Turkish state” (Yilmaz 2008). As Yilmaz demonstrates through his description of the two phases of the Kemalist revolution in Turkey, the concept of a secular, democratic and modern state has been present in the Turkish Republic since its founding.

Several reforms were instituted by Ataturk to realize the stated goals of Kemalism. In 1924, the National Assembly ratified a new Constitution in order to codify the new beliefs. In November 1925, religious head coverings were banned and western attire was instead adopted. Article 2 of the 1924 Constitution, which made Islam the official religion of Turkey, was annulled in 1928. To promote modernism, Latin letters were adopted to replace the Arabic script for the Turkish language in May 1928. In 1937, the “Six Arrows,” which are the six basic principles of the Republican People’s Party were added to the Constitution via an amendment in

February 1937. The elements of the “Six Arrows” included republicanism, nationalism, secularism, populism, statism, and reformism (Unsal 6-7).

An understanding of Ataturk’s reforms and the concept of Kemalism is useful for a proper understanding of the significance of rulings made by the Constitutional Court in the past 30 years. By eliminating potential opponents to Kemalism in the second stage of the Turkish Revolution, Ataturk and the Kemalists created a core value system that would be preserved by various members of the Turkish elite for more than 50 years.

In order to preserve these ideals, Ataturk founded and led the Republican People’s Party (RPP) to organize and occupy positions of government. The RPP advocated the ideals and beliefs of Ataturk and continued to rule Turkey without competitive elections until 1950. After Ataturk’s death in 1939, the party was lead by another military hero, Ismet İnönü. İnönü continued to advocate the ideals of Kemalism throughout his tenure.

The End of One-Party Rule

The first major challenge to Kemalism occurred in the late 1940’s and culminated in the first multi-party, democratic election in 1950. In the aftermath of World War II, Turkey’s foreign policy goals were two-fold. It wanted to stay out of the Soviet sphere of influence and get as close to the nucleus of the western state as possible. In order to achieve these goals, leaders of the Republican People’s Party pursued membership in newly-formed international institutions such as the North Atlantic Treaty Organization (NATO), the International Monetary Fund (IMF), and the World Bank. However, in order to be accepted as part of the new state system, it was necessary for Turkey to share in these values. Because the Republican People’s Party ruled through an appointed Turkish Grand National Assembly which was inherently undemocratic, the party leaders were forced to liberalize and democratize the political system. As a result of these

developments and further opening of the political system between 1946 and 1950, the Turkish Grand National Assembly passed a law allowing relatively free and fair elections in February 1950. The first fair elections occurred on May 14, 1950. Although the Republican People's Party expected to win the elections, the Democrat Party won 55 percent of the vote and the Republican People's Party only won 40% of the vote.

Despite conflicts before the election and blatant manipulation by the Republican People's Party, Prime Minister Ismet İnönü facilitated a peaceful transfer of power. Throughout the 1950's the Democrat Party ruled with an absolute majority, increasing their electoral victories in the 1954 elections. Similar to what the Republican People's Party had done in the 1940's, in the 1950's the Democrat Party wanted to reduce the Republican People's Party's effectiveness as a party and ensure that it would not be competitive in future elections.

The Democrat Party Era

The restrictive policies of the Democrat Party were aimed at incapacitating groups that would likely support the Republican People's Party. For example, in July 1953, a law was passed forbidding university professors from becoming members of political parties. Another law nationalized most of the assets of the Republican People's Party, claiming that they had been illegally obtained during the single-party-period. In March 1954, journalists were no longer permitted to publish negative information about a person in a position of authority. Another law in July 1954 gave the government the authority to "retire any state official in any capacity (including judges and university professors) without regard to the quality or length of service. Moreover, the officials thus retired did not have the right to appeal the government's decision to the courts" (Yilmaz 1996). Further restrictions on the freedom of press and the freedom of

demonstrations also occurred in 1956. Political parties were no longer permitted to have open-air rallies except during official periods immediately preceding elections.

The electoral losses by the Democrat Party in October 1957 made the ruling party even less tolerant of dissent than they were previously. The internal regulations of parliament were amended so that deputies were restricted in their right to speak, ask questions, and receive replies. Additionally, ministers were free not to answer some questions if doing so would “jeopardize the security of the state and the interests of the nation” (Yilmaz 1996). According to Yilmaz, the new regulations allowed the government to suspend parliament members from the Turkish Grand National Assembly and to lift their constitutional immunity. The government utilized these new rules to prevent the opposition from mobilizing on key issues.

The situation escalated in 1959 and resulted in violence amongst citizens and even parliamentarians sometimes. In response to Ismet İnönü’s calls for early elections, on April 18, 1960 the parliament, controlled by the Democrat Party, created the Commission to Investigate The Subversive Activities of the RPP and Some Organs of the Press. This committee was given exceptional powers which included the rights to suspend all political activities, the rights to ban any publications, and issue warrants of arrest for any individuals. Additionally, the Commission was permitted to prosecute and sentence individuals and the decisions of the Commission could not be appealed in court. The Commissions inspired demonstrations on college campuses in both Ankara and Istanbul, which resulted in both Istanbul and Ankara University to be closed for one month. Demonstrations were also carried out by War College cadets. As a training facility for future members of the military, demonstrations at the War College were highly significant.

The 1960 Military Coup

In response to the increasingly anti-democratic atmosphere, military officers decided to overthrow the Democrat Party regime because they argued that the Democrat Party “leadership would have put an end to democracy and established a civilian dictatorship” (Yilmaz 1996). Although it is not clear whether or not the Democrat Party was actually progressing in the direction of a civilian dictatorship, they were manipulating institutional rules to place the members of the Republican People’s Party at a distinct disadvantage in elections. The military coup in 1960 was the first instance in modern Turkish history in which the military took control of a democratically elected government. Its action set a precedent for future military takeovers and the belief amongst members of the military that they served as guardians of the core values of Turkey that were sacrosanct. Following the military coup of 1960, the military decided to create a Constitutional Court to ensure that actions taken by the governing party would not result in the same gross violations of rights that occurred in the 1950s. There was a widespread belief amongst the coup-makers that some sort of constitutional justice was necessary. The passage of Law no 44 on April 22, 1962 officially allowed the Constitutional Court to begin carrying out its activities (Turkish Constitutional Court). However, in protecting the principles that are most important to the Turkish Republic, the Constitutional Court restricts the mobilization of certain parties, which is inherently anti-democratic.

The First Constitutional Court

Because of the fears associated with the previous regime, an unusual number of actors were granted access to the new Constitutional Court. The eligible actors included the president of the republic, the political parties that had gained at least 10 percent of the vote in the last general elections, any political party with representation in the parliament, parliamentary groups of

political parties, and one-sixth of the members of either legislative chamber. Article 149 also stipulated that the Supreme Council of Judges, the Court of Cassation, the Council of State, and the universities could request laws that affected their own functions to be reviewed abstractly (Shambayati 2009). Membership of the new Constitutional Court was derived from the “Court of Cassation (four justices), the Council of the State (three justices), and the Court of Accounts (one justice)” (Shambayati 2009). These courts were comprised directly eight justices and three substitute justices from members of these groups. Additionally, the Turkish parliament appointed three justices, one of which was nominated by the universities. Universities also appointed one of two justices nominated by the Senate. While the President of the Republic nominated the final two justices, one of them had to be nominated by the Military Court of Cassation. The varied backgrounds of the justices demonstrate that the new Constitutional Court represented the goal of governance as a collaborative activity controlled by the newly empowered political and state elites.

Knowledge of the sanctity of Kemalist principles in Turkey, the origins of Turkish democracy, and the reasoning for the creation of the Constitutional Court demonstrate that the Constitutional Court, in addition to upholding the Constitution, is concerned with ensuring that the principals of Kemalism and democracy are not violated.

Another important organ founded in the wake of the 1960 military coup was the National Security Council (NSC). The NSC was originally created in order to function as an advisory body. However, following the second military intervention in 1971 it was transformed into a body that made recommendations to the cabinet about national security requirements (Kogacioglu 2004).

The 1982 Military Coup

Although the new Constitutional order worked well for the first few years, it was contingent upon the various segments of the Republican Alliance (the universities, military, students, and labor unions) remaining allied. However, a younger generation of leadership moved to the left, while the military moved to the right (Shambayati 2009). As the rift between the two continued to grow, the Turkish Constitutional Court began making more decisions in favor of the leftist faction, displaying a partisan bias. The Court even went so far as to require the implementation of the pro-Republican People's Party amnesty bill, resulting in the release of 4,000 leftist prisoners even after the bill had been rejected by the parliament (Shambayati 2009). The rift inside the Republican Alliance coupled with the bitter violence between leftist and rightist movements brought Turkey to the brink of civil war in the late 1970's. As a result of this polarization and political deadlock, the military decided to overthrow the government and establish a military regime on September 12, 1982.

The Current Constitutional Court

Because the military had learned from the past, they would not establish another regime that would allow them to be pushed to the margin of influence. Furthermore, Shambayati argues that "the military had lost faith in all civilian actors, including former allies in the judiciary, the state bureaucracy, the universities, civil society, and of course political parties" (Shambayati 2009). Additionally, the structure of the military was different in this coup. Instead of a divided military like in 1960, the military intervention in 1980 was unified and hierarchical, lead by the chief of staff and four service commanders.

The new structure of the National Security Council demonstrated this change. Although it was strengthened in the military intervention of 1971, the Council was still primarily comprised

of civilian leaders. Following the 1982 coup, however, the military increased the weight and number of military personnel at the expense of its civilian members. From the time of the military coup until the National Security Council was again reformed to be a civilian dominated organization in 2003, the National Security Council was considered the most decisive organ of the dual system of decision making established after the coup (Saribrahimoğlu 2008). According to Sakallioğlu:

The concrete decisions of the council cover[ed] an unprecedented spectrum: determining the curriculum in schools; regulating television stations' broadcasting hours; abolishing the penal immunity of members of parliament from the (Kurdish) Democracy Party; closing down certain prisons and television stations; making bureaucratic appointments of the ministry of public works in the southeast; postponing the termination date of military service for current conscripts; suggesting the formation of electoral alignments between political parties before the March 27, 1994, local election stating the substance of the laws on terror and capital punishment; and offering Arabic as an elective subject in secondary schools (Sakallioğlu 1997).

The National Security Council served as a medium through which the military could intervene in politics and serve as a guardian to the secularist and nationalist order that was established by the reforms of the 1930s as well as a guardian to Turkish democracy in general (Kogacioğlu 2004).

The new military regime also included a new format for the Constitutional Court. In addition to limiting the Court's scope of review while still maintaining judicial review, the 1982 constitution also changed the procedures for the appointment of the justices to guarantee that the military would still maintain influence on the judiciary. Additionally, the new constitution eliminated any nominating role by the Turkish Grand National Assembly and restricted nomination of new justices to the high court's nominating bodies. The new Turkish Constitutional Court includes eleven justices and four substitute justices. The military increased its influence, nominating two justices (instead of the previous number one) as well as having the Board of Higher Education, an institution closely monitored by the military in the new regime,

nominating one justice (Shambayati 2009). While justices from the military are no longer members of the military when appointed to the Court, they are products of the legal training of the military.

All of the judges on the Court are appointed by the president of the republic. Following the end of military rule, Constitutional Court members were given the constitutional protection of tenure, which expires at age 65 (Turkish Constitutional Court). The Parliament maintains no role in the appointment procedure after 1982.

The new Constitution stipulates that five members must come from civilian and military administrative courts and another five from other courts. According to the Constitution, judges must appoint three justices from members of “senior administrative officers and lawyers” (article 146). Very little distinction exists between judges and other civil servants. Shambayati argues that the Turkish Constitutional Court after 1982 was an administrative court and states that it is “one set of elite administrators watching the rest of the administration” (Shapiro 1986). Shambayati further states that in the Turkish case it is also responsible for watching society (Shambayati 2009). The Court was intended to act in collaboration with the military in order to support the regime rather than to oppose it as it had done during the 1970’s.

The Constitutional Court has several functions in addition to reviewing the constitutionality of laws. These include deciding the annulment of laws, deciding on the contention of unconstitutionality of laws, trying offenses of judicial and executive members of the regime related to their jobs, deciding on applications to dissolve political parties, auditing political parties under financial terms, deciding on a request to appeal the Parliament’s decision to revoke parliamentary immunity, and to appoint one of its members to the office of president of the Court of Jurisdictional Disputes.

In order to ban a political party, the Constitutional Court invokes Article 69/3, which states that the Constitutional Court will make the final determination on the closure of a political party following a trial initiated by the Chief Public Prosecutor of the Republic. The trial of a political party involves a verbal hearing with arguments made by both the respondent and the defendant and on a report written by the appointed rapporteur judge.

The Constitutional Court website establishes four reasons a party can be closed, which include a party statute and its program being contrary to paragraph 4 of Article 68 of the Constitution which states:

The statutes, programs and activities of political parties shall not be in conflict with the independence of the State, its indivisibility with its territory and nation, human rights, the principle of equality and the rule of law, national sovereignty, the principles of democratic and secular Republic; and shall not aim at establishing or defending a class or group dictatorship, or a dictatorship of any kind; shall not encourage the commitment of crimes (Paragraph 4, Article 68).

A political party may also be closed if it is a “center of actions” against paragraph 4 of Article 68 of the Constitution. If a political party receives monetary support from foreign countries, international institutions, or from a person or legal body that does not possess Turkish citizenship, it can be closed. The Court may also close a party if it was a previously dissolved political party reformed under a new name. Additionally, a party may be banned if it does not adhere to a warning decision issued by the Constitutional Court.

The 1995 Constitutional Amendment

Following the year 1991, which scholars mark as the true return of civilian politics in Turkey, the Court closed an increasing number of political parties. As more parties were banned, it became necessary to ensure the cost of banning political parties remained low. This became especially important in 1995 when the Constitutional Court banned the Democrat Party (DEP) who had actually sent representatives to the parliament at the time of its closure. After members

of the banned party lost their parliamentary immunity and were imprisoned, the Turkish Grand National Assembly introduced an amendment to lower the political costs of closing a political party and to minimize the impact of a closure ruling to parliament members. In 1995, Article 69 of the Constitution, which stated:

The founding members and administrators at every level of a political party which has been permanently dissolved shall not become founding members, administrators, or comptrollers of a new political party; nor shall any new political party be founded, the majority of whose members are former members of a political party dissolved (Article 69, Turkish Constitution).

This provision was controversial because it prevented members of banned parties from attaining memberships in new, legal parties. Shambayati claims that this provision was unenforceable and for this reason the parliament amended the Constitution, allowing members of closed parties to join new parties (Shambayati 2008). Political parties took advantage of this rule, sometimes forming a new party even before the previous party was closed. For this reason, the Justice and Development Party and the Peace and Democracy Party are the successors to several parties that have been banned previously.

The 2001 Constitutional Amendments

Pressure from the European Union caused a further amendment to the Constitutional procedures regarding the closure of political parties in October 2001. Article 69 was amended to state that a party could only be considered a center of the illegal actions described in Article 68 only if it was discovered that members were “intensively” engaging in such activities (Shambayati 2008). More importantly, the 2001 constitutional amendments required that a party could only be closed if three-fifths of the members of the Constitutional Court voted in favor of banning the party (instead of a simple majority as established under the previous Constitutional arrangement). Additionally, the 2001 amendments gave the Court an alternative sanction for

violations to the Constitution. Instead of closing a party, the Court was granted the power to either fine the party or restrict the amount of state supported funds it receives (Shambayati 2008). In 2008, this option was used in the Justice and Development party's closure case. While they were deemed responsible, the Court did not choose to close the political party and instead restricted their state funding. At the time of the closure case, the Justice and Development party had won 47% of the vote in the previous year and held over half of the seats in the parliament. The new Constitutional option allowed the Court to assign responsibility without closing the party. A closure of the majority party with such wide support would have had detrimental consequences for democracy in Turkey.

Social Movements in Turkey after 1982

In addition to understanding the origins and developments of the Constitutional Court, it is also important to know about social movements occurring in Turkey. These social movements have become an important basis for the formation of political parties that challenge the existing Kemalist ideology. In the period after the 1982 coup, Kogacioğlu writes that Kurdish nationalism and politically engaged Islam represented the two foremost threats to Turkish society (Kogacioğlu 2004). The pro-Kurdish parties were seen as related to the ongoing struggle in southeastern Turkey between Kurdish separatist guerilla forces and the Turkish military. The pro-Islamist parties to a lesser extent were feared because they were thought to be associated with sporadic terrorist Islamic fundamentalist acts in Turkey. Additionally, the Islamist parties were considered threatening to the secular order of Turkish society. These actors brought several issues to the forefront of consideration such as bans on the wearing of headscarves and the right to educate children in Kurdish.

Chapter 4: Data

In order to test the hypotheses expressed in Chapter 2, I constructed an original dataset on party closing cases in Turkey.

Dependent Variable – Court Closings

The population of cases to be studied was derived directly from the Turkish Constitutional Court’s website. Under the *Sıkça Sorular Sorular* (frequently asked questions) section, question forty-five details a list of all political parties that have faced closure in the Constitutional Court. I confirmed the cases by examining the *bilgi bankası* (information bank) on the Constitutional Court’s website by searching for political party closure cases for each year between 1983 and 2009.

On the chart of each of the case listings, there were three different options: *kapatıldı* (closed), *ret* (rejected), and *elde* (pending). If “*kapatıldı*,” which is literally defined as “closed” in Turkish, was written, I coded it as a 1 to signify that the Turkish Constitutional Court decided to close the party. If the word “*ret*,” which literally means rejected in Turkish, is written next to the party, then I coded it as a 0 to indicate that the party was permitted to remain open by the Constitutional Court. I did not code any of the parties where “*elde*,” which means pending in Turkish, was written because the result of the case is unclear. For the last two cases, I coded them from newspaper articles written by the *Hürriyet* about the recent closings of the Justice and Development Party and the Democratic Society Party.

Because Turkish Constitutional Court cases (especially party closure cases) can go on for a significant length of time, it is important to clarify how I derived the date of closure. The dates of the cases throughout the dataset refer to the date of the case decision which is found on the actual case files on the website of the Turkish Constitutional Court (Turkish Constitutional Court).

Independent Variable – Threat

For the purposes of this project, a party is considered threatening if it is either pro-Islamist, advocates Kurdish or other minority rights, or is a far-left party. The justification for testing each of these threats is derived from the literature on Turkey. Several authors, including Kogacioğlu, Shambayati, Hakyemez, and Tezcür argue that both support for Islam and pro-Kurdish parties are perceived by the Turkish government as threatening. Additionally, before 1991 and the fall of the Soviet Union, far left parties were also considered to be a threat to the Turkish Republic and their alliance with the Western states.

To determine whether parties were religious or pro-Kurdish, I consulted the “Political Handbook of the World.” For this project, it was necessary to examine information about political parties in the editions from 1987 through 2008. Information about the parties in 1983 and 1984 was obtained from “Problems of Political Development in the Third Turkish Republic” by Birol Ali Yeşilada.

In both the Yeşilada article and the Political Handbook, if a party was said to be “religious” or religiously oriented, I coded a 1 under the religion category. If no such reference to religion was made, I coded it as 0. Similarly, if the party description indicated that a particular party supported Kurdish issues, I coded it as a 1 and if it did not mention Kurds, I coded it as 0. If a party contained the name “Communist” or “Socialist,” I coded it as a 1 in the “far-left” category. If these terms did not exist in the party name, I coded it as 0.

I also coded a party as “Pro-Kurdish” if they advocated support for another repressed minority. This only occurred with the Democratic Peace Movement Party. I decided that this was important because further support for repressed minorities represent a threat to the existing regime.

The Ozgurluk ve Demokrasi Partisi (Liberty and Democracy Party) was the exception to this protocol. Although a description of the party could not be found in the Political Handbook, I found their appeal of the Constitutional Court's Decision to the European Court of Justice. The decision of the European Court of Justice quotes a portion of OZDEP's party manifesto which states that they desired to establish a "social order encompassing both the Turkish and Kurdish peoples" (European Court of Human Rights), which indicates that the party was pro-Kurdish.

Based on my reading on an article by Hakyemez and Akgun entitled "Limitations on the Freedom of Political Parties in Turkey and the Jurisdiction of the European Court of Human Rights," I coded the Socialist Turkey Party, the Socialist Unity Party, and the Labor Party as supportive of the Kurds. According to Hakyemez and Akgun, each of these parties were closed for supporting initiatives to recognize Kurds as a separate minority or advocating the recognition of Kurds as a constituent people (Hakyemez and Akgun 2002).³

Independent Variable – The Fragmentation of Political Space

It was difficult to identify a measure of fragmentation of political space. The data I chose to include is from the Database of Political Institutions at the World Bank. Unfortunately, there was no easy way for me to measure the position of the military relative to other members of the Republican Alliance (as Belge did in her argument for fragmentation of the political space). For this reason, this independent variable does not measure exactly the same concept as discussed in the theoretical section. Despite this limitation, I believe other aspects of fragmentation in Turkey are important and can be used to test this argument.

³ If I were to only use the Political Handbook information, it would decrease the percentage of Kurdish parties closed from 100% to 62.5%. However, it would not be a true reflection of the situation in Turkey because the Political Handbook was less thorough on smaller parties.

The first variable selected from the World Bank database was the *Allhouse* variable. *Allhouse* is a simple dichotomous variable measuring whether the party of the executive holds a majority of the seats in all relevant lawmaking houses. In the case of Turkey, the party of the executive must hold a majority in the Turkish Grand National Assembly. The inclusion of this variable is important in understanding whether the Court is more likely to close a party when the largest party has a majority of seats in parliament or not. Potentially this can demonstrate the importance of government cohesiveness vis-à-vis other veto players.

Another variable used to measure the fragmentation of political space is the polarization variable. The polarization measures a similar concept to the *Allhouse* variable, but it is more precise. It measures the maximum amount of difference between the largest party in the parliament and the four largest parties. I selected this variable because it gets at the same idea of looking at division within the governing system of Turkey.

I also selected a variable to measure stability (stabs). The stability variable refers to the percent of veto players who drop from the government in each year. Because veto players are important for the direction of government and ultimately the policies of Turkey, I contend that measuring their stability may give us a clue as to how important they are at various times. The more important the veto players are, the more it would be expected to close parties when there is little or no movement of veto players. Conversely, when a significant number of veto players drop from the government, one would expect the Court to feel less pressure and therefore rule based upon its preferences.

The last variable selected from the World Bank database was the Veto Players variable which measures the number of veto players in the government at any time. Veto players are defined as people or parties whose action can prevent legislation from passing. Because the

governing parties in the parliament have often been opposed to military rule and the initiatives promoted by the Kemalist regime, their unity and ability to have influence in organizations such as the parliament and the National Security Council could have an effect on the Turkish Constitutional Court's likelihood to close a political party.

Independent Variable – Public Support

There are two ways in which this project measures public support for party. The first is the number of votes received by a party immediately preceding closure of the party. The votes category refers to the percentage of the vote that the party obtained in the election immediately preceding their case in the Turkish Constitutional Court. Election result data was obtained from *Belgenet*.

For the Halkin Demokrat Partisi (People's Democratic Party), I included information from the results of the Democratic People's Party (DEHAP) because DEHAP was founded as a result of the case being brought against the People's Democratic Party. Because DEHAP was the party representing Kurdish issues immediately before the closure of the People's Democracy Party, the votes DEHAP received are more representative of the support for Kurdish parties at that time.

The results for the Demokratik Toplum Partisi (Democratic Society Party) are actually the total number of independent votes in the 2007 General Election because the majority of independent votes were actually supporters of the Democratic Society Party. However, only a few of the closed parties actually participated in elections. Many of the banned parties were actually fringe parties that never participated. For this reason, one cannot use the number of votes to compare across all political parties. Furthermore, fringe parties themselves could have been popular.

The number of votes was also drawn from Belgenet. This refers to the number of votes cast in favor of said party in the election immediately preceding its case in front of the Constitutional Court. The same issues mentioned in the votes section for the People's Democratic Party and the Democratic Society Party apply.

In order to deal with this problem of measurement, I measured party age so that all parties could be compared. In Turkey, the party's age is actually a good measurement of the level of support for several reasons. If the party was not supported by at least some people, it would not continue to exist. Secondly, a party that is older may in fact have higher costs associated with banning it because it has established itself and its basis of public support within the system. An older party also indicates that the judiciary and system tolerate its existence (with the exception of those parties that have been closed and reformed). Furthermore, more people tend to vote for older parties because they trust that since it has existed previously, it will continue to exist, eliminating the worry of wasting one's votes. In Turkey, some parties have a large amount of support but not a large amount of membership. For example, in the early 1990's membership in Kurdish parties was clandestine because of their ties to the militant PKK organization. For these reasons, I believed that party age is the best way to measure overall public support for a party at the time of a closure case.

For the purposes of this project, the age of the party is defined by the length of time in years that the organization has been in existence. Parties with similar objectives sometimes form with the same party leaders or governing ideology after the closing of some political parties. Through using the "Political Handbook of the World," I determined if a party was a successor because it generally indicated that it was. For these situations I added the age of the previous party with the age of the most recent to get the total age in years.

The Justice Party (2004) was the exception to this rule. Although the Justice Party claimed itself as the successor to the Justice Party before the 1980 military coup, it did not receive the traditional bases of support that the former Justice party received before 1980. All of the prominent politicians from the Justice Party instead joined the True Path Party. For this reason, I coded the Justice Party's age as 0.

Independent Variable – International Support

While domestic political concerns are important in the case of Turkey and the decisions to close political parties, countries cannot be analyzed in a vacuum. Often, external concerns can often be motivating factors for domestic political decisions. This has occurred in Turkey previously. For example, in discussing the comparison between why the Turkish government was more likely to restrict liberties at the end of the 1950's than the 1950's, Yilmaz states that at the end of the 1950's Turkey had already been accepted as a member of NATO and of the Western state system. However, in the 1940's, Turkey was still trying to convince the United States that it shared values of the Western system (Yilmaz 1996). Thus, it is logical to examine external influences with regard to the banning of political parties in the Turkish case.

For the purposes of this project the international variable concerns only the European Union. Since Turgut Ozal's application to the European Union in 1987, the Turkish Republic has considered EU membership to be an important goal in their attempts to westernize and modernize. Furthermore, attaining EU membership would be supportive of Kemalist issues. Thus, the presence of support for entry into the EU at various times could have an effect on the outcome of closure cases.

In order to measure the support for entry into the EU, I relied on polls asking citizens whether they support entry into the EU. Despite the history of relations between Turkey and the

European Union, which began in 1957 when Turkey applied to be an associate member of the European Economic Community, consistent polling of the Turkish public opinion towards the European Union did not exist. The EuroBarometer did not begin taking polls in Turkey until 2004. In “Who Wants Full Membership? Characteristics of Turkish Public Support for EU Membership” I was able to find the statistics for public support in 1996 and 1998. For the year 1997, I used the 1996 values but believe it is reasonable to estimate that they are between the reported values for 1996 and 1998. I repeated the same procedure, using the 1998 information in the year 1999 (Çarkoğlu 2003). Public support data from the years 2001-2007 was derived from “Determinants of Turkish citizen’s Attitudes Toward International Institutions.” Figure 5 contains a chart of Turkish public opinion from 2001-2007 on their support for EU membership (Erdoğan). I decided to use the information from this chart, which is a combination of World Values Survey and the EuroBarometer for greater consistency.

The values for 2008 and 2009 are taken from the key facts summaries of the EuroBarometer report that occurred immediately before the closure case (EuroBarometer 69 for 2008 and EuroBarometer 72 for 2009). These reports can be accessed on the European Commission Public Opinion’s website.

Because the values of support were sporadic and only available from the late 1990’s onwards, I needed to derive another measurement to measure EU support across all time periods. Countries that are economically connected and engage in trade are more likely to support one another. Because Turkey wanted to be integrated into the European Union, it would make sense that they would increase trade with the EU in order to achieve economic integration and further that goal. For these reasons, I believe the measure of percentage of imports to Turkey from the EU and percentage of exports from Turkey to the EU to be a good approximation of this support.

The values next to each case represent the percentage of exports in the year of the case that were exported to the European Union from Turkey. This column was derived by dividing the EU exports column by the Total Exports column. The EU Exports column was derived using the UN Comtrade database. The dollar amount in millions of dollars in exports from Turkey to the particular country was recorded. The values for each country in the EU were then added to generate Turkey's total exports to the EU for each year of closure cases. If the country was not yet admitted into the EU, I coded a 0 to indicate that their exports would not be factored into the EU total for that year.

For the values of Belgium and Luxembourg, I used the Belgium-Luxembourg variable in the Comtrade database until 1998. From 1999 onwards, the Belgium column only refers to exports to Belgium. To avoid double counting, I coded the Luxembourg column as 0 until 1998. From 1999 to 2001 the UN Comtrade had no data available for exports to Luxembourg from Turkey. I coded Luxembourg as a 0 for both of these years, which may slightly skew the percentage of exports to the EU lower than their actual values for these two years.

For the values of Germany, I only included information from the Federal Republic of Germany from 1983 until 1989. From 1991 until the present, the German exports include the variable for Germany. Data for 2009 exports was not yet available in the UN Comtrade database and was obtained from "Foreign Trade Statistics."

The values next to each case represent the percentage of imports in the year of the case that were imported to Turkey from the European Union. This column was derived by dividing the EU imports column by the Total Imports column. The EU Imports column was derived using the UN Comtrade database. The dollar amount in millions of dollars in imports from Turkey to the particular country was recorded. The values for each country in the EU were then added to

generate Turkey's total imports to the EU for each year of closure cases. If the country was not yet admitted into the EU, I coded a 0 to indicate that imports from said country would not be factored into the EU total for that year.

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Chapter 5: Estimation and Results

The collected data produced a dataset with 36 observations over a period of 26 years. In the 36 cases of observation, the Court chose to ban a political party 21 times and chose to allow a political party to remain open 15 times. As indicated in the previous chapter, the data were readily available with the exception of the variable for public support for European Union entry before 1996 and fractionalization measures after 2007.

A quantitative analysis of the data leads to conclusions about the causal mechanisms in the Turkish case and can help draw inferences about the causal mechanisms of the closure of political parties in general. I chose to do a quantitative analysis for two reasons. Because I do not speak Turkish fluently a qualitative analysis would be difficult because much of my information would be limited to secondary sources, limiting my ability to draw new conclusions on the existing data. Second, I could find no article where a quantitative analysis had previously been performed on the Turkish Constitutional Court, allowing me potentially to draw new insights and make a contribution to the literature.

Fundamental Regime Threat Hypothesis

The fundamental regime threat hypothesis was the first hypothesis tested. The threat hypothesis predicted that if threat was relevant to the closing of political parties, more parties that are considered a threat would be closed. Kogacioğlu and Shambayati argue that it is the threat of religious parties and Kurdish parties that are primarily important in the closure of political parties in the case of Turkey. In the case of Spain, Dobson also argues that Spain perceived Batasuna as a fundamental threat and therefore closed the political party. Rosenblum also agrees that the fundamental regime threat is a significant reason for banning of parties. Thus, it is widely established in the literature that threat is important variable and should therefore be tested.

			Threat		Total
			NO	YES	
Party Banned	NO	Count	11	4	15
		% within threat	64.7%	21.1%	41.7%
	YES	Count	6	15	21
		% within threat	35.3%	78.9%	58.3%
Total		Count	17	19	36
		% within threat	100.0%	100.0%	100.0%

Chi-squared (1) = 7.034; p = 0.008***

A comparison of the cross-tabulation shows that when a party is considered a threat (meaning it is either religious, far left, or in favor of Kurdish rights in the Turkish case), it is more likely to be closed. Out of 19 parties that were threatening, the Court only chose not to close a party four times. While the Court did choose to close 6 parties that were not threatening, 11 parties that were not threatening were permitted to remain open. A chi-squared test of independence with one degree of freedom returns a p-value of 0.008, which indicates that there is a greater than 99% chance that threat affects the Court's willingness to close a political party.

As the cross-tab shows, when threat is present there is an almost 79% chance that the Constitutional Court will choose to close a party. The cross-tab also demonstrates that if threat is not present, there remains only a 35% chance that the Court will choose to close a political party. Thus, an examination of the cross-tabulations and a simple chi-squared test of independence both confirm that a threat to the regime, as an individual variable, is meaningful and does indeed increase the likelihood that the Court will choose to ban a political party.

Fragmentation of Political Space Hypothesis

The second hypothesis tested is the fragmentation of political space argument. This hypothesis argues that if the political space is more fragmented, the Court is more likely to rule

based upon its preferences. In Belge's article, she claims that when the Republican Alliance was fragmented in the 1960's, the Court was more likely to rule in favor of increasing rights. She also contends that the fragmentation occurred again in the 1990s when the Republican People's Party allied themselves with the Kurdish parties and won victories in rights. Her theory suggests that when the different members of the Kemalist coalition disagree, the advocates of more rights will prevail. Thus, when the elites themselves disagree, they are no longer constrained. Belge argues that the military regime was often more restrictive than the Court of the 1960's wanted to be.

The fragmentation of political space here is a slightly different test, but still relevant. In "The Emergence of an Effective Judiciary in Mexico, 1994-2002," Rios-Figuera argues that fractionalization will cause a court to become more independent. Furthermore, Finkel argues that regimes that face a low probability of being reelected will advocate the strengthening of the judiciary to ensure their position in politics even after their party has been defeated. Thus, by testing the fragmentation of the government, one may still be able to draw some conclusions regarding the effect of fragmentation on Constitutional Court decisions. Will the Constitutional Court close political parties under a fragmented government? Does a unified government act as a check against the Constitutional Court?

In order to test this hypothesis, the same crosstab comparison technique that was used in analyzing the threat variable was utilized for fragmentation variables. The variable *Allhouse*, which is a measure of whether the executive's party controls a majority of seats in the parliament, produces striking results.

Table 5.2: Result and Absolute Majority Crosstabulation					
			Absolute Majority by Largest Party		Total
			NO	YES	
Party Banned	NO	Count % within <i>Allhouse</i>	0 0.0%	15 71.4%	15 41.7%
	YES	Count % within <i>Allhouse</i>	15 100.0%	6 28.6%	21 58.3%
Total		Count % within <i>Allhouse</i>	15 100.0%	21 100.0%	36 100.0%

Chi-squared (1) = 18.367; p = 0.000***

Of the twenty-one Constitutional Court cases that occurred while the executive's party did hold a majority in the parliament, 15 of those parties were permitted to remain open while only six were closed. In 71% of cases that occurred when the largest party controlled the majority, the Court chose not to ban the political party. Even more striking are the results when the executive's party did not hold a majority in the parliament. Of the 15 cases in which the government did not hold a majority of seats all fifteen of those parties were closed. Thus, in every instance of fragmentation, the Court chose to close a political party.

A chi-squared test confirms these findings, returning a Pearson chi-squared of 18.3673 and a p-value of less than 0.001 indicating that it is extremely unlikely that these variables are independent. Remember in chapter 3 that the history of the Constitutional Court suggests that its unconstrained preferences are most likely that they would want to ban any institution that does not conform to the Kemalist principles on which the Court was founded. For this reason, the produced results were not surprising. Additionally, it shows that despite attempts by the military to ensure that the elected institutions have minimal influence on the policies of the military, the

data suggests that the elected government serves at least in some way as a check against closing parties. When that government is united, it is enough to prevent the Court in more than half of cases from closing a political party.

An examination of the fragmentation of the political space would be incomplete without measuring the number of veto players in the government at the time of Court decisions. A veto player is defined as an individual or entity whose opposition to a policy is enough to change its outcome (such as preventing a piece of legislation from passing).

			Veto Players Measurement					Total
			1	2	3	4	6	
Party Banned	NO	Count	4	10	0	0	0	14
		% within Veto Pl.	66.7%	76.9%	0.0%	0.0%	0.0%	41.2%
	YES	Count	2	3	8	6	1	20
		% within Veto Pl.	33.3%	23.1%	100.0%	100.0%	100.0%	58.8%
Total		Count	6	13	8	6	1	34
		% within Veto Pl.	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-squared (4)= 18.968; p = 0.01***

For the *Veto Players* variable, I used a cross-tabulation table and calculated the chi-squared statistic in order to analyze the relationship between veto players and the closure of political parties. A comparison of the *Veto Players* variable on the dependent variable yielded a Pearson's chi-squared value of 18.9678 and a Pr value of 0.001, indicating that the relationship is quite significant. Additionally, an examination of the distribution of data confirms the statistical relationship and suggests that the more veto players present in the parliament, the more likely the Turkish Constitutional Court is to close a political party. For the fifteen closure cases where the *Veto Players* variable was three or greater, the Court closed the party in every case. The results are more mixed with less veto players with a slight inclination towards allowing parties to remain open. In 19 instances where there were two or less veto players when a party closure case

occurred, the Court chose to ban the parties only five times and allowed them to remain open fourteen times. Thus, while a low amount of veto players will not necessarily mean that a party will be allowed to remain open, more veto players (ie: higher fractionalization) will almost certainly make a party more likely to be closed. The standard theory of veto players argues that change is less likely with more veto players. I believe that in the Turkish case an increased number of veto players results in higher closure because more veto players breeds more disagreement and conflicting views. As I have argued previously, when actors disagree, they cannot exert as much pressure on the Court, allowing the Court to rule based on its preferences. Furthermore, the veto players finding is correlated to the *Allhouse* variable because it will predict closure when the elected government does not have a majority. This is because there is a significant decrease in pressure for the Constitutional Court to act contrary to its own preferences.

Because the element of veto players is important in this theory, it was also logical to examine the stability of the system. If the veto players are always changing, it could lessen the effect of said players in the government. Because it is known that the presence or absence of veto players is highly significant, one must consider whether changes in veto players are important. If the composition changes, one might expect that the instability created would decrease the effect that a unified group of veto players has on the decisions of the Court. Stability in this project is defined as the percent of veto players who drop from the government each year. The results of the analysis of the importance of a unified constituency in the parliament imply that a high amount of instability could lead to more parties permitted to remain open because the previous analysis implies the need of a unified and strong government to prevent parties from being closed.

The chi-squared test returns a Pearson chi-squared (2) number of only 3.0739 and a Pr value of 0.215. These values are well below the necessary value to indicate a statistically significant relationship. The distribution of the data, with almost as many parties allowed to remain open as parties closed when no veto players drop from the government confirms this assertion. While there are slightly more parties closed when instability is higher, the difference is not significant enough to assert that a strong relationship exists between stability and closure.

Public Support Hypothesis

Table 5.4: Difference of Means test of Age of Political Parties				
Party Banned	Average Age of Political Party	Number of Cases	Std. Deviation	95% Conf. Interval
NO	6.53	15	11.53	0.15 – 12.92
YES	8.81	21	11.66	3.50 – 14.12
Total	7.86	36	11.49	3.97 – 11.75
Difference	-2.28			-10.27 – 5.72

$t = -0.5813$; $p = 0.72$

The third hypothesis tested was the public support hypothesis. The public support hypothesis states that if a party receives more support, it is less likely to be closed⁴. Public support for a party was measured using party age. Actual votes received in the election immediately prior to the Constitutional Court case were not measured because many of the closed parties were actually fringe parties. Most of the closed parties did not run in elections prior to the closure of their parties. A difference of means test of unequal variance on the age of

⁴ While authors such as Stephenson, Carrubba, Staton, and Helmke argue in their respective papers that the public can influence judicial decisions, another strain of the literature argues the opposite – that judicial decisions influence public opinion. Franklin and Kosaki argue that the positive response hypothesis, which is the belief that a ruling by the court will cause the public to find it more legitimate, affects the public's reception to controversial decisions (Franklin and Kosaki 1989). Another paper authored by Johnson and Martin asserts the conditional response hypothesis, which basically states that the public's opinion about a particular case will solidify after the court makes its first major decision on a salient issue. However, any decision following the original decision will have no effect on the public's opinion (Johnson and Martin 1998).

parties returns a t-value of -0.5813 and a p-value of 0.72. This indicates that the age of a party in this dataset is not significant. The small difference between the average age of a closed party and an open party further confirms this finding, with an average difference of approximately two years. However, I am hesitant to conclude from this data that party age and therefore public support itself is not a significant factor because of the way age is calculated. The age of successor parties are aggregated to form a higher age for the new parties. Thus, because Kurdish parties are closed and reopened under different names, some of the older closed parties are more likely to be Kurdish. For this reason, the lack of significance in age may be due to the fact that there is covariance between age and Kurdish parties. In the case of Kurdish parties, every time a new Kurdish party is formed and is closed again, a party with a higher age is closed. This does not necessarily mean that public support does not affect the Turkish Constitutional Court. However, because the oldest parties closed are all Kurdish and of no other variety, it can be concluded that the potential threat of Kurdish parties probably outweighs any constraint placed upon the Court by public opinion. In other words, public support may be a factor affecting the decisions of the Constitutional Court, but the perceived territorial threat posed by the Kurdish parties outweighs the benefit of public support.

International Influences Hypothesis

The fourth independent variable tested in this project is international influences. The international influences hypothesis states that external influences will generally make the Constitutional Court less likely to close a political party. Turkey is currently pursuing its candidacy to enter the European Union. One factor that has prevented Turkey from entering the European Union is their record on human rights, including the banning of political parties. For this reason, a higher support for entry into the European Union would increase the likelihood that

the Court would rule to allow a controversial party to remain open because it furthers the overall goals of the Turkish Republic. In order to test this hypothesis, public opinion of Turkish citizens' desire to enter the European Union was analyzed. Reliable polls did not exist for public opinion polls on European Union preferences prior to 1996. Since that time however, there does appear to be a significant relationship between support for Turkish accession to the European Union and the banning of political parties in Turkey. A difference of means table shows that most of the distribution of votes does not widely vary, with an average difference of only 11% when the Court chooses not to ban a political party compared with when it does choose to close a party. The exception to this rule occurs at the point with the highest value of 71 percent of public support. All seven parties that appeared before the Constitutional Court when public support was at its highest were permitted to remain open. However, one cannot make a judgment based on these results alone for two reasons. First, the results in the rest of the distribution did not vary widely. Second, the data for public opinion is only available for the last thirteen years of the studied period.

However, despite these results, a two-tailed difference of means test indicates that the public support for entry into the European Union is statistically significant. The t-value is 3.23 and the p-value was 0.0031, indicating an over 99% probability that the difference in means is not random. However, despite the appearance of statistical significance, one must be careful to conclude that these results truly indicate that international support matters. Additionally, even though the indicates that higher support for entry into the EU is more likely to result in a party remaining open, it is interesting to note that both the mean level of support for EU entry when parties were closed and when parties were permitted to remain open is above 50%. At the very least, then, a significant majority of the population must support EU entry before the public

support will influence the Constitutional Court. Because opinion polls were not conducted until fairly recently, public support data was only available for 17 of the 36 cases. The small number of cases causes the results of the difference of means test to be suspect.

Table 5.5: Public Support for Entry to the European Union to Turkey				
Party Banned	Average Public Support for EU Entry	Number of Cases	Std. Deviation	95% Conf. Interval
NO	68.25	8	7.78	61.75 – 74.75
YES	57.09	9	6.26	52.28 – 61.90
Total	62.34	17	8.89	57.77 – 66.91
Difference	11.16			3.73 – 18.59

$t = 3.23$; $p = 0.0031$ ***

To account for the total population of cases more accurately, the number of imports from the European Union to Turkey and the number of exports from Turkey to the European Union were analyzed as a proxy for support of European Union succession. This alternative measurement is based on the idea that Turkey and the European Union will trade more when there is higher support by the Turks for European Union integration. By looking at the distribution of means for both imports from the European Union and exports to the European Union, the data appears significant.

Table 5.6: Imports from the European Union to Turkey				
Party Banned	Average EU Imports	Number of Cases	Std. Deviation	95% Conf. Interval
NO	28316.2967	15	24236.61076	14894.51 – 41738.08
YES	15746.0410	20	8050.06794	11978.49 – 19513.59
Total	21133.2934	35	17830.44101	15008.32 – 27258.26
Difference	12570.26			-1211.092 – 26351.6

$t = 1.9304$; $p = 0.0356$ **

In the case of imports from the European Union, the average import is 28316.30 million dollars whereas the average value of imports when the Court chooses to close a case is 15746.04 million

dollars. An analysis of the exports to the European Union from Turkey during the time period yields the same results.

Table 5.7: Exports to the European Union				
Party Banned	Average Exports	Number of Cases	Std. Deviation	95% Conf. Interval
NO	22400.2647	15	19437.76189	11635.99 – 33146.54
YES	10116.0465	20	4954.40643	7797.313 – 12434.78
Total	15380.7114	35	14399.13681	10434.43 – 20326.99
Difference	12284.22			1352.33 – 23216.11

$t = 2.3901$; $p = 0.0150^{**}$

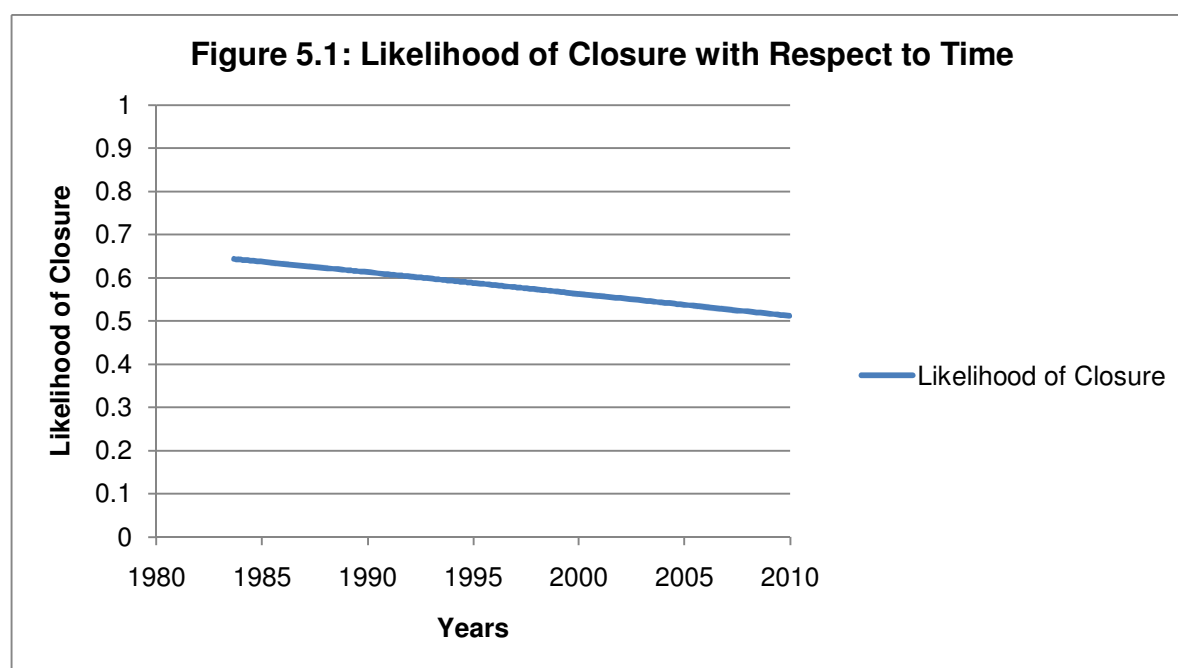
When a party was permitted to remain open, the average export was 22400.26 million dollars whereas the average export when the Court chose to close a party was much lower, at 10116.05 million dollars. The significant difference between the two averages in both cases leads one to believe that there is significance to the trade measurement.

In order to verify the significance of European Union imports and exports, a two-sample t-test with unequal variances was performed. The difference of means test for the exports to the European Union shows that the relationship is statistically significant. The test returned a t-value of 2.3901 and a p-value of 0.0150 on the 95% confidence interval. In other words, the means test of unequal variances shows that the number of exports is significant for the closure of political parties with greater than 95% certainty.

A two-sample t-test with unequal variances was also performed for imports into Turkey from the European Union during the same years as Constitutional Court political party closing cases. The test produced a t-value of 1.9304, which is slightly below the necessary value of 2 required to prove that the relationship is truly significant. It cannot be stated with a 95% level of

confidence that the number of imports is related to the closure of political parties. However, a t-value of 1.93 does suggest a confidence level of 90% that the values are related.

While the results of both imports and exports between the European Union and Turkey seem to indicate that there is a negative relationship between public support for entry into the European Union and closure, one cannot ignore the possibility that the relationship is a function of time rather than an actual relationship. As inflation occurs, imports and exports will always increase in dollar value. Similarly, it is possible that as more time exists between the military takeover of the early 1980's, the Court may be further removed from the desires of the military regime and therefore be less likely to close a political party.



In order to determine whether this bias exists, a logistic regression on the variable date, which is defined as the number of days since January 1, 1960, was performed. From this regression, the predicted values of date can be derived for every observation. Only on the basis of date, a party in 1983 faced a 64% chance of closure. In the most recent closure in December 2009, that percentage chance of closure had only decreased 51.19%. So while the Court does seem slightly

less likely to close political parties in more recent history, the chances of closure are still better than half when only the date variable is examined. For this reason, it does not seem that the bias of date is enough to conclude that the relationship between European exports and imports is not truly important.

Multivariate Model Analysis

An analysis of each of the independent variables by themselves on the dependent variable have proven the significance of threat, fragmentation of the political space, and international pressures as correlated and likely factors that affect the closure of political parties. It could not be determined whether or not public support was significant for the closure of political parties due to the nature of the data. However, in Turkey each of these variables do not exist independently from one another. Instead, they affect each other and studied together may provide even more insight about the nature of political party bans in Turkey and consequently in the rest of the world. Which of these elements is the strongest? Will threat inevitably be more influential than international pressure in the closure of cases? Does fragmentation or threat have a greater impact on the likelihood of closure?

In order to answer these questions, a series of logistic regressions are performed to analyze the relationship of the independent variables holding other independent variables constant. However, the nature of logistic regressions is such that it is very sensitive to sample size. Because there have only been 36 closure cases since the Court changed in 1980, the amount of explanatory power of the logistic regressions is more limited. Despite these limitations, these regressions are an important tool in analyzing the relationship between variables.

Table 5.8: Complete Multivariate Logistic Regression Models			
Independent Variables	Model 1	Model 2	Model 3
Threat	1.944 (1.285)	1.954 (1.279)	1.811 (1.327)
Age	0.059 (0.061)	0.059 (0.061)	0.042 (0.066)
EU Exports	-0.0001 (0.00007)*		-0.0003 (0.0003)
EU Imports		-0.00009 (0.00005)	
Constant	-4.507 (1.936)**	-4.718 (1.916)**	-2.871 (2.798)
Veto Players	2.368 (0.892)***	2.455 (0.876)***	1.112 (1.813)
Time			0.001 (0.001)

Note: Standard errors are in parenthesis
 p<0.10 = *; p<0.05 = **; p<0.01 =***

In the first logistic regression, the independent variables threat, age, imports into Turkey from the European Union, and the Veto Players variable were selected. When all of the variables are combined, the significant relationship of threat is mitigated by the other independent variables. Holding the others constant the p-value is 0.13, which is above the 0.01 mark required to prove statistical significance. Unsurprisingly, the age variable was not significant in the logistical regression model with a p-value of 0.336. This is consistent with the findings that age itself was not significant as an independent variable by itself. Despite the significance of exports to the European Union in an individual analysis of its relation to closure, it is mildly significant in the logistic regression with a p-value of 0.066. Interestingly, the Veto Players value remains significant even when other independent variables are added to the model. Despite the significant decrease in explanatory power, the p-value for veto players was 0.008, indicating that veto players are strongly related to the dependent variable and that the other independent variables have little to no affect on the relationship between veto players and the closure of a political party.

Threat	Predicted Likelihood of Closure Model 1	Predicted Likelihood of Closure Model 2	Predicted Likelihood of Closure Model 3
NO	54.3%	52.8%	46.33%
YES	89.3%	88.8%	84.08%

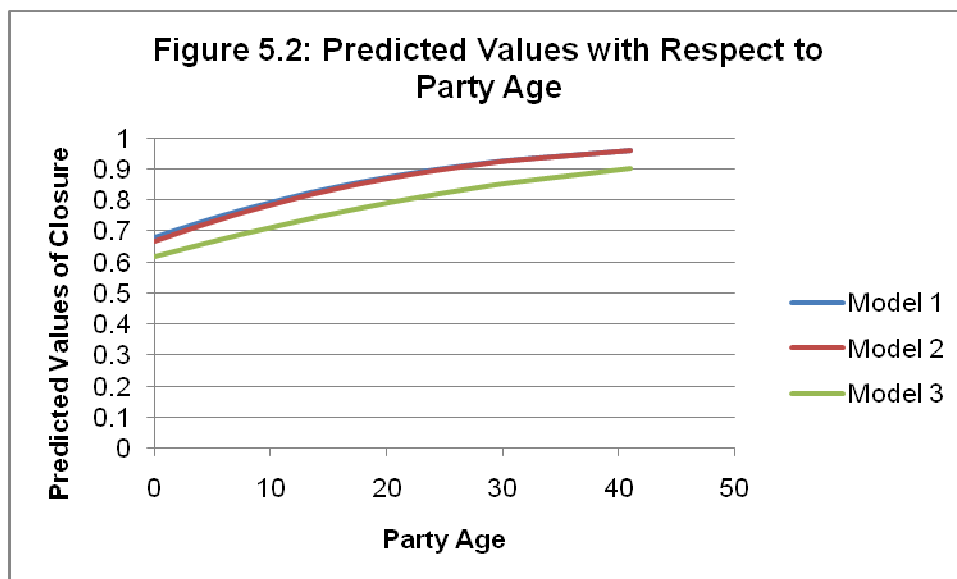
A complete model also allows a new set of predicted values, which include all of the independent variables to be taken into consideration. In the comprehensive model, if threat is present, there is an 89.2% chance of closure. However, if threat is not present, the percentage chance of closure is still approximately 54%. In the complete model, the presence of threat will almost certainly result in closure; but the absence of threat causes the results to be more unclear. The complete model, holding the other independent variables constant, causes an increase in the chances of closure with the presence of threat from 78.9% to 89.2%, representing an 11% increase.

Veto Players	Predicted Likelihood of Closure Model 1	Predicted Likelihood of Closure Model 2	Predicted Likelihood of Closure Model 3
1	7.8%	6.5%	28.05%
2	47.3%	44.8%	54.24%
3	90.6%	90.4%	78.28%
4	99.03%	99.1%	91.64%
5	No value ⁵	No value	No value
6	99.99%	99.99%	99.02%

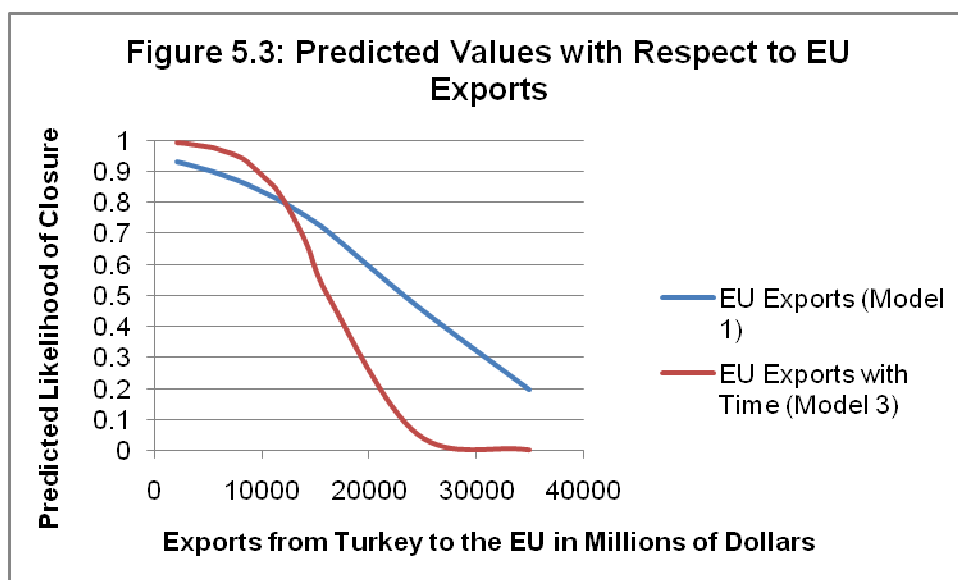
⁵ The reason there is No Value for a 5 is because a 5 on the Veto Player's scale never occurred in the Turkish Case. It can be inferred that the value for 5 would be between 99.03 and 99.99%.

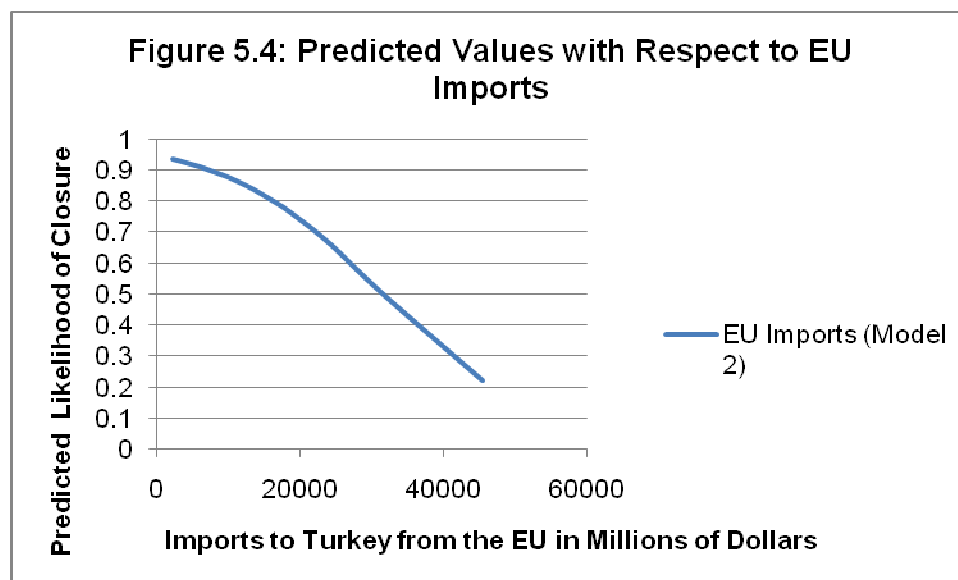
The complete model also shows interesting conclusions with the Veto Players variable. If there are 3 or more Veto Players present, the model predicts the chances of closure to be greater than 90%. In the event that the veto player is coded as a four, five, or six, the chances of closure are greater than 99%. Therefore, it seems that a significant presence of veto players will ensure the closure of the Turkish Constitutional Court in the Turkish case. The absence of veto players also seems to be quite significant on the lower end. If the Veto Player variable is coded as a one, its lowest value, the model predicts there is only a 7% chance of closure. When that variable is increased to two, the chances of closure increase to 47%. Thus, an increase of Veto Players is quite significant in predicting whether the Court will ban a political party.

The predicted results based on the age of political parties holding the other independent variables constant confirm that the age of a political party is not a significant factor. However, the model predicts that as age increases, the likelihood of closure increases, which is the opposite of what the original hypothesis predicts.

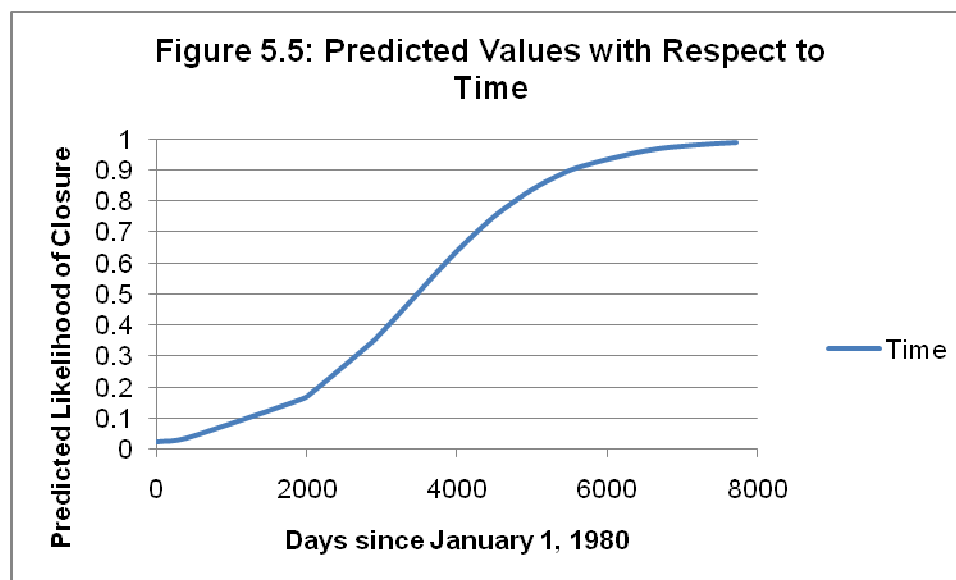


If a political party is new, the chances of closure, holding all other independent variables constant, is about 68%. The model suggests that a political party that is 41 years old (the oldest political party closed by the Court) has a 95.6% chance of closure. That being said, many of the older parties closed were Kurdish parties that have been closed were Kurdish parties because those parties have reformed and closed again multiple times. However, it is possible that age becomes more important in combination with the presence of threat because a party that has high support and is already deemed a threat to the regime would be extremely dangerous (to explain the closure cases of the Welfare Party and the Felicity Party). While these explanations are plausible, it must be remembered that if the party is brand new, there still remains a 68% chance of closure, suggesting that other independent variables probably affect the chances of closure more than the age of the political party. The predicted values for exports to the European Union also confirm the findings in the individual analysis. As exports increase, the chances that the Court will close a political party decrease.





Because exports to the European Union should serve as a similar proxy to imports into the European Union, a second logistic regression was performed to ensure that the same result was obtained as the first regression. An analysis of the regression shows a very slight increase of all of the z-scores and very little change in the p-value, confirming that a measure of European Union imports and exports are virtually the same measurement. The p-value associated with imports was 0.069 as opposed to the export value of 0.066. Although the model also confirms that the European export measure is very slightly more statistically significant than the import measure, the true difference is negligible. The efficacy of the real public support for entry into the European Union could not be tested within the logistic regression because the number of observations associated with it was too small and because the data does not feature enough variation to make meaningful distinctions. An examination of the predicted chances indicates that increased imports from the European will result in the Court being less likely to ban political parties. Because imports and exports measure virtually the same thing, the difference in predicted values of the second regression for other independent variables is negligible.



A third logistic regression was then run including a variable for the number of days that had passed since January 1, 1960. The day variable was used in the regression to control for time to ensure that time did not create a bias in favor of less closure after more time had passed. It was important to control for time because as the Court and the Turkish Republic has become further removed from the military coup of 1982, it may be less willing to close parties than it once was. This belief would be complemented by the fact that the Court would want to show more moderation in hopes of increasing its likelihood of entering the European Union. The variable for time was not statistically significant with a z-value of 0.72 and p-value of 0.471. However, although the time variable was not statistically significant, the significance of other independent variables, including both the threat and the Veto Players variable were not statistically significant with p-values of 0.172 and 0.54 respectively. However, it is difficult to conclude from these results that none of the variables are significant when time is taken into account. Because the model features 5 independent variables within 34 observations, the standard errors are quite large, suggesting that there is not much that can be known from this model.

Interactive Hypothesis

In addition to a multivariate analysis, a test of interactive hypotheses was performed with respect to the data. Because threat is considered by Kogacioğlu and Rosenblum to be important and an analysis of the threat variable found it to be significant, it was logical to examine whether the interaction of threat with other variables changed the overall effect of threat as other independent variables change. This test is represented by the model:

$$\Pr(\text{close}=1) = \Phi[\beta_1(\text{Threat}) + \beta_2(\text{Independent Variable}) + \beta_3 (\text{Threat}*\text{Independent Variable})],$$

where Φ represents a logistic regression model, β represents an estimated coefficient, independent variable represents the independent variable that is conditioning threat, and $\Pr(\text{close}=1)$ is the likelihood that a political party will be closed. From the generated coefficients of this test, the predicted probabilities are derived for the presence and absence of threat and the independent variable when it is 0 and when it is some other number. The change in predicted probabilities when the independent variable is some other number is then subtracted from the change in predicted probabilities when the independent variable is 0. The resulting value is known as a difference of differences and is the percent change of the effect of threat as the independent variable increases.

Table 5.11: Interaction of Threat Conditioned by Age		
	β	p
Threat	2.481	0.012
Age	0.037	0.411
Interaction between Threat and Age	-0.067	0.302

Threat	YES	NO	Δ
Age = 0	0.830	0.30	0.530
Age = 30	0.677	0.570	0.190

The first independent variable on which the effect of threat was tested was the party's age. The p-value of the logistic regression returns a value of 0.302, which indicates that the relationship is likely not significant. This observation is bolstered by a relatively small coefficient. However, when the difference between the two values in the delta column is taken, the difference of differences value is 0.34, which indicates a fairly significant percentage. The negative coefficient of the interaction term means that as age increases the overall effect of threat decreases. Despite the high percentage, the relationship is likely not significant due to the wide range in the 95% confidence interval. It cannot necessarily be concluded that no relationship occurs, however, because there interactive hypothesis test is weak due to the relatively small number of cases in the Turkish case.

	β	p
Threat	1.902	0.135
Exports to the EU	-0.00008	0.118
Interaction between Threat and Exports to the EU	0.00000	0.893

Table 5.14: Predicted Probabilities of Closure			
Threat	YES	NO	Δ
Exports = 0	0.918	0.624	0.294
Exports = 10000	0.845	0.425	0.42

The second interaction examined in the interactive hypotheses model was the interaction between threat and trade with the European Union. The coefficient of the interaction term in the logistic regression is very small. Additionally, the p-value is 0.893 indicating a very small likelihood that the interaction between threat and trade with the European Union is statistically significant. The difference of differences value is -0.126, which further confirms that the effect threat is not conditioned by values of exports from Turkey to the European Union.

Table 5.15: Interaction of Threat Conditioned by Veto Players		
	β	p
Threat	1.988	0.538
Veto Players	1.905	0.062
Interaction between Threat and Veto Players	-0.057	0.969

Table 5.16: Predicted Probabilities of Closure			
Threat	YES	NO	Δ
Veto Players = 0	0.057	0.008	0.049
Veto Players = 4	0.990	0.945	0.045

A third interactive hypothesis test was performed to determine the potential effect that Veto Players on the overall effect of threat. A logistic regression returned a coefficient of -0.057 and a p-value of 0.96. These results also indicate that the interaction between fragmentation and threat is statistically insignificant. This result is confirmed by the small difference of differences value, which is only 0.004. The very small difference of differences value suggests that the interaction between Veto Players and threat is likely insignificant.

Three interactive hypotheses tests were conducted in hopes of understanding whether certain independent variables can mitigate the overall effect of threat. An examination of party age, trade with the European Union and veto players shows that none of these variables significantly affect the overall influence of threat. Despite not finding statistically significant results, I am hesitant to conclude that no interaction occurs between the independent variables and threat due to the wide range of the 95% confidence intervals and the relatively small number of observations provided by the Turkish case.

Interpreting Results

The results of the bivariate data, as well as interactive hypotheses, have suggested that the two prevailing independent variables affecting the banning of a political party are threat and fragmentation. An examination of the Turkish case has suggested that there are multiple types of threats. For this reason, the threat variable is actually a combination of far-left, religious, and

Kurdish parties. Are all threats created equal with respect to the banning of political parties or are certain threats more likely to induce closure? Does it matter to the Turkish Constitutional Court whether the party is a far-left party, a religious party, or a Kurdish party?

Surprisingly, an analysis of the individual threats shows that both the religious and far left threats are actually not significant at all. A comparison of the far left results shows that the values are almost exactly the same as it would be if the distribution were random. Out of six Court cases where parties were considered far left, the Court closed four and allowed two to remain open.

Table 5.17: Result and Far Left Parties Crosstabulation					
			Far-left Party		Total
			NO	YES	
Party Banned	NO	Count	13	2	15
		% within Far-left	43.3%	33.3%	41.7%
	YES	Count	17	4	21
		% within Far-left	56.7%	66.7%	58.3%
Total		Count	30	6	36
		% within Far-left	100.0%	100.0%	100.0%

Chi-squared (1) = 0.026; p = 0.65

More importantly, of the 30 cases that were not far-left, 17 were still banned, while 13 were not. Because the analysis of Court cases ranges from 1983-2009 this result is not surprising. The Turkish Constitutional Court and Turkey in general found far-left parties to be much less threatening after the fall of the Soviet Union in 1991. As a part of Turkey's goal of westernization, it was required to share the values of the United States, which included being against far left parties. However, when the threat of the spread of such ideas disappeared, so too did the threat of the parties. A Pearson's chi-squared test of independence confirms this result with a Pr-value of 0.65, which is well above the significance threshold.

The predicted results of the logistic regression confirm the conclusions drawn from the chart. If a party is indeed a far-left party, it only increases the likelihood of closure by 10%. More importantly, however, the chance of closure is greater than 50% whether or not the party is a far-left party, meaning that the affect of far-left designation is negligible.

More surprisingly, an analysis of the crosstab with the religious threats also indicates that the religious threat is not significant.

		Religious Party		Total	
		NO	YES		
Party Banned	NO	Count	13	2	15
		% within religious	41.9%	40.0%	41.7%
	YES	Count	18	3	21
		% within religious	58.1%	60.0%	58.3%
Total		Count	31	5	36
		% within religious	100.0%	100.0%	100.0%

Chi-squared (1) = 0.007; p = 0.935

Of the parties that underwent closure cases before the Constitutional Court, five of them were considered religious. Of these five parties, two were allowed to remain open and three were closed. The distribution of parties that were not considered religious was that 13 were allowed to remain open and 18 were closed. A greater percentage of parties that were not religious but closed exists, which shows that religious parties are not the driving force behind the significance of the threat variable. Thus, an analysis of the religious parties' crosstab seems to indicate that the distribution of closure cases with respect to religious parties is random. This result is quite striking given the weight that authors place on religious parties throughout the literature on Turkish political parties. Kogacioğlu, Belge, and Arslan all spend as much time emphasizing

religious threats as religious threats, implying their equal weight when considering the closure of political parties in Turkey. Additionally, Rosenblum, in her article about the general closure of political parties, also spends a significant portion of her paper arguing the impact of religious parties. To find that this threat is not a significant contributor to party banning in the Turkish context is astounding. The expectations established through an analysis of the expected values are confirmed with a chi-squared test of independence. Returning a Pr-value of 0.935, the model suggests that the presence of the religious variable is quite insignificant.

If a party is religious, the increase in chances to close a political party is less than 2%. Even a non-religious party faces a 58% chance of closure. The prediction for closure of both a religious and non-religious party is well over 50%, suggesting that a far-left party is potentially more likely to be closed than even a religious party. Because several authors give equal weight to both Kurdish parties and religious parties in the literature specifically pertaining to Turkey, these results are quite striking. Statistically speaking, whether or not a party is religious has almost no bearing on whether or not a political party will be closed in Turkey.

An analysis of the pro-Kurdish variable shows that a party's stance as in favor of Kurdish rights is significant to the Court's decision to close a party and is the driving factor that causes the overall threat to a regime to be significant. Of the eleven parties that appeared before the Constitutional Court that were classified as supporting Kurdish issues, all eleven of them were closed. Additionally, of the 25 parties that were not coded as pro-Kurdish, 15 were permitted to remain open whereas 10 were closed. Although the literature argues that this result would have been expected, it is surprising that it is this variable alone and not a combination of pro-Kurdish and religious parties that make the threat variable significant. Because a Kurdish party is closed

in every instance, it was not possible to logistically regress that independent variable by itself and perform the prediction test.

		Kurdish Party		Total	
		NO	YES		
Party Banned	NO	Count	15	0	15
		% within Kurdish	53.6%	0.0%	41.7%
	YES	Count	13	8	21
		% within Kurdish	46.4%	100.0%	58.3%
Total		Count	28	8	36
		% within Kurdish	100.0%	100.0%	100.0%

Chi-squared (1) = 7.347; p = 0.07*

An analysis of the fundamental threats data depicts a situation that is different from the one expected. Instead of religious and Kurdish parties together providing the political basis for a ban by the Constitutional Court, it is chiefly based on the Kurdish story. This has interesting implications to the closure of political parties in general. Perhaps the sanctity of a nation state and its physical territory is more important to a regime than the ideological beliefs of religion. This story seems to be confirmed outside of Turkey. The Batasuna party in Spain was a Basque party that was closely tied to the ETA in a similar way that pro-Kurdish parties have been tied to the Kurdistan Workers Party (PKK), a terrorist organization that advocates the creation of a Kurdish nation. In Israel, the Kach party was banned in the 1980's for inciting racism. According to the Kach party platform, it advocated expelling all of the Arabs from the land of Israel. In each of these cases, the banned political parties advocated some form of separatism that would cause a fundamental change to the composition of the nation state. At the end of the day, it seems that the nation-state as its own entity is a highly treasured commodity that must be defended at all costs.

A comparison of the two most recent Constitutional Court closure cases in Turkey conforms to this story. In 2008, the Chief Prosecutor brought an indictment against the AKP for its violation of secularist principles of Turkey. In 2009, a case against the Democratic Society Party was argued in the Constitutional Court. Despite the fact that the Justice and Development party as in power and in some ways more threatening politically as the majority party in the Turkish Grand National Assembly than the fringe Kurdish party which won barely five percent of the vote in the previous election, the Court chose to close the Democratic Society Party while allowing the Justice and Development Party to remain open. The Justice and Development Party lost half of their government funding for the next election which amounts to a mere slap on the wrist compared with the closing of the Democratic Society Party.

An analysis of the threat variable establishes that threat is likely a significant consideration for courts when they decide whether they want to ban a political party or not. Further analysis of the threat variable shows that concerns for the territorial integrity of the state probably outweighs other ideological concerns when restricting parties. These conclusions are based upon the different way in which the Turkish Constitutional Court treats Kurdish and religious parties. Additionally, anecdotal evidence within the Turkish case and a cursory examination of other major political party closure cases also confirm the significance of territorial integrity in a decision to close a party.

An analysis of the collected data through various statistical means suggests a few answers regarding proposed hypotheses in Chapter 2. The first hypothesis stated that as threat increased, the Court would be expected to close parties more often. As expected, threats to the Kemalist regime were closed 78.9% of the time. However, in contrast to what many scholars have written regarding the Turkish Constitutional Court, whether a party is religious or Communist does not

drastically increase its likelihood to be banned. Instead, it is the fact that a party is Kurdish that will compel the Constitutional Court to close the party. The second hypothesis stated that as fractionalization increased, the Court would be more likely to rule in favor of its preferences. As Hootan Shambayati argues, the Turkish Constitutional Court was established to preserve the Kemalist ideals that the military supported during the military coup in 1980. For this reason, the Court should prefer to close any party that conflicts with the Kemalist regime. The hypothesis was confirmed with 100% of parties closed when the executive party controlled more than half of seats in the Turkish Parliament. Additionally, when the number of veto players increased, the Court was more likely to ban a political party. This is unsurprising because as the number of veto players increase, the overall fractionalization also increased. The third hypothesis tested stated that strong public support would decrease the likelihood of closing a political party. In both an individual examination of age and a multivariate examination of age of a political party, the age variable was not significant. However, due to the nature of the data and the tests performed, a relationship between public support and closure could not be confirmed or denied. The fourth hypothesis tested stated that greater support for entry into the European Union would reduce the likelihood that a political party would be closed. A difference of means test of unequal variance confirmed this hypothesis for both imports and exports. Similarly, public support for European Union entry also supports this relationship despite not having enough observations to confirm the relationship. Overall, if a party is Kurdish it will be banned every time. Additionally, if a political party case occurs when the largest party does not control a majority of seats in the parliament, the political party was banned in every case. Thus, certain conditions seemingly will ensure that a political party is banned despite the presence of other mitigating factors such as support for entry into the European Union.

Chapter 6: Conclusion

The banning of a political party by a judicial institution violates the rights of citizens to choose their governments. When a political party is banned, a restriction on the political space is imposed, hampering the ideals of democracy. However, in some instances this practice is necessary. For example, the European Court on Human Rights (EUCHR) has ruled that any party that threatens to eliminate democracy can and should be banned. In other words, the EUCHR has expressed strong disapproval to the concept of “one vote one time,” and believes that banning a political party is an acceptable action to prevent the destruction of democracy. Similarly, it is most would agree that terrorist groups bent on the destruction of a country should also be banned from politics. A party may also be closed if it advocates the hatred of another group and could lead to ethnic conflict and/or civil war. Certainly in democratic states there are compelling reasons for banning political parties. But do states ban parties for other reasons? If so, are those reasons legitimate or do those bans violate the rights of the people living in those countries? If a country does systematically close parties that may not necessarily threaten the existence of democracy, are there other factors that can mitigate the likelihood of closure? Are there any factors that will guarantee that a party is closed?

To answer some of these questions about the closure of political parties, this paper examined the rulings of the Turkish Constitutional Court. The Turkish Constitutional Court was an ideal situation to test because there were a variety of closure cases that had occurred. In the history of the Court since the new Constitution of 1983, the Court has heard 36 closure cases. In these cases, the Court has decided to ban 21 political parties and allow 15 to remain open. Although the Court has chosen to close a political party more often than to allow one to continue participating in the political sphere, it is clear that significant variance occurs within the Turkish case. This variance allows the processes of the closure of political parties to be studied. In many

other democratic states that have chosen to close political parties, such as Israel, Switzerland, Spain, and Germany, the instances of both cases and closure are much fewer, making it more difficult to attain the leverage necessary to understand the causal mechanisms behind court closings.

An examination of the literature yielded four testable hypotheses that may have increased or decreased the likelihood that a political party would be closed. These included threats to the regime, fractionalization, public support, and support for entry into the European Union. A quantitative analysis of the data showed that both threat and fractionalization were important considerations to the Court when deciding the fate of a political party. If the Court believes that a party is threatening to the Kemalist establishment, they were more likely to close that particular political party. However, an analysis of the different types of threats to the regime shows that not all threats are created equal in the Turkish case. Instead, it is only the Kurdish aspect of threat that compels the Court to ban a political party. Since 1983, eight Kurdish parties were brought before the Turkish Constitutional Court. In these eight instances, the Court banned the Kurdish parties in every instance. If a party is religious or Communist, the Court was only slightly more likely to close a political party, but it is clear that other factors are more influential for the Turkish Constitutional Court when religion or Communism is the designated threat. This is not to say that a religious party cannot be threatening in a theocratic state, such as Iran. However, when determining the threat level of a party, it is important to understand how that party threatens the basic fundamental existence of the regime rather than simply the ideals of the regime.

This finding allows certain conclusions to be drawn about the nature of closure of political parties in general. As demonstrated, the Constitutional Court will close a Kurdish

political party in every situation. As established in chapter 3, members of the Turkish Constitutional Court find the presence of Kurdish parties to be threatening because it represents a threat to the composition of the state of Turkey. Turkey is protective of its physical territory because of the losses it suffered as the Ottoman Empire at the conclusion of World War I. Additionally, Kurdish parties are loosely affiliated with the Kurdistan Workers Party (PKK). Even after the leader of the PKK, Abdullah Ocalan, was captured, political parties still take his advice into consideration. The strong connection between the Kurdish parties and the outlawed PKK cause the Kurdish parties to be particularly threatening. Connections to parties that desire to change the ethnic composition of the country or are separatists have been closed in other countries as well. In Spain, the Batasuna party has been closed due to its connections with the Basque separatist movement. Similarly, the Kach party in Israel was banned for its desire to expel all Arabs from Israel. If a nation has the ability to close a political party, chances are that if a party is threatening to the physical territory of that nation, it will be closed in every instance. This will occur even in the most liberal democracies that grant constitutional courts the power to close political parties.

An examination of fractionalization found that increased fragmentation within the government was correlated with a higher frequency of banned parties. This confirms the hypothesis developed in the literature that increased fractionalization will cause a court to be more likely to rule in favor of its preferences. While many courts, especially in liberal democracies, default preferences are in favor of expanding rights and allowing more political participation, this is not necessarily the case with Turkey. Instead, the Constitutional Court as a function of its 1983 Constitution was established as a tool in addition to the military to ensure that the founding principles of Kemalism and the basic composition of the Turkish Republic

remain. The Court has placed the principles of Kemalism above its desire to strengthen civil liberties or expand the political space for further competition. The presence or absence of fractionalization in other countries will also cause the Courts to be more likely to rule in favor of their preferences. As Rios-Figuerra argues, in Mexico fragmentation also allowed their Constitutional Court to be more likely to rule in favor of their preferences.

The results with respect to threat and fragmentation were the two strongest predictors of how the Turkish Constitutional Court will rule. Conveniently, both fragmentation (due to the preferences of Turkey) and threat happen to make the Court more likely to close a political party. When these elements are opposing (in other words when the Court's default preferences are such that they will prefer to expand civil liberties and allow more open participation), I believe that the threats variable will ultimately prevail over a preference to expand rights because a court will likely hold the survival of the regime over the expansion of rights. However, due to the nature of Turkey, it was not possible to study this phenomenon and more research should be done to determine whether or not that would be the case.

A study of how public support affects the willingness of the Constitutional Court to ban a political party did not find a relationship between the age of a political party and the closure of a political party. As discussed throughout the paper, the way in which the data was measured may cause it to contain a bias in favor of closure. For this reason, no conclusions could be drawn about the significance of public support in the Turkish case. However, many papers have been written describing how citizens influence courts and how court decisions can influence the opinions of voters. For this reason, it is likely that some sort of causal relationship may be present between public support and closure and is an area that requires further research with a different case study.

A study of international influences also confirmed that external factors can compel the Court to be more careful about which parties are closed. The dollar amount of exports to the European Union from Turkey and imports from the European Union to Turkey were used as a proxy for support for entry to the European Union. A difference of means test confirmed that the Court was much more likely to ban a political party when exports to the European Union and imports from the European Union were lower. A time variable was also analyzed to confirm that a relationship between trade and closure actually existed, rather than the Court merely being more likely not to ban a political party more recently. Even an analysis of public support for entry to the European Union (with much fewer data points) indicates a relationship between these two variables. Therefore, international influences do in some cases make a difference. This finding certainly has some interesting implications. Perhaps the international community can use organizations such as the European Union or the World Trade Organization as carrots to compel nations to make positive changes and allow more political openness. This potential policy would, of course, be conditioned upon several caveats. For example, it would first need to be known that a state actually possessed a strong desire to enter one of these organizations or gain a certain status within the international community. Secondly, the desire for the attainment of said status or membership must in some ways trump other contributing factors that would mitigate a state's willingness not to ban political parties. While these caveats are very difficult to fulfill, the belief that moderation will allow a state to obtain status or membership in a particular organization may at the very least lessen slightly the likelihood that a political party would be closed.

The results of the data allow one to develop a certain hierarchy about the factors that result in the closure of a political party. If a party represents a threat to the territory or ethnic composition of a country, it will be closed in every instance. If a party does not represent such a

threat but is tried during a time of fragmentation, the Court will likely rule based upon its preferences. If the Court does not prefer banning a political party or if fragmentation is not present, then and only then will other factors such as public support for a party or international support for a certain ruling have the ability to affect the decisions of a court.

According to Rosenblum, “the more recent the constitution, the more likely [it is] to incorporate religious, ethnic, racial, and linguistic constraints on party organizing” (Rosenblum 2007). The closure of the ethnic parties, like Kurdish parties or the Batasuna Party in Spain, could actually be problematic for democracies. Political parties are generally formed to represent a segment of the population and advocate for the wishes of that group. If a group of people that feels it does not have representation is constantly restricted from entering the system, it encourages that group to be increasingly anti-system. Closure of ethnic parties that are perceived as threatening to the framework of democracy could breed resentment to the current system. As a party that has been shut out of the system, terrorism or illicit activities may be the only means for said party to affect political change to the status-quo. Rosenblum has also asserted that:

Studies of constitutional courts demonstrate, however, that their powers of decision on these questions may owe less to being above the fray than to the coincidence of aims between major political parties and judges, and conviction on the part of established parties that for a variety of reasons achieving these ends is politically more viable through the courts than through legislative majorities” (Rosenblum 2007).

Furthermore, assertions against such as promoting anti-state activities are often made arbitrarily and are difficult to prove. Coupled with the fact that constitutional courts do indeed utilize their powers for political incentives, these factors give the constitutional courts essentially unchecked power in this domain.

Additionally, the banning of these ethnic parties eliminates what Rosenblum calls the “safety valve” effect. Political groups that desire change are not able to release tensions in a

moderated public arena. Courts must balance between banning a political party in order to protect democracy and leaving a party open to allow them to release tension and continue to be regulated within the political forum.

The fundamental threats argument can also be manipulated by courts for political reasons, causing them to close parties more often than they truly should. This notion is especially troubling given that courts are generally unelected institutions. Why should an unelected body, especially one with its own preferences and motivations, be the sole decider as to which parties can and cannot participate? How can the conflicts between the Turkish government and the Kurds expect to be solved if they have no voice or stake in the regime? A traditional role of a constitution is to protect minorities from the rule of the unrestrained rule of the majority. If political parties of the minority are being closed, how can the constitution and court perform this function?

The fact that fragmentation allows courts to rule based upon its preferences suggests that an entrenched regime has a distinct advantage to establishing a proportional representation system with a lower election threshold or some other political system that promotes fragmentation as long as they can maintain control of unelected institutions such as the courts. Attitudes and policies within elected institutions are likely to differ from established unelected institutions over time because elected institutions are more reflective of the populace and therefore more likely to change. For this reason, disagreements may occur between elected and unelected institutions. When this occurs, the pattern of political party bans has shown that fragmentation may actually help preserve the status quo.

The study of the banning of political parties is important because of its effects on the political arena. The very nature of a court banning a political party is undemocratic because an

unelected body is allowed to regulate the political space. According to Hirschl, the world is experiencing a “judicialization of politics.” As a result of this phenomenon, courts are now more willing and able to rule on political questions that were previously left to either the executive or legislative branches. The closure of political parties certainly falls into the realm of the judicialization of politics discussed by Hirschl. For this reason, an understanding of this process and the factors affecting how courts view a political party are important in both the present and future. If the judicialization of politics continues, courts could exercise even more influence over the political arena in the future. The courts themselves must increasingly strike a balance between acting in a way that preserves democracy while still allowing minority parties access to the political system. While historically there have indeed been real and significant reasons to ban political parties in the spirit of protecting democracy, the closure of political parties has also been used to exclude significant minorities and consolidate power of the elites which is a troubling prospect for democracy in the future if the courts continue to gain power vis-à-vis other branches.

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